

**Subcommittee on Proposed Resolutions  
under the Bankruptcy Ordinance and the Companies Ordinance  
Follow-up to Meeting on 19 July 2013**

**Administration's Response to  
Written Submission by Caritas Family Crisis Support Centre**

**Purpose**

The Debt and Financial Capability Service of Caritas Family Crisis Support Centre and Concern Group on “Consumer Credit in Hong Kong” of Caritas Family Crisis Support Centre (“Caritas”) submitted a Revised Submission on Proposed Resolutions under the Bankruptcy Ordinance and the Companies Ordinance to the Legislative Council on 19 July 2013. This note provides the Administration’s response to the written submission.

**Background**

2. In Hong Kong, it is government policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the services. To achieve this, the level of statutory fees, charges and deposits for administering bankruptcy case is determined with reference to the full costs incurred by the Official Receiver (“OR”) in the provision of insolvency-related services. This ensures that the costs for providing the insolvency services do not fall on the general tax-payers.

3. Pursuant to rule 52 of the Bankruptcy Rules (Cap. 6A), if a debtor petitions for bankruptcy, he shall pay to the OR a deposit of \$8,650. The deposit is to cover the costs and expenses incurred in handling the bankruptcy case such as the costs of publishing the notices relating to bankruptcy in the Gazette and in the newspaper, as well as the costs for conducting investigation. We now propose to reduce the deposit from \$8,650 to \$8,000. This will revert the level of deposit back to the level prior to the last fee revision exercise in 1997. If the fee proposals on deposits together with other statutory fees and charges come into effect before 2014, the projected cost recovery rate of the Official Receiver’s Office (“ORO”) for 2013-14 will be around 100%.

## **The Administration's response**

4. The Revised Submission of Caritas suggests that deposits payable by the elderly, disabled or debtors who have no income three months prior to the date of the bankruptcy petition should be further reduced to \$6,650. The suggestion will further reduce the cost recovery rate of the ORO. If the fees are insufficient to cover cost, the Government will have to use taxpayers' money to subsidize individual users of government services. This may not be fair to the general taxpayers.

5. Besides, as most if not all persons who petition for bankruptcy may claim affordability problem, any reduction/waiver mechanism must be fair and be acceptable to the public and relevant stakeholders. With reference to overseas practices (for instance, both the UK and Singapore have no such similar mechanism), we have no plan to consider a separate statutory mechanism to charge a lower deposit or waive the deposit in self-petitioned bankruptcy cases in respect of certain categories of persons (e.g. the elderly or low-income persons). As regards the questions raised by some members at the subcommittee meeting on 19 July 2013 as to whether assistance could be offered to bankruptcy petitioners from the angle of social welfare policy and legal aid, we have conveyed the responses of the Labour and Welfare Bureau ("LWB") and the Home Affairs Bureau ("HAB") respectively to the subcommittee secretariat on 24 September 2013, the content of which is reproduced in the **Annex** of this note.

**Financial Services and the Treasury Bureau  
Official Receiver's Office  
24 September 2013**

**LWB's response**

"We note from the draft minutes of the subcommittee meeting on 19 July 2013 that some members are of the view that intervention of social workers would help stop debtors from applying for bankruptcy and help them rebuild their confidence in life. In this regard, the Social Welfare Department (SWD) has all along been providing relevant services. In gist, social workers will provide counselling services to people with personal or family problems leading to or arising from financial hardship and refer them to specialist services, such as clinical psychology service, gamblers support service, debt counselling service, etc, as appropriate. Moreover, social workers may apply for charitable/trust funds to help individuals, including those filing for bankruptcy, who have difficulties in meeting expenses for daily living, such as maintenance, medical treatment, rehabilitation equipment, educational items, rental, expenses arising from moving house, etc. Apart from the above services, individuals with financial difficulties and meeting the eligibility criteria can also apply for Comprehensive Social Security Assistance (CSSA) to meet their basic needs.

We consider the above services and financial assistance under the CSSA Scheme adequate in providing timely assistance to and addressing the needs of bankruptcy petitioners. Hence, we have reservations on the need in putting in place a mechanism for referral between ORO and SWD as suggested by some members."

**HAB's response**

As regards legal aid, according to HAB / Legal Aid Department ("LAD"), the policy objective on legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. Means and merits tests are two cardinal criteria for the granting of legal aid to ensure that resources are targeted at those with the greatest need for help. For a debtor-petitioned bankruptcy case, it is noted that the petitioner is not seeking to enforce a right or defend a claim. He is seeking to free himself from his debts and liabilities before his creditors take action so that he can have a fresh start of life. The procedural requirements for obtaining the relief are such that one could effectively represent himself. HAB / LAD do not consider it justified to grant legal aid which is funded by taxpayers' money to pay for the fees and charges relating to voluntary bankruptcy procedures such as the statutory deposits payable to OR when debtor presents a petition.