

立法會
Legislative Council

LC Paper No. CB(1)1164/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004

**Minutes of the fifth meeting held on
Friday, 11 March 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon TAM Heung-man (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon KWONG Chi-kin

Public officers attending : Miss Emma LAU
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Mr Alan LO
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Arthur AU
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Mr E T O'Connell
Official Receiver

Ms May LEE
Assistant Official Receiver

Ms Vicki LEE
Senior Government Counsel
Department of Justice

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

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

Ms Connie SZETO
Senior Council Secretary (1)4

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1059/04-05 — Minutes of fourth meeting held on 21 February 2005)

The minutes of the meeting held on 21 February 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1060/04-05(01) — “Follow-up to the fourth meeting on 21 February 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1060/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 21 February 2005”
- LC Paper No. CB(1)925/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 11 January 2005”)

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

Follow-up actions to be taken by the Administration

Admin

3. At the request of the Bills Committee, the Administration agreed to take the following actions:

- (a) In order to address members' concern about the possible negative impact of the proposed tendering scheme to outsource summary bankruptcy cases to private-sector insolvency practitioners (PIPs) on the quality of service provided by PIPs, the Administration was requested to consider members' view and suggestion, as follows:
 - (i) The Administration should re-examine the financial viability and cost-effectiveness of the proposed tendering scheme; and
 - (ii) The feasibility of a member's suggestion of stipulating a minimum tender price for the tendering scheme.
- (b) To facilitate the clause-by-clause examination of the Bill, the Administration was requested to provide draft proposed Committee Stage amendments for consideration by the Bills Committee.

Suggestion of setting out in the legislation the qualification criteria for appointment as provisional trustees or trustees

4. Members noted the outcome of the consultation conducted by the Administration on the suggestion of setting out in the legislation (principal ordinance or subsidiary legislation) the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases. There was general agreement among the ten respondents that the detailed qualification criteria should be set out in the Official Receiver's Office's tender documents or a code of practice, and not in the legislation. As to the need to set out in the legislation the basic criteria such as the professional qualifications, different views had been expressed. On the one hand, the Hong Kong Bar Association and the Law Society of Hong Kong did not think that the criteria need to be or should be set out in legislation, whether the Bankruptcy Ordinance or its subsidiary legislation, and the Hong Kong Institute of Certified Public Accountants considered that it would be sufficient for the time being for the minimum qualification requirements to be contained in the tender documents. On the other hand, bodies like the Hong Kong Association of Banks, the Association of Chartered Certified Accountants and the Hong Kong Institute of Company Secretaries supported the inclusion of certain basic criteria such as "fit and proper" in the legislation, on the ground that such inclusion could enhance transparency and preserve the quality of PIPs. Members also noted that the Administration, having regard to the fact that there were already checks to help safeguard the quality of services of PIPs and the

much wider ramifications of setting out the criteria in the legislation, maintained its original proposal that there was no need to prescribe the criteria for PIPs in the statutory provisions.

5. Mr Ronny TONG maintained his view that the qualification criteria should be set out in the legislation (principal ordinance or subsidiary legislation) so as to ensure the quality of service to be provided by PIPs in the handling of outsourced summary bankruptcy cases and to enhance the transparency of the outsourcing scheme. To facilitate the Bills Committee to decide on the way forward, the Chairman accepted Mr TONG's suggestion that a circular be issued to all members inviting them to give views on the issue.

(Post-meeting note: With the concurrence of the Chairman, the Clerk issued the circular (LC Paper No. CB(1)1098/04-05) to all members of the Bills Committee on 15 March 2005. The Chairman also directed that the issue be placed on the agenda for the next meeting.)

Date of next meeting

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 1 April 2005, at 10:45 am. Members agreed that clause-by-clause examination of the Bill might be commenced at the next meeting after discussion of the outstanding issues.

III. Any other business

7. There being no other business, the meeting ended at 9:30 am.

Council Business Division 1
Legislative Council Secretariat
30 March 2005

**Proceedings of the fifth meeting of the
Bills Committee on Bankruptcy (Amendment) Bill 2004
on Friday, 11 March 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000225	Chairman	Confirmation of minutes of meeting on 21 February 2005	
000226-000827	Administration	<p><u>Committee Stage amendment (CSA) to reflect the policy intent that the Bill would enable only the outsourcing of debtor-petition summary bankruptcy cases but not creditor-petition cases</u> (Part A of LC Paper No. CB(1)1060/04-05(02))</p> <p>The Administration's undertaking to present the relevant CSA when the Bills Committee scrutinized the relevant provisions of the Bill</p> <p><u>Costs, charges and other expenses incurred by private-sector insolvency practitioners (PIPs), and remuneration for PIPs, in handling outsourced liquidation cases</u> (Part B of LC Paper No. CB(1)1060/04-05(02))</p> <p>Briefing by the Administration on the findings of a survey conducted by the Official Receiver's Office (ORO) on the subject (the survey)</p>	

