

**立法會**  
**Legislative Council**

LC Paper No. CB(1)926/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/04

**Bills Committee on Bankruptcy (Amendment) Bill 2004**

**Minutes of the third meeting held on  
Tuesday, 11 January 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon TAM Heung-man (Chairman)  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon LI Kwok-ying, MH  
Hon KWONG Chi-kin
- Public officers attending** : Miss Emma LAU  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)
- Mr Alan LO  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)
- Mr Arthur AU  
Assistant Secretary for Financial Services and the Treasury  
(Financial Services)
- Mr E T O'Connell  
Official Receiver

Ms May LEE  
Assistant Official Receiver

Ms Vicki LEE  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance :** Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Connie SZETO  
Senior Council Secretary (1)4

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- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)652/04-05 — Minutes of second meeting held on 15 December 2004)

The minutes of the meeting held on 15 December 2004 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)436/04-05(17) — “Follow-up to the first meeting on 3 November 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)436/04-05(18) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 3 November 2004”
- LC Paper No. CB(1)654/04-05(01) — Submission dated 5 January 2005 from the Insolvency Law Committee of the Law Society of Hong Kong

- LC Paper No. CB(1)654/04-05(02) — Administration's response to the submission from the Insolvency Law Committee of the Law Society of Hong Kong
- LC Paper No. CB(1)654/04-05(03) — "Follow-up to the second meeting on 15 December 2004" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)654/04-05(04) — Paper provided by the Administration on "List of follow-up actions to be taken by the Administration at the second meeting on 15 December 2004"
- LC Paper No. CB(1)669/04-05(01) — "Proposed meeting schedule from end of January to May 2005" prepared by the Legislative Council Secretariat)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin 3. At the request of the Bills Committee, the Administration agreed to take the following actions:

(a) To address members' concern about the financial viability of the Administration's proposal of outsourcing summary bankruptcy cases to the private-sector insolvency practitioners (PIPs) and that the quality of service provided by PIPs in handling such cases might be compromised in the event of insufficient funding, the Administration was requested to respond to some members' suggestion in item (i) below and to provide the required information under items (ii) to (v) -

(i) Given that the fees and expenses incurred by the Official Receiver's Office (ORO) for each summary bankruptcy case would be deducted from the debtor-deposit of \$8,650 before the case was outsourced to PIPs, the amount for each item of the fees and expenses incurred by ORO should be capped so as to ensure that there would be sufficient balance to be accounted to the debtor's estate for meeting the costs, charges and other expenses to be incurred by PIPs in handling the case;

- (ii) In connection with item (i) above, the contingency plan in the event that the total amount of the fees and expenses incurred by ORO exceeded the debtor-deposit;
  - (iii) The likely costs, charges and other expenses to be incurred by PIPs in handling summary bankruptcy cases;
  - (iv) In connection with item (iii) above, how the costs, charges and other expenses incurred by PIPs would be met in the event that the debtor's estate was insufficient to cover them; and
  - (v) In respect of the existing scheme for outsourcing summary liquidation cases to PIPs -
    - the range of costs, charges and other expenses incurred by PIPs in handling the outsourced summary liquidation cases;
    - the range of remuneration for the PIPs concerned; and
    - in the best case scenario where ORO was able to minimize the amount of its fees and expenses, such as by consolidating the publication of several orders in one notice in the Gazette and consolidating the publication of several orders in one advertisement in a newspaper, the amount of remuneration for the PIP concerned.
- (b) To address members' concern about whether the proposed outsourcing scheme would be able to attract competent PIPs to participate in the scheme, the Administration was requested to provide the following information on the participation of PIPs in the existing scheme for outsourcing summary liquidation cases -
- (i) Number of PIPs/firms which had submitted bids in each tender, with a breakdown by the nature of the firms, e.g. solicitors' firms, accountants' firms and company secretaries, etc. and a breakdown by the scale of the firms concerned; and
  - (ii) Number of PIPs/firms awarded the contracts in each tender, with a breakdown by the nature of the firms, e.g. solicitors' firms, accountants' firms and company secretaries, etc. and a breakdown by the scale of the firms concerned.
- (c) To ensure the quality of service to be provided by PIPs in the handling of the outsourced summary bankruptcy cases and to enhance the transparency of the outsourcing scheme, the Administration was invited to further consider some members' suggestion of setting out in the legislation (main ordinance or subsidiary legislation) the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases. In this connection, the Administration undertook to consult relevant professional bodies and other stakeholders on the suggestion and report the outcome to the Bills Committee at its next meeting to be held on 21 February 2005.

