

**For information  
on 19 February 2003**

**The Legislative Council  
Panel on Financial Affairs**

**Consultancy Study on the  
Review of the Role of the Official Receiver's Office**

**PURPOSE**

This paper informs Members of the outcome of the public consultation on the major findings and recommendations of a consultancy study on the review of the role of the Official Receiver's Office (ORO).

**BACKGROUND**

2. In the light of the changing liquidation and bankruptcy landscape, we have commissioned a consultancy study to review the ORO's existing role in the provision of insolvency administration services, and to identify what future role it should play and what changes need to be made to its present modus operandi against the future role.

3. The consultant's major findings and recommendations are summarised in our earlier paper for Members (CB(1) 2152/01-02(06)) (copy at Annex A). We conducted a public consultation exercise from 28 June 2002, and have received 24 submissions from various parties. A list of the respondents is at Annex B.

**OUTCOME OF PUBLIC CONSULTATION**

4. A summary of the respondents' comments on the major recommendations of the consultancy study is at Annex C. They are highlighted in the following paragraphs.

***Role and Functions of the ORO***

5. Most respondents agree that the ORO should be more a regulator than dealing with insolvency cases. One respondent considers that the ORO's present last resort function should be retained. There is also a suggestion that the ORO should assume a more direct role in supporting private sector insolvency practitioners on cross-border insolvency matters.

## ***Liquidation***

***(a) The ORO should continue with the Panel A<sup>1</sup> and tendering schemes.***

6. Most respondents agree with this recommendation.

***(b) The ORO should retain a small number of cases for in-house resolution to maintain key skills.***

7. Most respondents disagree with this recommendation on the ground that key skills may be maintained through other means.

***(c) The ORO should review its resource allocation to focus more on the supervision and monitoring of PIPs, upon outsourcing of most of the cases.***

8. Most respondents agree with this recommendation.

***(d) The ORO should explore, through the public consultation exercise for this study, reductions in mandatory casework for summary cases where justified.***

9. Most respondents agree with this recommendation, and a few respondents consider it necessary to have some appropriate controls.

***(e) The ORO should explore, through the public consultation exercise, the feasibility of introducing a “cab rank” system<sup>2</sup> similar to those currently run in the US and Australia.***

10. There are different views on this recommendation. Whilst a few respondents are in favour of this recommendation, the others are either not supportive or point out the need to consider the feasibility carefully.

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<sup>1</sup> The Panel A scheme is set up to facilitate the selection of private sector insolvency practitioners by creditors to deal with non-summary liquidation cases (each with realised assets likely to exceed \$200,000).

<sup>2</sup> Under the “cab rank” system, private sector insolvency practitioners who wish to take on compulsory liquidation cases have to register themselves with the court and handle any case assigned to them on the basis of a roster, irrespective of the assets available in the cases to meet their costs, and without public subsidy.

## ***Bankruptcy***

***(a) Legislative changes should be introduced to allow the ORO to outsource bankruptcy cases to PIPs.***

11. Most respondents agree with this recommendation. A few respondents consider it necessary for the Government to provide PIPs with subsidies and reduce the administration work involved.

***(b) A fast track procedure should be created to deal with selected consumer bankruptcy cases such as those involving debtors with small estates that do not merit extended investigation or administration.***

12. Most respondents agree with this recommendation, subject to the procedure being applicable to suitable cases or “no fault” cases and there being tougher penalties and enforcement. A few respondents are concerned that a fast track procedure would encourage more self petitions for bankruptcy.

***(c) Consideration should be given to making bankruptcy an extra judicial process.***

13. A few respondents agree with this recommendation. The others either have reservations or do not agree with it. It is questioned whether the recommendation would result in much savings in time and costs.

***(d) Public and lender access to bankruptcy data should be enhanced.***

14. Most respondents agree with this recommendation.

## ***Regulation and Supervision***

***(a) The ORO should not be responsible for PIP fee authorisation except where it has a direct and appropriate involvement in the specific case concerned.***

15. Most respondents agree with this recommendation as creditors should be responsible for PIP fee authorisation, but the court should play the role of a final arbiter in the event of disputes.

***(b) The degree of support/desire for a formal licensing system and whether such a system should involve the ORO should, through the public consultation exercise, be assessed.***

16. Most respondents support this recommendation, but a few respondents either do not agree or point out this would necessitate more administrative work.

***(c) A simple system based on authorisation by the ORO (or other selected body) should be adopted in the event that there is strong support for a ORO administered licensing and supervising system.***

17. There are different views on this recommendation. Whilst a few respondents agree with a simple system, some respondents propose alternatives such as one administered by the ORO and relevant professional bodies.

### ***Enquiry and Enforcement***

***(a) The ORO should establish a specialist investigations unit, the members of which would be drawn from different divisions of the ORO, to deal with cases flagged by the PIPs and creditors for additional enquiries.***

18. Most respondents agree with this recommendation.

***(b) The minimum level of enquiry should be increased in summary cases.***

19. Most respondents agree with this recommendation and some consider it necessary for the ORO to provide guidelines on the minimum level of enquiry.

