

**立法會**  
**Legislative Council**

LC Paper No. CB(1)243/13-14  
(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 second meeting held on  
Thursday, 3 October 2013, at 2:30 pm  
in Conference Room 2 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 Paul TSE Wai-chun, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
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

**Members absent** : Hon CHEUNG Kwok-che  
Hon CHAN Han-pan

**Public Officers attending** : Agenda items II and III  
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

**Attendance by invitation** : Agenda item II

Ms Paulina KWOK  
Centre Supervisor  
Caritas Family Crisis Support Centre -- Debt  
Counseling and Financial Capability Service

Mr KWONG Chung-keung  
Representative  
Caritas Family Crisis Support Centre -- Concern  
Group on Hong Kong Personal Credit Problem

Hong Kong Institute of Certified Public Accountants

Mr Bruno ARBOIT  
Restructuring and Insolvency Faculty Chairman

Ms Marie ROWBOTHAM  
Restructuring and Insolvency Faculty Member

**Clerk in attendance** : Ms Sharon CHUNG  
Chief Council Secretary (1)6

**Staff in attendance** : Miss Winnie LO  
Assistant Legal Adviser 7

Ms Angel SHEK  
Senior Council Secretary (1)4

Ms Christina SHIU  
Legislative Assistant (1)6

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**I Confirmation of minutes**

(LC Paper No. CB(1)1830/12-13 -- Minutes of meeting on 19 July 2013)

The minutes of the meeting held on 19 July 2013 were confirmed.

**II Meeting with deputations and the Administration**

(LC Paper No. CB(1)1832/12-13(01) -- Submission from Caritas Family Crisis Support Centre – Debt Counseling and Financial Capability Service dated 26 September 2013

LC Paper No. CB(1)1832/12-13(02) -- Submission from Caritas Family Crisis Support Centre – Concern Group on Hong Kong Personal Credit Problem dated 26 September 2013

LC Paper No. CB(1)1586/12-13(01) -- Submission from Caritas Family Crisis Support Centre dated 19 July 2013

LC Paper No. CB(1)1832/12-13(03) -- Administration's response to written submission dated 19 July 2013 from Caritas Family Crisis Support Centre

LC Paper No. CB(1)1866/12-13(01) Submission from the Hong Kong Institute of Certified Public Accountants dated 3 October 2013)  
(*tabled at the meeting and issued vide Lotus Notes email on 3 October 2013*)

Submissions received from deputations not attending the meeting

(LC Paper No. CB(1)1832/12-13(04) -- Submission from The Hong Kong Association of Banks dated 12 September 2013

LC Paper No. CB(1)1832/12-13(05) -- Submission from The Law Society of Hong Kong dated 12 September 2013

LC Paper No. CB(1)1832/12-13(06) -- Submission from The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) dated 16 September 2013)

Other relevant paper

(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)

2. The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Subcommittee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Declaration of interests

3. Mr Paul TSE declared that his law firm acted as provisional trustee and trustee for bankruptcy cases.

Discussion

4. The deputations presented their views on the Proposed Resolutions and the Subcommittee deliberated (Index of proceedings attached at the **Appendix**).

**III Meeting with the Administration**

*(Issued by the Financial Services -- Legislative Council Brief and the Treasury Bureau on 19.6.2013)*

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))

5. The Subcommittee examined clause by clause the following amendment rules/orders under the Proposed Resolutions (Index of proceedings attached at the **Appendix**) –

- (a) Bankruptcy (Amendment) Rules 2013;
- (b) Bankruptcy (Fees and Percentages)(Amendment) Order 2013;
- (c) Companies (Fees and Percentages)(Amendment) Order 2013; and
- (d) Companies (Winding-up)(Amendment) Rules 2013.

Follow-up actions to be taken by the Administration

6. The Administration was requested to provide a written response to the following –

- (a) the submission from the Hong Kong Institute of Certified Public Accountants on the Proposed Resolutions dated 3 October 2013 (LC Paper No. CB(1)1866/12-13(01)); and
- (b) the proposal of the Caritas Family Crisis Support Centre - Debt Counseling and Financial Capability Service on allowing those bankruptcy petitioners whose income was below the median income to pay the petitioner's deposit by instalments in one to two years (in its submission dated 26 September 2013 (LC Paper No. CB(1)1832/12-13 (01))).

