破產管理署提供的服務

主席:

各位同事,今天就審計署署長第34號報告書第5章「破產管理署提供的服務」繼續進行公開聆訊。被邀請出席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、破產管理署助理署長(個案處理)麥炳華先生、破產管理署助理署長(財務)萬能知先生及署理破產管理署助理署長(法律事務)劉嘉寧先生。

我們上次只討論了報告書的兩部分,其他部分還未開始討論。吳亮星議員,你想先跟進上次的討論,還是由第3部分開始?

吳亮星議員:

由第3部分開始。

主席:

好的,謝謝。

吳亮星議員:

謝謝主席。我相信局長今天須應付香港或國際性的股票問題,因此,我們會好好掌握時間。根據主席的引導,承接上次的討論,開始今天的聆訊,更謝謝政府有關方面提供資料。

今天討論報告書第3部分有關破產/清盤案財產中資產的確定和變現。報告書第3.5段提及"審計署注意到破產管理署並無備存財務部轉交個案處理部跟進的可疑個案數目統計,因此難以確定個案處理部的個案破產管理主任有否採取適當行動,跟進財務部發現的不當行為。"及第3.6段最後兩句提及"經常審閱這些記錄,破產管理署的管理層可以確定對於具有足夠憑證的個案是否已採取足夠行動,包括起訴。"我想根據以上資料,聽取破產管理署的回應,究竟在這類管理上,是否確實存在漏洞和不足?

主席:

區署長。

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

Mr Chairman, perhaps I can explain by way of background, that the role of the Financial Services Division is primarily to examine the statement of affairs, books of account, records and files in order to provide the case management people and the lawyers in the Legal Services Division with information as to whether, from a financial view point, the director's statutory duty specified in the legislation has been complied with. This examination will include undue or over-statement of assets and liabilities, any fraudulent preferences or unfair preferences, proper maintenance of books of accounts and records. Where prosecution action is eventually taken arising out of a report to the Legal Services Division, people from the Financial Services Division will attend court, the magistrate's court, to provide expert input, expert evidence, in the event that the case is being contested.

Mr Chairman, if the Financial Services Division opines that their investigation teams examine the statement of affairs and books of account in accordance with the present criteria based on liabilities and they also check the general format of the statement of affairs for liabilities, if there are liabilities of less than HK\$1 million. The nature and scope of the work depends on the amount of liabilities and whether or not additional information is required for possible prosecution action.

In view of this, Mr Chairman, it is not considered essential for FSD, Financial Services Division, to compile statistics as detailed comments for follow-up action are made on each case file. The preliminary examination are in cases when liabilities are in excess of \$10 million. A checklist showing areas of follow-up actions are highlighted and can provide the basis for the compilation of statistics.

The Case Management Division considers that statistics and the results of the review of assets may not reflect the true position and effectiveness of the officers concerned, because quite frankly the wound-up companies and bankrupt firms may well have ceased business for several months prior to the commencement of the liquidation or the bankruptcy. Therefore they have decided to take a commercial approach in deciding how much time should be spent on dealing with these matters. Sometimes it is difficult to also collect documentary evidence to facilitate recovery actions due to the lapse of time between the closure of a company or a bankrupt firm and by the time that the Official Receiver people go in to take over control of the company.

A further consideration, Mr Chairman, is that in many, many of these cases the estate, i.e., the wound-up company's estate or the bankrupt estate, simply has little or no assets to enable, for example, civil action to be taken against possible third parties for recoveries to that estate. As you know, Mr Chairman, a liquidator or trustee-in-bankruptcy must look to the assets in the estate to determine whether or not he can undertake civil action for further recovery. If there are insufficient assets in the estate, Mr Chairman, then invariably he will go to his creditors to explain the position and say, "are you prepared to

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contribute to a financial war chest to enable us to pursue these third parties?". And our files, Mr Chairman, are littered with examples of requests going out to creditors seeking funding for civil litigation, and creditors saying, "I am sorry, no, we are not interested".

Further guidelines, Mr Chairman, and more training on prosecution of insolvency offences will be provided by our prosecution section.

So, all in all, Mr Chairman, we say that there is control, there is management, and we are fulfilling our regulatory and prosecutorial role in relation to the investigation of wound-up companies and bankrupt estates.

主席:

吳議員,你是否想跟進?

吳亮星議員:

我想跟進報告書第3.5段。署長剛才說有一定的指引,我想知道破產管理署就這類跟進防止出現隱藏資產方面,是否有指引?究竟破產管理署根據甚麼指引採取適當行動,避免因為貪污或疏忽而引到沒有採取足夠行動確定破產人和無力償債公司是否有隱藏資產?

主席:

署長。

Atg OR:

Mr Chairman, there are two aspects to this. Again perhaps I could explain by way of background. First of all it is the primary duty of directors and bankrupts, of companies and insolvent estates, to disclose to the liquidator or to the trustee-in-bankruptcy all assets of a company so that the liquidator can liquidate those assets for the benefit of the creditors of that wound-up company or estate. There are criminal sanctions, Mr Chairman, contained in the companies legislation for prosecution action to be taken against directors and bankrupts if they fail to properly disclose the whereabouts of assets so that the liquidator can take action. And indeed, Mr Chairman, if you go to Table 7 of the Director of Audit's report, you will see the prosecution actions for disqualification proceedings that had been taken over the various years.

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With regard to hidden assets, Mr Chairman, on the civil side of matters, again each case file is examined by the Financial Services Division and a recommendation will be made to the Case Management Division in relation to whether or not there are hidden assets or whether or not directors have salted away property, whether or not there had been undue preferences. This is on the civil side of matters, and again I go back to my previous answer. Sometimes there is simply insufficient evidence to enable the liquidator or the trustee-inbankruptcy to launch civil proceedings for recovery of assets. If there is sufficient evidence, and let me also preface that, Mr Chairman, by saying that on many occasions we go and take third party barristers' advice on whether or not there is sufficient evidence to pursue the matter, and depending on whether or not it is a positive answer we will then consider our next step. If the answer is "yes, there is a possible hidden asset" and we want to pursue a third party we then again look to the credit balance standing to the estate of that particular account. And as I mentioned to you before, in most cases there are little or no assets available which may enable the liquidator or trustee-in-bankruptcy to fund recovery of action, recovery by way of civil litigation. The liquidator or trustee must then seek a war chest from his creditors, because after all it is the creditors in liquidation, or in bankruptcy who have a direct financial stake in the liquidation or bankruptcy. And again I repeat our case files are littered with such requests and rejections by the creditors who obviously feel they are simply not going to spend more money when there is no guarantee they are going to get it back.

主席:

請先容許我稍作跟進。If I can refer to Paragraph 3.5, I think all that the report is trying to say there is that there should have been appropriate follow-up action. I do agree that in a way simply looking at the number of cases that go for recovery action is not compehensive enough. But if the Director is right in saying that the case files are littered with evidence that there are not enough funds to pursue these actions, this is one proper follow-up action as far as I can see. Can that sort of statistic be compiled, and have they been compiled?

Atg OR:

The answer is, Mr Chairman, yes, but how cost-effective is it going to be? I mean, again we are wearing our liquidator's hat here. I mean, we are bound to try and process these cases. If at the end of the day the liquidator considers it is possibly not cost-effective to keep this very, very detailed information because it may not help in respect of other cases, we will obviously go away and consider this and if possible we will keep statistics. But it is a question of whether it is going to be cost-effective.

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Chairman:

I think the main thing is your work is as accountable as anybody else. If you do not keep any statistic, do not keep any record, then it really assumes that your decision and judgment is not challengeable.

Atg OR:

Well, Mr Chairman, we make a report. We tell creditors there is a possible cause of action against a third party in relation to civil litigation, and if the creditors say "we are not interested", there is not very much we can do.

