

**立法會**  
**Legislative Council**

LC Paper No. CB(1)652/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/2/04

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

**Minutes of the second meeting held on  
Wednesday, 15 December 2004, at 8:30 am  
in the Chamber 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  
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

**Attendance by invitation** : Yip, Tse & Tang Solicitors

Mr Thomas TSE  
Partner

Grant Thornton

Mr Alan C W TANG  
Partner

Hong Kong Institute of Certified Public Accountants

Mr Stephen BRISCOE  
Representative of HKICPA's Insolvency Practitioners  
Committee

Mr Peter TISMAN  
Technical Director (Business Members & Specialist Practices)

**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)337/04-05

— Minutes of first meeting held on 3 November 2004)

The minutes of the meeting held on 3 November 2004 were confirmed.

**II. Meeting with deputations and the Administration**

(LC Paper No. CB(1)436/04-05(01)

— Submission from Yip, Tse & Tang Solicitors

LC Paper No. CB(1)436/04-05(02)

— Submission from Grant Thornton

LC Paper No. CB(1)456/04-05(01)

— Submission from the Hong Kong Institute of Certified Public Accountants

LC Paper No. CB(1)436/04-05(03)

— Submission from the Chinese General Chamber of Commerce

LC Paper No. CB(1)436/04-05(04)

— Submission from the Consumer Council

LC Paper No. CB(1)436/04-05(05)

— Submission from the Hong Kong Monetary Authority

LC Paper No. CB(1)436/04-05(06)

— Submission from the Hong Kong Association of Banks

LC Paper No. CB(1)436/04-05(07)

— Submission from the Law Society of Hong Kong

LC Paper No. CB(1)436/04-05(08)

— Submission from the Standing Committee on Company Law Reform

LC Paper No. CB(1)436/04-05(09)

— Submission from Joseph S C Chan & Co

LC Paper No. CB(1)436/04-05(10)

— Submission from the Hong Kong Institute of Company Secretaries

LC Paper No. CB(1)436/04-05(11)

— Submission from the

Association of Chartered Certified Accountants (Hong Kong)

- LC Paper No. CB(1)436/04-05(12) — Submission from the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies
- LC Paper No. CB(1)436/04-05(13) — Submission from the British Chamber of Commerce in Hong Kong
- LC Paper No. CB(1)436/04-05(14) — Submission from Kenny Tam & Co
- LC Paper No. CB(1)436/04-05(15) — Submission from the Society of Chinese Accountants and Auditors
- LC Paper No. CB(1)440/04-05(01) — Summary of submissions (Position as at 14 December 2004)
- LC Paper No. CB(1)436/04-05(16) — Paper provided by the Administration on “Summary of Administration’s response on comments received”
- 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”)

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

*(Post-meeting note:* The Administration’s response to the written submission from the Hong Kong Institute of Certified Public Accountants was tabled at the meeting and issued to members vide LC Paper No. CB(1)523/04-05 on

15 December 2004.)

Follow-up actions to be taken by the Administration

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

- (a) To address members' concern about the cost-effectiveness of the Administration's proposal of outsourcing summary bankruptcy cases to the private-sector insolvency practitioners (PIPs), the Administration was requested to provide a written response to the following points –
  - (i) A mechanism should be set up to check and maintain the costs for handling the outsourced summary bankruptcy cases at a reasonable level so that the bankrupts' small estates would not be eaten up by the costs;
  - (ii) In connection with item (i) above, consideration should be given by the Administration to work out a scale of costs with the private sector; and
  - (iii) According to the verbal reply given by the Administration at the meeting, the Official Receiver's Office (ORO) would normally deduct a sum between \$2,000 and \$3,000 from the debtor deposit of \$8,650. What were the purposes for which the deducted sum was used?
  
