

立法會
Legislative Council

LC Paper No. CB(1) 645/01-02
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/00/2

**Bills Committee on
Companies (Corporate Rescue) Bill**

**Minutes of fifth meeting held on
Wednesday, 5 December 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
Hon SIN Chung-kai
Hon CHOY So-yuk
Hon LI Fung-ying, JP
Hon Audrey EU Yuet-mee, SC, JP

Member attending : Hon LEUNG Fu-wah, MH, JP

Member absent : Hon Jasper TSANG Yok-sing, JP

**Public officers
attending** : Miss Susie HO
Deputy Secretary for Financial Services

Mr Eamonn O'CONNELL
Official Receiver

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Mr Esmond LEE
Principal Assistant Secretary for Financial Services

Mr Edward LAU
Assistant Official Receiver (Legal Services)

Mr Jeremy GLEN
Assistant Principal Solicitor
Official Receiver's Office

Mr Lawrence PENG
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Anthony WONG
Senior Assistant Secretary (1)8

I. Confirmation of minutes of meeting
(LC Paper No. CB(1) 426/01-02)

The minutes of the fourth Bills Committee meeting held on 14 November 2001 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 463/01-02(01) —	Proposals in respect of the Trust Account Arrangement
LC Paper No. CB(1) 463/01-02(02) —	Insolvent Trading Provisions and Experience in Australia and the United Kingdom
LC Paper No. CB(1) 463/01-02(03) —	The Administration's Comments on the Issues and Concerns raised by the Assistant Legal Adviser in LC Paper No. LS168/00-01
LC Paper No. CB(1) 463/01-02(04) —	The Administration's Comments on the Further Submissions provided by Five Organisations
LC Paper No. CB(1) 259/01-02(01) to (05) —	Further submissions of five deputations
LS 168/00-01 —	Briefing by the Legal Service Division on Legal Aspects of the Companies (Corporate Rescue) Bill)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Bills Committee noted the Administration's new proposal to address members' concern about the trust account arrangement for payment of employees' wages and statutory entitlements. Under the new proposal, the sum payable to each employee would be capped at the maximum overall amount payable by the Protection of Wages on Insolvency Fund (PWIF) Board to an employee upon the winding up of a company, i.e. \$258,500. In this connection, the Administration proposed to consult the relevant parties on the new proposal. It estimated that at least three months would be required for the consultation.

4. The Bills Committee decided that the scrutiny of the Bill be held in abeyance to allow time for the Administration to conduct the consultation, and to work out the details and examine the implications of the new proposal. The Administration was requested to provide in due course a paper advising the Bills Committee of the outcome of the consultation and addressing members' concern on the following points:

- (a) Details of the new proposal, including whether the proposed cap of \$258,500 would be split into individual items of payment, e.g. not exceeding a certain amount in respect of wages and not exceeding a certain amount in respect of severance payment, etc.;
- (b) Merits of the new proposal, including -
 - (i) whether the new proposal could address the points of concern

raised by employer groups, labour unions, professional bodies and other relevant organizations;

- (ii) whether it was justified to cap the sum payable to each employee upon the commencement of a corporate rescue procedure at the maximum overall amount payable by PWIF Board to an employee upon the winding up of a company, having regard to the fact that in the former case, the company had not become insolvent;
- (iii) whether the proposed cap of \$258,500 would be sufficient in most cases to pay an employee's wages and statutory entitlements.

(c) Implications of the new proposal, including -

- (i) the implications on the statutory entitlements and rights of employees protected by existing legislation, such as the Employment Ordinance (Cap. 57), Protection of Wages on Insolvency Ordinance (Cap. 380), etc.;
- (ii) the implications on an employee's entitlements in various possible scenarios, e.g. an employee who was in employment of a company after the commencement of a corporate rescue procedure had not been paid for more than seven days, or an employee who resigned prior to the commencement of a corporate rescue procedure, or an employee who resigned in the course of a corporate rescue procedure, or an employee whose pay had been reduced upon or after the commencement of a corporate rescue procedure.

(d) Other concern

The implication of the high cost of a corporate rescue procedure, including the remuneration for the provisional supervisor, on the payment of employees' wages and statutory entitlements.

5. To address some members' concern about the proposed insolvent trading provisions, the Administration was also requested to review whether it was appropriate to hold the directors and senior management of a company liable for insolvent trading.

6. The Chairman would make a verbal report on the Bills Committee's decision to the House Committee at its meeting on Friday, 7 December 2001.

(Post-meeting note: The House Committee noted at its meeting on Friday, 7 December 2001 that the scrutiny of the Bill be held in abeyance.)