Chairman:

No, I am not saying whether the course of action is right or not. What I am saying is that should there be proper statistics, proper file records saying that these things have been cleared, and then when the Director of Audit comes he can at least say "I have looked at the file and cases, 800 cases. The statistics show that you have no funds to recover the action." I mean, that is one answer. It is an appropriate statistic or follow-up action.

Atg OR:

In the question of hidden assets, it is sometimes very difficult to actually, these cases are not that regular in relation to hidden assets or undue or fraudulent preferences. There are many, many other examples of types of civil litigation. Again we hear what you say but it is a question of "is it going to be cost-benefit for the Official Receiver's Office to keep these detailed statistics?"

Chairman:

If you look at, which I am going to follow up soon, I think on Page 15 in the English version of the Report, in 1998 and 1999, we are looking at the chart in Table 5, in 1998/1999 the nominal value of debts which we are looking at is \$1.6 billion. I am sure the figure is going to grow in 1999/2000 and the year after. We are talking about very, very huge few sums, at least on paper. I agree that in reality not much of this can or may be recovered, but at least that is the figure which is accountable, I think, to the creditors and I think to where people judge your work. And if there is no appropriate statistics to see how these things are being properly followed up, I think, when we talk about cost-effectiveness, we are talking about very, very huge sums.

Atg OR:

Can I ask my colleague, Mr Manning, to comment?

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

I think, Mr Chairman, if I could make the point here, there is no evidence to indicate that appropriate follow-up action has not been taken on these findings. In the last financial year there have been 248 various irregularities identified, possible irregularities, I should say rather than actual irregularities. These are possible fraudulent preferences, inter-dealings between directors' accounts, etc, etc, justification for bad debts written off. The Financial Services Division draws attention to each of these areas in their examination of the statements of affairs, the books of account and any other documentary evidence that is available. It is all documented on the case file very clearly with follow-up notes to say "please refer back" if there is any further investigation work required. Before the case is put forward for release to the court a case officer must examine and be able to produce reasonable evidence to apply for release to the court and indicating wherever follow-up action, if it has not been taken, why it has not been taken. Because oftentimes what apparently requires further follow-up action in actual fact does not necessitate because you have not got the information available.

And the statistics provided about the bad debts written off, I think we are all aware that most of the cases particularly handled by the Official Receiver's Office in the last couple of years in particular, are cases where there are virtually no assets left.

In most cases, I think approximately in 80 percent of the cases it is less than \$50,000. Companies have gone into liquidation. By the time the petition is taken out, by the time the actual liquidator gets his hands on whatever few assets there are available, it is six to nine months down the road. Oftentimes you cannot find books and records, you cannot find documentary evidence to follow through a debt, and in most cases the debtors will claim for one reason or another that this debt is not enforceable. So no further action can be taken. So, the statistics per se do not make particularly great reading, but when you see the percentage that is given there on Table 5, it indicates that in '94/95 15.8 percent of debts were recovered, and we look at the year '98/99 which says 0.5 percent. We would all agree that that is a very alarming statistic if we could take it at face value, but we cannot because the figure of '94/95 includes one debt which I understand to be somewhere in the order of \$110 million was received from one debtor. If we delete that figure from that, the percentages look to be working much more on par with each subsequent year.

主席:

劉江華議員,是否想跟進這問題?

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劉江華議員:

我想跟進這問題。破產管理署似乎仍然對這種做法作出辯護。根據報告書第3.16段,1999年收回債項的比率仍然很低,而且似乎越來越低。在這期間,雖曾轉換了數間律師行,在1999年亦轉換了一次,雖然這存在著很多因素,但報告書第3.17段顯示,破產管理署沒有任何追收帳面債項的統計數字、檢討和指引。在這情況下,破產管理署歸咎於律師行辦事不力,並在報告書第3.24段表示會在今後訂出指引。不過,管理階層在這方面完全沒有任何檢討、指引和統計數字,令我質疑你們的工作效率,又感到你們不負責任。

主席:

署長。

Atg OR:

Chairman, the Official Receiver's Office takes the view that it is cost-effective to hand out this work to debt collection agencies for two reasons. First of all there is not one penny of Government money involved in relation to instructing these debt collection agencies. Their fees are paid out of the assets of the estate. And secondly, Mr Chairman, it relieves the staff of the Official Receiver's Office having to chase these debts so that they can be redirected for other tasks.

I would like to point out, Mr Chairman, that in the past several years there has been an unprecedented rise in the workload of the Official Receiver's Office, in particular personal bankruptcy. And yet there has not been any commensurate increase in staff. In fact there has hardly been any increase in staff at all. The staff in the Official Receiver's Office, we have actually managed to re-engineer most of our processes to take on board this massive increase in personal bankruptcies arising out of the 1998 Bankruptcy (Amendment) Ordinance. So, Mr Chairman, we defend our position on the appointment of debt collection agencies. It is cost-effective for the reason I have given.

主席:

劉議員,請你作出跟進,把問題問清楚一些。

劉江華議員:

在合約屆滿再訂定時,破產管理署會有甚麼指標,以改善現時不理想的情況?

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Chairman:

Mr O'Connell?

Atg OR:

Can you repeat the question?

Chairman:

I think Mr Lau is really more concerned, not about the appointment of external agencies per se but how you supervise that appointment, in particular when 3.17 mentioned that you have very little statistics or very little measurement tools as to how to monitor the performance of the debt collector.

Atg OR:

Well, Mr Chairman, can I ask, Mr Mak, to address this?

主席:

麥先生。

破產管理署助理署長(個案處理)麥炳華先生:

其實,我們不是完全沒有"statistics"來"monitor"外聘的"book debts collectors"的,我們有"book debts statistics"……

主席:

對不起,麥先生,由於我們須保留會議紀錄,請你只用中文或英文發言,如 果中英夾雜,我們便難於翻譯和記錄。

破產管理署助理署長(個案處理):

對不起。我們並非完全沒有由追收債項代理所追收債項的統計紀錄,其實我們是有一套統計資料,但因後期追收帳面債項的個案陸續交給追收債項代理負責,我們沒有分開哪些由追收債項代理負責的個案,哪些由破產管理署負責。我們是如何監察追收債項代理呢?我們要求追收債項代理每月提交報告,向個案主任清楚說明追收個案的進度;此外,他們還須提交另一份報告,說明在一個月內成功追收的總額和註銷了多少帳面債項。其實,在註銷的階段上,追收債項代理只負責建議註銷,破產管

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理署個案組的主任收到他們的註銷建議後,一般都會根據他們提供的理由,加上本身的內部指引,決定在甚麼情形下註銷債項。我們是採用這種方式監察追收債項代理。 因此,不能說破產管理署對於追收債項代理是沒有統計數字資料及完全沒有監督。

主席:

劉江華議員。

劉江華議員:

主席。署長沒有就我的兩個問題作出圓滿解釋。在數字方面,審計署稱你們沒有統計數字,你則答覆是沒有分開追收債項代理和破產管理署追收帳面債項的數字,即是沒有由追收債項代理所追收債項的數字;你亦表示沒有發出任何指引,只有內部指引和內部處理。縱使有內部處理,審計署署長在報告書第3.18段指出,有些情況是非常兒戲,例如在一宗公司清盤案中,只因債務人遷離已知地址,破產管理署便同意註銷帳面債項,這種馬虎的做法令人覺得破產管理署對其工作完全沒有任何監管,可以隨便註銷債項,而且情況越來越差。請問如何處理這種情況?將來又如何處理?我這兩個問題還未獲得答覆。

主席:

麥先生。

破產管理署助理署長(個案處理):

我不能完全否認報告書第3.18段所提及的情況,但我相信這只是個別例子。 大家可能會認為這是推搪說法,不過,正如剛才署長所說,基本上這些追收的債項, 大多數已過了一段時間,要追尋欠債人已是一件很困難的事情......

