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電話 TEL. NO.: 2867 2477

圖文傳真 FAX NO.:

1 June 2020  
(By Email)

Mr Anthony Chu  
Clerk to Public Accounts Committee  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr Chu,

**Public Accounts Committee**  
**Consideration of Chapter 6 of the Director of Audit's Report No.74**  
**Management of insolvency services**

Thank you for your letter dated 22 May 2020 regarding the Public Accounts Committee's consideration of Chapter 6 of the Director of Audit's Report No.74. Herewith the English response of the Official Receiver to the matters set out in Part (I) of the Appendix of your letter at Annex for the time being. We understand that the questions in Chinese will reach us shortly.

Yours sincerely,

( Mr Ronald Fu )  
Assistant Official Receiver  
for Official Receiver

c.c. Secretary for Financial Services and the Treasury (fax no. 2537 3210)  
Director of Audit (fax no. 2583 9063)

CORRESPONDENCE SHOULD BE ADDRESSED TO THE OFFICIAL RECEIVER AND NOT TO INDIVIDUAL OFFICERS.

來函請書明「破產管理署署長」收

**Public Accounts Committee (“PAC”)  
Director of Audit’s Report No. 74  
Chapter 6 Management of insolvency services**

**Responses of the Official Receiver (“OR”)  
to matters set out in Part (I) of the Appendix  
to the letter of 22 May 2020 from the Clerk to PAC**

**Part 2: Administration of in-house insolvency services**

- 1) According to paragraph 2.4, in the period from 2016 to 2018, the annual achievements of the 18-month time target for processing summary bankruptcy cases with no monthly contributions but with assets for distribution were below 50%, ranging from 34% to 40%. According to paragraph 2.28(a), Official Receiver’s Office (“ORO”) would continue to develop effective strategies for progressing cases with difficult issues involved in possible asset realization. What strategies had ORO developed in this regard?**

**The OR’s Response**

The 18 month target is ORO’s in-house tool to monitor case progress. Cases which are unable to meet the target shall have valid reasons, e.g., the matters can be particularly complex, or involve additional legal advice and investigations and negotiation/liaison with bankrupts and third parties to obtain the necessary information and evidence for OR’s consideration before appropriate follow-up action to realise the assets can be taken, or the matters/problems at issue be concluded. There are strategies in place for complex cases. Difficult issues relating to possible assets realisation are discussed by Chief Insolvency Officers (“CIOs”) in the monthly Case Management Division (“CMD”) meetings to provide guidance on possible resolution. Progress of cases not meeting the target is reported and monitored regularly in the CMD Meeting until the cases are concluded. To equip case officers, the Legal Services Division publishes from time to time “Highlights” summarising the legal advice and which may have general application for CMD colleagues to refer to in future similar cases, with the caveat that in the event of doubt, specific legal advice should be sought in individual cases. Circulars promulgating general guidelines on different work areas / topics, for example, MPF, Sale of Landed Properties, Handling of Title Deeds, Valuation Services for Properties in Hong Kong and People’s Republic of China, Disposal of Shares in Listed Companies, Handling of After Acquired Property, have

been issued for internal reference. No Further Action (“NFA”) thresholds have also been developed in respect of specific types of asset, namely insurance policies, provident fund and joint bank account, and the approval limits for different levels of case officers to deal with assets (e.g. increase of approving limit for sale of assets by private treaty and write-off of book debts) have been refined to help speed up case processing. Regular training is given to case officers on different areas of work including assets recovery and realisation, and regular reminders are issued to case officers to exercise proper commercial judgement and reasonable discretion in case administration.

Going forward, we will develop more robust strategies in such cases, such as:

- Shortening time frames for relevant parties to provide information;
- Making enquiries only when necessary and to avoid repeated enquiry where possible;
- Where there are complex issues requiring legal action and repeated legal advice, setting more general thresholds for NFA considering the possible high costs of realisation in relation to the value of the possible assets to be realised, and developing more guidance that can be rolled out generally; and
- Conducting a further review on the common problems / difficulties involved and if necessary, formulating additional specific guidelines or additional internal circulars as may be appropriate.

**2) According to paragraph 2.6(b), under ORO’s mechanism, there were regular reviews of the returns on cases failing to meet the 18-month target in order to monitor the progress of the outstanding cases. During these reviews, there might be suggestions to introduce some management tools to assist to solve long outstanding problems. What were the details of the mechanism?**

**Had ORO changed the above mechanism in light of working conditions or accumulated experience in the past five years? If yes, what were the details?**

### The OR’s Response

For the 18-month target failure cases, their progress is reported and reviewed at the monthly CMD Meeting until the cases are concluded and

put on programme. Suggestions to resolve the outstanding issues in the cases are discussed and endorsed by the meeting where appropriate.

The above mechanism was introduced in 2014. The ORO will keep in view the mechanism in light of the achievement rate as well as the working conditions and refine or modify the mechanism where necessary.

