

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2131/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/04

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

**Minutes of the eleventh meeting held on  
Thursday, 9 June 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  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Ronny TONG Ka-wah, SC  
Hon KWONG Chi-kin
- Members absent** : Dr Hon LUI Ming-wah, JP  
Hon CHAN Kam-lam, JP  
Hon LI Kwok-ying, MH
- 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)

Ms May LEE  
Acting 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. Meeting with the Administration**
- (LC Paper No. CB(1)1689/04-05(01) — “Follow-up to the tenth meeting on 26 May 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1689/04-05(02) — Paper provided by the Administration on “Responses to list of follow-up actions for the tenth meeting on 26 May 2005”
- LC Paper No. CB(1)1624/04-05(02) — Paper provided by the Administration on “Responses to list of follow-up actions for the eighth and ninth meetings on 10 and 20 May 2005”
- 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)1743/04-05(01) — Marked-up copy of the English text of Clauses 3 and 11 of the Bill showing the Administration’s draft proposed Committee Stage amendments (As at 7 June 2005)
- LC Paper No. CB(1)1743/04-05(02) — Marked-up copy of the Chinese text of the Bill showing the draft proposed Committee Stage amendments provided by the Administration (As at 7 June 2005)
- LC Paper No. CB(1)1743/04-05(03) — Draft Committee Stage amendments proposed by the Administration)

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

Follow-up actions to be taken by the Administration

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

- (a) Section 85A(3) of the Bankruptcy Ordinance (BO)  
To address members’ concern that the proposed formulation “acts without remuneration” in section 85A(3) of BO was unclear and might be subject to different interpretation by the court (page 2 of Annex 1 to LC Paper No. CB(1)1689/04-05(02)), the Administration undertook to consider members’ suggestion of replacing the proposed formulation by “has not received any remuneration”.
- (b) Chinese text of the draft proposed Committee Stage amendment (CSA) to section 37(1)(a) of BO  
In response to comments by the Legal Adviser to the Bills Committee, the Administration undertook to add “,並” after “《破產(費用及百分率)令》(第 6 章, 附屬法例 C)訂明的” in the Chinese text of the draft proposed CSA to section 37(1)(a) (page 3 of LC Paper No.

CB(1)1743/04-05(02)).

(c) Finalized draft proposed CSAs to the Bill

The Administration undertook to provide the following papers by 12:00 noon of 10 June 2005 for circulation to members and the Legal Adviser to the Bills Committee -

- (i) Bilingual version of a marked-up copy of the Bill showing the finalized draft CSAs proposed by the Administration (with highlight on updated changes); and
- (ii) Bilingual version of a full set of the finalized draft CSAs proposed by the Administration.

(d) Second Reading debate on the Bill

The Administration was requested to highlight the following points in the speech to be delivered by the Secretary for Financial Services and the Treasury when the Second Reading debate on the Bill was resumed:

- (i) It was the Administration's policy intent that the "reasonable conditions" which the Official Receiver might impose on a person for appointment as a provisional trustee were those conditions to be set out in the tender document for outsourcing summary bankruptcy cases, including the detailed qualification criteria that the person should have a certain number of years of post-qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work;
- (ii) The Administration undertook that it would strengthen monitoring of the work of private-sector insolvency practitioners (PIPs) in handling outsourced summary bankruptcy cases, and conduct a fixed percentage of random audit on the outsourced cases (The Administration was requested to specify the percentage);
- (iii) The Administration undertook that it would be specified in the outsourced contract that PIPs, in handling outsourced summary bankruptcy cases, were required to observe the statutory and non-statutory requirements, including the requirements that they should avoid conflict of interests with, and should not accept advantages from, the bankrupt; and
- (iv) The Administration undertook that it would review the scheme for outsourcing summary bankruptcy cases after implementation of the scheme (The Administration was requested to specify when the review would be conducted) and report the outcome of the review to the Legislative Council.

