

**Bills Committee on Bankruptcy (Amendment) Bill 2004  
Second meeting on 15 December 2004**

**List of follow-up actions to be taken by the Administration**

1. *The cost-effectiveness of the Administration's proposal of outsourcing summary bankruptcy cases to the private-sector insolvency practitioners (PIPs)*
  - (a) *Whether 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*

As mentioned in our paper issued to the Bills Committee on 8 December 2004, in the great majority of bankruptcy cases, the bankrupts have very limited assets and income, or no asset and no income at all. Given the profile of the bankrupts, the risk of abuses such as charging costs at a unreasonable level by PIPs would be very remote in practice.

In any case, there are already adequate monitoring and supervisory provisions to ensure that the PIPs shall incur costs and charges in a reasonable manner.

- (i) The PIPs shall act in a fiduciary capacity and deal with the property under their control honestly, and in good faith with proper skill and competence in a reasonable manner under section 84 of the Bankruptcy Ordinance (BO). In the event of any complaint being made by a creditor, the Official Receiver's Office (ORO), the bankrupt or any other person, the court shall inquire into the matter and take such action as may be deemed expedient.
- (ii) The PIPs are required to keep the account of the receipts and payments under proposed section 93(1) (as proposed to be amended by Clause 34 of the Bill) of the BO. The ORO may at any time require the PIPs to provide him with the accounts under proposed section 93(1A) as part of the monitoring mechanism.

(iii) The creditors, with the concurrence of  $\frac{1}{4}$  of the creditors, may require the PIPs to provide the statement of accounts upon payment of the costs under section 88 of the BO. The creditors (usually banks or finance companies in the case of summary bankruptcy cases) are thus able to keep a check on the receipts and payments of the PIPs for the bankrupt's estate.

(b) *In connection with item (a) above, whether consideration should be given to work out a scale of costs with the private sector*

Given that summary bankruptcy cases are relatively "straight-forward" in nature<sup>1</sup>, and in order to keep the tendering arrangements simple and easier to administer, the merit for setting out a scale of fees is not apparent. Our current plan is that tenders from PIPs should be on the basis of a lump sum bid per case. This is considered appropriate given the profile and nature of summary cases intended to be outsourced. Further details of the proposed tender arrangements are set out in Annex A.

(c) *The ORO would normally deduct a sum between \$2,000 and \$3,000 from the debtor deposit of \$8,650. How would the deducted sum be used*

A note on the use of the debtor-deposit and related matters is at Annex B.

2. *The quality of service provided by PIPs in the handling of summary bankruptcy cases*

(a) *Whether it is appropriate to outsource summary bankruptcy cases to company secretaries*

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<sup>1</sup> In the great majority of bankruptcy cases, the bankrupts would have very limited assets and income, or no asset and no income at all. For example, in 2003, 94% of the bankruptcy cases were summary cases, i.e. assets not likely to exceed \$200,000. Moreover, out of 17,390 bankruptcy cases in the period from April 2003 to March 2004, over 80% of the bankrupts had reported a monthly income of not exceeding \$10,000, including some 43% or 7,457 cases of having no income. Given the profile of the bankrupts, experience shows that a number of the arrangements under the BO had not been resorted to in practice in summary cases. These include investigation procedures that require substantial funds or the distribution of dividends.

At present, persons who have passed the relevant parts of the Hong Kong Institute of Company Secretaries Examinations are also eligible for applying to be the Insolvency Officers of the ORO. An integral part of the Insolvency Officers' work is to deal with summary bankruptcy cases.

The proposal is to outsource the summary bankruptcy cases to competent professionals with necessary experience in handling insolvency cases. Lawyers, accounts and company secretaries are professionals who may possess the necessary and relevant experience in this regard. The ORO has not received any information indicating that the quality of services provided by company secretaries, vis-à-vis the other two professions, in the administration of insolvency cases is an area of concern.

As such, in the outsourcing of summary liquidation cases, company secretaries, alongside with lawyers and accountants, are eligible to tender. The arrangement has been in place for years. In working out the proposal for outsourcing summary bankruptcy cases, we therefore consider it appropriate to outsource to company secretaries (with the required experience) summary bankruptcy cases, which are generally less complicated than summary liquidation cases.

