

立法會
Legislative Council

LC Paper No. CB(1)1623/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004

**Minutes of the eighth meeting held on
Tuesday, 10 May 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
Hon CHAN Kam-lam, JP
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** : Dr Hon LUI Ming-wah, 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)
- Ms May LEE
Acting 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)1466/04-05 — Minutes of seventh meeting held on 21 April 2005)

The minutes of the meeting held on 21 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)1467/04-05(01) — “Follow-up to the seventh meeting on 21 April 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1467/04-05(02) — Paper provided by the Administration on “Responses to list of follow-up actions for the seventh meeting on 21 April 2005”
- LC Paper No. CB(1)925/04-05(02) — Paper provided by the Administration on “Responses to list of follow-up actions for the third meeting on 11 January 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
- 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
- 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
- Annex II to LC Paper No. — Paper provided by the Administration on “Responses to list of follow-up actions for the seventh meeting on 21 April 2005”
CB(1)1467/04-05(02)

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) Tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs)
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.
- (b) Handling of summary bankruptcy cases
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.
- (c) Clause 11 – proposed section 37(1) of the Bankruptcy Ordinance (BO)
The Administration was requested to take the following actions:
(i) To reconsider how to address the concerns expressed by members and deputations about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the

- lowest priority for payment (the proposed subsections (1)(f), (g) and (h) of section 37);
- (ii) In connection with item (i) above, given that the summary bankruptcy cases were outsourced to PIPs by the Official Receiver (OR), and that PIPs in administering the outsourced cases would perform the same functions and duties as OR in administering non-outsourced cases, the Administration was requested to consider a member's suggestion to regard PIPs as persons employed by OR so that PIPs' remuneration and expenses would be included as costs incurred by OR under the proposed section 37(1)(a) and accorded higher priority in payment;
 - (iii) To consider a member's suggestion of setting it out clearly in the provision that "remuneration of, fees, commissions, percentages and charges payable to" OR referred to in the proposed section 37(1)(a) meant those fees, charges and percentages set out in the Bankruptcy (Fees and Percentages) Order so as to avoid any ambiguity;
 - (iv) To rectify the inconsistency in the English and Chinese text of the proposed section 37(1)(a) where the English text referred to "the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the Official Receiver.....", while the Chinese text referred to "破產管理署署長的酬金、須支付予破產管理署署長的費用、手續費、百分率及收費，或破產管理署署長所招致或批准的訟費、收費及開支....."; and
 - (v) In the event that OR employed an external party to look into any suspected malpractices of a PIP in handling outsourced summary bankruptcy cases, the Administration was requested to confirm whether the cost incurred would be deducted from the debtor-deposit; if it would, to address members' concern that the cost, which might involve a substantial amount, would eat up the balance of the debtor-deposit; if not, to advise how the cost would be covered.
- (d) Clause 17 – proposed section 60(1) of BO
The Administration undertook to consider the Legal Adviser to the Bills Committee's suggestion of recasting the proposed section 60(1) to provide OR when acting as provisional trustee with the power of taking into his custody or control the property of the bankrupt as provided to other provisional trustees in the proposed section 60(2)(a).

Work plan

4. Members noted the Administration's plan to resume the Second Reading debate on the Bill within the current session as far as possible. Given the limited number of members present, the Chairman said that the Bills Committee might

consider at a later stage whether the Bill was ready for resumption within the current session. However, as only one more meeting had been scheduled (26 May 2005), members agreed that two additional meetings be scheduled to speed up scrutiny of the Bill. Details of the two additional meetings were as follows:

<u>Date</u>	<u>Time</u>
20 May 2005 (Friday)	3:30 pm - 5:30 pm
3 June 2005 (Friday)	3:30 pm - 5:30 pm

(Post-meeting note: The notice of the two meetings was issued to members on 11 May 2005.)