*(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)23/13-14(01) on 11 October 2013.)*

Way forward

7. The Chairman concluded that the Subcommittee had completed the scrutiny of the Proposed Resolutions. The Subcommittee and the Administration would not move any amendments to the relevant amendment rules/orders. Members agreed that the Subcommittee should report its deliberations to the House Committee on 18 October 2013.

8. The Subcommittee supported the Administration's proposal to move the Proposed Resolutions at the Council meeting of 30 October 2013. Members noted that the deadline for giving notice of motions to amend the relevant subsidiary legislation was 23 October 2013.

**IV Any other business**

9. There being no other business, the meeting ended at 4:01 pm.

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

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I - Confirmation of minutes</b>			
000156 – 000241	Chairman	Confirmation of minutes of the meeting held on 19 July 2013 (LC Paper No. CB(1)1830/12-13)	
000242 – 000633	Chairman	Introductory remarks	
<b>Agenda Item II – Meeting with deputations and the Administration</b>			
000634 – 001220	Chairman Caritas Family Crisis Support Centre -- Debt Counseling and Financial Capability Service ("Caritas")	<p>Presentation of views by Caritas (LC Paper No. CB(1)1832/12-13(01))</p> <p>The major views and suggestions of Caritas were as follows –</p> <p>(a) About 70% of the debtors using the debt counseling service of Caritas belonged to the low-income group and 25% were living below the official poverty line. The perennial financial difficulties of these debtors in making ends meet and repaying their debts could give rise to mental distress, domestic violence and other social costs.</p> <p>(b) Assistance should be rendered to the low-income or unemployed debtors who could not afford the fee of \$9,695 for filing a bankruptcy petition, including a statutory deposit of \$8,650 charged by the Official Receiver's Office ("ORO") for debtor-petition bankruptcy cases ("the statutory deposit") and a court fee of \$1,045 charged by the Judiciary for scheduling a hearing.</p> <p>(c) A mechanism should be put in place whereby –</p> <p>(i) Bankruptcy petitioners whose income was below the median income could opt to pay the statutory deposit in one go or by instalments in one to two years. Failure to settle the payment would be subject to an extension of the bankruptcy.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(ii) A reduced statutory deposit of, say, \$6500, should be levied on the vulnerable and underprivileged groups, e.g. the elderly aged over 65, the disabled or chronically ill, and debtors without income for three months prior to the date of the bankruptcy petition.</p> <p>(d) Offering assistance to debtors for filing a bankruptcy petition could achieve a three-win situation: facilitating rehabilitation of debtors, reducing bad debts for banks or financial institutions, and alleviating poverty by the Government.</p>	
001221 – 001746	Chairman Caritas Family Crisis Support Centre -- Concern Group on Hong Kong Personal Credit Problem ("the Concern Group")	<p>The Concern Group shared with members three typical cases handled by Caritas which highlighted the debtors' financial difficulty in paying the statutory deposit, and urged the Government to offer the option of payment by instalments.</p> <p>(LC Paper CB(1)1832/12-13(02))</p>	
001747 – 002325	Chairman Hong Kong Institute of Certified Public Accountants ("HKICPA")	<p>Presentation of views by HKICPA</p> <p>(LC Paper CB(1)1866/12-13(01))</p> <p>HKICPA indicated that it did not have objections to most of the proposed amendments under the Proposed Resolutions subject to the views and suggestions below –</p> <p>(a) HKICPA did not see the need to lower the statutory deposit as the existing level did not appear to be too high. Nevertheless, the Government might wish to consider providing for applications to be made, via an appropriate agency, to waive the deposit for the needy under specified circumstances.</p> <p>(b) The fee of \$40 for proof of debt (Item 10 in Table A of Schedule 3 to the Companies (Fees and Percentages) Order (Cap. 32 Sub Leg C)) should be abolished in view of the small amount of fee but relatively large administrative burden involved.</p> <p>(c) Replacing the "realization fee" under Item IV of Table B in Cap. 32 Sub Leg C by a fixed fee of \$170 as proposed would not have much impact as the Official Receiver ("OR") now rarely acted as provisional liquidator or liquidator.</p>	



