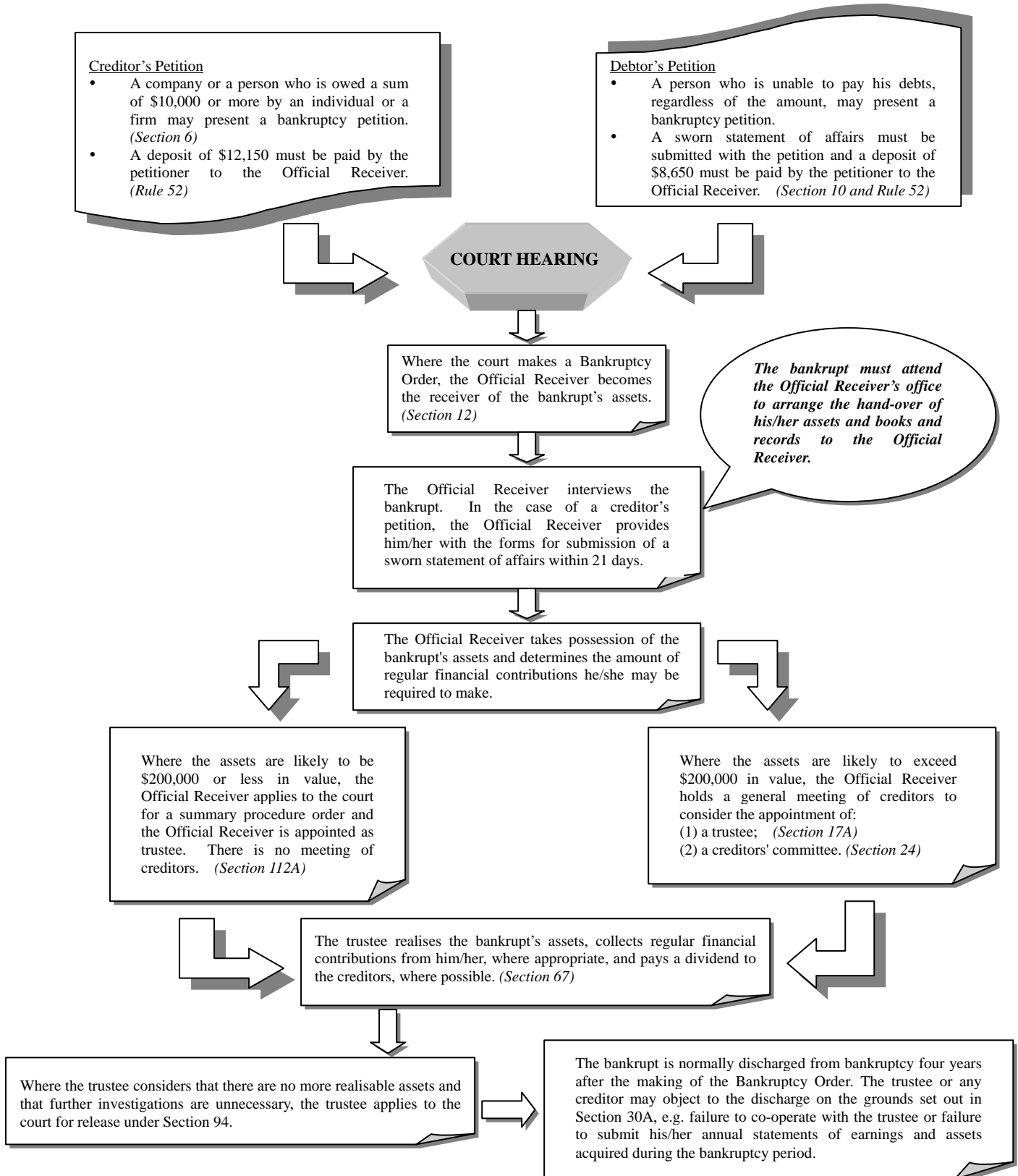


Bankruptcy: The Main Processing Stages



Note 1: The Sections and Rules quoted herein refer to the relevant sections and rules in the Bankruptcy Ordinance (Cap. 6) and Bankruptcy Rules.

Note 2: Related flowcharts: "Bankruptcy: Your rights as a creditor" and "Bankruptcy: Your duties as a bankrupt".

