

**立法會**  
**Legislative Council**

LC Paper No. CB(1)303/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/7/14

**Bills Committee on Bankruptcy (Amendment) Bill 2015**

**Minutes of the third meeting  
on Tuesday, 10 November 2015, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul TSE Wai-chun, JP  
Hon NG Leung-sing, SBS, JP  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon TANG Ka-piu, JP

**Members absent** : Hon Albert HO Chun-yan  
Hon Kenneth LEUNG

**Public officers attending** : Agenda Item I  
  
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

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Action

**I. Meeting with the Administration**

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| (LC Paper No. CB(1)1229/14-15(01)   | -- Submission from Hong Kong Bar Association dated 1 September 2015  |
| LC Paper No. CB(1)1293/14-15(01)  | -- Administration's response to the submission from Hong Kong Bar Association dated 1 September 2015       |
| LC Paper No. CB(1)1296/14-15(01)  | -- Further submission from Hong Kong Bar Association dated 7 October 2015                                  |
| LC Paper No. CB(1)134/15-16(01)   | -- Administration's response to the further submission from Hong Kong Bar Association dated 7 October 2015 |
| LC Paper No. CB(1)127/15-16(01)   | -- Assistant Legal Adviser's letter dated 5 November 2015 to the Administration                            |
| LC Paper No. CB(1)144/15-16(01)<br><i>(tabled at the meeting and subsequently issued on 11 November 2015)</i> | -- Administration's response to Assistant Legal Adviser's letter dated 5 November 2015                     |

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|----------------------------------|---|
| LC Paper No. CB(1)1175/14-15(01) | -- Assistant Legal Adviser's letter dated 6 August 2015 to the Administration   |
| LC Paper No. CB(1)1225/14-15(01) | -- Administration's response to Assistant Legal Adviser's letter dated 6 August 2015 with Committee Stage amendments  |
| LC Paper No. CB(1)127/15-16(02)  | -- Mark-up copy of the Administration's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division (Restricted to members only) |

Relevant papers issued previously

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|----------------------------------|---|
| File Ref: IB&W/3/1/1/1C(2015)    | -- Legislative Council Brief issued by the Financial Services and the Treasury Bureau           |
| LC Paper No. CB(3)647/14-15      | -- The Bill   |
| LC Paper No. LS65/14-15          | -- Legal Service Division Report  |
| 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) |
| 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)1146/14-15(01) | -- Administration's paper on "Responses to Deputations' Comments on the Bill")                  |

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

Committee Stage amendments ("CSAs") proposed by the Administration

2. In addition to the technical and textual amendments to be moved by the Administration as set out in Annex B to LC Paper No. CB(1)1225/14-15(01) to improve clarity of the Bill, the Administration would introduce the following CSAs to:

- (i) specify that the physical presence of the bankrupt would be required at the initial interview; and
- (ii) remove the reference to section 30A(10)(a) in the proposed section 30A(10A) to simplify the transitional provision.

3. The Administration agreed to provide a full set of the draft CSAs to the Bill as soon as practicable for the Bills Committee's consideration.

*(Post-meeting note: A full set of the draft CSAs to be moved by the Administration was circulated to members vide LC Paper No. CB(1)168/15-16 issued on 19 November 2015.)*

Legislative timetable

4. The Chairman concluded that subject to any views members and the Legal Adviser to the Bills Committee might have on the draft CSAs, the Bills Committee had completed the scrutiny of the Bill. The Bills Committee would not propose any CSA to the Bill. Members noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting of 16 December 2015. The Bills Committee Chairman would report the deliberations of the Bills Committee to the House Committee at its meeting on 4 December 2015. The deadline for giving notice to move CSAs, if any, to the Bill was 7 December 2015.