***(c) The prosecution and disqualification policy should be modified, including widening the range of offences prosecuted, more frequent use of appeals to seek an increase in the level of fines imposed.***

20. Most respondents agree with this recommendation, and some point out the need for more funding for the ORO, tougher penalties, and promulgation of guidelines for PIPs.

***(d) The ORO should improve its communication with the public on its enforcement action including publicising successful prosecution cases, and setting up a hotline for creditors and the public to report suspected offences.***

21. Most respondents agree with this recommendation, and some point out the need to involve creditors and the public in reporting suspected offences and to emphasise education for directors.

### ***Finance***

***(a) The ORO's fees should be reviewed and revised where appropriate.***

22. Most respondents agree with this recommendation, and some point out the need for the review to have regard to the revised role of the ORO.

***(b) Interested parties' reaction to financing alternatives such as diverting a fixed proportion of the Business Registration Fee to the ORO, increasing the interest charged on the Companies Liquidation Account, etc, should be explored during the public consultation exercise.***

23. There are different views on this recommendation. Two agree with the consultants' proposals such as in relation to the Business Registration Fee, whereas two propose their own proposals on financing alternatives.

***(c) The current basis of financial performance evaluation (60% recovery) should be changed.***

24. Most respondents agree with this recommendation, and a few point out the need to have regard to the revised role of the ORO.

***(d) The ORO should explore the possibility of raising additional revenue by developing value-added services.***

25. Most respondents agree with this recommendation.

### ***Administration***

26. Most respondents agree with the recommendation that the planned investment in management information systems should be treated as a priority. A few respondents point to the need to cater for PIPs' practical needs.

## **Way Forward**

27. Now that the public consultation phase is completed and the comments received analysed, we will proceed with considering how best to take forward the recommendations. Some of the recommendations such as outsourcing bankruptcy cases to PIPs can be pursued as soon as possible, whereas others (such as the proposed “cab rank” system and the licensing of PIPs) warrant further consideration. We will consult Members on any legislative amendments arising from the implementation of the recommendations. We will also take the opportunity to consider the comments received from some respondents on how to address the increasing number of bankruptcy cases.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
February 2003**

**For information  
on 5 July 2002**

**The Legislative Council  
Panel on Financial Affairs**

**Consultancy Study on the  
Review of the Role of the Official Receiver's Office**

**PURPOSE**

This paper informs Members of the major findings and recommendations of a consultancy study on the review of the role of the Official Receiver's Office (ORO).

**BACKGROUND**

2. In the light of the changing liquidation and bankruptcy landscape, we have commissioned a consultancy study to review the ORO's existing role in the provision of insolvency administration services, and to identify what future role it should play and what changes need to be made to its present modus operandi against the future role. The consultant's major findings and recommendations are set out in the consultation paper at the Annex.

**MAJOR FINDINGS AND RECOMMENDATIONS**

*Role and Functions of the ORO (see section 1 of the consultation paper)*

3. An economy that operates on credit has to deal with insolvencies, both personal and corporate, that are an inevitable part of the system. It is common for governments to establish public bodies to ensure that an effective insolvency service is provided. The functions of these bodies can fall within the following three general categories –

- (a) administration of insolvency cases where the assets are insufficient to meet the costs of doing so (the "last resort" function);

- (b) enquiry and enforcement to maintain market discipline and protect society from the reckless use or abuse of credit; and
- (c) regulation and supervision of private sector insolvency practitioners (“PIPs”).

4. The ORO’s services fall within these general categories. In particular, the ORO is obliged to provide the last resort function. The consultant considers that the ORO’s current roles are consistent with commonly accepted practices for similar bodies in other jurisdictions, and that there is no reason to change the general areas of services provided. The consultant, however, focuses on issues affecting each of the service areas identified, and possible options for enhancing or varying the means of delivering such services.

*Liquidation (see section 2 of the consultation paper)*

5. The number of liquidation cases handled by the ORO under the last resort provisions has increased significantly in recent years. The ORO has introduced, in addition to the Panel A Scheme for outsourcing non-summary cases (i.e. where realized assets are likely to exceed \$200,000) to PIPs, a tendering scheme to contract out summary cases (i.e. where the realisable assets are unlikely to exceed \$200,000) to PIPs<sup>1</sup>.

6. The consultant considers that the use of the Panel A and tendering schemes by the ORO has proved to be a cost-effective approach. It allows the ORO to deal with increases in case volume at a lower cost than that is likely to be incurred by expanding in-house resources. It is also in line with the Government’s overall policy to outsource public sector work to the private sector. There should, however, be checks and balances to address any concern that substantial outsourcing may lead to a dilution in quality and thoroughness of work done in summary cases.

