

Press release

LCQ5: Contracting out winding-up cases by the Official Receiver's Office

Wednesday, February 11, 2009

Following is a question by the Hon Paul Chan and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 11):

Question:

With the economy of Hong Kong sliding into recession recently, the Official Receiver's Office (ORO) announced earlier that the number of petitioned cases of winding-up of companies had continued to rise. It has been learnt that at present, ORO contracts out winding-up cases to private institutions. In this connection, will the Government inform this Council:

(a) how ORO ensures that private institutions of different sizes have equal opportunities of being awarded the above outsourcing contracts; whether it had conducted any review in the past five years on the procedure for granting its outsourcing contracts, including whether the tender prices were reasonable (e.g. those as low as \$0); if it had, of the details and results of the reviews, and how ORO will improve its outsourcing procedure in the light of the review results;

(b) whether ORO has, since it started to contract out the above work in 2002, found the performance of any outsourced service contractor falling short of contractual requirements; if it has, of the number of cases involved, as well as the follow-up actions taken and the outcome of such cases; and what mechanism and measures ORO have put in place to ensure the quality of outsourced winding-up services; and

(c) of the follow-up actions which outsourced service contractors must take when they uncover misconduct on the part of the management of the wound-up companies, with a breakdown, by type of misconduct, of the number of such cases in the past five years, the follow-up actions (including the number of cases in which prosecution was instituted) taken by the relevant outsourced service contractors and ORO, as well as the outcome of the cases?

Reply:

President,

The Administration's responses are as follows:

(a) In contracting out winding-up cases, the ORO considers it important to ensure professional quality while providing opportunities for private-sector insolvency practitioner firms (PIP) of different sizes. In fact, in contracting out such cases, the selection of PIPs is not based on size, but on their professional standard.

For example, in contracting out smaller-scale liquidation work (winding-up cases where the company has assets estimated to be below \$200,000), one of the key criteria is that applicants should have at least two professionals with appropriate experience. Firms of different sizes which meet the relevant criteria can apply to join. Since introduction of the scheme in 2001, more than 50 firms, including small and medium-sized firms, have taken up such liquidation work.

In the past five years, the ORO has conducted three tender exercises for contracting out smaller-scale liquidation work. The ORO periodically reviews the tender procedures and consults the trade to ensure that the tender exercises are carried out in a fair and open manner.

On the basis of the Government's prudent financial management and value-for-money principles, tenderers must meet the relevant professional standards before their bids are selected on the basis of price. In ORO's previous outsourcing schemes, there was only one selected firm which offered zero tender price in the 2001-02 and 2002-03 exercises; and the liquidation work performed by that firm was up to standard as confirmed in ORO's subsequent monitoring.

Based on past experience, ORO's outsourcing schemes have generally been operating smoothly. The outsourcing schemes helped the ORO cope with the upsurge in liquidation and bankruptcy cases in the late 1990s to obviate the need to strengthen its staffing complement, and have enabled ORO to make use of private sector expertise. At the same time, outsourcing serves to build up a pool of insolvency professionals in the private sector, promoting the development of Hong Kong's professional services sector. ORO will continue to review the professional criteria in the outsourcing schemes in response to market needs, and monitor the work of the PIPs in the outsourcing schemes to upkeep the quality of outsourced services.

(b) The ORO monitors the performance of firms taking up outsourced cases throughout various stages of liquidation in accordance with the Companies Ordinance (CO). Monitoring work includes, but is not limited to -

(i) Liquidators are required to apply to court for summary procedure order within three months of the winding-up order for cases with assets estimated to be below \$200,000;

(ii) Liquidators are required to submit a report to the ORO every six months from the time of their appointment, providing details on case progress;

(iii) Liquidators are also required to submit accounts to the ORO for audit or review twice a year;

(iv) After realising all the company's assets, liquidators should make dividend payment, if any, to creditors and apply to the court for an order of release; and

(v) Liquidators are required to report to the ORO on the conduct of the directors.

In addition, the ORO has set up a bring-up system to monitor the performance of the liquidators from private firms until the above work has been completed and it regularly conducts field audit on selected accounts.

Since introduction of the outsourcing scheme for contracting out smaller-scale liquidation work, two firms had been removed and/or not granted remuneration by court order following applications by the ORO for substandard performance and personal misconduct. Case allocations were discontinued for another four firms that have breached tender terms, namely sub-contracting and failure to directly employ staff to handle cases.

(c) Under the CO, if it appears to a liquidator that a director of a company that is wound up might have committed some misconduct which would render him unfit to be concerned in the management of a company, the liquidator is required to report the matter to the ORO for investigation. 2220 such reports were filed by the liquidators of outsourced cases between 2004 and 2008, averaging over 400 per year. (Details are set out at Annex 1.) Matters of unfit conduct reported to the ORO for investigation include:

(i) Failure to keep proper books of account of the company as required by the CO;

(ii) Failure to prepare financial statements of the company as required by the CO;

(iii) Failure to submit a statement of affairs of the company as required by the CO; and

(iv) Acting as director during bankruptcy period in breach of the CO.

Upon receiving such reports from the liquidators, the ORO will commence investigation work on the case. If there is sufficient evidence, the ORO will prosecute the directors in question. Between 2004 and 2008, ORO issued a total of 2268 summonses under the CO and the court imposed fines totalling over \$2,500,000. (Details are set out at Annex 2.)

Where there is sufficient evidence to prove that the director of the wound up company is unfit to be involved in the management of a company, ORO will apply to the court for a disqualification order to be made against the director so that the person concerned shall not act as director or be concerned with the management of a company for a specified period to be ordered by the court. The court issued a total of 248 disqualification orders between 2004 and 2008. (Details are set out at Annex 3.)

Ends