

立法會
Legislative Council

LC Paper No. CB(1)1466/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004

**Minutes of the seventh meeting held on
Thursday, 21 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

-
- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1280/04-05 — Minutes of sixth meeting held on 1 April 2005)

The minutes of the meeting held on 1 April 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1281/04-05(01) — “Follow-up to the sixth meeting on 1 April 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1281/04-05(02) — Paper provided by the Administration on “Responses to list of follow-up actions for the sixth meeting on 1 April 2005”
- LC Paper No. CB(1)1313/04-05(01) — Supplementary information on Bankruptcy

- LC Paper No. CB(1)1313/04-05(02) — Booklet on “Simple Guide on Bankruptcy” issued by the Official Receiver’s Office
- LC Paper No. CB(1)1313/04-05(03) — Booklet on “Simple Guide on Individual Voluntary Arrangement” issued by the Official Receiver’s Office
- LC Paper No. CB(1)1261/04-05(01) — Submission dated 1 April 2005 from the Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)1281/04-05(03) — Administration’s response to the submission dated 1 April 2005 from the Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)456/04-05(01) — Submission dated 10 December 2004 from the Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)523/04-05(01) — Administration’s response to the submission dated 10 December 2004 from the Hong Kong Institute of Certified Public Accountants
- 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)1281/04-05(02) — Annex to the paper provided by the Administration on “Responses to list of follow-up actions for the sixth meeting on 1 April 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 Chairman informed the meeting that as she had other important engagement, the meeting would end at 12:00 noon instead of 12:45 pm.

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

Follow-up actions to be taken by the Administration

Admin 4. At the request of the Bills Committee, the Administration agreed to take the following actions:

- (a) The Administration undertook to endeavour to present the following information to the Bills Committee at the next meeting on 10 May 2005:

Tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs)

- (i) As agreed at the meeting on 1 April 2005, the Administration would provide a sample of the tender document to be used in the tendering scheme for outsourcing summary bankruptcy cases. The detailed qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases would be set out in the tender document;
- (ii) As agreed at the meeting on 1 April 2005, the Administration would present to the Bills Committee its detailed proposals for setting out in subsidiary legislation the basic qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases; and

Handling of summary bankruptcy cases

- (iii) As requested by the Bills Committee at the meeting on 1 April 2005, the Administration undertook to provide the Official Receiver’s Office’s internal guidelines for handling summary bankruptcy cases.

- (b) Clause 11 – proposed section 37(1) of the Bankruptcy Ordinance

To address the concern expressed by members and deputations that the remuneration and necessary disbursements of PIPs were accorded almost the lowest priority for payment (the proposed subsections (1)(f), (g) and (h) of section 37), the Administration was requested to take the following actions:

- (i) To provide justifications for according a higher priority to the Official Receiver (OR)'s remuneration, commissions, percentages and charges than the remuneration and necessary disbursements of PIPs in outsourced summary bankruptcy cases;
- (ii) To consider a member's suggestion of recasting the proposed subsection (1)(a) of section 37 to the effect that only the necessary fees and charges incurred by the OR in handling outsourced summary bankruptcy cases would be accorded higher priority, and to review whether the commissions and percentages payable to the OR should be included in the proposed subsection (1)(a); and
- (iii) To address the concern that there was no assurance for PIPs that they would be paid their remuneration and would recover their necessary disbursements for handling outsourced summary bankruptcy cases.

Date of next meeting

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 10 May 2005 at 10:45 am.

