

**Official Receiver's Office**  
**The Government of the Hong Kong Special Administrative Region**

**TENDER FOR TAKING UP OF APPOINTMENT  
TO COMPLETE PRELIMINARY EXAMINATION  
IN BANKRUPTCY CASES**

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**TERMS OF TENDER**

1. **Invitation for Tender**

Tenders are invited for the taking up of appointment to perform the Services in Qualified Cases, subject to and in accordance with the terms and conditions in these Terms of Tender and the Schedule attached to this Invitation for Tender.

2. **Tender**

- (a) The Tender relates to the appointment of the Firm to perform the Services in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period.
- (b) The Schedule issued with the Tender must not be altered by the Tenderer, and the Tenderer must not put in additional terms and conditions of his own or make his Tender subject to any term or condition not being a term or condition in these Terms of Tender and the Schedule attached to this Tender. Figures should not be erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (c) Tenders are to be submitted in triplicate and are to be completed in ink or typescript. Tenders not so completed may not be considered.
- (d) A Tender may not be considered if complete information is not given with the Tender or if any particulars and data asked for in the Schedule are not furnished in full.
- (e) Each Tenderer shall not submit more than one tender in this Tender.

3. Tenders to Remain Open

(a) Tenders shall remain open for 90 days after the closing date of the Tender.

(b) Tender closing time in case of Rainstorm/Typhoon -

In case a black rainstorm warning or typhoon signal No. 8 or above is valid for any duration between 9:00 a.m. and 12:00 noon on the closing date of the Tender, the Tender closing time will be extended to 12:00 noon on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

4. Fee

(a) The Fee shall be a fixed fee quoted in Hong Kong Dollars.

(b) Tenderers should make certain that the Fee is correct and final before submitting their Tenders. Under no circumstances will the Government accept any request for adjustment on grounds that a mistake has been made in assessing the Fee.

5. Quotation Sheet

Tenderers are required to complete and submit the Quotation Sheet. Failure to do so shall render their Tenders invalid and disqualified.

6. Additional Information

(a) At any time after receiving the Tender and before acceptance, the Official Receiver may require the Tenderer to furnish additional or missing information.

(b) Requirements imposed under Clause 6(a) above may differ as between different Tenderers.

7. Personal and Other Data Provided

(a) Tenderer's personal data provided in the Tender will be used for tender evaluation and contract award purposes. If inaccurate information is provided, the Tender shall not be considered.

- (b) Tenderer's personal data provided in the Tender may be disclosed to the parties responsible for tender evaluation in other government departments and non-government organisations.
- (c) Tenderers have the right of access and correction with respect to personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of the Tender, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of the Official Receiver's Office.

8. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise), without any further reference to the Tenderer, the name and address of the Tenderer and the Fee per case it stated in its Tender and any other information provided in the Tender.

9. Completion of Tender

- (a) A Tenderer is expected to complete all tender documents. All tender documents must be signed and lodged to the Government Logistics Department Tender Box situated at G/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong, no later than the closing date of the Tender (i.e. 12:00 noon on 4 March 2010). Every Tender is a formal offer by the Tenderer to perform the Services in Qualified Cases allocated to the selected tenderer on the terms and conditions set out in the Contract.
- (b) Late tenders will not be considered.

10. Assessment of Tender

- (a) All tenders will initially be checked against the mandatory requirements which are set out in Part I – Qualification Criteria of the Schedule.
- (b) Tenders that fail to meet any of the mandatory requirements will not be further processed for evaluation. Tenders that have met all mandatory requirements

will be assessed on the basis of the Fee per case, the past performance of the Tenderers in providing the Services, the suitability of the Tenderers in performing the Services, and any other matters which the Official Receiver considers relevant.

11. Acceptance

- (a) The Tender, if accepted, will be concluded as a contract with the Official Receiver. The Firm will receive a letter from the Official Receiver for acceptance of the offer. Tenderers who do not receive any notification within the validity period of their offer shall assume that their offers have not been accepted.
- (b) The Official Receiver is not bound to accept a tender with the lowest Fee per case or any tender.

12. Allocation of Qualified Cases

- (a) The Official Receiver estimated that 10-12 Firms could be appointed to perform the Services. The appointed Firms will be allocated Qualified Cases on a rotational basis.
- (b) For information, the number of cases allocated under the previous outsourcing exercises in the past few periods is given below.

