

Press release

LCQ5: Fees and charges in bankruptcy

Wednesday, February 16, 2011

Following is a question by the Hon Albert Ho and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 16):

Question:

The Official Receiver's Office (ORO) calculated the fees and percentages charged for proceedings in bankruptcy in accordance with the Bankruptcy (Fees and Percentages) Order (the Order). A bankrupt may apply to the court for remission of such fees by invoking section 114(2) of the Bankruptcy Ordinance if he does not agree to the fees. There have been comments that the Order only stipulates the method for calculating the fees but the method does not take into account the actual operating costs incurred by ORO in performing the relevant work. In June 2000 and January 2011, the Court had twice ruled that the fees calculated according to the Order were unreasonable and reduced such fees. In this connection, will the executive authorities inform this Council:

(a) of the number of cases of fee remission ruled by the court in each of the past five years, as well as the percentages of such numbers in the total numbers of bankruptcies in those years; the amounts and extent of fees remitted; the party responsible for absorbing the resulting difference between the fees originally demanded by ORO and the reduced fees, and the financial impact on ORO;

(b) in formulating the method for calculating the fees as stipulated in the Order, whether the authorities intended to make use of the fees in bankruptcy successfully collected to subsidise the majority of bankruptcies in which fees cannot be collected successfully so as to recover the costs incurred by ORO in handling bankruptcies; if so, of the reasons for that; and

(c) whether they had conducted studies in the past five years to ascertain if it is fairer to calculate the aforesaid fees according to the actual costs incurred by ORO in performing the relevant duties, and whether it is necessary to amend the existing Order so as to avoid charging inappropriate fees; if the outcome of the studies is in the affirmative, of the reasons for that?

Reply:

President,

My reply to the three-part question is as follows:

(a) The Official Receiver's Office (ORO) calculates its fees in respect of bankruptcy proceedings in accordance with the Bankruptcy (Fees and Percentages) Order (the Order). The court may remit or waive payment of the fees under section 114(2) of the Bankruptcy Ordinance.

Between 2006 and 2010, seven fee remission cases were ruled by the court. The total number of bankruptcy cases in the same period was 57,486. Please refer to Annex (1) for details. The percentage of fee remission cases in the total number of cases was very low, at 0.01%.

The total amount remitted for the seven cases was around \$4.8 million, representing about 0.4% of the total income of the ORO in the same period, which had no significant impact on its financial status. The amount and extent of the fees remitted depended on the circumstances of individual cases. Please refer to Annex (2) for details.

In exercising its discretion for remission, the court will usually consider the individual merits of the case concerned, such as severe financial hardship of the applicant.

(b) The policy consideration of the Order is for recovering the costs for services of the ORO as far as possible in order to avoid using public money to subsidise the expenses incurred in the administration of bankruptcy cases. In order to achieve full cost recovery, the order allows some degree of cross-subsidisation. That means the fees charged in some cases will be higher than the actual costs incurred to defray the costs of administering other cases where there are no or inadequate assets to cover costs. Section 114(3) of the Bankruptcy Ordinance provides that "the amount of any fees prescribed under the section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Official Receiver in proceedings in bankruptcy or in any particular bankruptcy". If individual bankrupts wish to have their costs remitted for special reasons such as severe financial difficulty, they may apply to the court under section 114(2) of the Bankruptcy Ordinance.

(c) In the past five years, the ORO did not conduct any studies to ascertain if the fees regime should be changed so that the fees charged would be based on the actual costs incurred in performing its relevant duties in each case. We consider that if fees were to be levied on the basis of actual costs, it would mean that the fees would differ from case to case depending on the complexity of the case concerned. It would likely lead to a significant increase in fees in many cases. On the other hand, in most cases where there are little or no assets for realisation, full cost recovery will not be possible and as no subsidy could be obtained through cross-subsidisation, it would inevitably lead to the use of public fund to subsidise a substantial amount of fees for the services provided by the ORO. We are of the view that it would be inappropriate to use taxpayers' money to shoulder most of the expenses incurred in the administration of bankruptcy cases of individual bankrupts.

The ORO is reviewing the level of Official Receiver's fees and charges under the Order. We will revert to the Legislative Council Panel on Financial Affairs when the review is completed.

Ends