

立法會
Legislative Council

LC Paper No. CB(1)1059/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/04

Bills Committee on Bankruptcy (Amendment) Bill 2004

**Minutes of the fourth meeting held on
Monday, 21 February 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon TAM Heung-man (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH
Hon Ronny TONG Ka-wah, SC

Member absent : 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

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)926/04-05 — Minutes of third meeting held on 11 January 2005)

The minutes of the meeting held on 11 January 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)925/04-05(01) — “Follow-up to the third meeting on 11 January 2005” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)925/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 11 January 2005”)

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

Follow-up actions to be taken by the Administration

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

- (a) The Administration undertook to propose a Committee Stage amendment to reflect its policy intent that the Bill would enable only the outsourcing of debtor-petition summary bankruptcy cases (and not creditor-petition summary bankruptcy cases) to the private-sector insolvency practitioners (PIPs) by the Official Receiver.
- (b) The Administration undertook to report to the Bills Committee at its next meeting to be held on 11 March 2005 on the findings of a survey conducted by the Official Receiver's Office (ORO) on the costs, charges and other expenses incurred by PIPs, and the remuneration for the PIPs concerned, in handling outsourced liquidation cases (paragraph 8 of LC Paper No. CB(1)925/04-05(02)).
- (c) The Administration undertook to report to the Bills Committee at its next meeting to be held on 11 March 2005 on the outcome of the Administration's consultation with relevant professional bodies and other stakeholders on 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, and to provide written responses to the views and suggestions made by the concerned parties.
- (d) In connection with item (c) above, the Administration was requested to address a member's concern about whether there was any inconsistency between the views respectively expressed in the two submissions from the Insolvency Law Committee of the Law Society of Hong Kong, as follows:
 - (i) "Our view is also that a panel system should be established. This would involve a review of the qualifications and experience of practitioners undertaking office and also that an equitable system for the allocation of appointments to panel members be established" (Paragraph 12 of the submission dated 5 January 2005 (LC Paper No. CB(1)654/04-05(01))).
 - (ii) "The scheme for summary company liquidations appears to operate satisfactorily and under that scheme the minimum qualification requirements are spelled out in the ORO tender documents. The Committee cannot see any justification to change either the qualification criteria or the way that they are recorded and applied in the case of summary personal

bankruptcies” (Paragraph 3 of the submission dated 8 February 2005 attached in Annex D to the paper provided by the Administration —LC Paper No. CB(1)925/04-05(02)).

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 11 March 2005, at 8:30 am.

III. Any other business

5. There being no other business, the meeting ended at 10:10 am.

Council Business Division 1
Legislative Council Secretariat
10 March 2005

**Proceedings of the fourth meeting of the
Bills Committee on Bankruptcy (Amendment) Bill 2004
on Monday, 21 February 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000145	Chairman	(a) Confirmation of minutes of meeting on 11 January 2005 (b) Welcoming and introductory remarks	
000146-002550	Chairman Administration	<u>Feasibility of capping the fees and expenses incurred by the Official Receiver's Office (ORO) for each summary bankruptcy case</u> (Paragraphs 2 to 5 of LC Paper No. CB(1)925/04-05(02)) The Administration's advice that - (a) the ORO was not at liberty to cap the fees and expenses incurred by the ORO for each summary bankruptcy case. Such fees and expenses, which were estimated to be in the range of \$2,000 to \$3,000, should be deducted from the debtor-deposit of \$8,650 according to Rule 52 of the Bankruptcy Rules; and (b) in the unlikely event that the balance of the debtor-deposit, in the range of \$5,650 to \$6,650, was less than the likely amount of	

Time marker	Speaker	Subject(s)	Action Required
		<p>disbursements plus the remuneration tendered by the private-sector insolvency practitioners (PIPs), the ORO would not outsource the case</p> <p><u>Likely costs, charges and other expenses to be incurred by PIPs in handling summary bankruptcy cases</u> (Paragraphs 6 and 7 of and Appendix 1 to LC Paper No. CB(1)925/04-05(02))</p> <p>The Administration's advice that -</p> <p>(a) the average amount of disbursements of a PIP for handling a summary bankruptcy case was estimated to be between \$900 and \$1,500;</p> <p>(b) the amount available in a typical summary bankruptcy case for payments for costs of persons properly employed by the PIP and the PIP's remuneration would be between \$4,150 to \$5,750 (i.e. the amount of debtor-deposit less fees and expenses incurred by the ORO and less disbursements of PIP) even without additional asset realized and without income contribution made by the bankrupt; and</p> <p>(c) given the relatively straight-forward nature of the</p>	

