

Press release

LCQ19: Automatic discharge from bankruptcy

Wednesday, June 18, 2008

Following is a question by the Hon Leung Kwok-hung and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 18):

Question:

The Bankruptcy (Amendment) Ordinance 1996 (Amendment Ordinance), which set up the automatic discharge system, has commenced operation since April 1, 1998. In this connection, will the Government inform this Council:

(a) since the commencement of the Amendment Ordinance, whether the Official Receiver has, in any case of doubt or difficulty in enforcing the relevant legislation, applied in the first instance to the court for directions under rule 158 of the Bankruptcy Rules (Cap. 6 sub. leg. A); if so, of the details of the applications concerned (including the issues involved, application dates and court directions); if not, the reasons for that;

(b) given that in the investigation report published in March 2002 regarding a bankrupt's complaint about the enforcement of the Amendment Ordinance's provisions on discharge from bankruptcy by the Official Receiver's Office (ORO), The Ombudsman pointed out that in respect of the application to the court for directions, ORO had not given sufficient consideration to the complainant's interests, and that in objecting to the complainant's application for early hearing of the appeal against the court direction, ORO had not acted reasonably; and The Ombudsman therefore recommended that ORO should consider apologising to the complainant and the recommendation was accepted by ORO, whether ORO will apologise to the public and take responsibility for its failure to give sufficient consideration to the interests of the affected members of the public in enforcing the Amendment Ordinance; and

(c) given that under the Amendment Ordinance, a first-time bankrupt can be automatically discharged from bankruptcy four years after his bankruptcy order takes effect, unless the court orders that the bankruptcy period be extended to a maximum of another four years on the application of his trustee or creditor who makes a valid objection; and the maximum length of the bankruptcy period is therefore normally eight years under the present system; and in reply to my question at the Legislative Council meeting on May 2, 2007, the authorities advised that since the Amendment Ordinance has provided a one-year transitional arrangement for those persons adjudged bankrupt before the operation of the Amendment Ordinance on April 1, 1998, for the bankrupts whose bankruptcy orders were made more than 42 months (including those made more than eight years) before April 1, 1998, they would not be automatically discharged from bankruptcy upon the commencement of the Amendment Ordinance, whether the authorities have reviewed if it is a misinterpretation of the relevant provisions of the Amendment Ordinance and the legislative intent of the Ordinance to deem the one-year transitional period as an extension of the bankruptcy period?

Reply:

Madam President,

The Administration's responses are as follows -

(a) To clarify on any particular matter arising under bankruptcy, the Official Receiver has from time to time sought directions from the court pursuant to Section 82(3) of the Bankruptcy Ordinance and Rule 158 of the Bankruptcy Rules (Cap. 6). Examples of the directions sought by the Official Receiver from the court include: (a) the obligation of the Official Receiver under section 30C; (b) the jurisdiction of the court under section 30A(9); and (c) the proper interpretation of section 30A(10)(a). The Official Receiver's Office (ORO) does not maintain a separate register on such applications and hence cannot readily provide details of all such applications.

(b) As regards the case raised in the question, the Official Receiver has accepted and implemented the recommendation of The Ombudsman and tendered an apology to the complainant. On the other hand, it should be noted that, The Ombudsman had concluded that there was no evidence that the ORO had acted on a mistake of law in the handling of the complainant's application for discharge from bankruptcy. There was no further query from The Ombudsman and the case was then closed.

(c) The transitional arrangement under the Bankruptcy (Amendment) Ordinance 1996 stemmed from the recommendation of the Law Reform Commission's Report on Bankruptcy "...that persons bankrupt under the (present) provisions should be automatically discharged from bankruptcy twelve months after the introduction of the new provisions.....to give the Official Receiver sufficient time to review all cases of bankruptcy and decide which of the cases warrant objections being made to the court". Hence our answer given at the LegCo Meeting on May 2, 2007 was consistent with the Law Reform Commission's Report and there is no misinterpretation of the relevant provisions.

Ends