



BY FAX AND BY POST
(2104 7150)

Our Ref.: C/IPC, M18426

17 March 2003

Mr. D.F. Manning
Official Receiver's Office,
10/F, Queensway Government Offices,
66 Queensway,
Hong Kong.

Dear Mr. Manning,

**Tender for taking up appointment to complete
Preliminary Examination in Bankruptcy Cases**

I am replying to your letter of 14 March 2003 on the above subject, addressed to Winnie Cheung. The Society's Insolvency Practitioners Committee (IPC) has considered the matter and its comments are set out below.

The scope of outsourcing

We believe that the reference to "self-petition" is intended to cover the vast majority of the so-called "credit card" cases. Nevertheless, self-petition cases would also cover bankrupts with substantial liabilities under personal guarantees or direct personal loans, e.g. in their capacity as a major shareholder and managing director of a defunct conglomerate. There should therefore be a way to clearly identify and distinguish these two types of cases.

Eligibility requirements

As part of the eligibility requirements, interested firms are required to have at least two partners or directors who are "Recognised Professionals (RPs)".

We would suggest that, as with appointment-takers under the Panel A scheme, it should be specified that a firm should have two RPs one of whom must be partner/director or sole proprietor and the other of whom may be a director/principal acceptable to the Official Receiver (OR) as a partner-equivalent.

One of the RPs must be a "Professional Person" who must have a minimum of 200 professional hours over the last 3 years relating to liquidation, receivership, bankruptcy or individual voluntary arrangements.

We believe that the level of insolvency expertise and experience required should not be lower than for the tender scheme given the potential pitfalls involved in this work. We would also suggest that credit be given to PPs who have successfully completed the Society's Diploma in Insolvency course. The details of our proposal are contained in the paper attached.

Although a RP must oversee this process and be fully responsible for the training and preparation of staff and the subsequent report to the OR, presumably an RP is not expected to conduct all the interviews personally. This should either be made clear in the tender notice or in the related documentation.

The role of the Bankruptcy Agent and other procedural matters

The role of the "Bankruptcy Agent" vis-a-vis the OR (as trustee) should be clarified at the outset so as to avoid any miscommunication and misunderstanding between the Agent and individual case officers of the Official Receiver's Office (ORO). Internal guidelines both for the ORO and for the Bankruptcy Agent should be clearly spelt out and understood by all.

For example, what is the role of the Bankruptcy Agent:

- if the bankrupt cannot be located or refuses to attend the interview or refuses to attend it at a reasonable time (e.g. because of the dictates of a new job);
- if the bankrupt simply says he has no assets and no records and does not remember anything, i.e. is totally uncooperative;
- if the bankrupt intentionally lies to the Agent or provides incorrect information;
- after completion of the work set out in the "Scope", is the job of the Bankruptcy Agent finished? What, for example, if information is discovered that relates to an unfair preference or transaction at an undervalue? Will the ORO be responsible for conducting any follow-up interview or more detailed investigation which may lead to proceedings being instituted? Practitioners also indicate that their experience from the early days of the Panel B schemes is that some ORO case officers will assume the Agent to have taken full responsibility for the case administration and ask the Agent all sorts of detailed questions about matters that could and should be taken up by the ORO case officers.

Practitioners would also like to seek confirmation that, at a later date, no additional reporting requirements will be imposed. We understood that, under the tender scheme, firms have been asked to provide increasing amounts of information to the OR, some of which was not set out in the original tender documents. Although the additional requirements individually may not be onerous, the cumulative effect may be substantial. It is important to have a clear understanding at the outset of the limits of what is expected in the case of the contracting out of bankruptcy work.

A particular issue that has been raised is in relation to the extent of information that must be obtained in respect of the debtor's income and payments. It would be very useful for the OR to provide some guidelines in this respect. Practitioners would also like to seek clarification as to whether or not they will be required to retain original documents handed to them by the debtor or whether they will be able to forward these to the OR with their report.

Timeframes

Doubt has been expressed as to whether the Bankruptcy Agent will generally be able to interview the bankrupt within 3 days of the Bankruptcy Order and then submit various reports to the ORO within 7 days thereafter. The scheme seems to be overly optimistic about the willingness and ability of bankrupts to cooperate.

There is a concern that the Bankruptcy Agent may be unnecessarily exposed if he submits the "Report on Preliminary Examination" without big caveats. Even if all goes according to plan, it is unlikely that the Agent will be able to determine within 10 days of the Bankruptcy Order whether there were irregular loans or irregular transfers, of assets, etc. Within that timeframe, the chances are that the information and documentation he requires will still not be available and he may be able to do little more than repeat what the bankrupt has told him (as per the Preliminary Examination Form EA/B-11), without having any opportunity of independent verification of the answers given.


Practitioners would also like to obtain more information about the way in which bankruptcy cases will be allocated. At present, under the tender scheme, ORO staff need to ascertain who is next on the scheme, compose a standard letter and send that together with the company search to the insolvency practitioner. Will a similar arrangement be instituted for bankruptcy cases? The view is that the scheme would be totally impractical if very large numbers of consecutive bankruptcy cases were handed out to individual firms in one batch.

Other matters

We would like to seek confirmation that the Bankruptcy Agent will not be required to submit timesheets or detailed time costs summaries in support of his invoices, and to have some assurance as to the timeframe within which invoices will generally be paid.

We understand that the OR expects interviewers to be able to conduct the interview in Chinese. Bankrupts may also prefer the preliminary examination form to be completed in Chinese. Will any specific language requirement be imposed in the tender terms?

Yours sincerely,



PETER TISMAN
DEPUTY DIRECTOR
(BUSINESS & PRACTICE)

PMT/ay
Encl.