

「Cap. 6 BANKRUPTCY ORDINANCE」

[Law, 2017.1.3., Amended]

BANKRUPTCY ORDINANCE*

To amend the law relating to bankruptcy.

[January 1932]

Editorial Note:

*This Ordinance was amended by the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005). The transitional and savings provisions contained in s. 49 of that Amendment Ordinance are reproduced as follows:

“49.

Transitional and savings provisions

(1) Notwithstanding anything contained in this Ordinance, the amendments effected under this Ordinance (except sections 12, 19 and 32) shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if this Ordinance had not been enacted.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, #“commencement date” (生效日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(2) of this Ordinance.”.

Commencement date: 10 December 2007.

PART I

SHORT TITLE AND INTERPRETATION

1.

Short title

This Ordinance may be cited as the Bankruptcy Ordinance.

2.

Interpretation

In this Ordinance, unless the context otherwise requires—

“affidavit” (誓章) includes statutory declaration, affirmation and attestation on honour;

“bailiff” (執達主任) includes any officer charged with the execution of a writ or other process;

“bankruptcy debt” (破産債項), in relation to a bankrupt, means—

(a)

any debt or liability to which he is subject at the commencement of the bankruptcy; and

(b)

any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy;

(Added 76 of 1996 s. 2)

“court” (法院、法庭) means the Court of First Instance sitting in its bankruptcy jurisdiction;

(Amended 92 of 1975 s. 59; 25 of 1998 s. 2)

“debt provable in bankruptcy” (破産案中可證債權、破産案中可證債項) or “provable debt” (可證債權、可證債項) includes any debt or liability by this Ordinance made provable in bankruptcy;

“

goods

”(

貨品

) includes all chattels personal;

“

nominee

”(

代名人

) means the Official Receiver or some person who by reason of his experience and qualifications is, in the opinion of the court, a suitable person to perform the duties of the nominee specified in sections 20A, 20D, 20E and 20G;

(Added 76 of 1996 s. 2)

non-commencement order

(

不開始令

) means an order made by the court under section 30AC(1);

(Added 1 of 2016 s. 3)

“

oath

”(

誓言

) includes affirmation, declaration and attestation on honour;

“

Official Receiver

”(

破產管理署署長

) means the Official Receiver appointed under section 75;

(Added 47 of 1984 s. 2)

“

ordinary resolution

”(

普通決議

) means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“

prescribed

”(

訂明

) means prescribed by general rules within the meaning of this Ordinance;

“

property

”(

財產

) includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in Hong Kong or elsewhere, also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

(Amended 47 of 1984 s. 16)

“

proposal

”(

建議

) means a proposal for a voluntary arrangement made to his creditors by a debtor;

(Added 76 of 1996 s. 2)

“

provisional trustee

”(

暫行受託人

), in relation to a bankrupt, means—

(a)

where no person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the Official Receiver; or

(b)

where any person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the person;

(Added 18 of 2005 s. 2)

“

Registrar

”(

司法常務官

) means the Registrar of the High Court, and any Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court;

(Replaced 47 of 1984 s. 2. Amended 25 of 1998 s. 2; 10 of 2005 s. 167)

relevant period

(

有關期間

), in relation to a bankrupt, means the relevant period mentioned in section 30A(1);

(Added 1 of 2016 s. 3)

“

resolution

”(

決議

) means ordinary resolution;

“

secured creditor

”(

有抵押債權人

) means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof, as a security for a debt due to him from the debtor;

“

special resolution

”(

特別決議

) means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“

trustee

”(

受託人

) means, subject to section 58(1B), the trustee in bankruptcy of a bankrupt's estate;

(Amended 76 of 1996 s. 72; 18 of 2005 s. 2)

“

voluntary arrangement

”(

自願安排

) means a composition in satisfaction of a debtor's debts or a scheme of arrangement of a debtor's affairs.

(Added 76 of 1996 s. 2)

(Amended 76 of 1996 s. 2)

[cf. 1914 c. 59 s. 167 U.K.]

PART II

PROCEEDINGS FROM BANKRUPTCY PETITION TO DISCHARGE*

Editorial Note:

*

(Replaced 76 of 1996 s. 3)

3.

Who may present a bankruptcy petition

(1)

A petition for a bankruptcy order to be made against a debtor may be presented to the court—

(a)

by one of the debtor's creditors or jointly by more than one of them;

(b)

by the debtor himself;

(c)

by the nominee of, or any person (other than the debtor) who is for the time being bound by, a voluntary arrangement proposed by the debtor and approved by his creditors; or

(d)

where a criminal bankruptcy order has been made against the debtor, by the Official Petitioner.

(2)

Subject to the following provisions of this Part, the court may make a bankruptcy order on any such petition.

(Replaced 76 of 1996 s. 4)

4.

Conditions to be satisfied in respect of debtor

(1)

A bankruptcy petition shall not be presented to the court under section 3(1)(a) or (b) unless the debtor—

(a)

is domiciled in Hong Kong;

(b)
is personally present in Hong Kong on the day on which the petition is presented; or

(c)
at any time in the period of 3 years ending with that day—

(i)
has been ordinarily resident, or has had a place of residence, in Hong Kong; or

(ii)
has carried on business in Hong Kong.

(2)
The reference in subsection (1)(c) to a debtor carrying on business includes—

(a)
the carrying on of business by a firm or partnership of which the debtor is a member; and

(b)
the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(Replaced 76 of 1996 s. 4)

5.

Other preliminary conditions

(1)
Where a bankruptcy petition relating to a debtor is presented by a person who is entitled to present a petition under 2 or more paragraphs of section 3(1), the petition is to be treated for the purposes of this Part as a petition under whichever of those paragraphs is specified in the petition.

(2)
A bankruptcy petition shall not be withdrawn without the leave of the court.

(3)

The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of rules or for any other reason, to dismiss a bankruptcy petition or to stay such a petition and, where it stays such a petition, it may do so on such terms and conditions as it thinks fit.

(4)

Without prejudice to subsection (3), where a petition under section 3(1)(a), (b) or (c) in respect of a debtor is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Receiver dismiss the petition if it appears to it appropriate to do so.

(Replaced 76 of 1996 s. 4)

6.

Grounds of creditor's petition

(1)

A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2)

Subject to sections 6A to 6C, a creditor's petition may be presented to the court in respect of a debt or debts if, but only if, at the time the petition is presented—

(a)

the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds \$10,000 or a prescribed amount;

(b)

the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured;

(c)

the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and

(d)

there is no outstanding application to set aside a statutory demand served under section 6A in respect of the debt or any of the debts.

(3)

A debt is not to be regarded for the purposes of subsection (2) as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.

(4)

Notwithstanding subsection (2)(c) and (d), a creditor's petition may be presented if there are reasonable grounds for believing that the debtor intends to depart, or has departed, from Hong Kong and the debtor knows or ought reasonably to know that his departure would result in defeat or delay for his creditors, and this subsection applies irrespective of the reason for his departure.

(5)

The Financial Secretary may, by regulation, prescribe an amount greater than \$10,000 for the purposes of subsection (2)(a).

(Replaced 76 of 1996 s. 4)

6A.

Definition of “inability to pay”, etc.; the statutory demand

(1)

For the purposes of section 6(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a)

the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the

demand has been neither complied with nor set aside in accordance with the rules; or

(b)

execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.

(2)

For the purposes of section 6(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a)

the petitioning creditor to whom it is owed has served on the debtor a demand (also known as “the statutory demand”) in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due;

(b)

at least 3 weeks have elapsed since the demand was served; and

(c)

the demand has been neither complied with nor set aside in accordance with the rules.

(Added 76 of 1996 s. 4)

6B.

Creditor with security

(1)

A debt which is the debt, or one of the debts, in respect of which a creditor’s petition is presented need not be unsecured if either—

(a)

the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors; or

(b)

the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2)

In a case falling within subsection (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of sections 6 to 6C as separate debts.

(Added 76 of 1996 s. 4)

6C.

Expedited petition

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 6A, the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

(Added 76 of 1996 s. 4)

6D.

Proceedings on creditor's petition

(1)

The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a)

a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured nor compounded for; or

(b)

a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2)

In a case in which the petition contains such a statement as is required by section 6C, the court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 6A.

(3)

The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

(a)

that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented;

(b)

that the acceptance of that offer would have required the dismissal of the petition; and

(c)

that the offer has been unreasonably refused,

and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

(4)

In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5)

Nothing in sections 6 to 6C or this section prejudices the power of the court, in accordance with the rules, to authorize a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

(Added 76 of 1996 s. 4)

7.

Liability of firm to have bankruptcy order made against it

(1)

The following provisions shall have effect in the case of a firm carrying on business in Hong Kong—

(a)

(Repealed 76 of 1996 s. 5)

(b)

it shall be sufficient that a bankruptcy order against the firm be made in the firm name, without mentioning the names of the partners, and such bankruptcy order shall affect the joint and separate property of all the partners;

(Amended 76 of 1996 s. 5)

(c)

the right of a creditor to present a bankruptcy petition against the firm, and the jurisdiction of the court to make a bankruptcy order against the firm, shall not be affected by the fact, if it is so, that all or any of the partners of the firm are not resident or domiciled in Hong Kong.

(Amended 76 of 1996 s. 5)

(2)

The provisions of this section shall, so far as the nature of the case will permit, apply to any person carrying on business in Hong Kong in a name or style other than his own name.

(3)

A creditor may present a petition for a bankruptcy order against a firm in the same way as he may present such a petition against a debtor provided that the conditions set out in sections 4(1)(c)(ii), 5, 6, 6A and 6B are met in respect of the firm.

(Added 76 of 1996 s. 5)

(Amended 47 of 1984 s. 16)

8.

Powers of Official Receiver and duties of debtor on petition being filed

(1)

Immediately on the filing of any petition the Official Receiver may, in cases where he has reason to believe that any offence under this Ordinance or any fraud has been or is about to be perpetrated, by notice sent by messenger or by ordinary post, summon the debtor to attend before him to give such information as he requires, and may, either by himself or his agent authorized by him in writing, enter on any premises occupied by the debtor between the hours of 8 a.m. and 6 p.m. for the purpose of inspecting his property, stock in trade and books of account.

(2)

It shall be the duty of the debtor to furnish the Official Receiver with all such information as it is in the debtor's power to give or to obtain.

(3)

If the debtor fails without reasonable cause to attend on the Official Receiver as aforesaid or to furnish him with such information as aforesaid, or if the debtor obstructs the search of the premises or the production of any book or document required in connection therewith, or authorizes or permits any such obstruction, the debtor shall be liable on summary conviction to imprisonment for any term not exceeding 6 months, and every person who takes any part in any such obstruction, whether authorized or permitted by the debtor or not, shall be liable to the like penalty.

9.

Creditor's petition and order thereon

(1)

A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served in the prescribed manner.

(Amended 39 of 1987 s. 2)

(2)

At the hearing the court shall require proof of the debt of the petitioning creditor and of the service of the petition, and, if satisfied with the proof, may make a bankruptcy order in pursuance of the petition.

(Amended 76 of 1996 s. 6)

(3)

If the court is not satisfied with the proof of the petitioning creditor's debt or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts or has a reasonable prospect of being able to pay them, or considers that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(Amended 45 of 1986 s. 2; 76 of 1996 s. 6)

(4)

(Repealed 76 of 1996 s. 6)

(5)

Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6)

Where proceedings are stayed the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a bankruptcy order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(Amended 76 of 1996 s. 6)

(7)

(Repealed 76 of 1996 s. 6)

[cf. 1914 c. 59 s. 5 U.K.]

10.

Grounds of debtor's petition

(1)

A debtor's petition may be presented to the court only on the ground that the debtor is unable to pay his debts.

(2)

The petition shall be accompanied by a statement of the debtor's affairs containing—

(a)

such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(b)

such other information as may be prescribed.

(3)

A debtor's petition may be presented whether or not the aggregate amount of indebtedness is equal to or exceeds the amount provided for a creditor's petition under section 6(2)(a).

(Replaced 76 of 1996 s. 7)

11.

Appearance of Official Receiver on petition

On the hearing of any creditor's or debtor's petition it shall be lawful for the Official Receiver to appear and to call, examine and cross-examine any witness and, if he so thinks fit, to support or oppose the making of a bankruptcy order.

(Amended 76 of 1996 s. 73)

12.

Effect of bankruptcy order

(1)

On the making of a bankruptcy order, the Official Receiver shall thereby become the provisional trustee of the property of the bankrupt, and thereafter, except as directed by this Ordinance, 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 leave of the court and on such terms as the court may impose.

(Amended 76 of 1996 ss. 8 and 72; 18 of 2005 s. 3)

(1A)

In the case of a debtor's petition, the Official Receiver as the provisional trustee may at any time appoint any person to act as the provisional trustee of the property of the bankrupt in his place if he considers that—

(a)

the value of the property of the bankrupt is unlikely to exceed \$200,000; and

(b)

the person has the qualifications prescribed in Schedule 3.

(Added 18 of 2005 s. 3)

(1B)

The power of the Official Receiver to appoint a person as provisional trustee includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.

(Added 18 of 2005 s. 3)

(1C)

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 3.

(Added 18 of 2005 s. 3)

(2)

This section shall not affect the power of any secured creditor to realize or otherwise deal with his security.

[cf. 1914 c. 59 s. 7 U.K.]

13.

Power to appoint interim trustee

The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a bankruptcy order is made, appoint the Official Receiver to be interim trustee of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(Amended 76 of 1996 s. 9; 18 of 2005 s. 4)

[cf. 1914 c. 59 s. 8 U.K.]

14.

Power to stay pending proceedings

(1)

The court may at any time after the presentation of a bankruptcy petition either stay any action, execution or other legal process against the property or person of the debtor or allow it to continue on such terms as it may think just.

(2)

Where the court makes an order staying any action or proceedings or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding or to the address of his solicitor.

(3)

Without prejudice to the provisions of subsection (1), if the court orders the release of any debtor who is under execution for a civil debt, it may impose such conditions as it thinks fit, and in particular it may require as a condition of such release that the debtor find security to attend in the subsequent bankruptcy proceedings and to abide by all orders of the court relating to the said proceedings.

[cf. 1914 c. 59 s. 9 U.K.]

15.

Power to appoint special manager

(1)

The court may, on the application of the Official Receiver or of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Official Receiver, appoint a manager thereof accordingly, who shall have such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver.

(Amended 18 of 2005 s. 5)

(2)

The special manager shall give security and account in such manner as the court may direct.

(3)

The special manager shall receive such remuneration as may be fixed by the court.

(Amended 76 of 1996 s. 10)

(4)

The term of office of the special manager shall last until—

(a)

in a case where a provisional trustee is appointed under section 12(1A), the appointment; or

(b)

in any other case, a trustee is appointed or constituted under section 17, 100D(1), 112(4) or 112A(1)(i) or paragraph 6 of Part II of Schedule 1.

(Added 18 of 2005 s. 5)

[cf. 1914 c. 59 s. 10 U.K.]

16.

Advertisement of bankruptcy order

Notice of every bankruptcy order, stating the name, address and description of the debtor, the date of the order, and the date of the petition, shall be gazetted by the Official Receiver.

(Amended 76 of 1996 s. 73)

[cf. 1914 c. 59 s. 11 U.K.]

Proceedings consequent on order

17.

Power to make appointment of trustees

(1)

The power to appoint some fit person as trustee (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable, except at a time when an order for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors.

(2)

Any power to appoint a person as trustee includes power to appoint 2 or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(3)

The appointment of any person as trustee takes effect at the time specified in the creditors' resolution or the court order, as the case may be, appointing him.

(4)

This section is without prejudice to the provisions of this Ordinance under which the Official Receiver is, in certain circumstances, to be trustee.

(Replaced 76 of 1996 s. 11)

17A.

Summoning of meeting to appoint first trustee

(1)

Where a bankruptcy order has been made and no order for the summary administration of the bankrupt's estate has been made, it is the duty of the provisional trustee, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee under section 17.

(2)

This section does not apply where a criminal bankruptcy order was made and it is subject to the provision made in section 17B(3).

(3)

Subject to section 17B, if the provisional trustee decides not to summon such a meeting, he shall, before the end of the period of 12 weeks referred to in subsection (1), give notice of his decision to the court and to every creditor of the bankrupt who is known to the provisional trustee or is identified in the bankrupt's statement of affairs.

(4)

On the date of the giving to the court of a notice under subsection (3) the provisional trustee is the trustee.

(Added 76 of 1996 s. 11. Amended 18 of 2005 s. 6)

17B.

Power of creditors to requisition meeting

(1)

Where in the case of any bankruptcy, the provisional trustee has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing a trustee under section 17, any creditor of the bankrupt may request the provisional trustee to summon such a meeting for that purpose.

(2)

If such a request appears to the provisional trustee to be made with the concurrence of not less than 1/4 in value of the bankrupt's creditors (including the creditor making the request), it is the duty of the provisional trustee to summon the requested meeting.

(3)

Where subsection (2) applies, the provisional trustee is required neither to reach a decision for the purposes of section 17A nor (if he has reached one) to serve any notice under section 17A(3).

(Added 76 of 1996 s. 11. Amended 18 of 2005 s. 7)

18.

Statement of affairs

(1)

Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs, which shall be verified by affidavit, to the trustee not more than 21 days after the day the order was made.