- 3) **According to paragraph 2.12, as at 31 December 2019, more than 11 years after the commencement of an exercise in March 2008 to clear the outstanding matters of 1 200 pre-2002 insolvency cases, 200 (17%) pre-2002 insolvency cases still remained outstanding. According to Table 4, out of 107 bankruptcy cases, 34 involved landed properties.**

**According to paragraph 2.16, as at 31 December 2019, of the 1 996 bankruptcy cases with outstanding landed properties, the bankruptcy orders of 1 565 (78.4%) were made before 2006 (i.e. over 14 years ago).**

**According to paragraph 2.28(c), ORO would continue to formulate effective strategies for clearing the remaining pre-2002 insolvency cases as soon as practicable. According to paragraph 2.28(d), ORO would continue to develop effective strategies for handling bankruptcy cases involving landed properties. Please inform the Committee:**

- (a) **did ORO have a time frame to clear the long outstanding cases. If yes, details. If no, why not;**

#### The OR's Response

Given the diverse issues involved in each case, a definitive time frame for completion was not feasible but the list was monitored regularly in CMD Meetings and case officers were urged to progress the cases as speedily as possible.

The ORO will arrange for the case officers and supervisors to critically review the issues stuck in the long outstanding pre-2002 cases with a view to resolving the issues within six months. Cases where this cannot be achieved will be brought to a Case Administration Meeting to develop focused strategies to conclude them as soon as possible.

- (b) according to ORO, it took a longer time to handle outstanding landed properties in view of various difficulties encountered (paragraph 2.17). Please provide any complications and difficulties for outstanding cases which did not involve landed properties;**

The OR's Response

The outstanding issues are diverse and complex. For example one of the liquidation cases commenced in 1976, involved a listed holding company with overseas subsidiaries, all of which were put into liquidation in these overseas jurisdictions where trustees and liquidators were appointed. The group structure was such that the Hong Kong case was entitled to dividends from these subsidiaries. A dividend of HK\$12 Million was recently received by OR in March 2020, which has now been referred to the dividend unit for distribution of dividend. Where a company is in liquidation in other jurisdictions and the estate being administered by OR is the ultimate beneficiary, OR is dependent upon the matters being finalised in these other jurisdictions. Where there are inter-related cases across jurisdictions and dividend is still anticipated, the actual time frame is beyond the control of OR. Other complications/difficulties are set out in the table in our answer to question 3(c).

For further information in respect of the 107 outstanding bankruptcy cases identified in the report, four have now been put on the release program, 34 involve landed property, 11 have been referred to the Dividend Unit for distribution of dividend and 19 have already been discussed in the Case Administration Meeting with a view to resolving the difficult issues preventing closure of the case.

- (c) a breakdown of outstanding winding-up cases by complications/difficulties faced in these cases; and**

The OR's Response

A breakdown of outstanding winding-up cases by complications/difficulties faced is as follows:

<b>Nature of complications/difficulties</b>	<b>No. of cases</b>
Outstanding book-debts	24
Landed property to be disposed of, some with complex title issues	7
Further assets to be realised involving complications – for example dividends from foreign promissory notes / goods on consignment / goods confiscated by criminal investigatory authorities pending investigation of allegations of fraud.	6
Claims in other winding-up cases pending dividend payment from foreign liquidators/trustees	5
Entitlement of funds in estate being ascertained	2
On-going legal proceedings	2
Application for court order for payment to funding creditors regarding indemnity for costs of litigation given on legal proceedings instituted	2

As to the other remaining pre-2002 winding-up cases, they have either reached the final stages of administration and action for formal closure (e.g. dispensation with statement of affairs, dividend distribution and application for release) are being taken or have been under review for finalisation.

- (d) what effective measures would ORO take to expedite the actions in handling those cases involving outstanding landed properties?**

The OR's Response

For the landed property cases, the ORO has a dedicated team working to dispose of the landed properties. Effective strategies

include negotiation with solvent co-owners to purchase the interest of the bankrupt in the property which has vested in OR and selling the property with the consent of the co-owner. Negotiating with bankrupts for full payment of debts to allow an annulment application such that the property can be assigned back to bankrupts has also proven effective. The ORO has also been exploring other measures to assist in disposal as far as practicable, such as the options for availability of reverse mortgage for solvent joint-owners to purchase the property, applying more flexibility in price negotiation for sale of the properties, and considering applications for order for sale under Partition Ordinance in appropriate cases more robustly.

- 4) According to paragraph 2.17(a)(i), property market downturn for a number of years rendered sale of properties at market value difficult, thus hindered the expeditious disposal of landed properties. Of the outstanding landed properties, how many could be classified under such situation?**

The OR's Response

According to the private domestic property price index maintained by the Rating and Valuation Department, property prices started to drop from 1998 and the market only returned to the pre-1998 level by the end of 2009. With the market conditions during this period, sale of landed properties was challenging. Of the 1 996 cases with outstanding landed properties, there are around 1 873 cases (93.8%) with bankruptcy order made within the period from 1998-2009.

