## 破產管理署提供的服務

## 主席:

各位先生、女士,早晨。歡迎各位列席政府帳目委員會的公開聆訊。

為使公眾人士和各有關方面對委員會有更深入的了解,我會先簡單介紹委員 會的角色和職能。

政府帳目委員會是立法會轄下一個常設委員會。審計署署長對政府和接受政府資助的組織進行帳目審計和衡工量值審計工作,並將報告書提交立法會後,政府帳目委員會便會研究該等報告書,藉以監察公共開支。根據《立法會議事規則》第72條,委員會必須在審計署署長將審計報告書提交立法會省覽當日起計的3個月內,就該份報告書提交報告。委員會研究審計署署長報告書的目的,是聽取和報告書內容有關的證供,從而確保所確立的事實真相準確無誤,並且抱著建設性的精神和進取的態度作出結論及建議。我同時強調一點,整項研究工作的目的是希望從過往經驗中汲取的教訓,以及委員會對有關官員的表現所提出的意見,能有助政府當局在顧及經濟原則和講求效率及效用的前提下,改善對公帑開支的控制。

委員會按照既定程序研究審計署署長的報告書,在有需要的情況下會舉行公開聆訊,並會進行內部商議及發表委員會的報告書。委員會已訂定程序,確保有關的各方都有合理的陳詞機會。當委員會信納本身已確立有關的事實真相後,便會根據這些事實作出判斷,然後擬訂報告書的結論及建議。

審計署署長在1999年10月至2000年2月期間完成的第34號衡工量值式審計結果報告書,已在2000年3月29日向立法會提交。委員會經過初步研究審計署署長第34號報告書後,決定邀請有關的官員和人士今天到委員會席前應訊,回答我們就報告書中3個章節提出的問題。我們在研究有關問題和聽取所需的證供後,便會作出結論與建議,以反映委員會獨立而公正的判斷和觀點。這些建議會在我們於3個月內向立法會作出報告時公布。在該日前,我們不會以委員會或個人名義,公開發表任何結論。

我現在宣布聆訊正式開始。

第1節的聆訊議題是第34號報告書中第5章有關「破產管理署提供的服務」, 獲邀請出席的的證人包括財經事務局局長許仕仁先生、財經事務局首席助理局長(公司) 陳煥兒女士、庫務局局長俞宗怡女士、署理破產管理署署長區敬樂先生、破產管理局 助理署長(個案處理)麥炳華先生、破產管理署助理署長(財務)萬能知先生和破產管理署 助理署長(法律事務)劉嘉寧先生。現在開始聆訊,首先請吳亮星議員提問。

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## 吳亮星議員:

主席。審計署署長第34號報告書第5章分幾部分載述破產管理署的工作,所以請主席允許我逐個部分作出核證。

## 主席:

好。

# 吳亮星議員:

首先討論第2部分關於監察員工的工作量,根據報告書第2.4段所載,審計署認為,值得關注的是,破產管理主任的工作量有很大差別。所有的破產管理主任處理的個案,大部分是小額個案(即可變現資產不超過港幣5萬元),審計署認為完成每宗個案所需的時間應少於40人時。而破產管理主任工作量差別之大,顯示部分人員完成個案的時間,或出現了不合理的延誤,引致他們負責的處理中個案大量積壓。

破產管理署署長在第2.10段回應時表示,"令工作量分配出現差異的部分原因是某些人員已獲得委派處理特別工作,所以他們獲分配的破產/清盤個案較少。"有些人員獲分配需特別處理的工作,不知是否屬於複雜或特別的工作,但在分配特殊工作方面,是否有任何明文措施?會否考慮制訂客觀的數據,如參照每名主任完成有關工作量的時間標準?

#### 主席:

Mr O'Connell. Would you? Thank you.

#### Mr E T O'Connell, Acting Official Receiver (Atg OR):

Mr Chairman, on the first part of the question about complex cases and special assignments, it is true – I think Members are aware – that over the years a number of highly complex and high-profile insolvency cases have occurred in Hong Kong. I take Members back to 1991, for example, the collapse of Bank of Credit and Commerce which was put into liquidation, a very complex winding-up, and it was necessary to assign that to a couple of experienced case officers. That is one example. In more recent times, Mr Chairman, the collapse of a number of high-profile brokerages – CA Pacific, Peregrine, the Ming Fung Group – have caused concern within the Office, and this in turn required the assignment of specialised and experienced insolvency officers to deal with these complex windings-up.

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With regard to the latter part of the question, on whether or not the Official Receiver's Office is going to stipulate time periods, Mr Chairman, I am pleased to tell you these have already been enacted. We welcome the Audit Report. There was a failure to actually stipulate in the past a time span or a time period for the completion of the vast majority of the cases. And from henceforward, Mr Chairman, we have laid down a time span. In most cases we expect the insolvency officer to have completed the case within nine months of receiving the file.

## 主席:

吳亮星議員。

## 吳亮星議員:

主席。報告書第2.12段提及破產管理署曾在1999年4月向私營清盤從業員發出指引,說明如一宗清盤個案的可變現資產不超過20萬元,私營清盤從業員須於獲聘用後的一年內完成該宗個案。該段亦清楚說明破產管理署並沒有為內部的個案處理組設定完成一宗破產/清盤個案的時限。請問署長剛才所說的是否新近制定的,抑或是該署當時確實沒有為內部的個案處理組設定時限,而對外聘私營清盤從業員則發出處理個案的指引?

## 主席:

或者我稍作補充,在報告書第2.4段提及對私營清盤主任來說,要求處理個案的時限不應超逾40小時。總共有兩項限制,不止一項。Mr O'Connell請一併答覆。Mr O'Connell。

#### Atg OR:

Mr Chairman, yes, at the time the guideline was issued in April 1999 to private insolvency practitioners, they were expected to complete the case within one year. That is under what we call our Panel B scheme. It is true, Mr Chairman, that there was no similar directive given to in-house insolvency officers. As I have mentioned before, Mr Chairman, that has since been addressed.