(2)

The statement of affairs shall contain—

(a)

such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(b)

such other information as may be prescribed.

(3)

The trustee may, if he thinks fit—

(Amended 18 of 2005 s. 8)

(a)

release the bankrupt from his duty under subsection (1); or

(b)

extend the period specified in that subsection,

and, where the trustee has refused to exercise a power conferred by this section, the court may, if it thinks fit, exercise it.

(4)

A bankrupt who, without reasonable excuse—

(a)

fails to comply with the obligation imposed by this section; or

(b)

submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

(5)

Any person stating himself to be a creditor of the bankrupt may, on payment of the prescribed fee, personally or by agent inspect the statement at all reasonable times and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor is guilty of a contempt of court and liable to be punished accordingly on the application of the trustee.

(Replaced 76 of 1996 s. 12. Amended 18 of 2005 s. 8)

Public examination of debtor

19.

Public examination of bankrupt

(1)

Where a bankruptcy order has been made, the Official Receiver or the trustee may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.

(Amended 18 of 2005 s. 9)

(2)

Unless the court otherwise orders, the trustee shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than 1/4 in value of such creditors (including the creditor giving notice).

(Amended 18 of 2005 s. 9)

(3)

Where one of the bankrupt's creditors, without the requisite concurrence under subsection (2), so requests, the trustee shall make an application under subsection (1) but, notwithstanding subsection (4), the court may decline to direct that a public examination of the bankrupt be held.

(Amended 18 of 2005 s. 9)

(4)

On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4A)

The trustee may, before or at any time after making an application under subsection (1), in writing request the creditor at whose instance the application is made to deposit with him within the specified time such sum or further sum as he considers necessary to pay his costs and expenses in holding the public examination.

(Added 18 of 2005 s. 9)

(4B)

Notwithstanding anything in subsections (2) and (3), the trustee may refuse to make an application under subsection (1) or discontinue the public examination concerned if the creditor to whom a request is made under subsection (4A) fails to comply with the request.

(Added 18 of 2005 s. 9)

(5)

The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure—

(a)

the Official Receiver and, in the case of a debtor adjudged bankrupt on a petition under section 3(1)(d), the Official Petitioner;

(b)

the trustee;

(Amended 18 of 2005 s. 9)

(c)

any person who has been appointed as special manager of the bankrupt's estate or business;

(d)

any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(6)

The bankrupt may, but not at the expense of the estate, employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answer given by him, and may make representations on his behalf.

(7)

There shall be made in writing such record of the examination as the court thinks proper and the record shall be read over either to or by the bankrupt, signed by him, and verified by affidavit at a venue fixed by the court.

(8)

(Repealed 18 of 2005 s. 9)

(9)

It shall be the duty of a bankrupt examined under this section to answer all questions that the court may put or allow to be put to him.

(10)

Evidence given on oath under this section shall not be admissible in criminal proceedings other than for perjury by the person who gave it.

(Replaced 76 of 1996 s. 13)

19A.

(Repealed 76 of 1996 s. 13)

Voluntary arrangements

20.

Interim order

(1)

In the circumstances specified in section 20A, the court may make an interim order under this section.

(2)

An interim order has the effect that, during the period for which it is in force—

(a)

no bankruptcy petition relating to the debtor may be presented or proceeded with; and

(b)

no other proceedings, no execution or other legal process and no distress may be commenced or continued against the debtor or his property except with the leave of the court.

(Replaced 76 of 1996 s. 13)

20A.

Application for interim order

(1)

Application to the court for an interim order may be made where the debtor intends to make a proposal.

(2)

The proposal must provide for a nominee to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.

(3)

The application may be made—

(a)

if the debtor is an undischarged bankrupt, by the debtor, the trustee or the Official Receiver; and

(b)

in any other case, by the debtor.

(4)

An application shall not be made by an undischarged bankrupt unless he has given notice of the proposal to—

(a)

the Official Receiver; and

(b)

the trustee, if any.

(Added 76 of 1996 s. 13)

20B.

Effect of application

(1)

At any time when an application under section 20A for an interim order is pending the court may stay any action, execution or other legal process against the property or person of the debtor.

(2)

Any court in which proceedings are pending against a debtor may, on proof that an application under that section has been made in respect of that debtor, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(Added 76 of 1996 s. 13)

20C.

Cases in which interim order can be made

(1)

The court shall not make an interim order on an application under section 20A unless it is satisfied—

(a)

that the debtor intends to make a proposal;

(b)

that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy; and

(c)

that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day.

(2)

The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3)

Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4)

Subject to subsections (5) and (6), the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the

bankruptcy or modifying any provision of this Ordinance or the rules in their application to the debtor's bankruptcy.

(5)

An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of this Ordinance or the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6)

Subject to sections 20A to 20L, an interim order made on an application under section 20A ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

(Added 76 of 1996 s. 13)

20D.

Nominee's report on debtor's proposal

(1)

Where an interim order has been made on an application under section 20A, the nominee shall, before the order ceases to have effect, submit a report to the court stating—

(a)

whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(b)

if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2)

For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a)

a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(b)

a statement of his affairs containing—

(i)

such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(ii)

such other information as may be prescribed.

(3)

The court may, on an application made by the debtor or the nominee in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.

(4)

If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors would be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors.

(5)

The court may discharge the interim order if it is satisfied, on the application of the nominee—

(a)

that the debtor has failed to comply with his obligations under subsection (2); or

(b)

that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

(Added 76 of 1996 s. 13)

20E.**Summoning of creditors' meeting**

(1)

Where it has been reported to the court under section 20D that a meeting of the debtor's creditors should be summoned, the nominee shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2)

The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3)

For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a)

every person who is a creditor of the bankrupt in respect of a bankruptcy debt; and

(b)

every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

(Added 76 of 1996 s. 13)

20F.**Decisions of creditors' meeting**

(1)

A creditors' meeting summoned under section 20E shall decide whether to approve the proposed voluntary arrangement.

(2)

The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3)

The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(4)

The meeting shall not approve any proposal or modification under which—

(a)

any debt of the debtor that is given priority under section 38 is to be paid otherwise than in priority to such of his debts as are not given such priority; or

(b)

a creditor of the debtor in respect of a debt that is given priority under section 38 is to be paid an amount that is less than he would be entitled to under the provisions of that section,

except with the concurrence of the creditor concerned.

(5)

The meeting shall be conducted in accordance with the rules.

(Added 76 of 1996 s. 13)

20G.

Report of decisions to court

(1)

After the conclusion in accordance with the rules of the meeting summoned under section 20E, the nominee shall report the result of the meeting to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2)

If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

(Added 76 of 1996 s. 13)

20H.**Effect of approval**

(1)

Where the meeting summoned under section 20E approves the proposed voluntary arrangement (with or without modifications)—

(a)

the approved arrangement—

(i)

takes effect as if made by the debtor at the meeting; and

(ii)

binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at it) as if he were a party to the arrangement; and

(b)

any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 20G ceases to have effect at the end of that period.

(2)

Subsection (1)(b) applies except to such extent as the court may direct for the purposes of any application under section 20J.

(3)

Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (1)(b), that petition is deemed, unless the court otherwise orders, to have been dismissed.

(Added 76 of 1996 s. 13)

20I.**Effect where debtor an undischarged bankrupt**

(1)

Where the creditors' meeting summoned under section 20E approves the proposed voluntary arrangement (with or without modifications) and the debtor is an undischarged bankrupt, the court may—

(a)

annul the bankruptcy order by which he was adjudged bankrupt; or

(b)

give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(2)

The court shall not annul a bankruptcy order under subsection (1)—

(a)

at any time before the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 20G; or

(b)

at any time when an application under section 20J, or an appeal in respect of such an application, is pending or at any time in the period within which such an appeal may be brought.

(Added 76 of 1996 s. 13)

20J.

Challenge of meeting's decision

(1)

Subject to this section, an application to the court may be made, by any of the persons specified in subsection (2), on one or both of the following grounds—

(a)

that a voluntary arrangement approved by a creditors' meeting summoned under section 20E unfairly prejudices the interests of a creditor of the debtor;

(b)

that there has been some material irregularity at or in relation to such a meeting.
(2)

The persons who may apply under this section are—

- (a)
the debtor;
- (b)
a person entitled, in accordance with the rules, to vote at the creditors' meeting;
- (c)
the nominee (or his replacement under section 20K(3)); and
- (d)
if the debtor is an undischarged bankrupt, the trustee or the Official Receiver.

(3)
An application under this section shall not be made after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 20G.

(4)
Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following—

- (a)
revoke or suspend any approval given by the meeting;
- (b)
give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.

(5)
Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that

the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6)

Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7)

In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a)

things done since the meeting under any voluntary arrangement approved by the meeting; and

(b)

such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8)

Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 20E is not invalidated by any irregularity at or in relation to the meeting.

(Added 76 of 1996 s. 13)

20K.

Implementation and supervision of approved voluntary arrangement

(1)

Where a voluntary arrangement approved by a creditors' meeting summoned under section 20E has taken effect and the debtor, any of his creditors or any

other interested person is dissatisfied by any act, omission or decision of the nominee, he may apply to the court; and on such an application the court may—

(a)

confirm, reverse or modify any act or decision of the nominee;

(b)

give him directions; or

(c)

make such other order as it thinks fit.

(2)

The nominee may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(3)

The court may, whenever—

(a)

it is expedient to appoint a person to carry out the functions of the nominee; and

(b)

it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is experienced in insolvency matters, either in substitution for the existing nominee or to fill a vacancy.

(Added 76 of 1996 s. 13)

20L.

Default in connection with voluntary arrangement

(1)

The court shall not make a bankruptcy order on a petition under section 3(1)(c) (nominee of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a)

that the debtor has failed to comply with his obligations under the voluntary arrangement; or

(b)

that information which was false or misleading in any material particular or which contained material omissions—

(i)

was contained in any statement of affairs or other document supplied by the debtor under sections 20 to 20K to any person; or

(ii)

was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under those sections; or

(c)

that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the nominee of the arrangement.

(2)

Where a bankruptcy order is made on a petition under section 3(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

(Added 76 of 1996 s. 13)

21.

(Repealed 76 of 1996 s. 13)

22.

(Repealed 76 of 1996 s. 13)

23.

Provisions where person other than Official Receiver is appointed trustee

(1)

Where in a bankruptcy a person other than the Official Receiver is appointed trustee, that person—

(a)

shall not be capable of acting as trustee until he has notified his appointment to the Official Receiver and given security as provided in subsection (2)(a) to the satisfaction of the Official Receiver;

(b)

shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the bankrupt, and generally such aid as may be requisite for enabling the Official Receiver to perform his duties under this Ordinance.

(Amended 18 of 2005 s. 10)

(2)

In the case of a trustee other than the Official Receiver, the following provisions as to security shall have effect, namely—

(a)

the security shall be given to the Official Receiver in such manner as he may from time to time direct;

(b)

it shall not be necessary that security shall be given in each separate bankruptcy; but security may be given either specially in a particular bankruptcy, or generally, to be available for any bankruptcy in which the person giving security may be appointed, as trustee;

(c)

the Official Receiver shall fix the amount and nature of such security, and may from time to time, as he thinks fit, either increase or diminish the amount of special or general security which any person has given;

(d)

the cost of furnishing the required security by a trustee, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the estate as an expense incurred in the bankruptcy.

(Replaced 76 of 1996 s. 14)

24.

Creditors' committee

(1)

The creditors qualified to vote may at their first or any subsequent meeting, by resolution, appoint a creditors' committee to act with the trustee.

(2)-(9)

(Repealed 76 of 1996 s. 15)

(10)

If there be no creditors' committee any act or thing or any direction or permission by this Ordinance authorized or required to be done or given by the committee may be done or given by the court on the application of the trustee.

(Amended 76 of 1996 s. 15)

[cf. 1914 c. 59 s. 20 U.K.]

25.

(Repealed 76 of 1996 s. 16)

Control over person and property of debtor

26.

Duties of debtor as to discovery and realization of property

(1)

Every debtor against whom a bankruptcy order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(Amended 76 of 1996 s. 73)

(2)

He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other

meetings of his creditors, wait at such times on the Official Receiver, special manager or trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the Official Receiver, special manager or trustee or may be provided by this Ordinance, or be prescribed or be directed by the court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the Official Receiver, special manager, trustee or any creditor or person interested.

(3)

He shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

(Amended 76 of 1996 s. 17)

(4)

If a bankrupt wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Ordinance and which is for the time being in his possession or under his control, to the Official Receiver or to the trustee or to any person authorized by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court and may be punished accordingly.

(Amended 76 of 1996 s. 72)

[cf. 1914 c. 59 s. 22 U.K.]

27.

Arrest of debtor under certain circumstances

(1)

The court may, by warrant addressed to any person or persons named therein, cause a debtor to be arrested, and any books, papers, money and goods in his possession or under his control or relating to his affairs to be seized, and him

and them to be safely kept as prescribed until such time as the court may order under the following circumstances—

(a)
if after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he has absconded, or is about to abscond, with a view of avoiding payment of a debt, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;

(b)
if, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to dispose of or remove his goods with a view to preventing or delaying possession being taken of them by the Official Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;

(c)
if, after service of a bankruptcy petition on him or after a bankruptcy order is made against him he removes any goods in his possession above the value of \$50 without the leave of the Official Receiver or trustee;

(Amended 37 of 1950 Schedule)

(d)
if without good cause shown he fails to attend any examination ordered by the court;

(e)
if there is probable cause for believing that he has committed an offence punishable under this Ordinance.

(Amended 76 of 1996 s. 18)

(2)

No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to unfair preferences.

(Amended 76 of 1996 ss. 18 and 73)
[cf. 1914 c. 59 s. 23 U.K.]

28.

Re-direction of debtor's telegrams and letters

Where a bankruptcy order is made against a bankrupt the court, on the application of the Official Receiver or trustee, may from time to time order that for such time, not exceeding 3 months, as the court thinks fit telegrams and post letters and other postal packets, addressed to the bankrupt at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the agent of the telegraph organization or the Post-master General, or the officers acting under them, to the Official Receiver or the trustee or otherwise as the court directs, and the same shall be done accordingly.

(Amended 76 of 1996 ss. 72 and 73)
[cf. 1914 c. 59 s. 24 U.K.]

29.

Inquiry as to bankrupt's conduct, dealings and property

(1)

The court may, on the application of the Official Receiver or trustee, at any time after a bankruptcy order has been made against a bankrupt summon before it the bankrupt or his spouse, or any person known or suspected to have in his possession any of the estate or effects belonging to the bankrupt or supposed to be indebted to the bankrupt, or any person whom the court may deem capable of giving information respecting the bankrupt, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

(Amended 76 of 1996 ss. 71, 72 and 73)

(1A)

The court may require a person referred to in subsection (1), other than the bankrupt, to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(Added 76 of 1996 s. 19)

(2)

If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

(3)

The court may, by itself or by a commissioner appointed for the purpose, examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the bankrupt, his dealings or property and any other matter the court considers relevant.

(Amended 76 of 1996 ss. 19 and 72)

(3A)

It shall be the duty of a person examined under subsection (3) to answer all questions that the court may put or allow to be put to him.

(Added 76 of 1996 s. 19)

(3B)

Evidence given on oath under this section shall not be admissible in criminal proceedings other than for perjury by the person who gave it.

(Added 76 of 1996 s. 19)

(4)

If on the examination of any person it appears to the court that he is indebted to the bankrupt, the court may, on the application of the Official Receiver or trustee, order him to pay to the Official Receiver or trustee, at such time and in

such manner as to the court seems expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(Amended 76 of 1996 ss. 19 and 72)

(5)

If on the examination of any person it appears to the court that he has in his possession any property belonging to the bankrupt, the court may, on the application of the Official Receiver or trustee, order him to deliver to the Official Receiver or trustee such property or any part thereof, at such time and in such manner and on such terms as to the court may seem just.

(Amended 76 of 1996 ss. 19 and 72)

(6)

The court may, if it thinks fit, order that any person who if in Hong Kong would be liable to be brought before it under this section shall be examined in any place out of Hong Kong by a commissioner appointed for the purpose.

(Amended 47 of 1984 s. 16)

(7)

In the case of the death of the bankrupt or his spouse or of any other witness whose evidence has been duly taken under this Ordinance, the deposition of the person so deceased purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall in all legal proceedings be admitted as evidence of the matters therein deposed to, saving all just exceptions.

(Amended 76 of 1996 ss. 71 and 72)

[cf. 1914 c. 59 s. 25 U.K.]

30.

Commencement and continuance of bankruptcy

The bankruptcy of a person against whom a bankruptcy order has been made—

(a)

commences with the day on which the order is made; and

(b)

continues until he is discharged under section 30A or 30B.

(Replaced 76 of 1996 s. 20)

30A.

Discharge from bankruptcy

(1)

Subject to this section and section 30AC, a bankrupt is discharged from bankruptcy by the expiration of the relevant period.

(Amended 1 of 2016 s. 4)

(2)

The relevant period referred to in subsection (1) is as follows—

(a)

where a person has not previously been adjudged bankrupt, the period of 4 years;

(b)

where a person has been previously adjudged bankrupt, the period of 5 years, beginning with the commencement of the bankruptcy.

