

**Bills Committee on
Bankruptcy (Amendment) Bill 2015**

Responses to Deputations' Comments on the Bill

	<u>Comments</u>	<u>Responses</u>
A. The Law Society of Hong Kong (“LSHK”)		
1	The LSHK attached its response dated 8 July 2014 to the Financial Services and the Treasury Bureau’s stakeholder engagement exercise in 2014 on the review of the abscondee regime under the Bankruptcy Ordinance (“BO”) to the Bills Committee, and advised at the Bills Committee meeting on 7 July 2015 that it supported the reform approach as adopted in the Bill.	After receiving its submission in July 2014, the Financial Services and the Treasury Bureau and the Official Receiver’s Office (“ORO”) had met LSHK and taken into account its views where appropriate when finalising the legislative proposals. We are pleased to note that the LSHK expressed support to the reform approach as adopted in the Bill and indicated no further comment on the Bill.
B. Caritas Family Crisis Line and Education Centre – Debt and Financial Counselling Services (“Caritas”)		
2	Caritas is concerned whether a trading bankrupt who has not properly kept their books and accounts in the past would be subject to sanction under the new regime despite a lack of intent to evade his/her obligations.	Whilst the fact of a bankrupt’s failure to complete the initial interview would be a ground for the trustee-in-bankruptcy (“TIB”) to apply to the court for a non-commencement order against the bankrupt, the court would have the discretion to decide on whether to make a non-commencement order after taking into account all relevant facts and factors, including any representation made by the bankrupt.
3	Caritas suggests that there should be appropriate public education (especially for bankrupts) on the importance	The ORO will update its website and publications, such as the <i>Simple Guide on Bankruptcy</i> , to provide information on the new arrangements and the relevant

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	of completing the initial interview upon the implementation of the new arrangements.	requirements to members of the public. ORO will also conduct briefings for private insolvency practitioners and issue notices and guidelines to them.
4	Caritas is concerned whether a bankrupt will be sanctioned under the new arrangement as a result of maladministration or fault (such as loss of documents) on the part of the TIB.	The court will have the discretion to decide whether to make a non-commencement order against a bankrupt after taking into account all relevant facts and factors. Pursuant to the proposed section 30AC(1)(b), the court may not make a non-commencement order if it is satisfied by the bankrupt concerned that there is sufficient cause for the order not to be made.
5	Caritas considers that it will be sufficient to deal with situations where a bankrupt fails to complete the initial interview with the TIB by making use of section 26 of the BO, which provides that a bankrupt failing to fulfill certain obligations in respect of the discovery and realisation of property may be sanctioned for contempt of court.	As the new arrangements specifically target a bankrupt's failure to complete the initial interview, we consider it more appropriate to put in place a corresponding sanction which is commensurate with the prejudice caused to the administration of the bankrupt's estate, instead of relying on a general criminal sanction available under section 26(4) of the BO.
6	Caritas is concerned that the new arrangements cannot deter a bankrupt from refusing to co-operate with the TIB or failing to comply with the relevant obligations under the BO after his/her completion of the initial interview.	Those circumstances would be addressed by the other relevant existing provisions of the BO. By virtue of the objection regime under section 30A(3) and (4) of the BO, the TIB may object to the bankrupt's discharge and seek the court's order to extend the period for discharge up to eight years in total in those circumstances.
7	Caritas seeks clarification on the following points which it considered that a member of the public might find confusing – (a) whether a debtor remains in bankruptcy once the	Section 30 of the BO provides that the bankruptcy of a debtor commences on the day on which a bankruptcy order is made against him/her. The making of a non-commencement order against a bankrupt only affects the running of the period towards the bankrupt's discharge from bankruptcy as referred to in section 30A of the BO. It does not alter the bankruptcy status of the debtor