#### Chairman:

And the 40 hours? Is there any similar time limit? I think when you sub-contract the case to the private insolvency practitioners you expect them to complete smaller cases within 40 hours?

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#### Atg OR:

Yes, Mr Chairman, we do.

#### Chairman:

Is there a similar requirement in the Official Receiver's Office?

# Atg OR:

Well, we have laid down as a directive of nine months, because there are a number of requirements that we have to undertake, including gazetting, advertising, these all take time, and assessment of claims. That should take no more than 40 man hours. We see no reason why the private sector should be treated any differently from the in-house staff of the Official Receiver's Office. These are new directives which have been since implemented since the publication of the Director of Audit's report.

## 主席:

我先讓其他同事跟進,劉慧卿議員。

#### 劉慧卿議員:

主席。很簡單的問題。破產管理署是在1992年6月成立,直至1999年才發出指引。主席,報告書表二指出,完成處理可變現資產不超過20萬元的清盤個案所需時間,有21.8%需時3年或以上。請問局長或署長是否知道有關情況?為何多年來仍可容忍?當然,"遲到好過無到",是否因審計署署長作出調查,你們才急忙進行改善?是否多年來完全沒有考慮發出指引?

#### Chairman:

Mr O'Connell, would you like to take this?

#### Ms Emily LAU:

No, I think it is on policy. The Secretary should also give us a reply.

#### Chairman:

I will give Mr HUI a chance to supplement if he so wishes.

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#### Atg OR:

Mr Chairman, I am not making excuses. It is true. I am not going to make feeble excuses in this Chamber. It is absolutely true that there were no time frames set for the insolvency officers to complete these cases in the past. That is absolutely true. There is no point denying that, and it is also true that since the publication of the Director of Audit's report we have in fact implemented a crash programme for the payment of the dividend. And I am pleased to tell Members that, by the end of this month, for about 98 percent of pre-1997 cases where a dividend can be paid, it will be paid. And the target is by the end of July and August of this year all cases more than one year old where a dividend can be paid, will be paid. There might be one or two exceptions to that, Mr Chairman, but that is the target set for the Official Receiver's Office.

# 主席:

許局長,有沒有補充?

## 財經事務局局長許仕仁先生:

主席。以財經事務局的角度來說,多年來,我們不是沒有關注破產管理署處理個案的工作量的問題。在內部來說,破產管理署以專業的角度,大家都知道破產的過程,有些事情並非行政上可以解決,有些要根據法律程序、有些個案要根據法庭的指示,所以不能完全採用行政指令,武斷地指定在某一時限內完成一宗個案。就這方面,可以說不是財經事務局的專長。在過去數年,我們關注到破產管理署的工作量越來越多,我們關注他們的人手是否足夠、效率是否適當。就政策局的層面來說,我們較關注如何令破產管理署更具效率,可否以外判方式處理更多個案,以及從基本角度去考慮破產管理署是否應該繼續以這方式處理現時的工作。至於你們認為他們內部應有某些指引,但當時卻沒有發出,以局方看其表現,我們每月均有署方處理個案的數據,按一般破產管理過往的傳統來看,有些個案確實需要很長時間才能完成,特別是追討債項或處理資產等,對於大型的破產個案,更需要很長的時間。

至於小型的個案,我承認,局方應以考慮大型個案或受社會特別關注的個案同樣的方法去考慮,可能可以及早發覺,若破產管理署內部這樣處理,則個案只會越來越多,處理時間越來越長。而個案末能完結,積壓的情況就更多。我們因為要顧及大型和受社會特別關注的個案,至於法庭經常發出指示,亦有債權人委員會的個案,我們也會特別關注;對於沒有債權人委員會的個案,即債權人本身並不十分關注將來能追討所得的款額,在局方層面,關注便會較少,亦沒有特別指令個案須在指定時間內完成。我們純粹考慮署方提供的數據,發覺它處理的個案一年比一年多。署方在處理大型個案方面,沒有任何錯誤,債權人委員會沒有特別的投訴,法庭亦沒有特別的指令認為有不妥善的地方。於是,我們便讓署方自行處理大部分的小型個案。

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## 主席:

劉慧卿議員。

## 劉慧卿議員:

主席。我覺得署理署長十分坦白,不知他署任的時間多久,或許過去的錯誤不需由他負責。大家看到的情況並不理想,現時實行的一些改善工作是我們十分歡迎的,特別是剛才說要盡快把款項發放給債權人,這絕對是一件好事。我們不知道局長是否想作出維護,為何審計署作出審查後,便立即有改善行動。署長給我的印象是他覺得以往應該做的事,現時已付諸實行。但局長卻好像仍要爭辯,解釋有種種的原因導致該等延誤。局長在位已有一段時間,與坐在他身後的署長不同,因此,我有理由詢問局方,究竟作出了多少監管?債權人的權益應該由你們協助保障,這一點在審計署署長報告書內也有說明。現在你把個案分門別類,對有設立委員會的債權人就多作保障,沒有設立委員會的則容後處理,我卻未有看到人手不足的情況,只覺得你們處理事情沒有甚麼準則。可能立法會對這部門的關注不多,我們也可能有些失職。

## 主席:

許局長。

## 財經事務局局長:

主席。我絕對沒有嘗試開脫,只是盡最大努力答覆劉議員。事實上,我已承認了有些情況是沒有監察。我們只著眼於較大型的個案和每月處理個案的數據,發現個案數字越來越高。因此,在局方來說,是設法提高效率,以較少時間去處理個案,而不是提出增加人手。在過去數年,我們不願意亦不容許署方增加人手。這5年來署方只增加了一組17人的工作人員。以現時香港的經濟狀況和經濟循環,個案只會越來越多,局方是從根本方面去考慮處理破產管理署所執行的工作,至於部門內如何處理每宗個案,局方並沒有逐一監察。

