



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2869 4195)

13 May 2015

Mr WONG Yan-yin, Paul
Prin AS for Financial Services & the Treasury
(Financial Services)6
Financial Services and the Treasury Bureau
15th Floor
Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr WONG,

Re: Bankruptcy (Amendment) Bill 2015

I am scrutinizing the Bankruptcy (Amendment) Bill 2015 and would be grateful if you would clarify the following matters.

Policy objective of new section 30AB

The Bill proposes to abolish the automatic suspension of the relevant period under section 30A(10) of the Bankruptcy Ordinance (Cap. 6) (the Ordinance) which based on the absence of a bankrupt from Hong Kong. A new arrangement is proposed under the new section 30AB that the trustee may apply to the court, within six months after the date of the bankruptcy order or a longer period specified by the court, apply to court for a non-commencement order that the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order if the bankrupt has failed to attend the initial interview on a date as appointed by the trustee, or the bankrupt has attended the initial interview but failed to provide all information concerning the bankrupt's affairs, dealings and property as reasonably requested by the trustee.

It is also noted that under the existing Ordinance, there are provisions which impose obligations on a bankrupt in relation to submission of requisite documents, attendance of creditors' meeting and public examination to ensure a bankrupt's co-operation in the administration of the bankrupt's estate (examples of these duties and respective sanctions are set out in **Annex**). In particular, section 30A(3) and (4) provide that the trustee may by application to the court suspend the running of the relevant period under section 30A(1) on the various grounds including a bankrupt's failure to co-operate in the administration of his estate and a bankrupt's unsatisfactory conduct (section 30A(4)(c) and (d)). In view of the policy objective of securing a bankrupt's attendance at the initial interview, please let us know the justification(s) for legislating a new mechanism under sections 30AB and 30AC instead of relying on the existing provisions in the Ordinance concerning a bankrupt's unsatisfactory conduct or failure to co-operate in the administration of a bankrupt's estate.

Initial interview

It is noted that the term "initial interview" used in the proposed new section 30AB is not defined in the Bill nor does it appear in the Ordinance. In this regard, please clarify -

- (a) whether the initial interview under new section 30AB is referring to the interviews to be appointed by the trustee under rule 150(2) of the Bankruptcy Rules (Cap. 6A). If not, please let us know the legal requirements or basis for holding the initial interview with a bankrupt.
- (b) if the initial interview is referring to the interviews under rule 150(2) of Cap. 6A, the justification for imposing an additional sanction in respect of a bankrupt's failure to provide information to the trustee at the outset of the bankruptcy period. It is noted that under rule 150(2) the duty of a bankrupt to attend the interviews at such time and places as the trustee may appoint for the purpose of investigating the bankrupt's affairs is supplemental to the bankrupt's duty to submit a Statement of Affairs to the trustee within 21 days after the date of the bankruptcy order under section 18 of the Ordinance and failure to submit a Statement of Affairs is guilty of a contempt of court and may be liable to other punishment.

Non-commencement of relevant period

Under section 30A(10)(1) and by virtue of section 30 of the Ordinance, the relevant period commences from the date of bankruptcy order.

Section 30AB introduces a new mechanism of "treating the relevant period as not commencing to run on the date of bankruptcy order". Please let us know -

- (a) the reasons for not adopting the existing mechanism of "suspending the running of the relevant period" under section 30A(3) of the Ordinance given that the length of the non-commencement of the relevant period may be unduly prolonged and therefore causes unfairness to a bankrupt due to factors unrelated to the conduct of the bankrupt such as time allowed for the trustee to make the application (i.e. within 6 months from the date of bankruptcy order and such period may be extended) and the requisite time for processing the application in court;
- (b) the reasons for not providing any limit on length of non-commencement period the court may order; and
- (c) if there is any other jurisdiction that has adopted similar arrangement of 'non-commencement order' in respect of the running of bankruptcy period.

Transitional arrangements

New section 30A(10A) provides that despite the repeal of section 30A(10) by the Bill, section 30A(10)(a) and (b)(ii) as in force before 1 November 2016, the commencement date of the Bill, continues to apply to a bankrupt against whom a bankruptcy order has been made before that date. In view of the Court of Appeal's ruling in *Chang Hyun Chi v Official Receiver* [2015] 1 HKLRD 512 that section 30A(10)(a) is unconstitutional and an appeal to the Court of Final Appeal is pending, please let us know the reasons for the proposed application of the repealed sections to those pre-existing cases and the implications on the bankrupt's right to travel and the administration of these cases should the Court of Final Appeal uphold the Court of Appeal's ruling that section 30A(10)(a) is unconstitutional.

Timing of the Bill

It is noted that section 30A(10)(b)(i) has been inoperative since 2006 due to ruling of the Court of Final Appeal in *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing v Chan Wing Hing* [2006] 9 HKCFAR 545. For Member's information, please explain the reasons for taking about 9 years to introduce the Bill to address the constitutional issue raised by the Court of Final Appeal.

We shall be grateful if you would let us have your response in bilingual form at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Clara TAM', written in a cursive style.

(Clara TAM)
Assistant Legal Adviser

cc. DoJ (Attn: Mr Alan CHONG (By Fax: 2869 1302))

**Examples on duties of a bankrupt
under the Bankruptcy Ordinance (Cap. 6)**

<i>Section</i>	<i>Duty</i>	<i>Sanction</i>
18	Duty to submit a Statement of Affairs to the trustee not more than 21 days after the bankruptcy order was made (s. 18(1))	<ul style="list-style-type: none"> • Contempt of court; and • Other punishment (s. 18(4))
19	Duty to attend and answer all questions that the court may put or allow to be put in a public examination of a bankrupt's affairs (s. 19(9))	Arrest by court for failure to attend the public examination (s. 27(1)(d))
26	<ul style="list-style-type: none"> • Duty to attend first meeting of his creditors and to give such information as the meeting may require (s. 26(1)) • Duty to give inventory of his properties, list of creditors, list of his debts(s. 26(2)) • Duty to aid in the realization of his properties and the distribution of the proceeds among his creditors (s. 26(3)) 	Contempt of court (s. 26(4))
43	Duty to submit to the trustee an annual statement of his earnings during the preceding year; and details of any property he acquired during that period (s. 43A(6))	<ul style="list-style-type: none"> • An offence liable for imprisonment for 6 months (s. 43A(7)) • Discharge from bankruptcy may be refused by the court (s. 43A(8))