SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE BANKRUPTCY (AMENDMENT) BILL 2015 AND MINLAW'S RESPONSE

Proposal	Feedback received	Ministry of Law's response
Increasing Bankruptcy threshold to $15,000	Unfair to creditors who have to bear a higher amount of default before bankruptcy is available.	Change in income levels and inflation have eroded the value of the previous threshold, and $10,000 today is not worth as much as 15 years ago. The threshold is determined using the same income thresholds as those used in the last amendment in 1999, and simply reflected changes in income levels and inflation over the years.
	It deprives creditors with debts below $15,000 from an effective debt recovery mechanism. The rationale for pegging it to household income is also not clear.	Creditors of such debts should not be transferring the burden of recovering debts to the State. Other avenues such as debt restructuring may be more beneficial and should be explored. The rationale for pegging the threshold to household income is that this is what debtors can use to repay debts.
	The threshold is below that for bringing an appeal against a decision of a District Court or Magistrate's Court to the High Court, which is $50,000. This means that a bankruptcy order may not be appealed against if the debt is less than $50,000.	Jurisdiction over bankruptcy vests in the High Court. Every application for bankruptcy is commenced in the High Court and there is no issue of appeal from a District or Magistrate's Court.
Appointment of Private Trustees in cases initiated by Institutional Creditors	An institutional creditor should be owed more than $200,000 before being required to nominate a private trustee. Institutional creditors will otherwise be discouraged from using bankruptcy proceedings until the debt has grown substantially. Court should retain discretion to appoint the Official Assignee ("OA") in any case.	Institutional creditors have sufficient expertise and resources to conduct credit assessments prior to extending any amount of credit. They also have sufficient resources to bear the costs of debt recovery. Government resources and taxpayer dollars should not be used to subsidise the costs of the recovery of such debts.

Proposal	Feedback received	Ministry of Law's response
Appointment of Private Trustees in cases initiated by Institutional Creditors	Introduce panel system for appointment of private trustees as per the Hong Kong system. Membership on the panel can be made a pre-requisite to being given an insolvency practitioner licence to incentivise practitioners to join the panel.	Institutional creditors with a substantial number of cases can introduce their own internal panels of practitioners to be appointed. The aggregation of many cases may allow these practitioners to charge a preferential rate to these creditors.
	A third factor should be added to the definition of "institutional creditor": average annual profit of $10 million in the 3 years prior.	We will not be adopting this factor.
	This will increase costs of bankruptcy. Costs are deducted from the bankruptcy estate, resulting in less distribution to creditors. If costs of bankruptcy are increased due to appointment of private trustees, financial institutions will need to increase borrowing costs across the board – this would be unfair to consumers.	The appointment of private trustees might increase the costs of bankruptcy and in turn lead to lower distributions for creditors. However, an increase in the costs of bankruptcy administration may not be undesirable as this may result in (i) better risk assessments being conducted before credit is granted, and (ii) all avenues for repayment being explored before a creditor commences bankruptcy proceedings. While financial institutions may pass on the costs to borrowers, it is also possible that financial institutions would have to absorb the costs in order to stay competitive. In any event, having the increased costs of bankruptcy absorbed by the borrowers / financial institutions is preferable to having the Government and ultimately taxpayers bear these costs.
	Requirements for resignation are onerous and together with the possibility of forfeiture of the security deposit, makes appointment unattractive to private trustees and may cause fees to rise as a result. Additionally, bankruptcies can last for several years and there will be disruption and	Private trustees should not be allowed to resign with impunity simply because a case turns out to be difficult (if it is necessary, they can seek an indemnity from the creditors) and private trustees should price this possibility into their operations. However, if the private trustee is truly unable to find a replacement, the OA may consent to take over the administration

