

立法會
Legislative Council

LC Paper No. CB(1)1042/14-15

(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/14

Bills Committee on Bankruptcy (Amendment) Bill 2015

**Minutes of the first meeting
on Tuesday, 2 June 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon WONG Ting-kwong, SBS, JP
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon TANG Ka-piu, JP

Members absent : Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP

Public officers attending : Agenda Item II

Mr Paul WONG Yan-yin
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services) 6

Ms Teresa WONG Siu-wan, JP
Official Receiver

Ms Fiona LEE Kwan-wai
Assistant Official Receiver (Legal Services) 1

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Miss Rita YUNG
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant (1)3

Action

I. Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence among members of the Bills Committee present at the meeting, presided at the election of chairman of the Bills Committee. Mr WONG invited nominations for the chairmanship of the Bills Committee.

2. Mr CHAN Kam-lam was nominated by Mr Christopher CHEUNG and the nomination was seconded by Mr NG Leung-sing. Mr CHAN Kam-lam accepted the nomination.

3. There being no other nomination, Mr CHAN Kam-lam was elected Chairman of the Bills Committee. Mr CHAN then took the chair.

4. Members agreed that it was not necessary to elect a Deputy Chairman.

II. Meeting with the Administration
(LC Paper No. CB(3)647/14-15

-- The Bill

LC Paper No. CB(1)921/14-15(01)	-- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
File Ref: IB&W/3/1/1/1C(2015)	-- Legislative Council Brief issued by the Financial Services and the Treasury Bureau
LC Paper No. LS65/14-15	-- Legal Service Division Report
LC Paper No. CB(1)921/14-15(02)	-- Paper on Bankruptcy (Amendment) Bill 2015 prepared by the Legislative Council Secretariat (background brief)
LC Paper No. CB(1)921/14-15(03)	-- Assistant Legal Adviser's letter dated 13 May 2015 to the Administration
LC Paper No. CB(1)921/14-15(04)	-- Administration's response to matters raised by the Assistant Legal Adviser
LC Paper No. CB(1)944/14-15 (<i>tabled at the meeting and subsequently issued via e-mail on 3 June 2015</i>)	-- Administration's paper on Bankruptcy (Amendment) Bill 2015 (power-point presentation material))

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

Invitation of views

6. The Bills Committee agreed to invite views on the Bill and meet with deputations at the next meeting to be scheduled. Members agreed that invitations should be issued to the organizations set out in the "proposed list of organizations to be invited to give views" tabled at the meeting. The Chairman reminded members who wished to invite other organizations to the meeting to inform the Secretariat as soon as possible. The Chairman

suggested and members agreed that there was no need to invite views from members of the public.

(Post-meeting note: With the concurrence of the Chairman, a meeting was scheduled for 7 July 2015 at 10:45 am to meet with deputations and the Administration.)

Implementation timetable

7. Members noted that the Administration aimed at implementing the proposed new arrangements in November 2016, assuming that the Bill would be enacted around end of 2015.