- 5) According to paragraph 2.17(a)(iii), solvent co-owner refused to sell the properties in open market or to purchase the bankrupt's share in the properties. According to 2.17(a)(iv), the solvent co-owner was financially unable to purchase the bankrupt's share. Therefore, it was very complicated in dealing with the land properties. In the concluding remark in paragraph 2.17(d), it was stated that "[f]or joint properties, if amicable agreement cannot be reached with the co-owners, it may require an application to court under the Partition Ordinance [Cap. 352] for an order for sale and distribution of the net sale proceeds". Please inform this Committee:**

- (a) **in the past, bankrupts pointed out that ORO had forced them to sell joint properties or requested the co-owner of the property to purchase the bankrupt's share in accordance with the Partition Ordinance. According to past and current policies, would ORO force the bankrupt to sell joint property;**

The OR's Response

Upon the making of the bankruptcy order, the property of the bankrupt vests in the trustee and the trustee has a duty to realise the property of the bankrupt in so far as is possible for the benefit of the creditors. In the case of a joint property the bankruptcy order will sever the joint tenancy and the trustee will become a tenant in common with the solvent co-owner. The OR as trustee in bankruptcy will try to realise the share of the property which has vested in OR as trustee. The OR will use different strategies to realise the interest. If the solvent co-owner agrees to proceed with a joint sale of the property that can be done. If the co-owner is able to purchase the interest vested in the trustee that is also an option. In some cases, the bankrupt will take steps to negotiate with creditors and settle outstanding debts and apply for annulment of the bankruptcy order, in which case the interest will be vested back in the bankrupt. As a last resort, and in an appropriate case, the OR, as trustee, will consider taking legal action under the Partition Ordinance to apply to court for the sale of the joint-property. If the court grants the order for sale and the property is sold, the sale proceeds will be shared between the bankruptcy estate and the co-owner in accordance with their respective entitlement.

- (b) **if yes, under what circumstances would ORO/trustees take action under the Partition Ordinance to sell the bankrupt's property; and**

The OR's Response

An application under the Partition Ordinance is a last resort after all other attempts to realise have failed. Furthermore, the courts have set down principles determining when they will not grant an order for sale of the property under the Ordinance. If there is likely to be hardship, the court will refuse to order a sale. According to the jurisprudence there are no hard and fast rules as to what constitutes hardship and it is necessarily a fact sensitive question. Examples



from decided cases include, the inability to purchase alternative private accommodation or to apply for public housing, and the age, medical condition and personal circumstances of the occupiers. As such the OR acts cautiously, and only in cases considered appropriate. Any application to court may well result in fully contested litigation with cost implications for the OR and / or the bankruptcy estate in the event that the application does not succeed. The OR will only proceed under the Partition Ordinance where all other avenues have been exhausted and the case is considered suitable by reference to the jurisprudence, and there is sufficient funding either from the estate or the creditors. Funding includes funding to cover the possibility of adverse costs.

- (c) **the number of cases in which ORO requested and successfully forced bankrupts to sell joint properties respectively in the past 20 years.**

#### The OR's Response

The different strategies that the OR will use and relevant background information have been set out in our answer to questions 5(a) and (b) above. As mentioned, the OR will only consider taking legal action under the Partition Ordinance where all other avenues have been exhausted, amongst other factors. Since the setting up of the Project Work Section ("PWS") in December 2014, 1 375 landed properties have been successfully disposed of, of which 1 274 are joint properties. We do not have the figures for sale of joint properties prior to the setting up of the PWS.

- 6) **According to paragraph 2.17(a)(vi): "lack of funding for ORO to take action to facilitate sale under the Partition Ordinance or recover possession or resolve ownership issues". Please inform this Committee:**

- (a) **the meaning of "lack of funding";**

#### The OR's Response

There may be complicated issues requiring the advice of outside counsel, or legal advice may be required as to the likelihood of success of an application under the Partition Ordinance. In these

circumstances, if there are no funds in the bankruptcy estate, the OR will seek funding from the creditors to see whether or not they will fund such legal costs. Further, where legal proceedings are required to be taken for the recovery of assets but there are not sufficient funds in the bankruptcy estate, the OR will seek funding from creditors for the cost of the proceedings and for an indemnity for the possibility of any adverse legal costs that may be awarded in the event the legal action does not succeed. If the creditors are not willing to fund the action no further action will be taken. Pursuant to Rule 158A of the Bankruptcy Rules, where a debtor against whom a bankruptcy order has been made has no available assets, the OR shall not be required to incur any expense in relation to the estate unless the court otherwise directs.

- (b) **how much was the average legal expenditure for ORO/trustees to take actions under the Partition Ordinance in the past 20 years; and**

The OR's Response

Each case depends upon its own facts and circumstances. For a straightforward application in a relatively simple case where the contesting party acts in person and OR is successful and only one substantive court hearing is required, costs may be relatively low. It is difficult to give an average cost of proceedings. In contested cases the costs are likely to be much higher and before acting, the OR would require to have a sufficient amount to guard against an adverse costs order. It is unlikely that action would be taken, even in the most straightforward case unless there was at least HK\$100,000 available for funding.

