

立法會
Legislative Council

LC Paper No. CB(1)138/04-05(01)

Ref: CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004

Background Brief

Purpose

This paper sets out the background of the Bankruptcy (Amendment) Bill 2004, and summarizes the major concerns expressed by Members when the relevant proposals were deliberated at the meeting of the Panel on Financial Affairs (FA Panel) on 5 May 2003.

Background

2. The Bankruptcy Ordinance (BO) (Cap. 6) provides that Official Receiver (OR) shall become the receiver of the bankrupt's property on the making of a bankruptcy order by the court. For bankruptcy cases where the value of the bankrupt's property exceeds \$200,000 (i.e. non-summary cases), OR shall summon a meeting of creditors for the purpose of appointing a private-sector insolvency practitioner (PIP) as the trustee of the bankrupt's property. For cases where the value of the bankrupt's property does not exceed \$200,000 (i.e. summary cases), no meeting of creditors is called and upon an order made by the court that the case be administered in a summary manner, OR shall automatically be the trustee. Unlike the Companies Ordinance (Cap. 32) which allows OR to outsource summary cases of liquidation to PIPs, BO does not have similar provisions for summary cases of bankruptcy. The summary cases of bankruptcy, which account for over 90% of the total number of cases in 2003, are handled in-house by the OR's Office (ORO).

3. In 2001, in the light of the changing liquidation and bankruptcy landscape, the Administration commissioned a consultancy study to review the existing role of ORO in the provision of insolvency administration services (the review). The Administration consulted the public in June-August 2002 and the FA Panel at its meeting on 24 July 2002 on the recommendations of the review. One of the recommendations was the introduction of legislative amendments to allow ORO to outsource bankruptcy cases to PIPs. Given the significant increase in the number of bankruptcy cases in recent years, the

consultant considered that outsourcing offered potential for dealing with the expanding caseload in a more cost-effective and rapid manner.

4. The FA Panel was briefed at its meeting on 5 May 2003 on the outcome of the public consultation exercise. Members noted that the Administration received 24 submissions from various parties and most of the respondents agreed with the consultant's recommendation that legislative changes should be introduced to allow ORO to outsource bankruptcy cases to PIPs. A few respondents considered it necessary for the Government to provide PIPs with subsidies and reduce the administration work involved. The major concerns raised by members of the FA Panel are summarized in paragraph 9 below.

5. In mid-October 2003, the Administration provided the FA Panel with an information paper setting out the proposed legislative amendments and the Administration's intention to introduce the same into the Legislative Council (LegCo) within the 2003-04 session.

6. In December 2003, the Administration introduced the Bankruptcy (Amendment) Bill 2003 into LegCo to effect the outsourcing proposal. While the House Committee decided on 12 December 2003 that a bills committee should be formed to study the Bill, the bills committee was placed on the waiting list because there was no vacant slot. Owing to the unavailability of a bills committee slot, the Bill lapsed upon the end of the LegCo term on 30 September 2004.

7. On 13 October 2004, the Administration introduced the Bankruptcy (Amendment) Bill 2004 into LegCo. Apart from some textual amendments of minor nature, the Bill is the same in substance as the previous one introduced into LegCo in December 2003. A mark-up copy of the Bill showing the minor amendments is attached in Annex B to the LegCo Brief.

Objectives of the Bill

8. The Bankruptcy (Amendment) Bill 2004 seeks to amend BO for the following main purposes:

- (a) To empower OR to outsource bankruptcy cases to PIPs in specified circumstances;
- (b) To provide for the respective powers and duties of OR, a provisional trustee and a trustee;
- (c) To revise the priority of payment of costs and charges out of a bankrupt's estate as set out in section 37 of BO to bring the section in line with the provisions of rule 179(1) of the Companies (Winding-up) Rules (Cap. 32, sub. leg. H); and

- (d) To adapt certain provisions of BO to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Members' major concerns expressed at Panel meeting

9. At the FA Panel meeting on 5 May 2003, some members expressed concern over -

- (a) possible malpractice of PIPs in investigating bankruptcy cases;
- (b) the source of funding for engaging PIPs for bankruptcy cases; and
- (c) whether it was appropriate for the Government to subsidize PIPs in handling bankruptcy cases.

10. An extract from the minutes of the FA Panel meeting on 5 May 2003 (LC Paper No. CB(1)2017/02-03) is attached in **Appendix I**.

References

11. A list of relevant papers is set out in **Appendix II**.

**Extract from the minutes of meeting
of the Panel on Financial Affairs on 5 May 2003**



VI Consultancy Study on the Review of the Role of the Official Receiver's Office

(LC Paper No. CB(1) 907/02-03(05))

Briefing by the Administration

34. At the Chairman's invitation, the Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FS) briefed members on the outcome of the public consultation on the major findings and recommendations of a consultancy study on the review of the role of the Official Receiver's Office (ORO). She highlighted the following views from respondents for members' information:

- (a) On the role and functions of ORO, most respondents agreed that it should be more a regulator than dealing with insolvency cases.
- (b) For recommendations relating to liquidation cases, there were divergent views from respondents on the proposal of introducing a "cab rank" system for assigning liquidation cases to private sector insolvency practitioners (PIPs). Under the proposed system, PIPs who wished to take on compulsory liquidation cases would register with the court and handle any case assigned to them on a roster basis. Whilst a few respondents were in favour of the proposal, others were either not supportive or pointed out the need to consider the feasibility carefully.
- (c) For recommendations relating to bankruptcy cases, most respondents supported making legislative amendments to enable ORO to outsource bankruptcy cases to PIPs. A few respondents considered it necessary for the Government to provide PIPs with subsidies and reduce the administrative work involved. Most respondents agreed with the recommendation for a fast track procedure to be created for dealing with selected consumer bankruptcy cases while a few respondents were concerned that the procedure would encourage more self petitions for bankruptcy.
- (d) For recommendations relating to regulation and supervision of PIPs, there were different views on the establishment of an ORO

administered licensing and supervising system.

