

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

Response to Further Comments from the Hong Kong Bar Association

This paper sets out the Government's response to the further comments contained in the letter of the Hong Kong Bar Association ("HKBA") dated 7 October 2015 ("the Letter") concerning the Bankruptcy (Amendment) Bill 2015 ("the Bill").

Point 4 in the Letter

2. After further consideration, we will introduce a Committee Stage Amendment to make it expressly clear that physical presence of the bankrupt is required at the initial interview.

Point 5 in the Letter

3. With reference to Point 2 in the Government Response issued in October (CB(1)1293/14-15(01)), we would like to clarify that a bankrupt's failure to attend any other interview session adjourned from the initial interview will not be caught under the proposed section 30AB(1)(b).

Point 6 in the Letter

4. Given that the circumstances of individual cases vary, it will not be appropriate to prescribe in the Bill a set of standard requirements on the timing and mode for the TIB to give notice of the initial interview. In order to ensure that the court can assess whether the TIB has taken proper steps to notify the bankrupt of the initial interview, the Bill (under the proposed rule 89A(2)(b)) requires the TIB to provide particulars of the steps taken for notifying the bankrupt of the time and place for the initial interview, and the bankrupt can make representations to the court. We believe that the TIB will keep records of the steps he has taken for the notification and seek to provide relevant evidence to the court. The court will then take into consideration all relevant information and facts

in reaching a decision under proposed section 30AC(1) on whether to make a non-commencement order against the bankrupt.

Point 7 in the Letter

5. We would like to emphasize that the proposed new arrangements are designed to deal with cases where the TIB cannot commence administration of the bankrupt's estate properly at the outset owing to the bankrupt's failure to complete the initial interview. Against this background, we consider it appropriate that the relevant period which counts towards the discharge from bankruptcy should be treated as not commencing to run from the commencement of bankruptcy, viz. the date of the bankruptcy order in case a non-commencement order is made.

6. On the question about fairness to the bankrupt, there are already provisions in the Bill which ensure that the court would make a fair decision in considering whether or not to make a non-commencement order (e.g. proposed section 30AC(1)(b)). The court will take into consideration all relevant information and facts in reaching a decision.

Point 8 in the Letter

7. In light of the ruling of the Court of Final Appeal on 5 November 2015 that section 30A(10)(a) is unconstitutional, we will introduce a Committee Stage Amendment to simplify the transitional provision to remove the reference to section 30A(10)(a) in the proposed section 30A(10A).

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