- (c) **how many times had ORO used the Partition Ordinance to deal with outstanding landed properties?**

The OR's Response

According to our records, the ORO has applied for and successfully obtained an order for sale under the Partition Ordinance in 14 joint property cases.

- 7) **According to paragraph 2.20, up to 31 December 2019; there were ten referrals of legal matters made in the period from June 2013 to September 2019 by the Case Management Division to the Legal Services Division 1 for legal advice but remained outstanding. In particular, some referrals involving specific legal issues relating to the handling of bankrupts' benefits in retirement schemes in bankruptcy cases had not been resolved since 2013. Had these cases been resolved now?**

The OR's Response

Of the ten outstanding matters, two have been resolved. The majority of the remaining issues will be resolved in stages by the end of August 2020. In relation to the specific legal issues relating to the handling of retirement benefits, Senior Counsel has been instructed on two occasions in the past to advise, and further instructions to Senior Counsel have recently been issued. It is anticipated that this issue can be resolved by December 2020, although we have not ruled out the need for an application to the court for directions in that particular matter.

- 8) **According to paragraphs 2.23 and 2.24, as at 30 November 2019, ORO had placed monies recovered from 21 winding-up cases (amounting to \$4.7 million) and 207 bankruptcy cases (amounting to \$40.2 million) in the suspense accounts, and 8 (38%) of the 21 winding-up cases were released cases and 29 (14%) of the 207 bankruptcy cases were released/rescinded/withdrawn cases. What were the latest positions of those monies placed in the suspense accounts? Had ORO conducted regular reviews to ensure that monies placed in the suspense accounts were transferred to the Companies Liquidation Account and the Bankruptcy Account where appropriate in a timely manner?**

The OR's Response

For the monies in the suspense account for the cases which have already been released or where the bankruptcy order has been rescinded or withdrawn, the funds do not belong to the bankruptcy or liquidation estate but should be returned to the Petitioner, the debtor or some third parties. The major problem is locating the person entitled to the funds. In many of the cases the details which the OR has for the person are not updated, and attempts to locate the parties entitled have failed. There is no

mechanism under the Ordinance to dispose of such funds, unlike the mechanism for unclaimed assets or undistributed dividends, where there is a clear provision for them to be remitted to general revenue after five years. These cases are problematic, but there is no question of any loss of Government revenue.

The cases with monies in the suspense account are regularly brought up to case officers for review. To help proper and timely disposal of the monies, the ORO has also monitored the funds in the suspense account in the Bankruptcy Account Meeting.

As at 25 May 2020, the amount retained in the suspense account in respect of winding up cases has been reduced by HK\$2,586,755 and amounts to HK\$2,079,753 in respect of 19 cases. For bankruptcy cases, the amount has been reduced by HK\$2,154,308 and amounts to HK\$38,046,595 in 190 cases. Case officers will continue to work on clarification of entitlement. The amounts in the suspense account will also be reviewed regularly at Bankruptcy Accounts Meeting and also the Case Administration Meeting to ensure that where possible, entitlement to the funds is resolved, and where appropriate, the funds are transferred back to the estate for distribution to creditors.

- 9) **In paragraph 2.28(a), in responding to the Audit Commission (“Audit”) regarding the large balance in suspense accounts, ORO stated that it “will continue to develop effective strategies for progressing cases with difficult issues involved in possible asset realisation, through discussion in the Case Administration Meetings and Bankruptcy Account Meetings and will, where possible, issue additional guidelines for case officers to help progress such cases”. Please inform this Committee:**
- (a) **changes in the establishment of the Case Management Division responsible for direct participation in Case Administration Meetings and Bankruptcy Account Meetings in the past 10 years;**

#### The OR’s Response

These meetings have been established for the specific purpose of dealing with backlog. The first Bankruptcy Account Meeting was held on 8 February 2018 and is conducted on a quarterly basis. It

comprises OR, Assistant Official Receiver (Case Management) (“AOR(CM)”), CIO(Information Technology & Technical), CIO(Compliance and Regulatory), Chief Treasury Accountant (“CTA”) and Treasury Accountant (Financial Management and Systems). The membership has been the same since inception. The first Case Administration Meeting was held on 6 August 2018 and to date 18 meetings have been held. Four cases are usually considered at each meeting. It comprises OR, AOR(CM), Assistant Official Receiver (Legal Services)1, Assistant Official Receiver ( Legal Services)2, CTA and one CIO (on a rotational basis) plus each CIO of the case team presenting their case for consideration of the meeting, and a Senior Insolvency Officer who acts as the Secretary to record the discussion, and prepare notes for information accessible by officers. The membership has been the same since inception.

- (b) **in view of the continuous existence of “difficult issues involved in possible asset realisation”, had ORO implemented any measures in the past to expedite the handling of these cases and “develop effective strategies” at the case level; and**

#### The OR’s Response

Individual cases have unique circumstances and the difficult issues involved therein are usually fact sensitive. As mentioned in the response to Q1 above and in the Audit Report, the ORO had introduced different measures to help progress cases involving assets investigation and realisation and also set up Case Administration Meeting to review and develop strategies to resolve the specific issues at the case level.