Bankruptcy: Your Duties as a Bankrupt

The court makes a Bankruptcy Order and the Official Receiver becomes the receiver of your assets. (Section 12)

You must:

- deliver to the Official Receiver your assets and books and records;
- attend the Official Receiver's office to provide information about your assets and financial affairs and to determine the amount of regular financial contributions you may be required to make;
- fully co-operate with the Official Receiver or the trustee throughout the administration of your bankruptcy;
- notify the Official Receiver or the trustee immediately if you change your address.

You must submit a sworn statement of affairs to the Official Receiver within 21 days if the petition was presented by a creditor (Note 3). It may be a contempt of court if you fail to submit the statement to the Official Receiver (Section 18), for which you may be prosecuted.

You must submit annual statements of your earnings and assets acquired during the bankruptcy period to the trustee. The relevant forms may be obtained from the Official Receiver or downloaded from the Official Receiver's Internet homepage at <http://www.info.gov.hk/oro/>. (Section 43A(6))

You must attend the general meeting of creditors if you are requested by the Official Receiver.

You must continue to disclose to the trustee all assets acquired during the bankruptcy period.

Failure to perform your duties such as not disclosing your assets and details of your financial affairs may result in your being prosecuted. The trustee or any creditor may also object to your discharge from bankruptcy on the grounds set out in Section 30A, e.g. failure to co-operate with the trustee, failure to submit to the trustee an annual statement of earnings and assets acquired during the bankruptcy. You must notify the trustee if you intend to leave Hong Kong for whatever reason.

Note 1: The Sections and Rules quoted above refer to the relevant sections and rules in the Bankruptcy Ordinance (Cap. 6) and Bankruptcy Rules.

Note 2: Related flowcharts: "Bankruptcy: The main processing stages" and "Bankruptcy: Your rights as a creditor".

Note 3: Where the petition is presented by a debtor, a sworn statement of affairs must be submitted with the petition.

Bankruptcy: Your Rights as a Creditor

The court makes a Bankruptcy Order and the Official Receiver becomes the receiver of the bankrupt's assets. (Section 12)

If you have already received a payment from the Protection of Wages on Insolvency Fund, you must provide full details of the payment in your proof of debt.

You should submit to the Official Receiver your proof of debt as soon as possible using Form 46A. Otherwise, you may not be entitled to vote at the general meeting of creditors or to receive a dividend. (Rule 109)

Where the assets are likely to exceed \$200,000 in value, the Official Receiver holds a general meeting of creditors. You will be notified to attend. (Section 17A)

Where the assets are likely to be \$200,000 or less in value, the Official Receiver applies to the court for a summary procedure order and the Official Receiver is appointed as trustee. There is no meeting of creditors. (Section 112A)

At the meeting, if you have filed a valid proof of debt, you have the right to vote on the appointment of:

- (1) a trustee; (Section 17A)
- (2) a creditors' committee. (Section 24)

Where a Bankruptcy Order has been made, the Official Receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of him/her. Any creditor, with the concurrence of not less than 1/4 in value of all creditors, may require the Official Receiver to apply to the court for the public examination of the bankrupt. (Section 19)

The trustee realises the assets. Where there are sufficient assets for a dividend and if your proof of debt is admitted, you will receive a dividend.

Once all the assets have been realised and a final dividend has been paid, if any, the trustee applies to the court for his/her release. (Section 94) You will receive a notice from the trustee of his/her intention to do so and also a summary of his/her receipts and payments. If you object to the release, you must provide justification to the trustee or the court within 21 days from the date of the notice. (Rule 169)

The bankrupt is normally discharged from bankruptcy four years after the making of the Bankruptcy Order. The trustee or any creditor may object to the discharge on the grounds set out in Section 30A, e.g. failure to co-operate with the trustee or failure to submit annual statements of his/her earnings and assets acquired during the bankruptcy period.

Note 1: The Sections and Rules quoted above refer to the relevant sections and rules in the Bankruptcy Ordinance (Cap. 6) and Bankruptcy Rules.

Note 2: Related flowcharts: "Bankruptcy : The main processing stages" and "Bankruptcy: Your duties as a bankrupt".

Note 3: Creditors include employees.



Official Receiver's Office
The Government of the Hong Kong Special Administrative Region

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FAQ

Frequently Asked Questions about Bankruptcy




Frequently Asked Questions about Bankruptcy

The following information is intended as a guide only and should not be treated as a complete and authoritative statement of law or court practice.

While all reasonable care has been taken in the preparation of the following information, no responsibility is accepted by the Official Receiver for any errors it may contain, whether caused by negligence or otherwise, or for any loss howsoever occasioned to any person by reliance on it.