III. Any other business

6. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 1
Legislative Council Secretariat
9 May 2005

**Proceedings of the seventh meeting of the
Bills Committee on Bankruptcy (Amendment) Bill 2004
on Thursday, 21 April 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000200	Chairman	Confirmation of minutes of meeting on 1 April 2005	
000201-001240	Administration Chairman	<p><u>Matters arising from the sixth meeting on 1 April 2005</u></p> <p>(a) Briefing by the Administration on its written responses in respect of the following items:</p> <p>(i) Criteria for assessing the tenders submitted by private-sector insolvency practitioners (PIPs) for the tendering scheme for outsourcing summary bankruptcy cases (the proposed tendering scheme) (Paragraphs 1 to 3 of LC Paper No. CB(1)1281/04-05(02))</p> <p>(ii) Proposal to prescribe in subsidiary legislation the minimum qualification criteria for appointment as provisional trustees or trustees for outsourced bankruptcy cases (Paragraph 4 of LC Paper No. CB(1)1281/04-05(02))</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(iii) Sample documents involved in the administration of summary bankruptcy cases (Paragraph 5 of LC Paper No. CB(1)1281/04-05(02))</p> <p>(iv) Draft Committee Stage amendments to clauses 2 and 5 (Paragraph 6 of and Annex to LC Paper No. CB(1)1281/04-05(02))</p> <p>(v) Clause 9 (Paragraphs 7 to 11 of LC Paper No. CB(1)1281/04-05(02))</p> <p>(b) Administration's undertaking to endeavour to present to the Bills Committee its detailed proposals under item (ii) at the next meeting on 10 May 2005</p> <p>(c) Other supplementary information provided by the Administration (LC Paper Nos. CB(1)1313/04-05(01), (02) and (03))</p> <p>(d) Administration's undertakings to provide the following documents requested by members at the meeting on 1 April 2005:</p> <p>(i) A sample of the tender document to be used in the proposed tendering scheme</p>	<p>Administration to take action under paragraph 4(a)(ii) of the minutes</p> <p>Administration to take action under paragraph 4(a)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		(ii) The Official Receiver's Office (ORO)'s internal guidelines for handling summary bankruptcy cases	Administration to take action under paragraph 4(a)(iii) of the minutes
001241-001510	Chairman Administration	<p><u>Submission dated 1 April 2005 from the Hong Kong Institute of Certified Public Accountants (HKICPA)</u> (LC Paper Nos. CB(1)1261/04-05(01) and CB(1)1281/04-05(03))</p> <p>Briefing by the Administration on its written response to the general comments made in the submission</p>	
001511-002034	Chairman Administration	<p><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)1281/04-05(02) and CB(1)1165/04-05(04))</p> <p><u>Clauses 3 and 4</u></p> <p>Briefing by the Administration on its written response to HKICPA's comments (LC Paper Nos. CB(1)1281/04-05(03))</p> <p><u>Clause 10</u></p> <p>Briefing by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
002035-002958	Administration	<p><u>Clause 11</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Administration's response to the comments made by HKICPA and Grant Thornton</p>	
002959-003723	Mr Albert HO Administration	<p><u>Clause 11</u></p> <p>(a) Concern about the priority of costs and charges set out in the proposed section 37(1) of the Bankruptcy Ordinance (BO)</p> <p>(b) Why the Officer Receiver (OR)'s remuneration, commissions, percentages and charges (items in the proposed subsection (1)(a) of section 37) were accorded higher priority than the remuneration and necessary disbursements of PIPs (items in the proposed subsections (1)(f), (g) and (h))</p> <p>(c) Request for the Administration to provide justifications for according a higher priority to the OR's remuneration, commissions, percentages and charges than the remuneration and necessary disbursements of PIPs in outsourced summary bankruptcy cases</p> <p>(d) Administration's advice that -</p> <p>(i) the proposed priority of items set out in section 37(1) by and large</p>	Administration to take action under paragraph 4(b)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>followed that provided under Rule 179(1) of the Companies (Winding-up) Rules, which had been in place for many years; and</p> <p>(ii) the OR had the highest priority among the relevant items because of his dual role, namely the supervisory role and the role of administering the bankrupt's estate while acting as trustee in bankruptcy</p> <p>(e) A member's suggestion of -</p> <p>(i) recasting the proposed section 37(1)(a) to the effect that only the necessary fees and charges incurred by the OR in handling outsourced summary bankruptcy cases would be accorded higher priority; and</p> <p>(ii) reviewing whether the commissions and percentages payable to the OR should be included in the proposed section 37(1)(a)</p>	<p>Administration to consider the suggestion under paragraph 4(b)(ii) of the minutes</p>