- (c) **what was the content of additional guidelines to be provided to case officers? In the past, had ORO discovered common problems among difficult cases, so ORO had issued additional guidelines apart from the general guidelines to improve the processing of cases?**

#### The OR’s Response

The ORO has been continuously reviewing the common difficult issues involved in the administration of cases and where and when appropriate would issue guidelines/advice on the appropriate topics.

In the past, apart from the internal circulars mentioned above, guidelines or advice on handling common issues or difficulties in case administration, such as the proper way of handling cases with surplus after full settlement of the debts and interest of all proved creditors as well as all costs and expenses of the bankruptcy proceedings, and cases with balance for dividend to known creditors who have not proved their debts, have been issued. Given the nature of the work involved, however, it is not possible to do away with the need for consideration of complex documentation, pension fund trust deeds, contracts, evidence of specific claims and such like.

### **Part 3: Monitoring of private insolvency practitioners**

- 10) According to paragraph 3.6, no quality audits had been conducted on the winding-up cases allocated to private insolvency practitioners (“PIPs”) under the Panel T scheme (i.e. an open tender system for appointing provisional liquidators/liquidators in summary winding-up cases). According to paragraph 3.19(a), ORO would take steps to conduct quality audits from the next tender commencing from April 2020. What steps had ORO taken in this regard?**

#### **The OR’s Response**

The ORO is now in the process of designing the detailed procedures and logistics for the quality audits to be conducted, which include the checklist and questionnaire to be used in the audit, and the processes are scheduled to be completed by September 2020. The ORO will then make other necessary arrangements such as notification to the relevant PIPs and conduct of internal and external briefings for conduct of the audit commencing from April 2021.

- 11) In paragraph 3.13, ORO responded to the Audit that although there were eight incidents of PIPs failing to submit preliminary examination questionnaires within seven working days of the interview with the bankrupts, the PIPs had subsequently submitted the preliminary examination questionnaires within a reasonable period of time, and the issue of warning letters was not required. In this regard, please inform this Committee:**
- (a) how many PIPs were involved in the eight incidents; and**

### The OR's Response

There are two PIPs involved in the eight incidents.

- (b) **did the current Code of Conduct or guidelines allow ORO a discretion in not issuing warning letters to PIPs under the above circumstances?**

### The OR's Response

There is discretion where the reasons for non-compliance are reasonable, for example, the bankrupt could not be located or despite attempts by the PIP the bankrupt did not attend interview. In these circumstances the delay in compliance is considered being outside the control of the PIP. The ORO has internal guidelines on what is considered acceptable and when warning letters should be issued. The eight cases were dealt with in accordance with the internal guidelines.

- 12) According to paragraph 3.17, a notable number of liquidator's accounts and trustee's accounts outstanding from PIPs as at 31 December 2019 and six substantiated or partially substantiated complaints against PIPs received in the period from 2015 to 2019 were not recorded in the registers of unsatisfactory conduct of PIPs. According to paragraph 3.19(c), ORO would review and enhance the existing reporting and recording of unsatisfactory conduct or performance of PIPs, and ensure that the registers of unsatisfactory conduct of PIPs were maintained more comprehensively and in a more timely manner. Please inform the Committee:**

- (a) **what was the progress of ORO's review?**

### The OR's Response

The ORO is in the process of reviewing the existing reporting and recording of unsatisfactory conduct or performance of PIPs with a view to ensuring that the registers are maintained in a more comprehensive and timely manner. The initial plan is to consolidate the registers and refine the relevant reporting and

recording procedures and processes to achieve the purpose. The review is expected to be completed by July 2020.

- (b) **what was the current complaint handling mechanism? Which division of ORO was responsible for receiving and handling complaints;**

The OR's Response

According to the established complaint handling mechanism of the ORO, complaints to the ORO are coordinated by the Departmental Secretary ("DS"), the Departmental Complaint Officer. After recording and acknowledging the receipt of a complaint, DS or his deputy will pass the case file to the relevant division head to assign a responsible officer for investigation into the complaint. To monitor the progress of the follow-up actions on the complaints received, a summary of complaints together with the outcome of investigation will be prepared by the deputy of DS on a quarterly basis for circulation to OR and Division Heads for information and monitoring purposes. For complaints against PIPs in case-related matters, CMD is responsible for taking follow-up action to investigate in accordance with the complaint handling mechanism.

- (c) **how many complaints had ORO received in the past five years? How many complaints had been classified as substantiated; and**

The OR's Response

There were a total of 66 complaints against PIPs received in the past five years from 2015 to 2019. Among them, six complaints (9%) were found to be substantiated or partly substantiated after investigation.