35. On the way forward, DS/FS said that some of the recommendations, such as the proposal to outsource bankruptcy cases to PIPs, would be pursued as soon as possible and the Administration would consult members on the legislative amendments soon with a view to introducing the relevant bill to the Council in the next legislative session. As for other recommendations, such as the proposed "cab rank" system and the licensing of PIPs, they would be further considered by the Administration.

Discussion with Members

Need for legislative amendments

36. In reply to enquiry by Mr Albert HO and Ms Emily LAU about the need for legislative amendments to outsource insolvency cases to PIPs as they understood that outsourcing arrangements had been put in place at present, the Official Receiver (OR) explained that under existing legislation, ORO had to convene a meeting with the creditors who had to vote for the appointment of a PIP. Whilst some 700 odd cases had been given to PIPs under this arrangement, there were 25 000 plus bankruptcy cases handled by ORO in 2002. A very large number of such meetings would need to be held if these cases were to be outsourced. As such, it was considered essential to make legislative amendments to enable for a more efficient outsourcing of bankruptcy cases.

Proposed outsourcing arrangements

37. In reply to Mr Albert HO's concern about possible malpractices of PIPs in investigating bankruptcy cases, OR assured members that PIPs were professionals who were well aware of their statutory duties and obligations in undertaking investigations for bankruptcy cases. It was believed that they would perform their duties properly as apart from legal liabilities, they would be subject to disciplinary action for breaching professional rules and regulations by the professional bodies they were members of. OR added that PIPs would interview the individuals concerned in bankruptcy investigations to confirm the facts about their financial dealings and affairs. Any acts of e.g. the hiding of asset were criminal offence under the Bankruptcy Ordinance.

38. Mr Albert HO sought information on the source of funding for engaging PIPs for insolvency cases. He doubted whether outsourcing arrangements would be feasible for cases involving a small amount of realizable assets if the fees for PIPs were to be paid from these assets. In response, OR explained that for bankruptcy cases, ORO planned to make available to the participating PIPs part of the deposits given by the applicants of bankruptcy petitions as service fees for handling the cases. In addition, PIPs might approach the creditors concerned for contribution to the fees. OR assured members that public funds would not be used in this regard.

39. Noting that some respondents considered it necessary for the Government to provide PIPs with subsidies, Ms Emily LAU expressed concern about the propriety for the Government to subsidize the cost of insolvency cases. OR pointed out that a pilot scheme had been established in 1996 with a total subsidy of \$10 million allocated to ORO for outsourcing summary cases (i.e. where realizable assets were unlikely to exceed \$200,000) to PIPs and a list of registered PIPs was worked out in consultation with the Hong Kong Society of Accountants to participate in the pilot scheme. PIPs were provided with a maximum amount of \$60,000 for each liquidation case under the pilot scheme, and the amount of subsidy was subsequently reduced to \$9,200 per case after the introduction of a tendering scheme in 2000.

40. Mr Eric LI said that he had participated in the above pilot scheme and commented that the scheme had been successful and well received by PIPs.

Introduction of a “cab rank” system and licensing of PIPs

41. Ms Emily LAU pointed out that the “cab rank” system was a fair system which had run successfully in the US and Australia. She asked whether the Administration would incorporate the proposal in the legislative amendments to be introduced in the next legislative session.

42. DS/FS explained that unlike the situation of the US and Australia, the number of liquidation cases in Hong Kong was relatively small. Hence, the “cab rank” system might not be able to attract PIPs as they were uncertain about their returns under the system. She further advised that the Consumer Council had expressed support for the system. The Administration would further consider the proposal with further consultation of relevant stakeholders. If it was considered feasible, the proposal would be incorporated into the bill planned to be introduced in the next legislative session.

43. Mr Eric LI considered that the “cab rank” system would not be cost-effective under the existing insolvency regime given the small number of cases they might be allocated annually. He opined that the Administration should further streamline the liquidation procedures before taking forward the proposal. He further suggested that the system be considered one to two years after the implementation of outsourcing bankruptcy cases to PIPs so that PIPs could gain experience in the new system and assess their cost and return better. DS/FS agreed with Mr LI’s views.

44. As regards Ms Emily LAU’s enquiry about the feasibility of introducing a licensing system for PIPs, DS/FS said that the Administration would conduct further consultation with PIPs on the proposal.



Bankruptcy (Amendment) Bill 2004

List of relevant papers
(Position as at 15 October 2004)

Paper	LC Paper No.
Administration's paper on "Consultancy Study on the Review of the Role of the Official Receiver's Office" (<i>with consultation paper</i>)	CB(1)2152/01-02(06) <i>(discussed at FA Panel meeting on 24 July 2002)</i>
Administration's paper on "Consultancy study on the Review of the Role of the Official Receiver's Office" (<i>with the outcome of public consultation</i>)	CB(1)907/02-03(05) <i>(discussed at FA Panel meeting on 5 May 2003)</i>
Administration's paper on "Outsourcing of Bankruptcy Cases by Official Receiver's Office to Private Sector Insolvency Practitioners" (<i>with the proposal to amend the Bankruptcy Ordinance</i>)	CB(1)98/03-04(01) <i>(issued on 17 October 2003)</i>
Legislative Council Brief on Bankruptcy (Amendment) Bill 2004	File Ref: C3/17(2003) pt. 8 <i>(issued by the Financial Services and the Treasury Bureau on 7 October 2004)</i>
Legal Service Division Report on Bankruptcy (Amendment) Bill 2004	LS7/04-05 <i>(issued on 14 October 2004)</i>