主席:

我不想打岔你的話,不過,劉議員非常清晰地問有關報告書第3.17段,你卻 只在解釋你們的工作,而沒有回答劉議員的問題。這樣下去,你可能須出席第三次聆 訊。請你回答有還是沒有。如果你回答你們進行的其他工作,對劉議員和委員會來說, 根本沒有意義。

破產管理署助理署長(個案處理):

我補充我們在如何註銷債項方面,是有指引的。

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劉江華議員:

主席。那麼為何在第3.17段的第二小段說"破產管理署從未發出特別指引", 但是現在麥先生卻說有指引,是否審計署的報告書出現錯誤。

主席:

麥先生,審計署的報告書是否出現錯誤?若是,有甚麼證據呢?

破產管理署助理署長(個案處理):

報告書說的是特別指引,其實我們在1992年已經發出指引,可能當時還未聘請追收債項代理,但有關註銷債項的指引是適用的。我們在考慮代理人提議註銷債項時,會根據該指引決定是否應該註銷。審計署署長可否解釋這一段?我們應該有一份1992年的技術指引第2號。

主席:

如果真的有這情況,我建議大家不要再問這方面的問題,先讓審計署署長解釋破產管理署有否根據1992年的指引,以及究竟有否進行任何監察,證實即使破產管理署把工作外判,仍然根據指引工作?李華明議員和劉慧卿議員都想提出跟進問題,不過,我想先讓審計署署長作答,因為證供不相符,一定要先弄清楚。審計署署長。

審計署署長陳彥達先生:

報告書內所指的是沒有specific的特別指引,我們所說的是正確的,不過,如果各位希望澄清,我可以以書面回覆。

主席:

在公開聆訊中,是不容許一方面說有,另一方面說沒有的情況出現,這樣委員會便不知道真實的情況。因此,請你們一同研究有關的指引。我相信麥先生所說的指引是一般的指引,是供他們內部使用,審計署所指的特別指引是關於如何監管外聘的追收債項代理。麥先生似乎說他們的舊指引也適用。我認為最重要的是究竟破產管理署有否根據舊指引進行監管的工作,以及有否相關的證據?我相信須由審計署負責調查,麥先生,請你與審計署署長繼續聯絡。

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還有一部分問題未獲答覆,便是將來如何處理?似乎現時仍沒有有關的統計數字,區署長認為這些統計的用處不大。不過,既然審計署有這樣的建議,我希望陳署長能回答這問題,說明你們所要求的價值何在?以便署方可以清楚回應。

審計署署長:

主席。我們在報告書第3.6段已經清楚說明我們的意見,我們認為最重要的是,這些管理資料的作用是讓員工知道應如何善用和調配資源,否則,員工如何能夠知道應在哪方面分配多一些人手呢?因此,我們認為這些管理的資料是有用和應該備存的。

主席:

請問由區署長回答,還是由麥署長回答?Mr MAK.

破產管理署助理署長(個案處理):

正如我剛才所說,這個監察制度是用作監察隱藏的資產或可使無效交易的資產。正如Mr Manning所說,財務組會把這些資料以報告的形式貯存於檔案內,然後轉往個案組,個案組會根據檔案內的建議進行適當的調查。正如剛才署長所說,這些的交易或資產,不是容易證明的一般資產,而且,在很多情況下均有限制。雖然沒有這些個案的特別統計數字,但是當每宗案件完結後,破產管理主任須把所有檔案呈交負責監督的個案組主任,向他交代已完成所有工作,並準備結束案件。在進行這個程序時,負責監督的個案組主任應檢閱由破產管理主任呈交的檔案,包括資產負債說明書的檔案,這便是Mr Manning說的用作擺放報告資料的檔案。至於負責監督的個案組主任會檢查個案主任有否採取適當行動,或有否進行適當的行動監察……

主席:

麥先生,我又要打岔你的說話。我身為主席,其實不喜歡打岔別人的答話,但是麥先生明顯地沒有回答我們的問題,所以我要這樣做,否則,即使召開第三次或第四次聆訊,也不能解決問題。同事的問題是在監管架構上,有甚麼統計?大家都明白你們檔案內有原本的紀錄,但這與統計是兩回事,問題是你身為高層人員,面對接近五千多宗個案,你與署長能否對這五千多宗個案加以研究,然後作出適當的資源調配呢?同時,我亦想問許仕仁局長,政策局是否能在沒有任何統計數字和資料下,翻查五千多個檔案,以找出究竟其中進行了甚麼工作?身為高層人員,如何管理下層人員呢?是否只靠看檔案呢?大家都明白檔案內存有資料,審計署署長是想知道你們有否統計數字,令管理階層明白你們做了甚麼工作,以及如何交代你們的工作。劉江華議員。

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劉江華議員:

署長剛才所說的也有其用處,使我們知道該署在沒有指標、沒有時限下,順其自然。我現在才明白為何他們沒有效率,回應內容明顯地反映這個情況,我認為局長應對這個問題作出解釋。

主席:

請局長回答。

財經事務局局長許仕仁先生:

主席。其實這個問題在上次討論時已有觸及,把數據資料貯存起來其實是很簡單、很容易的事情,那麼為何不做呢?為何還在要為此辯護呢?問題是以破產管理署多年處理個案的經驗,這些監管管理的工具是否真的很有用處呢?撇除它是否有用的問題,其實署方在處理這些破產個案時,有否明顯和嚴重的失職呢?答案是沒有。說來說去,其實問題都是在於現在這個部門負責處理的破產案例的比率非常大。實際上,在現時的破產個案中,無論追數或不追數,大部分案件的最終結果都是甚麼也追不到,債權人在很早的階段已經對此失去興趣。在這樣的情況下,署方的確在管理,即management方面認為有些東西是沒有需要的,只須完成file的工作便可。我認為如果要令第三者認同我們的公信力,應進行這些系統性的工作。進行這些工作並不困難,因為只是統計數據。

至於外判方面,我相信即使帳目委員會的委員,原則上也不會反對,只要據理辦事便可。至於將來如何作出監管?署方的答覆是並非沒有作出監管,至於特別指引是否有大作用?若有的話,當然應該予以考慮,因為將來的工作會繼續外判,署方無法完全處理所有的個案。因此,我們與署方在討論後,都一致認為署方是應有一個有系統的資料統計,來作為監督工作進程的一種工具,以及將來收緊監管外判工作,這兩方面均可做到和將會進行。不過,我相信署方的同事很想表達一件事,便是在處理這些破產個案時,會否因為缺乏這些工具而嚴重影響其工作結果呢?從局方的角度來看,答案是不會,但是從客觀角度來看,應該備有這些工具,否則別人如何會相信你呢?其實問題根本並不複雜的。

主席:

我們的問題亦不困難。謝謝局長的補充。我想劉議員亦會接受。

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劉江華議員:

主席。我不接受,局長自問自答了很多問題,但是問題還未解決。

主席:

局長說會做的。

劉江華議員:

那麼採用甚麼指標呢?何時才能訂出指標呢?