- (b) To address the concern of members and deputations about the quality of service provided by PIPs in the handling of summary bankruptcy cases, the Administration was requested to consider the following views or suggestions expressed at the meeting and provide a written response:
  - (i) Whether it was appropriate to outsource summary bankruptcy cases to company secretaries;
  - (ii) To set out in the legislation the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases;
  - (iii) To establish a panel of PIPs qualified for appointment as provisional trustees or trustees for summary bankruptcy cases;
  - (iv) To set a reasonable level of remuneration (such as a fixed level of remuneration) for provisional trustees or trustees so as to encourage competent PIPs to participate in the outsourced summary bankruptcy cases; and
  - (v) To introduce contingency fees for provisional trustees or trustees so as to provide incentives for PIPs to recover assets of the bankrupt's estate.
  
- (c) On the monitoring of the performance of PIPs in handling the outsourced

bankruptcy cases, the Administration was requested to provide the following information:

- (i) Measures to be taken by ORO for monitoring the performance of PIPs, including the measures for ensuring that the PIPs had complied with the requirements set out in the outsourced contracts, and the measures for dealing with a situation where a PIP sat on the outsourced bankruptcy case;
- (ii) Power of ORO, if any, and the mechanism involved, for removing a PIP from the office of trustee due to his unsatisfactory performance; and
- (iii) Follow-up actions to be taken by ORO in handling the outsourced bankruptcy case after the removal of the PIP from the office of trustee.

#### Invitation for submissions

4. Members noted that the Law Society considered the proposed amendments not controversial and therefore had not provided any comments on the Bill. Given that the outsourcing proposal enshrined in the Bill would have impact on legal professionals in the handling of bankruptcy cases, members directed the Clerk to invite the Law Society again, in particular its Insolvency Law Committee, to give views on the Bill. Members also decided that the Hong Kong Bar Association should be invited to give views on the Bill.

*(Post-meeting note: Invitation letters were issued to the Law Society and Bar Association on 16 December 2004.)*

#### Date of next meeting

5. The Bills Committee agreed that the next meeting be held on Wednesday, 12 January 2005, at 10:45 am.

*(Post-meeting note: The meeting was subsequently rescheduled to be held on Tuesday, 11 January 2005, at 10:45 am.)*

**III. Any other business**

6. There being no other business, the meeting ended at 10:40 am.

Council Business Division 1  
Legislative Council Secretariat  
7 January 2005

**Proceedings of the second meeting of the  
Bills Committee on Bankruptcy (Amendment) Bill 2004  
on Wednesday, 15 December 2004, at 8:30 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000409	Chairman	(a) Confirmation of minutes of meeting on 3 November 2004  (b) Welcoming and introductory remarks	
000410-000652	Yip, Tse & Tang Solicitors (YTT)	Presentation of views (LC Paper No. CB(1)436/04-05(01))  (a) Expressed support for the Bill in principle  (b) Two major concerns -  (i) Whether the private-sector insolvency practitioners (PIPs) had adequate experience and expertise in handling bankruptcy cases; and  (ii) How the proposed tendering scheme to outsource summary bankruptcy cases to PIPs could ensure the quality of service provided by PIPs	

Time marker	Speaker	Subject(s)	Action Required
000653-001032	Grant Thornton (GT)	<p>Presentation of views (LC Paper No. CB(1)436/04-05(02))</p> <p>(a) Expressed support for the Bill in principle</p> <p>(b) Two major concerns-</p> <p>(i) PIPs would have little incentive to take up bankruptcy cases given the low priority accorded to the costs and charges by PIPs under the proposed section 37 of the Bankruptcy Ordinance (BO); and</p> <p>(ii) PIPs would be reluctant to carry out investigation to recover assets of the bankrupts' estates given that the bankrupts' estates of summary bankruptcy cases were often limited</p>	
001033-001535	Hong Kong Institute of Certified Public Accountants (HKICPA)	<p>Presentation of views (LC Paper No. CB(1)456/04-05(01))</p> <p>(a) Expressed support for the Bill in general</p> <p>(b) Four major concerns/suggestions:</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(i) The proposed section 37 of BO would give little incentive for PIPs to participate in the proposed tendering scheme to outsource summary bankruptcy cases;</p> <p>(ii) The proposed tendering scheme should include mechanisms for ensuring the appointment of qualified and experienced PIPs as provisional trustees or trustees, and for proper monitoring of the performance of PIPs;</p> <p>(iii) The Official Receiver (OR) should give reasons to support his view that the value of the property of the bankrupt was unlikely to exceed \$200,000, and confirm to the court that reasonable enquiries had been made in this regard before appointing a PIP as provisional trustee in his place; and</p> <p>(iv) It was timely to undertake review on the provisions in BO</p>	