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	<p>court has made a non-commencement order against him/her; and</p> <p>(b) whether the TIB concerned will continue to follow-up on the bankruptcy case after making an application for a non-commencement order against the bankrupt.</p>	<p>concerned.</p> <p>Upon appointment as the TIB of a bankruptcy case, the TIB assumes the duties to administer the bankrupt’s estate as imposed under the BO until vacation of office by the TIB in accordance with the relevant provisions of the BO. The application for a non-commencement order by the TIB or subsequent making of such an order by the court does not remove the TIB from his/her duties during the period when the non-commencement order is effective.</p>
C. The Hong Kong Institute of Certified Public Accountants (“HKICPA”)		
8	<p>Noting that the initial interview is a one-off event as proposed in the Bill, the HKICPA suggests that the notion of the initial interview be expanded to include subsequent interviews to be conducted within the first six months from the date of bankruptcy. A bankrupt’s failure to attend or to co-operate in a subsequent interview should also be grounds for the TIB to apply for a non-commencement order under the new arrangements. Such subsequent interviews do not necessarily have to be held face-to-face.</p>	<p>The initial interview, as provided for in the proposed section 30AB(1)(a), is the meeting between a bankrupt and the TIB on a day appointed by the latter for the administration of the bankrupt’s estate, at which the bankrupt shall provide the TIB with information concerning his or her affairs, dealings and property. It refers to the first meeting between the bankrupt and the TIB held on an appointed day for the purpose of administration of the bankrupt’s estate. In other words, the TIB cannot seek to extend the application of the new arrangements to the next meeting by “adjourning” the initial interview or by holding subsequent meetings. Confining the initial interview to the first meeting held on an appointed day is a balancing act, taking into account, <i>inter alia</i>, the need to minimise uncertainties as to whether any subsequent meeting is a continual session of the initial interview or not as well as to avoid potential abuse by the TIB.</p> <p>The initial interview is considered very important to the TIB’s case administration, whereas subsequent interviews are typically for the TIB to inquire into specific aspects pertaining to bankruptcy administration and</p>

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		<p>changes in the financial affairs of the bankrupt as well as further investigating into the bankrupt's affairs on a needs basis. Failure to attend or co-operate in subsequent interviews may, same as at present, form a basis for the TIB to apply to the court for objecting to the discharge of the bankrupt on grounds under section 30A(4)(b), (c), (d) and/or (e) of the BO, in which case the period for discharge may be extended to a total of up to eight years. We therefore consider it unnecessary to expand the notion of the initial interview.</p>
9	<p>The HKICPA considers that as a matter of drafting, it is not clear whether the proposed section 30AB(1) would apply to a re-scheduled initial interview.</p>	<p>Section 30AB(1)(a)(i) refers to a bankrupt's attendance at an initial interview on a day appointed by the TIB. If an original appointment has been cancelled, the TIB is entitled to appoint another day for the initial interview pursuant to the same provision; and such a day will be taken as the day for holding the initial interview for the purpose of the proposed section 30AB(1)(a)(i). The provision as drafted reflects the above intention.</p>
10	<p>The HKICPA seeks clarification on how the relevant provisions on the time limit for application for a non-commencement order (i.e. the proposed sections 30AB(2), (3) and (4)) would operate when a TIB makes an application for extension of the time limit (i.e. an extension application) pursuant to the proposed section 30AB(3).</p>	<p>The operation of the relevant provisions is as follows –</p> <ul style="list-style-type: none"> (a) a TIB may, within 6 months after the date of the bankruptcy order, apply for a non-commencement order pursuant to section 30AB(2)(a); (b) before the expiry of the 6 months after the date of the bankruptcy order, the TIB may make an extension application to the court pursuant to section 30AB(3) and (4)(a); (c) the court may then exercise discretion to specify a longer period for which the trustee may apply for a non-commencement order; (d) before the expiry of the extended period approved by the court under (c) above, the TIB may once again apply for another extension pursuant to

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		<p>section 30AB(3) and (4)(b); and</p> <p>(e) the court may, on a TIB’s further application made under (d), exercise discretion to grant a further extension during which the TIB may apply for a non-commencement order.</p> <p>The provisions as drafted reflect the aforesaid arrangements. The TIB is required to justify any extension application having regard to specific circumstances of the case, whereas the approval of the extension application will be at the full discretion of the court.</p>
11	The HKICPA considers that at any time during that extended period for application for a non-commencement order, the TIB should be allowed to make an application for a further extension under certain circumstances. The period of extension could be subject to an overall limit of one year.	The TIB is permitted to apply to the court for further extension of the deadline for submitting an application for non-commencement order as explained in our response to item 10 above. We do not consider it necessary or appropriate to impose an overall limit on the period of extension as it may fetter the discretion of the court.
D. The Hong Kong Association of Banks (“HKAB”)		
12	HKAB has no specific comment on the Bill.	We note HKAB’s position.
F. The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) (“DTCA”)		
13	DTCA has no specific comment on the Bill.	We note DTCA’s position.

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F. Consumer Council		
14	The Consumer Council does not comment on the matter, noting that no consumer issue is involved in the Bill.	We note the Consumer Council's position.

**Financial Services and the Treasury Bureau
Official Receiver's Office
July 2015**