
Simple Guide On Bankruptcy

**OFFICIAL RECEIVER'S OFFICE
HONG KONG**

INTRODUCTION

- 1.1 The Bankruptcy Ordinance provides the legal framework to enable:
- (a) A creditor to file a bankruptcy petition with the Court against an individual, a firm or a partner of a firm who owes him/her money; and
 - (b) A debtor who is unable to repay his/her debts to file a bankruptcy petition against himself/herself with the Court.
- 1.2 The main objectives of the bankruptcy legislation are:
- (a) To collect and realize all the bankrupt's assets and distribute them amongst his/her creditors; and
 - (b) To investigate the causes of insolvency and to punish the bankrupt if any breach of the bankruptcy provisions is involved.
- 1.3 The Bankruptcy Ordinance also provides for an **alternative to bankruptcy - Individual Voluntary Arrangement (IVA)** :
- (a) Under the IVA, a debtor makes a repayment proposal to the Court and the creditors. If it is approved, it will legally bind all creditors.
 - (b) The advantages of IVA are:-
 - (i) A debtor can avoid the stigma of bankruptcy;
 - (ii) He/She will be free from the legal restrictions provided for under the Bankruptcy and other Ordinances; and
 - (iii) He/She may be able to retain his/her job/profession.

Debtors are strongly advised to consider whether IVA would be appropriate for resolving the problem of debts before filing a petition for bankruptcy. Further information about IVA can be obtained from the Official Receiver's Office and other bodies experienced in insolvency matters such as accountants, solicitors, etc.

PROCEDURES FOR FILING PETITION

Creditor's Petition

- 2.1 The procedures for filing a creditor's petition for bankruptcy are:

- (a) Complete a Creditors' Bankruptcy Petition on Form 10, 10A or 10B of Bankruptcy (Forms) Rules, as appropriate, after serving the Statutory Demand on the debtor using Form 162, 163 or 164 of Bankruptcy (Forms) Rules, as appropriate, or upon failure of execution of Judgment obtained against the debtor;
- (b) Have the Petition attested and verified by affidavit;
- (c) Prepare an affidavit proving service of the Statutory Demand, if appropriate;
- (d) Deposit with the Official Receiver a sum of \$12,150 to cover the fees and expenses to be incurred by the Official Receiver (or trustee);
- (e) 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;
- (f) Deliver a sealed copy of the petition to the debtor; and
- (g) Submit a copy of all documents filed to the High Court in connection with the bankruptcy proceedings to the Official Receiver.

Debtor's Petition

2.2 The procedures for filing a debtor's petition for bankruptcy 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 by the following ways at \$10 each :-
 - (i) Calling the Publications Sales Section of ISD at 2537 1910;
 - (ii) Visiting the online Government Bookstore at <http://bookstore.esdlife.com>;
 - (iii) 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;
 - (iv) Placing order with ISD by e-mail at puborder@isd.gov.hk; and
 - (v) Downloading from the website of the Official Receiver's Office free of charge at <http://www.info.gov.hk/oro/guides/guide4.htm>;
 - (vi) Purchase at the Official Receiver's Office.

- (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 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; and
- (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.

EFFECTS OF BANKRUPTCY

- 3.1 Once a bankruptcy petition is filed or the Court makes a bankruptcy order, no proceedings can be taken against or continued with against the debtor/bankrupt or the debtor's/bankrupt's assets without the leave of the Court.
- 3.2 The Official Receiver/Trustee will take control of the assets of the bankrupt, including the accounting books and records in the case of a trading bankrupt. As regards the premises wherein the bankrupt normally resides which forms part of his/her assets, depending on the circumstances, the bankrupt may be allowed to continue living therein for a certain period of time to enable him/her to make other housing arrangements and to discuss with the Trustee how the bankrupt's interest may be realized.
- 3.3 A bankrupt may not be able to practise in certain professions for example, as a lawyer, an estate agent, an insurance agent, a securities dealer or act as a director of a limited company. A bankrupt working in the banking sector is required, under the Banking Ordinance, to inform his/her employer of his/her bankruptcy.