7. Outsourcing notwithstanding, the consultant considers it necessary to introduce measures that will directly reduce the cost to the public purse of handling summary cases. Amending the primary

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<sup>1</sup> Since 1997, the ORO has outsourced a number of compulsory liquidation cases to PIPs registered under two panels established by the ORO – Panels A and B (Panel B being replaced by the tendering scheme). Panel A applies to liquidation cases where the realisable assets are likely to exceed \$200,000, and the assumption is that the liquidator’s costs will be met by the assets available in the case. Where the creditors do not express a preference as to the liquidator, the ORO nominates a PIP from Panel A, rotating subsequent nominations amongst the Panel members in sequence.

legislation to remove the last resort function would eliminate such cost, but this would be contrary to the overall aim of providing an insolvency infrastructure comparable with international standards and consistent with Hong Kong's status as an international financial centre.

8. The consultant recommends that -
- (a) the ORO should continue with the Panel A and tendering schemes;
  - (b) the ORO should retain a small number of cases for in-house resolution to maintain key skills;
  - (c) the ORO should review its resource allocation to focus more on the supervision and monitoring of PIPs, upon outsourcing of most of the cases;
  - (d) the ORO should explore, through the public consultation exercise for this study, reductions in mandatory casework for summary cases where justified; and
  - (e) the ORO should explore, through the public consultation exercise, the feasibility of introducing a "cab rank" system similar to those currently run in the US and Australia. Under such a system, PIPs who wish to take on compulsory liquidation cases have to register themselves with the court and handle any case assigned to them on the basis of a roster, irrespective of the assets available in the cases to meet their costs, and without public subsidy.

***Bankruptcy (see section 3 of the consultation paper)***

9. There has been a significant increase in the number of bankruptcy cases in recent years. Unlike the summary liquidation cases which can be outsourced to the private sector under the Companies Ordinance by way of appointment, the Bankruptcy Ordinance does not allow the ORO to do so in respect of bankruptcy cases, which are handled in-house by the ORO.

10. The consultant considers that fundamental changes to the bankruptcy system are required, and outsourcing offers potential for dealing with the expanding caseload in a cost-effective and rapid manner.

11. The consultant also suggests that a “fast track” option would be a cost-effective approach to consumer bankruptcy cases, in which there are rarely sufficient assets to meet the costs of the bankruptcy. In most of these cases, no additional purpose is served by lengthy or extensive bankruptcy procedures. However, to protect the public interest, access to the fast track option should be limited whilst access to and use of bankruptcy data should be enhanced.

12. The consultant also considers that the suitability of an extra judicial process (i.e. one in which the court plays a limited role, if at all) for dealing with bankruptcy cases should be debated. This process provides the debtor with protection against his creditors, requires the debtor to cooperate and surrender assets to his creditors, and imposes penalties for failure to comply. The debtor is, however, supervised by an independent third party other than the court. The process is considered to be cheaper and faster than formal bankruptcy as it avoids the court’s involvement, limits the amount of work required from the supervising agency, and is usually completed faster than a formal bankruptcy.

13. The consultant recommends that -

- (a) legislative changes should be introduced to allow the ORO to outsource bankruptcy cases to PIPs;
- (b) a fast track procedure should be created to deal with selected consumer bankruptcy cases such as those involving debtors with small estates that do not merit extended investigation or administration;
- (c) consideration should be given to making bankruptcy an extra judicial process; and
- (d) public and lender access to bankruptcy data should be enhanced.

***Regulation and Supervision (see section 4 of the consultation paper)***

14. Creditors of an insolvent entity, who are effectively paying the liquidation service, have the primary role in approving PIP fees. The court, however, has a role of final arbiter of fees. In addition to resolution of disputed fees or those cases without a committee of inspection, the court approves provisional liquidators’ fees. The consultant considers that the ORO’s responsibility for fee supervision should be limited to cases in which public funding is involved and that its role should not be extended to

a wider one of general insolvency fee regulation.

15. There is no formal “licensing” procedure for the PIPs in Hong Kong. The ORO exercises control over authorisation of participants in the Panel A Scheme and the allocation of cases under the tendering scheme. Although both the ORO and the court do not have authority over the right of PIPs to carry out voluntary liquidations or other insolvency proceedings, given the small number of PIPs and no record of abuse of the insolvency system, the consultant considers that there are practical constraints to the introduction of a formal PIP licensing system similar to those used in other jurisdictions.

16. The consultant recommends that -

- (a) the ORO should not be responsible for PIP fee authorisation except where it has a direct and appropriate involvement in the specific case concerned;
- (b) the degree of support/desire for a formal licensing system and whether such a system should involve the ORO should, through the public consultation exercise, be assessed; and
- (c) a simple system based on authorisation by the ORO (or other selected body) should be adopted in the event that there is strong support for a ORO administered licensing and supervising system. Such a system could be based on PIPs’ experience and resources rather than a formal examination approach.

***Enquiry and Enforcement (see section 5 of the consultation paper)***

17. The enquiry and enforcement function is clearly seen as important in Hong Kong. The consultant considers that whilst there is no evidence to suggest that the ORO or PIPs are deficient in carrying out statutory enquiries, there appears to be a general perception that insufficient resources and concentration are paid to this aspect by both the ORO and PIPs. The level of fines imposed and severity of disqualification orders made are unlikely to prove an effective deterrent to rogue directors and bankrupts.