- (d) **as the registers of unsatisfactory conduct of PIPs were the only means to assess the past performance of PIPs for tender evaluation, would ORO make reference to the complaint registers during the tender evaluation? If no, why not.**



## The OR's Response

Whether conduct or performance of PIPs should be regarded as unsatisfactory depends on the facts and circumstances of each individual case and whether the complaint is substantiated. Complaints received against PIPs do not necessarily mean that there has been misconduct or unsatisfactory performance unless and until the complaints are found substantiated after investigation. Accordingly, under the prevailing mechanism, only substantiated complaints are required to be reported and recorded in the registers of unsatisfactory conduct of PIPs and this information will be referenced during the tender evaluation. To ensure recording of all substantiated complaints in the registers of unsatisfactory conduct of PIPs, the ORO will build in new mechanism in the existing complaint procedures to refer such complaint cases to CIO(Compliance and Regulatory) for follow-up in future.

- 13) According to paragraph 3.21, as at 31 December 2019, there were 763 liquidator's accounts and 15 355 trustee's accounts overdue but not yet submitted by PIPs. Of them, 302 (40%) liquidator's accounts and 146 (1%) trustee's accounts had been overdue for more than five years. According to paragraph 3.22, besides issuing reminder letters, no other follow-up actions had been taken by ORO. According to paragraphs 3.26 and 3.27, ORO had agreed to review and enhance the follow-up actions taken on long overdue accounts from PIPs. Had ORO completed the review? What enhanced measures would be implemented?**

## The OR's Response

The ORO is in the process of reviewing the current mechanism for submission of accounts from PIPs and considering measures to enhance the same. The processes are expected to be completed by September 2020.

- 14) Given that creditors or debtors were parties in bankruptcy/winding-up procedures, they generally had a good knowledge of PIPs' conduct. Did ORO have any mechanism to collect their views? Or were there any channels for them to reflect their comments on PIPs for ORO's reference when assessing future bids?**

## The OR's Response

In bankruptcy and winding-up proceedings, PIPs as the trustees or liquidators are officers of the court and subject to the court's control and supervision. Any parties including creditors or the bankrupt may apply to the court in respect of any act or decision of the trustee or liquidator if they are aggrieved by that act or conduct and the court may reverse, modify or confirm the decision of the liquidator or trustee. Creditors may also form a creditors committee to superintend the trusteeship or liquidator. That said, if creditors or the bankrupt have any complaint on conduct or performance of the PIPs in administration of the bankruptcy or compulsory winding-up cases, they can refer the same to the ORO. Upon receiving the complaint, the ORO will carry out investigations as appropriate, and require the PIPs to rectify the mistakes if necessary. If the case is serious, the ORO may consider taking more stringent regulatory actions including making application to court for their removal. The ORO will also consider the past conduct or performance of the PIPs in future tender exercises.

## Part 4: Way forward

- 15) According to paragraphs 4.9 and 4.13, the Financial Services and the Treasury Bureau ("FSTB") and ORO had not carried out the substantive legislative procedures on the introduction of domestic legislation relating to cross-border insolvency. Had FSTB and/or ORO formed any dedicated teams responsible for studying cross-border insolvency legislation? Had FSTB and ORO started relevant research or legislative drafting work in partnership with the Department of Justice?**

## The OR's Response

Please refer to the reply to question 21 which is a consolidated response by the SFST and the OR.

- 16) According to paragraph 4.18, the usage rate of individual voluntary arrangements ("IVA") was low, ranging from 6% to 8% from 2014 to 2018, as a percentage of total bankruptcy and IVA cases. The usage of IVAs as a percentage of total individual insolvencies was**

**obviously lower than that of England and Wales of the United Kingdom. Had ORO evaluated the reasons behind the low usage? Apart from the above, please inform this Committee:**

The OR's Response

There has been on-going review and monitoring of the position of IVA in the ORO Service Advisory Committee. As a matter of fact, the regime for personal insolvency in England and Wales is different from that in Hong Kong and there are more options for debtors in England and Wales, for example there is the option of a debt relief order, which is an administrative process for consumer debts up to GBP 20,000. The profile of debtors using the bankruptcy process and IVA is likely to be quite different. In Hong Kong, our bankrupts are older, unemployed and with no income and as such bankruptcy is a more attractive option for them to get relief from the debts quickly to enable them to make a fresh start. Given the profile of Hong Kong bankrupts it seems that most are not concerned by the change of status and prefer the immediate relief given by bankruptcy as oppose to the ongoing process and commitment required to adhere to the payment process in IVA, which may last longer than the normal four-year bankruptcy period. In addition, alternatives to IVA such as informal debt restructuring or inter-bank debt relief schemes offered by banking sector are also available and can be accessed by debtors.

- (a) was there any connection between the low usage rate and the three “passive” promotion methods mentioned in paragraph 4.20(h);**

The OR's Response

As explained above and in the Audit Report, choice of IVA or bankruptcy is quite dependent on which one will best suit or fit the circumstances/requirements of individual debtors. The ORO thus does not consider there to be connection between the low usage rate of IVA and the promotion methods undertaken by the ORO to inform debtors of their right to enter into an IVA. After discussing the low usage rate with stakeholders, it seems that bankruptcy is the preferred option for most debtors. That said the ORO will continue to take steps to make sure that debtors are aware of the option of IVA as an alternative to bankruptcy. Once the social distancing restrictions are removed, officers from the ORO will

attend several of the debt counselling service providers and resume delivering talks in this regard, and explain further the effects of bankruptcy generally.