DUTIES OF A BANKRUPT

- 4.1 Upon the making of the Bankruptcy Order and throughout the bankruptcy period, a bankrupt must fully co-operate with the Official Receiver/Trustee in the investigation of his/her bankruptcy and the realization of assets. He/She must provide information regarding his/her assets and liabilities, financial dealings and other relevant matters.

4.2 The duties of a bankrupt include :

- (a) Attending at the Official Receiver's Office as soon as possible upon the making of the Bankruptcy Order and other subsequent meetings with the Official Receiver/Trustee whenever notified;
- (b) Handing over all assets to the Official Receiver/Trustee;
- (c) Submitting a completed Preliminary Examination Questionnaire and a completed Monthly Income and Expenses Assessment Form;
- (d) Submitting a Statement of Affairs in the case of creditor's petition;
- (e) Submitting accounting books and records in the case of a trading bankrupt;
- (f) Stop using credit cards and accounts in banks and other financial institutions immediately. However, a bankrupt may, with the permission of the Official Receiver/Trustee, open a savings account for the purpose of receiving his/her income;
- (g) Refraining from obtaining further credit;
- (h) Not making payments direct to individual creditors;
- (i) Attending all meetings of creditors;
- (j) Making contribution towards his/her estate in bankruptcy out of his/her personal income as assessed by the Official Receiver/Trustee;
- (k) Informing the Trustee of change of name, address or telephone number, if any;
- (l) Notifying the Trustee where he/she can be contacted if he/she leaves Hong Kong;
- (m) Returning to Hong Kong if requested by the Trustee to do so; and
- (n) Submitting to the Trustee an annual statement of earnings with details of any property acquired.

RIGHTS OF CREDITORS

- 5.1 Following the making of a bankruptcy order, any creditor of the bankrupt may request the Official Receiver to summon a general meeting of the bankrupt's creditors for the purpose of appointing a Trustee.

- 5.2 If there is no request from creditors, the Official Receiver will decide whether or not to summon a general meeting of the bankrupt's creditors for the purpose of appointing a Trustee. Where the total value of all the property of the bankrupt is unlikely to exceed \$200,000, the Official Receiver may apply to the High Court for an order that the bankrupt's estate be administered in a summary manner, i.e. there will be no general meeting of creditors and the Official Receiver will be appointed as the Trustee.

- 5.3 Creditors must complete a Proof of Debt Form in order to prove for any debt contracted by the bankrupt and submit it to the Official Receiver together with any supporting documentary evidence and a filing fee of \$40. The filing fee is waived in the case of claims for wages/salary or debts not exceeding \$250. At the general meeting of creditors, only proving creditors have the right to vote on the appointment of :

- (i) a Trustee; and
- (ii) a creditors' committee.

- 5.4 Creditors are entitled to obtain a copy of the Statement of Affairs on payment of the prescribed fee.

- 5.5 Any creditor with the concurrence of not less than 1/4 in value of the bankrupt's creditors may request the Official Receiver to apply to the Court for a public examination of the bankrupt in open Court. This may be attended by all proving creditors.

DISTRIBUTION OF DIVIDEND

6. If after the deduction of fees and expenses, there are funds remaining in the estate of the bankrupt, the Trustee will distribute this sum to proving creditors by way of dividends.

DISCHARGE FROM BANKRUPTCY

- 7.1 A bankrupt who has not previously been adjudged bankrupt and who has fully complied with the provisions under the Bankruptcy Ordinance will be automatically discharged four years from the date of the Bankruptcy Order provided that there is no objection from the creditors or the Trustee.

- 7.2 The creditors or the Trustee may object on the grounds set out in Section 30A(4) of the Bankruptcy Ordinance which include non-cooperation, unsatisfactory conduct, failure to prepare an annual statement of his earnings and acquisition, etc. The period of extension of bankruptcy will not exceed four years.