**II. Any other business**

5. There being no other business, the meeting ended at 3:01 pm.

**Proceedings of the third meeting of  
the Bills Committee on Bankruptcy (Amendment) Bill 2015  
on Tuesday, 10 November 2015, at 2:30 pm  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000323 – 000519	Chairman	Opening remarks	
000520 – 001728	Chairman Administration	<p>Briefing on the Administration's responses to submissions from the Hong Kong Bar Association ("HKBA") (LC Paper Nos. CB(1)1293/14-15(01) and CB(1)134/15-16(01)).</p> <p>The Administration would introduce Committee Stage amendments ("CSAs") to –</p> <p>(a) specify that the physical presence of the bankrupt was required at the initial interview; and</p> <p>(b) remove the reference to section 30A(10)(a) in the proposed section 30A(10A) to simplify the transitional provision.</p>	
001729 – 002248	Chairman Mr Dennis KWOK Administration	<p>Mr Dennis KWOK sought elaboration on the Administration's responses to the comments of the HKBA on the Bankruptcy (Amendment) Bill 2015 ("the Bill") in respect of –</p> <p>(a) the text of the Administration's proposed CSAs to the Bill in relation to the physical presence of the bankrupt at the initial interview;</p> <p>(b) whether an initial interview included any subsequent interview adjourned from the first day of the initial interview appointed, and whether a bankrupt's failure to attend any other interview session adjourned from the initial interview would be caught under the proposed section 30AB(1)(b) of the Bill;</p> <p>(c) HKBA's suggestion that apart from a non-commencement order, the court should be at liberty to make a suspension order in order to minimize unfairness and/or prejudice which might be caused to the bankrupt in the circumstances that there was an inordinate delay in the application for a</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>non-commencement order by the trustee-in-bankruptcy ("TIB"); and</p> <p>(d) the consequences of a bankrupt's failure to provide at the initial interview the information reasonably required by the TIB.</p> <p>The Administration responded that –</p> <p>(a) it was proposed to add a new subsection under the proposed section 30AB of the Bill to clearly state that physical presence of the bankrupt was required at the initial interview. The exact wording of the proposed CSA was in preparation and the Administration would consult the views of the Assistant Legal Adviser where appropriate;</p> <p>(b) the initial interview referred to the first meeting between a bankrupt and the TIB on a day appointed by the latter for the administration of the bankrupt's estate. The bankrupt's failure to attend any other interview session "adjourned" from the initial interview would not be caught under the proposed section 30AB(1)(b);</p> <p>(c) the proposed new arrangements were designed to deal with cases where the TIB could not commence administration of the bankrupt's estate properly at the outset owing to the bankrupt's failure to complete the initial interview. The Administration considered it appropriate that the relevant period which counted towards the discharge from the bankruptcy should be treated as not commencing to run from the commencement of bankruptcy, viz. the date of the bankruptcy order in case a non-commencement order was made; and</p> <p>(d) if a bankrupt failed to attend the initial interview, or had attended the initial interview but failed to provide at the initial interview all the information concerning the bankrupt's affairs, dealings and property as reasonably required by the TIB and thus prejudiced the administration of the</p>	

Time marker	Speaker	Subject(s)	Action required
		bankrupt's estate, the TIB might apply to the court for a non-commencement order such that the relevant period for the bankrupt was treated as not commencing to run on the date of the bankruptcy order.	
002249 – 002956	Chairman Assistant Legal Adviser 9 ("ALA9") Administration	<p>ALA9's views and enquiries –</p> <p>(a) concern about fairness to the bankrupt in the case where the bankrupt though failed to attend the initial interview was willing to afford all co-operation to the TIB in the administration of the estate and had a justifiable reason for his/her absence (e.g. out of town); and</p> <p>(b) as regards a bankrupt who had left Hong Kong before the commencement of bankruptcy, whether the requirement of physical presence of the bankrupt at the initial interview (i.e. the bankrupt was required to return to Hong Kong to attend the initial interview) would impose an unreasonable restraint on the bankrupt's freedom to travel and be subject to challenge in view of the Court of Final Appeal's ruling on 5 November 2015 in <i>Official Receiver v Zhi Charles formerly known as Chang Hyun Chi</i> [FACV No.8/2015] that section 30A(10)(a) was unconstitutional.</p> <p>The Administration responded that –</p> <p>(a) while the new arrangements would provide the TIB with the power to apply to the court for a non-commencement order, this was not an automatic mechanism. The bankrupt's failure to attend the initial interview was only a prerequisite for making the application. The TIB also had to show to the court in the application that such failure had caused prejudice to the administration of the bankrupt's estate;</p> <p>(b) if the bankrupt, for whatever reasons, failed to attend the initial interview, the TIB would still need to take into account whether the bankrupt had taken any mitigation measures (e.g. through another interview or submitting</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>all documents and information on paper as well as the timing of submission and comprehensiveness of the information). It was not incumbent on the TIB to apply for a non-commencement order if he/she was satisfied that the prejudice had been sufficiently mitigated;</p> <p>(c) there were also provisions in the Bill which ensured that the court would make a fair decision in considering whether or not to make a non-commencement order. The court would take into consideration all relevant information and facts (including representations made by the bankrupt on why a non-commencement order should not be made) in reaching a decision; and</p> <p>(d) the main issue of contention over the existing abscondee regime was the automatic suspension of the relevant period. The proposed new arrangements were to replace the abscondee regime to, among other things, deal with the automatic suspension of the relevant period. Unlike the existing abscondee regime which had an automatic suspension mechanism, the proposed new arrangements would provide the court with the discretion to decide whether to make a non-commencement order after taking into account all relevant facts and factors.</p>	
002957 – 003229	Chairman Administration	<p>The Administration agreed to provide its proposed CSAs to the Bill as soon as practicable for the Bills Committee's consideration.</p> <p>The Bills Committee completed the scrutiny of the Bill.</p> <p>Legislative timetable.</p>	