財經事務局局長:

主席。如果只是為了滿足帳目委員會和審計署署長的要求,其實不難訂出指標。我在上次會議已多次表明,希望署方不要以為我想作弄他們,因為以政府來說,被審計署調查是一件很重要的事情,出席政府帳目委會接受質詢更是很嚴重的事情。其實,如果在3年後仍然不改變整體破產和清盤法律的遊戲規則,那麼,即使能完成審計署署長的建議,結果還是一樣的。從技術上回應審計署署長的意見,我認為並不困難,因為這只是很普通的管理制度。現時,部門處理這些個案已是刻不容緩,因此政府決定在短期內對部門作出有關的支持。那麼,政府在管理方面,如何幫助部門符合審計署署長認為應做到的要求呢?請大家不要誤會,我不是想增加人手,而是想安排一位負責這方面管理的專才把系統弄好,使審計署在將來再次進行調查時,署方已解決技術上的問題。不過,這仍沒有改變香港現時整體清盤和破產的遊戲規則,但是純粹從管理角度來看,包括劉江華議員剛才提及的如何跟進外判的追收債項代理和程序上將會如何等肯定有所進步。

主席:

署長有否補充?如果沒有的話,我想讓議員跟進,因為有很多議員想跟進這個問題,例如李華明議員、劉慧卿議員和吳亮星議員。李華明議員,對不起,讓你久等。

李華明議員:

主席。我想問實際一點的問題。現在審計署指出了兩個問題:第一,報告書第3.21段提到破產管理主任把所有帳面債項達2萬元或以上的清盤案,一律轉介追收債項代理。審計署認為有些個案其實可輕易收回債項,追收債項代理只是發出一封繳款通知書便可以把債項收回,但是破產管理署仍然不加選擇地把這些個案外判,你認為

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這樣的做法是否合理?其實,不預先查核個案,只在事後看檔案,如何監察外判個案的工作呢?報告書第3.17段更指出,追收債項代理傾向建議註銷難以收回的帳面債項,因為不論追收行動的結果怎樣,債項代理均可就每宗個案收取3,000元的處理費,如果成功追回債項,更可收取23%至28%的佣金,因此,他們傾向註銷債項。審計署認為這樣的安排會出現濫用的情況,追收債項代理會傾向這樣做。對於這項問題,你們會如何處理?我的第一項問題是,為何內部不預先查核個案,無論個案簡單與否均作外判?第二個問題是外判公司不論追收行動的結果怎樣,均可收取3,000元的處理費,會否造成漏洞,被人濫用呢?

主席:

區署長。

Atg OR:

Chairman, we have considered, this and we do not think it is cost-effective for a number of reasons. First of all, if we were just to cherry pick the good debts it would be very, very unlikely that any debt collection agency would be interested in just taking up the work for and on behalf of the Official Receiver. As far as the Official Receiver's Office is concerned, for the scheme to be effective you have got to hand out the case as a whole, and that means, yes, he gets some good ones and he gets a lot of bad ones as well.

On the question of abuse, Mr Chairman, monthly progress reports and quarterly reports are provided by our agents and these reports are reviewed and they are monitored. There is also provision in our contract with the debt collection agency for early determination due to unsatisfactory performance, Mr Chairman, and we will be reviewing the performance of the debt collection agency critically at the termination of the contract. So I hope that answers the Honourable Member's question.

主席:

李華明議員。

李華明議員:

主席。我相信署長會這樣回答的,像賣"豬肉搭骨頭"一般。他們作一批過的外判,因為如果全是複雜的個案,追收債項代理便難於處理。但問題是你們只是"一刀切",把所有2萬元或以上的個案便外判,完全沒有作出篩選,實際上可能全部都是簡單的個案,問題是為何你們內部不預先查核個案,因應困難的程度來外判呢?現在的做法是非常籠統的。

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Atg OR:

The total is \$20,000, Mr Chairman, not \$20,000 per case.

劉慧卿議員:

主席。我想跟進有關將來的問題,即使現在的情況不好,我們希望將來會好。 局長剛才提到派人專責管理,我相信大家都覺得非常需要這樣做。我希望財經事務局 局長和政府明白,我們不一定反對增加人手,在出現嚴重問題時,我們一定會同意。 不過,這樣未必能完全解決問題,財經事務局局長在報告書第8.18段表示,"應就破產 管理署署長現時的角色和職能進行根本的檢討",他亦表示會與破產管理署聯手就如 何改革破產管理署委聘顧問進行研究。請問會在何時進行?

請各位同事參閱我在上次聆訊中向區署長索取的資料,即2000年4月13日函件中的附錄3,內容是有關破產管理署首長薪級的人事調動,區敬樂署理署長在去年8月才出任助理署長,但數天後便立即晉升為署理署長。此外,另一位助理署長(法律事務)2,在今年3月才上任,而麥先生則在1999年12月才上任。除了在座的萬能知助理署長外,這些管理階層均任職少於1年,這是很有問題的。在區敬樂先生之前的寶禮署長,只任職了數個月,恐怕只有他之前的夏理德先生的任職時間最長。我希望局長可以表達多些他所看到的困難和問題。局長現在向我們表示將會聘請顧問進行改革,但是你又快將離職;現在破產管理署須處理的案件又越來越多;局長剛才表示不是空降一位同事專責改善管理便可以解決問題。那麼,政府帳目委員會究竟可以有甚麼結論呢?我們現在對很多問題都不知情,局長說讓他們進行檢討,但可能需時3年;又說將會"空降"一位同事專責管理,不過也未必能解決問題;再者,破產管理署的人事變動又非常頻密,區先生或其他人都只是在任數月便到來回答委員會的問題,請問究竟這個部門發生了甚麼問題?

主席:

局長。

財經事務局局長:

主席。在過去一段很長的日子,由於註冊總署重組後,分拆為破產管理署、公司註冊署和田土廳等數個部門。首先以破產管理署來說,Mr Hearder是一位很資深和專業的律師,在政府部門服務已久。我相信破產管理署與其他政府部門的問題差不多,出現後繼困難的問題。雖然現時政府並非沒有專業人士可以擔當這個職位,但是我可以坦白說,Mr Hearder退休時,我們不僅進行過內部招聘,還有進行公開招聘,雖然不是沒有應徵者,但是反應非常差。私營機構有數位應徵者,結果有一位臨時退

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出,另一位在面試後退出。我們曾與法律界人士討論這問題,亦曾向英國查詢,希望 能找尋一位富經驗的專業人士到來出任破產管理署署長一職,以短期或三數年合約方 式招聘,但結果仍是找不到適當的人選。

由於我不是管理律政部門的局長,所以如果我說錯了的話,希望政府帳目委 員會將來有機會代我澄清。現時,據我理解,以政府律政的整個組織來說,主要可分 為兩部分,一部分是律政署的專業律師;另一部分是另外一組的律師,英文是"Unified Solicitors Grade",這一組人在註冊總署重組後被分散到這幾個部門的。隨著對每項工 作的專業要求越來越高,例如原本專責公司註冊的,可否立即轉為專責破產管理呢? 據我理解,理論上,從專業的角度來看是可以的,因為一位律師不應只懂一種法律事 務,應要懂得其他法律事務,例如田土、契約、破產或公司法等,由於理念上應該是 可以的,所以便把這些人於這3個部門內互相調動。不過,話雖如此,當中還會涉及 個人喜好的因素,例如是否喜歡這項工作、是否有信心和是否勝任等。舉例來說,有 些人特別喜歡負責公司註冊事務,不喜歡負責破產事務,這是不足為奇的。因此,部 門內人手調動的空間其實不大,我們曾進行公開招聘,結果證明外間對這項工作沒有 興趣。大家都覺得現時整體法律的人士組織,較新招聘人員的水平為高,但是因為人 手關係,有經驗的高層確實很少。那麼,如何處理這樣的情況呢?現時唯有再進行招 聘,並已進行另一次招聘及在政府內部找尋有興趣的人士。最近的招聘行動只有兩位 同事有興趣應徵署長的職位,稍後應該會進行面試,希望能盡快委出一位署長。我們 可以做到的便只是這樣,現有兩位人選應徵,可供考慮。

主席。我非常明白劉議員擔心在未來的一、兩年將怎麼辦?我自己則有這樣的想法:第一,在短期安排方面,特別有關管理方面,我們若能在數月後安排人手來改善破產管理署的管理,就無須等待很久。接著便要同步改革香港的破產和清盤規則。我認為這方面需花較長時間,政府不能只訂出政策或處方便了事,因為這還牽涉到法律界、商界和會計界等,他們均有很多不同意見,這些專業人士未必認同為了行政方便而動輒更改遊戲規則。法律改革委員會經常都會討論這方面的問題,不時在報告中提出意見,但只提出部分意見,沒有提出全面的意見。我現正預備向法律改革委員會建議,說明這樣下去是行不通的,一定要全面改革,以及參考外國的情況。

