

立法會
Legislative Council

LC Paper No. CB(1)1830/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/SS/12/12/1

**Subcommittee on Proposed Resolutions under
the Bankruptcy Ordinance and the Companies Ordinance**

**Minutes of first meeting held on
Friday, 19 July 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon CHAN Han-pan
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Member absent : Hon Paul TSE Wai-chun, JP

**Public Officers
attending** : Agenda item II
Ms Teresa WONG Siu-wan
Official Receiver

Mr Maurice LOO Kam-wah
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Miss Cindy CHEUK Chi-wing
Government Counsel, Department of Justice

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Ken WOO
Council Secretary (1)5

Action

I Election of Chairman

Mr WONG Ting-kwong, the member with the highest precedence in the Council among all members of the Subcommittee present, presided over the election of Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Christopher CHEUNG nominated Mr WONG Ting-kwong and the nomination was seconded by Mr Steven HO. Mr WONG Ting-kwong accepted the nomination. There being no other nomination, Mr WONG Ting-kwong was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

*((issued by the Financial Services—Legislative Council Brief
and the Treasury Bureau on 19
June 2013))*

LC Paper No. LS64/12-13

—Legal Service Division Report

LC Paper No. CB(1)1566/12-13(01)

—Marked-up copy of the
Bankruptcy (Amendment)
Rules 2013 prepared by the
Legal Service Division

- LC Paper No. CB(1)1566/12-13(02) —Marked-up copy of the Bankruptcy (Fees and Percentages) (Amendment) Order 2013 prepared by the Legal Service Division
- LC Paper No. CB(1)1566/12-13(03) —Marked-up copy of the Companies (Fees and Percentages) (Amendment) Order 2013 prepared by the Legal Service Division
- LC Paper No. CB(1)1566/12-13(04) —Marked-up copy of the Companies (Winding-up) (Amendment) Rules 2013 prepared by the Legal Service Division
- LC Paper No. CB(1)1566/12-13(05) —Paper on Proposed Resolutions under the Bankruptcy Ordinance and the Companies Ordinance prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1)975/12-13(01) —Submission from Caritas Family Crisis Support Centre to the Panel on Financial Affairs dated 2 May 2013
- LC Paper No. CB(1)1586/12-13(01) —Submission from Caritas *(tabled at the meeting and issued via email on 19 July 2013)* Family Crisis Support Centre dated 19 July 2013)

4. The Subcommittee deliberated (Index of proceedings attached at the **Appendix**).

Invitation of views

5. Members agreed to invite views on the Proposed Resolutions from interested parties and members of the public by placing a notice on the website of the Legislative Council and issuing invitation letters to the 18 District Councils, related non-government organizations, banking institutions and financial companies.

Date of next meeting

6. Members agreed that the next meeting would be held on 3 October 2013 at 2:30 pm to meet with deputations and the Administration.

(Post-meeting note: With the concurrence of the Chairman, a list of organizations to be invited to the meeting to be held on 3 October 2013 was circulated to members vide LC Paper No. CB(1)1745/12-13 on 2 September 2013. A notice inviting submissions on the Proposed Resolutions was placed on the LegCo website on the same day.)

III Any other business

7. There being no other business, the meeting ended at 3:26 pm.

Council Business Division 1
Legislative Council Secretariat
27 September 2013

**Proceedings of first meeting of the
Subcommittee on Proposed Resolutions under the Bankruptcy Ordinance
and the Companies Ordinance
on Friday, 19 July 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Election of Chairman			
000054 – 000336	Mr WONG Ting-kwong Mr Christopher CHEUNG Mr Steven HO Mr CHEUNG Kwok-che	Election of Chairman	
Meeting with the Administration			
000337 – 000811	Chairman Administration	Briefing on the Proposed Resolutions by the Administration	
000812 – 001122	Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai expressed the following views and concerns:</p> <p>(a) whether the overcharged deposits would be refunded, if it was projected that the Official Receiver's Office ("ORO") would achieve a cost recovery rate at 111% in the financial year 2013-2014; and</p> <p>(b) given that low-income debtors were often unable to afford the existing cost for filing bankruptcy petitions, relevant concessionary measures should be introduced.</p> <p>The Administration advised that 98% of insolvency cases administered by ORO were non-remunerative cases, which meant that there were no or inadequate assets to cover the costs incurred by ORO in administering these cases.</p>	
001123 – 002240	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO enquired about the existing procedures for handling bankruptcy petitions.</p> <p>The Administration explained that in filing a bankruptcy petition, an applicant would incur a cost of \$9,695 which included a statutory deposit of \$8,650 charged by ORO for debtor-petition bankruptcy case and a court fee of \$1,045 charged by the Judiciary for scheduling a hearing. The statutory deposit was intended to cover part of the fees and expenses to be incurred by ORO for processing bankruptcy petitions, including conducting information searches or making enquiries in relation to the petitioner's assets, bank</p>	