<u>Period</u>	<u>Number of Cases</u>
April 2004 - March 2005	8,218
April 2005 - March 2006	6,867
April 2006 - December 2006	5,933
January 2007 – September 2007	7,200
October 2007 –June 2008	7,148
July 2008 – December 2009	17,706

- (c) The estimated number of cases to be allocated for the 20 months' period from May 2010 to December 2011 is in the region of 18,000.

13. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers may be destroyed three months after the date the Contract has been awarded.

14. Complaints About Tendering Process or Contract Awards

The tendering process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that his offer has not been fairly evaluated may write to the Official Receiver's Office who will examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. The Tenderer shall lodge the complaint before disposal of documents of unsuccessful Tenderers.

15. Cancellation of Tender

Without prejudice to the Government's right to cancel the tender, where there are changes of requirement after tender closing date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel the tender.

## **SCHEDULE**

### **Part I - Qualification Criteria**

A Tenderer must meet all of the following criteria in order to qualify for tender assessment -

1. The Tenderer must be a sole proprietor, a partnership or a limited company with at least two persons who are Recognised Professionals. One of the Recognised Professionals must be a proprietor, partner or director of the Tenderer.
  
2. At least one of the Recognised Professionals must-
  - (a) be a Professional Person who must be -
    - (i) a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap.50); or
    - (ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or
    - (iii) a current member of the Hong Kong Institute of Chartered Secretaries;
  - (b) have at least 3 years post-qualification experience in the relevant profession;  
and
  - (c) have a minimum of 200 professional hours of experience over the last 3 years relating to insolvency, liquidation, receivership, bankruptcy or individual voluntary arrangement. A pass in the HKICPA Diploma in Insolvency Programme is equivalent to 50 hours of insolvency work.
  
3. The Tenderer must have been providing insolvency, accounting, legal or company secretary services in Hong Kong for at least 2 years.
  
4. There must be at least 5 full time employees (excluding the proprietor, partners and director(s)) hired by the Firm available to perform the Services.

5. The Tenderer has not been disqualified or suspended by the Official Receiver from participating in any tender/quotation exercises conducted by the Official Receiver's Office.

## **Part II - Work Specifications**

1. **No Right of Refusal**

The Firm shall take up the appointment to perform the Services in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period. The Firm shall have no right to reject or to refuse to accept any such allocation.

2. **Adequate Full Time Staff**

The Firm shall keep and maintain under its direct full time employment sufficient staff resources which must not be less than the number stated in Clause 4 of Part I of the Schedule to ensure that all Qualified Cases allocated to the Firm are handled in a professional and expeditious manner. In this regard, the Firm shall not utilize staff from other firms or companies, or permit any part of the Services to be carried out by any person not being a person under its direct employment.

3. **Tasks and Duties**

The Firm shall in respect of a Qualified Case allocated to the Firm by the Official Receiver, perform the following work with professionally acceptable standards -

- (a) Interview the bankrupt at the Firm's office where its businesses are conducted at the appointed time during the normal office hours within five working days after the making of the Bankruptcy Order.
- (b) Explain to the bankrupt the bankruptcy procedure, the Official Receiver's role, the trustee's role and the bankrupt's duties.
- (c) Provide the bankrupt with such information relating to bankruptcy proceedings as required by the Official Receiver.
- (d) Collect and examine the completed and signed (by the bankrupt on every page) preliminary examination questionnaire (in the form prescribed by the Official Receiver) and all documents provided by the bankrupt. If the preliminary examination questionnaire has not been completed by the bankrupt, to complete the same for the bankrupt in accordance with information from the bankrupt and to arrange for the bankrupt to sign the same on every page.
- (e) Collect the signed statement of the bankrupt's monthly family income and expenditure (in the form prescribed by the Official Receiver) with all

supporting documentation, the purpose of which is to enable the Official Receiver to assess the monthly financial contributions to be made by the bankrupt.