如果政府帳目委員會認為局方應該有更多的介入,我會考慮是否有真正的需要。因為以政策局的層面來說,局方是否要對署方每天的運作、員工處理個案的時間和如何分配工作等也要作出監察?資源是否應該這樣運用的呢?還是應在政策的層面上作出措施,令破產管理署的職能在將來可以配合社會的需要,亦無需大幅增加納稅人的負擔。這就是我認為局方在政策層面上應考慮的較重要的事情。劉議員,我不是要申辯,審計署署長提出在個案層面上對分配工作和處理個案的時間,局方是沒有監察的。

# 破產管理署提供的服務

#### 主席:

李華明議員。

# 李華明議員:

主席。我想詢問兩點。第一,署長剛才提及可變現資產不超過5萬元的個案一般處理時間平均為40人時。請問多年以來,他有否留意員工在處理這類小型個案時,有多少是超出這個40人時的指標?第二,你對私營清盤從業員制訂標準,要求他們在一年內完成可變現資產不超過20萬元的個案。但對自己部門卻沒有這項要求,如果沒有制訂相同的標準,請問署長從92年至今,你採用甚麼準則和客觀的指標,以評審部門內64名破產管理主任的工作表現是否合乎要求?

## 主席:

區署長。

# Atg OR:

Mr Chairman, since 1992 there were a number of measures in place which we then thought tried to measure the performance of staff, for example prosecution action taken, the number of cases handled by any particular IO, and the number of cases being put on a dividend programme. Perhaps we now realise with the benefit of hindsight that these performance indicators were not really the relevant or the key performance indicators which the Director of Audit has highlighted in his report, namely the timely payment of dividend should have been part and parcel of that key performance indicator. And we wholeheartedly agree with that.

But there were measures in place, Mr Chairman, which we thought at that time measured the efficiency of the insolvency officers. Unfortunately, Mr Chairman, what happened was that over the years with the increasing workload the older cases just got left so that the IOs could concentrate on the new ones. There was no proper prioritization of tasks. We accept that. And as a consequence we have now, since 1998 and the Asian turmoil and the downturn of the Hong Kong economy, the snowball has developed into an absolute torrent of insolvencies. In particular, personal bankruptcies have absolutely soared since 1998. I think Members are well aware of this and we have not really had any increase in staff resources to address the soaring insolvency rate. All of these things come together Mr Chairman, and I am afraid some of the older cases were just left and unfortunately it is a fact, but we are addressing that now.

## 破產管理署提供的服務

#### 主席:

李華明議員。

## 李華明議員:

主席。我要跟進現時破產管理署有否制定較為客觀、可以量度員工生產力和工作量的指標,以評審工作的分配是否平均。如果單憑經驗來分配個案,始終不是客觀的指標。你對私營清盤從業員有客觀的指標,為何對部門員工卻沒有呢?第一,是否私營清盤從業員和部門員工已採用了同樣的指標?第二,你是否已定出一套客觀的工作量指標?

## 主席:

區署長

## Atg OR:

Mr Chairman, since the publication of the Director of Audit's report, we have implemented a number of re-engineering measures which we hope will address the concerns raised by the Director of Audit. First and foremost in this re-engineering process the chief insolvency officer, i.e. he is the person who heads up a team of insolvency officers, will adopt a far more supervisory/monitoring role than he has in the past. And his basic task will be to ensure that when the cases come in they are processed through very, very quickly. The dividend will be release with a time frame of nine months, and monthly reports are being made to the senior management to see how the situation is developing. In this way we think this will address the concerns highlighted by the Director of Audit. There was not in the past a properly supervisory monitoring role in place on the middle management of the insolvency officers' grade. This has since been addressed.

#### Chairman:

I think Mr LI's question is not only directed at the speed of finishing a case, but also how do you monitor the performance of individual officers? It is not only looking at it from the case angle but how an individual officer performs, whether he finishes a case within 40 hours. How do you measure the output of individuals?

#### Atg OR:

Can I ask my AOR, Mr MAK, to address that particular point? Mr MAK?

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## 主席:

麥先生。

## 破產管理署助理署長(個案處理)麥炳華先生:

各位議員,我相信不應以相同和連續性的時間去考慮40人時的指標。因為在處理破產或清盤的案件時,法律規定要在某一時間內完成某些工作。我們設定以40人時為標準,是根據過往的經驗,我們不希望破產管理主任用太多時間處理一些簡易程序的個案。如署長所說,過去我們確實存在一些問題,沒有嚴格地執行時間限制的指標,要求破產管理主任在限時內完成工作。其次,在監督方面,因為個案數字急促增加,我們卻處於被動的位置,當法庭轉介案件到部門時,我們必須接辦,如果我們規限破產管理主任只能接辦某一數目的個案,結果可能會無法接辦所有個案,然而,法律規定所有個案必須處理,我們接到個案後便要完全分派處理。

至於過去不能小心檢閱每名下屬真正生產量的原因,是因為個案數目太多,每個階層的破產管理主任已有很大的工作量,而我們是依賴高一級的人員監察下一級人員的制度,但高一級的人員本身亦有很多工作,往往造成疏忽監察下屬的情況。後來因為工作量增加,99年初開始,我們發覺存在很多問題,所以當時我們接觸了政府的管理參議署,研究改善處理個案的步驟。管理參議署在99年7月作出報告,建議了很多有用的改善措施。其實,審計署提出的問題,在管理參議署的報告中亦有提出類似的情況。

現時我們在監督工作量的問題上,接納了審計署和管理參議署的建議,每名 總破產管理主任須完全負責所屬組別處理個案的進程,而無需逐一階層的破產管理主 任負責。另一方面,我們亦設定了工作時間指標,希望不會把處理案件的時間拖長。

議員剛才詢問為何要求私營清盤從業員須在一年內完成處理的個案,而過去部門內則沒有這樣的規定。其實,根據過去的經驗,一些資產不多,能夠以簡易程序處理的案件,在兼顧有關的法律規定後,應可在一年內完成。但我們不能單看一宗個案,因為私營清盤從業員只處理少數個案,但破產管理署內的同事會同時兼顧很多不同的案件,這種情況可能會造成延誤。因為要處理不同的個案.....