(3)

Where the court is satisfied on the application of the trustee or one of the bankrupt's creditors that a valid objection based on one or more of the grounds set out in subsection (4) has been made, the court may order that the relevant period shall cease to run for such period, not exceeding, in the case of a person who—

(Amended 1 of 2016 s. 4)

(a)

has not previously been adjudged bankrupt, 4 years; or

(b)

has previously been adjudged bankrupt, 3 years, as may be specified in the order.

(4)

Subject to subsection (4A), the grounds on which an objection can be made to the discharge of a bankrupt under this section are as follows—

(Amended 1 of 2016 s. 4)

(a)

in the case of a discharge to which subsection (2)(a) applies, that the bankrupt is likely within 5 years of the commencement of the bankruptcy to be able to make a significant contribution to his estate;

(b)

that the discharge of the bankrupt would prejudice the administration of his estate;

(c)

that the bankrupt has failed to co-operate in the administration of his estate;

(d)

that the conduct of the bankrupt, either in respect of the period before or the period after the commencement of the bankruptcy, has been unsatisfactory;

(e)

without limiting paragraph (c) or (d), that the bankrupt has departed from Hong Kong and has failed forthwith to return to Hong Kong following a request to do so from the Official Receiver or the trustee;

(f)

that the bankrupt has continued to trade after knowing himself to be insolvent;

(g)

that the bankrupt has committed an offence under section 129 or any of sections 131 to 136;

(h)

that the bankrupt has failed to prepare an annual report of his earnings and acquisitions for the trustee.

(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.

(Added 1 of 2016 s. 4)

(5)
Not less than 3 months before the end of the relevant period, the trustee shall—

(Amended 1 of 2016 s. 4)

(a)
send a notice by ordinary mail to the last known address of each proving creditor; or

(b)
publish a notice in English and Chinese, respectively, in an English and a Chinese newspaper circulating in Hong Kong,
advising the creditors that—

(i)
the bankrupt will, in the absence of an objection, be discharged;

(ii)
the trustee does or does not intend to object to the discharge and, where he does intend to do so, giving the grounds of the objection;

(iii)
each of them has a right to object to the discharge and giving the grounds on which an objection can be based and the procedure for making an objection.

(6)
Where the trustee or a creditor objects to the discharge of a bankrupt, he shall—

(a)

notify the court; and

(b)

in the case of a creditor, also notify the trustee,

not less than 14 days before the end of the relevant period, stating the grounds of his objection and applying for an order under subsection (3).

(Amended 1 of 2016 s. 4)

(7)

Where the court has suspended the running of the relevant period under subsection (3), the bankrupt may, at any time, apply to have the suspension lifted and the court may, having regard to the interests of all the parties, lift the suspension or shorten the period during which it will operate.

(8)

Where a bankrupt has been discharged, he shall, notwithstanding his discharge—

(a)

continue to give such information respecting his affairs; and

(b)

attend on the trustee at such times, and do such other things,

as the trustee requires for the purpose of completing the administration of the estate, and if a discharged bankrupt does not comply with the requirements of this subsection, he shall be guilty of a contempt of court and may be punished accordingly on the application of the trustee.

(9)

Where the court grants a discharge under this section, it may, as a condition of granting the discharge, order the bankrupt to continue to make contributions to his estate in such amount and for such period as it considers appropriate but not exceeding a period of 8 years from the date the bankruptcy order was made.

(10)

(Repealed 1 of 2016 s. 4)

(10A)

Despite the repeal of subsection (10) by the Bankruptcy (Amendment) Ordinance 2016 (1 of 2016), subsection (10)(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.

(Added 1 of 2016 s. 4)

(11)

This section is without prejudice to any power of the court to annul a bankruptcy order.

(Added 76 of 1996 s. 20)

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.

(6)

To avoid doubt, a bankrupt has failed to attend an initial interview under subsection (1)(b)(i) if the bankrupt is not physically present before the trustee at the initial interview.

(Added 1 of 2016 s. 5)

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.

(Added 1 of 2016 s. 5)

30B.

Early discharge of bankrupt

(1)
Notwithstanding that the relevant period has not yet expired, a bankrupt who—

(Amended 1 of 2016 s. 6)

(a)
has not previously been adjudged bankrupt may, at any time; or

(b)

has been previously adjudged bankrupt may, not less than 3 years after the date of the bankruptcy order,

apply to the court for an order discharging him from bankruptcy.

(2)

The court shall not make an order under this section if—

(Amended 1 of 2016 s. 6)

(a)

the bankrupt has previously entered into—

(Amended 1 of 2016 s. 6)

(i)

a composition or scheme of arrangement under this Ordinance, as it existed before the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) came into operation; or

(ii)

a voluntary arrangement;

(b)

the bankrupt has unsecured liabilities that exceed 150% of the income that the trustee determines was derived by the bankrupt during the year immediately before the date of the bankruptcy order;

(c)

the bankrupt has failed to disclose a beneficial interest in any property;

(d)

the bankrupt has failed to disclose any liability that existed at the date of the bankruptcy order;

(e)

the bankrupt has failed to disclose in his statement of affairs income that he expected in the 12 months following the filing of the statement;

(f)

the bankrupt has engaged, after the date of the bankruptcy order, in misleading conduct in relation to a person in respect of an amount or amounts exceeding \$15,000;

(g)

the bankrupt has after the date of the bankruptcy order continued to act as a director or taken part in the management of a company, except with the leave of the court, contrary to section 156 of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622) or to section 480 of the Companies Ordinance (Cap. 622);

(Amended 28 of 2012 ss. 912 & 920)

(h)

the bankrupt has failed or refused to give his passport or other travel document to the trustee when requested to do so;

(i)

the bankrupt has failed to co-operate with the trustee; or

(Amended 1 of 2016 s. 6)

(j)

the relevant period for the bankrupt has not commenced to run pursuant to a non-commencement order.

(Added 1 of 2016 s. 6)

(3)

A bankrupt shall give notice to the trustee of an application under this section at least 28 days before the date of the hearing and the trustee shall advise each creditor of the application.

(4)

The trustee or a creditor may object to the discharge of the bankrupt on one or more of the grounds set out in section 30A(4) and the court may decline to make an order discharging the bankrupt if it is satisfied that the objection is valid.

(5)

Section 30A(8) and (9) applies to a discharge under this section.

(Added 76 of 1996 s. 20)

Editorial Note:

* Commencement date: 3 March 2014.

30C.

Bankruptcy order made before sections 30 to 30B come into operation

(1)

Subject to subsection (2), sections 30 to 30B apply to a bankruptcy order made before those sections come into operation in respect of which no order to discharge the bankrupt has been made.

(2)

Where a bankrupt—

(a)

has not previously been adjudged bankrupt and the bankruptcy order was made not less than 42 months; or

(Amended 80 of 1997 s. 101)

(b)

has previously been adjudged bankrupt and the current bankruptcy order was made not less than 54 months,

(Amended 80 of 1997 s. 101)

before sections 30 to 30B came into operation, he shall be deemed to be discharged from bankruptcy 12 months after the day this section comes into operation unless, during that 12 month period, the trustee or a creditor files an objection on a ground set forth in section 30A(4)(a) to (h), in which case section 30A applies and the court shall deal with the matter as it sees fit.

(Added 76 of 1996 s. 20)

30D.

Order for production of documents by Commissioner of Inland Revenue

(1)

For the purposes of an examination under section 29, the court may, on the application of the trustee where the trustee is—

(a)

the Official Receiver; or

(b)

a certified public accountant as defined in the Professional Accountants Ordinance (Cap. 50) or a solicitor,

(Amended 23 of 2004 s. 56)

order the Commissioner of Inland Revenue to produce to the court—

(i)

any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official;

(ii)

any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official; or

(iii)

any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2)

Notwithstanding any other Ordinance, the Commissioner of Inland Revenue shall, within 21 days of the order being made by the court—

(a)

produce the document in such form as is acceptable to the court; or

(b)

apply to the court for the discharge or variation of the order.

(3)

Where the court has made an order under subsection (1) for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorize the disclosure of the document, or of any part of its contents, to the trustee.

(4)

The trustee shall not disclose to any other person the contents of a document disclosed to him by order of the court under this section unless they are disclosed as part of an examination under section 29.

(5)

For the avoidance of doubt, no creditor or member of a creditors' committee is entitled to see the contents of a document disclosed to a trustee under this section.

(Added 76 of 1996 s. 21)

30E.

Supplies of gas, water, electricity, etc.

(1)

This section applies where on any day ("the relevant day")—

(a)

a bankruptcy order is made against a debtor; or

(b)

a voluntary arrangement proposed by a debtor is approved at a meeting summoned under section 20E,

and in this section “

the office-holder

”(

負責人

) means the Official Receiver or the trustee, as the case may be, or, in the case of a voluntary arrangement, the nominee.

(2)

If a request falling within subsection (3) is made for the giving after the relevant day of any of the supplies mentioned in subsection (4), the supplier may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but the supplier shall not, directly or indirectly, make it a condition of the giving of the supply that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.

(3)

A request falls within this subsection if it is made—

(a)

by or with the concurrence of the office-holder; and

(b)

for the purposes of any business which is or has been carried on by the debtor, by a firm or partnership of which the debtor is or was a member, or by an agent or manager for the debtor or for such a firm or partnership.

(4)

The supplies referred to in subsection (2) are—

(a)

a public supply of gas;

(b)

a public supply of electricity;

(c)

a supply of water under the Waterworks Ordinance (Cap. 102);

(d)

a supply of telecommunications services by a public telecommunications operator licensed under the Telecommunications Ordinance (Cap. 106).

(Amended 36 of 2000 s. 28)

(Added 76 of 1996 s. 21)

31.

(Repealed 76 of 1996 s. 22)

32.

Effect of order of discharge

(1)

An order of discharge shall not release the bankrupt—

(a)

(Repealed 76 of 1996 s. 23)

(aa)

from any liability to pay any amount under a confiscation order made under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) or under an external confiscation order registered under that Ordinance; or

(Added 35 of 1989 s. 32. Amended L.N. 19 of 1991)

(b)

(Repealed 76 of 1996 s. 23)

(2)

Subject to subsections (1) and (3) to (8), where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

(a)

on the functions (so far as they remain to be carried out) of the trustee and the operation of the provisions of this Ordinance for the purposes of carrying out those functions; or

(b)

on the liability of the discharged bankrupt to make continuing contributions to his estate pursuant to an order made under section 30A(9).

(Replaced 76 of 1996 s. 23)

(3)

Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(Replaced 76 of 1996 s. 23)

(4)

An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(Replaced 76 of 1996 s. 23)

(5)

Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognizance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognizance, with the consent of the Financial Secretary.

(Added 76 of 1996 s. 23)

(6)

Discharge does not, except to such extent and on such conditions as the court may direct, release the bankrupt from any bankruptcy debt which consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty being damages in respect of personal injuries to any person.

(Added 76 of 1996 s. 23)

(7)

Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as may be prescribed.

(Added 76 of 1996 s. 23)

(8)

Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(Added 76 of 1996 s. 23)

[cf. 1914 c. 59 s. 28 U.K.]

33.

Court's power to annul bankruptcy order

(1)

The court may annul a bankruptcy order if it at any time appears to the court that—

(a)

on any grounds existing at the time the order was made, the order ought not to have been made; or

(b)

to the extent required by the rules, the provable debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured to the satisfaction of the court.

(2)

The court may annul a bankruptcy order made against a debtor on a petition under section 3(1)(a), (b) or (c) if it at any time appears to the court, on an application by the Official Receiver—

(a)

that the petition was pending at a time when a criminal bankruptcy order was made against the debtor or was presented after such an order was so made; and

(b)

that no appeal is pending against the debtor's conviction of any offence by virtue of which the criminal bankruptcy order was made,

and the court shall annul a bankruptcy order made on a petition under section 3(1)(d) if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.

(3)

The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(4)

Where the court annuls a bankruptcy order under this section or section 20I, any sale or other disposition of property, payment made or other thing duly done by or under the authority of the Official Receiver, a nominee or a trustee or by the court is valid, but if any of the bankrupt's estate is then vested in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the court may direct, and the court may include in its order such supplemental provisions as may be authorized by the rules.

(5)

Where the court annuls a bankruptcy order under this section or section 20I, the court may make such order as it thinks fit respecting advertising or gazetting of the notice of the annulment and for the costs thereof.

(6)

Any interested person may apply for annulment of a bankruptcy order with leave of the court.

(Replaced 76 of 1996 s. 24)

Part III

Administration of Property

*(*Format changes—E.R. 2 of 2012)*

Editorial Note:

* The format of Part III has been updated to the current legislative styles.

Proof of debts

34.

Description of debts provable in bankruptcy

(1)

Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, tort, promise or breach of trust shall not be provable in bankruptcy.

(Amended 76 of 1996 s. 25)

(2)

Subject to section 42(5), a person having notice of a petition in bankruptcy shall not prove in bankruptcy for any debt or liability contracted by the bankrupt after the date of his so having notice.

(Replaced 76 of 1996 s. 25)

(3)

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the bankruptcy order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy order, including a liability to pay further damages as provided for in section 56A(2)(b) of the High Court Ordinance (Cap. 4) (following an award of provisional damages), shall be deemed to be debts provable in bankruptcy.

(Amended 40 of 1986 s. 5; 76 of 1996 ss. 72 and 73; 25 of 1998 s. 2)

(3A)

Notwithstanding subsection (3), a debt owing to the Government in respect of a fine or monetary penalty imposed under an Ordinance shall not be provable in bankruptcy.

(Added 76 of 1996 s. 25)

(3B)

Where a debt provable in bankruptcy is payable in a currency other than Hong Kong dollars, the trustee or, in the case of a voluntary arrangement, the nominee or his replacement under section 20K(3), shall convert the amount of the debt from the foreign currency into Hong Kong dollars at the midpoint between the selling and buying telegraphic transfer rates of exchange quoted by The Hong Kong Association of Banks on the day the bankruptcy order is made or, where no such rates are quoted, at an exchange rate determined by the court.

(Added 76 of 1996 s. 25)

(3C)

The trustee may pay a dividend in respect of a foreign currency claim either in Hong Kong dollars or in the foreign currency equivalent of Hong Kong dollars, and in the latter case he shall determine the foreign currency equivalent using the same conversion method as in subsection (3B) but as of the day of the payment of the dividend.

(Added 76 of 1996 s. 25)

(4)

An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value or, alternatively, the trustee may refer such debt or liability to the court for valuation in which case the court shall establish a value in accordance with subsection (7).

(Amended 76 of 1996 s. 25)

(5)

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

(6)

(Repealed 76 of 1996 s. 25)

(7)

Where the trustee has referred the question of valuation to it under subsection (4), the court may direct the value to be assessed before the court itself without the intervention of a jury and may give all necessary directions for this purpose.

(Amended 76 of 1996 s. 25)

(7A)

The trustee shall make a decision to—

(a)

accept; or

(b)

reject in whole or in part,

a proof of debt within—

(i)

a period, prescribed by the rules, after the proof is filed with him; or

(ii)

such longer period as the court may on application allow,

but this subsection does not apply if there is no reasonable prospect of a dividend being paid to the class of creditor to which the proof of debt relates.

(Added 76 of 1996 s. 25)

(8)

For the purposes of this Ordinance,

liability

(

債務

) includes—

(a)

any compensation for work or labour done;

(b)

any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the bankrupt;

(Amended 76 of 1996 s. 72)

(c)

generally, any express or implied engagement, agreement or undertaking to pay or capable of resulting in the payment of money or money's worth, whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on 2 or more contingencies, or, as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

[cf. 1914 c. 59 s. 30 U.K.]

35.

Mutual credit and set-off

Where there have been mutual credits, mutual debts or other mutual dealings between a bankrupt against whom a bankruptcy order is made under this Ordinance and any other person proving or claiming to prove a debt under the bankruptcy order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the one party shall be set off against any sum due from the other party and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt in any case where he had, at the time of giving credit to the bankrupt, notice that the petition had been presented.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 ss. 26, 72 and 73)

[cf. 1914 c. 59 s. 31 U.K.]

36.

Rules as to proof of debts

The Chief Justice may, with the approval of the Legislative Council, make rules providing for the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and other matters.

(Replaced 33 of 1939; G.N. 840 of 1940 Supp. Schedule)

[cf. 1914 c. 59 s. 32 U.K.]

37.

Priority of costs and charges

(1)

The assets remaining after payment of the expenses properly incurred in preserving, getting in or realizing any of the assets of the bankrupt shall, subject to any order of the court, first be liable to the following payments, which shall be made in the following order of priority, namely—

(Amended 18 of 2005 s. 11)

(a)

the fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and payable to the Official Receiver, and costs, charges and expenses incurred or authorized by, the Official Receiver, whether acting as trustee or otherwise, including the costs of any person properly employed by him;

(Replaced 18 of 2005 s. 11)

(b)

the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;

(Replaced 18 of 2005 s. 11)

(c)

the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;

(Replaced 18 of 2005 s. 11)

(d)

the costs and expenses of any person who makes the bankrupt's statement of affairs;

(Replaced 18 of 2005 s. 11)

(e)

the taxed charges of any shorthand writer appointed to take any examination under this Ordinance, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;

(Added 18 of 2005 s. 11)

(f)

the necessary disbursements of any trustee other than the Official Receiver, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;

(Added 18 of 2005 s. 11)

(g)

the costs of any person properly employed by any trustee other than the Official Receiver;

(Added 18 of 2005 s. 11)

(h)

the remuneration of any trustee other than the Official Receiver; and

(Added 18 of 2005 s. 11)

(i)

the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.