003724-004937	Mr Ronny TONG Administration	<p><u>Clause 11</u></p> <p>(a) Costs and charges for the provisional trustee</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Concern about the priority of costs and charges set out in the proposed section 37(1) of BO</p> <p>(c) Why the taxed costs of the petition (proposed subsection (1)(b) of section 37) was accorded higher priority than the special manager's remuneration, fees, disbursements and expenses (proposed subsection (1)(c) of section 37)</p> <p>(d) Members' concern that the balance of the debtor-deposit of a summary bankruptcy (i.e. deposit paid by the debtor after deducting fees and expenses incurred by the ORO for administering the case) would be insufficient to cover the remuneration and necessary disbursements of the PIP for handling the case</p> <p>(e) Administration's advice that -</p> <p>(i) in the unlikely event that the balance of the debtor-deposit of a summary bankruptcy was less than the likely amount of disbursement plus the remuneration tendered by the PIP, the ORO would not outsource the case;</p> <p>(ii) summary bankruptcy cases would be</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>outsourced in batches to allow PIPs to achieve economies of scale; and</p> <p>(iii) the proposed tendering scheme would be financially viable and attractive to PIPs</p>	
004938-005615	Mr Ronny TONG Administration	<p><u>Clause 11</u></p> <p>Why the taxed costs of the petition (proposed subsection (1)(b) of section 37) was accorded higher priority than the remuneration of, and fees, disbursements and expenses incurred by the special manager (proposed subsection (1)(c) of section 37)</p>	
005616-010254	Mr KWONG Chi-kin Administration	<p><u>Clause 11</u></p> <p>(a) Concern about the priority of costs and charges set out in the proposed section 37(1) of BO</p> <p>(b) A member's concern that it would be unfair to PIPs if they were not paid their remuneration and could not recover their necessary disbursements for handling outsourced summary bankruptcy cases</p> <p>(c) In connection with item (b) above, a member's view that PIPs' remuneration and necessary disbursements should be accorded higher priority</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(d) Request for the Administration to address the concern that there was no assurance for PIPs that they would be paid their remuneration and would recover their necessary disbursements for handling outsourced summary bankruptcy cases</p> <p>(e) Administration's advice that -</p> <p>(i) the proposed tendering scheme would be modelled on the tendering schemes for outsourcing summary liquidation cases which had been successfully implemented for a number of years;</p> <p>(ii) given the relatively straight-forward nature of the administration of summary bankruptcy cases, and that cases would be outsourced in batches so as to achieve economies of scale, there should be sufficient interests from PIPs in tendering;</p> <p>(iii) it was the decision of PIPs whether to participate in the proposed tendering scheme taking into account their commercial considerations; and</p>	<p>Administration to take action under paragraph 4(b)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		(iv) the remuneration and disbursements of PIPs for handling outsourced summary bankruptcy cases would be paid as provided in the proposed section 37(1) of BO, and it would be inappropriate for the Administration to give assurance to PIPs in this respect	
010255-011135	Mr Albert HO Administration Chairman	Concern about lack of assurance for PIPs to be paid their remuneration and recover their necessary disbursements for handling outsourced summary bankruptcy case	Administration to take action under paragraph 4(b)(iii) of the minutes
011136-011300	Chairman	<u>Clause 11</u> Request for the Administration to brief members on its response to the comments on clause 11 made by the Association of Chartered Certified Accountants (Hong Kong), Kenny Tam & Co, and the Society of Chinese Accountants and Auditors at the next meeting on 10 May 2005 <u>Date of next meeting</u>	