18. The consultant recommends that -
- (a) the ORO should establish a specialist investigations unit, the members of which would be drawn from different divisions of the ORO, to deal with cases flagged by the PIPs and creditors for additional enquiries;
  - (b) the minimum level of enquiry should be increased in summary cases;
  - (c) the prosecution and disqualification policy should be modified, including widening the range of offences prosecuted, more frequent use of appeals to seek an increase in the level of fines imposed; and
  - (d) the ORO should improve its communication with the public on its enforcement action including publicising successful prosecution cases, and setting up a hotline for creditors and the public to report suspected offences.

***Finance (see section 6 of the consultation paper)***

19. Any consideration of funding for the ORO's services should have regard to the level of services provided in the first place and the allocation of the costs of providing such services between users of the services and the public. The consultant points out that there is a lack of an agreed conceptual basis for such allocation in other jurisdictions.

20. At present, the ORO is expected to recover 60% of its costs. The consultant considers that this set percentage of cost recovery is not an appropriate financial performance measure as it fails to differentiate between controllable and non-controllable costs and revenues for the ORO.

21. The consultant recommends that -
- (a) the ORO's fees should be reviewed and revised where appropriate;
  - (b) interested parties' reaction to financing alternatives such as diverting a fixed proportion of the Business Registration Fee to the ORO, increasing the interest charged on the Companies Liquidation Account, etc, should be explored during the public consultation exercise;

- (c) the current basis of financial performance evaluation (60% recovery) should be changed; and
- (d) the ORO should explore the possibility of raising additional revenue by developing value-added services.

*Administration (see section 7 of the consultation paper)*

22. The efficient administration of insolvency cases is key to the ORO. In this regard, the ORO is not fully automated as it should be. The consultant recommends that the planned investment in management information systems should be treated as a priority.

**The Consultation Period**

23. We intend to seek the views of the public on the recommendations put forward by the consultant. Copies of the consultation paper has also been sent to the relevant professional and market bodies and other relevant organisations for comments. We hope to receive all comments by the end of August 2002.

**Financial Services Bureau**  
**28 June 2002**

**List of Respondents**

1. Association of Insolvency Officers
2. Baker Tilly
3. Clifford Chance
4. Consumer Council
5. Hong Kong Monetary Authority
6. Hong Kong Society of Accountants
7. Joseph S C Chan & Co
8. Judiciary Administrator
9. Kenny Tam & Co
10. Mr Alan C W Tang
11. Mr W K Leung.
12. Secretary to the Standing Committee on Company Law Reform
13. Standard Chartered Bank
14. The British Chamber of Commerce in Hong Kong
15. The Chinese General Chamber of Commerce.
16. The Chinese Manufacturers' Association of Hong Kong
17. The DTC Association
18. The Hong Kong Association of Banks
19. The Hong Kong Institute of Company Secretaries
20. The Hong Kong Institute of Directors
21. The Hong Kong SAR Licensed Money Lenders Association Ltd
22. The Law Society of Hong Kong
23. Yip, Tse & Tang, Solicitors
24. An individual

**Summary of Respondents' Comments on  
Major Recommendations of Consultancy Study on the  
Review of the Role of the Official Receiver's Office (ORO)**

No	Comments
<b><i>Role and Functions of the ORO</i></b>	
1	The ORO should be a regulator and case work should be done by PIPs. It can merge with the Companies Registry and the Securities and Futures Commission. (S/SCCLR <sup>1</sup> ).
2	The ORO should focus more on regulation and monitoring of PIPs. (An individual) The ORO should be regulatory and supervisory. (LSHK <sup>2</sup> )
3	Generally supportive of the recommendations in the consultation paper. (HKSARLMLA <sup>3</sup> )
4	The consultation paper contains some sound recommendations that can bring the ORO more closely in line with its international counterparts. (HKAB <sup>4</sup> )
5	No strong views against recommendations in the consultation paper, but call for assistance in dealing with increasing workload. (AIO <sup>5</sup> )
6	Issues to be considered would be who would carry out the casework and how this is funded. (HKIoD <sup>6</sup> ) <sup>1</sup>
7	The ORO should retain its present last resort function. The ORO is better placed than PIPs to carry out the role of investigation and enforcement. Have reservations about the effectiveness of the ORO's role of regulation and supervision. The ORO spends too much time "ensuring" the delivery of services by PIPs. Regulation should be left with relevant professional bodies, especially if licensing is introduced. The ORO should assume a new role of liaison/authentication for PIPs in dealing with cross-border issues related to voluntary liquidation cases concerning the Mainland. (ACWT <sup>7</sup> )
8	Do not wholeheartedly endorse that the ORO should be construed as a "last resort" service, but the ORO has enjoyed a primary role in insolvencies. The ORO should be funded adequately to fulfil its roles. (BCC <sup>8</sup> )

<sup>1</sup> Secretary to the Standing Committee on Company Law Reform

<sup>2</sup> The Law Society of Hong Kong

<sup>3</sup> The Hong Kong SAR Licensed Money Lenders Association Ltd

<sup>4</sup> The Hong Kong Association of Banks. It has raised other issues i.e. broadening the bankruptcy insolvency test; enhancing disclosure; introducing a requirement for self-petitioned debtors to prove a genuine attempt to restructure their debts; and more objective determination of allowable living expenses for bankrupts.