Date of next meeting

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 20 May 2005, at 3:30 pm.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
25 May 2005

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

Time marker	Speaker	Subject(s)	Action Required
000000-000032	Chairman	Confirmation of minutes of meeting on 21 April 2005	
000033-001835	Chairman Administration	<p><u>Matters arising from the sixth and seventh meetings on 1 and 21 April 2005</u> (LC Paper Nos. CB(1)1281/04-05(01), 1467/04-05(01) and (02), 925/04-05(02))</p> <p>(a) Administration's advice that as the provisions of the Bill had not been finalized, it was not yet in a position to prepare the tender document for outsourcing summary bankruptcy cases and its current plan was that the tender document would be based on that used in the outsourcing scheme of summary liquidation cases (Paragraph 2 and Annex I of LC Paper No. CB(1)1467/04-05(02))</p> <p>(b) Administration's undertaking to present to the Bills Committee later this month the detailed proposals for setting out in subsidiary legislation</p>	Administration to take action under paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>the basic qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases (Paragraph 1 of LC Paper No. CB(1)1467/04-05(02))</p> <p>(c) Administration’s undertaking to provide within this week the Official Receiver’s Office (ORO)’s internal guidelines for handling summary bankruptcy cases (Paragraph 3 of LC Paper No. CB(1)1467/04-05(02))</p> <p>(d) Briefing by the Administration on its written responses in respect of the following views and concerns on Clause 11 - proposed section 37(1) of the Bankruptcy Ordinance (BO):</p> <p>(i) Justification for according a higher priority to the Official Receiver (OR)’s remuneration, commissions, percentages and charges than the remuneration and necessary disbursements of private-sector insolvency practitioners (PIPs) in outsourced bankruptcy cases (Paragraphs 4 to 7 of LC Paper No. CB(1)1467/04-05(02));</p> <p>(ii) Suggestion of recasting the proposed subsection</p>	<p>Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(1)(a) of section 37 to the effect that only the necessary fees and charges incurred by OR in handling outsourced summary bankruptcy cases would be accorded higher priority, and to review whether the commissions and percentages payable to OR should be included in the proposed subsection (1)(a) (Paragraphs 8 and 9 of LC Paper No. CB(1)1467/04-05(02)); and</p> <p>(iii) Concern about the lack of assurance for PIPs that they would be paid their remuneration and would recover their necessary disbursements (Paragraph 10 of LC Paper No. CB(1)1467/04-05(02))</p>	
001836-002716	Mr Albert HO Administration	<p><u>Clause 11</u></p> <p>(a) Concern about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment (i.e. the proposed subsections (1)(f), (g) and (h) of section 37 of BO)</p> <p>(b) Whether it was appropriate to include the word</p>	Administration to take action under paragraph 3(c)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>“percentages” in the proposed section 37(1)(a)</p> <p>(c) Administration’s advice that -</p> <p>(i) “remuneration of, fees, commissions, percentages and charges payable to” OR referred to in the proposed section 37(1)(a) meant those fees, charges and percentages set out in the Bankruptcy (Fees and Percentages) Order (the Order) which were indeed fees rather than profits made by ORO in the administration of bankruptcy cases; and</p> <p>(ii) the word “percentages” was used in the Order and the Administration was considering whether the words “remuneration” and “commissions” in the proposed section 37(1)(a) should be deleted</p>	
002717-003654	Ms Miriam LAU Administration	<p><u>Clause 11</u></p> <p>(a) Suggestion for the Administration to set out clearly that “remuneration of, fees, commissions, percentages and charges payable to” OR referred to in the proposed section 37(1)(a) meant those fees, charges and percentages set out in the Order</p>	Administration to take action under paragraph 3(c)(iii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Concern about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment</p> <p>(c) Administration’s advice that:</p> <ul style="list-style-type: none"> (i) the priority in the proposed section 37(1) was consistent with the existing treatment under existing Rule 179 of the Companies(Winding-up) Rules for payment in liquidation cases, which was applicable to both non-summary and summary cases (whether outsourced or not); (ii) the proposed priority was made in recognition of OR’s multiple roles and duties under BO, including supervision of trustees, administration of bankrupt’s estate, and acting as the trustee in bankruptcy of the last resort; (iii) given the relatively straight-forward nature of the administration of summary bankruptcy cases, after deducting ORO’s fees and charges from the debtor-deposit, the balance would be 	<p>Administration to take action under paragraph 3(c)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>sufficient to cover the remuneration and necessary disbursements of PIPs; and</p> <p>(iv) in the unlikely event that the balance of the debtor-deposit of a summary bankruptcy case was less than the likely amount of disbursement plus the remuneration tendered by the PIP, the case would not be outsourced</p> <p>(d) Request for the Administration to rectify the inconsistency in the English and Chinese text of the proposed section 37(1)(a) where the English text referred to “the remuneration of, fees, commissions, percentages <u>and</u> charges payable to, and costs, charges and expenses incurred or authorized by, the Official Receiver.....”, while the Chinese text referred to “破產管理署署長的酬金、須支付予破產管理署署長的費用、手續費、百分率及收費，<u>或</u>破產管理署署長所招致或批准的訟費、收費及開支.....”