***(b) Whether the qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases should be set out in the legislation***

We consider it not appropriate for the draft legislation to include a provision to set out such qualification (say restricting the appointment of PIPs to particular professions). The reasons are as follows:

- (i) The wider ramification this would have in relation to the appointment of office holders for all modes of insolvency administration. In addition to summary cases in bankruptcy, there are:
  - Non-summary cases in Bankruptcy;
  - Summary and non-summary compulsory liquidations

- cases under the Companies Ordinance;
- Members and creditors general voluntary liquidation cases under the Companies Ordinance;
  - Individual Voluntary Arrangements in Bankruptcy where practitioners from the Private Sector are already being appointed;
  - Receivers and Managers appointed out of court by the holders of debentures and charges; and
  - Receivers and Managers appointed by the court to oversee the affairs of a company or an individual's estate.

At present, no statutory qualifications are set for appointment of office holders of the above cases. Any proposed setting of minimum professional criteria for office holders would have to be the subject of a wide-ranging study, including consultation not only with the relevant professional bodies but also with other stakeholders, including the various chambers of commerce and the Hong Kong Association of Banks all of whose members would be the primary end users of insolvency services.

- (ii) Having regard to the profile of the summary cases in bankruptcy, we consider it appropriate to set out the necessary qualifying criteria in the tender contract; and
- (iii) The ORO's tendering system for liquidation work has served well in the past and as a consequence we consider that, as a tried and tested model, it should be adapted for the proposed outsourcing of the summary cases in bankruptcy.

(c) ***Whether a panel of PIPs qualified for appointment as provisional trustees or trustees for summary bankruptcy cases should be established***

Only PIPs meeting a number of pre-qualification criteria are able to qualify as a tenderer. The criteria will be similar to those adopted for the current scheme for contracting out of summary

liquidation cases. The PIPs would need to be a member of the specified professional body, and should also have a certain number of years of post qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work. There is no need to establish a panel of PIPs as suggested.

- (d) ***Whether a reasonable level of remuneration (such as a fixed level of remuneration) for provisional trustees or trustees should be set so as to encourage competent PIPs to participate in the outsourced summary bankruptcy cases***

It is proposed that the outsourcing will be by way of open tender. Further details of the proposed tender arrangements are set out in Annex A.

- (e) ***Whether contingency fees for provisional trustees or trustees should be introduced so as to provide incentives for PIPs to recover assets of the bankrupt's estate***

The proposal of whether contingency fees should be charged carries much wider policy implications that are yet to be studied and considered. In any case, given that the great majority of bankrupts have limited assets, we are doubtful whether the proposal of contingency fee would be practicable in terms of implementation.

3. ***On the monitoring of the performance of PIPs in handling the outsourced bankruptcy cases***

- (a) ***Measures to be taken by ORO for monitoring the performance of PIPs, including the measures for ensuring that the PIPs have complied with the requirements set out in the outsourced contracts, and the measures for dealing with a situation where a PIP sits on the outsourced bankruptcy case***

There are statutory and non-statutory measures which may be taken by the ORO for monitoring the performance of PIPs in the administration of the outsourced summary bankruptcy cases. They include –

(i) Statutory measures

- (A) The court shall take cognizance of the conduct of the PIP and in the event of any PIP not faithfully performing his duties and duly observing all the requirements of the BO, the creditors, ORO, the bankrupt or any other person may refer the matter for consideration by the court under section 84 of the BO.
- (B) Under section 89 of the BO, the PIPs are required to provide annual statement of proceedings to the ORO through which the ORO will be able to monitor the progress of the proceedings.
- (C) Under the proposed section 93(1A) of the BO, the ORO may at any time require the PIPs to provide the accounts of the bankrupt's estate. Under the existing section 93(3A), the OR may ensure the accounts to be audited.
- (D) In appropriate cases, the ORO may make application to the court for removal of the trustee under section 96(2) of the BO.

(ii) Non-statutory measures

The contract of appointment will include the work specification of the PIPs. The contract will provide that the PIPs are required to perform with professionally acceptable standards all the duties as may be required of a trustee in bankruptcy under the BO and all the duties as may be imposed on them under the contract of appointment. The PIPs may be required under the contract of appointment to submit a report to the ORO if they do not complete certain work within the specified time frame. The ORO will closely monitor the performance of the PIPs under the terms of the contract and in accordance with the provisions of the BO.