Time marker	Speaker	Subject(s)	Action Required
000828-001528	Ms Audrey EU Administration	<p>(a) How “the average amount of remuneration of PIPs paid” was worked out in the survey</p> <p>(b) Reasons for the decreasing trend in tender prices for the tendering schemes to outsource summary liquidation cases</p>	
001529-002417	Mr Ronny TONG Administration	<p>(a) Concern about the possible negative impact of the proposed tendering scheme to outsource summary bankruptcy cases on the quality of service provided by PIPs</p> <p>(b) The Administration’s advice that -</p> <p>(i) administration of summary bankruptcy cases was relatively straight-forward and less complex, thus easier for PIPs to handle, than summary liquidation cases; and</p> <p>(ii) the tender price for the proposed outsourcing scheme of summary bankruptcy cases was anticipated to be lower than that for the tender scheme of outsourcing summary liquidation cases</p>	

Time marker	Speaker	Subject(s)	Action Required
002418-002924	Ms Miriam LAU	<p>(a) Concern that some PIPs might adopt a price-cutting strategy for bidding the tender for summary bankruptcy cases and the negative impact of such on the quality of service provided by PIPs</p> <p>(b) Emphasis on the need to specify in the tender contract or legislation the requirements for provisional trustees or trustees for summary bankruptcy cases to maintain good quality of service, and the need for the Administration to monitor the performance of the appointed provisional trustees or trustees</p>	
002925-004448	Mr LI Kwok-ying Administration Mr Ronny TONG	<p>(a) A member's suggestion of stipulating a minimum tender price for the proposed tendering scheme to outsource summary bankruptcy cases</p> <p>(b) Request for the Administration to re-examine the financial viability and cost-effectiveness of the proposed tendering scheme to outsource summary bankruptcy cases</p> <p>(c) The Administration's advice that both statutory and non-statutory means were available for monitoring the quality of service and performance of PIPs</p>	<p>Administration to consider the suggestion under paragraph 3(a)(ii) of the minutes</p> <p>Administration to consider the view under paragraph 3(a)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
004449-004915	Ms Audrey EU Administration Chairman	<p>(a) Qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases</p> <p>(b) Factors to be considered in the selection of tenderers</p> <p>(c) The Administration's advice that in the unlikely event that the balance of the debtor-deposit of a summary bankruptcy case (i.e. deposit paid by the petitioner deducting the relevant fees and expenses incurred by the ORO) was less than the likely amount of disbursement plus the remuneration tendered by the PIPs, the ORO would not outsource the case</p>	
004916-005014	Ms Audrey EU Administration	<p><u>Information on number of PIPs/firms which had submitted bids and awarded with contracts in previous tendering exercises for outsourcing summary liquidation cases</u> (Appendix 2 to LC Paper No. CB(1)925/04-05(02))</p>	
005015-005624	Chairman Administration Mr Ronny TONG	<p><u>Suggestion of setting out in the legislation the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases</u> (Part C of and Annex A to LC Paper CB(1)1060/04-05(02))</p> <p>(a) Briefing by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>on the outcome of its consultation with relevant professional bodies and other stakeholders on the suggestion:</p> <p>(i) There was general agreement among the respondents that the detailed qualification criteria should be set out in ORO's tender documents or code of practice, and not in the legislation;</p> <p>(ii) There were different views among the respondents on the need to set out the basic criteria in the legislation -</p> <ul style="list-style-type: none"> ● the Hong Kong Bar Association, Law Society of Hong Kong and Hong Kong Institute of Certified Public Accountants did not consider it necessary to set out the basic criteria in the Bankruptcy Ordinance (Cap. 6) or its subsidiary legislation; and ● the Hong Kong Association of Banks, the Association of Chartered Certified 	

Time marker	Speaker	Subject(s)	Action Required
		<p>Accountants and the Hong Kong Institute of Company Secretaries supported the inclusion of certain basic criteria such as “fit and proper” in the legislation.</p> <p>(b) The Administration’s request for the Bills Committee to give favourable consideration to the Administration’s original proposal of not prescribing the criteria for PIPs in the statutory provisions</p> <p>(c) A member’s disagreement with the Administration’s original proposal</p> <p><u>Concern about possible inconsistencies in the two submissions from the Law Society of Hong Kong</u> (Part D of and Annex B to LC Paper CB(1)1060/04-05(02))</p> <p>The Administration’s advice that the Law Society of Hong Kong did not consider that the two submissions were inconsistent</p>	
005625-010014	Chairman Mr Ronny TONG Clerk Ms Audrey EU	Suggestion of inviting members’ views on the suggestion of setting out the qualification criteria in the legislation	The Clerk to issue a circular on the issue under paragraph 5 of the minutes
010015-010106	Chairman Ms Audrey EU	Possible date for commencement of the clause-by-clause examination	Administration to take action under

Time marker	Speaker	Subject(s)	Action Required
	Clerk	of the Bill	paragraph 3(b) of the minutes
010107-010128	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
30 March 2005