

Bankruptcy (Amendment) Bill 2015

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A BILL

To

Amend the Bankruptcy Ordinance to abolish the regime under section 30A(10) of the Ordinance for the suspension of the relevant period under section 30A(1); to set up a new regime under which the relevant period may be treated as not commencing to run on the date of the bankruptcy order; and to provide for consequential and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on 1 November 2016.

Part 2

Amendments to Bankruptcy Ordinance

2. Bankruptcy Ordinance amended

The Bankruptcy Ordinance (Cap. 6) is amended as set out in sections 3 to 6.

3. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*non-commencement order* (不開始令) means an order made by the court under section 30AC(1);

relevant period (有關期間), in relation to a bankrupt, means the relevant period mentioned in section 30A(1);”.

4. Section 30A amended (discharge from bankruptcy)

(1) Section 30A(1), after “Subject to this section”—

Add

“and section 30AC”.

(2) Section 30A(1) and (3)—

Repeal

“under this section”.

(3) Section 30A(4)—

Repeal

“The grounds”

Substitute

“Subject to subsection (4A), the grounds”.

- (4) After section 30A(4)—

Add

“(4A) A matter referred to in section 30AB(1)(b)(i) or (ii) does not form the basis for the grounds set out in subsection (4) if—

- (a) the trustee has applied under section 30AB to the court for a non-commencement order against the bankrupt; and
- (b) the court has approved or dismissed the application.”.

- (5) Section 30A(5) and (6)—

Repeal

“under this section”.

- (6) Section 30A—

Repeal subsection (10).

- (7) Before section 30A(11)—

Add

“(10A) Despite the repeal of subsection (10) by the Bankruptcy (Amendment) Ordinance 2015 (of 2015), subsection (10)(a) and (b)(ii) as in force immediately before 1 November 2016 continues to apply to a bankrupt against whom a bankruptcy order has been made before that date.”.

5. Sections 30AB and 30AC added

After section 30A—

Add

“30AB. Non-commencement of relevant period: trustee’s application

- (1) The trustee may apply to the court for a non-commencement order against a bankrupt if—
 - (a) the trustee has required the bankrupt to—
 - (i) attend an initial interview on a day appointed by the trustee for the administration of the bankrupt’s estate; and
 - (ii) provide the trustee at the initial interview with information concerning the bankrupt’s affairs, dealings and property;
 - (b) the bankrupt—
 - (i) has failed to attend the initial interview; or
 - (ii) has attended the initial interview, but failed to provide the trustee at the initial interview with all of the information concerning the bankrupt’s affairs, dealings and property as reasonably required by the trustee; and
 - (c) the administration of the bankrupt’s estate was prejudiced by the matter referred to in paragraph (b)(i) or (ii).
- (2) The trustee may apply for a non-commencement order within—
 - (a) a period of 6 months after the date of the bankruptcy order against the bankrupt; or
 - (b) a longer period specified by the court under subsection (3).

- (3) The court may, on the trustee's application (*extension application*), specify a longer period for the trustee to apply for a non-commencement order.
- (4) An extension application must be made within—
 - (a) the period referred to in subsection (2)(a); or
 - (b) (if the court has specified a longer period under subsection (3)) that longer period.
- (5) This section only applies to a bankrupt against whom a bankruptcy order is made on or after 1 November 2016.

30AC. Non-commencement of relevant period: court order and trustee's notice

- (1) On an application made by the trustee under section 30AB(1), the court may approve the application and make a non-commencement order against the bankrupt if it—
 - (a) is satisfied by the trustee as to the matters mentioned in section 30AB(1)(a), (b) and (c); and
 - (b) is not satisfied by the bankrupt that there is sufficient cause for the order not to be made.
- (2) A non-commencement order—
 - (a) must—
 - (i) specify that the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order; and
 - (ii) specify one or more terms that the bankrupt must comply with before the relevant period is to commence to run; and

- (b) may specify any other terms the court thinks fit.
- (3) If the terms specified under subsection (2)(a)(ii) are complied with by the bankrupt, the trustee must, within 14 days after the date on which all such terms are complied with—
 - (a) file with the Registrar a notice stating that fact and the date on which all such terms are complied with; and
 - (b) send a copy of the notice to—
 - (i) the bankrupt; and
 - (ii) (where the trustee is not the Official Receiver) the Official Receiver.
- (4) On the trustee's filing of the notice mentioned in subsection (3)(a), the relevant period is treated as commencing to run on the date stated in the notice under that subsection.
- (5) This section is without prejudice to any power of the court to annul a bankruptcy order.”.

6. Section 30B amended (early discharge of bankrupt)

- (1) Section 30B(1)—

Repeal

“under section 30A”.

- (2) Section 30B(2)—

Repeal

“if the bankrupt”

Substitute

“if”.