- (iii) In the event of a PIP sitting on an outsourced bankruptcy

case or committing other acts of misconduct, the ORO will conduct investigation into the matter. In an appropriate case, the ORO may terminate the contract of appointment and arrange for other PIPs to take up the unallocated cases. If there are grounds for removal under section 96(2) of the BO, the ORO may apply to court for the removal of the PIP and appointment of another PIP in his place in respect of those cases where the PIP is already appointed as trustee in bankruptcy.

***(b) Power of ORO, if any, and the mechanism involved, for removing a PIP from the office of trustee due to his unsatisfactory performance***

A PIP may be removed by the court, not the ORO, under proposed section 96(2) (as proposed to be amended by Clause 35 of the Bill), on grounds such as the PIP is guilty of misconduct or fails to perform his duties under the BO.

***(c) 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***

In the event that a PIP as trustee in bankruptcy is removed by the court, the court will appoint another PIP in place of the removed trustee under section 96(2) of the BO. The removed PIP must deliver to the new trustee all books and documents and accounts in his possession under Rule 194 of the Bankruptcy Rules. The property of the bankrupt vests automatically in the new trustee under section 58(3) of the BO. If the PIP is removed by the court, then no remuneration should be payable to him under the terms of the contract. This is considered appropriate as the PIP has not fulfilled all his duties under the contract and is in breach of the terms of the contract.

## **Proposed Arrangements for the Outsourcing of Summary Bankruptcy Cases**

### **Introduction**

At the Bills Committee meeting held on 15 December 2004, Members requested the Administration to provide additional information on a number of matters relating to the Bankruptcy (Amendment) Bill 2004 (the Bill). Among other things, Members would like to know more about the proposed arrangements for tendering the summary bankruptcy cases to private-sector insolvency practitioners (PIPs).

2. In general, we believe that the proposed outsourcing should be done through competitive tendering. Competitive tendering, coupled with the adequate “checks and balances” available to monitor the performance of PIPs, will help ensure that the administration of summary bankruptcy cases would be outsourced to *qualified* PIPs with the lowest fee, thereby achieving *maximum* efficiency that will be in the interest of all relevant stakeholders, including the bankrupts, creditors and the ORO.

### **Monitoring of Services**

3. We concur with Members’ view that there is a need to ensure the quality of the administration of bankruptcy cases. The ORO will put in place a range of measures to ensure that only professionals meeting the pre-qualification criteria may be allowed to tender. The criteria will be similar to those adopted for the current scheme for contracting out of summary liquidation cases<sup>1</sup>. The PIPs would need to be a member of the specified professional body – Hong Kong Institute of Certified Public Accountants, Law Society of Hong Kong or Hong Kong Institute of Company Secretaries. They should also have a certain number of years of post qualification experience and a minimum number of professional or chargeable hours in respect of insolvency work, similar to those currently applied in the contracting of summary liquidation cases. Moreover, there will be various statutory, non-statutory and supporting measures to monitor the performance

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<sup>1</sup> For summary liquidation (of company) cases, the current minimum requirements are: (i) 3 years of post-qualification experience; (ii) 300 chargeable hours of relevant insolvency work over last 3 years, with at least 150 hours related to insolvent liquidation/receiverships, and remaining hours may be on solvent liquidation of which the hours would be reduced by 50%; and (iii) having performed a minimum of 4 winding-up cases.

of PIPs after their appointment. Details are set out in paragraphs 20-27 of our paper “Responses to Specific Questions Raised by the Bills Committee”, which was issued to the Bills Committee on 8 December 2004. We would also like to point out that only summary cases would be outsourced and the administration of such cases (compared with say company winding-up) is relatively straight-forward<sup>2</sup>. Thus, the proposed measures are, in our view, sufficient to safeguard the proper administration of cases after outsourcing.