Proposed meeting schedule and date of next meeting

4. In examining the proposed meeting schedule prepared by the LegCo Secretariat (LC Paper No. CB(1)669/04-05(01)), members noted the Administration's view that it would take about one month for the Administration to consult relevant professional bodies and other stakeholders on the suggestion referred to in paragraph 3(c) above. Members therefore agreed that the next meeting should be held after mid-February 2005.

5. After discussion, members agreed that the next meeting be held on Monday, 21 February 2005, at 8:30 am, and that the proposed meeting schedule from March to May 2005 be endorsed.

*(Post-meeting note: The meeting schedule from February to May 2005 was issued to members vide LC Paper No. CB(1)693/04-05 on 12 January 2005.)*

**III. Any other business**

6. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
17 February 2005

**Proceedings of the third meeting of the  
Bills Committee on Bankruptcy (Amendment) Bill 2004  
on Tuesday, 11 January 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000413	Chairman	(a) Confirmation of minutes of meeting on 15 December 2004  (b) Welcoming and introductory remarks	
000414-000900	Administration	Matters arising from the first meeting on 3 November 2004 (LC Paper No. CB(1)436/04-05(18))  <u>The proposed tendering scheme for outsourcing summary bankruptcy cases to Private-sector insolvency practitioners (PIPs)</u>  (a) The Administration's advice that the existing tendering scheme for outsourcing summary liquidation cases was cost-effective and company secretaries, alongside with lawyers and accountants, were eligible to participate  (b) The Administration's advice that the existing tendering scheme for outsourcing summary liquidation cases would be adapted for the proposed outsourcing of summary bankruptcy cases	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration's view that -</p> <ul style="list-style-type: none"> <li>(i) it was inappropriate to set a fixed fee, or a minimum fee for PIPs for the handling of summary bankruptcy cases; and</li> <li>(ii) the proposed tendering scheme for outsourcing summary bankruptcy cases would enhance transparency, maintain a level playing field among PIPs, and would be commercially viable</li> </ul>	
000901-001153	Administration	<p><u>Payments from the deposit/estate of the bankrupt in outsourced summary bankruptcy cases</u> (Annex B to LC paper No. CB(1)654/04-05(04))</p> <p>The Administration's advice that after the deduction of fees and expenses incurred by the Official Receiver's Office (ORO) from the debtor-deposit of \$8,650, the balance would be credited to the debtor's estate for meeting the costs, charges and other expenses to be incurred by PIPs in handling the case</p>	

