

立法會
Legislative Council

LC Paper No. CB(1)1165/04-05(03)

Ref: CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004
Sixth meeting on 1 April 2005

**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**

Purpose

This paper reports on the outcome of the consultation with members 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.

Background

2. To ensure the quality of service to be provided by private-sector insolvency practitioners (PIPs) in the handling of outsourced summary bankruptcy cases and to enhance the transparency of the outsourcing scheme, the Administration was invited to consider Hon Ronny TONG's 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. At the Bills Committee meeting on 11 January 2005, the Administration undertook to consult relevant professional bodies and other stakeholders on the suggestion and report the outcome to the Bills Committee.

3. At the meeting on 21 February 2005, the Administration informed the Bills Committee that it had issued a consultation paper to 24 stakeholders. The list of the 24 stakeholders is attached in **Appendix I**.

4. At the meeting on 11 March 2005, the Administration reported to the Bills Committee on the outcome of the consultation, as follows:

- (a) There is 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;
- (b) As to the need to set out in the legislation the *basic criteria* such as the professional qualifications, different views have been expressed. On the one hand, the Hong Kong Bar Association and the Law Society of Hong Kong do 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 (HKICPA) considers 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 support including certain basic criteria such as "fit and proper" in the legislation, on the ground that such inclusion can enhance transparency and preserve the quality of PIPs; and
- (c) Taking into account the outcome of the consultation, the Administration considers that there is a strong support in particular among the professional bodies, for treating the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases in the same way as that under the existing tendering scheme for summary liquidation cases, i.e. to set out the criteria in the tender contract. Having regard to the fact that there are already checks to help safeguard the quality of services of PIPs and the much wider ramifications of setting out the criteria in the legislation, the Administration invite Members to give favourable consideration to the Administration's original proposal that there is no need to prescribe the criteria for PIPs in the statutory provisions. This position has the support of the Hong Kong Bar Association, the Law Society and the HKICPA.

5. The details are set out in the paper provided by the Administration (LC Paper No. CB(1)1060/04-05(02), paragraphs 6 to 10, and Annex A).

6. To facilitate the Bills Committee to decide on the way forward, the Chairman accepted Hon Ronny TONG's suggestion raised at the meeting on 11 March 2005 that a circular be issued to all members inviting them to give views on the issue. The circular (LC Paper No. CB(1)1098/04-05) was issued to members on 15 March 2005.

Outcome of the consultation with members

7. All members of the Bills Committee have responded to the circular mentioned in paragraph 6 above. While three members respond that they have no comments on the suggestion, the views of the remaining six members are summarized in **Appendix II**.

Advice sought

8. Members are invited to note the outcome of the consultation and decide on the way forward.

Council Business Division 1
Legislative Council Secretariat
31 March 2005

List of the 24 stakeholders consulted by the Administration

1. Association of Insolvency Officers
2. Baker Tilly
3. Clifford Chance
4. Consumer Council
5. Grant Thornton
6. Hong Kong Bar Association
7. Hong Kong Institute of Certified Public Accountants
8. Hong Kong Monetary Authority
9. Joseph S.C. Chan & Co
10. Kenny Tam & Co
11. Standard Chartered Bank
12. The Association of Chartered Certified Accountants
13. The British Chamber of Commerce of Hong Kong
14. The Chinese General Chamber of Commerce
15. The Chinese Manufacturer's Association of Hong Kong
16. The DTC Association
17. The Hong Kong Association of banks
18. The Hong Kong Institute of Company Secretaries
19. The Hong Kong Institute of Directors
20. The Hong Kong S.A.R. Licensed Money Lenders Association Ltd
21. The Law Society of Hong Kong
22. The Society of Chinese Accountants and Auditors
23. The Standing Committee on Company Law Reform
24. Yip, Tse & Tang Solicitors

Bills Committee on Bankruptcy (Amendment) Bill 2004

**Summary of members' views
on the suggestion of setting out in the legislation
the qualification criteria for appointment
as provisional trustees or trustees for summary bankruptcy cases
(Position as at 12:00 noon, 31 March 2005)**

All members of the Bills Committee have responded to the circular issued by the LegCo Secretariat. While three members respond that they have no comments on the suggestion, the views of the remaining six members are summarized as follows:

	Detailed qualification criteria be set out in			Basic qualification criteria be set out in		
	principal ordinance	subsidiary legislation	the Official Receiver's Office's tender documents or a code of practice	principal ordinance	subsidiary legislation	the Official Receiver's Office's tender documents or a code of practice
No. of members	0	1*	5	0	5	1

Remark

- * A member considers that the detailed qualification criteria should be set out in subsidiary legislation. If the Bills Committee accepts that such criteria should be set out in the Official Receiver's Office's tender documents or a code of practice, the member considers that the criteria should be set out in the tender documents.