

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2129/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/04

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

**Minutes of the ninth meeting held on  
Friday, 20 May 2005, at 3:30 pm  
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-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH  
Hon Ronny TONG Ka-wah, SC  
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. Meeting with the Administration**
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| (LC Paper No. CB(1)1564/04-05(01) | — “Follow-up to the eighth meeting on 10 May 2005” prepared by the Legislative Council Secretariat  |
| LC Paper No. CB(3)42/04-05        | — The Bill  |
| LC Paper No. CB(1)137/04-05(01)   | — Marked-up copy of the Bankruptcy (Amendment) Bill 2004  |
| LC Paper No. CB(1)1165/04-05(04)  | — “Summary of issues of concern on individual clauses of the Bill (Position as at 29 March 2005)” prepared by the Legislative Council Secretariat |
| LC Paper No. CB(1)1281/04-05(03)  | — Administration’s response to the submission dated 1 April 2005 from the Hong Kong Institute of Certified Public Accountants                     |

LC Paper No. CB(1)1564/04-05(02) — Paper provided by the Administration on “Mark-up version of provisions in the Bankruptcy (Amendment) Bill 2004 to which the Administration intends to propose amendments (as at 17 May 2005)”

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

Follow-up actions to be taken by the Administration

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

- (a) Tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs)

The Administration undertook to present to the Bills Committee at the next meeting on 26 May 2005 its detailed proposals for setting out in subsidiary legislation the basic qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases.

- (b) Clause 11 – proposed section 37(1) of the Bankruptcy Ordinance (BO)

The Administration undertook to report to the Bills Committee at the next meeting on 26 May 2005 its responses to the concerns expressed by members and deputations about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment and other suggestions and views relating to the proposed section 37(1) of BO as set out in item 3 of LC Paper No. CB(1)1564/04-05(01).

- (c) Clause 24 – proposed subsections (1) and (1A) of section 80 of BO

The Administration undertook to consider the Legal Adviser to the Bills Committee’s suggestion of adding the word “term” before “provisional trustee” and “trustee” in the draft proposed Committee Stage amendments to the proposed subsections (1) and (1A) of section 80 respectively (pages 8 and 9 of LC Paper CB(1)1564/04-05(02)).

- (d) Clause 28 – proposed new section 86A of BO

The Administration undertook to consider a member’s suggestion of deleting the words “操守” in the Chinese text of the proposed new section 86A to achieve consistency with the word “conduct” in the English text.

*(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(1)1624/04-05(02) on 24 May 2005.)*

Date of next two meetings

3. The Chairman reminded members that the next two meetings would be held on 26 May and 3 June 2005.

**II. Any other business**

4. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 1  
Legislative Council Secretariat  
25 July 2005