- (f) Record in writing other information in relation to the bankrupt's assets, liabilities and businesses, if any, which are not shown in the preliminary examination questionnaire or the statement of affairs but which requires attention by the Official Receiver.
- (g) Collect and acknowledge receipt of all relevant documents, in either paper form or electronic form, and any other things, if appropriate, surrendered by the bankrupt.
- (h) Collect from the bankrupt such information as may be required by the Official Receiver for statistical purpose.
- (i) Within seven working days of the interview submit to the Official Receiver the completed preliminary examination questionnaire together with a report of information provided by the bankrupt in the form prescribed by the Official Receiver.
- (j) The Firm shall maintain sufficient staff in the office during the normal office hours to answer enquiries from the bankrupt.

(The preliminary examination questionnaire, statement of monthly family income and expenditure and report referred to in Clause 3(d), (e) and (i) above are available at <http://www.oro.gov.hk>, or hard copies are available upon request.)

#### 4. Statistics and Information

The Firm shall provide all the relevant statistics and information in connection with the Qualified Cases as and when required by the Official Receiver.

#### 5. Professional Standards

The Recognised Professionals of the Firm shall ensure that the performance of the Firm complies in all respect with the accepted professional standards and ethical guidelines of their relevant professions.

6. Privacy

The Firm shall respect the privacy of the bankrupt and other relevant parties when dealing with a Qualified Case and shall comply with the Personal Data (Privacy) Ordinance, Cap. 486.

## **Part III – Conditions of Contract**

### 1. Interpretation

(a) In these Tender documents -

“Allocation Period” means the period commencing from the date of acceptance of the offer referred to in Clause 11(a) of the Terms of Tender and ending on 31 December 2011 (both dates inclusive).

“Contract” means the contract referred to in Clause 11(a) of the Terms of Tender and includes the Terms of Tender and the Schedule.

“Fee” means the amount stated by a Tenderer in its Quotation Sheet as the fixed all-inclusive sum it will be remunerated by the Government for the performance and discharge of the Services when the Firm is appointed in a Qualified Case by the Official Receiver.

“Firm” means the Tenderer whose Tender is accepted.

“Government” means the Government of the Hong Kong SAR.

“Official Receiver” means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6).

“Professional Person” means a person who meets the requirements under Clause 2 of Part I of the Schedule.

“Qualified Case” means the bankruptcy proceedings of a bankrupt against whom a bankruptcy order is made upon a petition presented by the debtor

himself.

“Recognised Professional” means a person who is a registered member of one or more of the Recognised Professions.

“Recognised Professions” means the accounting profession, the legal profession, the company secretarial profession and any other profession which the Official Receiver may recognise in writing as Recognised Profession for the purpose of this Tender.

“Schedule” means the schedule attached to this Tender and includes the Quotation Sheet.

“Services” means the tasks, duties and obligations set out in the Work Specifications.

(b) Except where the context requires otherwise, the singular shall include the plural and vice versa; a reference to one gender shall include all genders.

2. Total Services

The Firm shall perform the Services in accordance with the Conditions of Contract and the Work Specifications.

3. Assignment

The Firm is strictly prohibited from assigning or otherwise transferring this Contract or any part, share or interest therein and the performance of this Contract by the Firm shall be deemed to be personal to the Firm.

4. Qualified Cases to be Allocated to the Firm

There is no guarantee on the total number of Qualified Cases to be allocated to each Firm. The Official Receiver will allocate Qualified Cases on a rotational basis, and is not bound to allocate an equal number of Qualified Cases to each Firm.

5. Security

The Firm must be covered by professional indemnity insurance to the satisfaction of the Official Receiver.

6. Fees

- (a) Subject to satisfactory performance of the Services, the Fee will be payable to the Firm within 8 weeks of the receipt of the invoice for payment by the Official Receiver.
- (b) The Fee payable shall be that set out in the Quotation Sheet.
- (c) The Fee shall be payable strictly on a case by case basis.
- (d) Any payment by the Government shall be without prejudice to any right or cause of action which has or may have accrued, or any remedy which may be available to the Official Receiver in respect of any non-compliance of the Contract by the Firm.

