

《 2015年破產(修訂)條例草案 》

Bankruptcy (Amendment) Bill 2015

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背景

Introduction

現行的《破產條例》訂明，破產人在「有關期間」屆滿時，即獲自動解除破產。首次破產人的「有關期間」為四年，而非首次破產人的「有關期間」則為五年。

The existing Bankruptcy Ordinance (“BO”) provides that a bankrupt will automatically be discharged from bankruptcy upon the expiry of the “relevant period”, which runs for four years for first-time bankrupts or five years for repeat bankrupts.

背景

Introduction

以下機制可將破產人獲自動解除破產的時間予以延後：
A bankrupt’s automatic discharge from bankruptcy may be deferred pursuant to the following mechanisms :

- a) **提出反對制度**：受託人或債權人可向法院提出申請，反對破產人獲自動解除破產。法院可頒令將首次破產人的「有關期間」暫時終止計算最多四年(非首次破產則為最多三年)。

Objection regime : A trustee-in-bankruptcy (TIB) or a creditor may apply to the court to object to the automatic discharge of the bankrupt, in which case the court may make an order to suspend the running of the “relevant period” for up to four years for first-time bankrupts (or up to three years for repeat bankrupts)

- b) **潛逃者規管制度**：在指明情況下，破產人若離開香港，其「有關期間」會自動暫時終止計算，直至破產人返回香港並把其回港一事通知受託人。

Abscondee regime : The running of the “relevant period” for a bankrupt who has left Hong Kong under specified circumstances will be suspended automatically until the bankrupt has returned to Hong Kong and notified the TIB of his or her return.

終審法院在早前裁定潛逃者規管制度其中一條條文不合憲，對破產人的旅行權利所施加的限制，超出了保障債權人權益所需：
The Court of Final Appeal ruled one of the provisions of the abscondee regime unconstitutional on grounds that the restraint imposed by that provision on the bankrupt’s right to travel went beyond what was necessary for the protection of the rights of creditors :

- a) 不論破產人有沒有履行義務的理由，制裁仍生效；
the sanction operated irrespective of the reason for the bankrupt’s failure to fulfill his obligation;
- b) 該制裁一律適用於所有情況；及
the sanction applied indiscriminately to all situations; and
- c) 法院沒有酌情權。
there was no discretion vested in the court.

背景

Introduction

- 我們就潛逃者規管制度進行檢討，並於2014年5月向財經事務委員會匯報檢討結果。
We have conducted a review of the abscondee regime and briefed the Panel on Financial Affairs on the review outcome in May 2014.
- 因應事務委員會的取向及諮詢持分者期間接獲的意見，我們制定了此項條例草案，其單一目的旨在引入一套新安排以取代現行潛逃者規管制度，以解決該制度的合憲性事宜。
Having regard to the preference of Panel members and views received from engagement with stakeholders, we have prepared this Bill with the sole purpose of introducing new arrangements to replace the existing abscondee regime so as to address the constitutionality issues of that regime.

主要建議

Key Recommendations

- 法院會獲賦予酌情權，決定是否發出不開始令。可考慮每個個案的情況，作出合適的判決。
The court is given discretion on whether to grant a non-commencement order. Make an appropriate judgement having regard to the circumstances of individual cases.
- 條例草案訂明保障持平的措施。
The Bill provides for measures to ensure fairness.

新安排

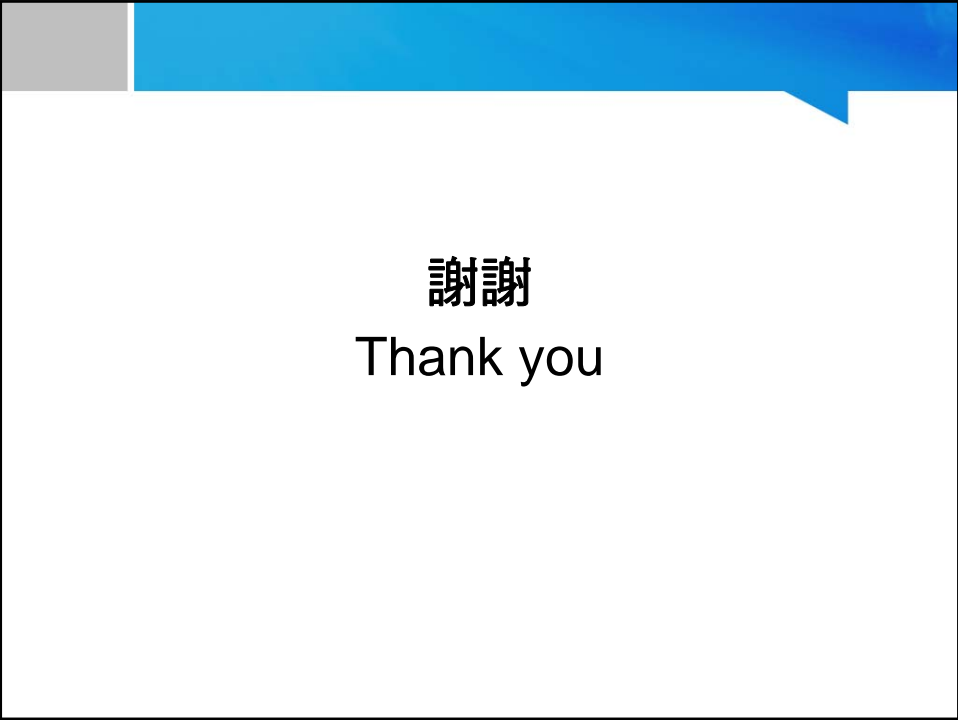
New Arrangements

1. 破產人未能完成初次會面，損害受託人對破產產業的管理。
A bankrupt's failure to complete an initial interview, prejudicing the estate administration by the TIB.
2. 受託人要求法院頒令，將破產人的「有關期間」視作從未開始計算。
The court may, on the TIB's application, make an order to treat the "relevant period" for the bankrupt as not commencing to run.
3. 如法院決定作出不開始令，法院在命令中指明重新開始計算「有關期間」的條件。
The court to specify in the non-commencement order the term(s) that will trigger commencement of the "relevant period" if it decides to make the order.

新安排

New Arrangements

4. 破產人的自動解除破產期限被延長。
The bankrupt's automatic discharge from bankruptcy deferred.
5. 當破產人符合有關條件，受託人須在十四日內向法院提交通知，「有關期間」自符合相關條件之日起開始計算。
After the bankrupt complies with the terms as specified by the court, the TIB must file a notice with the court within 14 days. The "relevant period" for the bankrupt commences to run on the date of compliance.



謝謝
Thank you