- (b) **did ORO have statistics or estimates on the cost for appointing an accountant or a solicitor as a nominee as required by the Bankruptcy Ordinance (paragraph 4.15 refers)? Under IVAs, how much should a debtor need to set aside as expenditure; and**

#### The OR's Response

The ORO does not keep statistics on the costs of appointing a nominee, which will be a matter for negotiation between the debtor and the nominee in each case. Each IVA case will depend upon its own facts and circumstances and the fee will vary depending upon the complexity of the case. According to our experience, the nominee and the debtor may agree a lump sum fee, and the total amount of the fee and expenses to be charged by the nominee will be set out in the proposal with an agreement to pay with an agreed number of instalments, which again will vary from case to case. The proposal for IVA put forward by the debtor to his creditors will have information on the amount proposed to be paid to the nominee by way of remuneration and expenses and this will be voted on by the creditors and in successful cases will be sanctioned by the court.

- (c) **would the debtors' expenses under IVAs be too high to make it unaffordable, resulting in a low usage rate?**

#### The OR's Response

The procedures for IVA are provided in the Bankruptcy Ordinance (Cap. 6). They include appointing a nominee, submitting proposal by the debtor, applying for interim order, convening creditors' meeting to consider the debtor's proposal and reporting the meeting result to court. As mentioned above, the costs and expenses of the nominee will be a matter for negotiation and agreement between the debtor, the nominee and the creditors and will vary from case to case depending on individual case circumstances. There is so far no evidence suggesting that the expenses for IVAs result in its low usage rate.

- 17) According to paragraph 4.25, over the years, while there had been more outsourcing of cases and the number of insolvency cases had generally been on a decreasing trend, no staff savings had been achieved by ORO and the establishment of ORO had increased by 49 (22%) from 224 as at 31 March 2010 to 273 as at 31 March 2019. Please provide the following information for the period from 31 March 2010 to 31 March 2019:**
- (a) the manpower changes in each division in ORO;**
  - (b) changes in the establishment of the Case Management Division; and**
  - (c) changes in the average number of cases each case officer was responsible for.**

#### The OR's Response

Although the number of bankruptcy and liquidation cases has stabilised after increasing from 1 616 in 1998 to a record high of 26 620 in 2002, it remains at a relatively high level at around 8 000 to 9 000 per year in recent years. The outsourcing schemes can reduce the ORO's workload of handling a large number of cases. However, with the substantial number of outsourced cases, the ORO has to deploy resources for monitoring to ensure that the PIPs discharge their duties in accordance with the statutory provisions and the requirements as specified in the tenders. Moreover, the ORO also has to directly handle a significant caseload including 75% of all debtor-petition bankruptcy cases which fall outside the outsourcing scheme, therefore ORO staff still have to deal with a significant caseload. As can be seen from the information shown below, the average caseload per case officer is on upward trend over the years and has increased from 363 in 2013 to 857 in 2019, i.e. an increase of 136%.

Due to the expansion of insolvency services to be delivered by the ORO after 1992 (e.g. the introduction of individual voluntary arrangement, section 12(1A) outsourcing under the Bankruptcy Ordinance, section 194(1A) outsourcing under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, etc.), the manpower resources of the ORO have been reshuffled to other work areas. Also, to enhance the insolvency provisions, the Bankruptcy Ordinance (Cap. 6) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance

(Cap. 32) have been amended in 2016 to introduce a non-commencement regime and a disclosure statement requirement. The introduction of the aforesaid provisions has created additional work burden in the case management work of the ORO.

Notwithstanding the heavy workload as above-mentioned, the total manpower resource in the ORO has remained in the range of about 224 to 273 staff. The establishment for different divisions of the ORO from 31 March 2010 to 31 March 2019 as well as the average caseload per case officer are appended for reference.

Departmental Administration Division

<b>Year</b>	<b>2010 - 2012</b>	<b>2013 - 2019</b>
Establishment	54	56

Financial Services Division

The establishment remained the same at 29 from 2010 to 2019.

Legal Services Division

<b>Year</b>	<b>2010</b>	<b>2011 - 2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 - 2018</b>	<b>2019</b>
Establishment	12	13	16	17	21	24

Case Management Division

<b>Year</b>	<b>2010 - 2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 - 2018</b>	<b>2019</b>
Establishment	129	132	134	136	164

Average Caseload per Insolvency Officer as at Year End (2010 - 2019)

<b>Year</b>	<b>Average Caseload</b>
2010	363
2011	394
2012	451
2013	635

2014	683
2015	757
2016	851
2017	868
2018	825
2019	857

For information, the posts created since 2010 are to meet new operational needs of the ORO arising from new legislative requirements and new IT projects; to strengthen support for prosecution and case management work; and to enhance staff training needs to permanent posts. Also, of the established civil service (“CS”) posts as at 31 March 2019 (i.e. 273 in total), 16 CS posts are time-limited and due to expire in the financial year from 2020 to 2023.