Time marker	Speaker	Subject(s)	Action required
		<p>(d) The "ad valorem fee" under Item I of Table B should be capped as large-scale corporate insolvencies could result in windfall amounts collected by ORO at the expense of the creditors, and as applications for fee reduction/waiver were not always successful.</p> <p>(e) The amount out of the interest from investment made under Section 295 of the Companies Ordinance (Cap. 32) to be paid to ORO should be expressed as a certain fraction of the total interest paid on the investment, and not a fraction of the return on the total monies invested.</p>	
002326 – 002814	Chairman Administration	<p>The Administration's responses to the views and suggestions raised by deputations relating to the statutory deposit –</p> <p>(a) The current proposal to reduce the statutory deposit from \$8,650 to \$8,000, together with other fee proposals under the Proposed Resolutions, would enable ORO to achieve a cost recovery rate of around 100%.</p> <p>(b) The suggestion that certain categories of persons (e.g. the elderly and the disabled) should be charged a lower statutory deposit would reduce the overall cost recovery rate for ORO in the administration of insolvency cases. It would be unfair to the general taxpayers to use public money to subsidize individual users of the service.</p> <p>(c) It would be difficult to devise a fair reduction/waiver mechanism since most, if not all, persons who petitioned for bankruptcy might claim affordability problem.</p> <p>(d) Other comparable common law jurisdictions (e.g. the United Kingdom and Singapore) did not provide for a separate statutory mechanism to charge certain categories of persons a lower deposit or to waive the deposit.</p> <p>The Administration's responses to other views and suggestions raised by deputations –</p> <p>(a) When creditors filed proof of debt, ORO had to carry out administrative work such as filing and checking the contents as regards the claim. Therefore, it was reasonable for ORO to levy a charge on such services.</p>	

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		<p>(b) The Administration's proposal was to replace the present mechanism for charging the "realisation fee" at 10% of the assets realized for both court winding-up and bankruptcy cases by a fixed fee of \$170. It would benefit the creditors as the proposal was to reduce the "realization fee" levied by OR and payable out of the assets realized.</p> <p>(c) In accordance with Paragraph 9 of Cap. 32 Sub Leg C OR might apply to the Court for a reduction of the "ad valorem fee" on specified ground. However, no applications under Paragraph 9 of Cap. 32 Sub Leg C had been made to date.</p> <p>(d) The suggestion in relation to Section 295 was outside the scope of the Proposed Resolutions.</p>	
002815 – 003809	Chairman Mr TANG Ka-piu Mr SIN Chung-kai Administration	<p>Mr TANG Ka-piu took the view that the option to pay the statutory deposit by instalments should be practicable as it would not pass any costs onto taxpayers. The Administration might deploy previously overcharged deposits on a temporary basis to meet the administrative costs before the statutory deposit was fully settled.</p> <p>Mr SIN Chung-kai considered it only a matter of order of payment whether the statutory deposit should be paid up-front or by instalments. Under the instalment option, the bankruptcy period could be lengthened if the bankrupt did not meet the payment conditions.</p> <p>The Administration responded that –</p> <p>(a) Under the general principle of bankruptcy law, if a bankrupt made contribution towards his estate during the bankruptcy period, such monies would be an asset to be distributed to all creditors in order of priority. Caritas' proposal would imply that contribution made by the bankrupt should first be used to pay the deposit balance, representing a debt owed to ORO in priority to other creditors. This would affect the interests of other creditors. The instalment option would not reconcile with the general bankruptcy principle that ordinary creditors should be entitled to a proportionate share of all such assets realized by the trustee during the bankruptcy period on an equal footing.</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) Policy issues relating to other possible options to assist the debtors to pay the statutory deposit through social welfare measures might be studied in other contexts.	
003810 – 004431	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO urged the Administration to exercise more flexibility to offer assistance to persons with affordability problem to petition for bankruptcy. For instance, ORO might consider special measures based on the assessment of the bankruptcy petitioner's income and assets by the Social Welfare Department ("SWD") and/or referral by social workers.</p> <p>The Administration referred to the written responses from the Labour and Welfare Bureau ("LWB") and the Home Affairs Bureau ("HAB") (LC Paper No. CB(1)1832/12-13(03)) and highlighted the services and financial assistance currently available to bankruptcy petitioners.</p> <p>The Chairman advised that the Subcommittee had invited officials from LWB and HAB to attend this meeting but the two bureaux had not acceded to the request. As policy issues relating to social welfare measures to assist bankruptcy petitioners were outside the scope of work of the Subcommittee, he suggested that, if necessary, the Subcommittee might request LWB or HAB to provide further written responses, or members might pursue the issues at meetings of the relevant Panels in future.</p> <p>Ms Cyd HO said that the relevant officials of LWB and HAB should be condemned for not attending the meeting.</p>	
004432 – 004563	Chairman Mr CHAN Kin-por Administration	<p>Mr CHAN Kin-por suggested that the Administration should –</p> <p>(a) provide for members' reference information on other government services not rendered on a full cost recovery basis; and</p> <p>(b) strive to reduce the cost for administering bankruptcy petitions with a view to lowering the statutory deposit level.</p> <p>The Administration reiterated that all along the level of ORO's statutory fees, charges and deposits were determined with reference to the full costs of insolvency-related services, having regard to the fact that such services were essentially led by individual's personal decision, for which the cost should not be borne</p>	