#### 主席:

麥先生,希望你能掌握時間,因聆訊時間尚有一小時,以你的答覆,你可能 要再出席聆訊三、四次。

## 破產管理署提供的服務

## 破產管理署助理署長(個案處理):

對不起。因此便做成這樣的情況。

## 主席:

李華明議員。

## 李華明議員:

我不希望阻礙大家的時間,如果現時不能提供有關資料,可以在日後補充。 究竟5萬元以下的小型個案,大部分案件所需時間有否超逾40人時?我並非要求一、 兩天內完成,請問有否進行這類統計?

# 主席:

麥先生,很簡單的問題,有否做統計呢?

# 破產管理署助理署長(個案處理):

就個案方面,現時我們已嚴格要求破產管理主任填報處理個案所需的時間。 我們過去在這方面有疏忽的情況,但現時我們已接納了審計署的意見,肯定每名破產 管理主任必須填報有關資料,希望日後可以解決這問題。

#### 主席:

我以為你會回應報告書第2.20段,有關填報標準工時記錄表的問題。請問現在是否有要求員工填報標準工時記錄表呢?由於過去沒有填報這些紀錄,現在如有紀錄便可監察處理個案所需時間,以便作出統計。第二方面,立法會並非沒有關注有關問題,我亦曾提出了不少問題,相信立法會亦有紀錄。金融風暴令個案大幅增加,而我想知道在1998-99年及1999-00年的兩個年度內,究竟署方有多少超時工作的紀錄?我希望藉著這些紀錄,瞭解工作量增加的情況。希望會後可以提供這些資料。至於標準工時記錄表方面,是否可以確實有填報該等記錄表?

# 破產管理署助理署長(個案處理):

我可以確實答覆,現時破產管理主任一定要填報這些資料。

## 破產管理署提供的服務

#### 主席:

劉江華議員。

# 劉江華議員:

主席。我想要跟進麥先生的答覆,他指出問題在後期才被發現,而逐級別的 監察因工作量增加而出現問題。因此,他們要求管理參議署協助研究檢討管理制度。 請問政府的高層管理人員,包括署長、副署長和助理署長等,是否有責任監察內部的 管理制度,而不是在工作出現問題時,要求其他部門研究改善的方法?香港政府一向 聲稱管理良好,為何問題要到了嚴重程度時才被察覺,還要其他部門協助改善有關情 況呢?我實在不明白這一點。

## 主席:

區署長。

# Atg OR:

Mr Chairman, the Management Services Agency were called in the middle of last year by my predecessor to have a look at the functional operations of the Official Receiver's Office because obviously there were concerns expressed. Sometimes when you are so close to a problem you cannot see what the problem is. Sometimes it takes an independent to come in and to shake you up and make you aware of the problem. The MSA came in and made a series of recommendations for re-engineering the department. And we received their report in December last year, shortly before in fact the Director of Audit published his report on the Official Receiver's Office. We had already begun to implement the series of changes as recommended by the Management Services Agency to increase efficiency within the office, including for example, setting up specialised bankruptcy teams to fast-track the vast majority of small bankruptcy cases through the office. Because most bankruptcies now, Mr Chairman, are self-petitioned bankruptcies. As you are most probably aware they are the overwhelming majority of cases now coming into the Official Receiver's Office.

So, we implemented nearly all of the recommendations of the Management Services Agency, and as my colleague, Mr Mak, has already said, many of those in fact closely reflected many of the recommendations contained in the Director of Audit's Report as well.

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#### 主席:

劉議員。

## 劉江華議員:

主席。我希望向庫務局局長提問,這是我在公開聆訊中一項很感疑惑的問題。很多部門在工作出現問題時,會請其他部門或管理顧問公司協助研究,剛才的答覆指自我檢討未必能發現問題所在。這是政府部門的處理方法嗎?所有高層的管理階層,是否應該監察部門的內部管理制度呢?署長和副署長職級的薪酬十分豐厚,為何不對內部管理制度作出監察?特別就這個案來說,現在才明白箇中情況。請問庫務局局長,部門首長是否理應要監察這種情況?

## 主席:

**俞局長**。

# 庫務局局長俞宗怡女士:

多謝劉議員提出的問題。《公共財政條例》規定所有管制人員,包括部門首長,要對所使用的資源(即公帑)負責任,令到公帑花得物有所值,盡量達到成本效益。不過,大部分部門首長,在經過一段時間後,都會覺得時移勢易,對部門處理的工作、執行的法例、採用的工序和技術,產生是否適合時代變遷的疑問。通常管制人員會利用內部資源,不斷作出檢討。但可能每隔數年,三年、五年或是更長的時間,管制人員會覺得有必要和好處,邀請一些專家對部門進行檢討,從基本作出檢討。例如現時海關瞭解到部門工作越來越繁重,市民的要求亦越來越高,他們正進行根本的改革。通常這類大型的檢討工作,管制人員可以有兩種選擇,第一,是向管理參議署,即政府內部機構,要求這些管理專才協助進行檢討工作。第二種選擇是管制人員可以申請撥款,聘請顧問公司進行基本性的檢討工作。

我相信政府的處理方法,其實與一般私營機構沒有分別。我們要瞭解,一般較有規模的私營機構,除了機構內的高層管制人員會不斷檢討公司的運作外,亦會每相隔一段時間,聘請一些特別關注管理的顧問公司,進行基本的檢討工作。我覺得,如果部門需要申請撥款聘請管理顧問公司協助進行檢討工作,亦是物有所值的。審計署署長報告書內,有一段提述由4月1日(即今個財政年度)開始,破產管理署獲撥款800萬元,聘請顧問公司,並聯同政策局,即財經事務局,一同檢討現時破產管理署的工作範疇,以及法例上是否需要修改或簡化。就這方面,我覺得是值得去做的。

