

Public Accounts Committee
Short public hearing on Chapter 6 of the Director of Audit's Report No.74
Management of insolvency services

Opening Remarks by the Official Receiver

Chairman and Members,

Good morning. Thank you for this opportunity to address the Public Accounts Committee ("PAC") on the follow up action that the ORO has taken, and further intended to take to address the 20 recommendations set out in Chapter 6 of Report No. 74 of the Director of Audit, concerning the Management of Insolvency Services. I take this opportunity to thank the Director of Audit for these suggestions and recommendations. We agree with the recommendations of the Director of Audit. By way of our letter to PAC of 1 June 2020 ("our letter") we have provided a detailed response to the 21 further questions raised by this committee.

2. At the outset I would like to provide this committee with some context. The work and functions of the ORO are governed by Statute and the necessary procedures for the most part are required by legislation, and as such refinement of process has constraints. Since the Asian Financial Crisis in 1998, the number of insolvency cases has remained at a comparatively high level and given the accumulation of cases with the need to administer each bankruptcy case for at least four to eight years, the workload of the ORO continues to increase. The issues arising in each case are different and of varying degrees of complexity. Cooperation from bankrupts is not always readily forthcoming, and there is a considerable level of case administration required for the in-house bankruptcy cases even after they are put on release programme or at post-discharge stage. Refinement of process, re-engineering and simplification of procedures are ongoing, and we have employed temporary staff and made use of outsourcing schemes over the years to assist with the heavy workload.

3. The Director of Audit has made recommendations in respect of :-

- (a) Administration of in-house insolvency services;
- (b) Monitoring of private insolvency practitioners (“PIPs”); and
- (c) Way forward.

I will address each of these areas in turn.

(a) Administration of in-house insolvency services

4. In respect of the six recommendations for enhanced administration of in-house insolvency services, we have set out at some length in our letter the strategies that we already have in place to assist officers in the expeditious resolution of difficult issues arising in individual cases. Whilst we have explained that the cases under administration are varied, complex and do not always lend themselves readily to standard solutions; and resolution for the most part being dependent upon further investigation requiring the cooperation of third parties, we will continue working to develop and refine effective strategies that can be rolled out generally for realization of assets, including where the assets involved are landed properties.

5. We are in the process of again reviewing common difficulties that are holding up cases, and will promulgate further guidelines in addition to those already in place as necessary. We anticipate such review to be finalized by the end of this calendar year.

6. We intend to expand specific “No Further Action” thresholds in respect of additional categories of asset, continue to provide regular updates on common legal problems likely to arise, refine the in-house approval limits for specific actions so as to speed up case processing, continue our investment in staff training and experience sharing amongst teams at the top-level management meetings, and continue monitoring progress and giving case specific advice where necessary.

7. Apart from the general guidelines and refinement of the case management process, we will continue to provide bespoke guidance and assistance at case level at the monthly Case Administration Meeting (“CAM”) and will continue with the more general quarterly Bankruptcy Account Meeting. Both meetings, established since 2018 and comprising directorate officers, with the aim of identifying, progressing and monitoring long outstanding complex cases, particularly those with larger balances in the bankruptcy accounts, have proved successful.

8. We intend to expand the CAM to consider the issues holding up the long outstanding pre-2002 company liquidation cases identified by the Director of Audit, where other strategies to conclude them fail. The pre-2002 personal bankruptcy cases are already being considered in the CAM. A list of all cases has been compiled with directions for review by the end of July 2020, with the aim, where possible, of putting all such cases on release program by December 2020, and if this cannot be achieved, a direction that the case be referred to CAM.

9. The long outstanding cases identified by the Director of Audit are complex. For instance, one case involved a listed holding company with subsidiaries in insolvent liquidation in other jurisdictions, and closure of the Hong Kong liquidation is dependent upon dividend from these oversea subsidiary liquidations. These cases are still active. We have set out other difficulties faced in these cases in our letter. We will nevertheless use our best endeavors to complete these old complex cases as soon as possible.

10. We will move ahead robustly with renewed focus, and apart from the disposal of landed properties, which we anticipate will take a longer time to resolve, aim to implement the recommendations by the end of this year.

(b) Monitoring of private insolvency practitioners

11. In respect of the eight recommendations made for the monitoring of PIPs, steps are being taken to conduct quality audit of Panel T scheme PIPs. The detailed procedures and logistics are under consideration and will be ready by September 2020, with a view to commencing quality audit from April 2021.

12. Measures have been put in place internally to ensure that the target coverage for field audit by the ORO's Financial Services Division will be met.

13. We intend to review and enhance the reporting of unsatisfactory conduct of PIPs and review and enhance the existing reporting and keeping of the various complaint registers. The preliminary proposal is to consolidate the current four registers into one register. This recommendation will be implemented by July 2020.

14. According to our records, 92% of liquidator's accounts were submitted within six months of account end date, and those outstanding liquidators accounts identified by the Director of Audit represent around 3% of accounts submitted over the same period. We will review and enhance follow up action required.

15. In respect of submission and checking of PIP accounts, we have been in the process of reviewing the various practices. At the moment the issuance of warning letters in respect of outstanding accounts is centralized and followed up by individual case officers. We are considering a more efficient strategy for follow up of warning letters. Furthermore, with the in-principle support of the Panel on Financial Affairs, we are planning to seek the funding approval of the Finance Committee for introducing an Electronic Submission System ("ESS"). Once implemented, the system will allow e-submission of accounts by PIPs, and manual checking by the ORO will no longer be necessary. This will greatly enhance efficiency. In respect of the checking of accounts submitted, a review of our risk-based checking mechanism is underway and is expected to be finalized by the end of July 2020.

16. We anticipate having a more robust framework for monitoring the PIPs in place by September 2020. With implementation of our ESS, we anticipate further enhancement to our regulatory capabilities.

(c) Way forward

17. In respect of the six recommendations made on the way forward for the ORO, the Secretary has responded to the two recommendations on corporate

rescue procedure and insolvent trading provisions, as well as domestic cross-border insolvency legislation.

18. In relation to the perceived under-utilization of the individual voluntary arrangement process in the Hong Kong context, we will continue to engage with our stakeholders and explore opportunities to facilitate the use of such procedures where appropriate.

19. We will continue to review our manpower needs, resources and operation structures on a regular basis to ensure alignment and maximum efficiency in delivery of our service. We intend to complete a full strategic review by March 2021.

20. We will continue to review our Departmental Technology Implementation Plan and ensure the costs and benefits are aligned.

21. The review of fees structure is in fact at a relatively advanced stage, but there are challenges in devising an alternative fee structure to support a self-funding insolvency service of last resort. Given the widely fluctuating insolvency numbers, the ever-changing insolvency environment and the difficulty in predicting volume, rationalization of the fee structure is not easy. That said, we aim to finalize the review by the end of March 2021.

22. Chairman and Members, again I thank you for your time and I thank the Audit Commission for their recommendations, which undoubtedly provide fresh perspectives and guidance for us in the reviews that we will undertake in implementation of the recommendations. My colleague and I would be pleased to answer members' questions.

ENDS