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		by the general tax-payers.	
004564 – 005238	Chairman Mr Paul TSE Administration	<p>Declaration of interests by Mr Paul TSE</p> <p>In reply to Mr Paul TSE, the Administration advised that about \$4,000 of the statutory deposit (of \$8,650) was to cover the fees and expenses to be incurred by ORO for processing bankruptcy petitions including, for instance, conducting information searches in the Land Registry and the Companies Registry, requesting financial information from bankrupt's bank(s), advertising a Bankruptcy Order in the Gazette and newspapers, and other miscellaneous items (e.g. transportation of books and records). The rest of the amount was to cover other expenses incurred by ORO as trustee.</p> <p>Mr TSE said that, as private insolvency practitioners ("PIPs") appointed by ORO to act as trustees in bankruptcy cases charged a very low fee of about \$2,000 or less for providing the requisite services during the four-year bankruptcy period, it appeared that the statutory deposit of \$8,650 collected by ORO was on the high side. He considered that there should be room for cutting down ORO's cost and lowering the level of the statutory deposit, such as by outsourcing more cases to the private sector.</p> <p>The Administration responded that –</p> <p>(a) At present, only some 25% of the debtor-petitioned bankruptcy cases were outsourced to the private sector. The current statutory deposit of \$8,650 was considered reasonable and appropriate.</p> <p>(b) Irrespective of the complexity of individual cases, expenses would be incurred by the trustee and by ORO for monitoring PIPs in the outsourced cases and conducting statutory audits of accounts, etc.</p>	
005239 – 005710	Chairman Ir Dr LO Wai-kwok	<p>Ir Dr LO Wai-kwok observed that –</p> <p>(a) The statutory deposit could not cover the full cost of processing bankruptcy petitions.</p> <p>(b) Debtors in need of financial assistance for pursuing bankruptcy petitions might receive help through the safety net measures, and policy issues of offering more financial assistance to bankruptcy petitioners from the angle of social welfare should be discussed at the meetings of the relevant Panel(s).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) Extending the bankruptcy period for failure to pay any part of the statutory deposit would involve major changes to the existing bankruptcy regime, and the extension was an unduly heavy penalty on the bankrupt.</p> <p>(d) It might not be feasible to accord priority to payment of statutory deposit in the distribution of proceeds from the debtor's assets and income, having regard to the need to make an orderly and fair adjudication of claims of creditors.</p>	
005711 – 010158	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai stressed that –</p> <p>(a) The Administration should take heed of Caritas' suggestion to permit payment of statutory deposit by instalments for lowering the threshold for debtors to pursue bankruptcy and facilitating their rehabilitation.</p> <p>(b) The outstanding amount of deposit could be paid as the "last charge" from the balance of the bankrupt's assets and income after payment of all other debts.</p> <p>The Administration responded that –</p> <p>(a) The Government would not be accorded priority over other creditors in securing claims in the bankruptcy process.</p> <p>(b) The suggestion of "last charge" might bring up other legal issues (e.g. death of the bankrupt, inadequacy of the proceeds from the bankrupt's assets and income to repay his/her other debts within the bankruptcy period).</p>	
010159 – 010553	Chairman Caritas	<p>Caritas supplemented the following views –</p> <p>(a) On the suggestion of payment by instalments, debtors without affordability problem could still choose to pay the statutory deposit in one go when filing bankruptcy petition.</p> <p>(b) Outstanding statutory deposit to be settled by instalments should not be regarded as "debt".</p> <p>(c) The instalment option should not require detailed assessment of the applicant's income and assets as this might delay the processing of bankruptcy</p>	