## 破產管理署提供的服務

#### 主席:

吳亮星議員。

# 吳亮星議員:

報告書第2.20段載述破產管理署曾發出技術通告,我希望跟進這項重要的問題。技術通告要求破產管理主任填寫標準工時記錄表。但根據報告書第2.21段記述,在處理5萬元以下,被抽查的20宗破產/清盤個案中,只有兩宗填妥工時記錄表;而20萬以上的清盤個案,20宗個案中只有3宗填妥了工時記錄表,即只佔一成或一成多的比率,其餘九成或接近九成的個案是完全沒有紀錄的。這情況明顯說明,完全沒有制度監察技術通告內容有否被執行,這是否顯示署方的監管不足呢?對於沒有填寫標準工時記錄表的員工,你們會如何處理?引申至報告書接著數段,如果沒有填寫這些資料,署方如何向法庭申請收費?欠缺足夠的依據,會否出現不合理收費的情況呢?

## 主席:

區署長。

#### Atg OR:

Yes, Mr Chairman, it is true that many of these cases in the past insolvency officers did fail to complete the time records as they were required to do under the technical circular. No excuses. That has since been addressed. They will from now on and have been doing for the past several weeks, as I said, ever since the Director of Audit issued his report. I cannot say anything more than that, Mr Chairman.

#### 主席:

如果員工沒有填寫工時記錄表,署方將如何作出跟進?在過去又曾否作出跟進行動呢?

#### Atg OR:

As far as I am aware, Mr Chairman, there has been no follow-up action against the particular insolvency officers concerned.

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#### 主席:

吳亮星議員。

## 吳亮星議員:

這裏已證實了有監管不足的情況,希望日後能夠強化監管的工作,否則向法庭申請收費時,便如報告書第2.24段所載,沒有工時記錄,便不能有效地評核破產管理主任的工作表現。其實,沒有紀錄如何提出合理的收費呢?這情況可能導致少收費用,公帑支出較實際申請的為多。反之,多收費用則對應收回資產的人士造成不合理的情況,我相信這點已十分清楚。

#### 主席:

劉慧卿議員請妳跟進。

## 劉慧卿議員:

署長和助理署長都承認有疏忽,但卻容許這種疏忽繼續下去,是否有人嚴重失職?當然,我很高興現時的情況已得到改善。但他們再三承認這種情況,實在令人非常震驚。審計署署長在下一個關於路政署的環節裏,對管理階層更建議採取紀律處分。主席,我相信這是很嚴重的事情。

此外,我想再跟進關於俞局長和幾位證人剛才指出部門有不斷進行檢討,未 能達到目標便邀請管理參議署協助,而管理參議署已完成檢討工作,突然又說申請800 萬元撥款聘請顧問研究的有關情況。其實,我翻閱審計署署長報告書後,看不到不斷 檢討的情況。如果已有作出檢討,為何看不到任何指引呢?也許我看漏了。請問那一 段提及他們不斷檢討?

#### 主席:

就方面,請許局長代俞局長作答。

#### 財經事務局局長:

主席。我就各位議員和劉慧卿議員剛才提出的問題作出回應。我相信署方要 向政府帳目委員會交代一點,像吳亮星議員剛才所說,如果法庭沒有紀錄,收費會如 何計算呢?提供給法庭的資料會否是虛構、並不真確呢?以我的理解,要法庭判決收 費的個案,署方並非完全沒有資料,有些資料是有填寫的,只是大部分沒有填寫。至

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於紀律處分方面,雖然我在憲制上無直接權力對IO執行處分,但我認為應對個案有賞有罰,不能抹去了便重新開始,這是不足夠的。

最後,我必須澄清關於800萬元撥款的問題。我剛才回應劉慧卿議員的問題時,曾指出在政策的層面上,我非常擔憂現時破產管理署的工作,都是依據一些很久以前的法例執行,而這些法例是源自英國傳統的。但實際上,在過去五、六年間,一些採用普通法的地區,包括英國本土,亦開始有所改變。政府和納稅人是否需要永久和無限量地負責清盤的費用,尤其是可收回的資產越來越少,這問題牽涉在法律上應如何處理破產管理。現在聘請顧問是研究這方面的問題,而不是研究管理的方法,管理方面會由管理階層繼續檢討,不需再花公帑進行。我絕對要澄清這點。

現在我們想聘請的法律專家,特別是澳洲的專家,研究整套破產管理是否已不合時宜。處理的個案需時甚長,又拖延時間,這不是純粹效率低的問題,部分是程序的問題,在法律上需要這樣處理。因此,我們希望聘請一些屬於海外的基本法傳統的專家,在整個破產的過程中,進行徹底的改革。過去法律改革委員會曾提出一些改革建議,但由於香港的傳統意識濃重,受到很大的阻力。現時我們要釜底抽薪,否則,即使署方有很好的管理,亦無法可以妥善地完成全部個案,個案越多,質素方面越被忽視。因為要顧及修正,可能未能顧及能否妥善處理。長此下去,這是不可接受的。所以我們得到政府和庫務局的同意,撥出一筆款項,研究這方面的問題,並不是研究內部行政的管理。

#### 主席:

劉慧卿議員。

## 劉慧卿議員:

主席。請署長答覆在過去數年,你們是否不斷檢討,然後才邀請管理參議署協助。此外,局長所說的賞罰是甚麼意思?是感到有些人員應該受到紀律處分嗎?而 獎賞方法,是否發放"花紅"呢?