**18. According to paragraph 4.27, ORO commenced a Departmental Information Technology Plan (“Plan”) Study in 2018. The Study proposed to implement 22 information technology projects in the coming five years. In this respect:**

**(a) when was the Plan expected to be implemented or launched;**

The OR’s Response

The Plan is being finalised. Among the 22 IT projects covered by the Plan, some projects have been planned before and have already commenced in Q1 of 2020 after obtaining funding approval. As for other projects, they will be implemented as per the Plan in due course.

**(b) the budget for the new projects;**

The OR’s Response

The estimated total non-recurrent and annual recurrent costs for all the new IT projects, including those projects with funding

applications having already been submitted, are HK\$61.51 Million and HK\$11.67 Million respectively.

- (c) **would ORO apply funding from the Finance Committee of the Legislative Council;**

The OR's Response

For IT projects with required funding exceeding \$10 Million, funding application is to be submitted to the Finance Committee of the Legislative Council. For example, in respect of IT project for implementation of an Electronic Submission System ("ESS"), the ORO is seeking a new funding commitment of HK\$37.986 Million under Head 710 from the Finance Committee of the Legislative Council. Given the Panel on Financial Affairs has supported in-principle the ESS, we will seek funding from the Finance Committee accordingly.

- (d) **how would the Plan enhance the efficiency of ORO; and**

The OR's Response

Given the rapid development of IT and the change in the business needs, workload, increasing demand for better customer services and other requirements, the Plan will help the ORO formulate and map out its short, medium and long term IT planning for support of its business in a systematic and strategic manner. The Plan will identify potential improvement opportunities with innovative use of information technology and form guidance for IT system development and IT-related resources planning for enhancing its overall capability and efficiency in the provision of insolvency service to meet the mission and vision of the ORO as well as to align with the next wave of e-Government initiatives.

Based on the preliminary findings of the Plan, a list of 22 projects have been proposed to attain the benefits from adoption of e-business solutions under prevailing IT technology; and improvements on the current mode of operation by developing new system as well as enhancing the existing systems. They include implementation of ESS and workflow sub-systems ("WFSS") projects. For the ESS, the ORO can enhance its efficiency in monitoring submissions from the PIPs by sending email notices,



reminders and warning letters generated automatically by the system in lieu of present manual workflow. Also, the ESS allows ORO staff and external parties to perform on-line enquiry of case details as well as case tracking via status checking functions of the system at any time convenient for them. As to the WFSS, the Plan has explored to develop satellite or sub-systems with tailor-made functionalities to facilitate more efficient operations by adoption of a workflow-driven methodology. For instance, a sub-system would be developed to handle processing of insolvency cases, e.g. generating standard letters by batch, bringing up cases to case officers for review at different stages of the case, etc. Another sub-system would be developed to help perform the compliance and regulatory work of the ORO on PIPs, which are also currently being handled by manual-driven process.

- (e) **would there be new indicators, such as effectiveness, cost savings and case processing time, set under the new projects to ensure that the expenditure spent was worthwhile and cost-effective?**

#### The OR's Response

The 22 IT projects identified in the Plan can be divided into three broad categories, namely, (i) upgrade of de-supported system/software (e.g. migration and adoption of Government Human Resources Management System); (ii) government initiatives (e.g. revamp of the ORO website); and (iii) business and operational needs of the ORO (e.g. implementation of electronic submission system). For all the projects, detailed cost and benefit analysis will be conducted beforehand and details will be included in the funding applications to substantiate that the IT projects to be developed and implemented shall meet the business and operational needs of the ORO. Expected benchmark and indicators such as processing time, cost savings, and any other business benefits and outcomes resulting from the projects will also be taken into account and set out where appropriate.

- 19) According to paragraph 4.29(a), ORO had agreed to conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases**

**and the anticipated increase of insolvency caseload in the coming period. Had ORO conducted the review? What were the results?**

The OR's Response

The ORO reviews manpower needs and operation structure on a regular basis to ensure that there is an alignment of resources to maximise efficiency and the focus of the work being done is in line with the mission of the ORO. When necessary, changes will be made to re-deploy resources to specific areas of work as and when required. The ORO will methodically and critically examine its needs with a focus on new areas of work or service needs that have developed as a result of changes in legislation, policy or operational requirements. Based on the recommendations of the Departmental IT Plan, changes will be made to the IT Team structure to deploy additional resources to ensure the success of the upcoming projects. At the same time, the level of insolvencies fluctuates considerably depending upon many factors. For bankruptcy in particular, with increased unemployment there is likely to be a rise in bankruptcy applications. Considering the current economic environment, the ORO are anticipating an increase in new cases and will take steps to increase resources for case management and where necessary, modify team structures to assist with expected increased workload. A full review will be conducted and it is expected to be completed by March 2021.

- End -