Next step

3. The Bills Committee completed scrutiny of the Bill. Members agreed that subject to the finalized draft CSAs being in order, the Bills Committee would support the Administration's proposal that the Second Reading debate on the Bill be resumed at the Council meeting on 6 July 2005. Members and the Administration noted the following dates:

<u>Date</u>	<u>Action</u>
14 June 2005	The Administration to issue a consultation letter to the Chairman of the House Committee on the proposal of resuming the Second Reading debate on the Bill on 6 July 2005
16 June 2005	The Clerk to issue the report of the Bills Committee to Members
17 June 2005	The Chairman to present the report of the Bills Committee to the House Committee
20 June 2005	Deadline for giving notice of resumption of the Second Reading debate on the Bill on 6 July 2005
25 June 2005	Deadline for giving notice of CSAs

4. Responding to the Chairman's enquiry, no member indicated that he/she would propose CSAs to the Bill.

**II. Any other business**

5. There being no other business, the meeting ended at 9:50 am.

**Proceedings of the eleventh meeting of the  
Bills Committee on Bankruptcy (Amendment) Bill 2004  
on Thursday, 9 June 2005, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-001050	Chairman Administration	<p><u>Matters arising from the meeting on 26 May 2005</u></p> <p><u>Basic qualification criteria for appointment as provisional trustees for outsourced bankruptcy cases</u></p> <p>Administration's undertaking to state in the Secretary for Financial Services and the Treasury (SFST)'s speech resuming the Second Reading Debate on the Bill the policy intent that the "reasonable conditions" referred to in the proposed new Schedule 3 to the Bankruptcy Ordinance (BO), which the Official Receiver (OR) might impose on a person for appointment as provisional trustees, were those conditions to be set out in the tender document for outsourcing summary bankruptcy cases (Paragraph 1 of LC Paper No. CB(1)1689/04-05(02))</p> <p><u>Long title and clause 11 - proposed section 37(1) of BO</u> (Paragraphs 2 to 8 of and Annex 1 to LC Paper No. CB(1)1689/04-05(02))</p>	Administration to take action under paragraph 2(d)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Briefing by the Administration on its proposal to amend the proposed section 85A(3) of BO:</p> <ul style="list-style-type: none"> <li>(i) to address the concern about the risk of the private-sector insolvency practitioner (PIP) having to pay their disbursements out of their own pockets; and</li> <li>(ii) to respond to members' suggestion of elevating the priority of payment of the necessary disbursements, costs and remuneration of PIPs (items under the proposed section 37(1)(f) to (h)) for summary bankruptcy cases</li> </ul> <p>(b) Administration's advice that:</p> <ul style="list-style-type: none"> <li>(i) with the proposed amendment to section 85A(3), in an outsourced bankruptcy case where PIP act without remuneration, the concerned PIP or the OR might apply to the court and the court might approve the necessary disbursements incurred by PIP in the course of the administration of the estate to be paid out of the bankrupt's estate;</li> </ul>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) the order of priority set out in section 37(1) would be subject to any court order in this regard;</p> <p>(iii) where the OR act as the applicant, it was unlikely that PIP would need to incur any additional costs, and the OR would take into consideration the relevant circumstances of a case in determining whether or not to act as the applicant; and</p> <p>(iv) the proposed amendment to section 85A(3) of BO would not necessitate an amendment to the long title of the Bill</p>	
001051-004452	<p>Mr Albert HO Chairman Administration Mr Ronny TONG Ms Miriam LAU Assistant Legal Adviser 6 (ALA6) Ms Audrey EU</p>	<p><u>The proposed formulation “acts without remuneration” in section 85A(3) of BO</u></p> <p>(a) Members’ concern that the proposed formulation “acts without remuneration” was unclear and might be subject to different interpretation by the court</p> <p>(b) Whether it was necessary to provide a definition of “acts without remuneration” in the provision</p> <p>(c) Whether the court order made under the amended section</p>	