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		<p>administration of summary bankruptcy cases, and that cases would be outsourced in batches so as to achieve economies of scale, there should be sufficient interest from PIPs in tendering</p>	
002551-004028	<p>Mr Ronny TONG Chairman Administration</p>	<p><u>Outsourcing debtor-petition summary bankruptcy cases to PIPs</u></p> <p>(a) The rationale behind the outsourcing proposal under the Bill</p> <p>(b) The Administration's advice that the policy intent was only to outsource debtor-petition summary bankruptcy cases but not the creditor-petition summary bankruptcy cases</p>	
004029-010146	<p>Mr Albert HO Administration</p>	<p><u>Likely costs, charges and expenses to be incurred by PIPs in handling summary bankruptcy cases</u> (Paragraphs 6 and 7, and paragraph 4 of Appendix 1 to LC Paper No. CB(1)925/04-05(02))</p> <p>(a) How costs and expenses involved in handling a summary bankruptcy case would be met, e.g. the taxed costs of the petition, expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt, litigation costs relating to reasonable domestic needs of the bankrupt and his family and the bankrupt's</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>contribution to his estate</p> <p>(b) Whether the ORO would meet the difference if the balance of the debtor-deposit of \$8,650 was insufficient to cover the costs and expenses incurred by, and the remuneration of, the PIP</p> <p>(c) Member's concern about the viability of the tendering scheme to outsource debtor-petition summary bankruptcy cases to PIPs given the uncertainty in the costs and expenses to be incurred by PIPs in handling the cases</p> <p>(d) The Administration's emphasis that PIPs were free to decide whether or not to participate in the tendering exercise for outsourcing summary bankruptcy cases taking into account the relevant arrangements and their own business considerations. The ORO would not meet the uncovered amount of disbursements and remuneration of PIPs</p>	
010147-010818	Ms Audrey EU Administration	<p><u>Rationale for outsourcing debtor-petition summary bankruptcy cases (and not creditor-petition summary bankruptcy cases) to PIPs</u></p> <p>A member's view that the Administration should propose a</p>	Administration to take action under

Time marker	Speaker	Subject(s)	Action Required
		<p>Committee Stage amendment to reflect its policy intent that the Bill would enable only the outsourcing of debtor-petition summary bankruptcy cases (and not creditor-petition summary bankruptcy cases) to PIPs by the Official Receiver (OR), and the Administration's undertaking to do so</p>	<p>paragraph 3(a) of the minutes</p>
010819-012220	Ms Miriam LAU Administration	<p><u>Tendering scheme to outsource debtor-petition summary bankruptcy cases to PIPs</u></p> <p>(a) Member's concerns about the viability of the tendering scheme, and whether the scheme could attract competent PIPs to participate</p> <p>(b) The Administration's advice that -</p> <p>(i) PIPs were professionals and had experience in insolvency work; and</p> <p>(ii) The outsourcing scheme would be subject to regular review for making improvement</p> <p><u>Feasibility of capping the fees and expenses incurred by the ORO for each summary bankruptcy case before outsourcing the case</u></p> <p>The Administration's advice that -</p> <p>(a) it was inappropriate to revise</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the existing arrangement under Rule 52 of the Bankruptcy Rules; and</p> <p>(b) the ORO was not at liberty to cap the fees and expenses incurred by the ORO in administering a summary bankruptcy case</p>	
012221-012529	Chairman Administration	<p><u>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</u> (Paragraphs 12 to 14, and Appendix 3, 4, 5 to LC Paper No. CB(1)925/04-05(02))</p> <p>The Administration's undertaking -</p> <p>(a) to report at the meeting to be held on 11 March 2004 on the outcome of its consultation with relevant professional bodies and other stakeholders on the captioned suggestion made by some members; and</p> <p>(b) to provide written responses to the views and suggestions made by the concerned parties</p>	Administration to take action under paragraph 3(c) of the minutes
012530-012809	Mr Ronny TONG Administration Chairman	<p><u>Submissions dated 5 January and 8 February 2005 from the Insolvency Law Committee of the Law Society of Hong Kong</u> (Paragraph 12 of LC Paper No. CB(1)654/04-05(01), and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>paragraph 3 of the submission dated 8 February 2005 attached in Annex D to LC Paper No. CB(1)925/04-05(02))</p> <p>(a) Member's concern about whether there was any inconsistency in the views expressed in the two submissions</p> <p>(b) Request for the Administration to address the concern in (a) above</p>	<p>Administration to take action under paragraph 3(d) of the minutes</p>
012810-013323	Administration	<p><u>The range of costs, charges and other expenses incurred by PIPs, and the range of remuneration for the PIPs concerned, in handling the outsourced summary liquidation cases under the existing outsourcing scheme</u> (Paragraph 8 of LC Paper No. CB(1)925/04-05(02))</p> <p>The Administration's undertaking to report at the meeting to be held on 11 March 2005 on the findings of a survey conducted by the ORO on the captioned subject</p> <p><u>In the best case scenario where ORO was able to minimize the amount of fees and expenses, the amount of remuneration for the PIP concerned in handling the outsourced summary liquidation cases under the existing outsourcing scheme</u> (Paragraphs 9 and 10 of LC paper No. CB(1)925/04-05(02))</p>	<p>Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>The Administration's briefing on its response</p> <p><u>Information in respect of the number, nature and scale of PIPs/firms, which had submitted bids and awarded with contracts in previous tendering exercises for outsourcing summary liquidation cases</u></p> <p>(Paragraph 11 of and Appendix 2 to LC Paper No. CB(1)925/04-05(02))</p> <p>The Administration's briefing on the information</p>	
013324-013445	Chairman Administration	<p><u>Submission dated 18 February 2005 from the Hong Kong Bar Association</u></p> <p>(LC Paper No. CB(1)948/04-05(01))</p>	
013446-013502	Chairman	Date of next meeting	
013503-013944	Mr Albert HO Administration Chairman	<p><u>The taxed costs of the petition</u></p> <p>(Paragraph 4(b) of Appendix 1 to LC Paper No. CB(1)925/04-05(02))</p>	