</p>	<p>Administration to take action under paragraph 3(c)(iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
003655-003952	Mr Ronny TONG Administration	<p><u>Clause 11</u></p> <p>(a) Whether the remuneration and necessary disbursements of PIPs were regarded as “costs of any person properly employed by him [OR]” in the proposed section 37(1)(a) of BO as the summary bankruptcy cases were contracted out to PIPs by OR</p> <p>(b) Administration’s advice that the remuneration and necessary disbursements of PIPs were not regarded as “costs of any person properly employed by him [OR]” in the proposed section 37(1)(a)</p> <p>(c) Concern about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment</p> <p>(d) A member’s view that it was unfair to PIPs that their remuneration and necessary disbursements were accorded a lower priority than those of OR as PIPs performed the same functions and duties as OR in administering non-outsourced cases</p> <p>(e) Suggestion for the Administration to regard PIPs as persons employed by OR so</p>	<p>Administration to take action under paragraph 3(c)(i) of the minutes</p> <p>Administration to take action under paragraph 3(c)(ii) of</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>that PIPs' remuneration and necessary disbursements would be included as costs incurred by OR under the proposed section 37(1)(a) and accorded higher priority in payment</p>	<p>the minutes</p>
003953-005236	<p>Mr Albert HO Administration Mr Ronny TONG</p>	<p><u>Clause 11</u></p> <p>(a) Whether ORO would deduct from the debtor-deposit the cost of employing an external party to look into any suspected malpractices of a PIP in handling outsourced summary bankruptcy cases</p> <p>(b) Concern that the cost referred to in item (a) above, which might involve a substantial amount, would eat up the balance of the debtor-deposit if it was to be deducted from the deposit</p> <p>(c) Concern that the low priority of payment of PIP's remuneration and disbursements under the proposed section 37(1) would adversely affect the quality of service provided by PIP</p> <p>(d) Administration's advice that -</p> <p>(i) there were statutory and non-statutory measures to monitor the performance of PIPs in handling outsourced summary</p>	<p>Administration to take action under paragraph 3(c)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>bankruptcy cases; and</p> <p>(ii) it was the decision of PIPs whether to participate in the proposed tendering scheme of outsourcing summary bankruptcy cases</p> <p>(e) Request for the Administration to confirm whether the cost for employing an external party to look into any suspected malpractices of a PIP in handling outsourced summary bankruptcy cases would be deducted from the debtor-deposit; if it would, to address members' concern that the cost, which might involve a substantial amount, would eat up the balance of the debtor-deposit; if not, to advise how the cost would be recovered</p>	<p>Administration to take action under paragraph 3(c)(v) of the minutes</p>
005237-010412	<p>Chairman Administration Mr Albert HO</p>	<p><u>Clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(3)42/04-05, CB(1)137/04-05(01), CB(1)1165/04-05(04), CB(1)1281/04-05(03), Annex II to CB(1)1467/04-05(02))</p> <p><u>Clause 11</u></p> <p>(a) Briefing by the Administration on its written responses to the comments made by Grant Thornton (GT), the Association of Chartered</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Certified Accountants (Hong Kong), Kenny TAM & Co, the Society of Chinese Accountants and Auditors, and the Hong Kong Institute of Certified Public Accountants (HKICPA) (LC Paper No. CB(1)1165/04-05(04))</p> <p>(b) Request for the Administration to reconsider how to address the concerns expressed by members and deputations about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment (the proposed subsections (1)(f), (g) and (h) of section 37);</p>	<p>Administration to take action under paragraph 3(c)(i) of the minutes</p>
010413-011632	Administration Mr Albert HO	<p><u>Clauses 12, 13, 14 and 15</u></p> <p>(a) Briefing by the Administration on the clauses</p> <p>(b) Members noted the draft proposed Committee Stage Amendments (CSAs) to the proposed new section 58(1B) of BO in clause 15</p> <p>(c) Briefing by the Administration on its written responses to the comments made by GT and HKICPA on clause 15 (LC Paper No. CB(1)1165/04-05(04))</p>	