Alternative to Bankruptcy - Individual Voluntary Arrangement (IVA)

1. Q: Is there any alternative to bankruptcy?

A: Yes, the debtor can choose IVA. IVA is a formal procedure under the Bankruptcy Ordinance to provide an alternative to bankruptcy. A debtor makes a repayment proposal to the court and the creditors. If it is approved, it will legally bind all creditors.

2. Q: What are the advantages of IVA?

A: (a) A debtor can avoid the stigma of bankruptcy. He/She will be free from the legal restrictions provided for under the Bankruptcy and other Ordinances and may be able to retain his/her job/profession.

(b) For the creditors, as compared with bankruptcy, they may expect better repayment from the debtor as the latter would have more incentive to make repayment.

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Procedures for Filing Petition

3. Q: What are the criteria for a debtor to file a petition for bankruptcy?

A: If a debtor wishes to present a petition for bankruptcy, he/she must satisfy the court that he/she is unable to pay his/her debts.



4. Q: How much will it cost a debtor to file a petition for bankruptcy?

A: The debtor will be required to deposit with the Official Receiver a sum of \$8,650 to cover the fees and expenses to be incurred by the Official Receiver (or the trustee) and pay a court fee of \$1,045 at the High Court.

5. Q: What are the procedures for filing a debtor's petition for bankruptcy?

A: The procedures are :-

(a) Complete a "Debtor's Bankruptcy Petition" on Form 3 of Bankruptcy (Forms) Rules and a "Statement of Affairs (Debtor's Petition)" on Form 28C of Bankruptcy (Forms) Rules. These forms are contained in 'Debtor's Bankruptcy Petition Procedural Guide' which can be obtained at \$10 per copy by the following ways :-

- (i) Calling the Publications Sales Section of ISD at **2537 1910**
- (ii) Visiting the online Government Bookstore at <http://bookstore.esdlife.com>
- (iii) Purchase at the Official Receiver's Office
- (iv) Downloading the order form from the ISD website at <http://www.isd.gov.hk> and submit the order online or by fax to **2523 7195**
- (v) Placing order with ISD by e-mail at puborder@isd.gov.hk

The Guide can also be downloaded from website <http://www.oro.gov.hk/publications/debtor.htm>

- (b) Deposit with the Official Receiver a sum of \$8,650 to cover the fees and expenses to be incurred by the Official Receiver (or the trustee).
- (c) Have the Petition attested and the Statement of Affairs sworn.
- (d) Go to the Registry of the High Court to :-
 - (i) pay a court fee of \$1,045;
 - (ii) obtain a date for the hearing of the Petition; and
 - (iii) file the Petition and the Statement of Affairs.
- (e) Submit a sealed copy of the Petition and a copy of the Statement of Affairs to the Official Receiver immediately after (d) (iii) above.

6. Q: What happens if a debtor has no money to petition for bankruptcy?

A: (a) A debtor who files a petition must deposit with the Official Receiver a sum of \$8,650 to cover the fees

and expenses to be incurred by the Official Receiver (or the trustee). There is no provision in the Bankruptcy Ordinance for exemption of the deposit. The debtor is also required to pay a court fee of \$1,045 at the High Court.

- (b) Creditors can also file a petition for the bankruptcy of the debtor. A creditor who files a petition must deposit with the Official Receiver a sum of \$12,150 to cover the fees and expenses to be incurred by the Official Receiver (or the trustee) and pay a court fee of \$1,045 at the High Court.

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Impact of Bankruptcy

7. Q: After a petition for bankruptcy has been presented, will it be advertised in the newspaper?

A: The Official Receiver will not advertise a bankruptcy petition. Once a Bankruptcy Order is made, the Official Receiver will advertise the Bankruptcy Order in the Gazette and two newspapers : one Chinese and one English.

8. Q: Will the Trustee inform the employer of the bankrupt?

- A: (a) If the bankrupt is working in the private sector, the Trustee will not approach his employer unless during the course of investigation and assessment, the Trustee finds it necessary to do so.
- (b) If the bankrupt is a civil servant, the Official Receiver must, under CSR459, inform the Departmental Secretary of the bankrupt's department, the Civil Service Bureau and the Treasury.