III. Any other business

8. There being no other business, the meeting ended at 11:14 am.

Council Business Division 1
Legislative Council Secretariat
2 July 2015

**Proceedings of the first meeting of
the Bills Committee on Bankruptcy (Amendment) 2015
on Tuesday, 2 June 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000147 – 000505	Mr WONG Ting-kwong Mr Christopher CHEUNG Mr NG Leung-sing Mr CHAN Kam-lam	Election of Chairman Mr CHAN Kam-lam was elected Chairman of the Bills Committee.	
Agenda Item II – Meeting with the Administration			
000506 – 001236	Chairman Administration	Power-point presentation by the Administration on the background to the review of the abscondee regime under the Bankruptcy Ordinance ("BO") (Cap. 6) as well as the key recommendations and proposed new arrangements in the Bankruptcy (Amendment) Bill 2015 ("the Bill") (LC Paper No. CB(1)944/14-15).	
001237 – 001605	Chairman Mr TANG Ka-piu Administration	Mr TANG Ka-piu enquired whether the running of the "relevant period" would be suspended if the bankrupt concerned left Hong Kong and resided elsewhere after he/she had attended the initial interview appointed by the trustee-in-bankruptcy ("TIB") under the proposed new arrangements in the Bill. The Administration responded that – (a) if a bankrupt had completed the initial interview before leaving Hong Kong, the bankrupt would not be subject to the sanction of having his/her "relevant period" treated as not commencing to run under the proposed new arrangements; (b) nevertheless, a bankrupt should continue to fulfil the obligations to cooperate with TIB in the administration of the bankrupt's estate when required until his/her discharge from bankruptcy, such as to attend further interviews or provide certain information in relation to his/her affairs, dealings and property; and	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) if the bankrupt stayed out of reach of his/her TIB subsequent to the completion of the initial interview, such situation might amount to failure to cooperate in the administration of the bankrupt's estate. The TIB or a creditor might thus rely on the existing objection regime to object to automatic discharge of the bankrupt from bankruptcy and apply to the court for an order to suspend the running of his/her "relevant period" for up to four years for first-time bankrupts (or up to three years for repeat bankrupts).</p>	
001606 – 002235	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG sought clarification on the differences between the existing abscondee regime and the proposed new arrangements in the Bill in respect of a bankrupt's right to travel.</p> <p>The Administration explained that –</p> <p>(a) the existing abscondee regime under BO sought to ensure that a bankrupt would stay on the TIB's radar until the end of the "relevant period" so that the TIB could obtain his/her cooperation in the administration of the bankrupt's estate when required. Section 30A(10) of BO provided for the automatic suspension of the running of the "relevant period" for a bankrupt under three specified circumstances, viz –</p> <p>(i) a bankrupt had left Hong Kong before the commencement of bankruptcy and had not returned to Hong Kong (section 30A(10)(a));</p> <p>(ii) a bankrupt had left Hong Kong after the commencement of bankruptcy without notifying the TIB of his/her itinerary and contact means (section 30A(10)(b)(i)); or</p> <p>(iii) a bankrupt had left Hong Kong after the commencement of bankruptcy and failed to return to Hong Kong as required by the TIB (section 30A(10)(b)(ii));</p> <p>in which case the "relevant period" would</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>only commence or resume running (as the case might be) when the bankrupt had returned to Hong Kong and notified the TIB of his/her return;</p> <p>(b) in an earlier court case, the Court of Final Appeal ("CFA") ruled in 2006 that section 30A(10)(b)(i) (para. (a)(ii) above) was unconstitutional and as a result that provision had become inoperative;</p> <p>(c) the CFA considered that the restraint imposed by section 30A(10)(b)(i) on the bankrupt's right to travel went beyond what was necessary for the protection of the rights of creditors because –</p> <p>(i) the sanction operated irrespective of the reason for the bankrupt's failure to notify the TIB of his/her departure from Hong Kong;</p> <p>(ii) the sanction applied indiscriminately to all situations, irrespective of, for instance, the stage of the bankruptcy already reached and whether it had occasioned any prejudice to the administration of the bankrupt's estate; and</p> <p>(iii) there was no discretion vested in the court to disapply the sanction or mitigate its consequences.</p> <p>(d) the Bill, if enacted by the Legislative Council, would replace the existing abscondee regime with the proposed new arrangements such that there would no longer be an automatic suspension of the "relevant period" as in the abscondee regime. If a bankrupt had failed to complete the initial interview with the TIB such that the administration of the bankrupt's estate was prejudiced, the TIB might apply to the court for a non-commencement order that the "relevant period" for the bankrupt was to be treated as not commencing to run on the date of the bankruptcy order; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(e) the proposed new arrangements would thus address the constitutionality issues in relation to the abscondee regime by providing the court with discretionary power in determining whether or not to impose the sanction on a bankrupt having regard to the circumstances of individual cases.	
002236 – 002530	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing expressed concern about the practical operation of the abscondee regime, and enquired how the Administration could ascertain the date for suspension of the running of the "relevant period" under the existing abscondee regime if a bankrupt had left Hong Kong without notifying the TIB, particularly through illegal means.</p> <p>The Administration responded that –</p> <p>(a) the Official Receiver's Office would liaise with the Immigration Department for the arrival/departure records of a bankrupt who could not be contacted. The automatic suspension of "relevant period" would start on the date of departure (or the date of the bankruptcy order if the bankrupt had left beforehand);</p> <p>(b) a bankrupt's fulfillment of his/her obligations in respect of completion of the initial interview with the TIB was considered to be more pertinent to the administration of the bankrupt's estate than the bankrupt's physical presence in Hong Kong as a bankrupt might stay out of reach of the TIB even though he/she had not left Hong Kong; and</p> <p>(c) the new arrangements proposed in the Bill for replacing the abscondee regime would focus on whether the bankrupt had completed the initial interview with the TIB instead of the bankrupt's mere physical presence in Hong Kong.</p>	
002531 – 003030	Chairman Mr NG Leung-sing Mr Kenneth LEUNG	<p>Invitation of views from deputations</p> <p>Implementation timetable and meeting arrangements</p>	

Council Business Division 1
Legislative Council Secretariat
2 July 2015