#### 主席:

許局長。

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# 財經事務局局長:

主席。這只是一個用詞,公務員應有紀律的規限,如果明顯沒有執行上級的指示,在失責時應該得到處分。絕對沒有"花紅"的制度。我是指紀律方面要嚴肅地處理。換言之,我會與署方研究,由這份報告引伸出來的個別情況,確實可以採取公務員內部的紀律處分時,便應該考慮採取行動。

#### 劉慧卿議員:

主席。今天我們都聽到數位官員承認疏忽的事件,許局長可能是第一次聽到,你現時是否覺得有理由需要採取行動呢?

# 主席:

許局長。

## 財經事務局局長:

主席。我剛才主動提出會與署方和署方的領導層,就這方面的錯失進行研究,如果符合《公務員規則》的紀律規則,當然會考慮個別的情況,採取行動。

#### 主席:

我希望取得那份技術通告,請署長同時告知誰人負責執行技術通告填報工時記錄表的規定。"I think I want to have a copy of the technical circular on time sheets".

## Atg OR:

I can let you have that, Mr Chairman.

#### Chairman:

And I want to know who is responsible for enforcing that particular technical circular or the monitoring as a side answer.

#### Atg OR:

We will let you have a copy of the technical circular, Mr Chairman. With regard to monitoring, it should have been the duty of the Chief Insolvency officers to monitor their teams.

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#### Chairman:

It should be clear from the circular, but I think Ms Lau's question still needs to be answered, her earlier question, who should be responsible? Has any ...

## Ms Emily LAU:

... continuous review ...

#### Chairman:

... continuous review, and has any follow-up action including, I suppose, she implies, disciplinary action has been taken?

#### Atg OR:

Mr Chairman, since the Director of Audit published his report, our critical priority has been to get the dividend out to the creditors in all cases where we can. As I mentioned before we are targeting that, to complete that exercise by the end of July/early August of this year. That is the critical priority. And then, Mr Chairman, obviously we will have to go back and look at what went sadly wrong. I cannot comment any more on that at the moment. It would be quite wrong to say that disciplinary action was going to be taken without a complete review of what went on in the past. But our number one priority, Mr Chairman, is to get the dividend out to the creditors as quickly as possible.

## Ms Emily LAU:

Chairman, I certainly agree with Mr O'Connell, yes, I agree with that. You have my full support. But I think my question was prompted by what the Secretary for Treasury had said that throughout the years there was continuous review of the operations, whether they need to set draft guidelines and all that. And then when that was not adequate then you brought in the MSA and that is the sequence of events that we are led to believe. So, that is why I want to ask Mr O'Connell whether he is aware of such review, because by reading the Director of Audit's report I do not think that has taken place. Maybe, Chairman, maybe the Director of Audit can assist by telling us whether they are aware of this so-called continuous review over the years? I did not notice any continuous review being undertaken. Could the Director of Audit assist here? 主席。我察覺不到有不斷檢討的情況,他們是否察覺到呢?審計署署長可否提供協助?

#### 主席:

審計署署長。

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## Mr Dominic CHAN Yin-tat, Director of Audit (D of A):

Mr Chairman, as far as we are aware there is no continuous review, as far as we are aware.

#### Ms Emily LAU:

Thank you very much. That is what I thought but the Secretary and the Director seemed to tell us something else.

#### Chairman:

Mr O'Connell?

#### Atg OR:

Could I just make one point of clarification, Mr Chairman? Perhaps I have misunderstood. In cases where the Official Receiver only acts as the provisional liquidator before the case is passed on to a private insolvency practitioner, time sheets are completed. I misunderstood the question for the purposes of making an application to the court for the purposes of reimbursement of time costs recovery. I misunderstood the question before, Mr Chairman. I just wanted to make that clarification.

#### Chairman:

On the continuous review, maybe Ms Denise YUE can take this up?

#### 庫務局局長:

主席。我希望澄清,剛才的答覆是解答劉江華議員提出的一般性問題,我記得劉議員詢問一般來說,政府部門的管制人員是否都應該負責檢討部門的工作、物有所值和衡工量值等問題。我的答案並非特別針對破產管理署。審計署署長報告書指出破產管理署的部分工作可以作出改善,而有關的政策局和庫務局在回應時,已反映了這一點。

#### 主席:

劉慧卿議員。

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## 劉慧卿議員:

主席。是否在自行檢討之後才決定邀請管理參議署協助?或是部門提出要求 便可以嗎?你們有否查詢過他們本身是否已作出檢討呢?局長剛才指出的是一般的 處理方法,請問你們會否監察部門處理的程序?

#### 主席:

**俞局長。** 

## 庫務局局長:

主席。我還是集中解答一般性的問題。每名管制人員的處事方式會有層次上的不同,我強調我是以一般性的角度解答劉江華議員的問題。至於破產管理署的管理階層決定選擇那一種途徑,每名管制人員皆有彈性的自主權,不過,相信管制人員在察覺部門需要改善時,都會以他們認為最適當的方法採取行動。

#### 主席:

即管理參議署在部門的要求下,不會理會曾進行了甚麼檢討工作,也會提供協助。

## 庫務局局長:

管理參議署主要考慮本身的工作量和有甚麼部門邀請他們協助檢討管理的工作,如果管理參議署能夠調派人員協助管制人員,通常都會接受邀請。但如果管理參議署在該段時間未能調撥資源,便可能提議管制人員直接在外間聘請顧問公司,又或部門可以等待管理參議署在數月後調撥人員,才開始進行檢討工作。實際上,管理參議署的工作人員並不多,而政府共有八十多個部門,每年亦會有一些部門邀請管理參議署進行不同規模的檢討工作。

#### 劉慧卿議員:

或許應由許局長答覆,因為俞局長並非負責該部門,要求提供協助的部門是 許局長轄下的。審計署署長剛才亦說他看不到有不斷的檢討,相信局長亦不知道有關 情況,這是否非政策管理的範圍。