Time marker	Speaker	Subject(s)	Action Required
		dealing with unfair preferences (e.g. sections 50 and 51 of BO)	
001536-003647	Chairman Administration	<p>Administration's responses to submissions by deputations (LC Paper Nos. CB(1)436/04-05(16) and (18); CB(1)523/04-05)</p> <p><u>Profile of the bankrupts and participation of PIPs in bankruptcy cases</u></p> <p>Administration's advice that -</p> <p>(a) About 94% of the bankruptcy cases filed in 2003 were summary cases where the bankrupts had very limited assets and income</p> <p>(b) It had been a common practice for over three years that PIPs were appointed as trustees at the creditors' meetings to handle bankruptcy cases</p> <p>(c) The Administration's intention was to outsource the debtor-petition summary bankruptcy cases to PIPs through open tender</p> <p>(d) The cases would be allocated in batches so that PIPs could achieve</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>economies of scale</p> <p>(e) The Administration's proposal was to make use of part of the debtor's deposit of \$8,650 to pay for the fees of PIPs</p> <p><u>Monitoring of the performance of PIPs</u></p> <p>(a) Administration's advice that PIPs as fiduciaries and officers of the court should undertake duties and obligations in handling bankruptcy cases in accordance with BO</p> <p>(b) The work specifications of the PIPs would be specified in the contract between ORO and the appointed PIPs to ensure satisfactory performance of PIPs</p> <p>(c) Statutory and non-statutory means were available to ensure the proper exercising of powers by PIPs in handling outsourced summary bankruptcy cases</p> <p>(d) ORO would handle enquiries and complaints against PIPs after the implementation of the outsourcing scheme</p>	

Time marker	Speaker	Subject(s)	Action Required
003648-010010	Mr Albert HO Administration Chairman	<p><u>Monitoring of the performance of PIPs</u></p> <p>(a) Members’ concern about the discretion for PIPs in handling summary bankruptcy cases, for instance, in determining the “reasonable and domestic needs” of the bankrupt and his family</p> <p>(b) Whether the Official Receiver’s Office (ORO) could make available its internal guidelines for the interpretation of “reasonable and domestic needs” of the bankrupt and his family to PIPs to assist the latter in carrying out their duty</p> <p>(c) Administration’s advice that PIPs were qualified and experienced professionals in handling bankruptcy cases</p> <p>(d) Administration’s emphasis that PIPs had no power to require the bankrupt to make financial contribution to the bankrupt’s estate as only the court, at the request of the PIPs, could do so under section 43E of BO</p> <p>(e) Administration’s advice that ORO would arrange</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>briefings for appointed PIPs and provide them with the forms and guidelines facilitating their work in considering the financial contributions to be made by the bankrupt</p> <p><u>Cost-effectiveness of the proposed tendering scheme to outsource summary bankruptcy cases</u></p> <p>(a) Member's concern about the difficulty for PIPs to perform their duties with very limited assets in the bankrupt's estates</p> <p>(b) Administration's advice that past experience had shown that in practice, there was no need to resort to the arrangements provided under BO for investigation relating to the recovery of assets of the bankrupts' estates in summary bankruptcy cases</p> <p>(c) Administration's advice that a PIP could approach creditors for funds in the event that he wished to initiate actions aiming at realizing additional assets of the bankrupt's estate</p>	

