

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1280/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/04

**Bills Committee on Bankruptcy (Amendment) Bill 2004**

**Minutes of the sixth meeting held on  
Friday, 1 April 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon TAM Heung-man (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH  
Hon Ronny TONG Ka-wah, SC  
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)1164/04-05) — Minutes of fifth meeting held on  
11 March 2005)

The minutes of the meeting held on 11 March 2005 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)1165/04-05(01)) — “Follow-up to the fifth meeting  
on 11 March 2005” prepared by  
the Legislative Council  
Secretariat
- LC Paper No. CB(1)1165/04-05(02) — Paper provided by the  
Administration on “Responses  
to list of follow-up actions for  
the fifth meeting on 11 March  
2005”

- LC Paper No. CB(1)1165/04-05(03) — Paper prepared by the Legislative Council Secretariat on “Outcome of the consultation with members on the suggestion of setting out in the legislation the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases”
- 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(3)42/04-05 — The Bill
- LC Paper No. CB(1)137/04-05(01) — Marked-up copy of the Bankruptcy (Amendment) Bill 2004
- Annex to LC Paper No. CB(1)1165/04-05(02) — Annex to the paper provided by the Administration on “Responses to list of follow-up actions for the fifth meeting on 11 March 2005”
- LC Paper No. CB(1)1165/04-05(04) — “Summary of issues of concern on individual clauses of the Bill (Position as at 29 March 2005)” prepared by the Legislative Council Secretariat

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

Follow-up actions to be taken by the Administration

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

- (a) Tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs)  
To enhance the transparency and fairness of the tendering scheme for

outsourcing summary bankruptcy cases, the Administration was requested to consider setting out the criteria for assessing the tenders. In this connection, members considered that the assessment criteria should include not only tender price but also other factors, such as the tenderers' manpower resources for undertaking the outsourced summary bankruptcy cases, past experience in insolvency work and track record in providing relevant services.

(b) Qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases

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, the Bills Committee considered that the detailed qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases should be set out in the Official Receiver's Office (ORO)'s tender documents and the basic qualification criteria in subsidiary legislation. In this connection:

- (i) the Administration agreed that the detailed qualification criteria be set out in tender documents and that it would provide a sample of the tender document to be used in the tendering scheme for outsourcing summary bankruptcy cases; and
- (ii) the Administration undertook to work out the detailed proposals for setting out the basic qualification criteria in subsidiary legislation, taking into account the views expressed by the Association of Chartered Certified Accountants, Hong Kong Association of Banks, Hong Kong Institute of Company Secretaries (HKICS), Hong Kong Institute of Certified Public Accountants (HKICPA), Grant Thornton, and Hong Kong Bar Association in their written submissions to the Administration in February or March 2005. The Administration also indicated that it would consult the three relevant stakeholders, i.e. the Law Society of Hong Kong, HKICS and HKICPA, before presenting the proposals to the Bills Committee for its consideration.

(c) Process of handling summary bankruptcy cases

In order to facilitate members' understanding of the process of handling summary bankruptcy cases by ORO, the Administration was requested to provide a full set of sample documents involved in the process and ORO's internal guidelines for handling such cases.

(d) Clause 2

For the sake of clarity, the Administration accepted the suggestion of a member that the definition of "trustee" in section 2 of the Bankruptcy Ordinance (BO) should make reference to the new subsection (1B) of section 58 which provided that save in certain sections, "the provisional

trustee shall, unless the context otherwise required, be regarded as the trustee for the purposes of this Ordinance”. The Administration undertook to prepare draft Committee Stage amendments accordingly.

(e) Clause 5

- (i) On the proposed section 15(4)(a) of BO, the Administration undertook to consider a member’s suggestion of adding “under section 12(1A)” after “provisional trustee” to improve the clarity of the proposed provision; and
- (ii) On the proposed section 15(4)(b) of BO, the Administration undertook to consider a member’s suggestion of setting out clearly when the term of office of the special manager should cease, such as by adding “appointed or constituted under section 81(4)” after “a trustee”.

(f) Clause 9

On section 19 of BO, the Administration was requested to provide a paper covering the following items:

- (i) Reasons for and purpose of the proposed deletion of section 19(8); and
- (ii) Whether the proposed amendments to section 19, i.e. the proposed addition of subsections (4A) and (4B) and the proposed deletion of subsection (8), involved a policy change.