III. Any other business

7. There being no other business, the meeting ended at 10:00 am.

Legislative Council Secretariat
18 December 2001

Appendix

**Proceedings of the fifth meeting of the
Bills Committee on Companies (Corporate Rescue) Bill
on Wednesday, 5 December 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<i>Agenda Item I — Confirmation of minutes of meeting</i>			
0001-0105	Chairman	Confirmation of minutes of meeting held on 14 November 2001	
<i>Agenda Item II — Meeting with the Administration</i>			
0106-0740	Administration	New proposal on trust account arrangement	
0741-0839	Chairman	-ditto-	
0840-1027	Ms LI Fung-ying	-ditto-	
1028-1249	Administration	-ditto-	
1250-1307	Chairman	-ditto-	
1308-1357	Administration	-ditto-	
1358-1451	Chairman	-ditto-	
1452-1530	Administration	-ditto-	
1531-1549	Chairman	-ditto-	
1550-1559	Administration	-ditto-	
1600-1612	Chairman	-ditto-	
1613-1621	Administration	-ditto-	
1622-1658	Chairman	-ditto-	
1659-1800	Miss CHAN Yuen-han	-ditto-	
1801-2022	Administration	-ditto-	
2023-2140	Miss CHAN Yuen-han	-ditto-	
2141-2234	Administration	-ditto-	
2235-2359	Miss CHAN Yuen-han	-ditto-	
2400-2601	Mr LEUNG Fu-wah	-ditto-	
2602-2904	Administration	-ditto-	
2905-2917	Chairman	-ditto-	
2918-2936	Administration	-ditto-	
2937-3042	Mr LEUNG Fu-wah	-ditto-	
3043-3209	Chairman	-ditto-	
3210-3237	Administration	-ditto-	
3238-3248	Chairman	-ditto-	
3249-3255	Administration	-ditto-	

Time	Speaker	Subject(s)	Action required
3256-3404	Mr CHAN Kwok-keung	New proposal on trust account arrangement	
3405-3606	Administration	-ditto-	
3607-3731	Chairman	-ditto-	
3732-3806	Mr CHAN Kwok-keung	-ditto-	
3807-3834	Chairman	-ditto-	
3835-4036	Mr Kenneth TING	Proposed insolvent trading provisions	
4037-4143	Administration	-ditto-	
4144-4216	Chairman	-ditto-	
4217-4300	Administration	-ditto-	
4301-4325	Chairman	-ditto-	
4326-4600	Administration	-ditto-	
4601-4634	Chairman	-ditto-	
4635-5300	Administration	Presentation on the experience in Australia on insolvent trading provisions	
5301-5400	Chairman	Proposed insolvent trading provisions	
5401-5423	Administration	-ditto-	
5424-5436	Chairman	-ditto-	
5437-5457	Mr Kenneth TING	-ditto-	
5458-5516	Administration	-ditto-	
5517-5528	Mr Kenneth TING	-ditto-	
5529-5543	Administration	-ditto-	
5544-5559	Mr Kenneth TING	-ditto-	
5600-5630	Chairman	-ditto-	
5631-5650	Mr Kenneth TING	-ditto-	
5651-5706	Chairman	-ditto-	
5707-5738	Mr Kenneth TING	-ditto-	
5739-5750	Chairman	-ditto-	
5751-010135	Administration	Presentation on the experience in the United Kingdom on insolvent trading provisions	
010136-010245	Chairman	Proposed insolvent trading provisions	
010246-010330	Mr Kenneth TING	-ditto-	
010331-010344	Chairman	-ditto-	
010345-010354	Mr Kenneth TING	-ditto-	
010355-010445	Mr Albert HO	New proposal on trust account arrangement	

Time	Speaker	Subject(s)	Action required
010446-010520	Chairman	-ditto-	
010521-010553	Administration	New proposal on trust account arrangement	
010554-010639	Chairman	-ditto-	
010640-010730	Mr Albert HO	-ditto-	
010731-010900	Administration	-ditto-	
010901-010934	Chairman	-ditto-	
010935-011000	Mr Albert HO	-ditto-	
011001-011056	Assistant Legal Adviser 6	-ditto-	
011057-011123	Mr Albert HO	-ditto-	
011124-011233	Administration	-ditto-	
011234-011541	Mr Eric LI	Proposed insolvent trading provisions	
011542-011826	Administration	-ditto-	
011827-011959	Mr Eric LI	-ditto-	
012000-012027	Administration	-ditto-	
012028-012052	Chairman	-ditto-	
012053-012215	Miss CHAN Yuen-han	New proposal on trust account arrangement	
012216-012406	Chairman	-ditto-	
012407-012456	Ms LI Fung-ying	-ditto-	
012457-012643	Chairman	Concluding remarks	Admin

Note: The audio records of the above proceedings are kept at the Legislative Council Library

Legislative Council Secretariat
18 December 2001