

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

Response to Matters Raised by the Assistant Legal Advisor

This paper sets out the Government's response to the matters concerning the Bankruptcy (Amendment) Bill 2015 ("the Bill") as raised in the letter of the Assistant Legal Advisor ("ALA") of the Legislative Council dated 6 August 2015 (**Annex A**).

Proposed section 30AC of the Bankruptcy Ordinance (Cap. 6)

2. Pursuant to section 30(a) of the Bankruptcy Ordinance, the bankruptcy of a person against whom a bankruptcy order has been made commences with the day on which the order is made. In section 30A(2), the relevant period for the bankrupt is defined to begin with the commencement of the bankruptcy. Therefore, "the date of the bankruptcy order" in proposed section 30AC(2)(a)(i) and "the commencement of the bankruptcy" in section 30A(2) refer to the same date. We adopt the formulation used in proposed section 30AC(2)(a) to make it easier for the readers to understand when the relevant period is treated as not commencing to run instead of having to make a further reference to section 30(a) to understand how "the commencement of the bankruptcy" is defined.

Proposed Rule 89A of the Bankruptcy Rules (Cap. 6A)

3. The insertion of "、" after the wording "建議的" may be more desirable if the wording and the phrase "破產人須先予遵守有關期間才.....開始計算的" are two parallel elements in the provision. We believe the present wording is clear enough to a user of the law and the insertion of "、" is unnecessary.

Proposed Form 82A in the Bankruptcy (Forms) Rules (Cap. 6B)

4. We note the ALA's suggestion. We will move a Government's

Committee Stage Amendment (“CSA”) to replace the term “不開始令” in the Chinese text of the Form 82A by “命令” for the sake of clarity.

Proposed Form 82B in Cap. 6B

5. Having considered the ALA’s comments and with a view to improving the clarity of the Bill, we will move a CSA to amend the reference to “section 30AC” in Form 82B as “section 30AC(3)(a)”.

6. For the sake of consistency, we will also move CSAs to replace certain references in Forms 82A and 82B by substituting references that are more specific. Details of these CSAs are at **Annex B**.

Proposed amendments to the Bankruptcy (Fees and Percentages) Order (Cap. 6C)

7. We note the ALA’s comments and will move a CSA to amend the Chinese text of the proposed item 6A to read “根據本條例第 30AB 條提出申請，要求作出不開始令” to improve the clarity of the Bill.

8. Annex B provides a copy of all the CSAs suggested by the Government for reference of Members of the Bills Committee.

Financial Services and the Treasury Bureau

Official Receiver’s Office

September 2015



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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6 August 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
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Hong Kong

Dear Mr WONG,

Re: Bankruptcy (Amendment) Bill 2015

Further to our letter dated 13 May 2015 and the meeting of the relevant Bills Committee on 7 July 2015, I would like to seek your response on the following drafting matters -

Proposed section 30AC of the Bankruptcy Ordinance (Cap. 6)

Under Clause 3 of the Bill, "relevant period" is defined to mean, in relation to a bankrupt, the relevant period mentioned in section 30A(1) of Cap. 6. Existing section 30A(1) reads, "[s]ubject to this section, a bankrupt is discharged from bankruptcy by the expiration of the relevant period under this section". Section 30A(2) further explains that "[t]he relevant period referred to in subsection (1) is as follows -

- (a) where a person has not previously been adjudged bankrupt, the period of 4 years;
- (b) where a person has been previously adjudged bankrupt, the period of 5 years,

beginning with *the commencement of the bankruptcy.*"

Proposed section 30AC(2)(a) which provides that a non-commencement order must specify that the relevant period for the bankrupt is treated as not commencing to run on the *date of the bankruptcy order*. The proposed section 30AC(2)(a) has not exactly adopted the formulation used in the existing section 30A(2). Please explain the reason(s) for using a different formulation in the proposed scheme.

Proposed Rule 89A of the Bankruptcy Rules (Cap. 6A)

Under the proposed Rule 89A(2)(c), "terms proposed to be complied with by the bankrupt for the relevant period to commence to run pursuant to section 30AC(4) of the Ordinance" is rendered as "建議的破產人須先予遵守有關期間才依據本條例第30AC(4)條開始計算的條款". Please consider putting a punctuation mark "、" after "建議的" to achieve readability of this sentence.

Proposed Form 82A in the Bankruptcy (Forms) Rules (Cap. 6B)

In the Chinese heading of Form 82A, please consider replacing "不開始令" by "命令" to tally with the English heading or amending the English heading accordingly to achieve the consistency between the Chinese and English texts.

Proposed Form 82B in Cap. 6B

The proposed Form 82B sets out the prescribed form of the notice to be filed with the Registrar of the High Court by the trustee in bankruptcy under proposed section 30AC(3). Please consider amending the references to "section 30AC" in Form 82B as "section 30AC(3)" for reader's easy reference.

Proposed amendments to the Bankruptcy (Fees and Percentages) Order (Cap. 6C)

Clause 15 of the Bill amends the Schedule to Cap. 6C by adding a proposed item 6A to its Table A. Please let us know what the expression "本條例第30AB條所指的要求" is referring to. In the Chinese text of section 30AB, "要求" appears in subsection (1) as well as subsection (1)(a) and refers to different matters, i.e. the application for a non-commencement order, and the requirement for the bankrupt to attend an initial interview and provide information. Also, it is noted that the relevant English text of proposed item 6A does not have a corresponding expression for "所指的要求". Please clarify.

I would appreciate if you would let me 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))

Bankruptcy (Amendment) Bill 2015

Committee StageAmendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
13(1)	By deleting “of commencement of relevant period for bankrupt under section 30AC” and substituting “of commencement of relevant period for bankrupt under section 30AC(3)(a)”.
13(1)	By deleting “non-commencement of relevant period for bankrupt under section 30AC” and substituting “non-commencement of relevant period for bankrupt under section 30AC(1)”.
13(2)	In the proposed Form 82A, in the heading, by deleting “SECTION 30AC” and substituting “SECTION 30AC(1)”.
13(2)	In the proposed Form 82A, by deleting “pursuant to section 30AC” and substituting “pursuant to section 30AC(2)(a)(i)”.
13(2)	In the proposed Form 82B, in the heading, by deleting “SECTION 30AC” and substituting “SECTION 30AC(3)(a)”.
13(2)	In the proposed Form 82B, by deleting “pursuant to section 30AC” and substituting “pursuant to section 30AC(3)(a)”.
15	In the proposed item 6A, in the Chinese text, by deleting “所指的要求作出不開始令的申請” and substituting “提出申請，要求作出不開始令”.