

**Paper for the House Committee Meeting
on 12 December 2003**

**Legal Service Division Report on
Bankruptcy (Amendment) Bill 2003**

I. SUMMARY

1. **Objects of the Bill**
 - (a) To enable the Official Receiver ("OR") to outsource bankruptcy cases to private-sector insolvency practitioners ("PIP") in specified circumstances;
 - (b) To revise the priority of payment of costs and charges out of a bankrupt's estate contained in section 37 of the Bankruptcy Ordinance ("BO") to bring it in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32, sub. leg. H); and
 - (c) 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.
2. **Comments**

Section 12 of BO provides that on the making of a bankruptcy order by the court, OR shall become the receiver of the bankrupt's property. The Bill seeks to deal with the expanding caseload in a more cost-effective and rapid manner by providing OR with the power to appoint PIPs to handle summary cases of bankruptcy and to dispense with the need to convene a creditors' meeting.
3. **Public Consultation**

In June 2002, the Administration conducted a public consultation exercise on the review on the role of the Official Receiver's Office ("ORO") in the provision of insolvency administration services and the submissions received from responding parties indicated general support for the proposal for outsourcing (para. 9 of LegCo Brief).
4. **Consultation with LegCo Panel**

At the meeting of the Panel on Financial Affairs ("FA Panel") held on 5 May 2003, members expressed the following concerns:-

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

Since the proposals in the Bill raise certain important policy issues and members have expressed some concerns at the FA Panel meeting, members may wish to consider whether to set up a Bills Committee to examine the Bill.

II. REPORT

Objects of the Bill

To amend the Bankruptcy Ordinance (Cap. 6) ("BO") to-

- (a) enable the Official Receiver ("OR") to outsource bankruptcy cases to private-sector insolvency practitioners ("PIP") in specified circumstances and to provide for the powers and duties of a provisional trustee in bankruptcy;
- (b) revise the priority of payment of costs and charges out of a bankrupt's estate contained in section 37 of BO to bring it in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32, sub. leg. H); and
- (c) 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.

LegCo Brief Reference

- 2. C3/17(2003) Pt. 8 issued by the Financial Services and the Treasury Bureau and dated 26 November 2003.

Date of First Reading

- 3. 10 December 2003.

Comments

- 4. Section 12 of BO provides that on the making of a bankruptcy order by the court, OR shall become the receiver of the bankrupt's property. In cases where the value of the bankrupt's property exceeds \$200,000, OR shall summon a meeting of creditors for the purpose of appointing a PIP as the trustee of the bankrupt's property. Under section 112A of BO, where the value of the bankrupt's property is not likely to exceed \$200,000, the court may make an order that the bankrupt's estate be administered in a summary manner. In a summary case, no meeting of creditors will be called and OR shall be the trustee in bankruptcy of the bankrupt's estate, which shall be administered in a summary way. This is different from the case of company liquidation as the Companies Ordinance (Cap. 32) provides that OR, as provisional liquidator of the company, may outsource summary cases (in which the value of the company's assets is unlikely to exceed \$200,000) to PIPs.

5. According to the Administration, summary cases account for more than 90% of the total number of bankruptcy cases and the Official Receiver's Office ("ORO") took up trusteeship for more than 25,000 bankruptcy cases in 2002 (para. 3 of LegCo Brief). The Bill seeks to deal with the expanding caseload in a more cost-effective and rapid manner by providing OR with the power to appoint PIPs to handle summary cases of bankruptcy without the need to convene a creditors' meeting.

6. The Bill introduces a new reference of "provisional trustee" and OR shall become the provisional trustee on the making of a bankruptcy order. Where OR as the provisional trustee considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, he may appoint any person in his place as provisional trustee of the property of the bankrupt. The Bill further provides that where the court has made an order for summary administration of a bankrupt's estate, the provisional trustee shall become the trustee thereafter. New provisions are also sought to be made to set out the respective duties of OR and trustees in bankruptcy under the new outsourcing regime.

7. Section 37 of BO sets out the priority of costs and charges which are to be paid after payment of the actual expenses incurred in realizing the property of the bankrupt. The Bill seeks to set out a revised order of priority of costs and charges after realization of the bankrupt's property with the object to bring it in line with the provisions of rule 179 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

8. Apart from certain consequential amendments, the Bill also seeks 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.

Public consultation

9. According to the LegCo Brief, the Administration conducted a public consultation exercise on the review on the role of ORO in the provision of insolvency administration services in June 2002 and the submissions received from responding parties (including professional bodies such as Hong Kong Association of Banks, Law Society of Hong Kong, Hong Kong Society of Accountants and Hong Kong Institute of Company Secretaries) indicated general support for the proposal for outsourcing (para. 9).

Consultation with LegCo Panel

10. At the meeting held on 5 May 2003, the Panel on Financial Affairs ("FA Panel") was briefed on the outcome of the review of the role of ORO in the provision of insolvency administration services. The Administration indicated that it would take forward the proposal of outsourcing bankruptcy cases to PIPs by legislative amendments with a view to enhancing the efficiency in handling such cases.

11. At the meeting, members expressed the following concerns:-
- (a) possible malpractice of PIPs in investigating bankruptcy cases;
 - (b) the source of funding for the engagement of PIPs in bankruptcy cases; and
 - (c) whether it was appropriate for the government to subsidize PIPs in handling bankruptcy cases.
12. 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 LegCo during the 2003-2004 session (LC Paper No. CB(1)98/03-04).

Conclusion

13. Since the proposals in the Bill raise certain important policy issues and members have expressed some concerns at the FA Panel meeting, members may wish to consider whether to set up a Bills Committee to examine the Bill.

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