Time marker	Speaker	Subject(s)	Action Required
		<p>85A(3) would override the priority in section 37(1) of BO</p> <p>(d) Administration’s advice that:</p> <p>(i) the proposed formulation “acts without remuneration” was a question of fact;</p> <p>(ii) the proposed section 85A(3) would apply to an exceptional situation where the bankrupt’s estate was exhausted after payment for items including PIP’s necessary disbursements under section 37(1)(f) and PIP’s costs under section 37(1)(g), hence leaving no remuneration for the PIP; and</p> <p>(iii) it was already provided in section 37(1) that the priority of payment as set out in the section was subject to any order of the court</p> <p>(e) Administration’s undertaking to consider members’ suggestion of replacing the proposed formulation “acts without remuneration” in section 85A(3) by “has not received any remuneration”</p> <p>(f) Whether it was necessary to amend the long title of the Bill</p>	<p>Administration to take action under paragraph 2(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
004453-005545	Ms Audrey EU Administration Mr Ronny TONG Chairman	<p><u>The need for providing criteria for the court in making decisions on payments upon application made under the proposed section 85A(3)</u></p> <p>Administration's advice that the existing legislation did not provide any criteria for consideration by the court in making orders in relation to administration of bankruptcy or liquidation cases</p>	
005546-010028	Chairman Administration	<p><u>Monitoring of PIP's work</u> (Paragraph 9 of LC Paper No. CB(1)1689/04-05(02))</p> <p>Administration's undertaking to strike a proper balance between the need to ensure the quality of PIP's work and to avoid creating undue burden on PIPs</p>	
010029-010552	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)1743/04-05(01), CB(1)1743/04-05(02) and CB(1)1743/04-05(03))</p> <p><u>Clause 11- proposed section 37(1) of BO</u></p> <p>(a) Briefing by the Administration on the draft proposed Committee Stage amendment (CSA) to subsection (1)(a) of section 37 (Page 2 of LC Paper No. CB(1)1743/04-05(01))</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Members' agreement with the draft proposed CSA</p> <p><u>CSAs to clause 3(b)</u></p> <p>(a) Briefing by the Administration on the revised draft proposed CSA to clause 3(b) (Paragraphs 2(a) and (c) of LC Paper No. CB(1)1743/04-05(03)), and LC Paper No. CB(1)1743/04-05(01))</p> <p>(b) Members' agreement with the revised draft proposed CSA</p>	
010553-011014	Chairman ALA6 Administration	<p><u>Chinese text of the Bill and the draft proposed CSAs</u> (LC Paper Nos. CB(3)42/04-05, CB(1)137/04-05(01) and CB(1)1743/04-05(02))</p> <p>(a) Briefing by the Administration on the Chinese text of clauses 1 to 48, Schedule and the draft proposed CSAs</p> <p>(b) Members' agreement with the draft proposed CSAs</p> <p><u>Chinese text of the draft proposed CSA to 37(1)(a) of BO</u> (Page 3 of LC Paper No. CB(1)1743/04-05(02))</p> <p>(a) In response to comments by the Legal Adviser to the Bills Committee, the Administration undertook to add “,並” after</p>	Administration to take action under paragraph 2(b) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>“《破產(費用及百分率)令》(第6章, 附屬法例C)訂明的” in the Chinese text of the draft proposed CSA to section 37(1)(a)</p>	
011015-011930	Chairman Administration	<p><u>Finalized draft proposed CSAs to the Bill</u></p> <p>(a) The Administration undertook to provide the following papers by 12:00 noon of 10 June 2005 for circulation to members and the Legal Adviser to the Bills Committee:</p> <p>(i) Bilingual version of a marked-up copy of the Bill showing the finalized draft CSAs proposed by the Administration (with highlight on updated changes); and</p> <p>(ii) Bilingual version of a full set of the finalized draft CSAs proposed by the Administration.</p> <p><u>Resumption of the Second Reading debate on the Bill on 6 July 2005</u></p>	Administration to take action under paragraph 2(c) of the minutes
011931-012200	Mr Albert HO Administration Chairman	<p>Request for the Administration to highlight the following points in the speech to be delivered by SFST when the Second Reading debate on the Bill was resumed:</p> <p>(a) It was the Administration's policy intent that the</p>	Administration to take action under paragraph 2(d) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>“reasonable conditions” which the OR might impose on a person for appointment as a provisional trustee were those conditions to be set out in the tender document for outsourcing summary bankruptcy cases, including the detailed qualification criteria that the person should have a certain number of years of post-qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work;</p> <p>(b) The Administration undertook that it would strengthen monitoring of the work of PIPs in handling outsourced summary bankruptcy cases, and conduct a fixed percentage of random audit on the outsourced cases (the Administration was requested to specify the percentage);</p> <p>(c) The Administration undertook that it would be specified in the outsourced contract that PIPs, in handling outsourced summary bankruptcy cases, were required to observe the statutory and non-statutory requirements, including the requirements that they should avoid conflict of interests with, and should not accept advantages from, the bankrupt; and</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(d) The Administration undertook that it would review the scheme for outsourcing summary bankruptcy cases after implementation of the scheme (the Administration was requested to specify when the review would be conducted) and report the outcome of the review to the Legislative Council	

Council Business Division 1  
Legislative Council Secretariat  
25 July 2005