## 破產管理署提供的服務

#### 主席:

許局長。

# 財經事務局局長:

主席。正如我開始時所說,其實局方一向很關注個案的增加和處理的情況。 多年以來,大家可以看到破產管理署的管理階層曾嘗試以行政手段,如發出指引和設立監管的架構等,令處理的個案能妥善完成。但在執行時,如監管員工方面,報告書中顯示他們有些缺失,但並不等於管理階層沒有進行檢討,其實不檢討也不行。因為我們每年都嚴謹地處理增加工作人員的申請,多數是不允許增加人手的。在這情況下,管理階層便要尋求改善效率的方法。

至於邀請管理參議署協助,據我理解,特別在金融風暴後,加上以私人自己申請破產的個案的新方式增加了,令過去兩年個案增加的情況特別嚴重。署方除以一貫的方法處理外,可能需要一些較為基本的改變,例如修改法律條文,縮短處理個案的工作時間。正如署長剛才所說,破產管理署在法律方面的同事本身是律師,對法律程序十分熟識和瞭解,在處理這些事情時,可能無法以第三者的角度考慮,因此,他們便要邀請管理參議署作為第三者協助檢討,亦可以客觀的角度,考慮幫助債權人的方法,這是有其作用的。這就是當時的背景。

#### 主席:

劉議員。為了幫助瞭解整件事情,我會要求索閱兩份文件。第一,是邀請管理參議署協助的正式函件,內容可能會提及工作的範圍及希望得到的顧問意見,從而得知要求協助的,是部門應該自己處理的一般工作,還是需倚靠顧問才能處理的工作;第二,報告書第8.18和8.19段的回應中,俞局長已提及以800萬元聘請外間的顧問,顧問的職權範圍亦應讓我們參考。我們看到這兩份文件後,便可比較聘請外間顧問的工作和自己的管理工作有何不同。劉江華議員。

## 劉江華議員:

主席。這兩份文件都有用,但局長剛才以金融風暴作解釋,我們明白有特殊的情況,然而,管理問題在金融風暴前已經發生,我們質疑管理階層為何不處理?局長剛才表示會研究是否有人員疏忽職守,請問何時可告知調查的結果?

#### 主席:

許局長。

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## 財經事務局局長:

主席。關於紀律的問題,我需要與署方研究,現在不能說有多少員工會受到處分,我們還要跟從公務員紀律的規例,不能隨便交出幾個人員來。我們一定會徵詢公務員事務局,並與署方認真處理。因此,我不能說在三個月後交出三名員工便了事。我覺得這樣對他們非常不公道的。

#### 主席:

局長,議員沒有這意思。

## 劉江華議員:

主席。你已為我澄清了,我沒有要求他們必須交出受處分人員數目的意圖。 不過,既然許局長答允進行調查,我亦不希望無了期地調查下去,委員會是有時間規限的,需要作出報告,我希望知道調查需要多少時間。當然,屆時你可以說無人疏忽職守,只要你交出調查結果,這是沒有問題的。

## 主席:

劉議員,我們先讓局長與署方考慮,在我們完成報告前,他們要向委員會清 楚交代事件進展的書面回覆。

# 財經事務局局長:

好。

## 主席:

我們的報告肯定在6月底前要完成,不是他要走,是我們要卸任。

#### 劉慧卿議員:

主席。我們是有理由知道局長在何時離任,因他是代表接任人作出承諾。

#### 主席:

他是代表局方作出承諾,不是個人的承諾。現時是4月初,相信一個月商議 的時間已足夠,請許局長在5月初回覆委員會。

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梁劉柔芬議員,我希望這問題後便暫停公開聆訊。剛才大家提出的都是很重要的問題,我不希望阻止大家發問。但尚有很多具體問題未作跟進,仍未進入有關的範圍,我相信需要再安排下一次的聆訊。梁劉柔芬議員。

# 梁劉柔芬議員:

主席。剛才已提出較為核心的問題,就是整個管理的認知性。局長剛才嘗試解釋是因為金融風暴和其他理由,但署方除了署理署長外 — 我不知道他署任了多少時間 — 亦有三位助理署長,他們全部是管理階層的人員,相信他們對管理認知性方面亦有相當瞭解。今天我們質疑署方在管理上出現問題,我希望署方可以解釋,究竟是這個行業令你們有這樣特別的情況,或是你們的專業有這樣特別的情況,抑或是局長所說有其他問題呢?我們在撰寫報告時會以署方為基礎,不太著重局方。我不希望在社會上造成一個印象,是署方沒有局方的政策指示,便沒有管理的意念,我不願社會上有這種意識。請你們清楚說明。

## 主席:

署長。如何能自動自覺些?

# Atg OR:

Mr Chairman, as I said, in the past there was perhaps an over-elaboration of procedures which the case insolvency officers were expected to follow which led to delay. Secondly, as we have already said, there were no time frames put in place in the past for these cases to be completed. That has since been addressed. With the exception of the filling-in of time sheets for where the Official Receiver acted as provisional liquidator, it is true that many other cases, and the smaller cases, the insolvency officers did not follow the requirements of the technical circulars issued by management with regard to the keeping of time records. That is accepted. That has since been addressed.

There are other problems as well, in particular as I said the snowball of insolvency cases since the commencement of the Asian financial turmoil. This in fact led to many insolvency officers leaving the older cases behind and not dealing with them in the way that they should have been dealt with, but just to address the new cases that were pouring in. All of these factors combined, I think, Mr Chairman to lead to delays.

Now, there are certain cases by their very nature which cannot be completed within nine months or a year because they are very, very complex. I think Members are aware of some of the very large liquidations. Bank of Credit and Commerce comes to mind. Peregrine is another one. Some of the big, the more complex, the more sophisticated insolvency cases may take several years of on-going investigations, chasing of

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assets, payment of interim dividends for these cases. So there are in certain cases, Mr Chairman, good reasons why these cases cannot be completed within nine months or a year.