(Added 18 of 2005 s. 11)

(2)

Whenever the court is satisfied that property of a bankrupt in respect of whose estate a bankruptcy order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the bankrupt without notice of presentation of the petition, the court may in its discretion order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is herein provided in respect of the taxed costs of the petitioner.

(Amended 76 of 1996 s. 27)

(3)

For the purposes of subsection (1)(e), if the shorthand writer is appointed or authorized by the Official Receiver, the cost of the shorthand notes shall be regarded as an expense properly incurred in getting in or realizing the assets of the bankrupt.

(Added 18 of 2005 s. 11)

(Amended 76 of 1996 ss. 72 & 73)

38.

Priority of debts

(1)

In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(a)

(Repealed 47 of 1984 s. 5)

(b)

any—

(i)

payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any clerk or servant in respect of wages or salary or both in respect of services rendered to the bankrupt if such payment was made during a period of 4 months before the date of the filing of the petition; and

(Amended 48 of 1987 s. 8)

(ii)

wages and salary (including commission provided that the amount thereof is fixed or ascertainable at the relevant date) of any clerk or servant in respect of services rendered to the bankrupt during a period—

(A)

beginning 4 months next before the date of the filing of the petition and ending on the making of the bankruptcy order; or

(Amended 76 of 1996 s. 73)

(B)

beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any clerk or servant who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service,

(Replaced 68 of 1996 s. 4)

whichever is the earlier, not exceeding, together with any payment under subparagraph (i), \$300;

(Replaced 12 of 1985 s. 29(4). Amended 48 of 1987 s. 8)

(c)

any—

(i)

payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any labourer or workman in respect of wages, whether payable for time or for piece work, in respect of services rendered to the bankrupt if such payment was made during a period of 4 months before the date of the filing of the petition; and

(ii)

wages of any labourer or workman, whether payable for time or for piece work, in respect of services rendered to the bankrupt during the period—

(A)

beginning 4 months next before the date of the filing of the petition and ending on the making of a bankruptcy order; or

(Amended 76 of 1996 s. 73)

(B)

beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any labourer or workman who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service,

(Replaced 68 of 1996 s. 4)

whichever is the earlier, not exceeding, together with any payment under subparagraph (i), \$100;

(Replaced 12 of 1985 s. 29(4). Amended 48 of 1987 s. 8)

(ca)

any severance payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$6,000;

(Added 54 of 1974 s. 2)

(caa) any long service payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$8,000;

(Added 78 of 1985 s. 2)

(cb)

any amount due in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the date of the bankruptcy order and, where the compensation is a periodical payment, the amount due in respect thereof shall be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed on an application being made for that purpose under the Employees' Compensation Ordinance (Cap. 282), but this paragraph shall not apply to any amount due in respect of compensation or liability for compensation where the bankrupt has entered into a contract with a person carrying on accident insurance business in Hong Kong in respect of his liability under the Employees' Compensation Ordinance (Cap. 282) for personal injury by accident to the employee to whom the compensation or liability for compensation is due;

(Added 5 of 1977 s. 2. Amended 47 of 1984 s. 16; 76 of 1996 s. 73)

(cc)

any wages in lieu of notice payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee one month's wages or \$2,000 whichever is the lesser;

(Added 5 of 1977 s. 2)

(cd)

all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or as a consequence of the bankruptcy order;

(Added 47 of 1984 s. 5. Amended 76 of 1996 s. 73)

(ce)

any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance 1991 (54 of 1991) representing an amount due by the bankrupt in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the date of the bankruptcy order;

(Added 54 of 1991 s. 47. Amended 76 of 1996 s. 73)

(cf)

any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 73(1)(n) of the Occupational Retirement Schemes Ordinance (Cap. 426) which should have been paid by the bankrupt in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the bankruptcy:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection;

(Added 88 of 1992 s. 83)

(cg)

(without prejudice to any right or liability under a trust) any amount of salaries deducted by the bankrupt from his employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426) which have not been paid into such funds;

(Added 88 of 1992 s. 83)

(ch)

any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes

Ordinance (Cap. 485) which should have been paid by the bankrupt in accordance with the provisions of that Ordinance before the commencement of the bankruptcy:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection;

(Added 80 of 1995 s. 49)

(ci)

any amount deducted by the bankrupt from the relevant income of his relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which have not been paid to that approved trustee;

(Added 80 of 1995 s. 49)

(cj)

any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

(Added 80 of 1995 s. 49)

(d)

all statutory debts due from the bankrupt to the Crown at the date of the bankruptcy order and which became due and payable within 12 months next before that date.

(Replaced 47 of 1984 s. 5. Amended 76 of 1996 s. 73)

(2)-(2A)

(Repealed 76 of 1996 s. 28)

(2B)

Where—

(a)

the date of the receiving order is on or after 1 April 1977; or

(b)

a bankruptcy order is made on or after the day the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) comes into operation,

the sum of \$8,000 shall be deemed to be substituted in each case for the sums of \$300 and \$100 referred to in paragraphs (b) and (c) respectively, and for the sum of \$6,000 referred to in paragraph (ca), of subsection (1).

(Added 5 of 1977 s. 2. Amended 76 of 1996 s. 28)

(3)

The debts specified in subsection (1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj)—

(Amended 47 of 1984 s. 5; 78 of 1985 s. 2; 54 of 1991 s. 47; 88 of 1992 s. 83; 80 of 1995 s. 49)

(a)

shall have priority over the debts specified in subsection (1)(d);

(b)

shall rank equally among themselves; and

(c)

shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions among themselves.

(Replaced 42 of 1970 s. 2. Amended 54 of 1974 s. 2; 5 of 1977 s. 2)

(3A)

(Repealed 47 of 1984 s. 5)

(4)

Subject to the provisions contained in section 37 and to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(5)

In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within 3 months next before the date of the bankruptcy order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof.

(Amended 42 of 1970 s. 2; 76 of 1996 s. 73)

(5A)

Any money paid under a charge under subsection (5) shall be a debt due from the estate of the bankrupt to the landlord or other person distraining or having distrained, and such debt shall be discharged so far as the property of the bankrupt is sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the bankruptcy.

(Added 42 of 1970 s. 2)

(5B)

Where any assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a trustee have been recovered, the court may, on the application of the Official Receiver or the trustee or any such creditor, make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

(Added 47 of 1984 s. 5)

(5C)

Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period.

(Added 47 of 1984 s. 5)

(6)

This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt and as if the date of his death were substituted for the date of the bankruptcy order.

(Amended 76 of 1996 s. 73)

(7)

In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. (See Rule 195)

(8)

Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*.

(9)

If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the bankruptcy order at the rate specified in section 71(3) on all debts proved in the bankruptcy.

(Amended 76 of 1996 ss. 28 & 73)

(10)

In this section—

accrued holiday remuneration

(
累算的假日薪酬

) includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Ordinance), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the bankrupt continued until he

became entitled to be allowed the holiday, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave;

(Amended 7 of 2012 s. 9)

Employees Compensation Assistance Fund

(
僱員補償援助基金

) means the fund established by section 7 of the Employees Compensation Assistance Ordinance 1991 (54 of 1991);

(Added 54 of 1991 s. 47)

pay for untaken annual leave

(
未放年假薪酬

), in relation to any person, means any sum which, by virtue either of the person's contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable—

(a)

in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or

(b)

on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave,

and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap. 57);

(Added 7 of 2012 s. 9)

pay for untaken statutory holidays

(
未放法定假日薪酬

) means any sum payable under the Employment Ordinance (Cap. 57) or a contract of employment in respect of a statutory holiday (within the meaning of that Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance);

(Added 7 of 2012 s. 9)

Protection of Wages on Insolvency Fund

(
破產欠薪保障基金

) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap. 380);

(Added 12 of 1985 s. 29(4))

statutory debt

(
法定債項

) means a debt the liability for which and the amount of which are determined by or under any provision in any Ordinance;

(Amended 18 of 2005 s. 12)

wages

(
工資

) includes, in relation to any person, any sum which, by virtue of his contract of employment, is payable to him as a Lunar New Year bonus, but does not include any accrued holiday remuneration.

(Replaced 47 of 1984 s. 5)

(11)

The Bankruptcy (Amendment) Ordinance 1984 (47 of 1984) shall not apply in the case of a bankruptcy where the date of the receiving order occurred before the commencement* of that Ordinance, and, in such a case, the provisions relating to priority of debts which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force.

(Added 47 of 1984 s. 5)

(12)

The Fifth Schedule to the Protection of Wages on Insolvency Ordinance 1985 (12 of 1985) shall not apply in the case of a bankruptcy where the date of the filing of a petition occurred before the commencement of that Ordinance, and, in such case, the provisions relating to priority of debts which would have applied if that Ordinance has not been enacted shall be deemed to remain in full force.

(Added 12 of 1985 s. 29(4))

(13)

Section 4(a) and (b) of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 (68 of 1996) (*the amending Ordinance*) shall not apply in the case of a bankruptcy to which an application under section 15(1) of the Protection of Wages on Insolvency Ordinance (Cap. 380) relates where such application is made before the commencement of the amending Ordinance, and, in such case, the provisions relating to priority of debts which would have applied if the amending Ordinance had not been enacted shall be deemed to remain in full force.

(Added 68 of 1996 s. 4)

[cf. 1914 c. 59 s. 33 U.K.]

Editorial Note:

* Commencement date: 31 August 1984.

39.

Preferential claims in case of apprenticeship

(1)

Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is a trainee solicitor to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or the apprentice or trainee solicitor gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or trainee solicitor contract; and if any money has been paid by or on behalf of the apprentice or trainee solicitor to the

bankrupt as a fee, the trustee may, on the application of the apprentice or trainee solicitor or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or trainee solicitor, regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or trainee solicitor contract before the commencement of the bankruptcy and to the other circumstances of the case.

(2)

Where it appears expedient to a trustee, he may, on the application of any apprentice or trainee solicitor to the bankrupt or any person acting on behalf of such apprentice or trainee solicitor, instead of acting under the provisions of subsection (1), transfer the indenture of apprenticeship or trainee solicitor contract to some other person.

(Amended 70 of 1991 s. 14)

[cf. 1914 c. 59 s. 34 U.K.]

40.

Landlord's power of distress

The Landlord or other person to whom any rent is due from the bankrupt may, subject to the provisions of Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for 6 months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

[cf. 1914 c. 59 s. 35 U.K.]

41.

Spouse's claim postponed

A bankrupt's spouse shall not be entitled to claim any dividend as a creditor in respect of any money or other estate, lent or entrusted to the bankrupt until all claims of the other creditors of the bankrupt for valuable consideration in money or monies worth have been satisfied.

(Replaced 76 of 1996 s. 29)

Property available for payment of debts

42.

Restrictions on dispositions of property

(1)

Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2)

Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3)

This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee.

(4)

This section does not give a remedy against any person—

(a)

in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented; or

(b)

in respect of any interest in property which derives from an interest in property referred to in paragraph (a).

(5)

Where after the commencement of the bankruptcy the bankrupt has incurred a debt to any person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of this Ordinance to have been incurred before the commencement of the bankruptcy unless—

(a)

that person had notice of the bankruptcy before the debt was incurred; or

(b)

it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6)

A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

(Replaced 76 of 1996 s. 30)

43.

Definition of bankrupt's estate

(1)

Subject to this section and sections 43A to 43E, a bankrupt's estate comprises—

(a)

all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and

(b)

any property which by virtue of any of the provisions of this Ordinance is comprised in that estate or is treated as falling within paragraph (a).

(2)

Subsection (1) does not apply to—

(a)

such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;

(b)

such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

(3)

Subsection (1) does not apply to property held by the bankrupt on trust for any other person.

(4)

References in this Ordinance to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and cannot be so exercised for the benefit of the bankrupt; and a power exercisable over or in respect of property is deemed to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5)

For the purposes of any provision in this Ordinance, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

(a)

any rights in relation to which a statement such as is required by section 6B(1)(a) was made in the petition on which the bankrupt was adjudged bankrupt; and

(b)

any rights which have been otherwise given up in accordance with the rules.

(6)

This section has effect subject to the provisions of any enactment not contained in this Ordinance under which any property is to be excluded from a bankrupt's estate.

(Replaced 76 of 1996 s. 31)

43A.

After-acquired property

(1)

Subject to this section, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2)

A notice under this section shall not be served in respect of—

(a)

any property falling within section 43(2) or (3); or

(b)

any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3)

Subject to subsection (4), upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4)

Where, whether before or after service of a notice under this section—

(a)

a person acquires property in good faith, for value and without notice of the bankruptcy; or

(b)

a banker enters into a transaction in good faith and without such notice, the trustee is not in respect of that property or transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5)

References in this section to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under section 43E.

(6)

For the purposes of this section, an undischarged bankrupt shall submit to the trustee on each anniversary of the making of the bankruptcy order against him, a statement of his earnings during the preceding year and details of any property he acquired during that period.

(7)

A bankrupt who fails or refuses to comply with subsection (6) is guilty of an offence and is liable to imprisonment for 6 months.

(8)

The court may refuse to discharge a bankrupt who has not complied with subsection (6).

(Added 76 of 1996 s. 31)

43B.

Vesting in trustee of certain items of excess value

(1)

Where—

(a)

property is excluded by virtue of section 43(2) from the bankrupt's estate; and

(b)

it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2)

Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3)

The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4)

For the purposes of this section, property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

(Added 76 of 1996 s. 31)

43C.

Time-limit for notice under section 43A or 43B

(1)

Except with the leave of the court, a notice shall not be served—

(a)

under section 43A, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;

(b)

under section 43B, after the end of the period of 42 days beginning with the day on which the property in question first came to the knowledge of the trustee.

(2)

For the purposes of this section—

(a)

anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b)

anything which comes, otherwise than under paragraph (a), to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the Official Receiver, on his becoming trustee.

(Added 76 of 1996 s. 31)

43D.

Application by bankrupt or creditor to include or exclude items from the bankrupt's estate

(1)

Notwithstanding sections 43 to 43B—

(a)

the bankrupt; or

(b)

one of the creditors,

may apply to the trustee for the inclusion in or exclusion from the estate of a particular item and the trustee may grant the application or refuse it.

(2)

Where the bankrupt or any of the creditors objects to the trustee's decision under subsection (1), he may apply to the court and the court may affirm the trustee's decision or reverse it or attach conditions to the original decision.

(Added 76 of 1996 s. 31)

43E.

Income payments orders

(1)

The court may, on the application of the trustee, make an order (*an income payments order*) claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

(2)

The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3)

An income payments order shall, in respect of any payment of income to which it is to apply, either—

(a)

require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order; or

(b)

require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4)

Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5)

Sums received by the trustee under an income payments order form part of the bankrupt's estate.

(6)

For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment.

(Added 76 of 1996 s. 31)

43F.

Continuing occupation of family home

(1)

Notwithstanding anything in this Ordinance, where a bankrupt normally resides in premises which comprise part of his estate, he shall be entitled to continue residing in such premises for a period of 6 months after the making of the bankruptcy order and the court may, on application before the expiry of the 6 month period, make an order extending the entitlement for a further period not exceeding 6 months.

(2)

Where the bankrupt makes an application for an extension, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

(Added 76 of 1996 s. 31)

44.

Provisions as to second bankruptcy

(1)

Where a second or subsequent bankruptcy order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon

any such order the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

(Amended 76 of 1996 s. 73)

(2)

In the event of a second or subsequent bankruptcy order being made against a bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall subject to any disposition thereof made by the Official Receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 52, vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

(Amended 76 of 1996 ss. 32 and 73)

(3)

Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

[cf. 1926 c. 7 s. 3 U.K.]

Effect of bankruptcy on antecedent and other transactions

45.

Restriction of rights of creditor under execution or attachment

(1)

Where a creditor has issued execution against the property of a bankrupt or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee of the bankrupt unless he had completed the execution or attachment before the date of the bankruptcy order and before notice of the presentation of any bankruptcy petition by or against the bankrupt.

(Amended 76 of 1996 ss. 33 and 73; 18 of 2005 s. 13)

(2)

For the purposes of this Ordinance—

(a)

an execution against goods is completed by seizure and sale or by the making of a charging order under section 20 of the High Court Ordinance (Cap. 4);

(Amended 25 of 1998 s. 2)

(b)

an attachment of a debt is completed by the receipt of the debt; and

(c)

an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 20.

(Replaced 52 of 1987 s. 44)

(3)

(Repealed 76 of 1996 s. 33)

(4)

The rights conferred by this section on the trustee in relation to executions against the property of the bankrupt and attachment of debts due to the bankrupt may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(Added 47 of 1984 s. 6. Amended 76 of 1996 s. 33)

[cf. 1914 c. 59 s. 40 U.K.]

46.

Duties of bailiff as to goods taken in execution

(1)

Where any movable property or negotiable instruments or money of a debtor are taken in execution, and before the receipt or recovery by the judgment creditor of the full amount of the levy, notice is served on the bailiff that a bankruptcy order has been made against the debtor, the bailiff shall on request deliver the movable property, negotiable instruments or money, or any money received in satisfaction or part satisfaction of the execution, to the trustee, but the costs of the execution shall be a first charge on the property so delivered and the trustee may sell the movable property or negotiable instruments, or an adequate part thereof, or apply the money, for the purpose of satisfying the charge.

