Bankruptcy (Amendment) Bill 2004

Minimum Qualification Criteria for Appointment as Provisional Trustees or Trustees for Outsourced Bankruptcy Cases

The Law Society's Insolvency Law Committee has reviewed the paper prepared by the Financial Services and Treasury Bureau/Official Receiver dated January 2005 on the qualification criteria for appointment as provisional trustee or trustee for outsourced bankruptcy cases.

The paper indicates there is a general level of acceptance amongst the members of the Bills Committee that the qualification criteria for appointment of trustees when outsourcing bankruptcy cases should be similar to those for the current scheme for outsourcing summary liquidation cases. However, some members felt that minimum qualification criteria should be recorded in the Bankruptcy legislation rather than in the Official Receiver's Office ("ORO") tender contracts, as is the case with summary liquidation cases. The Committee assumes the main concern is a desire to maintain transparency of appointments.

The scheme for summary company liquidations appears to operate satisfactorily and under that scheme the minimum qualification requirements are spelled out in the ORO tender documents. The Committee cannot see any justification to change either the qualification criteria or the way that they are recorded and applied in the case of summary personal bankruptcies.

In relation to the idea of setting these out in the ordinance:

1. The requirements under the standard ORO tender contracts are already publicly accessible and transparent. There seems to be no point in recording them separately in a statutory provision.

2. If statutory provisions are introduced, it is likely these would inhibit future flexibility at the very early stages of a new privatised bankruptcy administration system. The scheme may yet need to evolve to meet new market demands as it settles down. It would be unfortunate if changes to the criteria could only be achieved by undertaking a full legislative amendment.

3. It might be appropriate to set minimum qualifications and requirements in a statutory form if Hong Kong is moving towards establishing a new system of regulating insolvency practice, such as the UK system of registered insolvency practitioners.
If this is to occur it would be logical to spell out qualifications and criteria in a comprehensive statutory form which deals with both company and personal insolvencies. In

that context, the identification of criteria for membership of the professional group would occur only after a full public examination and debate about what was appropriate and necessary in the public interest to ensure that insolvency were adequately administered. However to be doing this within the relatively narrow context of summary bankruptcies, which is only a small segment of the broader area of professional insolvency practice, seems an anomaly and inappropriate. It appears the proposal is largely for a collateral purpose, namely, to achieve transparency in the making of appointments.

The Committee re-iterates its comments that it cannot see any justification to change either the qualification criteria or the way that they are recorded and applied in the case of summary personal bankruptcies.

The Law Society of Hong Kong
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