- (3) Section 30B(2)(a), (b), (c), (d), (e), (f), (g) and (h)—

Repeal

“has”

Substitute

“the bankrupt has”.

- (4) Section 30B(2)(i)—

Repeal

“has”

Substitute

“the bankrupt has”.

- (5) Section 30B(2)(i)—

Repeal the full stop

Substitute

“; or”.

- (6) After section 30B(2)(i)—

Add

“(j) the relevant period for the bankrupt has not commenced to run pursuant to a non-commencement order.”.

Part 3

Amendments to Bankruptcy Rules

7. Bankruptcy Rules amended

The Bankruptcy Rules (Cap. 6 sub. leg. A) are amended as set out in sections 8 to 11.

8. Rule 5 amended (matters to be heard in court)

After rule 5(e)—

Add

“(ea) applications under section 30AB of the Ordinance for a non-commencement order;”.

9. Rule 89 amended (lifting of suspension of discharge)

Rule 89(1)—

Repeal

“(that is to say, the period after which the bankrupt may under that section have his discharge)”.

10. Rules 89A and 89B added

After rule 89—

Add

“89A. Application for non-commencement order

- (1) On an application for a non-commencement order against a bankrupt—

- (a) (if the application is made by the Official Receiver as trustee) the Official Receiver must, with the application, file in court a report setting out the matters mentioned in subrule (2); or
 - (b) (if the application is made by a trustee other than the Official Receiver) the trustee must, with the application, file in court an affidavit setting out the matters mentioned in subrule (2).
 - (2) The matters are that—
 - (a) the reasons why it appears to the trustee that the order should be made;
 - (b) (if the application is based on the matter referred to in section 30AB(1)(b)(i) of the Ordinance) the particulars of the steps taken for notifying the bankrupt of the time and place for the initial interview; and
 - (c) the terms proposed to be complied with by the bankrupt for the relevant period to commence to run pursuant to section 30AC(4) of the Ordinance.
 - (3) The court must—
 - (a) fix the date, time and place for hearing the application; and
 - (b) give notice of the hearing to the trustee and the bankrupt.
 - (4) The trustee must send a copy of the report or affidavit to the bankrupt so as to reach the bankrupt at least 21 days before the date fixed for the hearing.

- (5) The bankrupt may, not less than 7 days before the date of the hearing, file in court a notice specifying any statements in the trustee's report or affidavit that the bankrupt intends to deny or dispute.
- (6) The bankrupt must, not less than 4 days before the date of the hearing, send a copy of the notice under subrule (5) to the trustee.
- (7) If the court makes a non-commencement order against the bankrupt, the trustee must, within 14 days after the date of the order, send a copy of the order to—
 - (a) the bankrupt; and
 - (b) (where the trustee is not the Official Receiver) the Official Receiver.

89B. Trustee's notice of commencement of relevant period

The trustee's notice filed with the Registrar under section 30AC(3)(a) of the Ordinance must be in a prescribed form.”.

11. Rule 91 amended (report or affidavit of trustee)

- (1) Rule 91(1)(iii)—

Repeal

“; and”

Substitute a semicolon.

- (2) Rule 91(1)(iv)—

Repeal

“distribution,”

Substitute

“distribution; and”.

- (3) After rule 91(1)(iv)—

Add

“(v) particulars of any non-commencement order against the bankrupt,”.

Part 4

Amendments to Bankruptcy (Forms) Rules

12. Bankruptcy (Forms) Rules amended

The Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) are amended as set out in section 13.

13. Schedule amended (forms)

- (1) The Schedule, Index of Forms, before heading “**Petition:**”—

Add

“Non-commencement Order:

Notice of commencement of relevant period for bankrupt under section 30AC of Bankruptcy Ordinance	82B
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Order for non-commencement of relevant period for bankrupt under section 30AC of Bankruptcy Ordinance	82A”.
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- (2) The Schedule, after Form 82—

Add

“FORM 82A [s. 30AC]

ORDER FOR NON-COMMENCEMENT OF RELEVANT
PERIOD FOR BANKRUPT UNDER SECTION 30AC OF
BANKRUPTCY ORDINANCE (CHAPTER 6)

(*Title.*)

On the application of the trustee for a non-commencement order against the above-named
(a) _____ (***bankrupt***), and after taking into
consideration the trustee’s (b) [report][affidavit]
filed on (c) _____.

(a) Insert full name
of bankrupt.

(b) Delete as
appropriate.

(c) Insert filing
date.

And on hearing

And on reading the evidence

And on a bankruptcy order made against the
bankrupt on (d) _____

(d) Insert date of
bankruptcy order.

And on an initial interview on a day
appointed by the trustee for the administration of
the bankrupt’s estate

(e) Delete as
appropriate.