(Amended 76 of 1996 s. 73)

(2)

Where, under an execution in respect of a judgment for a sum exceeding \$100, the property of a debtor is sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid and pay the balance into court, and if within 14 clear days of such sale or payment as aforesaid a bankruptcy petition is presented by or against the debtor, the said balance shall remain in court and if the debtor is adjudged bankrupt the balance shall be paid out to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition had been presented.

(3)

The rights conferred by this section on the trustee in relation to executions against any movable property or negotiable instruments or money of the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

*(Added 47 of 1984 s. 7)**(Amended 18 of 2005 s. 14)*

[cf. 1914 c. 59 s. 41(1) U.K.]

47.

(Repealed 76 of 1996 s. 34)

48.

Avoidance of general assignments of book debts unless registered

(1)

Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid before the date of the bankruptcy order, unless the assignment has been registered with the Registrar in a register to be kept by him for that purpose:

(Amended 76 of 1996 s. 35)

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made bona fide and for value, or in any assignment of assets for the benefit of creditors generally.

(2)

For the purposes of this section,

assignment

(

轉讓

) includes assignment by way of security and other charges on book debts.

[cf. 1914 c. 59 s. 43 U.K.]

49.

Transactions at an undervalue

(1)

Subject to this section and sections 51 and 51A, where a debtor is adjudged bankrupt and he has at a relevant time (defined in section 51) entered into a transaction with any person at an undervalue, the trustee may apply to the court for an order under this section.

(2)

The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that debtor had not entered into that transaction.

(3)

For the purposes of this section and sections 51 and 51A, a debtor enters into a transaction with a person at an undervalue if—

(a)

he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;

(b)

he enters into a transaction with that person in consideration of marriage; or

(c)

he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.

(Replaced 76 of 1996 s. 36)

49A.

(Repealed 76 of 1996 s. 36)

50.

Unfair preferences

(1)

Subject to this section and sections 51 and 51A, where a debtor is adjudged bankrupt and he has at a relevant time (defined in section 51) given an unfair

preference to any person, the trustee may apply to the court for an order under this section.

(2)

The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that debtor had not given that unfair preference.

(3)

For the purposes of this section and sections 51 and 51A, a debtor gives an unfair preference to a person if—

(a)

that person is one of the debtor's creditors or a surety or guarantor for any of his debts or other liabilities; and

(b)

the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the debtor's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4)

The court shall not make an order under this section in respect of an unfair preference given to any person unless the debtor who gave the unfair preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b).

(5)

A debtor who has given an unfair preference to a person who, at the time the unfair preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6)

The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

(Replaced 76 of 1996 s. 36)

51.

“Relevant time” under sections 49 and 50

(1)

Subject to subsections (2) and (3), the time at which a debtor enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the unfair preference given—

(a)

in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the debtor is adjudged bankrupt;

(b)

in the case of an unfair preference which is not a transaction at an undervalue and is given to a person who is an associate of the debtor (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day; and

(c)

in any other case of an unfair preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2)

Where a debtor enters into a transaction at an undervalue or gives an unfair preference at a time mentioned in subsection (1)(a), (b) or (c) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in subsection (1)(a)), that time is not a relevant time for the purposes of sections 49 and 50 unless the debtor—

(a)

is insolvent at that time; or

(b)

becomes insolvent in consequence of the transaction or preference,

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a debtor with a person who is an associate of his (otherwise than by reason only of being his employee).

(3)

For the purposes of subsection (2), a debtor is insolvent if—

(a)

he is unable to pay his debts as they fall due; or

(b)

the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

(Replaced 76 of 1996 s. 36)

51A.

Orders under sections 49 and 50

(1)

Without prejudice to the generality of section 49(2) or 50(2), an order under either of those sections with respect to a transaction or unfair preference entered into or given by a debtor who is subsequently adjudged bankrupt may (subject as follows)—

(a)

require any property transferred as part of the transaction, or in connection with the giving of the unfair preference, to be vested in the trustee as part of the estate;

(b)

require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c)

release or discharge (in whole or in part) any security given by the debtor;

(d)

require any person to pay, in respect of benefits received by him from the debtor, such sums to the trustee as the court may direct;

(e)

provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference to be under such new or revived obligations to the person as the court thinks appropriate;

(f)

provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference; and

(g)

provide for the extent to which any person whose property is vested by the order in the trustee, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the unfair preference.

(2)

An order under section 49 or 50 may affect the property of, or impose an obligation on, any person whether or not he is the person with whom the debtor in question entered into the transaction or, as the case may be, the person to whom the unfair preference was given; but such an order—

(a)

shall not prejudice any interest in property which was acquired from a person other than that debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

(b)

shall not require a person who received a benefit from the transaction or unfair preference in good faith and for value to pay a sum to the trustee, except where he was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when he was a creditor of that debtor.

(3)

Where a person has acquired an interest in property from a person other than the debtor in question, or has received a benefit from the transaction or unfair preference, and at the time of that acquisition or receipt—

(a)

he had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(b)

he was an associate of either the debtor in question or the person with whom that debtor entered into the transaction or to whom that debtor gave the unfair preference,

then, unless the contrary is shown, it shall be presumed for the purposes of subsection (2)(a) or (b) that the interest was acquired or the benefit was received otherwise than in good faith.

(4)

Any sums required to be paid to the trustee in accordance with an order under section 49 or 50 shall be comprised in the bankrupt's estate.

(5)

For the purposes of subsection (3)(a), the relevant surrounding circumstances are (as the case may require)—

(a)

the fact that the debtor in question entered into the transaction at an undervalue;
or

(b)

the circumstances which amounted to the giving of the unfair preference by the debtor in question.

(6)

For the purposes of subsection (3)(a), a person has notice of the relevant proceedings if he has notice—

(a)

of the fact that the petition on which the debtor in question is adjudged bankrupt has been presented; or

(b)

of the fact that the debtor in question has been adjudged bankrupt.

(Added 76 of 1996 s. 36)

51B.

Meaning of “associate”

(1)

For the purposes of sections 49 to 51A, any question whether a person is an associate of another person shall be determined in accordance with this section.

(2)

A person is an associate of a debtor if that person is the debtor’s spouse, or is a relative, or the spouse of a relative of the debtor or his spouse.

(3)

A person is an associate of a debtor with whom he is in partnership, and of the spouse or a relative of any debtor with whom he is in partnership.

(4)

A person is an associate of a debtor whom he employs or by whom he is employed and for this purpose, any director or other officer of a company shall be treated as employed by that company.

(5)

A person in his capacity as trustee of a trust is an associate of a debtor if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that debtor or an associate of that debtor.

(6)

A company is an associate of a debtor if that debtor has control of it or if that debtor and persons who are his associates together have control of it.

(7)

For the purposes of this section, a person is a relative of a debtor if he is that debtor's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

(a)

any relationship of the half blood as a relationship of the whole blood and the step child or adopted child of any person as his child; and

(b)

an illegitimate child as the legitimate child of his mother and reputed father, and references in this section to a spouse shall include a former spouse.

(8)

For the purposes of this section, a debtor shall be taken to have control of a company if—

(a)

the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, but a debtor shall not be considered to have control of a company by reason only that the directors act on advice given by him in a professional capacity; or

(b)

he is entitled to exercise, or control the exercise of, 1/3 or more of the voting power at any general meeting of the company or of another company which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.

(9)

In this section,

company

(

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) includes any body corporate (whether incorporated in Hong Kong or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

(Added 76 of 1996 s. 36)

52.

Dealings with undischarged bankrupt

(1)

(Repealed 76 of 1996 s. 37)

(2)

Where any individual, company or firm has ascertained that a person having a deposit, whether a deposit in respect of capital or not, or a credit balance, with such individual, company or firm is an undischarged bankrupt, then it shall be the duty of such individual, company or firm forthwith to inform the Official Receiver and the trustee in the bankruptcy of the existence of the deposit or credit balance, and such individual, company or firm shall not make any payment out of or in respect of the deposit or credit balance except under an order of the court or in accordance with instructions from the Official Receiver or the trustee in the bankruptcy.

(3)

In case of any contravention of the provisions of subsection (2) the individual, or the directors and officers of the company, or the partners and manager of the firm, as the case may be, shall be liable on summary conviction to a fine of \$1,000 and to imprisonment for 6 months.

[cf. 1914 c. 59 s. 47 U.K.]

Realization of property

53.

Possession of property by trustee

(1)

The trustee shall as soon as may be take possession of the deeds, books and documents of the bankrupt and all other parts of his property capable of manual delivery.

(2)

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may on his application enforce such acquisition or retention accordingly.

(3)

Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4)

Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5)

Subject to the provisions of this Ordinance with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, clerk, servant, comprador, employer or agent, of a bankrupt, shall pay

and deliver to the trustee all money and securities in his possession or power, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court and may be punished accordingly on the application of the trustee.

[cf. 1914 c. 59 s. 48 U.K.]

54.

Seizure of property of bankrupt

Any person acting under warrant of the court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt is concealed in a house or place not belonging to him, the court may if it thinks fit grant a search warrant to any constable or officer of the court, who may execute it according to its tenor.

(Amended 76 of 1996 s. 38)

[cf. 1914 c. 59 s. 49 U.K.]

55.

Sale of property out of Hong Kong

Where the bankrupt is possessed of any property out of Hong Kong, the trustee shall require him to join in selling the same for the benefit of the creditors and to sign all necessary authorities, powers, deeds and documents for the purpose, and if and so often as the bankrupt refuses to do so he may be punished for a contempt of court.

(Amended 47 of 1984 s. 16)

56.

(Repealed 76 of 1996 s. 39)

57.

(Repealed 27 of 1971 s. 15)

58.

Vesting and transfer of property

(1)

On the making of a bankruptcy order, the property of the bankrupt shall vest in the Official Receiver.

(Replaced 18 of 2005 s. 15)

(1A)

On the appointment of a person other than the Official Receiver as provisional trustee, the property shall forthwith pass to and vest in the provisional trustee appointed.

(Added 18 of 2005 s. 15)

(1B)

Save in sections 15(4), 17, 17A, 17B, 42(3), 58(2), 60, 79, 80, 81, 85, 85A, 96(1) and 112A, the provisional trustee shall, unless the context otherwise requires, be regarded as the trustee for the purposes of this Ordinance.

(Added 18 of 2005 s. 15)

(2)

On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

(3)

The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

[cf. 1914 c. 59 s. 53 U.K.]

59.

Disclaimer of onerous property

(1)

Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within 12 months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within 1 month after such appointment, he may disclaim such property at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(2)

The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3)

A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

(4)

The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not and the trustee has for a period of 28 days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee after such application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5)

The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6)

The court may, on application by any person claiming either to have any interest in any disclaimed property or to be under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature the court shall not make a vesting order in favour of any person claiming under the

bankrupt, whether as under-lessee or as a person entitled to a mortgage except upon the terms of making that person—

(a)

subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(b)

if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) subject only to the same liabilities and obligations as if the lease had comprised only the property comprised in the vesting order; and any under-lessee or person entitled to a mortgage who declines to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

(Amended 47 of 1984 s. 10)

(7)

Where on the release, removal, resignation or death of a trustee the Official Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within 12 months after the Official Receiver has become trustee in the circumstances aforesaid or has become aware of the existence of such property, whichever period may last expire.

(Amended 18 of 2005 s. 16)

(8)

Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury and may accordingly prove the same as a debt under the bankruptcy.

[cf. 1914 c. 59 s. 54 U.K.]

60.

Powers of provisional trustee and trustee to deal with property of the bankrupt

(1)

Subject to the provisions of this Ordinance and to any order of the court, a trustee or the Official Receiver when acting as provisional trustee may do all or any of the following things—

(Amended 18 of 2005 s. 17)

(aa)

take into his custody or under his control all the property to which the bankrupt is or appears to be entitled;

(Added 18 of 2005 s. 17)

(a)

sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels, and any transfer of a business of a bankrupt by the trustee or the Official Receiver when acting as provisional trustee shall be deemed to be exempted from the provisions of the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49);

(Amended 18 of 2005 s. 17)

(b)

give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c)

prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;

(d)

exercise any powers the capacity to exercise which is vested in the trustee under this Ordinance and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Ordinance;

(e)

subject to section 61, do all such other things as may be necessary for administering the estate and distributing its assets.

(Added 76 of 1996 s. 40)

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4)

(2)

Notwithstanding any other provisions of this Ordinance but subject to subsections (3) and (4), a provisional trustee other than the Official Receiver may do all or any of the following things—

(a)

take into his custody or under his control all the property to which the bankrupt is or appears to be entitled;

(b)

sell or dispose of perishable goods, or any property (other than derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if such property is not immediately sold or disposed of;

(c)

subject to section 61, do all such other things as may be necessary for protecting or preserving the bankrupt's property;

(d)

exercise any power the capacity to exercise which is vested in the provisional trustee under this Ordinance and execute any powers of attorney, deeds and

other instruments for the purpose of carrying into effect the provisions of this Ordinance;

(e)

subject to section 61, do all such other things as may be necessary for administering the estate pending the appointment of a trustee.

(Added 18 of 2005 s. 17)

(3)

A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised under an order of the court or with the prior approval of the Official Receiver.

(Added 18 of 2005 s. 17)

(4)

A provisional trustee other than the Official Receiver shall not sell or dispose of anything under subsection (2)(b) to a person who is an associate of the bankrupt, unless the sale or disposal is under an order of the court or with the prior approval of the Official Receiver.

(Added 18 of 2005 s. 17)

(5)

For the purposes of subsection (4), any question whether a person is an associate of another person shall be determined in accordance with section 51B as if—

(a)

that section were applicable also for the purposes of such determination; and

(b)

references to the “debtor” in that section were references to the “bankrupt” in subsection (4).

(Added 18 of 2005 s. 17)

(6)

The Official Receiver shall not be personally liable for any costs and charges incurred by any person as a result of any refusal to grant approval under subsection (3) or (4).

(Added 18 of 2005 s. 17)

[cf. 1914 c. 59 s. 55 U.K.]

61.

Powers exercisable by trustee with permission of creditors' committee

The trustee may, with the permission of the creditors' committee, do all or any of the following things—

(Amended 76 of 1996 s. 74)

(a)

carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same or allow the bankrupt to restructure the business in accordance with conditions determined by the trustee where such restructuring is in the interests of the creditors and, for the purpose of such restructuring, the trustee may permit the debtor to retain any leasehold interest in property in which his business is situated;

(Amended 76 of 1996 s. 41)

(b)

bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;

(c)

employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the creditors' committee;

(Amended 76 of 1996 s. 74)

(d)

accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;

(e)

mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

(f)

refer any dispute to arbitration, or compromise any debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times and generally on such terms as may be agreed on;

(g)

make such compromise or other arrangement as may be thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy;

(h)

make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(i)

divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold;

(j)

where any right, option or other power forms part of the bankrupt's estate, make payments or incur liabilities for the purpose of obtaining any property which is the subject of the right, option or power;

(Added 76 of 1996 s. 41)

(k)

if, after taking expert advice, he considers it to be in the interest of the estate to delay conversion of foreign currency into Hong Kong dollars, delay such

conversion for the period he considers appropriate, and, where there is no committee, may do so with the concurrence of the court.

(Added 76 of 1996 s. 41)

The permission given for the purposes of this section shall not be general permission to do all or any of the above-mentioned things but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4)

[cf. 1914 c. 59 s. 56 U.K.]

61A.

Control of trustee by court

The exercise by the trustee of the powers conferred by sections 60 and 61 shall be subject to the control of the court, and any creditor may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(Added 76 of 1996 s. 42)

62.

Power to allow bankrupt to manage property

The trustee, with the permission of the creditors' committee, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

(Amended 76 of 1996 s. 74)

[cf. 1914 c. 59 s. 57 U.K.]

63.

Allowance to bankrupt for maintenance or service

The trustee may from time to time, with the permission of the creditors' committee, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of

his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court.

(Amended 76 of 1996 s. 74)

[cf. 1914 c. 59 s. 58 U.K.]

64.

Right of trustee to inspect goods pawned, etc.

Where any goods of a debtor against whom a bankruptcy order has been made are held by any person by way of pledge, pawn or other security, it shall be lawful for the trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

(Amended 76 of 1996 s. 73; 18 of 2005 s. 18)

[cf. 1914 c. 59 s. 59 U.K.]

65.

Limitation of trustee's powers in relation to copyright

Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell or authorize the sale of any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

[cf. 1914 c. 59 s. 60 U.K.]

66.

Protection of Official Receiver and trustee from personal liability in certain cases

Where the Official Receiver or trustee has seized or disposed of any goods, chattels, property or other effects in the possession or on the premises or under the control of a debtor against whom a bankruptcy order has been made and it is thereafter made to appear that the said goods, chattels, property or other effects were not at the date of the bankruptcy order the property of the debtor, the Official Receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the Official Receiver or trustee has been guilty of mala fides or of gross negligence in respect of the same.

(Amended 76 of 1996 s. 73)

[cf. 1914 c. 59 s. 61 U.K.]

Distribution of property

67.