Time marker	Speaker	Subject(s)	Action Required
010011-011842	YTT Mr Ronny TONG Chairman HKICPA GT	<p data-bbox="746 360 1193 472"><u>Quality of service provided by PIPs in handling outsourced bankruptcy cases</u></p> <p data-bbox="746 517 1193 786">(a) Concern about the appropriateness to allow company secretaries to be appointed as provisional trustees or trustees for handling summary bankruptcy cases</p> <p data-bbox="746 831 1193 1099">(b) Concern about the quality of service provided by PIPs under the proposed tendering scheme given the expected low tender prices for bidding the concerned contracts</p> <p data-bbox="746 1144 1193 1178">(c) Suggestions for ORO -</p> <p data-bbox="810 1223 1193 1491">(i) To set out in the legislation the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases;</p> <p data-bbox="810 1536 1193 1760">(ii) To establish a panel of PIPs qualified for appointment as provisional trustees or trustees for summary bankruptcy cases;</p> <p data-bbox="810 1805 1193 1951">(iii) To set up a mechanism for checking and maintaining the costs for handling the</p>	<p data-bbox="1217 517 1503 707">Administration to consider the view under paragraph 3(b)(i) of the minutes</p> <p data-bbox="1217 1223 1503 1491">Administration to consider the suggestions under paragraph 3(a)(i), (a)(ii), (b)(i) and (b)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		outsourced cases at a reasonable level so that the bankrupts' small estates would not be eaten up by the costs, and to work out a scale of costs with the private sector	
011843-012822	Administration Mr Ronny TONG	<p>(a) The rationale for the ORO to outsource summary bankruptcy cases to PIPs</p> <p>(b) Measures for monitoring the performance of appointed PIPs</p>	
012823-014854	Ms Miriam LAU Administration Chairman	<p>(a) The purposes for ORO in deducting a sum of about \$2,000 to \$3,000 from the deposit</p> <p>(b) Member's concern about the negative impact of PIPs' price-cutting strategy for bidding tenders of outsourced summary bankruptcy cases on the quality of service provided by PIP</p> <p>(c) Member's suggestion for ORO to set a reasonable level of remuneration for provisional trustees or trustees so as to encourage competent PIPs to participate in the outsourced summary bankruptcy cases</p>	<p>Administration to provide the information under paragraph 3(a)(iii) of the minutes</p> <p>Administration to consider the suggestion under paragraph 3(b)(iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
014855-015718	Ms Audrey EU Administration Chairman	Feasibility of introducing contingency fees for provisional trustees or trustees so as to provide incentives for PIPs to recover assets of the bankrupt's estate	Administration to consider the suggestion under paragraph 3(b)(v) of the minutes
015719-015859	Ms Audrey EU Chairman Administration	<p><u>Monitoring the performance of PIPs</u></p> <p>(a) Measures to be taken by ORO for monitoring PIPs' performance</p> <p>(b) Power of ORO and the mechanism involved for removing a PIP from the office of trustee due to his unsatisfactory performance</p> <p>(c) Follow-up action to be taken by ORO in handling the outsourced bankruptcy cases after the removal of the PIP from the office of trustee</p>	<p>Administration to provide the information under paragraph 3(c)(i) of the minutes</p> <p>Administration to provide the information under paragraph 3(c)(ii) of the minutes</p> <p>Administration to provide the information under paragraph 3(c)(iii) of the minutes</p>
015900-015944	Mr KWONG Chi-kin	Different purposes for which the debtors' deposit might be used	
015945-020159	Mr Ronny TONG Administration Chairman	Invitation of views on the Bill from Hong Kong Bar Association and The Law Society of Hong Kong, in particular its Insolvency Law Committee	The Clerk to the Bills Committee to write to the concerned organizations

Council Business Division 1  
Legislative Council Secretariat  
7 January 2005