CHAPTER 6

Financial Services and the Treasury Bureau
Official Receiver's Office

Management of insolvency services

Audit Commission
Hong Kong
2 April 2020

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 74 of the Director of Audit contains 8 Chapters which are available on our website at https://www.aud.gov.hk

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

MANAGEMENT OF INSOLVENCY SERVICES

Contents

MANAGEMENT OF INSOLVENCY SERVICES

Executive Summary

1. The Official Receiver's Office (ORO) is responsible for providing insolvency services in Hong Kong, including the compulsory winding-up of companies and personal bankruptcy under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (C(WUMP)O – Cap. 32) and the Bankruptcy Ordinance (Cap. 6) respectively. In 2019-20, ORO's estimated expenditure was $223 million, of which $177 million (about 80%) was related to personal emoluments or personnel related expenses. The Audit Commission (Audit) has recently conducted a review to examine the management of insolvency services by ORO with a view to identifying areas for improvement.

Administration of in-house insolvency services

2. According to ORO, under the outsourcing schemes, nearly all winding-up cases and about 25% of debtor-petition summary bankruptcy cases are undertaken by private insolvency practitioners (PIPs). As at 31 December 2019, ORO was working on 20,349 bankruptcy cases (including 15,384 undischarged bankruptcy cases), 190 winding-up cases (carried forward from previous years before all winding-up cases were undertaken by PIPs), 471 outstanding winding-up petitions and 81 winding-up cases on the release programme (para. 2.2). Audit examination has revealed the following areas for improvement:

(a) ***Time target not met for processing summary bankruptcy cases with no monthly contributions but with assets for distribution.*** According to ORO Circular of May 2000, for summary bankruptcy cases with no monthly contributions but with assets for distribution, they should be placed on the release programme within 18 months from the dates of bankruptcy orders. During the period from 2016 to 2018, the annual achievements of the 18-month target for processing these summary cases were below 50%, ranging from 34% to 40%. As the timeliness of processing cases with possible assets for realisation and distribution is a prime concern of creditors, ORO needs to continue to closely monitor the achievement of the

18-month target, and formulate effective strategies for dealing with cases with difficulties in asset realisation in order to meet the target processing time (paras. 2.3, 2.4 and 2.7);

(b) ***Performance target on distribution of dividends not clearly defined.*** As stated in ORO's Controlling Officer's Report, there was a target processing time of nine months relating to distribution of dividends (i.e. "completing procedures when the distribution is possible"). According to ORO's guidelines, the point in time when the distribution is possible (i.e. the starting point for counting the target processing time of nine months) was: (i) the month when the cash balance meets the threshold of $70,000 for a bankruptcy case and $200,000 for a winding-up case; or (ii) the date of receipt by the Dividend Unit when a case with cash balance below the thresholds was referred by the case officer. With a view to clearly defining the performance target on distribution of dividends in the Controlling Officer's Report, ORO needs to specify more clearly in the Report the performance target for completion of procedures for distribution of dividends (paras. 2.9 to 2.11);

(c) ***Clearing exercise of pre-2002 insolvency cases not yet completed.*** In March 2008, ORO commenced an exercise with a view to clearing the outstanding matters of the 1,200 pre-2002 insolvency cases (i.e. cases with date of bankruptcy order or winding-up order before 2002) as soon as possible. However, as at 31 December 2019, more than 11 years after the commencement of the exercise, 200 (17%) pre-2002 insolvency cases (comprising 107 bankruptcy cases and 93 winding-up cases) still remained outstanding (para. 2.12);

(d) ***Need to formulate effective strategies for handling bankruptcy cases involving landed properties.*** With a view to taking more effective follow-up actions in asset realisation, in December 2014, the Project Work Section was set up under the Case Management Division to deal with the majority (i.e. 2,790 cases) of long outstanding landed properties (e.g. residential properties, commercial properties, car parking spaces and land lots) vested in the Official Receiver as trustee in various bankruptcy cases. For other outstanding landed properties that had not been taken up by the Project Work Section in 2014 and the new landed properties vested in the Official Receiver as trustee thereafter, they were handled by individual case officers. Audit noted that, as at 31 December 2019, 1,996 cases remained outstanding. Of them, the bankruptcy orders of 1,565 (78.4%) cases were

made before 2006 (i.e. over 14 years ago). Given that the period of bankruptcy is generally four years (up to a maximum of eight years if the court makes an order under the Bankruptcy Ordinance to extend the bankruptcy), it was not entirely satisfactory that there were a notable number of bankruptcy cases involving landed properties vested in the Official Receiver as trustee for over 14 years but still not yet resolved (paras. 1.8, 2.14 to 2.16 and 2.18); and

(e) ***Large balance in suspense accounts.*** According to ORO's guidelines, for winding-up cases and bankruptcy cases of which the Official Receiver acts as liquidator/trustee, all the company liquidation estates and bankruptcy estates recovered should be placed in the Companies Liquidation Account and the Bankruptcy Account respectively. Interest earned from these estates is transferred to the general revenue annually. Audit noted that as at 30 November 2019, ORO had placed monies recovered from 21 winding-up cases (amounting to $4.7 million) and 207 bankruptcy cases (amounting to $40.2 million) in the suspense accounts. In particular, 8 (38%) of the 21 winding-up cases were released cases and 29 (14%) of the 207 bankruptcy cases were released/rescinded/withdrawn cases. It is less than satisfactory that monies have been put into suspense accounts for a long time pending clarifications, particularly for amounts belonging to the estate of the liquidation or bankruptcy that should have been accounted for in the Companies Liquidation Account and the Bankruptcy Account (paras. 2.22 to 2.24 and 2.26).

Monitoring of private insolvency practitioners

Management of outsourcing schemes

3. At present, ORO operates four outsourcing schemes, including: (a) the Panel A scheme (an administrative scheme for appointing liquidators or special managers in non-summary winding-up cases); (b) the Panel T scheme (an open tender system for appointing provisional liquidators/liquidators in summary winding-up cases); (c) the debtor-petition summary bankruptcy case scheme (an open tender system for appointing provisional trustees/trustees in debtor-petition summary bankruptcy cases); and (d) the preliminary examination scheme (an open tender system for appointing professional firms to perform preliminary work relating to debtor-petition bankruptcy cases handled by ORO). According to ORO, it adopts various measures (e.g. conducting quality audits and field audits) to monitor the

performance of the PIPs under the four outsourcing schemes. If there is a breach of statutory or contractual duties, ORO may take regulatory actions against the PIPs (paras. 3.2 and 3.3). Audit examination has revealed the following areas for improvement:

(a) ***Need to conduct quality audits for Panel T scheme.*** According to the Conditions of Contract of the tenders, ORO will conduct quality audits on the cases allocated to PIPs under the Panel T scheme and debtor-petition summary bankruptcy case scheme. When conducting a quality audit, the case officer examines the adequacy and quality of key areas of the administration work (e.g. applying for summary procedure order and realising assets) performed by the PIP. However, Audit noted that for the Panel T scheme, no quality audits had been conducted up to 31 January 2020 (paras. 3.4 and 3.6);

(b) ***Need to ensure that the target coverage of field audits on cases outsourced under Panel T scheme is met.*** ORO staff are required to conduct field audits of the selected cases outsourced under the Panel T scheme and debtor-petition summary bankruptcy case scheme respectively. Audit noted that for the two most recently completed contracts (covering the period from April 2014 to March 2016 and April 2016 to March 2018) of the Panel T scheme, field audits had been completed on only 3.1% and 2.7% (i.e. 78% and 68% of the target coverage) of the cases outsourced under the two contracts respectively (paras. 3.8 and 3.9);

(c) ***Need to issue warning letters for PIPs' unsatisfactory performance.*** According to the Conditions of Contract of the tenders of the Panel T scheme, the debtor-petition summary bankruptcy case scheme and the preliminary examination scheme, ORO may issue warning letters to the PIPs for their unsatisfactory performance (e.g. failure to submit preliminary examination questionnaires within 7 working days of the interview with the bankrupts). Allocation of cases to PIPs would be suspended for one or two months when a certain number of warning letters have been issued. For PIPs which have been suspended for case allocation for two months or more in the previous two contracts, they will not be considered for tender assessment. However, Audit found that in the period from 2016 to 2019, no warning letters had been issued. Audit also noted that during the period, there were 8 incidents of PIPs of the preliminary examination scheme failing to submit the preliminary examination questionnaires within 7 working days of the interview with the bankrupts

and warning letters could have been issued to these under-performing PIPs according to the Conditions of Contract of the tenders (paras. 3.11 to 3.13 and 3.15); and

(d) ***Need to make continuous improvement in monitoring performance of PIPs.*** According to ORO Circular of October 2013, for cases handled by all PIPs (appointed under the outsourcing schemes, or by the court or creditors), case officers are required to monitor the PIPs' conduct or performance in accordance with the relevant statutory and contractual requirements. Case officers should report unsatisfactory conduct or performance of PIPs in a standard form for central keeping by the Compliance and Regulatory Section. Audit reviewed the registers of unsatisfactory conduct of PIPs, which contained the standard forms completed by case officers and would be reviewed when assessing the past performance of PIPs for tender evaluation, and noted that: (i) while a notable number of liquidator's accounts and trustee's accounts were outstanding from PIPs as at 31 December 2019, no such information was recorded in the registers; and (ii) six substantiated or partially substantiated complaints against PIPs received in the period from 2015 to 2019 were not recorded in the registers (paras. 3.16 and 3.17).

Accounts submitted by PIPs

4. A PIP shall submit an account of his receipts and payments as the liquidator (i.e. liquidator's account) to ORO twice a year. For bankruptcy cases, ORO requires a PIP to submit an account of his receipts and payments as the trustee (i.e. trustee's account) every two years. In submitting the account, the trustee is required to remit to ORO the ad valorem fee, which is charged at progressively reducing rates from 10% to 1% on the aggregate amount of the assets realised. ORO may cause the submitted liquidator's accounts and trustee's accounts to be audited. All accounts shall be filed with the court and made available for inspection by any interested parties upon payment of a fee (para. 3.20(b)). Audit examination has revealed the following areas for improvement:

(a) ***Need to review and enhance follow-up actions taken on long overdue accounts.*** Submission of accounts by liquidators and trustees are statutory requirements stipulated in C(WUMP)O and the Bankruptcy Ordinance. Late submission of accounts to ORO may also lead to delay in remitting ad valorem fees to ORO. Audit noted that as at 31 December 2019, there

were 763 liquidator's accounts and 15,355 trustee's accounts overdue but not yet submitted. Of them, 302 (40%) liquidator's accounts and 146 (1%) trustee's accounts had been overdue for more than five years. Audit also noted that besides issuing reminder letters, no other follow-up actions had been taken by ORO (paras. 3.21 and 3.22); and

(b) ***Need to improve examination/checking of accounts.*** All liquidator's accounts and trustee's accounts submitted by PIPs are subject to an examination of content and accuracy or a cursory checking by ORO. Field audits are also conducted on selected accounts to inspect PIPs' books, accounts and vouchers. However, Audit noted that as at 31 December 2019, 30,972 accounts had been received but not yet examined/checked. Of these 30,972 accounts, 843 (2.7%) accounts had been received for more than five years (paras. 3.23 and 3.24).

Way forward

Modernisation of insolvency provisions

5. In October 1996 and July 1999, the Law Reform Commission of Hong Kong made a number of recommendations to update the local insolvency provisions, taking into account international practices. However, after a long lapse of time, two significant proposals have not yet been implemented. They were: (a) the statutory corporate rescue procedure (i.e. to impose a moratorium during which a company is protected from creditors' action and put under the control of a provisional supervisor whose task is to formulate an arrangement for agreement with its creditors or make other appropriate recommendations) and insolvent trading provisions (i.e. to impose a liability on responsible persons for insolvent trading once a company traded while insolvent or if the company continued to trade when there was no reasonable prospect of preventing the company from becoming insolvent); and (b) cross-border insolvency. As stated in the report of July 1999 of the Law Reform Commission of Hong Kong, the treatment of cross-border insolvency was important in Hong Kong because of its status as an international business and financial centre, given that a large proportion of companies listed in Hong Kong were registered abroad (paras. 1.19, 4.2 and 4.7). Audit examination has revealed the following areas for improvement:

(a) ***Need to introduce the bill on corporate rescue procedure and insolvent trading provisions into Legislative Council in a timely manner.*** In October 2015, the Financial Services and the Treasury Bureau (FSTB) informed the Legislative Council that the target was to introduce the bill on corporate rescue procedure and insolvent trading provisions into the Legislative Council in 2017/18. However, up to January 2020 (i.e. over 23 years since the recommendation of the Law Reform Commission of Hong Kong in October 1996), the relevant bill had not yet been introduced into the Legislative Council (para. 4.6); and

(b) ***Need to sustain efforts in taking forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate.*** In order to provide certainty and align Hong Kong with other major jurisdictions, there has been a strong voice from the insolvency profession and from the court, calling for adoption of specific domestic legislation to deal with cross-border insolvency issues. As the cross-border insolvency matter is a complex subject requiring a careful and comprehensive deliberation, FSTB and ORO should continue to consider how to take forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate (para. 4.11).

Deployment of manpower of ORO

6. ***Need to conduct a strategic review on future manpower deployment.*** Over the years, while there had been more outsourcing of cases and the number of insolvency cases had generally been on a decreasing trend, Audit noted that no staff savings had been achieved by ORO and the establishment of ORO had increased by 49 (22%) from 224 as at 31 March 2010 to 273 as at 31 March 2019. To meet future challenge, ORO needs to conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases and the anticipated increase of insolvency caseload in the coming period (paras. 4.25 and 4.26).

Review of fees structure of ORO

7. ***Need to minimise the impact of fluctuating cost recovery rates on fee charging.*** In line with Government's policy of setting bankruptcy and winding-up fees and charges to recover the total costs for services of ORO as far as possible, it

has been ORO's long established practice to adopt the global costing approach for achieving full cost recovery on an overall basis. In effect, this means that the fees charged in some insolvency cases will be higher than the actual costs incurred to defray the costs of administering other cases where there are no or inadequate assets to cover costs. Audit noted that after ORO's fee revision in 2013, ORO's cost recovery rates had fluctuated notably (ranging from 97% to 326%) and could meet the full-cost target (i.e. from 95% to 105%) only in 2013-14, 2016-17 and 2018-19. In order to address the significant fluctuations of cost recovery rates, in August 2018, ORO completed a preliminary review comparing the fees structures of ORO and insolvency authorities in other jurisdictions (e.g. the United Kingdom) with a view to considering possible options available for FSTB's consideration. However, up to January 2020, ORO had not completed the review of its fees structure (paras. 4.30 and 4.33 to 4.35).

Audit recommendations

8. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Official Receiver should:**

Administration of in-house insolvency services

(a) **continue to closely monitor the achievement of the 18-month target for summary bankruptcy cases with no monthly contributions but with assets for distribution, and formulate effective strategies for dealing with cases with difficulties in asset realisation in order to meet the target processing time (para. 2.27(a));**

(b) **specify more clearly in the Controlling Officer's Report the performance target for completion of procedures for distribution of dividends (para. 2.27(b));**

(c) **formulate effective strategies for clearing the 200 pre-2002 long outstanding insolvency cases as soon as practicable and handling bankruptcy cases involving landed properties (para. 2.27(c) and (d));**

(d) **periodically review the balance kept in the suspense accounts, especially for released/rescinded/withdrawn cases, and take effective measures to ascertain the nature of the funds and transfer them back to the Companies Liquidation Account and the Bankruptcy Account where appropriate in a timely manner (para. 2.27(f));**

Monitoring of PIPs

(e) **implement the procedures on conducting quality audits for the Panel T scheme as soon as practicable (para. 3.18(a));**

(f) **remind the Financial Services Division to take measures to ensure that the target coverage of field audits is met (para. 3.18(b));**

(g) **keep in view the need of issuing warning letters for PIPs' unsatisfactory performance including any prolonged delay in the submission of preliminary examination questionnaires in future (para. 3.18(c));**

(h) **take measures to enhance the reporting and recording of unsatisfactory conduct or performance of PIPs (para. 3.18(d));**

(i) **ensure that the registers of unsatisfactory conduct of PIPs are maintained properly and make continuous improvement in monitoring the performance of PIPs (para. 3.18(e) and (f));**

(j) **review and enhance the follow-up actions taken on long overdue accounts from PIPs and the current procedures on the examination/checking of accounts from PIPs (para. 3.26);**

Way forward

(k) **conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases and the anticipated increase of insolvency caseload in the coming period (para. 4.28(a)); and**

(l) **explore measures to minimise the impact of the fluctuating cost recovery rates on fee charging (para. 4.36).**

9. **Audit has also *recommended* that the Secretary for Financial Services and the Treasury should, in collaboration with the Official Receiver:**

(a) **take action to introduce the bill on corporate rescue procedure and insolvent trading provisions into the Legislative Council in a timely manner (para. 4.12(a)); and**

(b) **continue to consider how to take forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate (para. 4.12(b)).**

Response from the Government

10. The Secretary for Financial Services and the Treasury and the Official Receiver agree with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 The mission of the Official Receiver's Office (ORO) is to ensure that the insolvency services it provides in Hong Kong, including winding-up of companies and personal bankruptcy, is of high quality on par with international standards and that the legislation is commensurate with the objective of keeping Hong Kong to the forefront as a major international financial centre. It is responsible for administering the Companies (Winding Up and Miscellaneous Provisions) Ordinance (C(WUMP)O — Cap. 32) relating to the compulsory winding-up of companies (Note 1) and the Bankruptcy Ordinance (Cap. 6) relating to personal bankruptcy.