Proposal	Feedback received	Ministry of Law's response
	increase costs if a replacement private trustee has to be appointed.	of the bankruptcy. With respect to forfeiture of the security deposit, only dishonest or misbehaving trustees will be discouraged by the possible forfeiture of the security deposit. Trustees who comply with their obligations need not fear forfeiture. The resignation process for private trustees requires the outgoing private trustee to prepare a report detailing the administration of the bankruptcy, which will assist in a smooth transition between trustees.
Appointment of Private Trustees in cases initiated by Institutional Creditors	Where a private trustee is appointed instead of the OA, there must be adequate safeguards to ensure all creditors are informed if the bankrupt is being discharged or if dividends are being distributed.	Private trustees will be required to give the requisite notice. If such notice is not given, (i) in cases of discharges, the OA may hold back the discharge of the bankrupt, and (ii) in cases of distribution of dividends, the trustee may be face personal liability for making distributions without informing the creditors.
	There should be guidelines on the fees and to cap fees chargeable by the private trustee. The fees charged by the OA can serve as a guideline for private trustees. Alternatively, scale fees could be introduced, for reference for the institutional creditors.	It is not appropriate for the OA to limit fees charged by private trustees. Adequate safeguards exist in section 38 of the Bankruptcy Act which provides that the remuneration of the trustees must be approved by the creditor's committee, by a special resolution of the creditors or by the Court. If creditors feel that the private trustees' fees should take reference from the OA's fees, it is open to them to require that. The scale of the OA's fees is found in subsidiary legislation and institutional creditors are welcome to take reference from that scale of fees.

Proposal	Feedback received	Ministry of Law's response
Appointment of Private Trustees in cases initiated by Institutional Creditors	Concerns that the appointment of private trustees may create inconsistency in the administration of bankruptcies. Additionally, the OA's supervision of private trustees may be insufficient to ensure proper administration of bankrupt estates.	The statutory framework of the bankruptcy regime ensures that the administration of bankruptcy estates ought not to be fundamentally different simply because different private trustees administer the case. In respect of supervision of private trustees, the OA ought to have sufficient powers and resources to perform the supervisory role.
	Concerns that there are not enough public accountants and advocates and solicitors to be appointed as private trustees. MinLaw should prescribe suitable individuals to act as private trustees.	In the event that suitable individuals who can act as private trustees are identified, MinLaw will consider prescribing such individuals to act as private trustees.
	MinLaw to prescribe and maintain a list of qualified private trustees.	Persons who are qualified to act as private trustees must either be registered public accountants, advocates and solicitors or persons gazetted by the Minister. It not necessary for MinLaw to maintain a separate list of public accountants and advocates and solicitors, but MinLaw will consider maintaining a list of persons gazetted to act as private trustees (if any).
	Banks and finance companies should be free, for the purposes of appointing private trustees, to disclose information without being hindered by banking secrecy or the Personal Data Protection Act.	Exceptions in the Banking Act and Personal Data Protection Act ought to be sufficient to allow disclosure of information to the private trustee.
Differentiated discharge	Fixed timelines for discharge increase moral hazard and may result in bankruptcy being an attractive option of a defaulting debtor.	It is important to balance between ensuring that bankrupts make reasonable efforts to repay their debts, and offering them an opportunity to "re-start" their financial lives.

Proposal	Feedback received	Ministry of Law's response
		The various timelines in the Differentiated Discharge regime are sufficiently long to prevent an increase in moral hazard. These timelines give bankrupts clear goals to meet in order to obtain their discharge, and thus give them an incentive to be compliant during their bankruptcy. We have also allowed the Courts to review extend bankruptcies beyond the 9/11 year marks to deal with exceptional cases. Records of recalcitrant bankrupts will also be kept permanently to facilitate better credit assessment by prospective creditors.
Differentiated discharge	After 7 years, the bankrupt can avoid his obligation to pay Target Contributions.	While a bankrupt will be eligible for discharge after a certain period notwithstanding that the Target Contribution has not been fully paid, the bankrupt's name will remain permanently on the register after discharge. This will likely affect his ability to obtain further credit, and is a consequence that he will bear.
	Court should be given the power to review OA's decision to discharge the bankrupt at the 9/11 year marks.	We are agreeable that the Courts should be given such a power, but this should only apply in exceptional cases.
	Monthly contribution is more fairly determined based on cash flow of the bankrupt, e.g. income received as beneficiary of an estate, capital gains of assets. The Target Contribution should also take into account the bankrupt's other assets and the total	Money received as a beneficiary of an estate, capital gains etc. form part of the estate of the bankrupt and will vest in the trustee in bankruptcy in full (i.e. no deductions for reasonable maintenance). Accordingly, it is not appropriate to treat such monies as capable of paying down the Target Contribution. We also note that the definition of income is a wide one and not merely restricted to cash derived from the bankrupt's employment. The new bankruptcy regime hopes to offer a rehabilitative regime to give bankrupts a fresh start if they have paid a sum that is