現時,外國越來越多採用外判的方式,由政府負責的越來越少。李華明議員剛才說很多"豬肉",但事實是沒有可能有"豬肉"的,這情況只會越來越少,例如澳洲,差不多全部把工作外判,政府的角色只是監管外判公司的表現。第二,報告書亦有提及在執法方面似乎不足,故政府應集中檢控在清盤過程中發現有違規行為的董事。我盡量向劉議員解釋這是整體的策略,在過去兩年的確沒有一位在位長久的署長,原因不是我們沒有進行招聘,而是實際的反應不佳。

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主席:

劉慧卿議員。

劉慧卿議員:

主席。我明白如要進行檢討,將會"牽一髮而動全身",當然須花時間。不過,問題是為何到現在還未開始進行?請局長回應他在報告書第8.18段提及的事情將會在何時進行。此外,局長在何時才察覺有需要重新評估破產管理署署長的職能?若局長現在才發覺,那麼由現在開始計劃,我們便會明白明年或後年才可進行,夏理德先生在1998年年底退休時,你們應已知道有破產管理署署長這個空缺,局長可否告知我們為何寶禮先生只出任署長數月便離開?這是否反映了工作有問題呢?是否薪酬不足,還是認為有些事情是做不到的,認為應把專業和管理分開呢?現時繼續進行署長的招聘,會否因為是專業律師,而無須他負責管理工作,只專責有關法律工作;政府則空降一位同事專責未來數年的管理工作以作折衷?謝謝。

主席:

局長

財經事務局局長:

主席。第一,關於長遠研究方面,我們已經與英國和澳洲有關的專業部門接觸,正在尋找適當人選作研究工作,希望可以在未來數個月內落實。對於現時的工作範圍,當然亦要進一步落實,才可決定適當的人選。第二,寶禮先生是基於私人理由,在出任署長一段短時間後便重返田土廳。由於屬於私人理由,因此我不能代他詳細解釋。第三,有關薪酬問題......

劉慧卿議員:

不是薪酬問題,而是為何不能吸引應徵者?

財經事務局局長:

我曾與香港律師會的領導層作出多次討論,詢問外界是否有合適的專業人士出任此職。外界的確有專業人士對破產和清盤事務非常熟悉、富經驗和感興趣的。但由於歷史遺留下來的因素,雖然破產管理署署長的職級不算低,但亦不甚高,而當這些專業人士得知破產管理署署長的工作範圍是包括管理工作,正如我剛才提及署長是須負責整個律師系統,即"Unified Solicitors Grade"的人事調動,例如調往公司註冊署

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或其他部門等,再加上專業人士都認為這項工作的職級與薪酬不成比例,尤其是外間法律界的破產和清盤專才已經不多,所以他們在市場上可以獲得很高的薪酬,因此外界的專才對此工作不感興趣。至於政府內部的律師是否感興趣?我很難向各位解釋,事實是經過兩次招募後,政府內部的律師對此職位的興趣亦不大。我個人認為其中一個很大的原因可能是須兼顧管理工作。他們在法律上的工作非常稱職,但是如要跟隨審計署署長的建議,我們當然不會感到困難,但這些法律專家卻會感到很繁瑣,我們必須提供輔助。我們亦曾考慮是否一定要由律師出任署長一職,大家都知道破產管理署的工作須絕對依照法律程序行事,署長亦會經常被傳召到法院解釋很多事情,法官亦要求署長隨時就很多問題作出解釋。因此,如果署長沒有法律背景便很難勝任。要一位法律專才既對法律有專業的知識,又要善於管理工作,我認為會有很大的困難,因此我們正考慮先改善管理和監管程序以增加公信力。不過,解決問題的最終辦法是全面改革香港現時的整體清盤和破產處理方式。

劉慧卿議員:

主席。局長沒有回答他是在何時察悉應該聘請顧問作出研究?何時出現問 題?

主席:

局長

財經事務局局長:

主席。以我記憶所及,在兩、三年之前,我已向法改會提出意見,當時的法改會就有關《公司法(修訂)條例草案》進行討論,這條條例草案還未在立法會通過。其中包括討論公司破產後,能否在某些情況下仍然可以繼續經營,法改會已就此討論了數年。在這過程中,財經事務局曾向法改會提出不能只作部分修改,而不作全面修改。我們的建議主要是不能把清盤的最終責任歸於政府,這是最基本的問題。從以前的文件中可以看到,不把這個問題解決,便無法進行其他工作,這已是3年以前的事情。

劉慧卿議員:

主席。我們想看看這些文件。局長現時是否已決定不理會法改會,因為法改會這麼久仍沒有回應,局長是否因此而決定聘請顧問?

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財經事務局局長:

主席。我們很想參考外國的經驗,因為在普通法下,終始不能任意妄為.....

劉慧卿議員:

我們也希望如此,有些人的看法可能不一樣。

財經事務局局長:

最少我不是這樣。因為要令業界即法律界和會計界等專業人士接受是非常重要的,不能令他們覺得不合理。因此,在普通法的傳統下,如何把政府的角色盡量減至最低,使外界可以多些參與。現時,英國和澳洲正在實行這樣的制度,我們想從這兩個地區中,尋求一些專業人士的意見,使業界不會認為政府的建議只是閉門造車,他們對此的接受程度是非常重要的,所以一定要找一些外界認為有地位的人士提供意見。

劉慧卿議員:

主席。我想請問這些這麼有地位的外國專業人士的收費是多少?是否"本地薑"不辣,要多少錢才能買到"外國薑"?

財經事務局局長:

主席。上次帳目委員會要求我們提供的工作範圍,我們已經提供了,對於這項工作,我們已申請的撥款是**800**萬,當然未必會需要達到這個數目。

主席:

我們大約十時半便要交回會議廳,但是還未完成第3部分,請大家好好掌握時間。吳亮星議員。

吳亮星議員:

我會加快速度的。委員會希望能在這個部分取得一些結論,署長剛才說過,而局長亦解釋過"豬肉"和"骨頭"的問題。破產管理署署長在報告書第3.24(e)段表示不同意該署應經常首先利用內部資源去收取所謂"豬肉"的部分,應該"豬肉"與"骨頭"一同外判。但是審計署署長在報告書第3.21段清楚說明由於部分債項可輕易收回而無需轉介代理,不加選擇地遵守這項內部指引,即把"豬肉"與"骨頭"一同外判的做法,不

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符合有關破產/清盤案財產的最佳利益。我們已核證兩方不同的意見,就這方面再作討論已不會有特別的結果。不過,我希望破產管理署能夠提供證據,證明他們在報告書第3.24(e)(i)段所說,追收債項代理的費用是從清盤/破產案財產中支付而非公帑;那麼,若一分錢也不能追回,3,000元的追收代理費是否由公帑負責呢?此外,破產管理署在報告書第3.24(e)(ii)段提及如果該署只安排"骨頭"給追收債項代理,預計沒有追收債項代理會對這項工作感興趣,其實他們未必知道該署曾經對"骨頭"和"豬肉"作出分類,只是當局單方面認為如果追收債項代理只處理"骨頭"便不會感興趣。署長可否就此以書面向我們提供一份核證的資料,以證明破產管理局是否曾查證外判公司沒有興趣追收這些債項?如果我們對這點仍有保留,便不須再花時間討論了。是否可以進入第4部分?