Time marker	Speaker	Subject(s)	Action Required
011633-013559	Administration Assistant Legal Adviser 6 (ALA6) Chairman	<p><u>Clause 16</u> Briefing by the Administration</p> <p><u>Clause 17</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Members noted the draft proposed CSAs to add subsections (d) and (e) to the proposed new section 60(2) of BO</p> <p>(c) Definition of “associate” in the proposed new sections 60(4) and (5)</p> <p>(d) ALA6’s concern that it was unclear from the present drafting of the proposed sections 60(1) and (2) whether OR when acting as provisional trustee had the power of taking into his custody or control the property of the bankrupt</p> <p>(e) Administration’s undertaking to consider ALA6’s suggestion of recasting the proposed section 60(1) to put it beyond doubt that OR when acting as provisional trustee had the power of taking into his custody or control the property of the bankrupt as provided to other provisional trustees in the proposed section 60(2)(a)</p>	Administration to take action under paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action Required
013600-014049	Chairman Administration ALA6	<p><u>Clauses 18, 19 and 20</u></p> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) ALA6's advice that by virtue of the proposed amendments to section 77 (clause 20), duties of OR as regards the bankrupt's conduct would be relieved (c) Administration's advice that the proposed section 77 was to set out the supervisory role of OR as regards the bankrupt's conduct <p><u>Clause 21</u></p> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) ALA6's advice that by virtue of the proposed amendments to section 78(1), existing duties of OR as to bankrupt's estate would be taken up by the trustee (including PIPs in the outsourced summary bankruptcy cases) (c) Administration's advice that the duty of OR when acting as trustee in respect of the bankrupt's estate would be provided in the new section 86B 	

Time marker	Speaker	Subject(s)	Action Required
014050-015550	Mr Albert HO Administration ALA6	<p><u>Clauses 20 and 21</u></p> <p>(a) Reason for the proposed deletion of the existing section 77(b) relating to the conduct of public examination of the bankrupt</p> <p>(b) Administration’s advice that OR’s power to conduct public examination of the bankrupt was provided in section 19</p> <p>(c) Duties of OR as regards the bankrupt’s conduct and estate when acting in the official capacity of OR (the proposed sections 77 and 78)</p> <p>(d) Duties of OR as regards the bankrupt’s conduct and estate when acting as trustee (the proposed new sections 86A and 86B)</p> <p>(e) Appointment and duties of interim trustee (the proposed section 13 and the proposed section 78(2))</p> <p>(f) Deletion of words “and manager” in the proposed section 78(2) and appointment of special manager under section 15</p> <p>(g) The duty of OR to act as trustee during any vacancy in the office of trustee</p>	

Time marker	Speaker	Subject(s)	Action Required
		(section 78(1)(g)) and circumstances under which OR would take up such duty	
015551-020120	Chairman Administration Mr Albert HO Clerk	<u>Work plan</u> (a) Members' agreement to schedule two additional meetings on 20 May and 3 June 2005 (b) Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
25 May 2005