

The Hong Kong Chartered Governance Institute

Submission on:

Official Receiver's Office

**Security Requirements for Appointment of Liquidators and
Trustees in Bankruptcy**

Date: 6 April 2022

By Email Only

The Official Receiver
Official Receiver's Office
10/F – 12/F, High Block
Queensway Government Offices
66 Queensway
Hong Kong

Dear Sirs,

Security Requirements for Appointment of Liquidators and Trustees in Bankruptcy

We refer to the letter of the Official Receiver's Office (ORO) of 25 March 2022 to our Institute on the above topic.

About HKCGI

The Hong Kong Chartered Governance Institute (**HKCGI**), formerly known as The Hong Kong Institute of Chartered Secretaries (**HKICS**), is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (**CGI**), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with more than 40,000 members and students worldwide. HKCGI is one of the fastest growing divisions of CGI, with a current membership of over 6,800, 300 graduates and 3,000 students with significant representations within listed companies and other cross-industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

Concerns about ascertaining the realizable amount

As noted earlier in our reply of 17 October 2021 to the ORO, we will publicise any ORO required security arrangements for appointments as liquidators or trustees in bankruptcy to our members.

As to the detailed proposals now set out under the letter of 25 March 2022 from the ORO to us, it would appear that the ORO should make an estimate of the realizable amounts and not simply rely on the book values for non-cash items, aside from those readily realizable for cash, for example, listed company shares. This is especially important given that certain types of assets may be particularly prone to have significantly different realizable values than book values, and in many cases the realizable value could be much lower than the book value mentioned in your letter. This is because the items may not always be recorded at realizable value under the prevailing financial reporting standards. For example, for

intangible assets, including patents, copyrights, IP rights, brands and trademarks, in many circumstances, entities may choose to account for these items using a cost model under the financial reporting standards. This means that those items were recorded in the financial statements at their initial costs, subject to annual amortization (if they have definite useful lives) and impairment, that is, not recorded at their realizable values. The book values may be quite different from the realizable values, especially if the items were acquired by the entity many years ago. Likewise, items of property, plant and equipment are usually stated at the cost model, and are common items on the financial statements of most entities. We are however not in a position to go into a line-by-line analysis of the items, and it is up to the ORO to consider the issue further and make judgements which might well have to be done on a case-by-case basis.

In the context, we are concerned that the ORO's detailed proposals could potentially hamper the taking up of appointments, especially for smaller or more challenging cases, as there is a genuine chance for an overestimate of the security requirements based on the book value of the non-cash items aside from those readily realizable for cash, for example, listed company shares.

Our submission

We submit that the ORO could consider adopting a prudent and practical approach, by initially determining and requiring security based on actual realizations as well as estimated realizations from readily realizable assets. This is however not final and conclusive, as the insolvency practitioners, following their appointments, and after having undertaken appropriate steps to verify the financial position relating to the assets will then be able to make a proper assessment of the value of the realizable assets and to work with the ORO on the necessary adjustments. The security arrangements will then be subject to a continuous monitoring process with top up and reductions, as appropriate due to the actual realizations, and expenses and distributions. It is difficult for an insolvency practitioner, on an appointment, and not having fully appraised of the facts and situation to provide security to the satisfaction of the ORO, especially where the ORO's determination is 'final and conclusive'. The alternative may, for example, be for the ORO to accept PII for a period of time pending finalization of the security arrangements say for six months to a year, with top up for any actual realized amounts not covered under the PII limit offered to the ORO. Thereafter, the continuous monitoring regime should become applicable.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG, Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute

Ernest Lee FCG HKFCG(PE)
President