<sup>5</sup> Association of Insolvency Officers

<sup>6</sup> The Hong Kong Institute of Directors

<sup>7</sup> Mr Alan C W Tang. He has also raised other issues such as the filing of affidavits of fitness, security bonds, the appropriateness of monetary limits in the Companies Ordinance and Bankruptcy Ordinance.

<sup>8</sup> The British Chamber of Commerce in Hong Kong

No	Comments
9	The ORO has an important role to play in the oversight, monitoring and review of the legal and regulatory framework for insolvencies in Hong Kong. The ORO should assume a more direct role in supporting PIPs on cross-border insolvency matters, involving the Mainland or other jurisdictions. (HKSA <sup>9</sup> )
<b>Liquidation</b>	
<b>(a) The ORO should continue with the Panel A and tendering schemes.</b>	
10	Agreed. (S/SCCLR, BT <sup>10</sup> , HKAB, DTCA <sup>11</sup> , KTC <sup>12</sup> , HKSA) Supported with some comments on operational details. (HKICS <sup>13</sup> ) Agreed, but suggest that PIPs be licensed. (CC <sup>14</sup> ) Agreed in principle. (CGCC <sup>15</sup> ) Agreed that the Panel A scheme should be retained. (BCC)
11	Have hesitation in supporting the recommendation. (ACWT)
<b>(b) The ORO should retain a small number of cases for in-house resolution to maintain key skills.</b>	
12	Disagreed. (S/SCCLR, BT, CC, LSHK, HKSA) The ORO should try to outsource all cases to PIPs except for exceptional cases. (CMAHK <sup>16</sup> )
13	Agreed. (HKAB, DTCA, HKIoD)
<b>(c) The ORO should review its resource allocation to focus more on the supervision and monitoring of PIPs, upon outsourcing of most of the cases.</b>	
14	Agreed. (S/SCCLR, BT, HKAB, CC, DTCA, HKSA) Supported as the ORO should take up more of an investigative role in suspicious cases. (ACWT) Supported. (CMAHK)
15	The ORO may further strengthen its audit team in order to supervise PIPs' practices. (WKL <sup>17</sup> )

<sup>9</sup> Hong Kong Society of Accountants. It has raised a number of technical and procedural issues to be addressed such as the appropriateness of monetary limits in the legislation, security bonds taken out by PIPs.

<sup>10</sup> Baker Tilly

<sup>11</sup> The DTC Association

<sup>12</sup> Kenny Tam & Co. He has suggested some changes to the schemes.

<sup>13</sup> The Hong Kong Institute of Company Secretaries

<sup>14</sup> Clifford Chance

<sup>15</sup> The Chinese General Chamber of Commerce. It considers that the Government should take remedial measures to deal with increasing bankruptcy cases and proposes some measures.

<sup>16</sup> The Chinese Manufacturers' Association of Hong Kong

<sup>17</sup> Mr W K Leung. He has mentioned the Canadian approach of maintaining the operation statistics of PIPs.

No	Comments
<b>(d) The ORO should explore, through the public consultation exercise for this study, reductions in mandatory casework for summary cases where justified.</b>	
16	If all case management is outsourced to PIPs, the ORO could set up systems to monitor the work done by PIPs. (S/SCCLR)
17	Supported. (An individual, HKICS, CMAHK, HKSA <sup>18</sup> ) Supported, regarding the reduction of mandatory procedures. (ACWT) Agreed, and strongly in favour of a summary winding-up procedure similar to that in place in Australia. (CC) Agreed. (DTCA, KTC) Makes sense to expedite the summary procedure. (LSHK)
18	The existing procedures could be reviewed as a means of streamlining case work, with some suggestions. (BT)
19	The recommendation is basically sound, subject to the appropriate controls. (HKAB)
20	Need to fully consider the consequential amendments to the Companies Ordinance and Bankruptcy Ordinance. (BCC)
<b>(e) The ORO should explore, through the public consultation exercise, the feasibility of introducing a “cab rank” system similar to those currently run in the US and Australia.</b>	
21	The “cab rank” system is working for Panel A cases, but it may be preferable to have a tendering plus subsidy system for the summary cases. Could consider a system for voluntary liquidation for small companies. (S/SCCLR)
22	The “cab rank” system may be a feasible option for Hong Kong although it is unlikely to be attractive to most PIPs unless there is a subsidy. (BT)
23	The “cab rank” system may not be viable and attractive to PIPs. (HKAB, CCouncil <sup>19</sup> ) The “cab rank” system is not appropriate. (KTC)
24	Supported. (HKICS, CMAHK) Agreed. (CC)
25	The introduction of a “cab rank” system has considerable merit, but how it blends with the Panel A scheme is moot. Moreover, cross-subsidisation under the system is somewhat controversial. (BCC)
26	Need to consider the feasibility carefully. A “cab rank” system would not work unless it is properly funded. (HKSA)
27	Disagreed. (DCTA) Do not support. (ACWT)
28	Agree that a formal consultation exercise be used to explore the feasibility of a “cab rank” system. (HKIoD)

<sup>18</sup> HKSA has put forward some suggestions.