1.3 ORO's work involves:

(a) the delivery of an effective in-house management insolvency service when appointed by the court or creditors as liquidator or trustee, and the management of the schemes for contracting out insolvency cases to the private sector;

(b) the effective realisation of assets of insolvent companies and bankrupts at the earliest opportunity, adjudication of creditors' claims, and declaration of dividends to preferential and ordinary creditors as soon as possible; and

(c) investigation into the conduct of bankrupts, directors and officers of insolvent companies and the causes of business failure, prosecution of insolvency offenders and implementation of the statutory provisions relating to the disqualification of company directors of insolvent companies.

Note 1: *ORO mainly administers compulsory winding-up cases. For voluntary winding-up cases, ORO is only responsible for keeping the unclaimed and undistributed money pursuant to C(WUMP)O and the Companies (Winding-up) Rules (Cap. 32H).*

Introduction

A consultancy study in 2002, which was commissioned by the then Financial Services Bureau (now the Financial Services and the Treasury Bureau (FSTB)) to review the role of ORO, recommended that the outsourcing policy of ORO should be continued. In line with the recommendation and also in order to handle the increased workload, ORO had contracted out more cases to private insolvency practitioners (PIPs).

1.4 Headed by the Official Receiver, ORO is organised into five divisions, as follows:

(a) ***Case Management Division.*** When the Official Receiver is appointed by the court or creditors to act as trustee/liquidator, the Division is responsible for insolvency administration (e.g. realisation of assets and distribution of dividends). When ORO has contracted out cases to PIPs, or PIPs are appointed by the court or creditors to act as trustees/liquidators in compulsory winding-up or bankruptcy cases, the Division is responsible for monitoring their conduct (Note 2);

(b) ***Legal Services Division 1.*** It is responsible for providing legal advice on all aspects of the administration of insolvent estates for the benefit of insolvent estates (e.g. appearing in court in interlocutory and final court hearings and instructing counsel in complicated cases);

(c) ***Legal Services Division 2.*** It is responsible for investigating and prosecuting insolvency offenders, investigating and making application for disqualification of company directors, liquidators and receivers, and the legislative exercise of corporate rescue procedure;

(d) ***Financial Services Division.*** It is responsible for performing financial and accounting investigations into insolvency cases, conducting statutory audits

---

Note 2: *According to ORO, all compulsory winding-up and bankruptcy proceedings as well as the PIPs appointed as provisional liquidators/liquidators and provisional trustees/trustees in the proceedings are supervised by the court. Committees of inspection and creditors' committees (see Note 5 to para. 1.16), if formed, will also superintend the PIPs and monitor the conduct of the administration of cases. As prescribed under C(WUMP)O and the Bankruptcy Ordinance, the Official Receiver is required to carry out certain monitoring and regulatory work, such as auditing accounts submitted, monitoring receipts and payments from insolvent estates in winding-up, monitoring compliance with statutory obligations and enquiring into complaints made against PIPs.*

of accounts submitted by outside trustees/liquidators, managing and investing insolvency monies, and performing departmental accounting functions; and

(e) ***Departmental Administration Division.*** It is responsible for providing general administrative support and translation services, and performing human resource management functions.

An extract of the organisation chart of ORO as at 31 October 2019 is at Appendix A. As at 31 March 2019, ORO had a staff establishment of 273 (including 8 Directorate posts, 17 posts in Unified Solicitor grade, 4 posts in Treasury Accountant grade and 85 posts in Insolvency Officer grade). For 2019-20, ORO's estimated expenditure was $223 million. About 80% (i.e. $177 million) of the expenditures were related to personal emoluments or personnel related expenses.

Bankruptcy of insolvent individuals

1.5 ***Objectives.*** According to ORO, the primary objectives of the bankruptcy legislation are to:

(a) enable a debtor who needs a moratorium to negotiate settlement with creditors to apply to the court at any time before or after the making of a bankruptcy order against him for an interim order to stay all legal proceedings against him;

(b) provide relief and free the debtor, who is in a hopeless financial position, as expeditiously and as inexpensively as possible from his debts and liabilities so that the debtor can make a "fresh start"; and

(c) ensure that the assets of the debtor are equitably used to pay genuine creditors ratably according to the amount owed to each of them.

1.6 ***Bankruptcy petitions.*** Under the Bankruptcy Ordinance, there are two types of bankruptcy petitions, namely:

(a) ***Creditor's petition.*** A creditor may file a bankruptcy petition with the court against an individual, a firm or a partner of a firm who owes him more than $10,000; and

(b) ***Debtor's petition.*** A debtor who is unable to repay his debts may file a bankruptcy petition against himself with the court.

Appendix B outlines the bankruptcy procedures under the Bankruptcy Ordinance.

1.7 ***Effects of bankruptcy.*** Major effects of bankruptcy include:

(a) where a debtor is adjudged bankrupt upon making of bankruptcy order, any disposition of his/her property made after presentation of bankruptcy petition is void, and no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the bankrupt in respect of the debt, nor shall proceed with or commence any action or other legal proceedings, unless with the consent or leave of the court;

(b) upon the making of the bankruptcy order, all the bankrupt's assets (including interest in real estate) are vested in the trustee and will remain so after the bankrupt's discharge from bankruptcy; and

(c) a bankrupt may not be able to practise in certain professions (e.g. a lawyer or an estate agent) or act as a director of a limited company.

1.8 ***Discharge from bankruptcy.*** With effect from April 1998 (Note 3), for a bankrupt who has not previously been adjudged bankrupt and who has fully complied with the provisions under the Bankruptcy Ordinance, he will be automatically discharged from bankruptcy four years from the date of bankruptcy order. The

---

Note 3: *Before April 1998, there was no automatic discharge of bankrupts. A bankruptcy order would normally last for a lifetime, unless a bankrupt applied to the court for discharge and the application was approved. The number of bankruptcy orders made on debtor-petition bankruptcy cases increased from 33 in 1997 to 305 in 1998, 2,306 in 1999 and peaked at 23,655 in 2002. In the period from 2010 to 2019, the number of debtor-petition bankruptcy orders ranged from 6,664 to 9,353 each year.*

creditors or the trustee may object to the automatic discharge of a bankrupt on any of the grounds set out in the Bankruptcy Ordinance. Examples of grounds include non-cooperation and unsatisfactory conduct. If the objection is accepted by the court, the court may make an order under the Bankruptcy Ordinance to extend the bankruptcy for a period not exceeding four years. For a bankrupt who has previously been adjudged bankrupt, the relevant period of bankruptcy is five years from the date of bankruptcy order and the bankruptcy may be extended for a period not exceeding three years.

1.9 ***Profile of bankrupts.*** According to the annual statistics on profile of bankrupts released by ORO on its website (see Table 1), some details of the bankrupts in 2019 are as follows:

(a) ***Age.*** The distribution of bankrupts in the age groups of "30 or below", "above 30 to 40", "above 40 to 50" and "above 50" was 16%, 24%, 25% and 35% respectively;

(b) ***Monthly income.*** While 37% of the bankrupts had no monthly income, 50% had monthly income of $20,000 or below;

(c) ***Liabilities level.*** The liabilities level of 89% of the bankrupts was $1 million or below. In particular, 22% had liabilities of $200,000 or below and 35% had liabilities of above $200,000 to $400,000; and

(d) ***Cause of bankruptcy.*** 44% and 27% of the bankruptcy cases were due to the lack of gainful employment and overspending respectively.

Table 1

Annual statistics on profile of bankrupts (2019)

Age of bankrupts	**Percentage**
≤ 30	16%
> 30 to 40	24%
> 40 to 50	25%
> 50	35%
Total	100%
Monthly income of bankrupts	**Percentage**
$0	37%
> $0 to $10,000	14%
> $10,000 to $15,000	19% (50%)
> $15,000 to $20,000	17%
> $20,000 to $25,000	8%
> $25,000	5%
Total	100%
Liabilities level of bankrupts	**Percentage**
≤ $200,000	22%
> $200,000 to $400,000	35%
> $400,000 to $600,000	19% (89%)
> $600,000 to $800,000	9%
> $800,000 to $1,000,000	4%
> $1,000,000 to $2,000,000	7%
> $2,000,000 to $6,000,000	3%
> $6,000,000	1%
Total	100%
Cause of failure of bankrupts	**Percentage**
Lack of gainful employment	44%
Overspending	27%
Others (Note)	29%
Total	100%

Source: *ORO records*

Note: *Examples include "excessive use of credit facilities" and "gambling".*

1.10 ***Individual voluntary arrangement.*** The Bankruptcy Ordinance provides for an individual voluntary arrangement (IVA) as an alternative to bankruptcy. Applications for IVA may be made by:

(a) a debtor who has a problem with debt repayment; or

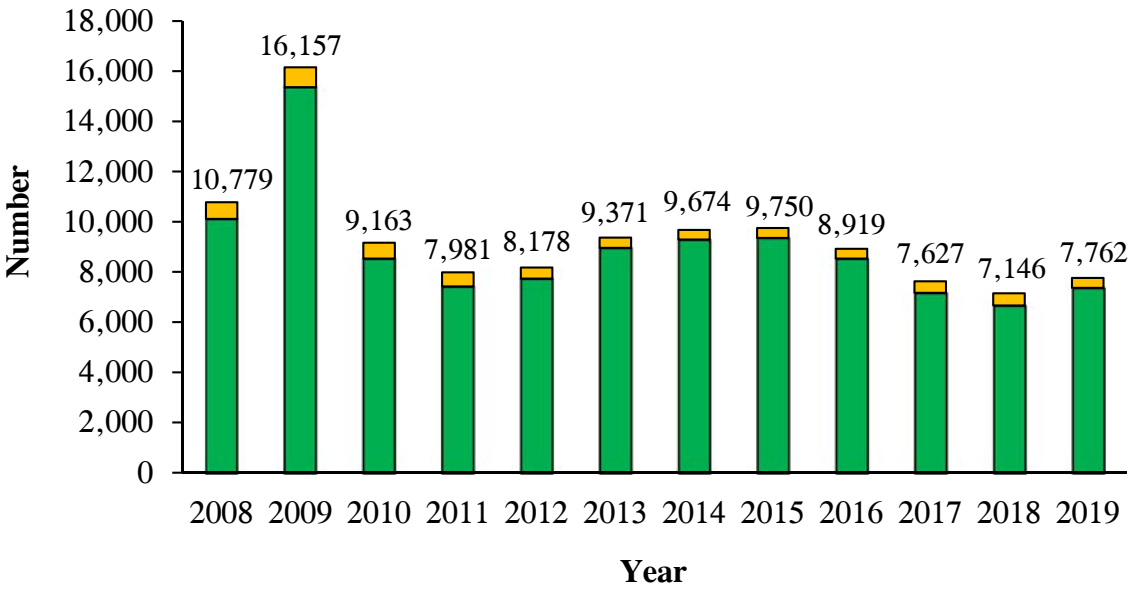
(b) an undischarged bankrupt.

IVA involves application to the court for an interim order during which no bankruptcy petition or other legal proceedings may be taken or continued against the debtor. The debtor is required to make a repayment proposal to the creditors which, on approval, is binding on all creditors.

1.11 Figures 1 and 2 show the numbers of bankruptcy orders made by the court and approved IVAs registered in the period from 2008 to 2019. As shown in Figures 1 and 2, the number of bankruptcy orders made decreased by 28% from 10,779 in 2008 to 7,762 in 2019 and the number of approved IVA cases decreased by 69% from 2,020 in 2008 to 624 in 2019.

Figure 1

Number of bankruptcy orders made
(2008 to 2019)



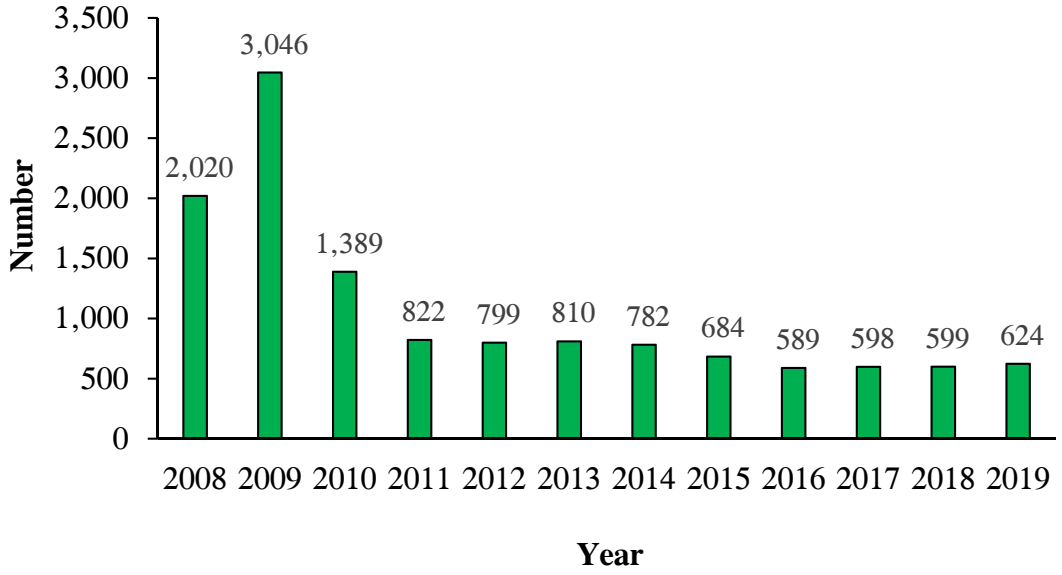
Legend: Debtor-petition cases
Creditor-petition cases

Source: *ORO records*

Remarks: *According to ORO, the trend of the number of insolvency cases is historically affected by the economic situation. In general, the number is likely to increase if the economic situation deteriorates and the unemployment rate increases and vice versa. Based on the growth rate of the cases in the second half of 2019 as compared with the first half of 2019, the number of new bankruptcy orders is estimated to further increase in 2020.*

Figure 2

Number of approved IVAs registered (2008 to 2019)



Source: *ORO records*

Compulsory winding-up of insolvent companies

1.12 ***Objectives.*** The main objectives of the companies winding-up are to:

(a) ensure that all the company's affairs have been dealt with properly; and

(b) have the company dissolved.

1.13 ***Winding-up petitions.*** A creditor, a shareholder or the company itself can file a winding-up petition against the company. A limited company may be wound up by the court in the circumstances set out in C(WUMP)O. The more common ones are:

(a) the company is unable to pay a debt of $10,000 or above;

(b) the court is of the opinion that it is just and equitable that the company should be wound up; or

(c) the company has, by special resolution, resolved that the company be wound up by the court.

Appendix C outlines the winding-up procedures under C(WUMP)O.

1.14 ***Effects of compulsory winding-up.*** After the winding-up order is made against the company:

(a) any disposition of the property of the company (including any transfer of shares or alteration in the status of the shareholders of the company) made after the commencement of the winding-up, unless the court orders otherwise, is void;

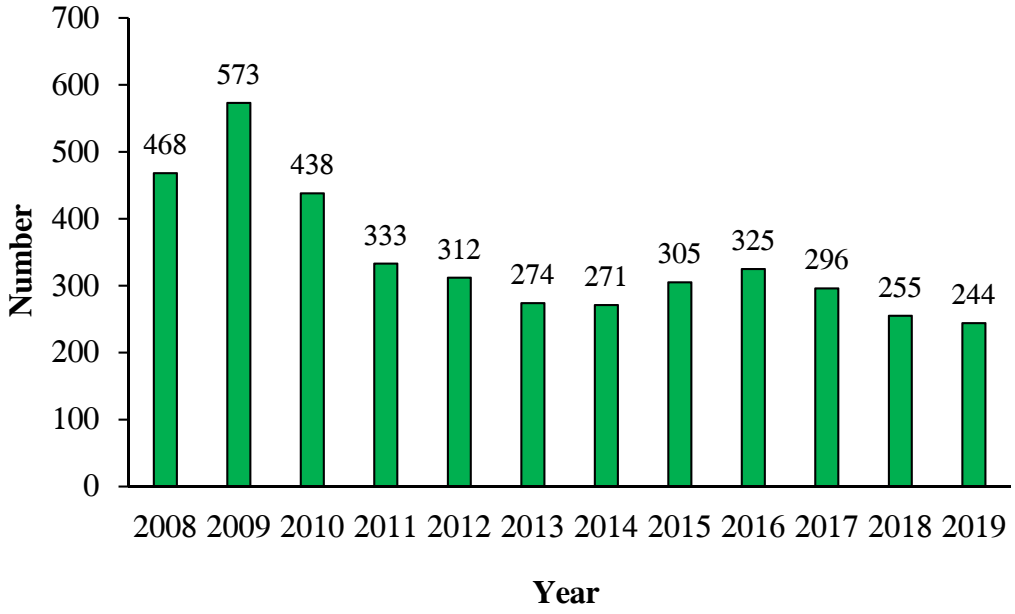
(b) no action or proceeding shall be continued or commenced against the company except with leave of the court; and

(c) the liquidator will take over control of the company including its assets and accounting records.