And it appearing to the court that (e) [the
bankrupt has failed to attend the initial interview]
[the bankrupt has attended the initial interview,
but failed to provide the trustee at the initial
interview with all of the information concerning
the bankrupt’s affairs, dealings and property as
reasonably required by the trustee]

And it appearing to the court that the administration of the bankrupt's estate was prejudiced by the failure

And it appearing to the court that there is no sufficient cause for a non-commencement order not to be made under section 30AC(1) of the Bankruptcy Ordinance (Chapter 6) (*Ordinance*).

It is ordered that—

- (1) pursuant to section 30AC of the Ordinance, the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order, i.e. (d) _____;
- (2) the relevant period for the bankrupt does not commence to run until the date as stated in the trustee's notice under section 30AC(3)(a) of the Ordinance and on which all of the following term(s) has (have) been complied with—

(f) List the term(s) imposed by the court for commencement of running of relevant period.

(i) (f)

(ii) (f)

(3) (g)

(g) List any other term(s) the court thinks fit.

Dated this _____ day of _____ .

Registrar.

FORM 82B

[rule 89B]

NOTICE OF COMMENCEMENT OF RELEVANT PERIOD
FOR BANKRUPT UNDER SECTION 30AC OF
BANKRUPTCY ORDINANCE (CHAPTER 6)

(*Title.*)

Take notice that—

- (a) Insert full name of bankrupt. (1) a bankruptcy order was made against the above-named (a) _____ (***bankrupt***) on (b) _____, and an order that the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order (***non-commencement order***) was made on (c) _____; and
- (b) Insert date of bankruptcy order.
- (c) Insert date of non-commencement order.
- (2) pursuant to section 30AC of the Bankruptcy Ordinance (Chapter 6), I confirm that all the term(s) imposed by the court for the commencement of the running of the relevant period for the bankrupt as specified in the non-commencement order was (were) complied with on (d) _____ such that the relevant period is treated as commencing to run on that date.
- (d) Insert date on which all terms were complied with.

Dated this day of .

Bankruptcy (Amendment) Bill 2015

Part 4

Clause 13

C933

Signed _____

(e) Insert name of
trustee.

(e)".

Part 5

Amendment to Bankruptcy (Fees and Percentages) Order

14. Bankruptcy (Fees and Percentages) Order amended

The Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended as set out in section 15.

15. Schedule amended

The Schedule, Table A, after item 6—

Add

“6A. Application under section 30AB for a
non-commencement order 528.00”.

Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) (*Ordinance*) and its subsidiary legislation.

2. The object of the Bill is mainly to—
 - (a) abolish the regime (*old regime*) under section 30A(10) of the Ordinance for the suspension of the relevant period for a bankrupt under section 30A(1) of the Ordinance (*relevant period*); and
 - (b) set up a new regime (*new regime*) under which the relevant period may be treated, pursuant to a court order (*non-commencement order*), as not commencing to run on the date of the bankruptcy order.
3. Clause 1 sets out the short title and provides for commencement.
4. Clause 3 adds the new definitions of *non-commencement order* and *relevant period* to section 2 of the Ordinance.
5. Clause 4 amends section 30A of the Ordinance by—
 - (a) adding a new section 30A(4A) to make section 30A(3) (regarding the application for objection to the discharge of a bankrupt) and section 30B(4) (regarding the application for objection to the early discharge of a bankrupt) subject to the new regime;
 - (b) repealing section 30A(10) to abolish the old regime; and

- (c) adding a new section 30A(10A) to make the old regime continue to apply to a bankrupt against whom a bankruptcy order is made before 1 November 2016.
- 6. Clause 5 adds new sections 30AB and 30AC to the Ordinance to—
 - (a) provide for the new regime under which the trustee may apply for a non-commencement order;
 - (b) empower the court to make a non-commencement order; and
 - (c) make the new regime applicable only to a bankrupt against whom a bankruptcy order is made on or after 1 November 2016.
- 7. Clause 6 amends section 30B(2) of the Ordinance by adding a new paragraph (j) providing that the court is not to make an order for early discharge of a bankrupt if the relevant period for the bankrupt has not commenced to run pursuant to a non-commencement order.
- 8. Clauses 8, 10 and 11 amend the Bankruptcy Rules (Cap. 6 sub. leg. A) by—
 - (a) amending rule 5 to require an application for a non-commencement order to be heard and determined in open court;
 - (b) adding new rules 89A and 89B to provide for the court procedures relating to a non-commencement order; and
 - (c) amending rule 91 to require the particulars of any non-commencement order against a bankrupt to be included in—

- (i) the report of the Official Receiver; or
 - (ii) the affidavit of the trustee (not being the Official Receiver),
- filed in respect of the bankrupt's application for early discharge under section 30B of the Ordinance.

9. Clause 13 amends the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) by adding two new forms (Forms 82A and 82B) relating to the making of a non-commencement order and the notice of commencement of the relevant period.
10. Clause 15 amends the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to provide for the fee payable to the court on an application for a non-commencement order.