Time marker	Speaker	Subject(s)	Action Required
001154-003320	Administration	<p><u>Monitoring of the performance of PIPs in handling the outsourced bankruptcy cases</u> (Item 3 of LC Paper No. CB(1)654/04-05(04))</p> <p>(a) Statutory and non-statutory measures available to ORO for monitoring the performance of PIPs</p> <p>(b) The Administration's advice that ORO had suspended PIPs from participating in tenders for outsourcing summary liquidation cases due to their unsatisfactory performance in handling cases in previous contracts</p>	
003321-005900	Mr Ronny TONG Administration Chairman	<p><u>Quality of service provided by PIPs in handling outsourced summary bankruptcy case</u></p> <p>(a) Member's suggestion of setting out in the legislation (main ordinance or subsidiary legislation) the qualification criteria for appointing PIPs as provisional trustee or trustees for summary bankruptcy cases in order to ensure their quality of service and enhance the transparency of the outsourcing scheme</p> <p>(b) The Administration's view that -</p> <p>(i) it was appropriate to set out the necessary</p>	Administration to consider the suggestion under paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>qualifying criteria for PIPs in the tender contract; and</p> <p>(ii) the member’s suggestion would have ramification on the appointment of office holders for all modes of insolvency administration, such as non-summary cases in bankruptcy and summary and non-summary compulsory liquidations cases, where currently no statutory qualifications were set for the appointment of office holders for such cases</p> <p>(c) The Administration’s undertaking to consult relevant professional bodies and other stakeholders on the suggestion and report the outcome to the Bills Committee</p> <p><u>Whether it was appropriate to outsource summary bankruptcy cases to company secretaries</u></p> <p>(a) The Administration’s advice that PIPs had to meet pre-qualification criteria including post-qualification experience, professional or chargeable hours in respect of insolvency work, before qualifying as tenderers in existing scheme for outsourcing summary liquidation cases</p>	<p>Administration to take action under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's emphasis that summary bankruptcy cases would be outsourced to competent professionals with relevant experience in handling insolvency cases</p>	
005901-012608	Ms Miriam LAU Administration Chairman	<p><u>Financial viability of the proposal of outsourcing summary bankruptcy cases and quality of service provided by PIPs in handling outsourced bankruptcy cases</u></p> <p>(a) Member's concern that the balance of debtor-deposit would be insufficient to meet the costs, charges and other expenses to be incurred by PIPs in handling the cases</p> <p>(b) Member's suggestion of capping the amount of fees and expenses to be incurred by ORO in relation to handling of summary bankruptcy cases</p> <p>(c) Member's concern that competent PIPs would not be attracted to participate in the proposed tendering scheme for outsourcing summary bankruptcy cases</p> <p>(d) The Administration's advice that -</p> <p>(i) ORO was able to minimize the amount of its fees and expenses in</p>	Administration to consider the suggestion under paragraph 3(a)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>relation to handling summary bankruptcy cases by consolidating the publication of bankruptcy orders in one notice in the Gazette and in one advertisement in a newspaper; and</p> <p>(ii) the outsourced summary bankruptcy cases would be allocated in batches so that PIPs could achieve economies of scale</p> <p>(e) Request for information about the likely costs, charges and other expenses to be incurred by PIPs in handling summary bankruptcy cases</p> <p>(f) How the costs, charges and other expenses incurred by PIPs would be met in the event that the debtor's estate was insufficient to cover them</p> <p>(g) Request for information about the existing scheme for outsourcing summary liquidation cases to PIPs -</p> <p>(i) the range of costs, charges and other expenses incurred by PIPs in handling the outsourced summary liquidation cases;</p> <p>(ii) the range of remuneration for PIPs in handling the</p>	<p>Administration to provide the information under paragraph 3(a)(iii) of the minutes</p> <p>Administration to provide information under paragraph 3(a)(iv) of the minutes</p> <p>Administration to provide the information under paragraph 3(a)(v) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>outsourced summary liquidation cases; and</p> <p>(iii) the remuneration for PIPs under the best case scenario where ORO was able to minimize the amount of its fees and expenses by consolidating the publication of bankruptcy orders in the Gazette and in newspaper advertisement</p> <p>(h) Request for information about the contingency plan in the event that the total amount of the fees and expenses incurred by ORO exceeded the debtor-deposit</p>	<p>Administration to provide information under paragraph 3(a)(ii) of the minutes</p>
012609-012928	Chairman Administration	<p><u>Matters arising from the second meeting on 15 December 2004</u> (LC Paper No. CB(1)654/04-05(02) and (04))</p> <p>The Law Society of Hong Kong's submission expressing concern that competent PIPs would not be interested in participating in the proposed tendering scheme for outsourcing summary bankruptcy cases, given the wide range of obligations and duties required of PIPs and limited assets in the bankrupt's estate</p>	

Time marker	Speaker	Subject(s)	Action Required
012929-013950	Administration	<p><u>Experience in outsourcing summary liquidation cases to PIPs</u></p> <p>(a) A pilot scheme was introduced in mid 1990s with government setting up a subsidy fund of \$10 million for PIPs handling summary liquidation cases</p> <p>(b) Previous tender schemes arranged since 2000</p> <p>(c) Request for information about the number of PIPs/firms which had submitted bids in each tender, a breakdown by the nature of the firms, e.g. solicitors' firms, accountants' firms and company secretaries, and a breakdown by the scale of the firms concerned, and the corresponding information about PIPs/firms awarded the contract in each tender</p>	Administration to provide the information under paragraph 3(b)(i) and (ii) of the minutes
013951-014214	Chairman	Hong Kong Bar Association's advice that it would respond to the Bills Committee's invitation for views on the Bill by end of January 2005	
014215-015015	Chairman Ms Miriam LAU Administration Mr Ronny TONG Clerk	<p><u>Proposed meeting schedule from February to May 2005</u></p> <p>(LC Paper No. CB(1)669/04-05(01))</p>	