1.15 As shown in Figure 3, the number of winding-up orders made decreased by 48% from 468 in 2008 to 244 in 2019.

Figure 3

Number of winding-up orders made (2008 to 2019)



Source: *ORO records*

Remarks: *According to ORO, the trend of the number of insolvency cases is historically affected by the economic situation. In general, the number is likely to increase if the economic situation deteriorates and the unemployment rate increases and vice versa.*

Small bankruptcy and winding-up

1.16 Both the Bankruptcy Ordinance and C(WUMP)O have provisions stating that when the realisable assets of a bankruptcy or winding-up case are not likely to exceed $200,000, the court may, upon application by the provisional trustee or provisional liquidator (Note 4), order that the case be administered in a summary manner. Comparing with non-summary cases, the following modifications will be adopted in administering summary cases:

Note 4: *According to ORO, generally, a provisional trustee/liquidator is appointed upon the making of the bankruptcy order/winding-up order to take over and preserve the assets of the bankrupt/wound-up company pending the appointment of the trustee/liquidator to handle the assets.*

(a) ***Bankruptcy cases.*** There will be no general meeting of creditors and no creditors' committee (Note 5) will be formed. The provisional trustee will be appointed as the trustee; and

(b) ***Winding-up cases.*** There will be no first meeting of creditors and contributories, and no committee of inspection (see Note 5) will be formed. The provisional liquidator will be appointed as the liquidator.

Other modifications with a view to saving expense and simplifying procedure may also be prescribed.

Corporate insolvency law reform

1.17 The nature of doing business generally requires that companies operate on credit, which enables them to trade, develop and expand. Corporate insolvency law is necessary to resolve all claims against insolvent companies, and to provide a fair and orderly process for realising and collecting the assets of insolvent companies and distributing them among creditors. It is important to ensure that the legislation in Hong Kong provides an effective process of liquidation and does not lag behind other major jurisdictions. It is also imperative to ensure that the corporate winding-up regime can keep up with the latest developments in Hong Kong.

1.18 ***International ranking in resolving insolvency.*** The World Bank Group (Note 6) publishes an annual study entitled "Doing Business" which measures the regulations that enhance business activity and those that constrain it. The study presents quantitative indicators on business regulations and the protection of property

---

Note 5: *The creditors' committee or committee of inspection, which usually comprises creditors, is appointed at a meeting of creditors and provides assistance and guidance to the trustee or liquidator in the performance of his duties (e.g. to approve the exercise of certain powers by the trustee or liquidator in accordance with the Bankruptcy Ordinance or C(WUMP)O). When there is no creditors' committee or committee of inspection, the court may, on the application of the trustee or liquidator, do any act and give any permission which the committee could have done or given.*

Note 6: *Established in 1944, the World Bank Group is an institution in the United Nations system. It is a unique global partnership working for sustainable solutions that reduce poverty and build shared prosperity in developing countries.*

rights that can be compared across 190 economies (e.g. the United Kingdom, the United States and Singapore). In the annual study, regulations affecting various areas (e.g. "starting a business", "registering property" and "getting credit") of the life of a business, including the "resolving insolvency" (Note 7), are covered to determine the overall ranking on the "ease of doing business". In the annual study published in October 2019, while Hong Kong's overall ranking in the "ease of doing business" was 3, the ranking in the "resolving insolvency" was 45, which represented a drop of 17 places from 28 in the report published in October 2016 (see Table 2). This was attributable partly to the absence of a statutory framework recognised by the World Bank Group to deal with corporate rescue issues (Note 8).

Note 7: *For "resolving insolvency", the study examines the time, cost and outcome of insolvency proceedings involving domestic entities as well as the strength of the legal framework applicable to judicial liquidation and reorganisation proceedings. The data for this area are derived from questionnaire responses by local insolvency practitioners and verified through a study of laws and regulations as well as public information on insolvency systems.*

Note 8: *Comparing the two studies published in October 2019 and October 2016, while Hong Kong's performance in respect of time, cost and outcome of insolvency proceedings involving domestic entities remained the same, the score of the strength of insolvency framework applicable to judicial liquidation and reorganisation proceedings dropped from 9 to 6 (out of 16). In particular, Hong Kong scored 2 points less in relation to reorganisation aspects. According to ORO, it was because since the study published in October 2017, the scheme of arrangement (i.e. arrangements and compromises under the Companies Ordinance) in Hong Kong was no longer recognised as a reorganisation as defined by the World Bank Group.*

Table 2

International ranking reported in the "Doing Business" studies (2016 to 2019)

Year of publication	International ranking	
	"Ease of doing business"	"Resolving insolvency"
2016	4	28
2017	5	43
2018	4	44
2019	3	45

Source: *Audit analysis of the "Doing Business" study results published by the World Bank Group in the period from 2016 to 2019*

1.19 ***Corporate rescue and insolvent trading.*** Throughout the years, in order to better protect investment and preserve employment, PIPs and the general public have called for modernising insolvency law to rescue financially troubled businesses and curb the continued trading of insolvent companies. In its report entitled "Corporate rescue and insolvent trading" issued in October 1996, the Law Reform Commission of Hong Kong (LRC) recommended the introduction of a statutory corporate rescue procedure (i.e. to impose a moratorium during which a company is protected from creditors' action and put under the control of a provisional supervisor (an independent professional third party) whose task is to formulate an arrangement for agreement with its creditors or make other appropriate recommendations) and provisions on insolvent trading (i.e. to impose a liability on responsible persons for insolvent trading once a company traded while insolvent or if the company continued to trade when there was no reasonable prospect of preventing the company from becoming insolvent). Up to January 2020, Hong Kong had no statutory corporate rescue procedure and provisions on insolvent trading.

1.20 ***Cross-border insolvency.*** Cross-border insolvency (sometimes called international insolvency) regulates the treatment of financially distressed debtors where such debtors have assets or creditors in more than one jurisdiction (Note 9). Private practitioners of the insolvency profession generally consider that it is pertinent to put in place a fair and efficient administration of cross-border insolvency proceedings in Hong Kong which protects the interests of all creditors and other interested persons, including the debtors, on a global basis. In its report entitled "The winding-up provisions of the Companies Ordinance" issued in July 1999, LRC made various recommendations in relation to the winding-up provisions in the then Companies Ordinance (Cap. 32), including the introduction of provisions relating to the area of cross-border insolvency. While C(WUMP)O has come into operation in February 2017 to improve and modernise Hong Kong's corporate winding-up regime, up to January 2020, Hong Kong had no statutory framework for cross-border insolvency.

Audit review

1.21 In 2012, the Audit Commission (Audit) completed a review on the insolvency services provided by ORO and the results were reported in Chapter 5 of the Director of Audit's Report No. 58 of March 2012 (2012 Audit Report).

1.22 In November 2019, Audit commenced a review to examine the management of insolvency services by ORO, focusing on:

(a) administration of in-house insolvency services (PART 2);

(b) monitoring of private insolvency practitioners (PART 3); and

(c) way forward (PART 4).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Note 9: *Cross-border insolvency mainly involves three different areas: (a) winding-up of foreign companies; (b) recognition and assistance to foreign liquidators; and (c) cross-border restructuring.*

General response from the Government

1.23 The Official Receiver agrees with the audit recommendations. She thanks Audit and expresses appreciation on Audit's efforts in conducting the audit review and putting forward recommendations to help improve the operation of ORO.

Acknowledgement

1.24 Audit would like to acknowledge with gratitude the full cooperation of the staff of FSTB and ORO during the course of the audit review.

PART 2: ADMINISTRATION OF IN-HOUSE INSOLVENCY SERVICES

2.1 This PART examines the administration of in-house insolvency services, focusing on the administration of casework.

Administration of casework

2.2 According to ORO, under the outsourcing schemes (see para. 3.2), nearly all winding-up cases (Note 10) and about 25% of debtor-petition summary bankruptcy cases are undertaken by PIPs. As at 31 December 2019, ORO was working on 20,349 bankruptcy cases (including 15,384 undischarged bankruptcy cases), 190 winding-up cases (carried forward from previous years before all winding-up cases were undertaken by PIPs), 471 outstanding winding-up petitions and 81 winding-up cases on the release programme (Note 11).

Time targets for processing summary bankruptcy cases

2.3 According to ORO Circular of May 2000, there are two time targets for processing summary bankruptcy cases (i.e. cases with realisable assets which are not likely to exceed $200,000 — see para. 1.16), as follows:

(a) ***12-month target for summary cases with insufficient assets for distribution.*** Summary cases with insufficient assets for distribution should

---

Note 10: *According to ORO, for non-summary winding-up cases handled by ORO, ORO will act as provisional liquidator to administer the cases until a PIP is appointed as liquidator by the court upon application by the Official Receiver. Therefore, nearly all cases will be undertaken by PIPs eventually.*

Note 11: *After realising all the assets of the wound-up company/bankrupt and distributing the final dividend (if any), ORO will put an insolvency case on the release programme. For cases put on the release programme, ORO will apply to the court for releases in accordance with C(WUMP)O and the Bankruptcy Ordinance. A release order issued by the court will discharge the Official Receiver's liability from any act done or default made while acting as the liquidator or trustee in the administration of the relevant winding-up or bankruptcy proceedings.*

be placed on the release programme within 12 months from the dates of bankruptcy orders; and

(b) ***18-month target for summary cases with no monthly contributions but with assets for distribution.*** Summary cases with no monthly contributions but with assets for distribution should be placed on the release programme within 18 months from the dates of bankruptcy orders.

The performance in respect of the two time targets for processing summary bankruptcy cases are reported in the monthly meetings of the Case Management Division chaired by the Assistant Official Receiver (Case Management).

2.4 ***18-month target not met for summary cases with no monthly contributions but with assets for distribution.*** Audit noted that in the period from 2016 to 2018, while the annual achievements of the 12-month target for processing summary cases with insufficient assets for distribution were 99%, the annual achievements of the 18-month target for processing summary cases with no monthly contributions but with assets for distribution were below 50%, ranging from 34% to 40% (see Table 3).

Table 3

Achievement of time targets
for processing summary bankruptcy cases
(2016 to 2018)

Year	Achievement of time target (%)	
	12-month target for summary cases with insufficient assets for distribution	**18-month target for summary cases with no monthly contributions but with assets for distribution**
2016	99%	40%
2017	99%	39%
2018	99%	34%

Source: Audit analysis of ORO records

2.5 In February 2020, ORO informed Audit that the reasons for not meeting the 18-month target for summary cases with no monthly contributions but with assets for distribution mainly included the time taken for:

(a) conducting investigation into bankrupts' affairs (e.g. transfer of assets before bankruptcy or trust properties in various kinds of assets, substantial assets disposed of by bankrupts before bankruptcy and disputes in interest of assets, etc.); and

(b) realising assets (e.g. joint assets and shares in limited companies, etc.) for distributions.

2.6 ***Performance reporting.*** Audit noted that while the 12-month target for processing summary bankruptcy cases with insufficient assets for distribution was reported as a performance target (with planned achievement of 97%) in ORO's Controlling Officer's Report, the 18-month target for processing summary bankruptcy cases with no monthly contributions but with assets for distribution was not included in the Report. In response to Audit's enquiry, in February and March 2020, ORO said that:

(a) the 18-month target should only be used as an in-house tool for monitoring progress, taking into account that the factors involved are complex and outside the control of ORO:

  (i) the outstanding matters involve investigations, negotiations and realisation pertaining to assets recovery. For summary cases with no monthly contributions but with assets for distribution, making enquires to or obtaining information, documents or evidence from bankrupts and third parties are required. The time for completion varies case by case and it depends very much upon the progress of replies and investigations. Very often, a one-off successful enquiry is rare and repeated requests for information are necessary; and

  (ii) realisation work on all these kinds of assets is not straight forward and a series of actions are required to be taken in order to recover the assets including in some cases the need to obtain legal advice. For example, negotiation with solvent owners, valuation of shares, searching for buyers, obtaining and studying the trust deeds of

provident fund schemes or Mandatory Provident Fund Schemes, pending administration of deceased estate process, locating evidence to pursue book debts, etc. are all necessary steps for realisation and they are time consuming. In appropriate cases, after exhausting all efforts and means, legal action is required for asset recovery and creditor's funding is needed for the purpose; and

(b) under ORO's mechanism, there are regular reviews of the returns on cases failing to meet the 18-month target in order to monitor the progress of the outstanding cases and speed up case closure. By reviewing the reasons of cases for failing to meet the 18-month target, ORO may come up with suggestions to introduce some management tools (e.g. setting of some thresholds for taking no further actions for certain assets) to assist to solve those long outstanding problems. Case officers are also reminded that cases with sufficient assets for distribution should be referred to Dividend Unit (see para. 2.9) forthwith for distribution of dividends to creditors as early as possible and there is a system to bring up cases with estate balance meeting the dividend threshold for review. ORO considers that the measures in place can safeguard the timeliness of processing the cases with assets for distribution to creditors and they are so far effective.

2.7 In Audit's view, for summary bankruptcy cases with possible assets for realisation and distribution, the timeliness of processing the cases is a prime concern of creditors. Therefore, ORO needs to continue to closely monitor the achievement of the 18-month target for summary bankruptcy cases with no monthly contributions but with assets for distribution, and formulate effective strategies for dealing with cases with difficulties in asset realisation in order to meet the target processing time.

Performance target on distribution of dividends not clearly defined

2.8 According to ORO's Guidelines for Insolvency Officers (Bankruptcy), whenever funds available are clearly sufficient to make a meaningful payment/dividend (Note 12) to the creditors after making provision for all fees and

---

Note 12: *According to ORO's guidelines, when considering whether it is a meaningful payment/dividend to the creditors, various criteria, including whether the net sum available for distribution exceeds $6,000 and whether the largest creditor would receive more than $2,000, should be taken into consideration.*

expenses to date and those committed but unpaid, every effort should be made to distribute the preferential payment and dividends from the bankruptcy estate as appropriate as soon as possible. In case a full and final dividend cannot be distributed for the time being, an interim preferential payment and/or ordinary dividend should also be declared where appropriate.

2.9 The Dividend Unit of the Case Management Division is responsible for adjudication of claims and distribution of dividends for all in-house insolvency cases. ORO stated in the Controlling Officer's Report a target processing time of nine months relating to distribution of dividends (with planned achievement of 100%), as follows:

"completing procedures when the distribution is possible"

Audit reviewed ORO's achievement of the performance target in the three years from 2016 to 2018 and noted that ORO reported in the Controlling Officer's Reports that it had fully (i.e. 100%) met the target.

2.10 According to ORO's guidelines, the point in time when the distribution is possible (i.e. the starting point for counting the target processing time of nine months) was defined as follows:

(a) the month when the cash balance meets the threshold of $70,000 (Note 13) for a bankruptcy case and $200,000 for a winding-up case; or

(b) the date of receipt by the Dividend Unit when a case with cash balance below the thresholds was referred by the case officer.

2.11 With a view to clearly defining the performance target on distribution of dividends in the Controlling Officer's Report, Audit considers that ORO needs to specify more clearly in the Report the performance target for completion of procedures for distribution of dividends (see para. 2.10).

Note 13: *Before reducing to $70,000 in March 2018, the thresholds for a debtor-petition bankruptcy case and a creditor-petition bankruptcy case were $150,000 and $200,000 respectively.*

Clearing exercise of pre-2002 insolvency cases not yet completed

2.12 In March 2008, ORO commenced an exercise with a view to clearing the outstanding matters of the 1,200 pre-2002 insolvency cases (i.e. cases with date of bankruptcy order or winding-up order before 2002) as soon as possible. However, Audit noted that as at 31 December 2019, more than 11 years after the commencement of the exercise, 200 (17%) pre-2002 insolvency cases (comprising 107 bankruptcy cases and 93 winding-up cases) still remained outstanding. Table 4 shows the ageing analysis of these 200 pre-2002 insolvency cases.

Table 4

Ageing analysis of 200 pre-2002 outstanding insolvency cases (31 December 2019)

Years elapsed from the date of bankruptcy order/ winding-up order	Number of cases		
	Bankruptcy (a)	**Winding-up (b)**	**Total (c) = (a) + (b)**
>15 to 20	79	34	113
>20 to 25	22	42	64
>25 to 30	5	8	13
>30 to 35	1	2	3
>35 to 40	0	4	4
>40	0	3 (Note 1)	3
Total	107 (Note 2)	93	200

Source: *Audit analysis of ORO records*

Note 1: *The winding-up orders of the three winding-up cases were made in 1976.*

Note 2: *The number included 34 cases involving landed properties.*

2.13 It is less than satisfactory that the clearing exercise has still not been completed after more than 11 years. Audit considers that ORO needs to formulate effective strategies for clearing the 200 pre-2002 long outstanding insolvency cases as soon as practicable.

Need to formulate effective strategies for handling bankruptcy cases involving landed properties

2.14 According to ORO, with a view to taking more effective follow-up actions in asset realisation, in December 2014, the Project Work Section was set up under the Case Management Division to deal with the majority (i.e. 2,790 cases) of long outstanding landed properties (e.g. residential properties, commercial properties, car parking spaces and land lots) vested in the Official Receiver as trustee in various bankruptcy cases. Audit noted that as at 31 December 2019, 1,415 (51%) cases remained outstanding.