BANKRUPTCY OFFENCES

8. The bankruptcy offences are summarized in Schedule 1.

REFERENCE MATERIALS

- 9.1 For further information, please refer to:

- Simple Guide On Individual Voluntary Arrangement
- Bankruptcy: The Main Processing Stage
- Bankruptcy: Your Duties as a Bankrupt
- Bankruptcy: Your Rights as a Creditor
- Frequently Asked Questions about Bankruptcy

- 9.2 These documents can be obtained from the Official Receiver's Office free of charge, from the website <http://www.info.gov.hk/oro> or by fax-on-demand through telephone number 2867 2448.

ENQUIRIES

10. If further information is required, please contact us:

Mail : The Departmental Secretary
 Official Receiver's Office
 10/F-12/F, Queensway Government Offices
 66 Queensway, Hong Kong

Telephone : 2867 2448
 Fax : 3105 1814
 E-mail : oroadmin@oro.gov.hk

SCHEDULE 1

BANKRUPTCY OFFENCES

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
43A	<u>Failure to submit annual statement of earnings</u> An undischarged bankrupt shall submit to the Trustee annually a statement of his earnings during the preceding year and details of any property he acquired during such period, failing which he shall be guilty of an offence and liable to imprisonment.	Liable to imprisonment up to a maximum of six months.
129 (1)	<u>Fraudulent Debtors</u> Any persons who has been adjudicated bankrupt shall in each of the following be guilty of an offence if :- (a) the bankrupt does not fully discover to the Trustee all his property and such disposal; (b) the bankrupt fails to deliver up to the Trustee all such property in his custody or control; (c) the bankrupt does not deliver up to the Trustee all books and records in his custody or under his control relating to his property or affairs; (d) after the presentation of a bankruptcy petition or within 12 months next before such presentation (the "Relevant Period"), the bankrupt conceals any part of his property to the value of HK\$50 or upwards or conceals any debts due to or from him; (e) during the Relevant Period, the bankrupt fraudulently removes any part of his property to the value of HK\$50 or upwards; (f) the bankrupt makes any material omission or misstatement in any statement relating to his affairs;	Liable to imprisonment for up to a maximum of two years except for 129(1)(o).

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
	<p>(g) the bankrupt fails to inform the Trustee within one month after knowing or having any reason to believe that a false debt had been proved by any person under his bankruptcy;</p> <p>(h) after presentation of a bankruptcy petition, the bankrupt prevents or is party to preventing the production of any books and records affecting or relating to his property or affairs;</p> <p>(i) during the Relevant Period, the bankrupt removes, conceals, destroys, mutilates or falsifies any book or document affecting or relating to his property or affairs;</p> <p>(j) during the Relevant Period, the bankrupt makes any false entry in any book or document affecting or relating to his property or affairs;</p> <p>(k) during the Relevant Period, the bankrupt fraudulently parts with, alters or makes any omission in any documents affecting or relating to his property or affairs;</p> <p>(l) after the presentation of a bankruptcy petition or at any meeting of his creditors within 12 months next before such presentation, the bankrupt attempts to account for any part of his property by fictitious losses or expenses;</p> <p>(o) during the Relevant Period, the bankrupt pawns, pledges or disposes of any property which he has obtained on credit and has not paid for unless such pawning, pledging or disposing is in the ordinary way of the bankrupt's trade;</p> <p>(p) the bankrupt is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.</p>	<p>Liable on summary conviction to imprisonment up to a maximum of one year or upon conviction on indictment to imprisonment up to a maximum of five years.</p>