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 21 April 2005, at 10:45 am.

**III. Any other business**

5. There being no other business, the meeting ended at 12:50 pm.

**Proceedings of the sixth meeting of the  
Bills Committee on Bankruptcy (Amendment) Bill 2004  
on Friday, 1 April 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000230	Chairman	(a) Confirmation of minutes of meeting on 11 March 2005  (b) Welcoming and introductory remarks	
000231-000834	Administration	<u>Financial viability and cost-effectiveness of the proposed tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs) (the proposed tendering scheme)</u> (Paragraphs 2 to 6 of LC Paper No. CB(1)1165/04-05(02))  Briefing by the Administration on its response	
000835-003336	Ms Miriam LAU Administration Dr LUI Ming-wah Mr Ronny TONG	<u>Assessment criteria for the proposed tendering scheme</u>  (a) Members' concern that tender price was the only assessment criterion in the proposed tendering scheme  (b) The Administration's advice that -  (i) PIPs had to meet pre-qualification criteria	

Time marker	Speaker	Subject(s)	Action Required
		<p>before eligible for submitting tenders;</p> <p>(ii) The Official Receiver's Office (ORO) would vet the tenders and make recommendation to the Central Tender Board on the selection of tender;</p> <p>(iii) Besides tender price, ORO would take into consideration other factors in the assessment, e.g. tenderers' manpower resources for undertaking the outsourced summary bankruptcy cases, past experience in insolvency work, and track record in providing relevant services;</p> <p>(iv) In the event that the tenderers being equal on other criteria, tender price would be the main factor of consideration in the assessment; and</p> <p>(v) It would be a criminal offence if tenderers knowingly submitted false information in the tender documents</p> <p>(c) Members' suggestion for the Administration to set out the criteria for assessing the tenders of the proposed tendering scheme in order to</p>	<p>Administration to consider the suggestion under paragraph 3(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>enhance the transparency and fairness of the scheme</p> <p>(d) Members' views that the assessment criteria should not only include tender price but also other factors, e.g. tenderers' manpower resources for undertaking the outsourced summary bankruptcy cases, past experience in insolvency work, and track record in providing relevant services</p>	<p>Administration to take action under paragraph 3(a) of the minutes</p>
003337-003615	Mr Albert HO	<p>A member's suggestion of introducing a point system similar to that adopted by the Housing Department or the Lands Department for assessing tenders submitted for their works contracts</p>	
003616-003745	Administration	<p>The Administration's advice that -</p> <p>(a) The proposed tendering scheme would be modelled on the tendering scheme for outsourcing summary liquidation cases which had been implemented successfully for some years;</p> <p>(b) It was considered unnecessary to introduce a point system for assessing the tenders for the proposed tendering scheme; and</p> <p>(c) The Administration had been working closely with the market and professional bodies to identify areas for improving</p>	