2.15 For other outstanding landed properties that had not been taken up by the Project Work Section in 2014 and the new landed properties vested in the Official Receiver as trustee thereafter, they were handled by individual case officers. Audit noted that those outstanding cases amounted to 581 as at 31 December 2019.

2.16 Audit analysis of the dates of bankruptcy orders of those 1,996 (1,415 + 581) cases with outstanding landed properties revealed that the bankruptcy orders of 1,565 (78.4%) cases were made before 2006 (i.e. over 14 years ago) (see Table 5).

Table 5

Analysis of outstanding bankruptcy cases involving landed properties (31 December 2019)

Year of bankruptcy order	Number of cases (%)		Number of landed properties involved (%)	
Before 1991 (Note)	4 (0.2%)		4 (0.2%)	
1991 to 1995	12 (0.6%)	1,565 (78.4%)	13 (0.6%)	1,641 (78.4%)
1996 to 2000	87 (4.4%)		100 (4.8%)	
2001 to 2005	1,462 (73.2%)		1,524 (72.8%)	
2006 to 2010	364 (18.2%)		381 (18.2%)	
2011 to 2015	57 (2.9%)		61 (2.9%)	
2016 to 2019	10 (0.5%)		10 (0.5%)	
Total	1,996 (100.0%)		2,093 (100.0%)	

Source: *Audit analysis of ORO records*

Note: *For the case with the earliest bankruptcy order, the order was made some 35 years ago in 1985.*

2.17 According to ORO:

(a) in dealing with the outstanding landed properties, ORO has encountered various difficulties which hinder the expeditious disposal of the properties. They include:

(i) property market downturn for a number of years caused by the Asian financial crisis and global financial tsunami rendering sale at market value difficult;

(ii) sale cannot be proceeded with for properties of negative equity as market value of the properties is not sufficient to discharge the

outstanding mortgage and encumbrances and to cover the costs of the sale;

(iii) refusal of solvent co-owner to sell the properties in open market or to purchase the bankrupt's share in the properties;

(iv) financial inability of the solvent co-owner to purchase the bankrupt's share;

(v) disputes over the ownership such as allegation of trust; and

(vi) lack of funding for ORO to take action to facilitate sale under the Partition Ordinance (Cap. 352) or recover possession or resolve ownership issues.

Apart from the above-mentioned difficulties, among the outstanding landed properties, quite a number of them are overseas properties. This causes additional complications and difficulties in disposal of the properties;

(b) given the difficulty in handling cases of landed properties and as most of the properties involved are public or low cost housing, ORO is using various tactics and strategies to deal with these cases (e.g. ORO is exploring the possibility of reverse mortgage where there is sufficient equity in the property). The issues involved can be complex and the task of finding solutions is time consuming and challenging;

(c) when a bankruptcy order is made by the court, the Official Receiver will be appointed as trustee in bankruptcy. By virtue of the Bankruptcy Ordinance, the property of the bankrupt shall vest in the Official Receiver and it remains vested in the Official Receiver notwithstanding the discharge of the bankrupt. That includes landed property which in most cases, is the bankrupt's home or land held in his name or jointly with another person and is his major and most valuable asset. As trustee in bankruptcy, the Official Receiver has the fiduciary duty to deal with the property under her control honestly, in good faith, with proper skill and competence and in a reasonable manner, and is required to take all reasonable care to realise the property at the best price reasonably obtainable; and

(d) clearance of the backlog of bankruptcy cases involving landed properties is expected to be a long and arduous process. It requires skilful negotiation with various parties including potential purchasers and solvent co-owners. It also involves tedious and time-consuming work including but not limited to:

(i) obtaining up-to-date valuation of market price of the properties concerned;

(ii) negotiating with the solvent co-owners and potential purchasers on proposed sale and purchase of the properties or the bankrupts' interest in the properties as well as on the detailed terms and conditions therefor;

(iii) procuring any necessary approval from the Hong Kong Housing Authority for sale of flats under the Home Ownership Scheme and Tenants Purchase Scheme or from the relevant authority (e.g. Hong Kong Housing Society) for sale of other subsidised housing;

(iv) appointing estate agents for marketing the properties for sale;

(v) checking and resolving any matters on the intended sale or any claims on the property, such as division of sale proceeds between the parties, equitable accounting in respect of mortgage repayment and occupation rent, legal costs and disbursement of sale, sharing of the sum on apportionment accounts (e.g. rates, government rent, management fees and other outgoings), etc.;

(vi) checking and signing the conveyancing documents (e.g. provisional and formal agreement for sale and purchase, assignment, etc.); and

(vii) applying re-possession order or any other court order required for disposal of the properties concerned.

For joint properties, if amicable agreement cannot be reached with the co-owners, it may require an application to court under the Partition Ordinance for an order for sale and distribution of the net sale proceeds. The court would need to consider in that event whether there is any genuine

hardship caused to the parties concerned if such order is to be made. To support the case, ORO would need to make detailed submission on the application including background of the case, ORO's efforts made in realising the properties and the legal basis for making such an application.

2.18 While Audit noted the difficulties in handling landed properties, given that the period of bankruptcy is generally four years (up to a maximum of eight years (see para. 1.8)), it was not entirely satisfactory that there were a notable number of bankruptcy cases involving landed properties vested in the Official Receiver as trustee for over 14 years but still not yet resolved. Audit considers that ORO needs to formulate effective strategies for handling bankruptcy cases involving landed properties.

Long time taken to provide legal advice for case administration

2.19 The Legal Services Division 1 is responsible for providing legal advice on all aspects of the administration of insolvent estates for the benefit of insolvent estates. Audit noted that there was no time target set for the Legal Services Division 1 to provide legal advice to case officers.

2.20 In response to Audit's enquiry, in January 2020, ORO informed Audit that up to 31 December 2019, there were ten referrals of legal matters made by the Case Management Division to the Legal Services Division 1 for legal advice but remained outstanding, and these referrals were made in the period from June 2013 to September 2019. In particular, Audit noted that a number of specific legal issues relating to the handling of bankrupts' benefits in retirement schemes in bankruptcy cases had not been resolved since 2013. According to ORO, in the event, certain monies received from benefits or payments out from retirement schemes recovered by ORO, entitlement to which was uncertain, had not been distributed to creditors but placed in the suspense accounts for bankruptcy cases (see para. 2.23) since August 2018. According to ORO, while the complexity of legal advice varies significantly, for the most part Legal Officers give due priority and consideration to their cases and set their priorities accordingly. That said, there are a few particularly complicated legal issues that have been outstanding for some time and ORO is working very hard to resolve them.

2.21 In Audit's view, ORO needs to take measures to expedite the resolution of complex legal issues encountered in the administration of insolvency cases.

Large balance in suspense accounts

2.22 According to ORO's guidelines, for winding-up cases and bankruptcy cases of which the Official Receiver acts as liquidator/trustee, all the company liquidation estates and bankruptcy estates recovered should be placed in the Companies Liquidation Account and the Bankruptcy Account respectively. Interest earned from these estates is transferred to the general revenue annually (see para. 4.32).

2.23 Audit noted that as at 30 November 2019, ORO had placed monies recovered from 21 winding-up cases (amounting to $4.7 million) and 207 bankruptcy cases (amounting to $40.2 million) in the suspense accounts. According to ORO, the balance kept in the suspense accounts is normally held pending clarification of their title in due course or reserved for some particular case administration purpose (e.g. third party's money for intended annulment application) and where appropriate, the interest earned will remain in the suspense accounts instead of being transferred to the general revenue. Audit noted that according to ORO's guidelines, if a suspense account has been created, case officers should check the balance and ascertain the nature of the funds and transfer the balance back to the Companies Liquidation Account and the Bankruptcy Account as soon as possible.

2.24 Audit analysed the suspense accounts for winding-up and bankruptcy cases as at 30 November 2019 (see Tables 6 and 7) and noted that:

(a) 8 (38%) of the 21 winding-up cases were released cases, that is, the Official Receiver had been released from the role of liquidators by the court; and

(b) 29 (14%) of the 207 bankruptcy cases were released/rescinded/withdrawn cases.

Table 6

Suspense account for winding-up cases
(30 November 2019)

Number of years from the date of winding-up order	Case status					
	Active		Released		Total	
	No.	Amount ($)	No.	Amount ($)	No.	Amount ($)
> 20 to 25	8	1,005,837	4	105,551	12	1,111,388
> 25 to 30	1	19,200	2	12,356	3	31,556
> 30 to 35	2	707,073	1	100	3	707,173
> 35 to 40	2	2,807,675	–	–	2	2,807,675
> 40	–	–	1	8,716	1	8,716
Total	13	4,539,785	8	126,723	21	4,666,508

Source: Audit analysis of ORO records

Table 7

Suspense account for bankruptcy cases
(30 November 2019)

Number of years from the date of bankruptcy order	Case status							
	Active		On release programme		Released/Rescinded/ Withdrawn		Total	
	No.	Amount ($)	No.	Amount ($)	No.	Amount ($)	No.	Amount ($)
≤ 4	60	6,734,252	22	1,225,933	4	203,759	86	8,163,944
>4 to 8	35	6,754,313	2	56,589	4	1,627,846	41	8,438,748
>8 to 12	16	2,749,998	–	–	1	789	17	2,750,787
>12 to 16	26	8,310,065	1	1,643,987	7	635,458	34	10,589,510
>16 to 20	9	8,055,874	1	885,061	8	982,911	18	9,923,846
> 20	4	188,245	2	88,000	5	57,823	11	334,068
Total	150	32,792,747	28	3,899,570	29	3,508,586	207	40,200,903

Source: Audit analysis of ORO records

2.25 In response to Audit's enquiry, in February and March 2020, ORO informed Audit that:

(a) the balance held in the released cases was mainly payments of various nature received after release (e.g. payments from Mandatory Provident Fund Schemes and other provident fund schemes) pending clarification of their title. As for the rescinded and withdrawn cases, the balance was required to be refunded to relevant parties and action had been taken to locate the latter;

(b) the main reason for putting into the suspense account of a case certain amount of money received during the course of the administration of the case was that such amount of money did not form part of the estate of the bankruptcy or liquidation. Further clarifications would be needed before it could be confirmed that such amount of money belonged to the estate of the

bankruptcy or liquidation. While there were different scenarios under which a certain amount of money was put into the suspense accounts, the fact that the sum was put into the suspense account means that such sum, or at least a portion of it, did not belong to the estate of the bankruptcy or liquidation and hence there should not be any loss to the estate of the bankruptcy or liquidation; and

(c) as of early March 2020:

(i) regarding the suspense accounts for winding-up cases, 1 of the 21 cases had been cleared. For the remaining 20 cases, their suspense accounts were created before 2012. In particular, the suspense accounts of 14 (70% of 20) cases amounting to $3.9 million were created before 1999; and

(ii) regarding the suspense accounts for bankruptcy cases, 12 of the 207 cases had been cleared. For the remaining 195 cases, while the suspense accounts of 4 (2%) cases amounting to $43,000 were created before 1999, most of the funds of others were put into the suspense accounts in the past few years. In particular, the suspense accounts of 93 (48%) cases amounting to $8 million were created in 2019. Of the 195 cases, 83 cases ($11.7 million) related to the unresolved legal issue in handling bankrupts' benefits in retirement schemes, 18 cases ($1.1 million) related to severance/long service payments to bankrupts and 7 cases ($0.8 million) represented third party monies/funding from creditors.

2.26 In Audit's view, it is less than satisfactory that monies have been put into suspense accounts for a long time pending clarifications, particularly for amounts belonging to the estate of the liquidation or bankruptcy that should have been accounted for in the Companies Liquidation Account and the Bankruptcy Account. Audit considers that ORO needs to periodically review the balance kept in the suspense accounts, especially for released/rescinded/withdrawn cases, and take effective measures to ascertain the nature of the funds and transfer them back to the Companies Liquidation Account and the Bankruptcy Account where appropriate in a timely manner.

Audit recommendations

2.27 **Audit has *recommended* that the Official Receiver should:**

(a) **continue to closely monitor the achievement of the 18-month target for summary bankruptcy cases with no monthly contributions but with assets for distribution, and formulate effective strategies for dealing with cases with difficulties in asset realisation in order to meet the target processing time;**

(b) **specify more clearly in the Controlling Officer's Report the performance target for completion of procedures for distribution of dividends;**

(c) **formulate effective strategies for clearing the 200 pre-2002 long outstanding insolvency cases as soon as practicable;**

(d) **formulate effective strategies for handling bankruptcy cases involving landed properties;**

(e) **take measures to expedite the resolution of complex legal issues encountered in the administration of insolvency cases; and**

(f) **periodically review the balance kept in the suspense accounts, especially for released/rescinded/withdrawn cases, and take effective measures to ascertain the nature of the funds and transfer them back to the Companies Liquidation Account and the Bankruptcy Account where appropriate in a timely manner.**

Response from the Government

2.28 The Official Receiver agrees with the audit recommendations. She has said that ORO:

(a) will continue to develop effective strategies for progressing cases with difficult issues involved in possible asset realisation, through discussion in the Case Administration Meetings and Bankruptcy Account Meetings and

will, where possible, issue additional guidelines for case officers to help progress such cases;

(b) will specify more clearly in the Controlling Officer's Report the performance target for completion of procedures for dividend distribution;

(c) has already reviewed some of the pre-2002 insolvency cases in the Case Administration Meetings and Bankruptcy Account Meetings and formulated strategies to help clear some of the outstanding issues and concluded the cases concerned. ORO will continue to formulate effective strategies for clearing the remaining pre-2002 long outstanding insolvency cases as soon as practicable through continued discussion in these two Meetings and will, where possible, issue additional guidelines for case officers to help progress such cases;

(d) has arranged regular meetings to refine strategies in handling the outstanding landed properties and also stepped up efforts to explore ways to resolve the issues involved in the cases, for example, liaising with stakeholders and relevant parties including financial creditors and the Hong Kong Housing Authority. ORO will continue to develop effective strategies for handling bankruptcy cases involving landed properties through discussion in the Case Administration Meetings and Bankruptcy Account Meetings and will, where possible, issue additional guidelines for case officers to help progress such cases;

(e) will take measures to expedite the resolution of the complex legal issues affecting the administration of insolvency cases by case officers. The complexity of legal advice varies significantly and generally all Legal Officers give due priority and consideration to their cases and set their priorities accordingly. However, additional time is required to deal with complicated legal issues arising from time to time. That said, the Legal Services Division 1 has now put in place a performance pledge for the provision of timely legal advice in all cases referred to them; and

(f) has already examined and monitored funds in the Bankruptcy Account and reviewed amounts kept in suspense accounts in the quarterly Bankruptcy Account Meetings with a view to having the monies distributed as soon as possible. ORO will continue with this practice.

PART 3: MONITORING OF PRIVATE INSOLVENCY PRACTITIONERS

3.1 This PART examines the monitoring of PIPs by ORO, focusing on:

(a) management of outsourcing schemes (paras. 3.2 to 3.19); and

(b) accounts submitted by PIPs (paras. 3.20 to 3.27).

Management of outsourcing schemes

3.2 ***Outsourcing schemes.*** At present, ORO operates four outsourcing schemes. Salient features of these schemes are as follows:

(a) ***Panel A scheme.*** The scheme is an administrative scheme by ORO to nominate accountants who are members of the Hong Kong Institute of Certified Public Accountants for appointment as liquidators or special managers in non-summary winding-up cases in certain circumstances. Professional firms and their PIPs meeting the prescribed requirements may apply to the Admission Committee (Note 14) of the Panel A scheme for admission to the scheme. The firms and PIPs admitted will charge fees as approved by the committee of inspection or by the court to the insolvent companies' estates. No government subsidy would be provided even if the estates are insufficient to meet their costs. As at 31 January 2020, there were 11 Panel A PIPs;

(b) ***Panel T scheme.*** The scheme is an open tender system to appoint professional firms (in the accounting, legal and secretarial fields) with relevant insolvency work experience to take up appointment as provisional liquidators/liquidators in summary winding-up cases under section 194(1A)

Note 14: *For administering the Panel A scheme, there is an Admission Committee, comprising three ORO officers (one of whom is the Chief Treasury Accountant acting as the chairman) and three representatives of the Hong Kong Institute of Certified Public Accountants. The Committee shall meet on a regular basis to consider new applications, review complaints and make any reprimands or disqualifications of PIPs from the scheme.*

of C(WUMP)O. These Panel T firms charge fees on a time-cost basis to the insolvent companies' estates and a government subsidy (up to their tendered amount) would be provided if the estates are insufficient to meet their costs. There are 10 Panel T PIPs under the contract from April 2018 to March 2020;

(c) ***Debtor-petition summary bankruptcy case scheme.*** Under this outsourcing scheme, ORO selects professional firms by an open tender to handle about 25% of the debtor-petition summary bankruptcy cases. The selected PIPs charge their required remuneration (i.e. their tendered amount) for acting as provisional trustees/trustees to the petitioners' deposits (Note 15) and other fees to bankruptcy estates and there is no government subsidy provided. There were five PIPs under the contract from January 2018 to December 2019; and

(d) ***Preliminary examination scheme.*** ORO selects professional firms for this outsourcing scheme by an open tender. The PIPs' services include interviewing the bankrupts of debtor-petition bankruptcy cases handled by ORO, explaining to them the bankruptcy procedures and examining their submitted preliminary examination questionnaires. The PIPs are remunerated by ORO (i.e. their tendered amount) out of the petitioners' deposits. There were four PIPs under the contract from January 2018 to December 2019.