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
<p>130(1)</p> <p>130(2)</p> <p>130(3)</p>	<p><u>Certain offences by persons other than the bankrupt</u></p> <p>If any manager, accountant or book-keeper in the employment of the bankrupt does any act which if committed by the bankrupt would be a contravention of any of the provisions of section 129(1)(i) or (j), such manager, accountant or book-keeper shall be deemed to be guilty of an offence.</p> <p>Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under section 129(1)(o), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid, shall be guilty of an offence and liable for imprisonment.</p> <p>A person who knowingly makes a false statement when proving a debt in bankruptcy or knowingly makes a false statement in an affidavit required under the Bankruptcy Ordinance is guilty of an offence and is liable to a fine and to imprisonment.</p>	<p>Liable to imprisonment for up to a maximum of two years.</p> <p>Liable on summary conviction to imprisonment up to a maximum of one year or upon conviction on indictment up to a maximum of five years.</p> <p>Liable to a fine and to imprisonment up to a maximum of six months.</p>
<p>131</p>	<p><u>Undischarged bankrupt obtaining credit</u></p> <p>It is a criminal offence for a bankrupt to :-</p> <p>(a) obtain credit of HK\$100 or upwards either alone or jointly with any other person, without first informing the person from whom he obtains credit that he is an undischarged bankrupt; or</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
	<p>(b) engage in any business in a different name from that under which he was adjudicated bankrupt and in the course of such trade or business obtain credit from any persons without first disclosing to such person the name under which he was adjudicated bankrupt; or</p> <p>(c) engage in any business in a different name from that under which he was adjudicated bankrupt without first publishing in the Gazette and newspapers particulars of the business under which he was adjudicated bankrupt.</p>	
132	<p><u>Frauds by bankrupts</u></p> <p>Any person who has been adjudged bankrupt shall be guilty of an offence if :-</p> <p>(a) he has made or caused to be made any gift or transfer of or charge on his property with intent to defraud his creditors; or</p> <p>(b) with intent to defraud his creditors, he had concealed or removed any part of his property since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against him; or</p> <p>(c) with intent to defraud his creditors, he has caused or connived at the levying of any execution against his property.</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>
133(1)	<p><u>Gambling etc.</u></p> <p>Any adjudged bankrupt who having been engaged in any trade or business and having outstanding at the date of the bankruptcy order any debts contracted in the course and for the purposes of such trade or business, shall be guilty of an offence if :-</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
	<p>(a) he has within two years prior to the presentation of the bankruptcy petition materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations and such gambling or speculations are unconnected with his trade or business; or</p> <p>(b) he has between the date of the presentation of the petition and the date of the bankruptcy order lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or</p> <p>(c) on being required by the Official Receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition or between that date and the date of the bankruptcy order, he fails to give a satisfactory explanation of the manner in which such loss was incurred.</p>	
134(1)	<p><u>Failing to keep proper accounts</u></p> <p>Any person who has been adjudged bankrupt shall be guilty of an offence if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout the period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the bankruptcy order, or has not preserved all books of account so kept unless the bankrupt proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>

Bankruptcy Ordinance (Cap. 6) Section	Description of the Offence	Penalty
135	<p><u>Bankrupt absconding with property</u></p> <p>Any person who is adjudged bankrupt shall (unless he proves that he had no intent to defraud) be guilty of an offence if after the presentation of a bankruptcy petition, or within six months before such presentation, quits Hong Kong and takes with him, or attempts or makes preparation to quit Hong Kong and take with him, any part of his property to the amount of HK\$100 or upwards, which ought by law to be divided among his creditors.</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>
136	<p><u>Debtor concealing himself to avoid service</u></p> <p>Any person against whom a bankruptcy order is made shall be guilty of an offence if he conceals or absents himself from his usual or last known place of abode or business or quits Hong Kong, with intent to avoid service of any process in bankruptcy or to avoid examination in respect of his affairs or otherwise to defeat, embarrass or delay any proceedings against him in bankruptcy.</p>	<p>Liable to imprisonment for up to a maximum of two years.</p>

Companies Ordinance (Cap.32) Section	Description of the Offence	Penalty
156(1)	<p><u>(Companies Ordinance) Undischarged bankrupt acting as directors</u></p> <p>If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be guilty of an offence and liable to imprisonment and a fine.</p>	<p>Liable on summary conviction to imprisonment up to a maximum of one year and fine up to a maximum of HK\$150,000 or upon conviction on indictment to imprisonment up to a maximum of two years and fine up to a maximum of HK\$700,000.</p>