Declaration and distribution of dividends

(1)

Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(Replaced 76 of 1996 s. 43)

(2)-(3)

(Repealed 76 of 1996 s. 43)

(4)

Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5)

When the trustee has declared a dividend he shall cause to be gazetted and shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable.

[cf. 1914 c. 59 s. 62 U.K.]

68.

Joint and separate dividends

(1)

Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2)

Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

[cf. 1914 c. 59 s. 63 U.K.]

69.

Provision for creditors residing at a distance, etc.

(1)

In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from Hong Kong that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

(Amended 47 of 1984 s. 16)

(2)

He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3)

Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

[cf. 1914 c. 59 s. 64 U.K.]

70.

Right of creditor who has not proved debt before declaration of a dividend

Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

[cf. 1914 c. 59 s. 65 U.K.]

71.

Interest on debts

(1)

Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(2)

Any surplus remaining after the payment of debts that are proved in bankruptcy shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(3)

The rate of interest payable under subsection (2) in respect of any debt is whichever is the greater of the following—

(a)

the rate specified under section 49 of the Supreme Court Ordinance (Cap. 4) at the commencement of the bankruptcy; and

(b)

the rate applicable to that debt apart from the bankruptcy.

(4)

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the bankruptcy, the creditor may prove for interest, at a rate not exceeding the rate specified under section 49 of the Supreme Court Ordinance (Cap. 4), to that date from the time when the debt or sum has become payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

(Replaced 76 of 1996 s. 44)

71A.

Extortionate credit transactions

(1)

This section applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2)

The court may, on the application of the trustee, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.

(3)

For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a)
the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b)
it otherwise grossly contravened ordinary principles of fair dealing,
and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4)
An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit—

(a)
provision setting aside the whole or part of any obligation created by the transaction;

(b)
provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c)
provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

(d)
provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

(e)
provision directing accounts to be taken between any persons.

(5)

Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.

(Added 76 of 1996 s. 44)

72.

Final dividend

(1)

When the trustee has realized all the property of the bankrupt, or so much thereof as can be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2)

After the expiration of the time so limited or if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

[cf. 1914 c. 59 s. 67 U.K.]

73.

No action for dividend

No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the court may, if it thinks fit, order him to pay it and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application.

[cf. 1914 c. 59 s. 68 U.K.]

74.

Right of bankrupt to surplus

The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges and expenses of the proceedings under the bankruptcy petition.

[cf. 1914 c. 59 s. 69 U.K.]

PART IIIA**CRIMINAL BANKRUPTCY**

(Part IIIA added 21 of 1979 s. 2)

Interpretation**74A.****Interpretation**

In this Part and in Schedule 1—

“

criminal bankruptcy administration petition

”(

刑事破産管理呈請

) means a petition under section 112 presented by virtue of Schedule 1;

“

criminal bankruptcy order

”(

刑事破産令

) means an order made under section 84A of the Criminal Procedure Ordinance (Cap. 221);

“

criminal bankruptcy petition

”(

刑事破産呈請

) means a bankruptcy petition presented by virtue of Schedule 1.

(Amended 39 of 1992 s. 2)

Official Petitioner

74B.

Office and functions of Official Petitioner

(1)

For the purposes of discharging, in relation to cases in which a criminal bankruptcy order is made, the functions mentioned in subsection (2), there shall be an officer known as the Official Petitioner; and the Secretary for Justice shall, by virtue of his office, be the Official Petitioner.

(Amended L.N. 362 of 1997)

(2)

The functions of the Official Petitioner shall be—

(a)

to consider whether, in a case where a criminal bankruptcy order is made, it is in the public interest that he should himself present a criminal bankruptcy petition;

(b)

to present a criminal bankruptcy petition in any such case where he determines it is in the public interest for him to do so;

(c)

to make payments, in such cases as he may determine, towards expenses incurred by other persons in connection with proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition;

(d)

to exercise, so far as he considers it to be in the public interest to do so, any of the powers conferred on him by Schedule 1.

(Amended 39 of 1992 s. 2)

(3)

Neither the Official Petitioner nor any person acting under his authority shall be liable to any action or proceeding in respect of anything done or omitted in the discharge, or purported discharge, of the functions of the Official Petitioner under or by virtue of this Ordinance.

(4)

Any functions of the Official Petitioner under this Ordinance may be discharged on his behalf by any person acting with his authority.

[cf. 1972 c. 71 s. 9 U.K.]

General

74C.

Effect of criminal bankruptcy order

Schedule 1 shall apply to give effect to the operation of this Ordinance in a case where a criminal bankruptcy order has been made and to supplement this Ordinance in relation to dispositions made by a person against whom such an order has been made.

(Amended 39 of 1992 s. 2)

PART IV

OFFICIAL RECEIVER

75.

Appointment of Official Receiver and other officers

(Adaptation amendments retroactively made - see 18 of 2005 s. 19)

(1)

The Chief Executive may appoint an Official Receiver and such other officers to hold any of the offices specified in Schedule 2 as may be required to assist the Official Receiver in the performance of his duties.

(Amended 18 of 2005 s. 19)

(2)

No person shall be appointed Official Receiver or to any of the offices specified in Part I of Schedule 2 unless on the date of such appointment he is qualified to

practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap. 87).

(Amended 42 of 2000 s. 21)

(3)

The Official Receiver and the holder of an office specified in Part I of Schedule 2 shall be deemed to be legal officers for the purpose of the Legal Officers Ordinance (Cap. 87) and shall have all rights conferred upon legal officers by that Ordinance.

(4)

The holder of an office specified in Schedule 2 may, subject to subsection (5) and any instructions of the Official Receiver, exercise the powers or perform the duties of the office of the Official Receiver.

(5)

The holder of an office specified in Part II of Schedule 2 shall not exercise any right conferred by subsection (3) on the holder of an office specified in Part I of Schedule 2.

(6)

The Official Receiver shall act under the general authority and direction of the Chief Executive and shall also be an officer of the court.

(Amended 18 of 2005 s. 19)

(7)

The Chief Executive may, by order published in the Gazette, amend Schedule 2.

(Amended 18 of 2005 s. 19)

(Replaced 39 of 1992 s. 3)

76.

Status of Official Receiver

(1)

The duties of the Official Receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2)

The Official Receiver and the holder of an office specified in Schedule 2 may take any affidavit required by any Ordinance to be made before or produced or delivered to or filed with the Official Receiver or the holder of an office specified in Schedule 2 notwithstanding any Ordinance requiring the taking of such affidavit by or before any other person.

(Replaced 39 of 1992 s. 4)

(3)

All provisions in this or any other Ordinance referring to the trustee in a bankruptcy shall, unless the context otherwise requires or the Ordinance otherwise provides, include the Official Receiver when acting as trustee.

(4)

The trustee shall supply the Official Receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the Official Receiver to perform his duties under this Ordinance.

[cf. 1914 c. 59 s. 72 U.K.]

76A.

Transitional provision

(1)

Any thing done before the commencement* of the Bankruptcy (Amendment) Ordinance 1992 (39 of 1992) by the Registrar General in the capacity of Official Receiver shall be regarded as having been done by the Official Receiver at the time when the thing was done.

(2)

Any document which contains a reference to the Registrar General in the capacity of Official Receiver shall have effect on and after the commencement* of the Bankruptcy (Amendment) Ordinance 1992 (39 of 1992) with the substitution for such reference of a reference to the Official Receiver.

(3)

In any legal proceedings pending on the commencement* of the Bankruptcy (Amendment) Ordinance 1992 (39 of 1992) to which the Registrar General in the capacity of Official Receiver is a party, the Official Receiver shall as from such commencement be substituted as a party thereto in lieu of the Registrar General and the proceedings shall continue as if the Official Receiver had always been that party.

(4)

In this section, “

Registrar General

”(

註冊總署署長

) means the Registrar General appointed under section 2(1) of the Registrar General (Establishment) Ordinance (Cap. 100)+.

(Added 39 of 1992 s. 5)

Editorial Note:

* Commencement date: 1 June 1992.

+ The Registrar General (Establishment) Ordinance was repealed by s. 14 of the Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance (Cap. 439).

77.

Duties of Official Receiver as regards the bankrupt's conduct

As regards the conduct of a bankrupt, it shall be the duty of the Official Receiver—

(Amended 18 of 2005 s. 20)

(a)

to consider any report submitted to him under section 86A and take such action on the report as he considers appropriate;

(Replaced 18 of 2005 s. 20)

(b)

(Repealed 18 of 2005 s. 20)

(c)

to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice may direct.

(Amended L.N. 362 of 1997; 18 of 2005 s. 20)

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4; 76 of 1996 s. 72)

[cf. 1914 c. 59 s. 73 U.K.]

78.

Duties of Official Receiver as to bankrupt's estate

(1)

As regards the estate of a bankrupt, it shall be the duty of the Official Receiver—

(Amended 76 of 1996 s. 72)

(a)

to act as interim trustee if so appointed by the court;

(Replaced 18 of 2005 s. 21)

(b)-(e)

(Repealed 18 of 2005 s. 21)

(f)

to advertise the bankruptcy order;

(Amended 76 of 1996 ss. 72 and 73)

(g)

to act as trustee during any vacancy in the office of trustee.

(h)

(Repealed 18 of 2005 s. 21)

(2)

For the purpose of his duties as interim trustee, the Official Receiver shall have the same powers as if he were a receiver appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the bankrupt's property, and may for that purpose, if he thinks it

advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the bankrupt's property or the disposing of perishable goods.

(Amended 76 of 1996 s. 72)

(3)

(Repealed 18 of 2005 s. 21)

(Amended 18 of

2005 s. 21)

[cf. 1914 c. 59 s. 74 U.K.]

PART V

TRUSTEES AND PROVISIONAL TRUSTEES*

Editorial Note:

*

(Replaced 18 of 2005 s. 22)

Official name

79.

Official name of trustee and provisional trustee

(1)

The official name of a provisional trustee shall be “the provisional trustee of the property of a bankrupt” (inserting the name of the bankrupt).

(2)

The official name of a trustee shall be “the trustee of the property of a bankrupt” (inserting the name of the bankrupt).

(3)

By his official name, a provisional trustee or trustee may do all acts that are required or authorized to be done by him in the execution of his office.

(Replaced 18 of 2005 s. 23)

Appointment

79A.**Disqualification for appointment as trustee**

No person being an undischarged bankrupt and no body corporate shall be qualified for appointment to the office of trustee, and—

(a)

any appointment made in contravention of this section shall be void; and

(b)

where any such person or any body corporate acts as trustee, such person or body corporate shall be liable to a fine of \$5,000.

(Added 47 of 1984 s. 11)

79B.**Corrupt inducement affecting appointment as trustee**

Any person who gives or agrees or offers to give to any creditor of a debtor or bankrupt any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the trustee shall be liable to a fine of \$5,000.

(Added 47 of 1984 s. 11)

80.**Power to appoint joint or successive trustees and provisional trustees**

(1)

When 2 or more persons are appointed as provisional trustees, the appointment shall state whether any act required or authorized to be done by a provisional trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term “provisional trustee”, and shall be joint tenants of the property of the bankrupt.

(Replaced 18 of 2005 s. 24)

(1A)

When 2 or more persons are appointed as trustees, the appointment shall state whether any act required or authorized to be done by a trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the term “trustee”, and shall be joint tenants of the property of the bankrupt.

(Added 18 of 2005 s. 24)

(2)

The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee or failing to give security, or of the appointment of any such person not being approved by the court.

[cf. 1914 c. 59 s. 77 U.K.]

81.

Proceedings in case of vacancy in office of trustee

(1)

If a vacancy occurs in the office of a trustee the creditors in general meeting may appoint a person to fill the vacancy and the thereupon the same proceedings shall be taken as in the case of a first appointment.

(2)

The Official Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3)

If the creditors do not within 3 weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the Official Receiver shall report the matter to the court, and the court may appoint a trustee.

(4)

During any vacancy in the office of trustee the Official Receiver shall act as trustee.

[cf. 1914 c. 59 s. 78 U.K.]

81A.

Vacancy in office of provisional trustee

(1)

If a vacancy occurs in the office of a provisional trustee, the Official Receiver shall—

(a)

in a case where the Official Receiver considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, either appoint another person to fill the vacancy or act as the provisional trustee; or

(b)

in any other case, act as the provisional trustee.

(2)

The power of the Official Receiver to appoint another person to fill a vacancy may be exercised without a creditors' meeting, and it includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.

(Added 18 of 2005 s. 25)

Control over trustee

82.

Discretionary powers of trustee and control thereof

(1)

Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting or by the creditors' committee, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the creditors' committee.

(Amended 76 of 1996 s. 74)

(2)

The trustee may from time to time summon general meeting of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-fourth in value of the creditors (including himself), at any time to request the trustee to call a meeting of the creditors, and the trustee shall call such meeting accordingly within 14 days:

Provided that the person at whose instance the meeting is summoned shall, if so required, deposit with the trustee a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the court so directs.

(Amended 18 of 2005 s. 26)

(3)

The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4)

Subject to the provisions of this Ordinance the trustee shall use his discretion in the management of the estate and its distribution among the creditors.

[cf. 1914 c. 59 s. 79 U.K.]

83.

Appeal to court against trustee

If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

[cf. 1914 c. 59 s. 80 U.K.]

84.

Control of court over trustee

(1)

The court shall take cognizance of the conduct of trustees, who shall act in a fiduciary capacity and deal with property under their control honestly, in good faith, with proper skill and competence and in a reasonable manner, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by Ordinance, rules or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the court by any creditor, the Official Receiver, the bankrupt or any other person in regard thereto by notice duly served on the trustee at least 8 clear days before the date of hearing, the court shall inquire into the matter and take such action thereon as may be deemed expedient.

(Amended 76 of 1996 s. 46)

(1A)

Without limiting the generality of the duties imposed on a trustee by subsection (1), in realizing the assets of a bankrupt's estate it shall be the duty of a trustee to take all reasonable care to realize the best price reasonably obtainable in the circumstances.

(Added 76 of 1996 s. 46)

(2)

The court may either of its own motion or on the application of the Official Receiver at any time require any trustee to answer any inquiry made by it or him in relation to any bankruptcy in which the trustee is engaged and may examine on oath the trustee or any other person concerning the bankruptcy.

(3)

The court may also direct an investigation to be made of the books and vouchers of the trustee.

(4)

Where on an application under this section the court is satisfied—

(a)

that the trustee has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate; or

(b)

that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee in the carrying out of his functions,

the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just, and liability under this section is without prejudice to any liability arising apart from this section.

(Added 76 of 1996 s. 46)

[cf. 1914 c. 59 s. 81 U.K.]

Remuneration and costs

85.

Remuneration of trustee

(1)

Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the creditors' committee.

(Amended 76 of 1996 ss. 72 and 74)

(2)

Where the remuneration of the trustee is to be a commission upon the amount received by the trustee, then one part shall be payable on the amount realized by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(3)

If one-fourth in number or value of the creditors apply to the Official Receiver or the Official Receiver is of the opinion that the remuneration of a trustee should be reviewed, the Official Receiver may apply to the court and thereupon the court may confirm, increase or reduce the remuneration of the trustee.

(4)

The resolution or the creditors' committee, as the case may be, shall specify the expenses which the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any such expenses.

(Amended 76 of 1996 s. 74)

(5)

Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the court may approve.

(6)

A trustee shall not under any circumstances whatever make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond his said remuneration payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor or other person who may be employed about a bankruptcy.

(Replaced 26 of 1985 s. 2)

85A.

Remuneration of provisional trustee and the first trustee constituted under section 112A

(1) The remuneration of the following persons shall be fixed by the Official Receiver in accordance with a scale of fees or on such other basis as the Official Receiver may from time to time approve in writing—

(a)

a provisional trustee other than the Official Receiver;

(b)

in a case where section 112A applies and the first trustee constituted under subsection (1)(i) of that section is not the Official Receiver, that first trustee.

(2)

If one-fourth in number or value of the creditors apply to the Official Receiver or the Official Receiver is of the opinion that the remuneration of the provisional trustee or first trustee referred to in subsection (1) should be reviewed, the Official Receiver may apply to the court and thereupon the court may confirm, increase or reduce such remuneration.

(3)

Where the provisional trustee or first trustee referred to in subsection (1) has not received any remuneration, the court may, on application, order the payment out of the bankrupt's estate to him of such amount as the court considers sufficient to reimburse him for any necessary disbursements incurred by him in the course of the administration of the estate. Such application may be made by the trustee or the Official Receiver.

(4)

The provisional trustee or first trustee referred to in subsection (1) shall not under any circumstances whatever make any arrangement for, or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever to be made or payable to him beyond his said remuneration payable out of the estate, and he shall not make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy.

(Added 18 of 2005 s. 27)

86.

Allowance and taxation of costs

(1)

Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by Ordinance or rules to be performed by himself.

(2)

Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services.

(3)

All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons, not being trustees, shall be taxed by the Registrar and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The Registrar shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4)

Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the Registrar for taxation, and if he fails to do so within 7 days after receipt of the request or such further time as the court on application may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

[cf. 1914 c. 59 s. 83 U.K.]

Duties of trustee as regards the bankrupt's conduct and estate

(Added 18 of 2005 s. 28)

86A.

Duties of trustee as regards the bankrupt's conduct

(1)

It shall be the duty of the trustee—

(a)

to investigate the conduct of the bankrupt; and

(b)

to report to the court on any conduct that justifies the court in refusing, suspending or qualifying an order for the bankrupt's discharge.

