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來函請註明本署檔號

IN REPLY PLEASE QUOTE THIS REF: T11/10 -MTSC/CR

來函檔號 YOUR REF.:

電 話 TEL. NO.: 2867 2515

圖文傳真 FAX NO.: 2110 0315

- (1) The Hong Kong Institute of Certified Public Accountants
- (2) The Hong Kong Institute of Chartered Secretaries
- (3) The Law Society of Hong Kong

22 July 2020

Provisional Trustees/Trustees under the Bankruptcy Ordinance (Cap. 6)

Cash Payout Scheme

The Government of the Hong Kong Special Administrative Region has launched the Cash Payout Scheme (“the Scheme”) for disbursing HK\$10,000 to each Hong Kong permanent resident aged 18 or above. All persons, including undischarged bankrupts, who meet the eligibility criteria, may register for the Scheme to receive the HK\$10,000.

Pursuant to section 43A of the Bankruptcy Ordinance (Cap. 6), an undischarged bankrupt shall regularly report to his/her trustee details of earnings and any property acquired during bankruptcy, and the trustee may by notice in writing claim the property. The undischarged bankrupt is required to observe the requirements set out in the Bankruptcy Ordinance (Cap. 6) in respect of monies received during the bankruptcy period which includes reporting to the trustee the money received from the Scheme.

When receiving a report from an undischarged bankrupt, your members who are insolvency practitioners and appointment takers as the joint and several provisional trustees/trustees under the Bankruptcy Ordinance (Cap. 6) need to consider whether or not to claim the money the undischarged bankrupt received from the Scheme as after-acquired property. In this connection, the office-holders are reminded that it is the duty of provisional trustee/trustees to administer the bankruptcy proceedings under their charge with proper skill and competence and in a reasonable manner. In determining whether to lay claim on any part of the bankrupt's property or not, they are required to take into account circumstances of individual case including nature and value of the property, the bankrupt's financial position, domestic needs of the bankrupt and his/her family, as well as other relevant factors such as interest of stakeholders in the proceedings like creditors and bankrupt. It is not appropriate for the office-holders to apply some across-the-board decisions in this regard without looking into circumstances of each case.

In respect of laying claim on such property, office-holders are also reminded that under section 43A(2) of Bankruptcy Ordinance (Cap. 6), it is explicitly stipulated that the notice claiming any such property shall not be served in respect of any property falling within section 43(2), i.e.

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). Moreover, as advised in our letter of 14 April 2020, the office-holder are encouraged to exercise their professional judgement in using as much flexibility as possible to assess domestic needs of the bankrupt and his/her family and apply sensible discretion when considering to lay claim for after-acquired property during this unprecedented time.

Please circulate this letter to your members who are insolvency practitioners for their attention. 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