3.3 ***Monitoring measures for outsourcing schemes.*** According to ORO, it adopts various measures (e.g. conducting quality audits) to monitor the performance of the PIPs under the four outsourcing schemes. If there is a breach of statutory or contractual duties, ORO may take regulatory actions against the PIPs (e.g. issuing warning letters, suspending the allocation of new cases and applying to the court for removal of a PIP as the liquidator or trustee). Table 8 shows a summary of the monitoring measures for the four outsourcing schemes.

Note 15: *The Bankruptcy Rules require the petitioner (i.e. the debtor of a debtor-petition case) to deposit $8,000 with ORO at the time of petition to cover the fees and expenses of the bankruptcy proceedings.*

Table 8

Monitoring measures for outsourcing schemes

Scheme	Monitoring measures
Winding-up cases	
Panel A	(a) monitoring funds paid into the Companies Liquidation Account (see para. 3.20(a)); (b) checking liquidator's accounts submitted by PIPs; (c) conducting field audits of the outsourced cases (if being selected under ORO's internal criteria); and (d) following up complaints/allegations against PIPs.
Panel T	(a) monitoring key stages of the winding-up process such as summary procedure order; (b) monitoring funds paid into the Companies Liquidation Account; (c) checking liquidator's accounts submitted by PIPs; (d) conducting field audits of the selected outsourced cases; (e) conducting quality audits of around 5% of the outsourced cases (if necessary); and (f) following up complaints/allegations against PIPs.
Bankruptcy cases	
Debtor-petition summary bankruptcy case	(a) monitoring key stages of the bankruptcy process such as summary procedure order; (b) checking trustee's accounts submitted by PIPs; (c) checking the statutory required annual statement of proceedings; (d) conducting field audits of the selected outsourced cases; (e) conducting quality audits of around 5% or not less than 10% of the outsourced cases; and (f) following up complaints/allegations against PIPs.
Preliminary examination	(a) conducting quality checks of 5% of the outsourced cases; and (b) following up complaints/allegations against PIPs.

Source: ORO records

Need to conduct quality audits for Panel T scheme

3.4 According to the Conditions of Contract of the tenders, ORO will conduct quality audits on the cases allocated to PIPs under the Panel T scheme and debtor-petition summary bankruptcy case scheme (Note 16), as follows:

(a) ***Panel T scheme.*** For the two latest contracts covering the period from April 2016 to March 2018 and April 2018 to March 2020, ORO will select around 5% of cases allocated for conducting quality audits; and

(b) ***Debtor-petition summary bankruptcy case scheme.*** For the two latest contracts covering the period from January 2016 to December 2017 and January 2018 to December 2019, ORO will respectively select not less than 10% and around 5% of cases allocated for conducting quality audits.

The percentage of cases selected for conducting quality audits may be adjusted as ORO considers appropriate. When conducting a quality audit, the case officer examines the adequacy and quality of key areas of the administration work (e.g. applying for summary procedure order and realising assets) performed by the PIP.

3.5 According to ORO Circulars of June and August 2018, cases are selected for conducting quality audits on a random basis. After completing a quality audit, the responsible officer should submit a summary report to the management of ORO.

3.6 Audit noted that for the Panel T scheme, up to 31 January 2020, no quality audits had been conducted. In February and March 2020, ORO informed Audit that:

(a) ORO had been conducting field audits on liquidator's accounts of the selected cases of the Panel T scheme. This included an inspection of PIPs'

Note 16: *In the rules of the Panel A scheme, there is no requirement to conduct quality audits on the outsourced cases. According to ORO, unlike the Panel T scheme and the debtor-petition summary bankruptcy case scheme for direct appointment of PIPs as provisional liquidator or provisional trustee (and subsequently liquidator or trustee — see para. 1.16) in place of the Official Receiver, the Panel A scheme is only an administrative scheme for nomination of PIPs to take up appointment as liquidators and their appointments as liquidators is subject to the approval of courts. PIPs, if appointed, will be monitored in the same way of other non-summary winding-up cases.*

books, accounts and vouchers (see para. 3.23(b)). Other than field audits, ORO also had a range of measures to monitor the work of PIPs participating in the outsourcing schemes and the quality of outsourced cases, including monitoring the major status of the cases, examining the liquidator's accounts and conducting investigation into the complaints lodged against PIPs and taking actions when necessary;

(b) the provisional liquidators were required to submit a report every six months of their appointment giving details on what had been done, what needed to be done and also an indication with reasons on whether or not the case could not be completed within one year. If the case could not be completed within one year, they had to submit a report every six months giving explanations as to why the case could not be completed. ORO had set up a bring-up system to assist the monitoring of their performance;

(c) in the examination and field audit of a liquidator's account, apart from checking accuracy, ORO also checked if the liquidator had performed his duties according to the requirements imposed by statute and rules. When defects were identified, ORO would ask the liquidator to explain the position and take appropriate actions. If the liquidator failed to respond, ORO could apply to the court to examine the liquidator;

(d) the liquidators had to pay monies received by them to the Companies Liquidation Account kept by ORO (see para. 3.20(a)). Requests from the liquidators to ORO for withdrawal of funds out of the Companies Liquidation Account had to be provided with supporting documents for perusal. When the liquidators have realised all the property of the companies, the liquidators should make dividend payment, if any, to creditors and apply to the court for an order of release under section 205 of C(WUMP)O; and

(e) taking into account the measures put in place (see (a) to (d) above) and the high maturity of the Panel T scheme and the private sector in dealing with winding-up cases, no quality audit had been carried out in the past.

In order to strengthen its regulatory role and align with other outsourcing schemes, ORO had reviewed the position and would work out procedures for conducting quality audits of the cases outsourced under the Panel T scheme. The initial plan was to

implement the procedures in the forthcoming new contract covering the period from April 2020 to March 2022.

3.7 In Audit's view, timely completion of quality audits can provide assurance on the quality of PIPs' work and ensure that any unsatisfactory performance of PIPs can be identified and rectified in a timely manner. Audit notes ORO's initiative of extending the quality audits for Panel T scheme and considers that the procedures on conducting quality audits for the Panel T scheme should be implemented as soon as practicable.

Need to ensure that the target coverage of field audits on cases outsourced under Panel T scheme is met

3.8 As shown in Table 8 in paragraph 3.3, ORO staff are required to conduct field audits of the selected cases outsourced under the Panel T scheme and debtor-petition summary bankruptcy case scheme respectively.

3.9 Audit reviewed the number of field audits conducted on cases outsourced under the two schemes and noted that for the two most recently completed contracts (covering the period from April 2014 to March 2016 and April 2016 to March 2018) of the Panel T scheme, field audits had been completed on only 3.1% and 2.7% (i.e. 78% and 68% of the target coverage) of the cases outsourced under the two contracts respectively.

3.10 In response to Audit's enquiry, in February 2020, ORO informed Audit that:

(a) the established procedure was for the Financial Services Division to select the cases for conducting field audits and inform case officers accordingly on a biannual basis;

(b) those liquidator's accounts submitted by PIPs of the Panel T scheme and not selected for field audit would be examined by the case officers; and

(c) ORO had already stepped up controls to improve the situation of not meeting the target coverage of field audits for the Panel T scheme by

monitoring the status of liquidator's accounts received from case officers. In case the selected liquidator's accounts for any reason had not been submitted to the Financial Services Division, the Division would select another case for conducting field audits so as to ensure that the target coverage would be met.

In Audit's view, ORO needs to remind the Financial Services Division to take measures to ensure that the target coverage of field audits is met.

Need to issue warning letters for private insolvency practitioners' unsatisfactory performance

3.11 ***Warning letters.*** According to the Conditions of Contract of the tenders of the Panel T scheme, the debtor-petition summary bankruptcy case scheme and the preliminary examination scheme, ORO may issue warning letters to PIPs for their unsatisfactory performance. Examples include PIPs' failure to:

(a) apply to the court for summary procedure order within the specified time;

(b) provide necessary assistance and complete a questionnaire as may be required by ORO when quality audit is conducted in accordance with the tender clauses;

(c) perform the tasks and duties as are necessary or may be required of a provisional liquidator/liquidator or a provisional trustee/trustee pursuant to the provisions of C(WUMP)O or the Bankruptcy Ordinance;

(d) provide all relevant statistics and information and produce any documents in connection with the cases allocated as and when required by ORO in accordance with the tender clauses;

(e) submit preliminary examination questionnaires within 7 working days of the interview with the bankrupts;

(f) submit liquidator's accounts or trustee's accounts; and

(g) report the conduct of the directors of the wound-up companies to ORO in accordance with the provision of C(WUMP)O.

3.12 ***Suspension of allocation of cases.*** According to ORO Circulars of February, June and August 2018, the Compliance and Regulatory Section of the Case Management Division keeps a register of all warning letters and takes follow-up actions, as follows:

(a) ***Panel T scheme and debtor-petition summary bankruptcy case scheme.*** Suspending allocation of cases to a PIP for one month and two months when a total of 30 and 35 warning letters have been issued respectively; and

(b) ***Preliminary examination scheme.*** Suspending allocation of cases to a PIP for one month and two months when a total of 15 and 30 warning letters have been issued respectively.

3.13 According to ORO, in the period from 2016 to 2019, no warning letters had been issued. However, Audit examination of the records centrally kept by the Compliance and Regulatory Section (see para. 3.16) revealed that in the period from 2016 to 2019, there were 8 incidents of PIPs of the preliminary examination scheme failing to submit the preliminary examination questionnaires within 7 working days of the interview with the bankrupts (see para. 3.11(e)). For the 8 incidents, warning letters could have been issued to the under-performing PIPs according to the Conditions of Contract of the tenders. In response to Audit's enquiry, ORO said in March 2020 that the PIPs had subsequently submitted the preliminary examination questionnaires within a reasonable period of time, and the issue of warning letters was not required. In Audit's view, ORO needs to keep in view the need of issuing warning letters for PIPs' unsatisfactory performance including any prolonged delay in the submission of preliminary examination questionnaires in future.

Need to make continuous improvement in monitoring performance of private insolvency practitioners

3.14 ***Making use of "warning letter system".*** In the 2012 Audit Report, Audit recommended that ORO should duly take into account PIPs' past performance in evaluating their tenders for reappointment under a new contract. In response, ORO stated that it would review the terms of future outsourcing contracts and consider the

introduction of a marking scheme to ensure the quality of outsourced services. While ORO had enhanced the terms of outsourcing contracts commencing since 2014, Audit noted that in January 2015, in order to avoid excessive use of marking schemes and taking into consideration ORO's practical difficulties (Note 17) in introducing a marking scheme, ORO decided to make use of the "warning letter system" (see paras. 3.11 and 3.12) to assess the performance of PIPs in the outsourcing contracts commencing since 2016. Such information on PIPs' performance was used for tender evaluation for the outsourcing contracts commencing since 2018.

3.15 ***Terms of outsourcing contracts.*** In relation to the evaluation of past performance of PIPs in the outsourcing contracts commencing in 2020, Audit noted that:

(a) for contracts which the tenderer had made with ORO for the provision of any insolvency services or work, during the period of four years prior to the new contract:

  (i) none of such contracts was terminated by ORO; and

  (ii) ORO had not suspended the allocation of cases or work to such tenderer under any such contracts for two months or more (see para. 3.12); and

(b) the Official Receiver may in her absolute discretion think fit including (but not limited to) the following matters:

  (i) whether the tenderer or any of its key personnel has been convicted of any offence;

Note 17: *The practical difficulties included: (a) the concerns about the unique circumstances of cases; (b) without the assistance of the court, it would be difficult to challenge the case administration, specify quality performance or decide whether there is total or partial compliance; (c) setting out specifically all the requirements would make the marking scheme cumbersome; and (d) the quality of performance is neither just judged by the number of cases completed nor the amount of assets realised for creditors.*

(ii) whether the tenderer or any of its key personnel is subject to any ongoing disciplinary action or investigation by a professional body; and

(iii) whether or not the tenderer or any of its key personnel is fit and proper to take up the contract or to provide the services.

3.16 ***Registers of unsatisfactory conduct of PIPs.*** According to ORO Circular of October 2013, for cases handled by all PIPs (appointed under the outsourcing schemes, or by the court or creditors), case officers are required to monitor the PIPs' conduct or performance in accordance with the relevant statutory and contractual requirements. Case officers should report unsatisfactory conduct or performance of PIPs in a standard form for central keeping by the Compliance and Regulatory Section. Examples of circumstances that warrant the report for central keeping are as follows:

(a) PIPs repeatedly ignore the case officers' correspondence;

(b) PIPs repeatedly fail to observe the terms and conditions of contracts or statutory requirements;

(c) PIPs fail to submit liquidator's accounts or trustee's accounts despite reminders and warning; and

(d) allegations from creditors, company directors, etc. against PIPs are substantiated.

The Circular also states that the examples of circumstances are not exhaustive and case officers have to look at the facts and circumstances of each individual case. According to ORO, the standard forms completed by case officers, together with information collected from other sources (e.g. comments on PIPs' performance made by the court), were organised into four registers of unsatisfactory conduct of PIPs (i.e. one relating to the payment of cash into the Companies Liquidation Account (see para. 3.20(a)) and one for each of the three outsourcing schemes). Those registers

would be reviewed by the Tender Assessment Panel (Note 18) when assessing the past performance of PIPs for tender evaluation.

3.17 ***Areas for improvement.*** In January 2020, Audit reviewed the registers of unsatisfactory conduct of PIPs and noted the following room for improvement:

(a) while a notable number of liquidator's accounts and trustee's accounts were outstanding from PIPs (see para. 3.21) as at 31 December 2019, no such information was recorded in the registers (see para. 3.16(c));

(b) for PIPs appointed by the court or creditors, only non-compliance with the statutory requirement to pay cash into the Companies Liquidation Account would be recorded. Audit noted that two substantiated complaints (received in 2015 and 2019 and filed in the complaint registers) against one PIP appointed by creditors were not found in the registers (see para. 3.16(d)); and

(c) 4 substantiated or partially substantiated complaints against 3 PIPs appointed under the outsourcing schemes received in the period from 2015 to 2019 and filed in the complaint registers were not recorded in the registers (see para. 3.16(d)).

As warning letters had not been issued by ORO for the unsatisfactory performance of PIPs (see para. 3.13), the registers of unsatisfactory conduct of PIPs were the only means to assess the past performance of PIPs for tender evaluation. In view of the importance of the registers of unsatisfactory conduct of PIPs, Audit considers that ORO needs to take measures to enhance the reporting and recording of unsatisfactory conduct or performance of PIPs, and ensure that the registers of unsatisfactory conduct of PIPs are maintained properly. In order to facilitate a systemic appraisal of PIPs' performance and duly take into account PIPs' past performance in tender evaluation, ORO should also make continuous improvement in monitoring the performance of PIPs.

Note 18: *The Tender Assessment Panel, comprising a Chief Insolvency Officer as the chairperson and four members, is responsible for evaluating the tenders received and making recommendations to the Departmental Tender Committee for awarding contracts.*

Audit recommendations

3.18 **Audit has *recommended* that the Official Receiver should:**

(a) **implement the procedures on conducting quality audits for the Panel T scheme as soon as practicable;**

(b) **remind the Financial Services Division to take measures to ensure that the target coverage of field audits is met;**

(c) **keep in view the need of issuing warning letters for PIPs' unsatisfactory performance including any prolonged delay in the submission of preliminary examination questionnaires in future;**

(d) **take measures to enhance the reporting and recording of unsatisfactory conduct or performance of PIPs;**

(e) **ensure that the registers of unsatisfactory conduct of PIPs are maintained properly; and**

(f) **make continuous improvement in monitoring the performance of PIPs.**

Response from the Government

3.19 The Official Receiver agrees with the audit recommendations. She has said that ORO:

(a) will take steps to conduct quality audits for the Panel T scheme from the next tender to be commenced from April 2020;

(b) has already implemented measures (see para. 3.10) to ensure the target field audit coverage is met; and

(c) will review and enhance the existing reporting and recording of unsatisfactory conduct or performance of PIPs and ensure that the registers of unsatisfactory conduct of PIPs are maintained more comprehensively and

in a more timely manner. ORO will continue to make improvement in monitoring the performance of PIPs.

Accounts submitted by private insolvency practitioners

3.20 The accounting requirements on receipts and payments of all PIPs (appointed under the outsourcing schemes, by the court or creditors) when acting as the liquidators or trustees are laid down in C(WUMP)O and the Bankruptcy Ordinance. The requirements include:

(a) ***Receipts and payments.*** For a winding-up case, a PIP shall pay the proceeds of realised assets and his other receipts as the liquidator into the Companies Liquidation Account kept by ORO. ORO is responsible for authorising payments to be made by the PIP out of the Companies Liquidation Account. For a bankruptcy case, a PIP shall maintain a bank account for all receipts and payments as the trustee; and

(b) ***Accounts of receipts and payments.*** A PIP shall submit an account of his receipts and payments as the liquidator (i.e. liquidator's account) to ORO twice a year. For bankruptcy cases, ORO requires a PIP to submit an account of his receipts and payments as the trustee (i.e. trustee's account) every two years. In submitting the account, while the trustee is required to remit to ORO the ad valorem fee (Note 19), ORO may charge the ad valorem fee against the estate money in the Companies Liquidation Account for winding-up cases. ORO may cause the submitted liquidator's accounts and trustee's accounts to be audited. All accounts shall be filed with the court and made available for inspection by any interested parties upon payment of a fee.