(2)

In the case of a trustee other than the Official Receiver, it shall also be the duty of the trustee—

(a)

to investigate the conduct of the bankrupt and to immediately report to the Official Receiver when there is reason to believe that the bankrupt has committed an act that constitutes an offence under this Ordinance; and

(b)

to take such part and give such assistance in relation to the prosecution of the bankrupt as the Secretary for Justice or the Official Receiver may direct.

(Added 18 of 2005 s. 28)

86B.

Duties of trustee as regards the bankrupt's estate

(1)

As regards the estate of a bankrupt, it shall be the duty of the trustee—

(a)

to raise money in any case where in the interests of the creditors it appears necessary so to do;

(b)

to preside at the first meeting of creditors if it is summoned;

(c)

to issue forms of proxy for use at the meetings of creditors;

(d)

to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs;

(e)

to advertise the date of the first meeting of creditors and of the bankrupt's public examination, and such other matters as it may be necessary to advertise;

(f)

to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose to employ at the expense of the estate any person or persons to assist in its preparation.

(2)

The trustee shall account to the court and pay over all moneys and deal with all securities in such manner as the court from time to time directs.

(Added 18 of 2005 s. 28)

Receipts, payments, accounts, audit

87.

Trustee to provide list of creditors

The trustee shall, whenever required by any creditor so to do, provide the creditor with a list of the creditors showing the amount of the debt due to each creditor, and the creditor requiring such list shall pay a fee at the prescribed rate.

(Amended 76 of 1996 s. 47; 18 of 2005 s. 29)

[cf. 1914 c. 59 s. 84 U.K.]

88.

Trustee to provide statement of accounts

It shall be lawful for any creditor, with the concurrence of one-fourth of the creditors (including himself), at any time to call upon the trustee to provide the

creditors with a statement of the accounts up to the date of such notice, and the trustee shall upon receipt of such notice provide the statement of the accounts:

Provided that the person at whose instance the accounts are provided shall, if so required, deposit with the trustee a sum sufficient to pay the costs of providing the accounts, which sum shall be repaid to him out of the estate if the court so directs.

(Amended 18 of 2005 s. 30)

[cf. 1914 c. 59 s. 85 U.K.]

89.

Annual statement of proceedings

(1)

Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, provide the Official Receiver with a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars and made out in the prescribed form.

(2)

The Official Receiver shall cause the statements so provided to be examined, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on the said statements or in his accounts or otherwise, and may apply to the court for an order that the trustee do make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

(Amended 18 of 2005 s. 31)

[cf. 1914 c. 59 s. 87 U.K.]

90.

Trustee not to pay into private account

No trustee in a bankruptcy or nominee under a voluntary arrangement shall pay any sums received by him as trustee into his private banking account or use them otherwise than in the administration of the estate.

(Amended 76 of 1996 s. 48)
[cf. 1914 c. 59 s. 88 U.K.]

91.

Payment of moneys into bank

(Adaptation amendments retroactively made - see 18 of 2005 s. 32)

(1)

The Official Receiver shall open in his name as Official Receiver an account at a bank approved by the Chief Executive and shall pay to the credit thereof all sums received by him as such Official Receiver or as trustee, and every trustee in a bankruptcy, other than the Official Receiver, receiving money as such trustee shall open an account at such bank in the name of the bankrupt's estate and shall pay to the credit of such account all sums which may from time to time be received by him as such trustee:

(Amended 47 of 1984 s. 12; 76 of 1996 s. 72; 18 of 2005 s. 32)

Provided that the Official Receiver may, on the application of the creditors' committee, authorize any other trustee to make his payments into and out of any other bank specified by the committee in such application, and those payments shall be made in the prescribed manner.

(Added 47 of 1984 s. 12. Amended 76 of 1996 s. 74)

(2)

If a trustee at any time retains for more than 10 days a sum exceeding \$2,000, or such other amount as the Official Receiver in any particular case may authorize him to retain, then unless he explains the retention to the satisfaction of the Official Receiver, he shall pay interest on the amount so retained in excess at the rate of 20 per cent per annum, and shall have no claim to remuneration, and may be removed from his office by the Official Receiver and shall be liable to pay any expenses occasioned by reason of his default.

(Amended 47 of 1984 s. 12)

[cf. 1914 c. 59 s. 89(5) U.K.]

(3)

Any trustee paying money into his private banking account or using it otherwise than in the administration of the estate may without prejudice to any other liability be dismissed from office without remuneration and may be ordered by the court to make good all losses and expenses which the creditors may suffer in consequence of his conduct.

92.

Record and account to be kept by trustee

(1)

The trustee shall keep a record in writing in which he shall enter a minute of all proceedings had and resolutions passed at any meeting of creditors or of the creditors' committee and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property. Such record shall be produced for inspection to the Official Receiver at any time on demand.

(Amended 18 of 2005 s. 33)

(2)

The trustee shall also keep an account, to be called the estate account, in the form of an ordinary debtor and creditor account, in which he shall enter from day to day all his receipts and payments as trustee.

(3)

The trustee shall produce at every meeting of creditors and at every meeting of the creditors' committee the record and account above-mentioned and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

(Amended 76 of 1996 s. 74)

93.

Audit of trustee's accounts

(1)

A trustee other than the Official Receiver shall keep an account of his receipts and payments as such trustee.

(Replaced 18 of 2005 s. 34)

(1A)

The Official Receiver may at any time require the trustee to provide him with the account, and the trustee shall comply with the requirement within the specified time.

(Added 18 of 2005 s. 34)

(2)

The account shall be in a prescribed form, shall be made in duplicate and shall be verified by an affidavit in the prescribed form.

(Amended 13 of 1966 Schedule)

(3)

The trustee shall provide the Official Receiver with such vouchers and information relating to the account as he requires, and the Official Receiver may at any time require the production of, and inspect, any books or accounts kept by the trustee.

(Replaced 39 of 1987 s. 3. Amended 18 of 2005 s. 34)

(3A)

The Official Receiver may at any time cause the account to be audited.

(Added 39 of 1987 s. 3)

(4)

When any such account has been audited (or, as the case may be, forthwith if the Official Receiver decides that the account need not be audited) one copy thereof shall be filed and kept by the Official Receiver, and the other copy shall be delivered to the court for filing, and each copy shall be open on payment of the prescribed fee to the inspection of any creditor or of the bankrupt or of any person interested.

(Amended 39 of 1987 s. 3)

(4A)

Notwithstanding the fact that unaudited copies of an account have already been filed, the Official Receiver may subsequently cause that account to be audited, and in that event a copy of the audited account shall be filed and kept by the Official Receiver, and a further copy shall be delivered to the court for filing, and each copy shall be open, upon payment of the prescribed fee, to the inspection of any creditor or of the bankrupt or of any person interested.

(Added 39 of 1987 s. 3)

(5)

The court may if it so desires examine the trustee and, after hearing the explanation, if any, of the trustee, make such order as it may think just for compelling the trustee to make good any loss to the estate which may appear to the court to have been occasioned by any misfeasance, neglect or improper conduct or omission of the trustee.

(Amended 39 of 1987 s. 3)

[cf. 1914 c. 59 s. 92 U.K.]

Vacation of office by trustee

94.

Release of trustee

(1)

When the trustee has realized all the property of the bankrupt or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a voluntary arrangement having been approved, or has resigned or has been removed from his office, he shall apply to the court for his release, and if all the requirements of the court with respect to accounts and with respect to any order of the court against the trustee have been fulfilled, the court may make an order for release accordingly.

(Amended 76 of 1996 s. 49)

(2)

Where the release of a trustee is withheld the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3)

An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4)

The provisions of subsections (1), (2) and (3) shall apply to the Official Receiver when he is or is acting as trustee, and when the Official Receiver has been released under this section or any previous similar enactment he shall continue to act as trustee for any subsequent purposes of the administration of the bankrupt's estate but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made or liability incurred before his release.

(Amended 76 of 1996 s. 72)

(5)

Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.

(6)

Where on the release of a trustee the Official Receiver is or is acting as trustee, no liability shall attach to him personally in respect of any act done or default made or liability incurred by any prior trustee.

[cf. 1914 c. 59 s. 93 U.K.]

95.

Office of trustee vacated by insolvency

If a bankruptcy order is made against a trustee he shall thereby vacate his office of trustee.

(Amended 76 of 1996 s. 73)

[cf. 1914 c. 59 s. 94 U.K.]

96.

Removal of trustee

(1)

The creditors may by ordinary resolution, at a meeting specially called for that purpose of which 7 days' notice has been given, remove a trustee, other than the Official Receiver, appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as provided in case of a vacancy in the office of trustee.

(2)

If the court is of opinion—

(a)

that a trustee, other than the Official Receiver, is guilty of misconduct or fails to perform his duties under this Ordinance; or

(Amended 18 of 2005 s. 35)

(b)

that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(c)

that he is by reason of lunacy or continued sickness or absence incapable of performing his duties; or

(d)

that his connection with or relation to the bankrupt or his estate or any particular creditor might make it difficult for him to act with impartiality in the interest of the creditors generally; or

(e)

that the interests of the creditors require it,
the court may remove him from his office and appoint another person in his place.

[cf. 1914 c. 59 s. 95 U.K.]

PART VI

CONSTITUTION, PROCEDURE AND POWERS OF COURT

Jurisdiction

97.

General power of court

(1)

Subject to the provisions of this Ordinance, the court shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2)

(Repealed 76 of 1996 s. 50)

[cf. 1914 c. 59 s. 105 U.K.]

Review and appeals

98.

Review and appeals in bankruptcy

(1)

The court or the Registrar may review, rescind or vary any order made by it or him, as the case may be, under its or his bankruptcy jurisdiction.

(Replaced 78 of 1991 s. 2)

(2)

Every order of the court or the Registrar shall be subject to appeal to the Court of Appeal. The notice of appeal shall be served within the time for appealing against an order made in the matter of any bankruptcy as specified in Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A).

(Amended 92 of 1975 s. 59; 78 of 1991 s. 2; 18 of 2005 s. 36)

[cf. 1914 c. 59 s. 108 U.K.]

Procedure

99.

General rules of procedure

(1)

The rules and practice of the High Court for the time being for regulating the ordinary civil procedure of the court shall, so far as the same may be applicable and not inconsistent with the provisions of this Ordinance, be applied to bankruptcy proceedings, and every order of the court made in connection with bankruptcy proceedings may be enforced in the same way as a judgment of the court made in respect of any other civil proceedings may be enforced.

(Amended 25 of 1998 s. 2)

(2)

The Registrar shall in cases of urgency have power to make interim orders and to hear and determine unopposed or ex parte applications and any order so made shall, subject to an appeal to the court, be deemed to be an order of the court.

(3)

Subject to rules made under section 113 limiting the power conferred by this subsection, the Registrar sitting in open court shall have power to hear and determine—

(a)

unopposed bankruptcy petitions and to make bankruptcy orders thereon;

(Amended 37 of 1998 s. 2)

(b)

applications to annul bankruptcy orders;

(Amended 37 of 1998 s. 2; 18 of 2005 s. 37)

(c)

applications for an interim order in respect of a voluntary arrangement; and

(Replaced 37 of 1998 s. 2)

(d)

applications for discharge from bankruptcy.

(Replaced 78 of 1991 s. 3. Amended 18 of 2005 s. 37)

99A.

Jurisdiction of Registrar

(1)

Unless otherwise ordered by the court in a particular case, the Registrar may exercise and perform the powers and duties conferred or imposed upon the court by sections 19 and 29.

(2)

The Registrar may, if he exercises the jurisdiction conferred on him by subsection (1) or section 99(3)—

(Amended 78 of 1991 s. 4)

(a)

refer any matter for the decision or direction of a judge; and

(b)

at any time adjourn an examination for further hearing before a judge.

(3)

A judge may, if a matter is referred to him under subsection (2)(a), dispose of it himself or refer it back to the Registrar with such directions as he thinks fit.

(4)

A judge may, if an examination is adjourned under subsection (2)(b) for further hearing before a judge—

(a)

continue the examination;

(b)

at any time direct that the examination be continued before the Registrar; and

(c)

make such other order and give such directions as he may consider proper.

(5)

Any reference in this Ordinance to the court shall include a reference to the Registrar exercising the jurisdiction conferred on him by this section.

(6)

Notwithstanding subsection (5), the Registrar, when exercising the jurisdiction conferred by this section, shall not have power to make an order for the committal of a person for contempt of court.

(7)

In this section—

“

Registrar

” (

司法常務官

) means—

(a)

the Registrar of the High Court;

(aa)

any Senior Deputy Registrar of the High Court;

(Added 10 of 2005 s. 168)

(b)

any Deputy Registrar of the High Court; and

(c)

any Assistant Registrar of the High Court appointed by the Chief Justice for the purposes of this section.

(Amended 25 of 1998 s. 2)

(Added 50 of 1970 s. 2)

100.

Discretionary powers of court

(1)

Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in court under this Ordinance shall be in the discretion of the court.

(Amended 76 of 1996 s. 51)

(2)

The court may at any time adjourn any proceedings before it upon terms, if any, as it may think fit to impose.

(3)

The court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose.

(4)

Where by this Ordinance or by general rules the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof upon such terms, if any, as the court may think fit to impose.

(5)

Subject to general rules, the court may in any matter take the whole or any part of the evidence viva voce or by interrogatories or upon affidavit or, out of Hong Kong, by commission.

(Amended 47 of 1984 s. 16)

[cf. 1914 c. 59 s. 109 U.K.]

100A.

Court may make a regulating order

(1)

Where it appears to the court on application being made by the Official Receiver, the trustee or any creditor at any time after the presentation of a bankruptcy petition, that by reason of the large number of creditors or for any other reason the interest of the creditors so requires, it may, on or after the making of a bankruptcy order, order that the bankruptcy proceedings shall be regulated specially by the court, and such order shall be known as a regulating order.

(Amended 76 of 1996 s. 73; 18 of 2005 s. 38)

(2)

A regulating order shall be published in such manner as the court may direct, and sections 100B to 100H inclusive shall apply to the bankruptcy proceedings where a regulating order has been made but not otherwise.

(3)

Where a regulating order is made the Bankruptcy Rules (Cap. 6 sub. leg. A) shall apply mutatis mutandis to the Official Receiver, trustee and creditors' committee appointed or acting after the making of a regulating order, and to the conduct of any ballot or other proceedings ordered by the court under section 100B or 100F.

(Amended 76 of 1996 s. 74)

(4)

Where any order made under sections 100B to 100G inclusive prescribes any procedure it shall be deemed to be in substitution for the procedure which would be required by this Ordinance but for the making of such order, and in particular where any such order prescribes a procedure for doing something which would otherwise be done at a meeting of creditors no such meeting shall be required to be held.

(Added 21 of 1965 s. 2)

100B.

First meeting and composition

(1)

(Repealed 76 of 1996 s. 52)

(2)

The court may order that the wishes of creditors be ascertained for the purpose of accepting or rejecting any proposal in such manner as it may direct without the holding of meetings under section 20E, and for such purpose may direct the manner in which any proposal be communicated to such creditors.

(Amended 76 of 1996 s. 52)

(3)

Without derogating from the generality of subsection (2) the court may direct the holding of a ballot and the use of voting letters.

(4)

Notwithstanding anything in sections 20 to 20K, where a majority in number and three-fourths in value of all the creditors who have proved their debt, or who by virtue of section 100H are deemed for voting purposes to have proved a debt exceeding \$100, agree to accept a proposal, the proposal shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.

(Amended 76 of 1996 s. 52)

(5)

(Repealed 76 of 1996 s. 52)

(Added 21 of 1965 s. 2)

100C.

(Repealed 76 of 1996 s. 53)

100D.

Appointment and removal of trustee after the making of regulating order

(1)

The court may, on application being made by the Official Receiver or the trustee appointed or acting before the making of the regulating order under section 100A, by order appoint the person who makes the application or

any other person recommended by him as trustee of the property of the bankrupt under the regulating order.

(Replaced 18 of 2005 s. 39)

(1A)

The court may, on application being made by the Official Receiver, by order remove any trustee appointed under subsection (1) and fill any vacancy.

(Added 18 of 2005 s. 39)

(1B)

On the making of an order under subsection (1) or (1A), section 81(1), (2) and (3) or 96(1) shall cease to apply to the bankruptcy and any action taken under such provisions before the making of the regulating order in respect of the appointment or removal of a trustee or filling of any vacancy shall cease to have effect.

(Added 18 of 2005 s. 39)

(2)

The court may by order give such directions to a trustee as it shall think fit. Such directions shall be deemed to be the directions of creditors for the purposes of section 82. Neither a trustee nor the Official Receiver shall be required to summon any meetings of creditors save where the court so orders.

(Added 21 of 1965 s. 2)

100E.

Creditors' committee

(1)

The court may on application being made by the Official Receiver or trustee by order appoint such qualified persons as it thinks fit as a creditors' committee for the purpose of superintending the administration of the property of the bankrupt by the trustee, remove any member thereof and fill any vacancy therein.

(Amended 76 of 1996 s. 74)

(2)

The continuing members of the committee, provided there be not less than 2 such continuing members, may act notwithstanding any vacancy in their body.