9. Q: Will bankruptcy affect the employment of a bankrupt in certain professions?

- A: (a) A bankrupt may not be able to practise in certain professions such as lawyer, estate agent, securities dealer or act as a director of a limited company. The relevant professional bodies should be consulted for further information.
- (b) A bankrupt working in the banking sector is required to inform his/her employer under the Banking Ordinance.
- (c) A bankrupt working in other sectors should check whether there is any stipulation of such in his/her employment contract or other company documents.

10. Q: Will the staff of the Official Receiver's Office go to the bankrupt's house for inspection?

A: The Official Receiver has the right to do so under the legislation and may do so if necessary.

11. Q: Is a bankrupt required to pay his debts? What will happen to a bankrupt's assets and income?

A: In principle, a bankrupt's debts will be met from his/her assets and income. For this purpose, a bankrupt must hand over all his/her assets, both overseas and local, to the Trustee immediately upon the granting of the Bankruptcy Order. He/She must also inform the Trustee of his/her income. The

Trustee will, after taking a view of the reasonable domestic needs of the bankrupt and his/her family, distribute the balance of his/her assets and income to his/her creditors to repay his/her debts.

12. Q: Can a bankrupt travel by taxi?

A: He/She should not unless there are reasonable grounds for doing so.

13. Q: Can a bankrupt continue to make payments in respect of the life insurance policy taken out?

A: The Trustee will not usually allow the bankrupt to make payments in respect of the life insurance policy taken out.

14. Q: Can a debtor obtain a loan after presentation of a bankruptcy petition?

A: After a bankruptcy petition has been presented to the court, the debtor should refrain from obtaining any further loans.

15. Q: Can a bankrupt travel overseas?

A: Yes, provided that the expenses are not met from his/her assets and income. Moreover, before doing so, he/she should inform the Trustee of his/her travel arrangements.

16. Q: Will family members of a bankrupt be required to bear the bankrupt's indebtedness?

A: No.

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Property of Bankrupt

17. Q: Will the property of a bankrupt outside Hong Kong be realized?

A: The Trustee will realize a bankrupt's property in and outside Hong Kong. It is an offence for a bankrupt to conceal information relating to his/her property or to fail to deliver his/her property to the Trustee, and the bankrupt may be liable to be prosecuted.

18. Q: What will happen if a bankrupt transfers his/her assets before bankruptcy?

A: The Trustee will investigate all assets disposed of by the bankrupt prior to the presentation of the bankruptcy petition. It is an offence for a bankrupt to transfer any assets with a fraudulent intent, and the bankrupt may be liable to be prosecuted.

19. Q: For a flat under the joint name of the bankrupt and his spouse, what will happen to the flat after bankruptcy?

A: Generally speaking, the Trustee will realize the bankrupt's share in the joint property.

20. Q: What will happen to the provident fund of a bankrupt?

A: The provident fund of the bankrupt will be considered as part of the bankrupt's assets subject to the provisions of individual provident fund.

21. Q: If a bankrupt is a civil servant, what will happen to his/her

pension?

A: In general, his/her pension will cease to be payable upon the making of the Bankruptcy Order. He/She may submit an application to the Chief Executive through the Civil Service Bureau for approval of ex-gratia payments. In the event it is approved, the Trustee will assess his/her reasonable domestic needs and if there is any balance, the bankrupt will be required to repay his/her debts.

22. Q: Can a bankrupt buy property such as a flat, a car etc?

A: No.

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Discharge**23. Q: When will a bankrupt be discharged from bankruptcy? Is there any minimum period of time?**

A: A bankrupt, who has not previously been adjudged bankrupt and conforms to the stipulations and conditions under the Bankruptcy Ordinance, will be automatically discharged four years from the date of the Bankruptcy Order provided that there is no objection to his/her discharge from the creditors and the Trustee. If he/she has been previously adjudged bankrupt, the period will be five years.

24. Q: What are the grounds for the creditors or the Trustee to object to the automatic discharge?

A: The creditors or the Trustee may object on the grounds listed out in Section 30A(4) of the Bankruptcy Ordinance which includes non-cooperation, unsatisfactory conduct, failure to prepare an annual report of his earnings and acquisition, etc.

25. Q: What can a bankrupt do when the Trustee or the creditors object to his/her automatic discharge?

A: The bankrupt may file a defence to the court and there will be a hearing.

26. Q: Is a discharged bankrupt required to settle his debts?

A: When a bankrupt is discharged, the discharge releases him/her from all the provable debts, but not those incurred by fraud, a fine imposed for an offence, damages in respect of personal injuries to any person, etc.

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