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		<p>accounts, etc., and advertising a Bankruptcy Order in the Gazette and newspapers. Since 98% of insolvency cases administered by ORO were non-remunerative cases, the minimum fee of \$12,150 for processing a bankruptcy case could not be fully levied in most cases.</p> <p>Ms Cyd HO suggested that arrangements should be made to offer needy applicants a Government loan, otherwise they would have no way of filing a petition in view of their already miserable living, coupled with the fact that they would not usually be able to borrow money from private money lenders.</p> <p>The Administration explained that it was the Government's policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the services. This was to ensure that the costs for providing the services did not fall on the general tax-payers.</p> <p>The Chairman enquired about the statistics on failure to file a bankruptcy petition due to affordability problem, and whether such applicants could seek financial assistance from other Government departments.</p> <p>The Administration replied that it did not have the relevant figure and that the said financial assistance was currently not available. It added that the banking industry had found it more preferable for debtors to restructure their debts rather than opt for bankruptcy petitions, which were regarded as a last resort.</p> <p>Ms Cyd HO opined that bankruptcy petitions should be considered on a case-by-case basis and special measures and assistance should be rendered to low-income debtors who could not afford the petition fees.</p> <p>The Administration advised that around 3 000 out of some 10 000 bankruptcy petitions received yearly during the last three years were outsourced for processing. Of the some 7 000 cases handled by ORO yearly, 37% of debtors had no assets at all, and 51% and 11% of debtors possessed assets at a value of lower than \$10,000 and between \$10,000 to \$30,000 respectively.</p>	

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		<p>In response to the Chairman, the Administration advised that the annual number of debtor-petition and creditor-petition bankruptcy cases was around 10 000 and a few hundred respectively.</p>	
002241 – 003046	Mr CHEUNG Kwok-che Administration	<p>Mr CHEUNG Kwok-che opined that as ORO's income was meagre compared with the Government's yearly fiscal income, consideration could be given to levying the deposits for bankruptcy petitions on a multi-tier approach. Those petitioners with an income reaching 100% of the median household income should be levied 100% of the cost, while those with an income below the median household income should be levied a lower rate depending on their income as a percentage of the median household income.</p> <p>The Administration advised the following:</p> <ul style="list-style-type: none"> (a) Of the debtors who presented bankruptcy petitions from 2008 to 2012, 38% had no income and 40% had a monthly income below \$10,000. (b) Debtors who wished to petition for bankruptcy in the United Kingdom ("UK") and Singapore would also need to make a deposit upon presentation of the petition. Neither of the two jurisdictions provided for a separate statutory mechanism to charge certain categories of persons a lower deposit or to waive the deposit. Besides, it was very difficult to design a fair reduction/waiver mechanism since most, if not all, persons who petitioned for bankruptcy may claim affordability problem. <p>In response to the Administration, Mr CHEUNG pointed out the following:</p> <ul style="list-style-type: none"> (a) The experience of the two jurisdictions mentioned above did not mean that a reduction/waiver mechanism was inappropriate in the context of Hong Kong. (b) According to some non-government organizations ("NGOs"), some debtors had no way but to borrow money from their family or relatives for filing a bankruptcy petition. The Subcommittee should hold a meeting to receive the views of deputations, including ex-debtors, related NGOs and legal practitioners on the Proposed Resolutions. Officials of the Labour and 	