<sup>19</sup> Consumer Council

No	Comments
<b>Bankruptcy</b>	
<b>(a) Legislative changes should be introduced to allow the ORO to outsource bankruptcy cases to PIPs.</b>	
29	Agreed. (YTT Solicitors <sup>20</sup> , S/SCCLR, BT, HKAB, CC, DTCA, HKIoD) Supported. (HKICS, CMAHK) Supported but sufficient Government funding for “asset-less” cases. (ACWT <sup>21</sup> ) Agreed, subject to PIPs being properly remunerated. (KTC) Agreed, but need subsidy and reduction in case administration work. (HKSA) Supported, subject to competent PIPs doing the work. (SCB <sup>22</sup> )
30	Outsourcing should be implemented as soon as practicable. (JSCCC <sup>23</sup> )
31	Agree that outsourcing personal bankruptcies would offer potential for dealing with the current caseload system. Legislative changes should be introduced to allow that. (HKIoD)
32	Outsourcing is a feasible measure but there may be implementation difficulties. The ORO should try to reduce such difficulties. (CGCC)
33	Outsourcing would bring significant benefit to the ORO if PIPs are prepared to take up the work. (BCC)
34	If the ORO wants to minimise the costs in contracting out the cases, it must make the cases more profitable for PIPs. (WKL)
<b>(b) A fast track procedure should be created to deal with selected consumer bankruptcy cases such as those involving debtors with small estates that do not merit extended investigation or administration.</b>	
35	Concerned that shortening may put pressure on the ORO in relation to investigations. (S/SCCLR)
36	Agreed. (BT) Agreed, but only suitable cases or “no fault” cases. (CC, HKAB, LSHK, BCC <sup>24</sup> ) Agreed, but “no fault” cases and tougher penalties and enforcement. (SCB) Supported. (HKICS) Agreed in principle, but need to know who would qualify and what review process would be undertaken. (DTCA) Agreed, but need to ensure PIPs have the necessary expertise and experience. (HKIoD) Support in principle, but need sophisticated process. (ACWT) Support in principle. (HKSA)

<sup>20</sup> Yip, Tse & Tang, Solicitors

<sup>21</sup> He considers that the Government should make access to bankruptcy harder, and those evading liabilities by bankruptcy pay a much heavier “price”.

<sup>22</sup> Standard Chartered Bank. It has suggested a number of proposals to address issues such as obtaining credit after petitioning, exclusion of certain debts from discharge, assessment of bankrupts’ living expenses.

<sup>23</sup> Joseph S C Chan & Co

<sup>24</sup> BCC has suggested some changes to the bankruptcy procedures.

No	Comments
37	Have reservations. (HKSARLMLA) Consider that the Government should be careful in taking forward this recommendation. (CMAHK <sup>25</sup> )
38	The recommendation is not a solution to the caseload problem. It may encourage more self bankruptcy petitions. (JSCCC) No need to change the current periods of consumer bankruptcy. A speedier bankruptcy process should be coupled with public education and stringent scrutiny and control. (CCouncil <sup>26</sup> ) Need to be very careful in deciding the timing for introducing the fast track procedures. (HKMA <sup>27</sup> )
<b><i>(c) Consideration should be given to making bankruptcy an extra judicial process.</i></b>	
39	Favour this recommendation, which should also apply to compulsory company winding-up. (S/SCCLR) Agreed. (BT) Agreed subject to proper screening of cases. (DTCA) Supported. (CMAHK) There is merit in the recommendation but concern about the effectiveness and how the ORO can take up the work. (BCC)
40	Have reservations (HKSARLMLA, HKAB) This recommendation can be put on hold for the time being. (JSCCC)
41	Disagreed. (CC, LSHK) Do not support. (ACWT, SCB)
42	Introducing extra judicial process is not ripe for the moment. (HKIoD)
43	Have reservations as to whether this recommendation would result in much savings in time and costs. Public interest is involved in obtaining a bankruptcy order through the court procedure. (JA <sup>28</sup> ) Not convinced. (HKSA) Need more details of how the proposed system will work. (CCouncil)
<b><i>(d) Public and lender access to bankruptcy data should be enhanced.</i></b>	
44	Agreed. (S/SCCLR, BT, DTCA, HKIoD, CCouncil, KTC) This recommendation should be implemented as soon as practicable. (JSCCC) Agreed, but a shorter public record for IVA debtors. (CC) Agreed as enhanced use of bankruptcy data by credit providers has a great deterrent effect. (LSHK) Supported. (ACWT, HKSA, SCB)
45	The proposed deletion from the public record all details of IVAs 5 years from the date of the composition being agreed with creditors is not appropriate. (HKSARLMLA) The period should be 7 years. (BCC)

<sup>25</sup> CMAHK considers that the Government should look into remedial measures to tackle the loss in the deterrent effect of bankruptcy, and proposes some measures.

<sup>26</sup> CCouncil has proposed some measures to tackle consumer bankruptcy.