7. Performance of the Firm

- (a) The performance of the Firm will be monitored by the Official Receiver in terms of the time taken to complete the case and the quality of work.
- (b) If the Firm -
  - (i) shall fail to carry out all or any of the Services; or
  - (ii) if the quality of the Services is considered by the Official Receiver as unsatisfactory; or
  - (iii) if there is any breach of any terms or conditions of the Contract by the Firm (which shall be determined solely by the Official Receiver and whose decision shall be final),

the Official Receiver may terminate the Contract at any time by giving 7 days' notice in writing; and if the Official Receiver so terminates the Contract, he may –

- (1) assign to another firm or company the balance of any uncompleted service in respect of any Qualified Cases allocated to the Firm, and to arrange for another firm or company to take up the appointment which, if not because of the termination of the Contract, would be allocated to the Firm during the Allocation Period; and/or
  - (2) refuse to pay for any service rendered or costs incurred by the Firm in connection with the provision of the services unless the conditions for payment under Condition 6 have been met and payment is due.
- (c) Without prejudice to any of the provisions in Condition 7 hereof, the Official Receiver may, in those circumstances mentioned in Condition 7(b)(i), (ii) and (iii)-
- (i) disqualify the Firm from participating in any future tender/quotation exercises called by the Official Receiver's Office for such period of time as may be determined by the Official Receiver;
  - (ii) file with the relevant professional bodies complaints of misconduct or breach of contract.
- (d) The Government may at any time or times prior to the completion of the Services at its option terminate the Services without cause by giving the Firm or a partner of the Firm, as the case may be, 7 days' written notice of such termination. The Government shall not be responsible for any loss or damage to the Firm in connection with, arising from and in relation to such termination.

8. Conflicts of interest

The Firm shall avoid any conflict of interest in performing the Services in any Qualified Case allocated to the Firm. The Firm must inform the Official Receiver forthwith if there is any conflict of interest or a real risk of conflict of interest between the Firm and the bankrupt or any other parties in any Qualified Case allocated to the Firm.

9. No Acceptance of Advantages

The Firm shall not accept any advantages or benefit from the bankrupt or any creditors or any person in relation to any Qualified Case allocated to the Firm.

10. Payment for Services

Payment of the Fee shall be in accordance with Condition 6 of this Part.

11. Notices

Any notice given under the Contract shall be deemed to be received as follows -

- (i) Fax - on the date when sent.
- (ii) Letter - 7 days after being sent in the post with prepaid postage.

12. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the Laws of the Hong Kong SAR and the parties thereto shall submit to the jurisdiction of the courts of the Hong Kong SAR.

13. Change in Qualification Status or other information

- (a) After the acceptance of the Tender and throughout the Allocation Period, the Firm shall immediately inform the Official Receiver in writing of any factor which may affect its qualification status as stated in the Qualification Criteria in Part I of the Schedule or any change in any information contained in the Quotation Sheet submitted by the Firm.
- (b) In addition to any other remedies which the Official Receiver may have, the Official Receiver may terminate the Contract and/or refuse to allocate any Qualified Cases to the Firm in the light of any information which may affect its qualification status or any change in any information submitted by the Firm at the time of Tender that has come to his attention whether under this Condition or obtained from other sources.

## QUOTATION SHEET

*Name of firm/company* \_\_\_\_\_

*Fee per case* **HKD** \_\_\_\_\_

*Number and grade of directly employed full time employees (excluding proprietor, partners and director(s)) available to perform the Services* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Length of period of relevant practice of firm/company (in years and months)* \_\_\_\_\_

### *Details of the Recognised Professionals*

<u>Name</u> (Spelling identical to the one registered in the professional bodies)	<u>Recognised professional bodies &amp; membership Nos.</u>	<u>Position in firm/company</u>	<u>Length of service with the firm/company</u>	<u>Number of years of post-qualification experience</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

***Details of the Professional Persons***

<u>Name</u> (Spelling identical to the one registered in the professional bodies)	<u>Recognised professional bodies &amp; membership Nos.</u>	<u>Number of years of post-qualification experience</u>	<u>Total number of *professional hours from 1 January 2007 to 31 December 2009</u>	<u>Holder of the HKICPA Diploma in Insolvency Programme (Yes or No)</u>
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____

(\* Professional hours should relate to the insolvency, liquidation, receivership, bankruptcy or individual voluntary arrangement.)

***Details of Professional Indemnity Insurance***

Name of Insurer: \_\_\_\_\_  
 Period Covered by Policy: \_\_\_\_\_

***Signature of proprietor/  
 partner/director  
 authorised to sign the offer***

\_\_\_\_\_  
 \_\_\_\_\_  
***NAME (In block letters)***

***Date***

\_\_\_\_\_