

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

**Response to the Letter of Assistant Legal Adviser**

This paper sets out the Government's response to the comments contained in the letter of the Assistant Legal Adviser dated 5 November 2015 ("the Letter") concerning the Bankruptcy (Amendment) Bill 2015 ("the Bill").

*Meaning of "initial interview" in the Bill*

2. After further consideration, we will introduce a Committee Stage Amendment ("CSA") to make it expressly clear that physical presence of the bankrupt is required at the initial interview. The trustee-in-bankruptcy ("TIB") will decide what information concerning the bankrupt's affairs, dealings and property is required from the bankrupt having regard to circumstances of individual cases. Checking the bankrupt's identity document is only an example to illustrate the importance of the bankrupt's physical presence at the initial interview.

3. 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).

4. While the new arrangements will provide the TIB a power to apply to the court for a non-commencement order, this is not an automatic mechanism. The bankrupt's failure to attend the initial interview is only a prerequisite for making the application and the TIB also has to show to the court in the application that such failure has caused prejudice to the administration of the bankrupt's estate. If the bankrupt, for whatever reasons, fails to attend the initial interview, the TIB will still need to take into account whether the bankrupt has taken any mitigation measures, e.g. through another interview or submitting all documents and information on paper as well as the timing of submission and comprehensiveness of the information). It is not incumbent on the TIB to apply for a non-commencement order if he or she is satisfied that the prejudice has been sufficiently mitigated. There are also 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) under which the court needs to consider representations made by the bankrupt on why the non-commencement order should not be made).

#### *Giving of notice for initial interview*

5. 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. The TIB will take stock of the steps he or she has taken for the notification to prove to the court that he has made reasonable steps to inform the bankrupt. 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.

#### *Non-commencement order*

6. The policy objective of the new arrangements is to target a bankrupt's failure to complete the initial interview. The proposed new arrangements are designed to deal with cases where the TIB cannot properly commence administration of the bankrupt's estate at the outset owing to the bankrupt's failure to complete the initial interview. It is thus logical to consider that the relevant period should be treated as not commencing to run from the commencement of bankruptcy.

7. The proposed new arrangements are distinct from the current objection regime under section 30A(4) of the Bankruptcy Ordinance ("BO") (Cap. 6). They are to replace the existing abscondee regime under section 30A(10) of the BO to, among other things, tackle the automatic suspension of the relevant period under the existing regime. The initial interview is critical to the TIB's work in bankruptcy case administration. The proposed arrangements are to encourage the bankrupt to cooperate with the TIB so that the TIB will have sufficient information and documents at the outset to perform his or her duties properly. This policy objective cannot be achieved through the objection regime, as that

does not provide an adequate sanction specifically targeting those bankrupts who fail to cooperate with the TIB at the outset which prejudices the commencement of administration of the bankrupt's estate.

8. We need to point out that the comments of the Law Society of Hong Kong quoted in the Letter were made in 2014 in relation to an interview approach presented to the Panel on Financial Affairs. The new arrangements are developed from the interview approach with suitable modifications. After making a written submission on the Bill, the Law Society attended the meeting of the Bills Committee on 7 July 2015 and already advised that it supported the reform approach as adopted in the Bill.

9. We have undertaken that appropriate public education will be conducted before the commencement of the new arrangements to minimize any possible confusion. For example, the Official Receiver's Office ("ORO") will update its website and publications, such as *The Simple Guide on Bankruptcy*, to provide information on the new arrangements and the relevant requirements to members of the public. ORO will also conduct briefings for private insolvency practitioners and issue notices and guidelines to them.

10. At the meeting of the Bills Committee held on 7 July, we already briefed Members that there were differences between the regimes in Australia and the United Kingdom and our proposed new arrangements, and Members did not raise any objection to devising our own proposal.

#### *Transitional provisions*

11. 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 CSA to simplify the transitional provision to remove the reference to section 30A(10)(a) in the proposed section 30A(10A). The transitional provisions should aim to preserve what is still effective before the commencement of the new arrangements. It is not our policy intent to further relax the existing regime which remains legally in order.

**Financial Services and the Treasury Bureau**

**Official Receiver's Office**

**10 November 2015**