<sup>27</sup> Hong Kong Monetary Authority

<sup>28</sup> Judiciary Administrator

No	Comments
<b><i>Regulation and Supervision</i></b>	
<b><i>(a) The ORO should not be responsible for PIP fee authorisation except where it has a direct and appropriate involvement in the specific case concerned.</i></b>	
46	Agreed, but the ORO should be given power to approve fees in cases of disputes between creditors and PIPs with appeal to the Court. (S/SCCLR) Agreed, but creditors have ready access to the court. (CC) Agreed, but there should be licensing of PIPs and the court should not be responsible for taxation of fees, unless there is a dispute or challenge. (BT) Agreed. (HKAB, DTCA, BCC, KTC) Supported. (ACWT) Creditors should, as a matter of principle, be responsible for PIP fee authorisation. Moreover, the court should not be responsible for taxation of fees, other than as final arbiter in the event of disputes. (HKSA)
47	The current supervision role of the ORO should be continued. Wider insolvency fee regulation by the ORO is not necessary given the existing court avenue for dispute/appeal. (HKIoD)
48	Considers that there should be substantive measures of supervising the level of fees charged by PIPs. (CCouncil)
<b><i>(b) The degree of support/desire for a formal licensing system and whether such a system should involve the ORO should, through the public consultation exercise, be assessed.</i></b>	
49	Favour the establishment of a PIP licensing system. The licensing body should be a statutory body. Favour the division of the licensing regime into corporate and personal insolvency practices. (YTT Solicitors) Favour a licensing procedure, but the ORO's regulatory role should be kept to a minimum. (LSHK) Supported. (ACWT) A licensing system is preferable, but need to consider the costs. (BCC) Desirable to have a formal licensing system in the long run. (HKSA) Some kind of licensing is required. (WKL)
50	No need for a formal licensing system, if the ORO plays a greater regulatory role and there is a need for so few PIPs. (S/SCCLR)
51	The implementation of a formal licensing system for PIPs is critical to ensuring the maintenance of high standards within the insolvency profession. (BT)
52	Agree that a formal regulatory system should be introduced. (HKSARLMLA) Agreed in principle but the process must be simple and allow PIPs that are not lawyers nor accountants. (DTCA)
53	A licensing system would necessitate more administrative work and additional bureaucracy, but it appears to be a growing trend. (HKAB)
54	Strongly support the introduction of a formal licensing system. (CC)
55	The ORO's current supervision role should be continued but agree that a consultation exercise be used to assess the degree of support for a formal licensing system. (HKIoD)
56	A formal licensing system is not appropriate at this stage. (KTC)

No	Comments
<b>(c) A simple system based on authorisation by the ORO (or other selected body) should be adopted in the event that there is strong support for a ORO administered licensing and supervising system.</b>	
57	Favour that as a start, the ORO to administer a simple system based on authorisation. (YTT Solicitors)
58	Agreed. (S/SCCLR, HKAB, DTCA)
59	The existing system of regulation and supervision of PIPs administered by the ORO is totally inadequate. The simple licensing system proposed in the consultation paper is not sufficient. The supervisory role of the ORO should be extended to all insolvency administrations, including creditors' voluntary liquidations and members' voluntary liquidations. (BT)
60	The ORO, together with the Law Society and HKSA, could implement a licensing system. (BCC) The system could be jointly administered by the ORO and relevant professional bodies. In the meantime, the existing arrangement should be improved. (HKSA)
61	Disagreed. (CC) The licensing system should be established independent of the ORO (could be a joint establishment between the ORO and relevant professional bodies). The system should, at least initially, be based on "authorisation". (ACWT)
62	A simple licensing system involving the ORO. (HKIoD) A simple authorisation system. (CMAHK)
63	Whilst licensing is done by the ORO, the assessment of qualification should be left to relevant professional bodies. (WKL)
64	Suggest setting up a professional body. (CGCC)
<b>Enquiry and Enforcement</b>	
<b>(a) The ORO should establish a specialist investigations unit to deal with cases flagged by the PIPs and creditors for additional enquiries.</b>	
65	Agreed. (S/SCCLR, BT, CC, DTCA, HKIoD, CGCC, BCC, HKSA) Agreed, but there should be guidelines on the level of "rule breaking". (HKAB) Welcome the recommendation. (LSHK) Supported. (ACWT, SCB)
<b>(b) The minimum level of enquiry should be increased in summary cases.</b>	
66	PIPs must convince the ORO that all appropriate steps have been taken and there are (or are not) grounds for prosecution, etc. (S/SCCLR)
67	The ORO should issue clear guidelines on a minimum level of investigation and should be proactive in monitoring such investigation. (BT)
68	Agreed. (CC, DTCA, HKSA) Supported. (ACWT, SCB) The ORO should strengthen its scrutiny over bankruptcy cases. (CCouncil)

