

Press Release

LCQ13: Fees and deposits relating to bankruptcy petitions and individual voluntary arrangements

Wednesday, February 4, 2015

Following is a question by the Hon Chan Chi-chuen and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 4):

Question:

Under the Bankruptcy Ordinance (Cap. 6), debtors who are unable to pay their debts may file bankruptcy petitions against themselves with the Court or make repayment proposals to the Court and creditors under individual voluntary arrangements (IVAs). Debtors filing bankruptcy petitions are required to deposit with the Official Receiver (OR) a sum of \$8,000 to cover the fees and expenses to be incurred by OR (or trustees) and pay a court fee of \$1,045. As for debtors who have opted to apply for IVAs, they are required to deposit with the nominees an initial sum of \$12,150 to cover the relevant fees. Some members of the public have sought my assistance, claiming that as they were unable to pay their debts, they and their families had been living under heavy livelihood and mental pressure all day. Eventually, they had decided to apply for bankruptcy but could hardly afford the exorbitant statutory fee and make the aforesaid deposit. In this connection, will the Government inform this Council:

(1) whether, in conducting the last review of the levels of statutory fees and deposits relating to bankruptcy procedures, the authorities had made reference to the changes in the Consumer Price Index since the review preceding the last one; if they had, of the details; if not, the reasons for that;

(2) whether it knows the respective numbers of bankruptcy petitions received from debtors by the Court and IVA cases reported by nominees to the OR's Office last year; and

(3) among the debtors mentioned in (2), whether any of them told the authorities that they were unable to pay the aforesaid statutory fees and make the aforesaid deposits; if there were such debtors, whether the Government

provided assistance to them under the existing mechanism; if it did, of the details and, among such debtors, the number of those who filed bankruptcy petitions successfully; if it did not provide assistance, whether the Government will review the existing mechanism and provide assistance through the Social Welfare Department or other government departments to those who are unable to pay the relevant fees; if it will, of the details; if not, the reasons for that?

Reply:

President,

(1) It is Government's policy that any fees charged should in general be set at a level adequate to recover the full cost of services provided so as to ensure that the cost of service provision would not be borne by general taxpayers. The Administration has thus made reference to the cost incurred by the Official Receiver's Office (ORO) in providing its services when reviewing and adjusting its statutory fees, charges and deposits. The last adjustment was made on November 1, 2013, when the Administration reduced a number of ORO's fees, charges and deposits following the scrutiny and approval by the Legislative Council (LegCo).

(2) In 2014, the ORO received 9 550 bankruptcy petitions presented by debtors, and outside nominees reported 782 approved individual voluntary arrangements (IVA) cases to the ORO.

(3) The ORO does not maintain record on whether a debtor has claimed to be unable to afford the statutory fees, charges or deposits for bankruptcy petitions or IVA.

During the scrutiny of the proposals to reduce a number of ORO's statutory fees, charges and deposits in 2013, the relevant subcommittee of LegCo discussed whether the Government could explore ways to offer assistance to bankruptcy petitioners who could not afford the deposit for filing bankruptcy petitions. In response to the subcommittee's request at that time, we have provided written reply to the subcommittee on the subject from the angle of social welfare policy and legal aid after consultation with the Labour and Welfare Bureau (LWB), the Home Affairs Bureau (HAB) and the Legal Aid Department.

Regarding part (3) of the question, we have approached the above bureaux/department again to seek their views. The Social Welfare Department reiterated that the department provides relevant services which include counselling having regard to the circumstances of individuals or families in need (including any personal or family problems arising from or leading to financial hardship). Depending on the circumstances, social workers will also refer them to appropriate services (such as debt counselling service, etc.). Individuals (including those filing for bankruptcy) with difficulties in meeting daily living expenses may also, through the assistance rendered by social workers, apply for charitable/trust funds to pay for living expenses (including expenses for medical treatment, rehabilitation equipment, educational items, rental and home relocation, etc.). Apart from the above services, eligible individuals with financial difficulties may also apply for Comprehensive Social Security Assistance to meet their basic needs.

The HAB also reiterated that the policy objective of legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. Applicants must pass both the statutory means and the merits tests in order to be eligible for legal aid. Legal aid service aims to provide legal representation for eligible applicants in legal proceedings. At present, legal aid service already covers proceedings in relation to bankruptcy, winding-up and recovery of arrears of wages by employees. In a debtor-petitioned bankruptcy case, the petitioner is seeking to free himself from his debts and liabilities before his creditors take action so that the petitioner can start afresh, instead of seeking to enforce a right or defend a claim. The procedural requirement is such that the petitioner can effectively represent himself. Given that legal aid is a public-funded service, using taxpayers' money to pay for the fees and charges relating to a debtor's bankruptcy petition, such as the statutory deposits payable by a debtor to the ORO, goes against the principle of effective use of public money.

In light of the above, the Administration considers that there is no need to change the existing policy.

Ends