Need to review and enhance follow-up actions taken on long overdue accounts

3.21 Audit noted that as at 31 December 2019, there were 763 liquidator's accounts and 15,355 trustee's accounts overdue but not yet submitted. Of them,

Note 19: *Ad valorem fees are levied on all insolvency cases handled by ORO or PIPs. The fees are charged at progressively reducing rates from 10% to 1% on the aggregate amount of the assets realised.*

302 (40%) liquidator's accounts and 146 (1%) trustee's accounts had been overdue for more than five years. Tables 9 and 10 show the ageing analyses of liquidator's accounts and trustee's accounts overdue but not yet submitted as at 31 December 2019.

Table 9

Ageing analysis of liquidator's accounts overdue but not yet submitted (31 December 2019)

Overdue period (Number of years)	Accounts due from PIPs under ORO's outsourcing schemes		Accounts due from PIPs appointed by the court or creditors		Total		
	Number	%	Number	%	Number	%	
≤1	269	39	41	64	310	40	
>1 to 3	112	16	8	12	120	16	
>3 to 5	23	3	8	12	31	4	
>5 to 10	11	2	8	12	19	3	
>10 to 15	261	37	—	—	261	34	302 (40%)
>15	22	3	—	—	22 (Note)	3	
Total	698	100	65	100	763	100	

Source: *Audit analysis of ORO records*

Note: *The overdue period for the longest outstanding liquidator's account was 17 years.*

Remarks: *According to ORO, accounts due for submission in the period from 1 November to 31 December 2019 were not included because those accounts were not considered overdue.*

Table 10

Ageing analysis of trustee's accounts overdue but not yet submitted (31 December 2019)

Overdue period (Number of years)	Accounts due from PIPs under ORO's outsourcing schemes		Accounts due from PIPs appointed by the court or creditors		Total		
	Number	%	Number	%	Number	%	
≤1	3,472	59.6	7,392	77.6	10,864	70.7	
>1 to 3	2,154	37.0	1,886	19.8	4,040	26.3	
>3 to 5	187	3.2	118	1.2	305	2.0	
>5 to 10	10	0.2	123	1.3	133	0.9	146 (1%)
>10 to 15	—	—	13	0.1	13 (Note)	0.1	
Total	5,823	100.0	9,532	100.0	15,355	100.0	

Source: *Audit analysis of ORO records*

Note: *The overdue period for the longest outstanding trustee's account was 15 years.*

Remarks: *According to ORO, accounts due for submission in the period from 1 November to 31 December 2019 were not included because those accounts were not considered overdue.*

3.22 In the 2012 Audit Report, Audit recommended that ORO should strengthen the monitoring of submission of accounts by PIPs. In response, ORO informed Audit that it had enhanced the guidelines on procedures to take follow-up actions against PIPs with unexplained consistent default in submitting accounts, including reporting the matter to the court and termination of contract in cases of serious default. However, Audit noted that besides issuing reminder letters, no other follow-up actions had been taken by ORO. Submission of accounts by liquidators and trustees are statutory requirements stipulated in C(WUMP)O and the Bankruptcy Ordinance. Late

submission of accounts to ORO may also lead to delay in remitting ad valorem fees to ORO (see para. 3.20(b)). Audit considers that ORO needs to review and enhance its follow-up actions taken on long overdue accounts from PIPs.

Need to improve examination/checking of accounts

3.23 ORO has laid down requirements on the checking of the liquidator's and trustee's accounts submitted by PIPs:

(a) ***Examination/checking.*** All accounts are subject to an examination of content and accuracy by the Financial Services Division/Case Management Division or a cursory checking by the Case Management Division; and

(b) ***Field audit.*** The Financial Services Division carries out field audits of selected accounts to inspect the PIPs' books, accounts and vouchers.

3.24 For examination/checking of accounts by the Financial Services Division and/or Case Management Division, Audit noted that as at 31 December 2019, 30,972 accounts had been received but not yet examined/checked. Of these 30,972 accounts, 843 (2.7%) accounts had been received for more than five years (see Table 11).

Table 11

Ageing analysis of accounts not yet examined/checked
(31 December 2019)

Outstanding period (Note 1) (Number of years)	Number of liquidator's accounts (a)	Number of trustee's accounts (b)	Total (c) = (a) + (b)		
≤1	1,333	11,197	12,530	(40.5%)	
> 1 to 2	746	7,784	8,530	(27.5%)	
> 2 to 3	229	5,983	6,212	(20.1%)	
> 3 to 5	28	2,829	2,857	(9.2%)	
> 5 to 10	24	763	787	(2.5%)	843 (2.7%)
>10 to 15	18	38	56 (Note 2)	(0.2%)	
Total	2,378	28,594	30,972	(100.0%)	

Source: *Audit analysis of ORO records*

Note 1: *The period is counted from the date of receipt of the account.*

Note 2: *The account with the longest outstanding period was received 15 years ago.*

3.25 In response to Audit's enquiry, in March 2020, ORO said that:

(a) it had already noted the issue and considered that it was unsustainable to check all accounts submitted by PIPs considering the numbers; and

(b) in March 2019, ORO implemented a new risk-based approach in checking the accounts submitted in summary cases. ORO planned to review such approach and its cost effectiveness one year after implementation. ORO would consider the current mechanism for examination/checking after review of the risk-based checking mechanism and its effectiveness.

Audit considers that ORO needs to review and enhance its current procedures on the examination/checking of accounts from PIPs.

Audit recommendations

3.26 **Audit has *recommended* that the Official Receiver should review and enhance:**

(a) **the follow-up actions taken on long overdue accounts from PIPs; and**

(b) **the current procedures on the examination/checking of accounts from PIPs.**

Response from the Government

3.27 The Official Receiver agrees with the audit recommendations. She has said that ORO will consider the current mechanism for handling of accounts from PIPs after review of the risk-based checking mechanism and its effectiveness.

PART 4: WAY FORWARD

4.1 This PART examines the way forward on the insolvency management, focusing on:

(a) modernisation of insolvency provisions (paras. 4.2 to 4.13);

(b) alternative to personal bankruptcy (paras. 4.14 to 4.23);

(c) deployment of manpower of ORO (paras. 4.24 to 4.29); and

(d) review of fees structure of ORO (paras. 4.30 to 4.37).

Modernisation of insolvency provisions

4.2 The insolvency provisions in Hong Kong are largely based on the United Kingdom regime. In order to modernise the local insolvency provisions, in October 1996 and July 1999, LRC made a number of recommendations to update the local insolvency provisions, taking into account international practices. However, after a long lapse of time, two significant proposals have not yet been implemented, namely:

(a) the statutory corporate rescue procedure and insolvent trading provisions (see para. 1.19); and

(b) cross-border insolvency (see para. 1.20).

Need to introduce the bill on corporate rescue procedure and insolvent trading provisions into Legislative Council in a timely manner

4.3 ***Purpose of corporate rescue procedure.*** According to the 1996 Report of LRC:

(a) it is better for a viable business to survive as a going concern, in whole or in part, than for it to be simply wound up and such assets as remain distributed. It benefits:

(i) the company's shareholders, as if the company survives, their share holdings might become valuable, whereas if a company is insolvent and wound up they get nothing; and

(ii) the ordinary creditors of the company if they obtain more from a company reorganisation than from a dividend in a winding up, with the added benefit that they would keep a customer; and

(b) it has become increasingly clear that secured creditors, usually banks, must look beyond the notion that being secured means that they are not affected by the winding up of a client company. Employment that would otherwise disappear would be preserved, at least to some extent. All of this has implications for Government both in revenue and social terms.

4.4 ***Purpose of insolvent trading provisions.*** According to the 1996 Report of LRC:

(a) the purpose of an insolvent trading provision would be to encourage responsible persons to face the fact that a company was slipping into insolvency at an early date and cause them to address the situation rather than to trade on regardless of the consequences. Insolvent trading should raise the awareness of responsible persons of their duty to creditors rather than just having regard to the interests of the shareholders; and

(b) responsible persons who paid attention to their business, and who took appropriate action when faced with insolvency, should never face an application in respect of insolvent trading, whereas those who did not would be vulnerable.

4.5 Two bills on corporate rescue procedure and insolvent trading provisions, first as a bill containing provisions on corporate rescue and insolvent trading in 2000, and second as a standalone bill in 2001, had been introduced into the Legislative Council (LegCo). However, due to the complexity of the legislative proposals and

the diverse views of the stakeholders, the relevant provisions or the bill were not enacted. In January 2009, in response to the recommendations made by the Task Force on Economic Challenges (Note 20), the Government agreed to re-consider the introduction of a corporate rescue procedure to facilitate companies with viable long-term business but in short term financial difficulties to restructure. Since 2009, FSTB and ORO had conducted various rounds of consultation exercises and studies and started the preparation work and the initial drafting of the draft drafting instructions for the legislative exercise of a corporate rescue procedure and provisions on insolvent trading in mid-2010. In May 2014, FSTB announced the detailed proposals of the legislative initiative for introducing a statutory corporate rescue procedure and insolvent trading provisions.

4.6 In October 2015, when introducing the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 into LegCo to amend C(WUMP)O and its subsidiary legislation (Note 21), FSTB stated in the LegCo Brief that detailed proposals to introduce a new statutory corporate rescue procedure and insolvent trading provisions were being developed in parallel and having regard to the scale of the exercise and the complexity of the issues involved, the target was to introduce the relevant bill into LegCo in 2017/18. Up to January 2020, the relevant bill had not yet been introduced into LegCo. In response to Audit's enquiry, in December 2019, ORO informed Audit that:

(a) a longer time than expected was taken on the legislative process given the complexity of the subjects and consultation on a wide spectrum of stakeholders; and

(b) having reviewed the legislative calendar and noting the complexity of the bill, FSTB proposed to conduct a further round of selective stakeholder engagement (involving practitioners, professional bodies, chambers of

---

Note 20: *The Task Force on Economic Challenges was established in response to the global financial tsunami in 2007-08. Chaired by the Chief Executive of the Hong Kong Special Administrative Region, the Task Force comprised nine individuals from different sectors (e.g. banking sector and accounting sector) as members. The last meeting of the Task Force was held in June 2009.*

Note 21: *The Bill introduced amendments to increase protection of creditors, streamline the winding-up process, strengthen regulation under the winding-up regime and make related, consequential and minor technical amendments.*

commerce, labour unions, etc.). It was planned to introduce the bill into LegCo after the 2020 summer recess.

There has been a long lapse of time (i.e. over 23 years) since the recommendation of LRC was made in October 1996. Audit considers that FSTB should, in collaboration with ORO, take action to introduce the bill on corporate rescue procedure and insolvent trading provisions into LegCo in a timely manner.

Need to sustain efforts in taking forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate

4.7 A large proportion of companies listed in Hong Kong were registered abroad and a large and growing number of other companies, both private and public, were also registered outside Hong Kong. As mentioned in paragraph 1.20, in July 1999, LRC in its report made various recommendations in relation to the winding-up provisions in the then Companies Ordinance, including the introduction of provisions relating to the area of cross-border insolvency. As stated in the report, the treatment of cross-border insolvency was important in Hong Kong because of its status as an international business and financial centre.

4.8 According to ORO:

(a) it is increasingly common for corporate insolvency in Hong Kong to involve cross-border insolvency issues. Liquidators may be appointed in different jurisdictions with different insolvency regimes. It is important to ensure fair and equality of treatment, insofar as it is possible, for all worldwide creditors. Otherwise, there may be a disorderly race for assets in different jurisdictions and thus resulting in preferential treatment for local creditors. Mutual recognition of foreign liquidators by the courts and provisions for court assistance to foreign liquidators among different jurisdictions is important;

(b) the courts in Hong Kong have resorted to the common law principles of comity to assist foreign liquidators in various situations. However, assistance will only be granted by the courts if:

(i) the assistance is requested by a liquidator appointed in a jurisdiction that has similar substantive insolvency law to Hong Kong (Note 22); and

(ii) the courts may under the law of Hong Kong make an order of the type of assistance sought by the foreign liquidator; and

(c) in drafting the domestic legislation on cross-border insolvency, reference has been made to the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (Note 23) (hereinafter referred to as the UNCITRAL Model Law), which was a leading international standard. More than 40 jurisdictions (e.g. the United States (since 2005) and Singapore (since 2017)) had adopted the UNCITRAL Model Law. The text of the UNCITRAL Model Law focuses on four key elements, namely:

(i) access to local courts for representatives of foreign insolvency proceedings and creditors, and authorisation for local insolvency representatives to seek assistance elsewhere;

(ii) recognition of certain orders issued by foreign courts;

(iii) relief to assist foreign proceedings; and

(iv) cooperation among the courts of States where the debtor's assets are located and coordination of concurrent proceedings.

Note 22: *According to ORO, there has been recent development of the case law such that the court is, in an appropriate case, prepared to extend the scope of granting assistance and recognition to the liquidators not from the common law jurisdictions. The principle emerged from recent cases is that the court may recognise foreign insolvency proceedings opened in a civil law jurisdiction if it is satisfied that the foreign proceedings are collective insolvency proceedings and are opened in the company's place of incorporation.*

Note 23: *Established in 1966, the United Nations Commission on International Trade Law is the core legal body of the United Nations system in the field of international trade law. It has universal membership specialising in commercial law reform worldwide and its business is the modernisation and harmonisation of rules on international business.*

4.9 Audit noted that, from 1999 to 2015, there was no substantial progress in taking forward LRC's recommendation on the introduction of provisions relating to cross-border insolvency. According to ORO, as noted in the LRC Report of July 1999, the UNCITRAL Model Law had not yet been adopted by any jurisdiction and progress on adoption of the law by other jurisdictions was kept under regular review by FSTB and ORO, and the issue was discussed by the Standing Committee on Company Law Reform (Note 24) for a number of times. Priority has also been given to the legislative exercises of amending C(WUMP)O and introducing the new statutory corporate rescue procedure and insolvent trading provisions in recent years. In 2016, ORO commissioned a senior counsel to assess the advantages and disadvantages of introducing domestic cross-border insolvency legislation to Hong Kong in two forms, including the adoption of the UNCITRAL Model Law. In December 2016, the senior counsel concluded that the UNCITRAL Model Law was the preferred way for Hong Kong to address concerns on cross-border insolvency.

4.10 In June 2019, FSTB and ORO commissioned another senior counsel to conduct a consultancy study, including recommending the necessary modifications in adopting the UNCITRAL Model Law for domestic cross-border insolvency legislation with regard to local circumstances and preparing a draft UNCITRAL Model Law with relevant modifications for use in Hong Kong for the purpose of a public consultation exercise.

4.11 According to ORO, in order to provide certainty and align Hong Kong with other major jurisdictions, there has been a strong voice from the insolvency profession and from the court, calling for adoption of specific domestic legislation to deal with cross-border insolvency issues. Audit notes that the cross-border insolvency matter is a complex subject requiring a careful and comprehensive deliberation. Audit considers that FSTB and ORO should continue to consider how to take forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate.

Note 24: *Set up in 1984, the Standing Committee on Company Law Reform advises the Financial Secretary on, among others, amendments to the Companies Ordinance and C(WUMP)O, as and when necessary.*

Audit recommendations

4.12 **Audit has *recommended* that the Secretary for Financial Services and the Treasury should, in collaboration with the Official Receiver:**

(a) **take action to introduce the bill on corporate rescue procedure and insolvent trading provisions into LegCo in a timely manner; and**

(b) **continue to consider how to take forward the domestic cross-border insolvency legislation and conduct public consultation as appropriate.**

Response from the Government

4.13 The Secretary for Financial Services and the Treasury and the Official Receiver agree with the audit recommendations. They have said that:

(a) the drafting of the bill has reached an advance stage. The Government will further engage various stakeholders on specific areas of the draft bill with a view to finalising the bill for introduction into LegCo in the first half of the 2020-21 legislative session; and

(b) FSTB and ORO will consider taking forward the domestic cross-border insolvency legislation on the basis of the UNCITRAL Model Law.

Alternative to personal bankruptcy

4.14 ***Advantages of IVA.*** Similar to the proposed corporate rescue procedure for corporate insolvency, the Bankruptcy Ordinance provides for an IVA as an alternative to bankruptcy since April 1998. Under an IVA, a debtor makes a repayment proposal to the creditors. If the repayment proposal is approved, it will legally bind all the creditors. According to ORO, the advantages of an IVA are:

(a) ***Debtors.*** Debtors:

(i) can avoid the stigma of bankruptcy;

(ii) will be free from the legal restrictions provided for under the Bankruptcy Ordinance and other ordinances; and

(iii) may be able to retain their jobs or professions; and

(b) ***Creditors.*** As compared with bankruptcy, creditors may expect better repayment from debtors as the latter would have more incentive to make repayment.

4.15 ***Nominee.*** As required by the Bankruptcy Ordinance, a debtor must find a person who is prepared to act as a nominee (Note 25). That person should, in the opinion of the court, have suitable experience and qualifications to perform duties as nominee. Usually an accountant or a solicitor may be appointed to act as a nominee in an IVA case.