主席:

吳議員,請不要這麼快,因為我仍想跟進這問題。我想作出補充,經過這麼多年,仍未追收的債款共達十多億元,現時似乎只外判給一間律師樓負責,風險相當高,尤其我們現在沒有嚴謹的監察系統,亦似乎沒有正式的外判或分判,在這情況下,破產管理署署長認為無人有興趣,較難具有說服力。因此,我想請問署長曾否嘗試分判給多一些的律師負責追收債項?有否進行任何調查,顯示市場對追收債務是否感興趣?我從現有的資料看到很多會計師樓和律師樓對此都非常感興趣,雖然有"豬肉"和"豬頭骨"之分,但是追收的數目並不少,因此,我想知道究竟署方基於甚麼原因作出這個判斷?署長可能也知道委員會曾與職業訓練局討論類似的問題,當時職訓局的執行幹事在沒有經過任何調查下,便主觀地認為外界沒有興趣而把工作外判,這是委員會不能接受的。署長。

Atg OR:

Mr Chairman, it is a strongly-held view of the Official Receiver's Office that the outsourcing of companies' debts, of bankrupt estates debts' as a package is cost-effective, is in the best interest of the Hong Kong Government, is in the best interests of the Hong Kong taxpayer and we also think is in the best interest of creditors.

Mr Chairman, as my colleague, Mr Manning, pointed out, many of these cases are small cases. You might have a hundred debts or fifty debts of relatively small amounts. If civil servants were to deal with this workload in-house, it is simply not on. It does make a great deal of commercial sense to outsource to the private sector the claims of a company in total as a package. It would not work any other way, Mr Chairman, in view of the large amount of relatively small sums of money involved.

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主席:

我想請庫務局局長協助。政府在外判前,很多時都經過招標程序。我不知道庫務局是否有機會參與其中,但是審計署報告書第3.21段提到,其中部分債項是向政府部門或政府資助機構如高等教育院校追收,這些債項在進行清盤程序時,差不多是自動對數,是很容易收回的。從庫務局的角度來看,把這些政府部門或政府資助機構的債項交給外判公司追收,是否具效益呢?如果向政府部門或向公眾團體、政府資助團體追收債項,只是一紙繳款通知書的事,庫務局是否認為可由政府內部負責,無須外判呢?俞局長。

庫務局局長俞宗怡女士:

主席提到報告書第3.21段內的資料,我不知道這段所提及的"一間高等教育院校"和"一個政府部門"是否屬於非常少數的個案。在聆訊時,我聽到破產管理署負責的絕大部分破產清盤案,都沒有牽涉公眾團體。因此,我不知道報告書第3.21段所提出的這兩個個案是否屬於非常特別的情況。當然,如果破產管理署的同事能夠把這類個案與其他個案分別出來,那麼該署只須採用公文方式,便可以向這些公眾團體,例如大學、資助機構或政府部門發出繳款通知書,這純粹是以個案形式來看。主席,現時破產管理署以2萬元或以上的帳面債項為限,外判這些清盤破產案給外間的律師行處理,但我從表五看到,其實屬"豬肉"的個案不多,因為在表五所列出的債項個案很多,但收回的卻不多。請大家留意,破產管理署署長在報告書第3.24段已經同意考慮將來委聘多於一位追收債項代理,並加緊監察這些債項代理的表現,這正是剛才主席和數位議員所關注的問題。

主席:

有兩件事我想作出補充。我也處理過很多清盤的工作,很多公司都有向政府繳交按金,例如水費等,雖然這些帳款數目不大,但卻相當普通。對於破產管理署表示只有很少這方面的按金,我感到很奇怪,因此,請署長對此作出解釋。同時,破產管理署在未經外判程序下,把這麼大筆的債款交給一間律師樓處理,很難令委員會認同不把這些容易追收的帳目一起外判,便難以吸引外間的律師樓。我相信署長要就這方面繼續說服我們。署長。

Atg OR:

Mr Chairman, can I take Members to Table 4 of the VFM report and third item down, "refund of utility deposits". The refund of utility deposit is not treated within the Official Receiver's Office as book debt collection. It is a simple process within the liquidation so it is not counted in the book debt collection process.

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But on the other point, again, going back to the simpler, why we hand out all of the book debts of a company as a package, Mr Chairman, I would like Members to try and envisage that when you go into some of these companies and the books are in disarray, much of the evidence might be missing. You might have a hundred debtors laid out in the book, each for relatively small amounts of money. We do not think it is cost-effective for the civil servants to actually spend their time having to go through the ledgers of these companies to isolate which debts are due and owing from Government bodies. It is simply not cost-effective to do that. And from our angle, Mr Chairman, it makes much more commercial sense to outsource the case as a whole, as a package, to the debt-collection agency.

Chairman:

Mr Manning?

Assistant Official Receiver (Financial Services):

I think, Mr Chairman, to answer the question about tender procedures, over the last number of years the Official Receiver, I think the very first time we started this process was somewhere around '94 or something like that, we did a pilot scheme with one particular firm who dealt with it. The follow-on – that was a two-year contract, I think – that particular firm from memory maintained that they were not making any money out of this so we then approached, and I cannot recall whether it was eight or ten different legal firms asking for written submissions as to what they would expect if they were to do this type of work. And eventually we selected one particular firm because they offered the most advantageous terms. That was a two-year contract. That particular firm maintained they were also losing considerable sums of money on this, that the base price of \$3,000 was far too low, that they could not make money on it because it required going through reams of documentation, etc. And the last tender we let a year or two ago – '99 – which again was not a written, it was not a tender, it was quotations from two firms, one of whom is a major debt-collection agency.

Chairman:

You will probably find the situation with the lawyers quite different now from two years ago, but I would not argue with you, but I think from people who know the legal profession I think they are crying out for work now. Let us look at it again.

On the issue, Mr O'Connell ...?

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Atg OR:

There is one other point I would like to clarify. We have since last September written to the Law Society and also to the Hong Kong Bar Association asking for expressions of interest in relation to doing work for and on behalf of the Official Receiver's Office. It is not just confined to book debt collection. And as a consequence we have had submissions from about 20 to 25 firms, Law Society firms and maybe 40 to 50 barristers in the private sector who have expressed an interest setting out details of their remuneration, and we are in fact drawing up a roster. So we are outsourcing to the private sector, not just the question of book debt collections but also other types of litigation in relation to the affairs of wound-up companies and bankrupt estates.

Chairman:

As the level of interest grows I think we can look at a more favourable term to ourselves. 吳亮星議員是否想跟進?

吳亮星議員:

如果要討論這一點,便要討論報告書第6.8段,這是屬於同一情況。破產管理署表示今後將會採用招標制,但根據該署剛才所說的困難仍然存在,我不相信最終會有機會採用招標制。

主席:

吳亮星議員,請讓署長先作解釋,我相信你誤會了報告書第6.8段與剛才所說的情況。We are talking about PIP. This is a totally different sub-contractor.

Atg OR:

I am talking about, in the previous point, Mr Chairman, which is in relation to legal work being undertaken in-house other than the debt collection system, which we now intend to outsource from the Official Receiver's Office. And as I mentioned, we have written to the Law Society and to the Hong Kong Bar Association asking for expressions of interest and we have built up a list of people. Paragraph 6.8 which the Honourable Member was referring to is in relation to the outsourcing of the administration of insolvency work to private sector accountants, and I think the Administration has fully responded on this in Paragraph 6.8.

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Chairman:

And there was substantial interest from the accountancy profession, so Mr NG's concern that there might not be interest is unfounded?

Atg OR:

No, they are interested, Mr Chairman.

主席:

我還想跟進第3部分,因為這是非常重要的。第一,我想瞭解有關外判代理的問題,署長可否向我們提供外判合約的樣辦?第二,在合約內,有否授權破產管理署翻查律師樓的紀錄?第三,破產管理署曾作出甚麼行動,執行合約內的管制權力?從表五得知,1998-99年度,債項高達16、17億元,而收回的只有很少。其實合約內應已給予破產管理署監管權力,但是審計署署長認為破產管理署沒有執行監管工作,所以我想請署長再次回答,說明他們有否執行合約上的權力,進行監察工作。署長。

Atg OR:

On the question of reviewing every single case file handed out to the agent, if that is what is being suggested?

