

For discussion on
1 June 2009

Legislative Council Panel on Financial Affairs

Proposed Expansion of Outsourcing Scheme on Bankruptcy Cases

PURPOSE

This paper briefs Members on the proposed expansion of Official Receiver's Office (ORO)'s pilot scheme to outsource additional summary bankruptcy cases under the Bankruptcy Ordinance to private sector insolvency practitioners (PIPs). Members' views are welcomed.

THE PROPOSAL

2. In view of the substantial increase in bankruptcy caseload in recent months and in anticipation that the level of caseload will remain relatively high in the foreseeable future in light of the current financial situation, we propose to expand the existing pilot scheme to outsource an additional 10,000 bankruptcy cases to PIPs in a two-year period starting from end 2009. This proposal will create business and employment opportunities for PIPs during the economic downturn and will facilitate further development of the expertise of the insolvency sector.

EXISTING PILOT SCHEME

3. Subsidiary legislation to the Bankruptcy Ordinance was commenced in December 2007 to empower the Official Receiver to directly appoint PIPs as provisional trustees in summary debtor-petition bankruptcy cases i.e. where the value of assets involved does not exceed \$200,000. The main objective of providing for this outsourcing arrangement is to alleviate ORO's workload and enhance the expertise of the insolvency sector.

4. Following the conduct of a tender exercise, the ORO commenced a two-year pilot scheme in May 2008 to outsource a total of 3,000 summary debtor-petition bankruptcy cases¹ to PIPs. Under the scheme, the three firms selected have continued obligations to administer the cases allocated to them until completion of the cases concerned.

5. After appointment as provisional trustees in summary debtor-petition bankruptcy cases (and later as trustees subject to satisfactory completion of the relevant administrative and legal steps), the performance of the selected firms are subject to continued monitoring by the ORO by way of –

- (a) monitoring key stages of the cases such as summary procedure order, release order, etc.;
- (b) checking the annual statements of proceedings;
- (c) checking and auditing trustees' accounts of receipts and payments;
- (d) monitoring complaints received against the appointed firms; and
- (e) conducting quality audit of 10% of the outsourced cases.

6. The pilot scheme has been in operation since May 2008 and the ORO has conducted a review on the scheme recently. In the past year, the ORO has received 31 complaints and requests for assistance from bankrupts. Most of them were on minor teething issues such as communication problems, disputes on the amounts of financial contributions which the bankrupts are required to make, the bankrupts' requests for refund of bank balances/salary, etc. With ORO's facilitation, most of the complaints and requests have been dealt with satisfactorily. Two cases are still under investigation.

7. From the quality audit of 10% of the outsourced cases, the ORO observes that the selected firms have generally been able to comply with the statutory requirements and the terms of the tender contract in the administration of the cases allocated to them, such as serving bankruptcy orders on the bankrupts, interviewing the bankrupts, filing applications for summary procedure orders in the court, etc.

8. In summary, the ORO considers that the pilot scheme is operating smoothly.

¹ Equivalent to around 15% of the annual debtor-petition bankruptcy caseload at that time.

PROPOSED EXPANSION OF THE PILOT SCHEME

9. The number of bankruptcy petitions for the six-month period between November 2008 and April 2009 has increased by 56.7% when compared with the preceding six-month period between May 2008 and October 2008. On this basis, we estimate that the number of bankruptcy caseload in 2009 may exceed 20,000. A table showing the caseload over the past ten years is at Annex.

10. To help address the substantial increase in workload, the ORO has already re-deployed their existing staffing resources as appropriate. Given the scale of the increase and the limited scope for increase in staffing support and the necessary accommodation space, it is proposed that the existing pilot scheme should be expanded to ensure timely processing of new cases. The proposed outsourcing of 10,000 cases over a period of two years would constitute about 25% of the estimated annual caseload of 20,000.

11. In order to ensure that the PIPs selected are properly qualified and have sufficient staff resources to handle the cases allocated to them in a professional and expeditious manner, the ORO will require the tendering firms to have at least two qualified professionals from the legal, accounting or company secretarial fields and at least 10 directly employed full time staff available to perform the required duties. The two professionals must each have at least three years of post-qualification experience and a minimum of 300 hours of insolvency experience in the past three years. Similar requirements were adopted in the previous tender exercise in 2008.

12. Same as in the previous tender exercise, the ORO will appoint the selected firms to handle 500 cases each per year during the two-year period. Based on experience of the existing pilot scheme, the ORO considers this caseload reasonable and manageable for the PIPs, which are usually small and medium enterprises. On this basis, the ORO intends to select 10 PIPs in the coming tender exercise.

FUNDING

13. Following the arrangement for the existing pilot scheme, the remuneration of the firms to be selected in the planned tender exercise will be defrayed from the petitioner's deposit or the assets of the bankrupt. No government expenditure is required to meet the remuneration of PIPs.

NEXT STEP

14. Subject to Members' views, the ORO will proceed with the preparation of the tender exercise. It is expected that new contracts may be awarded in November/December 2009.

Official Receiver's Office

May 2009

Bankruptcy cases in the past ten years (1999 to 2009)

Year	Bankruptcy petitions	Monthly average
1999	3 876	323
2000	5 487	457
2001	13 186	1 099
2002	26 922	2 244
2003	22 092	1 841
2004	12 489	1 041
2005	9 933	828
2006	10 685	890
2007	10 918	910
2008	11 620	968
2009 (Jan – Apr)	6 128	1 532