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		Welfare Bureau ("LWB") and Home Affairs Bureau ("HAB") should also be invited to discuss the possible assistance for debtors in respect of filing bankruptcy petitions.	
003047 – 003334	Mr TANG Ka-piu	<p>Mr TANG Ka-piu expressed the following views and concerns:</p> <p>(a) Debtors who could not secure money from relatives or friends to pay for their bankruptcy petitions would often have to go for illegal money lenders. Their difficulties in securing money for the purpose had also given rise to the bankruptcy consultants who charged exorbitant consultancy fees.</p> <p>(b) Reducing the petition fees would not encourage people to pursue bankruptcy. The Administration should accept the suggestion of levying the deposit on a tiered approach.</p> <p>(c) He supported holding a meeting to hear the views of the relevant individuals and deputations on the Proposed Resolutions.</p>	
003335 – 004027	Chairman Administration Ms Cyd HO	<p>In response to the Chairman, the Administration advised that unemployment and gambling were the most common reasons for bankruptcy petitions.</p> <p>The Chairman expressed doubt on unemployment being a major reason for bankruptcy, as in his view Hong Kong permanent residents were protected by the safety net. He opined that pursuing the bankruptcy route would not be conducive to resolving the perennial financial difficulties of some debtors who might go for bankruptcy time after time. The bankruptcy issue was worth exploring from the angle of social welfare.</p> <p>Ms Cyd HO said that in order for the Subcommittee to understand the difficulties faced by debtors and the assistance they needed, a meeting should be arranged and related NGOs, social workers and ex-debtors should be invited to give views.</p>	
004028 – 004532	Chairman Mr CHEUNG Kwok-che Administration	Mr CHEUNG Kwok-che commented that the some 10 000 cases of bankruptcy petitions received yearly by ORO actually meant that some 10 000 families required assistance. He stressed the importance of the intervention of social workers to stop debtors from	

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		<p>applying for bankruptcy over and over again and help them rebuild their confidence in life. He suggested that the Administration should consider putting in place a mechanism for referral between ORO and the Social Welfare Department ("SWD") in order to provide timely assistance to the needy.</p> <p>The Chairman concurred with Mr CHEUNG's views. He considered it inappropriate to deter ORO from recovering its costs of providing insolvency services, and suggested that SWD might investigate the cases referred by ORO and offer financial assistance as appropriate.</p> <p>The Administration undertook to consider Mr CHEUNG's suggestion.</p>	
004533 – 004936	Ir Dr LO Wai-kwok Administration	<p>Ir Dr LO Wai-kwok expressed the following views and concerns:</p> <p>(a) It would hinder ORO's work if the Office was required to approve fee reduction/exemption for bankruptcy petitions. SWD was in a more appropriate position to pursue the relevant proposal.</p> <p>(b) Given that the vast majority of bankruptcy petitions were submitted by debtors, the Administration should consider whether the deposit for debtor's petition could be further lowered, with the deposit for creditor's petition remaining unchanged.</p> <p>The Administration advised that ORO's statutory fees, charges and deposits were last revised in 1997 with a general increase. In light of ORO's latest cost recovery projection, the Administration proposed to revert the levels of these fees to the levels prior to the last fee revision exercise. A standardized approach to reverting the levels of the fees could ensure fairness for the parties concerned.</p>	
004937 – 005312	Mr NG Leung-sing	<p>Mr NG Leung-sing expressed the following views and concerns:</p> <p>(a) Bankruptcy was an internationally accepted way of insolvency handling. It provided debtors with a way of rehabilitation. Debtors should not be denied the opportunity to file a bankruptcy petition due to affordability reason.</p>	

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		(b) It was appropriate to exempt the fees for filing bankruptcy petitions for the needy, provided that the relevant mechanism would ensure no abuse of the system and the best use of public money.	
005313 – 005632	Chairman Mr CHEUNG Kwok-che	Meeting arrangements Mr CHEUNG Kwok-che reiterated his request for the attendance of officials from LWB and HAB to the next meeting of the Subcommittee to receive deputations' views. The Chairman considered that policy issues involving policy bureaux other than the bureau responsible for the proposed legislation should be discussed by the relevant Panel(s). He would check with the Secretariat whether there had been precedents of cross-bureaux attendance at Subcommittee meetings.	