Chairman:

No, that is not what I am suggesting. I am saying any supervision or monitoring work. We are talking about whatever efforts have been made. I just want a record of some effort made. I certainly do not imply having to review every file. That would be mad to recommend that.

Atg OR:

Yes, that would be completely cost-ineffective as you quite rightly point out, Chairman. Following on from the Director of Audit's report, we have introduced random testing.

Chairman:

But not before?

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No.

Chairman:

Can I have a look at the contract?

Atg OR:

We can let you have a copy of the contract, Mr Chairman.

Chairman:

I presume the contract does give you rights?

Atg OR:

Yes, we do have rights to review the work of our agents in relation to their efforts to collect book debts, Mr Chairman. But I would ask Members to remember that these are professional firms of solicitors, members of the Hong Kong Law Society who are subject of course to the discipline mechanisms of the Law Society in relation to the way in which they undertake work for and on behalf of a client. They are our agents with all that that implies, of course, Mr Chairman. They have fiduciary duties and duties of care, and those standards in respect of a professional firm are very exacting and very high.

主席:

吳亮星議員,請你跟進第4部分。

吳亭星議員:

第4部分是有關變現資產的分發和執法工作。整體來說,破產管理署完全接受審計署在報告書第4.8段提出的意見,並且在第4.9段作出回應。我希望除了注重時間目標之外,還注重其準確性。雖然報告書強調以時間為主,但我建議破產管理署多考慮準確性,因為這亦很重要的。我只是就第4部分提出我的意見,不會提出特別的核證。我現在想進入第5部分......

主席:

其他同事仍然想就第4部分發問。劉江華議員。

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劉江華議員:

吳亮星議員似乎對破產管理署在報告書第4.9段的回應滿意,但我認為太簡單,只是表示同意審計署的意見。審計署署長非常明確地表示那些債項延誤已久,差不多四十多億元還未發放,仍然繼續賺取利息。請問可否立即發放中期債項,因為有些債項延誤了10年以上,數目亦差不多達1億元以上。我不敢想像為何會發生這樣的事情,也不明白為何債權人在這10年裏不作追討。請問會否即時發放中期債款呢?會否再訂立服務目標,而目標是甚麼呢?這些都是本委員會需要清楚知道的,不能輕輕帶過。就以上兩個問題,你們今天可否回答?若否,何時才可告知我們?

主席:

署長。

Atg OR:

Mr Chairman, when the Director of Audit released his draft report in January initial instructions were given to staff to identify all cases more than three years old where a dividend could be paid and which had not been paid. We have identified 270 cases, Mr Chairman. We are on track to pay the dividend in all of those cases by the end of this month, except one or two cases for one reason or another we cannot hit that target, but we can hit the target in respect of those one or two cases in May and June.

For all cases between one year and three years old where there is a credit balance on the estate sufficient to pay a dividend, our target is to hit those by the end of July of this year. So that by the end of July this year all cases more than one year old where a dividend can be paid will have in fact been paid, Mr Chairman. And to follow up on that, Mr Chairman, we will include in our performance pledges a pledge that henceforward where dividends can be paid they will be paid within nine months. And we will be discussing this, Mr Chairman, with the Official Receiver's Advisory Committee within the next few days.

主席:

我們一定要在10時40分交回會議廳,請大家掌握時間。劉慧卿議員。

劉慧卿議員:

其實我也只想詢問目標的問題,署長已回答是9個月,已回答了我的問題。

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主席:

吳亮星議員,請你跟進第5部分有關衡量服務表現與提供服務。

吳亮星議員:

審計署在報告書第5.14段建議,破產管理署在策劃和發展聯機查冊設施時,考慮客戶的需要和汲取其他政府和海外破產管理機構的經驗,破產管理署在第5.15段對此表示同意,他亦表示破產管理署已呈交通過公共服務電子化基礎建設裝置聯機查冊設施的建議,如果立法會財務委員會投票通過撥款,這計劃的可行性研究將可在2000-2001年展開。請問為何在汲取經驗和取得建議後,還要提交立法會財務委員會申請撥款以進行可行性研究?請問所須款項是否很龐大?整體內容如何?

主席:

對於這個問題,希望取得詳盡答案,署長,請你以書面答覆,因為整個制度 和撥款同屬資料性的調查。

吳亮星議員:

如果沒有其他議員跟進第5部分,我便進入第6部分有關委聘私營清盤從業員處理清盤案。報告書第6.6段提及破產管理署備存了一份認可的私營機構名單,請問這些認可機構名單的排列準則為何?過去曾否就排列後的效果作出檢討或評估?根據報告書第6.8段財經事務局局長表示最終會把輪流委聘制改為招標制,對於招標制,當局認為會否成功?對專業人士會引起甚麼反應?以及有否落實時間的初步計劃呢?

主席:

署長,由你回答還是由局方回答呢?署長。

Atg OR:

Yes, Mr Chairman, two questions. Sorry, perhaps the Member could clarify. Is he asking a question about the Panel A Scheme, Panel B Scheme, or just actually moving from a roster system to a tender system?

Chairman:

I think it is really the latter.

破產管理署提供的服務

Atg OR:

Yes, perhaps I can give by way of background an explanation. In 1996, Mr Chairman, to address the growing workload of the Official Receiver's Office, the scheme, which we call the Panel A Scheme, was established. And effectively what this does is that we invited private sector accountancy firms with insolvency experience – that was the precondition, the necessary insolvency experience – to come in and effectively to take over the administration of cases where there were assets of more than HK\$200,000. It is only in relation to windings-up. It does not apply to bankruptcies, purely in relation to windings-up. And there were about between 35 to 40 on average in those days of such cases. And what happened was we set up a roster of firms, and I think there are fourteen firms now, mainly the big firms, plus some of the more medium-sized firms in Hong Kong who are appointed to undertake the work of the administration of that liquidation from the roster.

In 1997, Mr Chairman, this scheme was supplemented by what we call the Panel B Scheme. Again this actually involved a Government subsidy. It originally started off as a pilot scheme where we were given \$10 million and we set a cap of \$60,000 per case for those cases which had less than HK\$200,000, the idea being to build up more expertise within the private sector and to outsource more of the administration of insolvency work to the private sector.

Following a review of the Panel B system, and in fact last year the scheme became a recurrent scheme. We now have a HK\$21.3 million from the Finance Bureau. It is no longer a pilot scheme. It is now a permanent scheme, and the idea is to outsource to the private sector the administration of the smaller types of winding up so that Government does not have to carry on increasing workforce, etc, to cope with the increase in demand.

Following comments of the Director of Audit, and even before the Director of Audit delivered his report, Mr Chairman, we were considering other ways of trying to improve the efficiency of the system. And we have been in consultation with the Financial Services Bureau about the possibility of setting up a tendering system to reduce the subsidy. At the moment what happens under the Panel B Scheme is that where the assets of a company being wound up are insufficient to pay the liquidators' costs Government will step in with a subsidy of a maximum of \$60,000 per case to meet the liquidators' fees, the Panel B agent's cost for the actual winding up process. In an effort to try and reduce that cap, and we have in fact done this already late last year as you are aware, Mr Chairman, we have actually cut that cap to \$40,000. But in conjunction with that we are now looking at a tendering system where we are going to package the cases into maybe a hundred or two hundred. We are still working out the final details in conjunction with the Branch, and going out to the private sector and saying, "if we were to guarantee you a hundred of these cases, what would your maximum subsidy per case be?" We think, Mr Chairman, the tendering system would help to cut the cost of subsidy. This is our thinking, Mr Chairman.

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主席:

吳亮星議員,雖然你仍要跟進,但請給其他議員一點時間跟進。

吳亮星議員:

以房屋署為例,以前是安排律師樓輪流負責契約的,最後採用了招標制。請 問專業界是否嘗試瞭解招標制?招標制最終會採用甚麼機制以達致目標?純粹是價 低者得,還是採用計分制?