### **Competitive Tender**

4. Having met the pre-qualification requirements, tenders would be assessed primarily on the basis of tender prices, subject to other considerations such as the track record of the tenderers in providing the services. We consider that this is the best way to outsource summary bankruptcy cases because -

- (a) Under this arrangement, PIPs will be given the flexibility to submit bids, taking into account market environment as well as their own business considerations;
- (b) There would also be a high degree of transparency in the process. We do not consider it appropriate for the Government to set any “fixed” level of fee for all PIPs, as there are no comparable benchmarks. Such measure may also carry anti-competition implications;
- (c) More importantly, the efficiency achieved through market competition would result in more assets left for estate of the bankrupt, which would be available for other uses including the possible distribution of dividends to creditors. We consider that outsourcing summary bankruptcy cases to PIPs through competitive tendering would be in the best interests of all relevant stakeholders, including both the bankrupts and creditors.

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<sup>2</sup> In the great majority of bankruptcy cases, the bankrupts would have very limited assets and income, or no asset and no income at all. For example, in 2003, 94% of the bankruptcy cases were summary cases (i.e. assets not likely to exceed \$200,000). Moreover, out of 17,390 bankruptcy cases in the period from April 2003 to March 2004, over 80% of the bankrupts had reported a monthly income of not exceeding \$10,000, including some 43% or 7,457 cases of having no income. Given the profile of the bankrupts, experience shows that a number of the arrangements under the BO had not been resorted to in practice in summary cases. These include investigation procedures that require substantial funds or the distribution of dividends.

5. There has been concern that outsourcing through competitive tender could lead to “cut-throat” competition, which could in turn undermine the quality of the administration of cases. We are of the view that this concern is not grounded. First, it should be reiterated that PIPs are officers of the court and act in a fiduciary capacity (re. section 84 of the BO). They are also subject to monitoring under various statutory, non-statutory and supporting measures, details of which are set out in paragraphs 20 to 27 of our paper “Responses to Specific Questions Raised by the Bills Committee” issued to the Bills Committee on 8 December 2004. In making any bids for the contracts, the PIPs, being professionals governed by their professional code of conduct, are expected and required to make their bids on the basis that they need to discharge their fiduciary duties fully and conscientiously in administering all cases assigned to them. There is no ground to suspect that the professional PIPs would bid at “cut-throat” prices and hence would choose not to fulfill their fiduciary duties as set out in the BO and the contract of appointment with the ORO. Secondly, based on ORO’s experience in outsourcing summary liquidation cases, we do not consider that the proposed arrangements would lead to poor quality. Instead, experience has shown that open tendering arrangements would lead to the provision of quality services and achievement of efficiency.

### **Other Options Considered**

6. In any case, we have carefully considered other options, but would not recommend them for the following reasons.

(a) Setting a fixed fee for PIPs

- (i) We do not believe that introducing a fixed fee (whether on a lump sum or time-cost basis, or as a percentage of say the assets realized<sup>3</sup>) for PIPs can necessarily guarantee the quality of the administration of outsourced bankruptcy cases. The option would however hinder market competition and thus undermine the benefits of outsourcing. It would also be difficult to fix a fee at a “reasonable” level for all PIPs.

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<sup>3</sup> In any case, given that the great majority of the bankrupts have only limited assets, the idea of setting the fee for PIPs as a percentage of the assets realized would not be practicable.

- (ii) As suggested by some Members, we have looked into the outsourcing arrangements under the Legal Aid Scheme (LAS). It is found that there are major differences, which make the LAS not a good model to follow in the case of the proposed outsourcing by the ORO. For example, under the LAS, legal aid cases are of different nature and they are assigned on a case-by-case basis to legal practitioners with due regard to the nature and complexity of the specific cases involved, as well as the required level of experience and expertise of the legal practitioners. On the other hand, summary bankruptcy cases are relatively more “straight-forward” in nature (see footnote 1) and are intended to be outsourced in batches, with a view to enabling the PIPs to achieve economy of scale. Furthermore, under the LAS, the fees payable to the legal practitioners are usually determined by the court’s taxation. In the administration of summary bankruptcy cases, taxation is generally not required.

(b) Setting a minimum fee for PIPs

This option has drawbacks similar to those of option (a) (setting a fixed fee). In a nutshell, having a minimum would hinder competition and cannot guarantee the quality of services, and may not be in the interest of stakeholders such as the creditors.

7. Given the above considerations, we are of the view that the proposed outsourcing should be done through competitive tendering, in order to promote market competition and to ensure that the interests of all relevant stakeholders (including the bankrupts and creditors) would be best protected. It is also relevant to note that the remuneration for PIPs appointed by creditors is subject to negotiation between the two parties. Neither the Bankruptcy Ordinance (BO), nor the relevant professional bodies as far as we are aware, have prescribed any fixed or minimum fee for this purpose.