4.16 ***Register of IVA.*** Under the Bankruptcy Rules (Cap. 6A) of the Bankruptcy Ordinance, ORO shall maintain a register of IVA for public inspection. ORO shall enter into the register various matters. Examples include the name, Hong Kong identity card number and address of the debtor, the date of the creditors' meeting during which the IVA was approved, and the name and address of the nominee.

4.17 ***Completion of IVA cases.*** Up to 31 December 2019, 13,236 approved IVA cases have been completed (i.e. the repayment proposals approved by the creditors have been fully implemented by the debtors). Audit analysed the time taken to complete those 13,236 approved IVA cases and found that most of the cases (i.e. 9,366 (71%)) took more than four to eight years for completion (see Table 12). According to ORO:

(a) regarding IVA cases, the IVA proposal in each approved IVA case was approved by the creditors in the creditors' meeting. When the creditors approved the IVA proposal, they should have already taken into consideration of the length of time for the completion of all the agreed repayments;

Note 25: *The Official Receiver has ceased to accept nomination as nominee since September 2002.*

(b) to make the IVA repayment proposal more attractive than repayment under bankruptcy, the debtor/bankrupt would normally either offer a longer repayment period than the 4-year bankruptcy period or offer a larger sum of repayment to the creditors than under bankruptcy (i.e. repayment from outside his own assets). Hence it is not surprising to find that the repayment period in most IVA cases was longer than 4 to 8 years; and

(c) during the course of the implementation of IVA, the nominee should have also reported to the creditors frequently on the progress of the implementation of the IVA repayment proposal. If the creditors agreed, the IVA proposal can take whatever length of time to complete.

Table 12

Time taken to complete approved IVA cases
(31 December 2019)

Years elapsed from the date of entering into the register of IVA	Number of cases
0 to 1	193 (1%)
>1 to 2	312 (2%)
>2 to 4	2,741 (21%)
>4 to 8	9,366 (71%)
>8	624 (5%) (Note 1)
Total	13,236 (100%) (Note 2)

Source: *Audit analysis of ORO records*

Note 1: *For the IVA case that took the longest time for completion, the time taken was 15 years.*

Note 2: *One IVA case without the date of completion recorded and 18 IVA cases with recorded completion dates earlier than the dates of entering into the register of IVA were excluded.*

Low usage of individual voluntary arrangements

4.18 Despite the advantages of IVAs (see para. 4.14), Audit analysis of the usage of IVAs as a percentage of total bankruptcy and IVA cases in the period from 2014 to 2018 revealed that the usage of IVAs was low, ranging from 6% to 8% (see Table 13).

Table 13

Number of IVA and bankruptcy cases
(2014 to 2018)

Year	Number of cases		
	IVA **(a)**	**Bankruptcy** **(b)**	**Total** **(c) = (a) + (b)**
2014	782 (7%)	9,674 (93%)	10,456 (100%)
2015	684 (7%)	9,750 (93%)	10,434 (100%)
2016	589 (6%)	8,919 (94%)	9,508 (100%)
2017	598 (7%)	7,627 (93%)	8,225 (100%)
2018	599 (8%)	7,146 (92%)	7,745 (100%)

Source: *Audit analysis of ORO records*

4.19 While the usage of IVAs in Hong Kong was low, Audit noted that in England and Wales of the United Kingdom, the usage of IVAs was higher and on an increasing trend. The usage of IVAs as a percentage of total individual insolvencies in England and Wales increased by 9 percentage points from 53% in 2014 to 62% in 2018 (ranging from 50% to 62% in the period).

4.20 According to ORO:

(a) the United Kingdom, England and Scotland have additional debt relief products for those in financial distress which do not involve bankruptcy (e.g. Debt Relief Orders in England for debts up to 20,000 British Pound Sterling which is a purely administrative online application process to relieve debtors of certain types of consumer debt). The profile of their bankrupts is likely to be quite different from those in Hong Kong, and they are likely to be more sophisticated business failures;

(b) considering the profile of bankrupts (see Table 1 in para. 1.9) in Hong Kong, the majority of bankrupts are unemployed, older people. The socio-economic background of bankruptcy/insolvency in Hong Kong is different from other jurisdictions and it is difficult or may not be appropriate to have a direct comparison between them. For example, the termination rate of IVAs in the United Kingdom is generally observed higher than that of Hong Kong. A direct comparison to their IVA market may not be very useful;

(c) no study had been conducted to ascertain the reasons why the use of IVAs had not been common amongst debtors since the introduction of the regime in 1998;

(d) ORO had discussed the issues with stakeholders at the Services Advisory Committee (Note 26) from time to time and the view from the industry is that IVA is more expensive, lasts longer and is less attractive to bankrupts for whom a change in status has no practical effect. Considering the profile of bankrupts (see Table 1 in para. 1.9), 87% have either no income or income below $20,000 and as such, an IVA is unlikely to be attractive to such types of people. Given that 92% of bankruptcy cases are

---

Note 26: *Established in June 1994, the Services Advisory Committee is a customer liaison group comprising representatives from service users and PIPs. The Committee meets quarterly and helps monitor ORO's service quality and standards. Its terms of reference are to: (a) monitor the published performance pledge of ORO; (b) exchange views on policy and operational matters, having regard to service levels and procedures, with the aim of enhancing efficiency and improving services of ORO; (c) provide opinions and feedback to ORO on its performance and its services and improve ORO's understanding of customer's needs and problems; and (d) improve customer's understanding of ORO's policies, services, practices and procedures.*

debtor-petition cases, it may not be surprising that IVA is not attractive to them;

(e) as the law only requires the nominees to report to ORO the approved IVA cases, there was no information on the number of IVA cases rejected by creditors;

(f) to make his IVA proposal more attractive to his creditors, a debtor has to put forward a repayment proposal with repayment amounts more than that will be received by his creditors under the bankruptcy regime (e.g. repayment period longer than the normal bankruptcy period of four years). In other words, if a debtor does not mind being adjudged bankrupt (e.g. a debtor who does not have sufficient fund to make repayment to his creditors after deducting his reasonable expenses from his salary), he will not put forward an IVA proposal to his creditors;

(g) those debtors who used IVAs were believed to be those who did not want or could not afford to become a bankrupt, maybe due to their concern about reputation or the loss of ability to practise in a profession if they are made bankrupt; and

(h) ORO had all along been promoting the use of IVAs amongst debtors/bankrupts through the following means:

(i) the posters in ORO's public area;

(ii) the publication of the Simple Guide on IVA (both pamphlets and on ORO website);

(iii) in the Simple Guide on Bankruptcy (both pamphlets and on ORO website), the use of IVA as an alternative to bankruptcy was also mentioned; and

(iv) in the preliminary examination questionnaire to be completed by bankrupts, there was a question asking the bankrupt to consider using IVA.

A debtor also has to declare in a statutory form whether he has tried to come to any agreement with his creditors and whether he will be able to introduce an IVA for his creditors.

4.21 With a view to enhancing the usage of IVA in Hong Kong, Audit considers that ORO needs to further explore with stakeholders (e.g. the Services Advisory Committee) to determine what additional measures (e.g. enhancing publicity of IVAs) can be introduced to facilitate the use of IVAs in Hong Kong.

Audit recommendation

4.22 **Audit has *recommended* that the Official Receiver should further explore with stakeholders to determine what additional measures can be introduced to facilitate the use of IVAs in Hong Kong.**

Response from the Government

4.23 The Official Receiver agrees with the audit recommendation. She has said that ORO will continue to explore with stakeholders additional measures that may be taken to facilitate the use of IVAs in Hong Kong.

Deployment of manpower of Official Receiver's Office

4.24 Since 1996 and 2001, ORO had contracted out the non-summary winding-up cases and summary winding-up cases to PIPs respectively. In line with the recommendation of the 2002 consultancy study (see para. 1.3) that the outsourcing policy of ORO should be continued and in order to handle the increased workload, since 2008, ORO had also contracted out about 25% of the debtor-petition summary bankruptcy cases to PIPs. In the 2012 Audit Report, Audit recommended that ORO should review ORO's resource deployment to ensure that any staff savings as a result of outsourcing casework were redeployed for strengthening its regulatory function. In response, the Official Receiver said that there had been a steady shift of ORO to a regulatory role with more outsourcing of cases, and ORO would establish a dedicated regulatory and compliance section to monitor PIPs' performance. In this connection, a new section under the Case Management Division was established, namely the

Compliance and Regulatory Section (see para. 3.12) in June 2012 for monitoring PIPs' performance. As of October 2019, the Compliance and Regulatory Section had 18 staff.

Need to conduct a strategic review on future manpower deployment

4.25 Over the years, while there had been more outsourcing of cases and the number of insolvency cases had generally been on a decreasing trend (see Figure 1 in para. 1.11 and Figure 3 in para. 1.15), Audit noted that no staff savings had been achieved by ORO and the establishment of ORO had increased by 49 (22%) from 224 as at 31 March 2010 to 273 as at 31 March 2019. According to ORO:

(a) while the total number of new insolvency cases each year has been decreasing, the workload of ORO has not declined in line with the number of new insolvency cases during the same period. The number of new insolvency cases each year do not reflect the workload of ORO for that year because effectively in all circumstances, an insolvency case will not be completed within one year;

(b) under the Bankruptcy Ordinance, a first-time bankrupt can be automatically discharged from bankruptcy four years after his bankruptcy order takes effect, unless the court orders that the bankruptcy period be extended to a maximum of another four years on the application of his trustee or creditors who make a valid objection. Hence, the length of the bankruptcy period in a case is normally four to eight years under the regime. During the bankruptcy period, the Official Receiver as the trustee is required to administer a bankruptcy case, including monitoring submission of a report of earnings and acquisitions during the preceding year by the bankrupt on each anniversary of the making of the bankruptcy order, investigating and taking appropriate action on any after-acquired property identified, reviewing cases for discharge, raising objection to discharge in appropriate cases, etc. A lot of work is required throughout the bankruptcy period. Furthermore, many of the issues involved in the case administration may be legally complicated, and realisation and investigation into various matters may span a number of years even after the discharge of the bankrupt. Those cases that cannot be finalised quickly generally have complicated issues to resolve;

(c) despite the huge rise in the number of bankruptcy and winding-up cases since 1998, the number of staff of ORO remained quite stable and are not so different to that during those years before the surge of the bankruptcy orders from 1998 which have reached its peak in 2002 and 2003. Furthermore, in 2016, the Bankruptcy Ordinance and C(WUMP)O have been amended to introduce a non-commencement regime and a disclosure statement requirement respectively. This has created additional work burden in the case management work. Moreover, there is an obvious trend that the number of annulment cases has increased substantially in recent years. All of these new and/or increased workload have created heavy work burden to the case administration and other support work;

(d) there is a significant backlog of cases from the previous years where the numbers were extraordinarily high and which ORO has been working diligently to tackle via various means. For example, ORO has regularly reviewed and identified cases with assets/funds in the Bankruptcy Account which have outstanding issues to be resolved, set up the Case Administration Meeting to methodically review the long outstanding cases with a view to developing a strategy that can be rolled out across the department and giving guidance to Insolvency Officers to conclude those cases with difficult issues to be resolved. The aim is to develop de-minimas thresholds for various outstanding matters so that Insolvency Officers can take more robust steps to put the case on the release programme;

(e) the bulk of insolvency cases (mainly bankruptcy cases) were taken up by ORO (see Table 14). ORO is also required to monitor the work of PIPs in handling their cases, and deploy resources to regulatory work in this connection. The workload of ORO is expected to increase in the coming period (see remarks in Figure 1 in para. 1.11); and

(f) in parallel with the workload issues, ORO has also faced the issue of increased rate of natural wastage and probationary staff, especially for the Insolvency Officer grade in the past few years. In the period from 2016-17 to 2018-19, ratio of the vacancies in the promotional Insolvency Officer ranks and percentage of probationers in the rank of Insolvency Officer II increased. For example, the percentage of probationary Insolvency Officer II increased from 35.5% in March 2017 to 52.5% in March 2019. To deal with the issue, apart from the standard training of the Civil Service Training and Development Institute and the in-house tailor-made induction course for the probationary Insolvency Officers, ORO has arranged senior

Insolvency Officers and Legal Officers to deliver regular experience sharing sessions to the junior Insolvency Officers. Insolvency Officers of various levels are also nominated to attend appropriate external training on insolvency (e.g. seminars on specific insolvency-related subject and professional diploma course in insolvency organised by the Hong Kong Institute of Certified Public Accountants).

Table 14

Number of insolvency cases administered by ORO and PIPs (2008 to 2019)

Year	Number of insolvency cases administered by ORO	Number of insolvency cases administered by PIPs
2008	8,572	2,675
2009	12,743	3,987
2010	4,643	4,958
2011	4,115	4,199
2012	5,019	3,471
2013	5,534	4,111
2014	4,899	5,046
2015	4,361	5,694
2016	4,842	5,402
2017	3,239	4,684
2018	3,382	4,019
2019	4,230	3,777
Total	65,579	52,023

Source: *Audit analysis of ORO records*

Remarks: *The bulk of cases administered by ORO are bankruptcy cases.*

4.26 In Audit's view, to meet future challenge, ORO needs to conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases and the anticipated increase of insolvency caseload in the coming period.

4.27 ***Use of information technology.*** With a view to further enhancing its efficiency in handling the increasing workload and mapping out the short to medium term information technology strategy and development plan to support its business operation in a systematic and strategic manner, ORO commenced a Departmental Information Technology Plan Study in 2018. The Study proposed to implement 22 information technology projects in the coming five years with a view to:

(a) improving the work flow and business operation of ORO (e.g. introducing an electronic submission system for insolvency (i.e. a portal for public to submit documents to ORO and for ORO to send documents to relevant parties), electronic workflow system for internal users in different aspects of case management work);

(b) fulfilling the information technology needs of ORO users in performing their daily operation (e.g. installation of e-fax, voice-to-text software, etc.);

(c) replacing some de-support hardware and software (e.g. upgrade of the e-Services and e-leave systems, etc.); and

(d) achieving various government-wide initiatives (e.g. revamp of ORO website, e-form application, implementation of Electronic Record Keeping System, etc.).

Audit notes that the implementation of information technology projects would enhance the productivity of ORO. In Audit's view, ORO should conduct a cost-and-benefit analysis in planning the implementation of the information technology projects.

Audit recommendations

4.28 **Audit has *recommended* that the Official Receiver should:**

(a) **conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases and the anticipated increase of insolvency caseload in the coming period; and**

(b) **conduct a cost-and-benefit analysis in planning the implementation of the information technology projects.**

Response from the Government

4.29 The Official Receiver agrees with the audit recommendations. She has said that:

(a) ORO will conduct a strategic review on future manpower deployment, having regard to the increased regulatory role, the progress of clearing backlog cases and the anticipated increase of insolvency caseload in the coming period; and

(b) cost-and-benefit analysis is and will be conducted in planning and implementation of the information technology projects in accordance with the prevailing guidelines of the Government and the Office of the Government Chief Information Officer.

Review of fees structure of Official Receiver's Office

4.30 ***Global costing approach.*** According to Financial Circular No. 6/2016, it is Government's policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. The Government's policy consideration of bankruptcy and winding-up fees and charges is for recovering the total costs for services of ORO as far as possible, so as to avoid using public money to fund the expenses incurred in the administration of insolvency cases. In order to achieve full-cost recovery, it has been ORO's long established practice to adopt the global costing approach for achieving full cost recovery on an overall basis. That means the fees charged in some insolvency cases will be higher than the actual costs incurred to defray the costs of administering other cases where there are no or inadequate assets to cover costs. According to ORO:

(a) the Bankruptcy Ordinance and C(WUMP)O provide that the amount of any fees prescribed therein shall not be limited by reference to the amount of administrative or other costs incurred in any particular case. Therefore, ORO has the statutory backing of recovering costs generally (i.e. globally) without reference to the administrative or other costs incurred in any particular case; and

(b) due to the intricacies and interdependence of the insolvency services, it is impracticable for ORO to carry out separate costing for these services and ensure that their fee levels can attain full cost recovery individually.

4.31 ***Statutory fees.*** The statutory fees payable to ORO in relation to its administration of bankruptcy and winding-up cases are set out in the Bankruptcy Rules, the Bankruptcy (Fees and Percentages) Order (Cap. 6C), the Companies (Fees and Percentages) Order (Cap. 32C) and the Companies (Winding-up) Rules. The main types of statutory fees include:

(a) ad valorem fees levied on all insolvency cases handled by ORO or PIPs. The fees are charged at progressively reducing rates from 10% to 1% on the aggregate amount of the assets realised;

(b) a minimum fee of $11,250 for both bankruptcy and winding-up cases where the Official Receiver acts as trustee or liquidator; and

(c) realisation fees at fixed rate of $170 and distribution fees of 5% of dividends distributed for cases handled by ORO.

4.32 ***Interest income.*** ORO also earns interest income from investing monies of the insolvent estates with the banks. C(WUMP)O and the Bankruptcy Ordinance provide that for company liquidation estates not exceeding $100,000 and all bankruptcy estates, all interest earned is transferred to the general revenue annually. For company liquidation estates exceeding $100,000, an amount up to 1.5% per annum of the monies is collected by ORO.