#### Chairman:

I think Mrs LEUNG's is a more general question. If I may slightly rephrase it, it is that professional in the management of this particular type of part, are you aware or should you be aware or at least your predecessors, should they be aware that there could be other type of practices in the monitoring of staff workload, particularly for example in the private sector which conducts similar work? Should your predecessor be aware of the fact that there are probably better type of management styles and systems elsewhere? Because you are making quite tough demands on the private practitioners.

## Atg OR:

Yes, I think obviously there are different management styles elsewhere, including in the commercial sector. I cannot speak for my predecessor. I mean I cannot comment on what he thought or what he did not think. It is not for me to say. But as I said what we are determined to do in the interim, of course, is learn from this and to drive forward and draw a line under what has happened in the past with a view to learning from it. And to move forward to ensure that there is no repetition of this ever occurring again.

#### 主席:

梁劉柔芬議員。

#### Mrs Sophie LEUNG:

Chairman, may I follow that? Of course everyone can say after something happens that we will look forward and make some corrections and changes whatsoever. But I guess what I am asking is since all of you today present are really in the management and I think this is management of your staff and of your productivity as a whole. So I am asking, is it because of your own profession that you practice this way or, as I understand it in the private sector, your profession definitely does not practice in such a manner. I mean they are very, very concerned about time log and productivity at the end of each job. But anyway, I would just like to give you a chance for all of you present to explain yourself so that the community would not get a wrong impression of what Government officials are incapable of as far as management of staff is concerned.

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#### Chairman:

Mr O'Connell, I think in some ways your reply would be very important on how we are going to follow-up the case as well. I think Mrs LEUNG is really asking you as the controlling officer for the Department, not only just in the future but in a way it depends on your former colleague as well. I think it is important how you actually give an answer. Mr Manning?

#### Mr D F Manning, Assistant official Receiver (Financial Services):

Mr Chairman, could I just make a point here, that I think it should be borne in mind that time sheets were not quite as relevant in the Official Receiver's Office as they are in the private sector. As is mentioned later on the report, for the private sector, the basis for levying fees is on the basis of time cost which is recorded on time sheets. They also use the time sheets obviously to see the number of hours that people are actually working, etc, and this has been the subject of some comment indeed by the courts about the number of hours that are being charged on time sheets. The only area where the Official Receiver is entitled to get any money on the basis of time costs is where he is the provisional liquidator. So the same emphasis was not placed on time sheet basically for a charge. So the point made earlier on whether public coffers were suffering as a consequence of not keeping time sheets, is not valid. They are kept in relation to when we do provisional liquidations. So we can substantiate any bill we put to the court against an estate.

But as I say up to relatively recently, and indeed it was really only during the Peregrine case when it really came out in the courts here about the importance of time sheets and the backing of information to substantiate these, in particular in the private sector. This emanated from a case in the UK, the Maxwell case, a couple of years ago. We have become very much aware of this, and indeed in some areas of our office we do keep timesheets. We do have targets. We do have deadlines and we give our staff man days to complete certain tasks. We will measure that against the actual man days that they do to see inefficiency level. That again is one area, but as I say there was never any great emphasis placed on time sheets by management up to fairly recently. We now I think have responded here and said, yes, time sheets if we are going to go on to, and basically the Director of Audit has alluded to and indeed stated it may need a change in the legislation whereby we would start charging fees on the basis of time costs if we want to go for full Because at the moment the majority of our fees are generated on a cost recovery. percentage basis. The fixed fees generate very, very little money. It is basically on realisation of assets, distribution and interest on monies place in the company's liquidation account. That is where the major source of revenue, about 75 percent of the revenue of the ORO comes from that area. So time sheets in itself are not necessarily the only way of measuring or managing staff, but it seems we are going in this direction and saw the time sheets as the ultimate way of managing staff. We do it in areas certainly for different functions and different management reasons.

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#### Chairman:

Mr O'Connell?

## Atg OR:

Mr Chairman, just a follow-up to what Mr Manning said, that the 85 percent of the cases that come into our offices have little or no assets because that is the nature of small under-capitalised companies with little or no assets. At the moment the law proscribes that we can charge a fee in accordance with the companies fees and percentage order which basically, as Mr Manning says, prescribes the percentage. A percentage of nothing equals nothing. It is very, very difficult to generate fees. That is why there is this inequilibrium between the amount of fees and the amount of costs, But in those cases where stuff is being passed out to the private sector - there are a small number of cases, maybe thirty to forty, where the Official Receiver acts as provisional liquidator - time costs are kept to justify payment of fees when we make the application to the court, but they are the minority of cases, Mr Chairman.

## 主席:

似乎現在是完結聆訊的適當時間,委員會將會商討日後如何作出跟進,尚有 很多問題我們未有機會提出。劉慧卿議員。

#### 劉慧卿議員:

可否要求提供有關破產管理署的管理階層人士調動的資料?梁議員剛才亦 提出,不知道署理署長署任了多久?可否提供近一、兩年內的人士調動資料,是否調 動頻密?請連姓名也一併提供,或許委員會會邀請作為證人。

#### 主席:

主要是說署長或是......

#### 劉慧卿議員:

及助理署長等管理階層的人十,相信人數不會太多吧?

#### 主席:

請局方協助提供由1998年1月開始人事調動的資料。梁劉柔芬議員。

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# 梁劉柔芬議員:

主席。除文件外,剛才提出某些個案因有一定的程序而拖長了的。可否請署 方亦提供這方面的例子?我希望不單是大型個案,包括小型個案的例子,讓我們知道 署方的工作情況。

# 主席:

以列表方式可能較為容易比較不同組別的工作情況,或許讓署方再次答覆,有那些大型個案影響了個別組別的工作,令獲分配的工作量較少。Mr O'Connell, special cases, if you could give slightly more elaboration. We had two, Ming Fung and Peregrine, but I am sure there are more. Thank you.

# Atg OR:

Yes.

# 主席:

這部分的聆訊到此為止,多謝各位證人出席。各位同事可稍作休息,接著是另一項聆訊。先請證人退席。

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