8. There is also a question of whether a scale of costs should be introduced. Given that summary bankruptcy cases are relatively “straight-forward” in nature (see footnote 1), and in order to keep the tendering arrangements simple and easier to administer, the merit for setting out such a scale of costs is not apparent. Our current plan is that tenders from PIPs should be on the basis of a lump sum bid per case.

**Payments from the Deposit/Estate of the Bankrupt  
In Outsourced Cases**

It is proposed that only debtor-petition cases where the assets held by the bankrupt are not likely to exceed \$200,000 (summary cases) may be outsourced by the Official Receiver's Office (ORO).

**Deposit made by the Petitioner**

*(A) Statutory Provisions*

2. Under rule 52(1) of the Bankruptcy Rules, upon the presentation of a bankruptcy petition, the petitioner (must be a debtor in outsourced cases) shall deposit with the ORO a sum of \$8,650<sup>1</sup>. Such sum will first cover the fees and expenses incurred by the OR, whether the OR is acting in his official capacity or as a trustee-in-bankruptcy.

*(B) Actual Operation*

3. The amount to be deducted by the ORO depends on the actual fees and expenses incurred in the particular case. As a rough estimate, it would be in the range of \$2,000–\$3,000 in a typical case, detailed as follows –

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<sup>1</sup> A sum further to \$8,650 shall be deposited as the debtor and ORO may agree or as the court may from time to time direct.

<u>Item</u>	<u>Amount (\$)</u>
<i>(i) Fees (i.e. statutory Fees Payable under the Bankruptcy (Fees and Percentages) Order)</i>	
(a) Insertion in the Gazette of a notice relating to bankruptcy	355
(b) For all official stationery, printing, postage, etc	670 <sup>2</sup>
<i>(ii) Expenses</i>	
(a) Land registration <sup>3</sup>	210
(b) Photocopying	90*
(c) Printing expense payable to Government Logistics Department for publication of the bankruptcy order in the Gazette <sup>4</sup>	350*
(d) Printing expense payable for publication of the bankruptcy order in newspapers <sup>5</sup>	350*
<b>Total:</b>	2,025 ====

\*: These are approximate figures. The actual expenses may be affected by factors such as the actual volume of photocopying required, the feasibility to arrange consolidated gazetting/advertisements, as well as the prevailing rates applicable.

The total amount of fees and expenses incurred by the ORO would be in the range of \$2,000 to \$3,000. Assuming that it is equal to \$A, the balance of the deposit would then be \$8,650 - \$A, say = \$B.

## **Payment under Section 37**

### *(A) Statutory Provisions*

4. After the petition made by the debtor is accepted and a bankruptcy order is granted by the court, the ORO would then account the balance of the

<sup>2</sup> A fee of \$670 is charged for a bankruptcy case where the number of creditors and bankrupts does not exceed 10, and an additional fee of \$670 is charged thereafter for every 10 additional creditors and bankrupts or part thereof.

<sup>3</sup> Rule 53 of the Bankruptcy Rules provides that where a bankruptcy petition is filed, OR may register a memorial of the petition in the Land Registry registered in the name of the debtor.

<sup>4</sup> Rule 78 of the Bankruptcy Rules provides that where a bankruptcy order is made, the OR shall forthwith send notice thereof to the Gazette and to such local newspaper or newspapers as he may think fit.

<sup>5</sup> See footnote (4).

deposit to the debtor's estate, pursuant to rule 52(2) of the Bankruptcy Rules. The estate, which may be augmented by any further asset realized from the bankrupt and any contribution made by him during the bankruptcy period, would then be used to cover the costs and charges set out in section 37 of the BO. Under this section, expenses properly incurred in preserving, getting in or realizing any of the assets of the bankrupt would first be paid off. Thereafter, the remaining balance would be used to cover payments according to the order of priority in the same section (proposed to be amended by Clause 11 of the Amendment Bill), namely -

- (a) the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the OR, whether acting as trustee or otherwise, including the costs of any person properly employed by him;
- (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
- (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;
- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the OR<sup>6</sup>, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the OR;
- (h) the remuneration of any trustee other than the OR; and
- (i) the actual out-of-pocket expenses necessarily incurred by the

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<sup>6</sup> "Trustee other than the OR" would include the PIP appointed to administer the outsourced bankruptcy case.

creditors' committee subject to the approval of the trustee.