主席:

署長。

Atg OR:

Mr Chairman, as I said earlier, we are still working out the final details of how we are best going to do this because of course one of the policy objectives in addition to actually cutting the subsidy is to ensure, is to try and broaden the insolvency base in Hong Kong so that more practitioners are involved in the insolvency field. The thinking is if you just pitch it at the lowest possible bid then the big boys will come in. I mean, this is only our initial thinking at the moment. We want to include the smaller practitioners in Hong Kong to broaden the insolvency base. So we have twin policy objectives": one to try and cut the cost of subsidy, but on the other hand try and broaden the insolvency practitioners' base.

主席:

李華明議員。

李華明議員:

主席。報告書第6.8段是財經事務局局長的回應,因此,我希望局長能就這點作出回應。我相信政府是同意採取招標制,但仍然擔心大會計師行會壟斷市場,使小規模的會計師行沒有機會參與。不過,現實的情況可以是相反的,以律師行向房委會投標為例,當時大律師行和小規模的律師行同時開低價競投,這便證明是可以產生競爭的。我看不到當局為何假設大會計師行一定會壟斷市場,為免小規模會計行被淘汰而採用輪流委聘制。請問你們有甚麼證據證實你們所擔心的情況會發生呢?

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主席:

局長。

財經事務局局長:

主席。證據就是在過去5年,未有"Panel B"之前,只有"Panel A",我上任後不久便質疑為何經常只由那5、6間公司擔任清盤人,我所獲得的答案是只有這數間懂得如何處理有關事項。但當時我認為香港有那麼多會計師行,為何會出現這情況?會計師公會解釋這方面的工作是非常複雜和專業的,所以只有這數間會計師行可充任清盤人。主席,如果我的話有錯,希望主席作出指正。請大家明白,香港的會計界與法律界不同,會計界經過合併後,由八大會計師行變為五大會計師行,如果沒有任何干預更會越來越少大會計師行,它們有經驗便有業績,有業績便可以不斷有工作,這樣便造成循環。況且,大會計師行計算成本的方法不同,因此可以低價把新的參與者摒諸門外。以上便是我認為"Panel A"的一項很大的流弊。

我們亦曾嘗試向破產管理署建議擴大參與機構的數目,最少也要增至十數間,雖然最後真的增至十多間,但是數目仍然很細,而且有些是經驗不足的。法改會亦曾建議香港應效法英國,訂定發牌制度,不論是會計師或律師,凡持牌人士便可以處理清盤工作。我認為越多人參與,服務水平便會越高,收費亦會越廉宜,不能任由那數間大行壟斷市場。

至於政策目標,署方剛才已清楚解釋,我們對這方面非常執著,一定要把參與者的範圍盡量擴闊。議員剛才說如果進行公開投標,自然會吸引很多有興趣人士參與。不過,這是不足夠的,如果我們的要求標準只是接受擁有高專業水平的公司,不接受沒有清盤經驗的公司,這樣便會造成循環,越少公司可以處理有關工作,便越少公司擁有有關經驗。因此,我們需要有其他準則,以增加符合資格的人數,例如接受曾修讀會計師公會的有關課程的人士。我們一定要先進行這些工作,然後才進行招標,這樣才會有意義。否則,將來的投標結果仍然是那十間、八間會計師行,這是沒有意思的。經過一、兩年的試驗後,我們與會計師公會取得共識,盡量擴闊這個網絡,即使沒有經驗的人士,如果完成會計師公會的有關課程,我們都視為符合資格。我們要先訂立這些機制後才進行招標,這樣更能適當地掌握政策。我不是反對招標制,我只是解釋我們過去數年做了甚麼準備工夫,以及解釋這行業開始時的情況是如何。

主席:

還有十分鐘便要交回會議廳,但是還有兩位議員輪候發問。李華明議員。

破產管理署提供的服務

李華明議員:

主席。我只想說一句,局長可以書面回覆,請問當局曾否徵詢財政司司長的公平競爭諮詢委員會,因為它是負責政府部門有關公平競爭的政策。

主席:

局長。

財經事務局局長:

在現階段,暫時還未把包括招標制在內的新政策諮詢該委員會,從"Panel A"和"Panel B"的實施時間便可知道,我們決定盡量把參與者的範圍擴闊時,公平競爭諮詢委員會尚未成立。現時我們認為時機成熟,可以再引進多些投標競爭,在這情況下,我同意李議員的建議,在這個階段應向委員會諮詢,研究我們現時的立場是否正確。

主席:

劉慧卿議員。

劉慧卿議員:

我同意局長所說的目標,但是我希望清楚知道是否只要完成你們要求的有關課程便可符合資格呢?還是在現時的情況下,因大會計師行的收費開價較低,仍會擁有投標優勢?還是當局會體恤小規模會計師行,在他們完成有關課程後便可被視為富有經驗,即使收費較高,也會交給他們負責呢?

主席:

局長。

財經事務局局長:

主席。其實現在局方和署方仍在討論如何衡量經驗和開價兩者的比重,因為需要以比重來衡量。哪方面應多些?哪方面應少些呢?我現在不能回答,因為我們還未有最後的方案,現時仍在討論中。一旦有了結果,若帳目委員會想知道,我們當然樂意告知。

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劉慧卿議員:

請問局長是接受大會計師行基於規模經濟效益而能收費較廉官嗎?

財經事務局局長:

對。我不反對大會計師行收費可能較廉宜,但是我認為這樣下去,能夠擔任 清盤人的機構數目只會很少,不能把參與者的範圍擴大。不過,如果為盡快把參與者 範圍擴大而花費很多公帑的做法亦是不對的。因此,如要從中取得平衡,便須與會計 師公會討論,研究可否逐步擴闊,否則,便永遠只由那數間公司壟斷。當大家都知道 其他參與者沒有機會時,那麼,那數間一向壟斷的公司的開價便不一定會低。

劉慧卿議員:

請問會計師公會是反對還是支持擴闊參與者的範圍?

財經事務局局長:

主席。我相信會計師公會原則上是支持的。

劉慧卿議員:

實質是反對嗎?

財經事務局局長:

不是。實際上,會計師公會方面非常關注質素和水平的問題,他們希望不要 太急進,以免導致整體處理破產的水平降低。據我估計,會計師公會的立場是這樣, 如果我說錯,請李議員作出指正。

主席:

不要這樣說。我會在內部會議中向同事詳細解釋,因為我很清楚這件事的歷 史背景和其中的考慮因素。吳亮星議員,最後一項簡單問題。

破產管理署提供的服務

吳亮星議員:

局長可以以書面答覆這個問題。報告書第8.11段提及"破產管理署雖曾在內部討論調高最低收費及呈請人按金以收回十足成本的建議,但因顧慮到立法會未必會接納而沒有向政府總部提交建議。破產管理署估計,如實施有關建議,每年可削減虧損2,300萬元。審計署認為,有關建議的財政影響重大,破產管理署實應認真擬備收費調整建議的理據,提交立法會審議。"我不明白為何署方會認為立法會未必接納,請問局長可否就此提供你們當時顧慮的理由?當局將會向立法會提出甚麼理據呢?如果今天不能以口頭回應,請局長稍後以書面答覆。

主席:

吳亮星議員,請問你想由哪位官員作答?對不起,一時間我不知道這些意見 在報告書內哪裏出現。

吳亮星議員:

在報告書第8.11段。

主席:

請問是誰有這些意見?

吳亮星議員:

是審計署署長查出的,因此我須核實。

主席:

我已看清楚了,是破產管理署。署長可否連同舊紀錄和當時的考慮,以書面 向我們作出回應。

Atg OR:

Yes, certainly, Mr Chairman.

主席:

對不起,開會的時間失了預算,謝謝各位證人出席今天的聆訊。

破產管理署提供的服務