



OFFICIAL RECEIVER'S OFFICE

破 產 管 理 署

10TH-12TH FLOORS, HIGH BLOCK,
QUEENSWAY GOVERNMENT OFFICES,
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IN REPLY PLEASE QUOTE THIS REF: T 34/1 - MTSC/CR

來函檔號 YOUR REF:

電 話 TEL. NO.: 2867 2515

圖文傳真 FAX NO.: 2110 0315

To : (i) All Trustees appointed under s.12(1A) of the Bankruptcy Ordinance

(ii) Major trustee firms, viz. Messrs. Lee & Chow, Hong Kong Debt Management Services Ltd., Messrs. Gallant and Messrs. Tsang, Chan & Wong

13 April 2021

Dear Sirs,

Charging of AV fees under Bankruptcy (Fees and Percentages) Order (Cap. 6C)
on Comprehensive Social Security Assistance ("CSSA")

I write further to my letter of 12 June 2019, a copy of which is attached for your easy reference.

Subsequent to my letter of 12 June 2019, I have received enquiries from some private insolvency practitioners on the charging of AV fees on funds comprised solely of government subsidies received by bankrupts under the Comprehensive Social Security Assistance ("CSSA") Scheme prior to the making of the bankruptcy order, and kept in bank accounts frozen by the banks, and remitted to trustees-in-bankruptcy together with other bank balances upon the making of the bankruptcy order.

Under section 43(2) of the Bankruptcy Ordinance (Cap. 6), it is explicitly provided that such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family (為滿足破產人及其家庭的基本家庭需要而必需有的衣物、寢具、家具、家居設備及供應品) do not form part of the bankrupt's estate in bankruptcy. Having regard to the purpose, function and quantum of the CSSA (https://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_comprehens/) Official Receiver takes the view that the subsidies received by bankrupts and kept by them upon the making of the bankruptcy order fall within the definition of section 43(2) of Cap. 6 and do not form part of the bankruptcy estate. Bankrupts should be allowed to keep the full amount of the subsidies and the same should not be subject to the payment of AV fees to the Official Receiver under Item 9(b) of Table B of the Bankruptcy (Fees and Percentages) Order (Cap. 6C) of the Bankruptcy Ordinance.

As regards treatment of subsidies received by bankrupts under the CSSA Scheme during the bankruptcy period, the view of the Official Receiver is that pursuant to section 43E, in an application for an income payment order, no order should be made by

the court, the effect of which would be to reduce the income of the bankrupt below what is necessary for meeting the reasonable domestic needs of the bankrupt and family members. Given the nature of CSSA, it should fall within the category of income necessary to meet the reasonable domestic needs of the bankrupt and family in most cases, and the view of the Official Receiver is that generally CSSA income should not be the subject of such application.

Should there be any query on this letter, please contact the undersigned on 2867 2515.

Yours faithfully,

Signed
(Michael T S Cheung)
for Official Receiver



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To : (i) All Trustees appointed under s.12(1A) of the Bankruptcy Ordinance

(ii) Major trustee firms, viz. Messrs. Lee & Chow, Hong Kong Debt Management Services Ltd., Messrs. Gallant and Messrs. Tsang, Chan & Wong

12 June 2019

Dear Sirs,

Charging of AV fees under Bankruptcy (Fees and Percentages) Order (Cap. 6C)

Pursuant to Item 9(b) of Table B of the Bankruptcy (Fees and Percentages) Order (Cap. 6C), on the aggregate amount of the assets realised and brought to the credit there shall be paid a scaling fees in respect of estates in which the Official Receiver is not acting as trustee when the trustee provides his accounts to the Official Receiver under s.93(1A) of the Bankruptcy Ordinance ("the AV fees"). It is noted that on some occasions after the trustee has realised a sum of money from the bankrupt's bank account, the trustee would make a refund of certain portion of the sum realised to the bankrupt as an allowance to him.

The Official Receiver takes the view that as the fees to be charged under Item 9(b) of Table B of Cap. 6C is concerned with the aggregate amount of the assets realised and brought to credit, the AV fees should be calculated on the total amount recovered from the bank but not the net amount of bank balances recovered after making refund to the bankrupt. As such, when the trustee is prepared to make any refund to the bankrupt from the assets realised, the trustee is advised to ensure that sufficient sum from the bankruptcy estate is made available and set aside for the payment of the AV fees which is calculated on the total sum of assets realised.

Yours faithfully,

Signed
(Michael T S Cheung)
for Official Receiver