**Proceedings of the ninth meeting of the  
Bills Committee on Bankruptcy (Amendment) Bill 2004  
on Friday, 20 May 2005, at 3:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000212	Chairman Administration	<p><u>Matters arising from the eighth meeting on 10 May 2005</u> (LC Paper Nos. CB(1)1564/04-05(01) and (02))</p> <p>Administration's undertaking to take the following actions:</p> <p>(a) To present to the Bills Committee at the next meeting on 26 May 2005 its detailed proposals for setting out in subsidiary legislation the basic qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases</p> <p>(b) To report to the Bills Committee at the next meeting on 26 May 2005 its responses to the concerns expressed by members and deputations about the proposed arrangement to accord the remuneration and necessary disbursements of PIPs almost the lowest priority for payment and other suggestions and views relating to the proposed section 37(1) of the Bankruptcy Ordinance (BO) as</p>	Administration to take action under paragraph 2(a) and 2(b) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		set out in item 3 of LC Paper No. CB(1)1564/04-05(01)	
000213-000756	Chairman Administration Assistant Legal Adviser 6 (ALA6)	<p><u>Clause 5</u></p> <p>(a) Briefing by the Administration on the revised draft proposed Committee Stage amendment (CSA) to the proposed section 15(4)(b) of BO</p> <p>(b) Clarification on the effect of the revised draft proposed CSA</p> <p>(c) Members' agreement with the revised draft proposed CSA</p> <p><u>Clause 17</u></p> <p>(a) Briefing by the Administration on the draft proposed CSA to add a new paragraph (aa) to section 60(1) of BO</p> <p>(b) Members' agreement with the draft proposed CSA</p>	
000757-001254	Chairman Administration	<p><u>Clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(3)42/04-05, CB(1)137/04-05(01), CB(1)1165/04-05(04), CB(1)1281/04-05(03) and CB(1)1564/04-05(02))</p> <p><u>Clauses 22 and 23</u></p> <p>(a) Briefing by the Administration on the clauses</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Briefing by the Administration on its written responses to the comments made by Grant Thornton (GT) and the Hong Kong Institute of Certified Public Accountants (HKICPA) on clause 23 (LC Paper No. CB(1)1165/04-05(04))</p>	
001255-001816	Chairman Administration ALA6	<p><u>Clause 24</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Briefing by the Administration on the draft proposed CSAs to the proposed subsections (1) and (1A) of section 80 of BO</p> <p>(c) Request for the Administration to consider the Legal Adviser to the Bills Committee's suggestion of adding the word "term before "provisional trustee" and "trustee" in the draft proposed CSAs to the proposed subsections (1) and (1A) of section 80 respectively (pages 8 and 9 of LC Paper CB(1)1564/04-05(02))</p> <p>(d) Briefing by the Administration on its written responses to the comments made by GT (LC Paper No. CB(1)1165/04-05(04))</p>	Administration to take action under paragraph 2(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
001817-002709	Chairman Administration ALA6 Mr Ronny TONG	<u>Clause 25</u>  (a) Briefing by the Administration  (b) Briefing by the Administration on its written responses to the comments made by GT (LC Paper No. CB(1)1165/04-05(04))  (c) Circumstances under which vacancy in office of joint provisional trustees would arise  (d) Administration's advice that:  (i) it was the existing practice of the Official Receiver's Office to make appointment of joint provisional trustees on "joint and several" basis; and  (ii) if one of the joint provisional trustees ceased to be a provisional trustee, the situation would not constitute a vacancy in office of provisional trustee	
002710-002753	Chairman Administration	<u>Clause 26</u>  Briefing by the Administration	
002754-005002	Chairman Administration ALA6	<u>Clause 27</u>  (a) Briefing by the Administration	



Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Briefing by the Administration on its written responses to the comments made by deputations, including the Consumer Council, GT, HKICPA, Joseph SC CHAN &amp; Co, the Association of Chartered Certified Accountants (Hong Kong) (ACCA), the Law Society of Hong Kong, and Yip, Tse &amp; Tang Solicitors (LC Paper Nos. CB(1)1165/04-05(04) and CB(1)1281/04-05(03))</p> <p>(c) Concerns about the lack of sanction for contravention of the proposed new section 85A(4) of BO by trustees, and the drafting of the subsection</p> <p>(d) Administration's advice that:</p> <p>(i) there were adequate safeguards against a trustee's misconduct, including power of the court to remove the trustee from office and disallow his remuneration, and if the misconduct involved criminal offences, prosecution might be initiated; and</p> <p>(ii) the proposed new section 85A followed the relevant provisions in the existing section 85</p>	

Time marker	Speaker	Subject(s)	Action Required
005003-010544	Chairman Administration Mr Ronny TONG	<u>Clause 28</u>  (a) Briefing by the Administration  (b) Briefing by the Administration on the draft proposed CSA to the proposed new section 86A of BO  (c) Administration's undertaking to consider a member's suggestion of deleting the words “操守” in the Chinese text of the proposed new section 86A to achieve consistency with the word “conduct” in the English text.  (d) Briefing by the Administration on its written responses to the comments made by GT, HKICPA and ACCA (LC Paper Nos. CB(1)1165/04-05(04) and CB(1)1281/04-05(03))	Administration to take action under paragraph 2(d) of the minutes
010545-010629	Chairman Administration	<u>Clause 29</u>  Briefing by the Administration	
010630-010932	Chairman Administration	<u>Clause 30</u>  (a) Briefing by the Administration  (b) Briefing by the Administration on its written response to the comments made by HKICPA (LC Paper Nos. CB(1)1165/04-05(04) and CB(1)1281/04-05(03))	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
010933-011008	Chairman Administration	<u>Clause 31</u>  Briefing by the Administration	
011009-011222	Chairman Administration	<u>Clause 32</u>  (a) Briefing by the Administration  (b) Briefing by the Administration on its written responses to the comments made by ACCA (LC Paper No. CB(1)1165/04-05(04))	
011223-011407	Chairman Administration	<u>Clauses 33 and 34</u>  Briefing by the Administration	
011408-011634	Chairman Clerk Administration	Date of next two meetings	