Need to minimise the impact of fluctuating cost recovery rates on fee charging

4.33 In the 2012 Audit Report, Audit noted that there had been a consistent over-recovery by ORO by a considerable margin and recommended ORO to expedite action on its fees and charges review with a view to rationalising the fee levels as soon as possible. In response, ORO completed the fees and charges review and the relevant amendment rules and orders on fees and charges were effective from November 2013. However, Audit noted that after the fee revision in 2013, ORO's cost recovery rates had fluctuated notably (ranging from 97% to 326%) and could meet the full-cost target (i.e. from 95% to 105%) only in 2013-14, 2016-17 and 2018-19 (see Table 15).

Table 15

ORO's cost recovery rates
(2013-14 to 2018-19)

Year	Cost recovery rate
2013-14	104%
2014-15	161%
2015-16	326% (Note)
2016-17	97%
2017-18	143%
2018-19	97%

Source: *ORO records*

Note: *According to ORO, the high cost recovery rate in 2015-16 was mainly due to the exceptional income (e.g. minimum fees) generated from clearance of backlog.*

4.34 Audit noted that in August 2018, ORO completed a preliminary review comparing the fees structures of ORO and insolvency authorities in other jurisdictions (e.g. the United Kingdom) with a view to considering possible options available for FSTB's consideration. According to ORO:

Way forward

(a) it has conducted the annual review of ORO's statutory fees and charges in accordance with Financial Circular No. 6/2016. The latest review was submitted to FSTB in January 2019;

(b) regarding the global costing approach adopted by ORO:

(i) given that the number of insolvency cases for each financial year and the related revenue thereon may vary considerably from one year to another due to uncontrollable factors (e.g. economic situations, behaviour of concerned parties and market segment performance), it is difficult to make any meaningful estimates or projection of the number of insolvency cases in a particular year. Historical figures indicate that the number of insolvency cases each year will fluctuate from around 9,000 in one year to around 26,000 in a recession year (e.g. the outbreak of Severe Acute Respiratory Syndrome in 2003);

(ii) besides the number of insolvency cases, there is also a great variation in the amount of realisable assets for insolvency cases. For instance, there are cases with no assets realised and cases with millions of assets realised (although occasionally);

(iii) for the interest income, the proportion of interest income over the total income was volatile (ranging from 12% to 38% in the period from 2014-15 to 2018-19) and ORO had little control/influence over the amount of insolvent estate which can be invested; and

(iv) for ORO's recurrent expenditure, it is envisaged that ORO requires to have a minimum funding of about $220 million to achieve full cost recovery commencing from 2019-20. ORO's expenditure will normally be on an increasing trend due to creation of new posts, inflation and other price changes; and

(c) it is considering the merits of introducing a "rolling average"/"weighted average" cost recovery rate. While the effect of "rolling average" model with the time frame of 5 and 10 years has been studied, ORO is reviewing other financial models (e.g. the "weighted average" model).

4.35 Up to January 2020, ORO had not completed the review of its fees structure. Audit considers that ORO needs to explore measures to minimise the impact of the fluctuating cost recovery rates on fee charging.

Audit recommendation

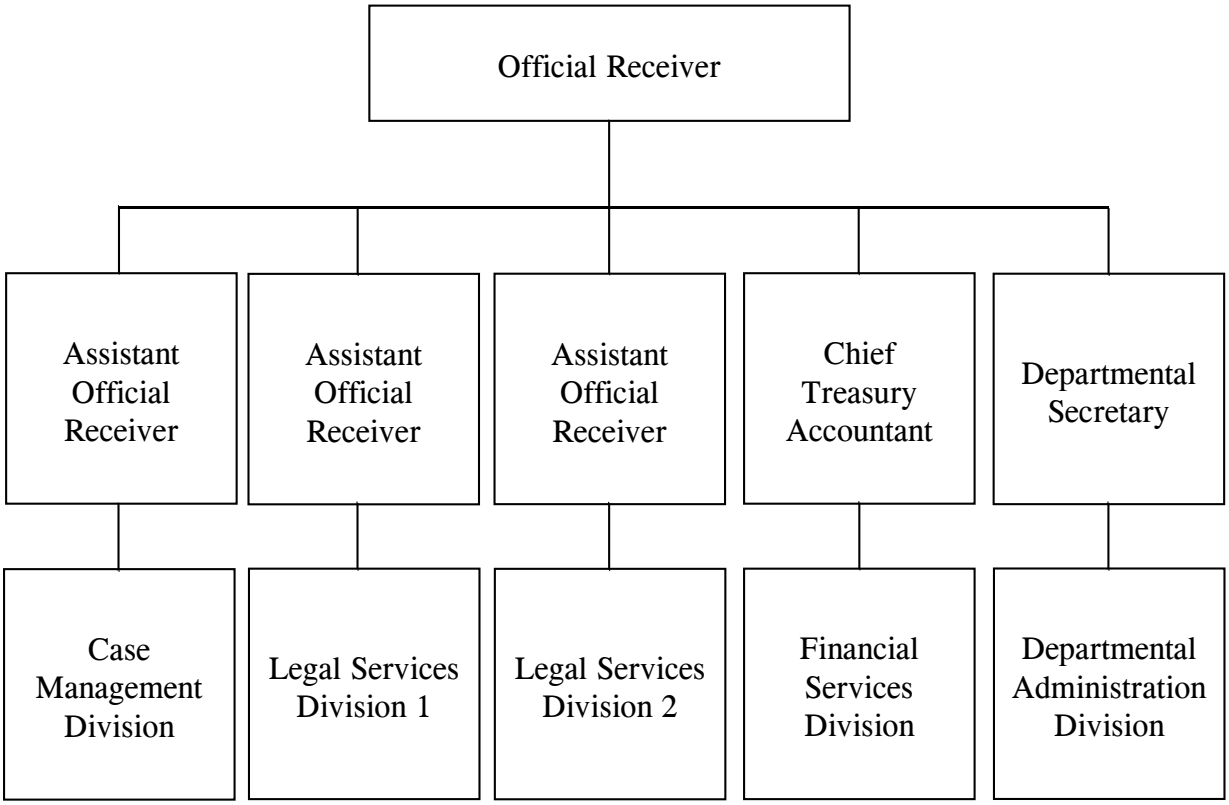
4.36 **Audit has *recommended* that the Official Receiver should explore measures to minimise the impact of the fluctuating cost recovery rates on fee charging.**

Response from the Government

4.37 The Official Receiver agrees with the audit recommendation. She has said that ORO will continue to explore measures to minimise the impact of fluctuating cost recovery rates on fee charging.

Appendix A
(para. 1.4 refers)

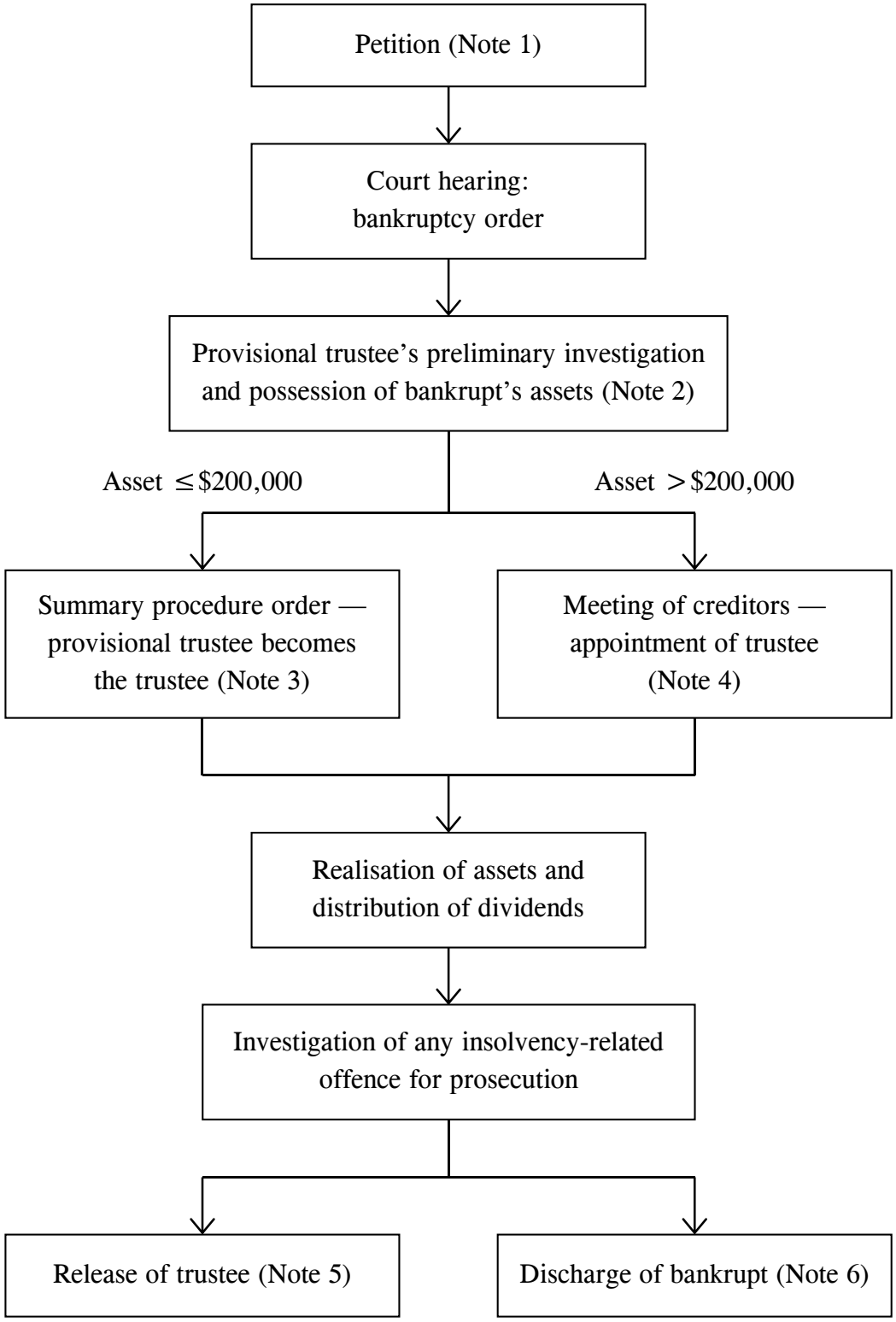
Official Receiver's Office: Organisation chart (extract) (31 October 2019)



Source: *ORO records*

Appendix B
(para. 1.6 refers)

Flowchart of bankruptcy procedures



Source: *ORO records*

Note 1: *A petition may be presented by an individual who is unable to repay his debts (debtor-petition case), or by his creditors (creditor-petition case).*

Note 2: *Where the court makes a bankruptcy order, the Official Receiver becomes the provisional trustee of the bankrupt's assets. In case of a debtor's petition, the Official Receiver as provisional trustee may appoint any qualified person as provisional trustee in her place if the assets are unlikely to exceed $200,000 (summary case).*

Note 3: *For a summary case, the provisional trustee may apply to the court for a summary procedure order and appointment as the trustee. When the order is granted, there will be no meeting of creditors. A trustee's duties include realising a bankrupt's assets and paying dividends to the creditors.*

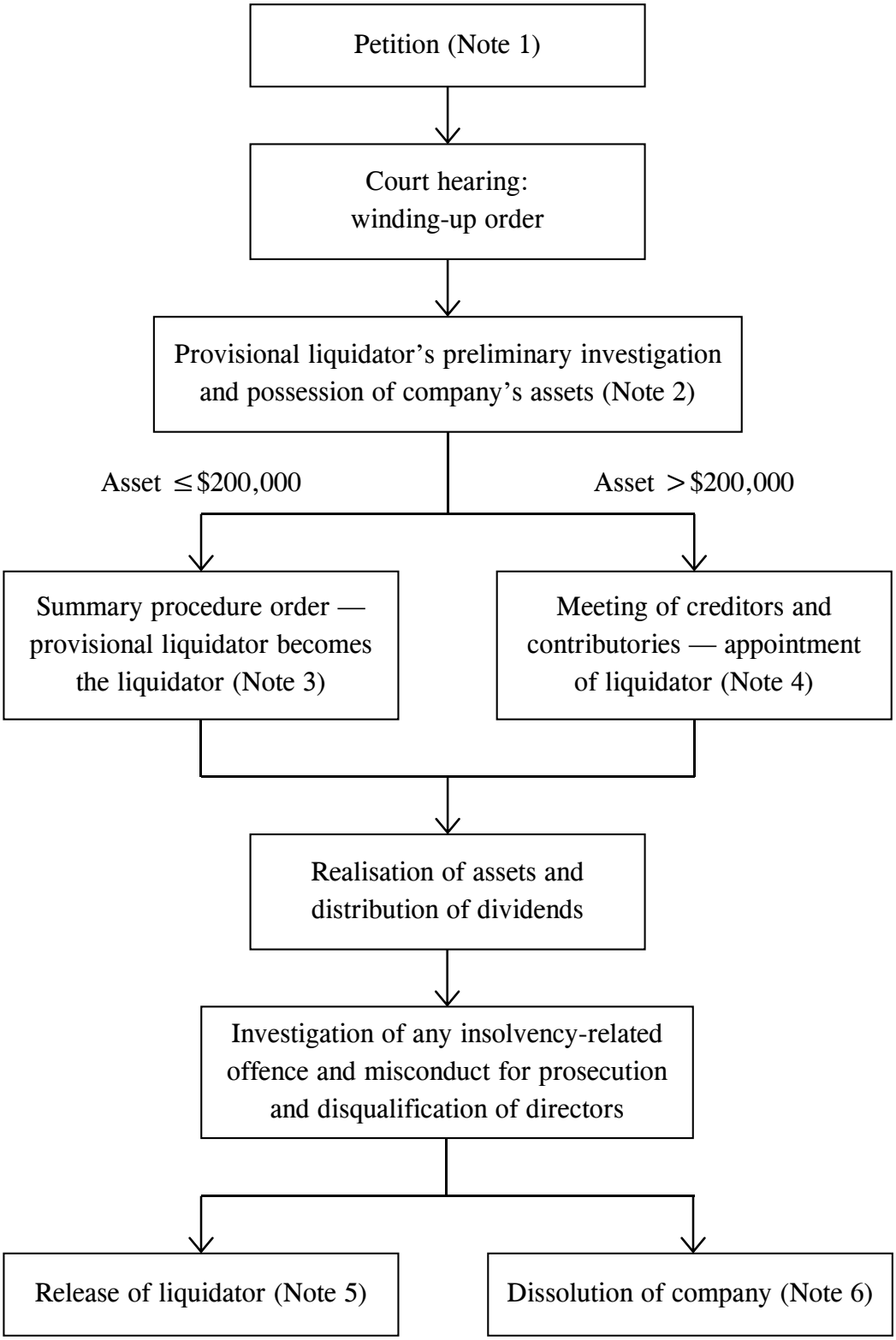
Note 4: *For a non-summary case (where the bankrupt's assets exceed $200,000 or where creditors with prescribed percentage of liabilities in value request), the provisional trustee holds a general meeting of creditors to consider the appointment of a trustee and/or formation of creditors' committee. The committee, if formed, may give direction to the trustee in the administration of a bankrupt's property.*

Note 5: *Where the trustee considers that there are no more realisable assets and no further action is required in administration of the bankruptcy proceedings, the trustee applies to the court for release.*

Note 6: *A bankrupt is automatically discharged from bankruptcy four years from the date of bankruptcy order. The bankruptcy period may cease to run if a non-commencement order is made or may be extended if the trustee or any creditor objects to the discharge and approved by the court.*

Appendix C
(para. 1.13 refers)

Flowchart of winding-up procedures



Source: *ORO records*

Note 1: *A petition may be presented by the company or its creditors. The Financial Secretary or a statutory regulatory body (e.g. the Securities and Futures Commission) may also present the petition if it is in the public interest to do so.*

Note 2: *On the making of a winding-up order by the court, the Official Receiver shall become the provisional liquidator if no other person is appointed by the court. The provisional liquidator shall take possession of the wound-up company's assets. The Official Receiver as provisional liquidator may appoint any qualified person to act as provisional liquidator in her place if the company's assets are unlikely to exceed $200,000 (summary case).*

Note 3: *For a summary case, the provisional liquidator may apply to the court for a summary procedure order and appointment as liquidator. When the order is granted, there will be no meeting of creditors and contributories. A liquidator's duties include realising the company's assets and paying dividends to the creditors.*

Note 4: *For a non-summary case (where the company's assets exceed $200,000 or where creditors with prescribed percentage of liabilities in value request), the provisional liquidator holds meetings of creditors and contributories (e.g. shareholders of the wound-up company) to consider the appointment of a liquidator and a committee of inspection. The committee, if formed, may give direction to the liquidator in the administration of a wound-up company's assets.*

Note 5: *Where the liquidator considers that there are no more realisable assets and no further action is required in the administration of the winding-up proceedings, the liquidator applies to the court for release.*

Note 6: *If the Official Receiver is the liquidator, she files a certificate to the Registrar of Companies and the company will normally be dissolved after two years. If a PIP is the liquidator, he seeks an order from the court and the company will dissolve on the date of the order.*

Acronyms and abbreviations

Audit	Audit Commission
C(WUMP)O	Companies (Winding Up and Miscellaneous Provisions) Ordinance
FSTB	Financial Services and the Treasury Bureau
IVA	Individual voluntary arrangement
LegCo	Legislative Council
LRC	Law Reform Commission of Hong Kong
ORO	Official Receiver's Office
PIP	Private insolvency practitioner
UNCITRAL	United Nations Commission on International Trade Law