



BY FAX AND BY POST
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Your Ref.: C3/17(04)
Our Ref.: C/IPC, M33457

3 March 2005

Mr. Alan Lo,
Financial Services Branch,
The Financial Services and the Treasury Bureau,
18th Floor, Admiralty Centre, Tower 1,
18 Harcourt Road, Hong Kong.

Dear Mr. Lo,

Bankruptcy (Amendment) Bill 2004

I am replying to your letter dated 1 February 2005 requesting comments on whether some form of minimum qualifications should be set out for private sector insolvency practitioners (“PIPs”) to be appointed as (provisional) trustees in summary bankruptcy cases, and if so, what such minimum qualifications should be, and whether they should be set out in the statute. The comments of the Hong Kong Institute of Certified Public Accountants (“HKICPA”/“Institute”) are set out below.

The Institute’s submission on the Bankruptcy (Amendment) Bill 2004, dated 10 December 2004, stated that, amongst other things, the proposed framework under which the Official Receiver (“OR”) is to outsource summary bankruptcy cases to PIPs should ensure that only those who are adequately qualified and experienced to act as (provisional) trustees would be appointed as such.

The Institute believes that express minimum qualifications for PIPs are required to enhance transparency and to ensure that only professionals with appropriate expertise are appointed to act as (provisional) trustees. In this regard, we suggest certain minimum qualification requirements be drawn up based on those already adopted in the tenders for outsourcing summary liquidation cases and outsourcing the preliminary examination in bankruptcy. Some suggested criteria for an applicant firm, modelled on the existing requirements, would be:

- (i) A firm must have at least two partners or directors who are “Recognised Professionals”, one of whom must be a Professional Person”, i.e.,
- a certified public accountant who is a member of the Hong Kong Institute of Certified Public Accountants; or
 - a solicitor who is a member of the Law Society of Hong Kong; or
 - a company secretary who is a member of the Hong Kong Institute of Company Secretaries; and having
 - at least 3 years of post-qualification experience; and



- a minimum of 300 qualifying chargeable hours relating to “relevant insolvency work” over the past 3 years.

“Relevant insolvency work” would include bankruptcies, individual voluntary arrangements, insolvent liquidations and receiverships.
 - The “relevant insolvency work” must have been performed in the course of a minimum of four separate administrations.
- (ii) A firm should have a minimum of two appointment-takers, who should be partners or directors, at least one of whom should be a Professional Person.

We also consider that, in considering the experience and qualifications of Professional Persons, some recognition should continue be given to relevant insolvency training courses, such as the HKICPA’s Diploma in Insolvency, which covers all aspects of insolvency work, including bankruptcy and individual voluntary arrangements.

The Institute is of the view that the inclusion of item (d) in paragraph 12 of the Administration’s paper, that is, “a person who in the opinion of the OR is fit and proper for the appointment” would provide a reasonable means for the OR to retain a discretion to allow the appointment of other suitable persons, on a case by case basis. It would not be practicable to specify an exhaustive list of such persons, who might be experienced specialists, adequately regulated overseas-qualified professionals, etc.

The Institute believes that, in line with the outsourcing arrangements for summary liquidation cases and other outsourcing conducted by the ORO, it would be sufficient for the time being for the minimum qualification requirements to be contained in the tender terms, i.e., to be contractual in nature, rather than statutory requirements. These terms of the tender are ordinarily stated in the invitation to tender, which appears in the Government Gazette and on the ORO website. In this way they are transparent and, at the same time, potentially, more flexible than criteria codified in legislation. We would also agree with the view expressed in the Administration’s paper that incorporating the criteria for appointment as (provisional) trustee in legislation would have broader implications that ought to be examined fully before any such step is considered in this particular case.

I hope that you find our comments to be constructive. If you have any questions in respect of our comments, please feel free to contact Mr. Peter Tisman, Director, Faculties & Advocacy, at the Institute, on 2287 7084.

Yours sincerely,

WINNIE C.W. CHEUNG
CHIEF EXECUTIVE & REGISTRAR

WCC/PMT/ay