*(B) Actual Operation*

5. Assuming that -

- (a) the ORO would account the balance of the deposit, namely \$B, to the debtor's estate; and
- (b) the further assets realized from the bankrupt and the contribution made by him during the bankruptcy period total \$C; and
- (c) \$D was the expenses properly incurred in preserving, getting in or realizing any of the assets of the bankrupt;

then it would mean  $\$B + \$C - \$D = \$E$  would be available to cover the relevant costs and charges as set out in paragraphs 4(a) to (i) above. In a real-life situation regarding a debtor-petition summary case, however we would like to point out that some of the costs and charges would unlikely arise, as explained below -

<b>Para.</b>	<b>Cost/charge item</b>	<b>Reasons as to why the item would unlikely arise</b>
4(a)	The remuneration of, fees and expenses etc incurred or authorized by the OR, whether acting as trustee or otherwise	They are rarely applicable or should have been covered under Rule 52 of the Bankruptcy Rules.
4(b)	Taxed costs of the petition	The costs are expected to be paid by the bankrupt himself in a debtor-petition case.
4(c)	Remuneration of, and fees, disbursements and expenses properly incurred by the special manager	It is very unlikely that a special manager would be appointed in summary bankruptcy cases.
4(d)	Costs and expenses of any person who makes the bankrupt's statement of affairs	The statement of affairs is expected to be prepared by the bankrupt himself.
4(e)	Taxed charges of any shorthand writer appointed to take any examination	It is very unlikely that a shorthand writer would be appointed in summary

		bankruptcy case.
4(i)	Expenses necessarily incurred by the creditors' committee	There would be no creditors' committee for summary cases.

As such, in practice only the costs and charges under paragraphs 4(f), (g) and (h), namely (i) the disbursements of the PIP (except expenses properly incurred in presenting, getting in a realizing the assets of the bankrupt); (ii) the costs of any persons employed by PIPs; and (iii) the remuneration of PIPs, are relevant. Assuming these costs and charges total \$F, that would mean  $\$E - \$F$ , say = \$G, would be available for payments under section 38(1).

### **Payment under Section 38(1)**

6. After the payments under section 37, the remaining balance, namely \$G, would then be distributed to creditors in accordance with the priorities as set out under section 38(1) of the BO. In short, among all debts owed by the bankrupts, outstanding wages of the employees (or ex-employees) or benefits such as severance payment payable by the bankrupt have the highest priority in the distribution. However, given that the great majority of bankrupts in summary cases would have limited assets and income, or no asset and no income at all, distribution under section 38(1) is not common in practice in such cases.

### **Cases Turn Out to be Non-summary Cases**

7. During the administration of a summary case, if it is found that the value of the assets of the bankrupt is likely to exceed \$200,000, the PIP would apply to the court for rescinding the summary procedure order under section 112A of the BO and then call a meeting of creditors for appointment of trustee under section 17(1). The case would become a non-summary case. The meeting of creditors may appoint that PIP or any other fit person to be the trustee-in-bankruptcy, and the remuneration for the trustee is subject to negotiation between the two parties. Sections 37 and 38(1) of the BO also apply to non-summary bankruptcy cases.

## **Outsourcing of Summary Cases**

8. As set out in the above paragraphs, even without additional asset realized and without income contribution made by the bankrupt, an amount in the range of \$5,000 to \$6,000 [\$8,650 deducted by the expenses/fees incurred by the ORO (\$2,000 to \$3,000)] would be available to cover the costs and charges under section 37. In practice, such costs and charges would mostly include the disbursement and remuneration of PIPs<sup>7</sup>, plus the costs of any person employed by the PIPs. With this amount, together with the relatively straight-forward nature of the administration of summary bankruptcy cases (compared with winding-up cases which usually involve more work like checking of accounts), and that summary cases would be outsourced in batches so as to achieve economies of scale, we believe that there would be sufficient interest from PIPs in tendering and that this outsourcing proposal should be commercially viable.

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<sup>7</sup> See paragraph 5 above.