Proposal	Feedback received	Ministry of Law's response
	amount of debt the bankrupt owes.	reasonably expected of them. The Target Contribution which is designed to account for what the bankrupt can be expected to earn during his bankruptcy achieves this. Apart from income, all other assets of the bankrupt will be realised and will also be distributed to creditors. In view of this, these other factors should not be included in calculating the Target Contribution.
Differentiated discharge	Since Monthly Contributions can be revised downwards, they should be capable of being revised upwards so that bankrupts are not lackadaisical in contributing.	Upward revisions of the Monthly Contributions can be made by application to Court. An upward revision is significant as it effectively 'extends the goalposts' that the bankrupt has to meet in order to obtain his discharge. Such revisions should only be made after careful consideration. Accordingly, it is more appropriate that upward revisions are only made after the careful scrutiny of a Court application.
	Allowing third-party payments may be subject to abuse. There should be full and frank disclosure of the source of these third-party payments and the relationship of these third-parties to the bankrupts.	A trustee in bankruptcy may require that the third party payer make statutory declarations to confirm that the money is from an independent source before accepting such payment.
	To ensure regime is not abused, there is a need for greater disclosure from the bankrupt. Failure to make truthful disclosure should be a disqualifying act.	Any property or asset concealed via such non-disclosure will also vest in OA despite the discharge, and can be realised after the discharge if necessary. Failure to make truthful disclosure can also be investigated and prosecuted even after discharge.
	The ability of a single creditor's objection, no matter how small the debt is compared to the bankrupt's total debts, to successfully prevent a discharge during the period between 3 to 5 years	We agree that a bankrupt ought to obtain his discharge during the period between 3 to 5 years of the Administration Date unless objections are brought by a significant number of creditors in number or in value.

Proposal	Feedback received	Ministry of Law's response
	of the Administration Date is too onerous. Bankrupts may not be incentivised to meet the Target Contribution during this period because it is too easy for a creditor to veto his discharge.	Thus, the bankrupt ought to be granted his discharge during the 3 to 5 year period unless (i) a majority of the bankrupt's creditors; or (ii) creditors who represent 25% of his total debts object to the discharge.
To retain records of bankruptcy cases on a publicly searchable register for an amount of time depending on conduct of bankrupt in bankruptcy	Should not retain records at all, or at the most retain for 6 months so as to allow discharged bankrupts to obtain bank loans.	The purpose of maintaining these records is to provide information to creditors to facilitate credit assessment by them.
	Bankruptcy records should remain available even after 5 years from the discharge of the bankrupt, to help ensure that proper credit decisions are taken.	Bankrupts who have been co-operative in bankruptcy by paying the Target Contribution in full ought to given a chance to rebuild their lives by having their records removed from the register after a time. This is in line with the greater emphasis on rehabilitation of bankrupts.
Others	Query whether certain property that is protected in bankruptcy, such as HDB flats, will vest in private trustees and what approach private trustees should take to such protected property.	Protected property, such as HDB flats, will not vest in private trustees. They also do not vest in the OA.
	Where HDB loans are outstanding and security is unrealised, saving provisions should preserve the liability for such loans to institutional creditors notwithstanding the bankrupt's discharge.	There is no intention to change the existing position that discharge from bankruptcy has on HDB loans.
	Original definition of secured creditors should be retained.	The proposed amendment is to ensure that any creditor with a valid security interest Is not excluded from the definition of 'secured creditor'.
	Suggestions to revise the Bankruptcy (Costs) Rules upwards to take into account the effects of	MinLaw will consider these suggestions when the subsidiary legislation is being drafted.

Proposal	Feedback received	Ministry of Law's response
	inflation.	
Others	OA should be allowed to extend time for creditors to file proofs of debt without requiring the creditors to seek Court approval. Creditors should go to Court only when OA declines.	We are agreeable to giving the OA powers to extend the time for creditors to file proofs of debt in limited circumstances. These are where the OA is satisfied that the creditor (i) had no knowledge (actual or constructive) of the bankruptcy order before the expiry of the deadline to file the proof of debt; or (ii) could not reasonably be expected to prove his debt before the expiry of the deadline to file the proof of debt.
	Deadline to file proofs of debts should be 12 months instead of 4 months.	A period of 4 months is appropriate, as the OA / private trustees will give notice to creditors listed in the statement of affairs to file their proofs of debt. In any event, MinLaw is adopting the suggestion above to allow the submission of late proofs in certain circumstances.