No	Comments
69	The need for a minimum level of enquiry is questionable. Need to establish reporting standards. (HKAB)
70	Disagreed as it is not economical, but PIPs should report areas of concern to the ORO. (HKIoD)
<b>(c) <i>The prosecution and disqualification policy should be modified, including widening the range of offences prosecuted, more frequent use of appeals to seek an increase in the level of fines imposed.</i></b>	
71	A corporate affairs department should be set up to regulate company and insolvency law. (S/SCCLR)
72	The existing policy is ineffective. Significant legislative amendment is required to increase the penalties. (BT).
73	Agreed. (HKAB, DTCA, LSHK) Supported. (ACWT, SCB)
74	Funding and resources should be allocated to prosecution and disqualification. (CC)
75	The investigation and prosecution should be strengthened through promulgation of guidelines by the ORO for PIPs. (CMAHK)
76	Fines are an inadequate sanction and imprisonment should be introduced. (BCC)
77	The ORO is best placed to carry out the investigation/prosecution role. (HKSA <sup>29</sup> )
<b>(d) <i>The ORO should improve its communication with the public on its enforcement action including publicising successful prosecution cases, and setting up a hotline for creditors and the public to report suspected offences.</i></b>	
78	Agreed. (S/SCCLR, HKAB, CC, DTCA, HKIoD, BCC) Supported. (ACWT, SCB) The ORO should seek creditors' and the public's participation in reporting suspected offences. (CGCC) Agreed, with emphasis on education for directors. (HKSA)
79	This may not be conducive under the current economic climate. (An individual)
80	The investigation, prosecution and disqualification policy should be strengthened. (BT)
<b><i>Finance</i></b>	
<b>(a) <i>The ORO's fees should be reviewed and revised where appropriate.</i></b>	
81	A complete rethinking of fees may be necessary. (S/SCCLR)

<sup>29</sup> HKSA has mentioned that it is in favour of introducing legislation on insolvent trading in conjunction with the provisions on corporate rescue.

No	Comments
82	The ORO should be adequately funded. Changes to financing depends on the adoption of the recommendations in the consultation paper. (BT)
83	Agreed and fees could be standardised. (HKAB) Agreed that fees should be simplified and revised as appropriate. (CC)
84	Supported. (HKICS) Agreed. (DTCA, HKIoD, KTC, HKSA) Supported with suggested changes. (ACWT)
85	The present system of finance is unfair, and full cost recovery may not be realistic. (LSHK)
86	The ORO should try to reduce expenditure on cases. (CGCC)
87	Deposits paid to the ORO should be non-refundable and retained by the ORO. (BCC)
<b><i>(b) Interested parties' reaction to financing alternatives such as diverting a fixed proportion of the Business Registration Fee to the ORO, increasing the interest charged on the Companies Liquidation Account, etc, should be explored during the public consultation exercise.</i></b>	
88	A complete rethinking of fees may be necessary. (S/SCCLR)
89	The present financing system does not necessarily bear any relationship to the work done by the ORO. (BT)
90	No objection to the review of alternative funding options. (HKAB)
91	Supports a judicious increase in the rate levied on the Companies Liquidation Account and support that funds associated with creditors' voluntary and members' voluntary liquidations be deposited immediately into the Account. (HKICS)
92	Agreed that financial alternatives should be examined. (DTCA)
93	Fees which are paid for company and business registration should be allocated to the ORO, at least in part, to ensure company law compliance. (LSHK)
94	Do not see any alternative funding arrangements other than the Government and creditors. (ACWT)
95	The ORO to charge PIPs administrative costs. (CMAHK)
96	A number of suggestions on the financing of the ORO, such as using the petitioner's deposit, reviewing the operation of the Companies Liquidation Account. (HKSA)
<b><i>(c) The current basis of financial performance evaluation (60% recovery) should be changed.</i></b>	
97	Agreed in the meantime. (S/SCCLR) Supported. (ACWT)
98	This depends on the changes to the ORO's role. (HKAB)

No	Comments
99	Agreed that there be greater flexibility. (CC) Agreed. (DTCA, HKSA) Agreed, but need to have regard to the revised role of the ORO. (CMAHK)
100	Need to re-consider if a “trading account” system can apply to the ORO. (BCC)
<b><i>(d) The ORO should explore the possibility of raising additional revenue by developing value-added services.</i></b>	
101	Agreed. (S/SCCLR, HKAB, CC, DTCA, HKIoD, HKSA)
102	It may not be appropriate to continue to disclose information of a discharged bankrupt under any search register system. (An individual)
103	The petitioner’s deposit may be increased to meet the costs PIPs may incur under a cab rank system with no subsidy. (BT)
104	Do not support. (ACWT)
<b><i>Administration</i></b>	
<b><i>The planned investment in management information systems should be treated as a priority.</i></b>	
105	No comment. (S/SCCLR) Agreed. (CC, DTCA, HKIoD, BCC, HKSA)
106	Any investment in this regard must be assessed in the light of changes to the ORO’s role. Where possible, PIPs should be consulted in the review of the system. (BT)
107	The investment should be linked to better provision of information to “customers” of the service. Urgent priority must be given to providing information to financial creditors. (HKAB)
108	Supported in principle but the systems should cater for PIPs’ practical needs. (ACWT) Supported. (CMAHK)