Time marker	Speaker	Subject(s)	Action required
		petitions at the expense of the debtors while increasing the workload of the relevant department.	
010554 – 010826	Chairman Caritas Administration	<p>In reply to the Chairman's enquiry, the Administration advised that there were some 150 000 debtor-petitioned bankruptcy cases since 1998, most of which (i.e. about 50 000) had been presented in 2002 and 2003.</p> <p>Caritas supplemented that its Debt Counseling and Financial Capability Service had since inception handled some 60 000 cases but not all of the clients ultimately pursued bankruptcy.</p>	
010827 – 011115	Chairman	The Chairman requested that the Administration should provide a written response to the submission from HKICPA (LC Paper No. CB(1)1866/12-13(01)) and the proposal of Caritas on allowing those bankruptcy petitioners whose income was below the median income to pay the petitioner's deposit by instalments in its submission dated 26 September 2013 (LC Paper No. CB(1)1832/12-13 (01)).	The Administration to take follow-up action as required in paragraph 6 of the minutes
<b>Agenda Item III – Meeting with the Administration</b>			
011116 – 011400	Chairman Administration	<p>Clause-by-clause examination of the amendment rules/orders under the Proposed Resolutions</p> <p><u>Bankruptcy (Amendment) Rules 2013</u></p> <p><i>Rule 1 – Bankruptcy Rules amended</i></p> <p><i>Rule 2 – Rule 52 amended (deposit by petitioner)</i></p> <p>Members raised no questions.</p>	
011401 – 012100	Chairman Administration	<p><u>Bankruptcy (Fees and Percentages) (Amendment) Order 2013</u></p> <p><i>Section 1 – Bankruptcy (Fees and Percentages) Order amended</i></p> <p><i>Section 2 – Schedule amended</i></p> <p>Members raised no questions.</p>	
012101 – 012640	Chairman Administration	<p><u>Companies (Fees and Percentages) (Amendment) Order 2013</u></p> <p><i>Section 1 – Companies (Fees and Percentages) Order amended</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>Section 2 – Schedule 3 amended</i></p> <p>Members raised no questions.</p>	
012641 – 012820	Chairman Administration	<p><u>Companies (Winding-up) (Amendment) Rules 2013</u></p> <p><i>Rule 1 – Companies (Winding-up) Rules amended</i></p> <p><i>Rule 2 – Rule 22A amended (deposit by petitioner)</i></p> <p><i>Rule 3 – Rule 117 amended (costs of calling meeting)</i></p> <p>Members raised no questions.</p>	
012821 – 013055	Chairman Administration	<p>Completion of the scrutiny of the Proposed Resolutions</p> <p>Legislative timetable</p>	<p>The Clerk to prepare a report for submission to the House Committee</p>