Time marker	Speaker	Subject(s)	Action Required
		the transparency and operation of the tendering scheme for outsourcing summary liquidation cases	
003746-004117	Mr CHAN Kam-lam Administration	A member's view that it was unnecessary to introduce a point system for assessing tenders of the proposed tendering scheme, and that it was more important for ORO to strengthen monitoring of PIPs' services	
004118-004737	Chairman Administration Dr LUI Ming-wah	<p><u>Consultation with members on the suggestion of setting out in the legislation the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases</u> (LC Paper No. CB(1)1165/04-05(03))</p> <p>Report by the Chairman on the results of the consultation -</p> <p>(a) Three members responded that they had no comments on the suggestion;</p> <p>(b) On the basic qualification criteria, five members considered that the criteria should be set out in the subsidiary legislation, while one member considered that the criteria should be set out in ORO's tender documents or a code of practice;</p> <p>(c) On the detailed qualification criteria, five members</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>considered that the criteria should be set out in the ORO's tender documents or a code of practice, while one member considered that the criteria should be set out in subsidiary legislation (Remark: The member considered that if the Bills Committee accepted that such criteria should be set out in ORO's tender documents or a code of practice, the member considered that the criteria should be set out in the tender documents); and</p> <p>(d) It was the Bills Committee's view that the basic qualification criteria should be set out in the subsidiary legislation and the detailed qualification in ORO's tender documents</p>	
004738-004908	Dr LUI Ming-wah Administration	The Administration's agreement that the detailed qualification criteria be set out in tender documents	
004909-005227	Mr Ronny TONG	A member's view that the qualification criteria should be set out in the subsidiary legislation	
005228-005410	Administration	The Administration's undertaking to work out the detailed proposals for setting out the basic qualification criteria in subsidiary legislation, taking into account the views expressed by the Association of Chartered Certified Accountants, Hong Kong Association of Banks,	Administration to take action under paragraph 3(b)(ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		Hong Kong Institute of Company Secretaries (HKICS), Hong Kong Institute of Certified Public Accountants (HKICPA), Grant Thornton, and Hong Kong Bar Association in their written submissions to the Administration in February or March 2005, and in consultation with the three relevant stakeholders, i.e. the Law Society of Hong Kong, HKICS and HKICPA, before presenting the proposals to the Bills Committee for its consideration	
005411-010210	Mr Ronny TONG Ms Miriam LAU Administration Chairman	(a) The basic and detailed qualification criteria of PIPs  (b) Request for the Administration to provide a sample of the tender document to be used in the proposed tendering scheme	Administration to take action under paragraph 3(b)(i) of the minutes
010211-010735	Mr Albert HO Administration	Request for the Administration to provide a full set of sample documents involved in the process of handling summary bankruptcy cases and ORO's internal guidelines for handling such cases	Administration to take action under paragraph 3(c) of the minutes
010736-010830	Chairman	<u>Clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(3)42/04-05, CB(1)137/04-05(01), Annex to CB(1)1165/04-05(02), CB(1)1165/04-05(04))	
010831-011344	Administration	<u>Clauses 1 and 2</u>  Briefing by the Administration	

Time marker	Speaker	Subject(s)	Action Required
011345-012750	Ms Miriam LAU Administration Assistant Legal Adviser 6 (ALA6) Mr Ronny TONG Clerk Chairman	<u>Clause 3</u> (a) Briefing by the Administration (b) Assessment of the value of the property of the bankrupt by ORO (c) Members' agreement with the draft proposed Committee Stage amendment (CSA) to the new subsection (1A) of section 12 of the Bankruptcy Ordinance (BO) (d) The reference to "person" in the new subsection (1B) of section 12 of BO	
012751-013309	Administration	<u>Clause 4</u> Briefing by the Administration	
013310-014108	Administration Mr Ronny TONG	<u>Clause 5</u> (a) Briefing by the Administration (b) Operation of the proposed section 15(4)(a) of BO (c) On the proposed section 15(4)(a) of BO, a member's suggestion for the Administration to add "under section 12(1A)" after "provisional trustee" to improve the clarity of the proposed provision (d) On the proposed section 15(4)(b) of BO, a member's	Administration to consider the suggestion under paragraph 3(e)(i) of the minutes  Administration to consider the

Time marker	Speaker	Subject(s)	Action Required
		suggestion for the Administration to set out clearly when the term of office of the special manager “shall” cease, such as by adding “appointed or constituted under section 81(4)” after “a trustee”	suggestion under paragraph 3(e)(ii) of the minutes
014109-014654	ALA6 Administration Mr Ronny TONG	<u>Clause 2</u>  (a) A member’s suggestion that the definition of “trustee” in section 2 of BO should make reference to the new subsection (1B) of section 58 which provided that save in certain sections, “the provisional trustee shall, unless the context otherwise required, be regarded as the trustee for the purposes of this Ordinance”  (b) The Administration’s undertaking to prepare draft CSA in respect of item (a) above accordingly	Administration to take action under paragraph 3(d) of the minutes
014655-015123	Administration Mr Ronny TONG Mr CHAN Kam-lam	<u>Clauses 6 and 7</u>  Briefing by the Administration	
015124-015502	Chairman Administration	<u>Clauses 8 and 9</u>  Briefing by the Administration	
015503-020715	Mr Ronny TONG Administration Chairman Ms Miriam LAU	<u>Clause 9</u>  (a) Reasons for and purpose of the proposed deletion of	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		section 19(8) of BO  (b) Concern about whether the proposed amendments to section 19, i.e. the proposed addition of subsections (4A) and (4B) and the proposed deletion of subsection (8) involved a policy change  (c) Request for the Administration to prepare a paper to address the points in items (a) and (b) above	Administration to take action under paragraph 3(f) of the minutes
020716-020815	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
19 April 2005