(3)

Upon the making of any order for such appointment, removal or filling of a vacancy the provisions of section 24(1) and any applicable rules related thereto shall cease to apply to the bankruptcy and any action taken under such provisions in respect of any appointment of a creditors' committee, any removal of any member thereof or the filling of any vacancy therein shall cease to have effect.

(Amended 76 of 1996 ss. 55 & 74)

(Added 21 of 1965 s. 2)

100F.

Informing creditors and ascertaining their wishes

The court may by order give such directions to the Official Receiver or trustee as it shall think fit for the purpose of keeping creditors informed of any matter relating to the bankruptcy and for ascertaining their wishes, and may require the Official Receiver or trustee to make such reports to the court as it may specify.

(Added 21 of 1965 s. 2)

100G.

Creditors to give notice of intention to take part in public examination

(1)

The court may order that any creditor wishing to exercise his right to question the bankrupt on his public examination under section 19(5) shall give notice in writing of such intention to—

(Amended 18 of 2005 s. 40)

(a)

in a case where the Official Receiver is the applicant for the public examination, the Official Receiver; or

(b)

in a case where the trustee is the applicant for the public examination, the trustee.

(Amended 76 of 1996 s. 56; 18 of 2005 s. 40)

(1A)

The court may also direct that no creditor may exercise his right to question the bankrupt on his public examination under section 19(5) unless the notice under subsection (1) is received by the Official Receiver or the trustee, as the case may be, within such time as may be specified by the court.

(Added 18 of 2005 s. 40)

(2)

For the purpose of this section the court may direct that notice of the public examination of a bankrupt shall be published in such manner as it may specify, and notice of such examination or of adjourned hearings thereof shall not be required to be sent to creditors individually.

(Added 21 of 1965 s. 2. Amended 76 of 1996 s. 72)

100H.

Proof of debts in the case of banks

(1)

Where the bankrupt was carrying on the business of a bank, any creditor who is a depositor, whether on current, savings, deposit, fixed deposit or other account, shall, unless and until the Official Receiver or trustee by notice in writing requires him to make a formal proof of debt, be deemed to have proved his debt—

(Amended 18 of 2005 s. 41)

(a)

for voting purposes, for the net balance to his credit in the books of the bank on all his accounts taken together, at the date of the bankruptcy order:

(Amended 76 of 1996 s. 73)

Provided that if the said balance does not exceed \$100 he shall not be deemed to have proved his debt for the purposes of sections 20 to 20K and 100B(4); and

(Amended 76 of 1996 s. 57)

(b)

for dividend purposes, for the said balance plus or minus, as the case may be, the net amount of interest accrued due by or to the bank on the said accounts at the date of the bankruptcy order.

(Amended 76 of 1996 s. 73)

(2)

Any debt which is deemed to have been proved by virtue of subsection (1) shall be treated as if a proof thereof had been duly lodged in due time with the Official Receiver or trustee and had been admitted for voting and dividend purposes respectively for the said amounts stated in subsection (1).

(Added 21 of 1965 s. 2)

101.

Consolidation of petitions

Where 2 or more bankruptcy petitions are presented against the same debtor or against joint debtors the court may consolidate the proceedings or any of them on such terms as the court thinks fit.

[cf. 1914 c. 59 s. 110 U.K.]

102.

Power to change carriage of proceedings

Where the petitioner does not proceed with due diligence on his petition the court may either dismiss the petition or substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Ordinance in the place of the petitioning creditor.

[cf. 1914 c. 59 s. 111 U.K.]

103.

Continuance of proceedings on death of debtor

If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

[cf. 1914 c. 59 s. 112 U.K.]

104.

Power to stay proceedings

The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

[cf. 1914 c. 59 s. 113 U.K.]

105.

Power to present petition against one partner

Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

(Amended 76 of 1996 s. 58)

[cf. 1914 c. 59 s. 114 U.K.]

106.

Power to dismiss petition against some respondents only

Where there are more respondents than one to a petition the court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

[cf. 1914 c. 59 s. 115 U.K.]

107.

Actions by trustee and bankrupt's partners

Where a member of a partnership is adjudged bankrupt the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application

for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs.

[cf. 1914 c. 59 s. 117 U.K.]

108.

Actions on joint contracts

Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

[cf. 1914 c. 59 s. 118 U.K.]

109.

Proceedings in partnership name

Any 2 or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

[cf. 1914 c. 59 s. 119 U.K.]

PART VII

SUPPLEMENTAL PROVISIONS

Disobedience to order of court

110.

Disobedience to order of court

Where default is made by a trustee, bankrupt or other person in obeying any order or direction made or given by the court under this Ordinance, the court

may make an immediate order for the committal of such trustee, bankrupt or other person for contempt of court:

Provided that the power given by this section shall be deemed to be in addition to and not in substitution for any other right, remedy or liability in respect of such default.

(Amended 76 of 1996 s. 72)

[cf. 1914 c. 59 s. 105(5) U.K.]

Application of Ordinance

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule)

111.

Exclusion of corporations, companies and limited partnerships

A bankruptcy order shall not be made against—

(Amended 28 of 2012 ss. 912 & 920)

(a)

any corporation;

(b)

any association or company registered under—

(i)

a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); or

(ii)

the Companies Ordinance (Cap. 622); or

(c)

any partnership registered under the Limited Partnerships Ordinance (Cap. 37).

(Amended 76 of 1996 s. 73; 28 of 2012 ss. 912 & 920)

[cf. 1914 c. 59 s. 126 U.K.]

112.

Administration in bankruptcy of estate of person dying insolvent

(1)

Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration in bankruptcy of the estate of the deceased debtor, according to the law of bankruptcy.

(2)

The petition shall be served on the legal personal representative of the deceased debtor or, if there is none in Hong Kong, on the Official Administrator, and the court may in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate or may upon cause shown dismiss the petition with or without costs.

(Amended 47 of 1984 s. 16)

(3)

A petition for administration in bankruptcy under this section shall not be presented to the court after proceedings have been commenced under the Rules of the High Court (Cap. 4 sub. leg. A) for the administration of the deceased debtor's estate but the court may, when satisfied that the estate is insufficient to pay its debts, make an order for the administration in bankruptcy of the estate of the deceased debtor and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(Amended 25 of 1998 s. 2)

(4)

Upon an order being made for the administration in bankruptcy of a deceased debtor's estate the property of the debtor shall vest in the Official Receiver as trustee thereof and he shall forthwith proceed to realize and distribute it in accordance with the provisions of this Ordinance:

Provided that the creditors shall have the same powers as to appointment of trustees and creditors' committees as they have in other cases where the estate

of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance relating to trustees and creditors' committees shall apply to trustees and creditors' committees appointed under the power so conferred. If no creditors' committee is appointed any act or thing or any direction or permission which might have been done or given by a creditors' committee may be done or given by the court.

(Amended 76 of 1996 s. 74)

(5)

With the modifications hereinafter mentioned, all the provisions of Part III (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (10) the following provisions, namely section 29 (which relates to inquiries as to the debtor's conduct, dealings and property) and section 86 (which relates to the costs of trustees, managers and other persons) shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance, and section 40 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(6)

In the administration of the property of the deceased debtor under an order of administration the Official Receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full out of the debtor's estate in priority to all other debts.

(7)

If on the administration of a deceased debtor's estate any surplus remains in the hands of the Official Receiver or trustee, after payment in full of all the debts

due from the debtor together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or failing such representative, to the Official Administrator.

(8)

(Repealed 76 of 1996 s. 59)

(9)

A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor or by the Official Administrator; and where a petition is so presented by such a representative or by the Official Administrator this section shall apply subject to such modifications as may be prescribed by general rules made under subsection (10).

(10)

General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

(Amended E.R. 2 of 2014)

[cf. 1914 c. 59 s. 130 U.K.]

112A.

Application of Ordinance to small bankruptcies

(1)

Subject to subsection (2), where a bankruptcy order is made against a debtor and—

(Amended 76 of 1996 s. 60)

(a)

the court receives proof to its satisfaction; or

(b)

the provisional trustee reports to the court,

that the property of the debtor is not likely to exceed in value \$200,000, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall apply subject to the following modifications—

(Amended 26 of 1985 s. 3)

(ia)

the first meeting of creditors shall be dispensed with;

(Replaced 76 of 1996 s. 60)

(i)

the provisional trustee shall be the trustee in the bankruptcy;

(Amended 76 of 1996 s. 60)

(ii)

there shall be no creditors' committee, and the trustee may do all things which may be done by a trustee with the permission of a creditors' committee;

(Amended 76 of 1996 s. 74)

(iii)

such other modifications as may be prescribed with a view to saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the bankrupt.

(Amended 76 of 1996 s. 72)

(2)

The court may, upon the application of the trustee, at any time before the discharge of the bankrupt rescind an order made under subsection (1) and thereupon the administration shall proceed as if the order had not been made.

(Amended 76 of 1996 s. 72)

(Added 1 of 1976 s. 6. Amended 18 of 2005 s. 42)

[cf. 1914 c. 47 s. 129 U.K.]

General rules

113.

Power to make general rules

The Chief Justice may, with the approval of the Legislative Council, make rules providing for, generally, the carrying into effect the objects of this Ordinance.

[cf. 1914 c. 59 s. 132(1) U.K.]

Fees and remuneration**114.****Fees and remuneration**

(1)

The Chief Justice may, with the approval of the Legislative Council, by order prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance.

(Amended 39 of 1987 s. 4)

(2)

The court may remit the payment of any particular fee or fees due from any bankrupt, or any part thereof, either absolutely or on such terms as it may think fit.

(Amended 76 of 1996 s. 72)

(3)

The amount of any fees prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Official Receiver in proceedings in bankruptcy or in any particular bankruptcy.

(Added 39 of 1987 s. 4)

(4)

Orders made under this section may authorize the court to fix any fee or to vary the amount of any fee otherwise prescribed.

(Added 39 of 1987 s. 4)

(5)

No fee prescribed under this section shall be invalid by reason only of the amount of that fee.

(Added 39 of 1987 s. 4)

(6)

Fees required to be paid under orders made under this section shall be recoverable as a debt.

(Added 39 of 1987 s. 4)

(7)

Orders made under this section before the commencement of the Bankruptcy (Amendment) Ordinance 1987 (39 of 1987) and in force immediately before such commencement, shall have effect as from the commencement of that Ordinance as if made under this section as amended by that Ordinance.

(Added 39 of 1987 s. 4)

[cf. 1914 c. 59 s. 133(1) U.K.]

115.

Disposal of Official Receiver's fees

All fees and commissions received by or payable to the Official Receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the Official Receiver as an interim trustee or otherwise, shall be paid by such officer forthwith into the general revenue.

(Amended 47 of 1984 s. 13; 18 of 2005 s. 43)

Evidence

116.

Evidence of proceedings at meetings of creditors

(1)

A minute of proceedings at a meeting of creditors under this Ordinance, signed by a person describing himself as or appearing to be chairman of the meeting, shall be received in evidence without further proof.

(2)

Until the contrary is proved every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings had thereat to have been duly passed or had.

[cf. 1914 c. 59 s. 138 U.K.]

117.

Evidence of proceedings in bankruptcy

Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance shall, if it appears to be sealed with the seal of the court or purports to be signed by the Registrar, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatsoever.

[cf. 1914 c. 59 s. 139 U.K.]

118.

Swearing of affidavits

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorized to administer oaths, or in the case of a person who is out of Hong Kong, before a person qualified to administer oaths in the country where he resides.

(Amended 47 of 1984 s. 16; 25 of 1998 s. 2)

[cf. 1914 c. 59 s. 140 U.K.]

119.

Death of debtor or witness

In the case of the death of the bankrupt or his spouse, or of a witness whose evidence has been received by the court in any proceeding under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of

the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

(Amended 76 of 1996 ss. 71 & 72)

[cf. 1914 c. 59 s. 141 U.K.]

120.

Statements made to Official Receiver or trustee through an interpreter

Any statement made by a bankrupt or creditor in any bankruptcy to the Official Receiver or trustee through an interpreter shall be deemed to have been made to the Official Receiver or trustee as the case may be respectively, and evidence thereof shall be receivable from the Official Receiver or trustee, on it being proved either that the interpreter employed was a sworn interpreter or that he held the substantive or acting appointment of interpreter, or of clerk and interpreter, to the Official Receiver.

(Amended 76 of 1996 s. 72)

121.

Certificate of appointment of trustee

A certificate of the Official Receiver that a person has been appointed trustee under this Ordinance shall be conclusive evidence of his appointment.

[cf. 1914 c. 59 s. 143 U.K.]

Miscellaneous

122.

Computation of time

(1)

Where by this Ordinance any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed.

(2)

If the limited time is less than 6 days, a specified day is not to be reckoned in the computation of the limited time.

(Replaced 18 of 2016 s. 9)

(3)

If the limited time expires on a specified day, the act or proceeding is considered as done or taken in due time if it is done or taken on the next following day, not being a specified day.

(Replaced 18 of 2016 s. 9)

(3A)

In this section—

specified day

(
指明日子
) means—

(a)

a Saturday;

(b)

a general holiday;

(c)

a gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

(d)

a black rainstorm warning day as defined by that section; or

(e)

(if the act or proceeding in question is required to be done or taken at an office of the court) another day on which the office is closed.

(Added 18 of 2016 s. 9)

(4)

The provisions of this section shall take effect notwithstanding anything contained in sections 29, 30 and 31 of the High Court Ordinance (Cap. 4).

(Amended 92 of 1975 s. 58; 25 of 1998 s. 2)

[cf. 1914 c. 59 s. 145 U.K.]

123.

Service of notices

All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

[cf. 1914 c. 59 s. 146 U.K.]

124.

Formal defect not to invalidate proceedings

(1)

No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity unless the court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.

(2)

No defect or irregularity in the appointment or election of a trustee or member of a creditors' committee shall vitiate any act done by him in good faith.

(Amended 76 of 1996 s. 74; 18 of 2005 s. 44)

[cf. 1914 c. 59 s. 147 U.K.]

125.

Exemption of documents from stamp duty

(1)

Stamp duty shall not be payable in respect of—

(a)

any assurance relating solely to immovable property or personal property which is part of the estate of any bankrupt, and which, after the execution of the

assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy; or

(b)

any other instrument relating solely to the property of any bankrupt.

(2)

In this section “

assurance

” (

轉易書

) includes deed, conveyance, assignment and surrender.

(Replaced 31 of 1981 s. 65)

126.

Acting of corporations, partners, etc.

For all or any of the purposes of this Ordinance a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members and a lunatic may act by his committee or curator bonis.

[cf. 1914 c. 59 s. 149 U.K.]

127.

Certain provisions to bind Crown

Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a bankrupt, the priorities of debts, the effect of a voluntary arrangement, and the effect of a discharge, shall bind the Crown.

(Amended 76 of 1996 ss. 61 & 72)

[cf. 1914 c. 59 s. 151 U.K.]

Unclaimed funds or dividends

128.

Unclaimed and undistributed dividends or funds

(1)

Where—

(a)

a trustee, other than the Official Receiver, under any bankruptcy; or

(b)

a nominee under any voluntary arrangement,

pursuant to this Ordinance has under his control any unclaimed dividend which has remained unclaimed for more than 6 months, or any money held in trust by the bankrupt for another person, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the bankrupt, he shall forthwith pay it to the Official Receiver who shall carry the same to an account to be termed the Bankruptcy Estate Account. The Official Receiver's receipt for the money so paid shall be a sufficient discharge to the trustee in respect thereof.

(Amended 1 of 1976 s. 7; 47 of 1984 s. 14; 76 of 1996 ss. 62 and 72)

(1A)

Where the Official Receiver is the trustee under any bankruptcy or the nominee under any voluntary arrangement, and, pursuant to this Ordinance has under his control any unclaimed dividend which has remained unclaimed for more than 6 months or where after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the bankrupt, he shall forthwith transfer the same to the Bankruptcy Estates Account.

(Added 1 of 1976 s. 7. Amended 76 of 1996 ss. 62 and 72)

(2)

The trustee, whether he has obtained his release or not, may be called upon by the court to account for any unclaimed funds or dividends and any failure to comply with the requisitions of the court in this behalf may be dealt with as a contempt of court.

(3)

Any person claiming to be entitled to any moneys paid into the Bankruptcy Estate Account under this Ordinance may, within 5 years of the date when the same was so paid in, apply to the Official Receiver for payment to him of the same, and the Official Receiver, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Official Receiver may appeal to the court.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 1 of 1976 s. 7)

(4)

After any money has remained unclaimed in the Bankruptcy Estates Account for a period of 5 years the Official Receiver may transfer such money to the general revenue of Hong Kong.

(Replaced 1 of 1976 s. 7)

(5)

Before transferring any money under subsection (4) the Official Receiver may give such notice as he thinks necessary to such parties as he may think fit.

(Replaced 1 of 1976 s. 7)

[cf. 1914 c. 59 s. 153(1) U.K.]

128A.

Deposit of surplus cash balances

(1)

Whenever the cash balance standing to the credit of—

(a)

the Bankruptcy Estates Account referred to in section 128; or

(b)

any account operated by the Official Receiver under section 91,

is in excess of the amount which, in the opinion of the Official Receiver, is required for the time being to answer demands in respect of debtor's estates, the Official Receiver may deposit the whole or any part of that excess with a bank.

(Amended 47 of 1984 s. 15)

(2)

The Official Receiver shall on or after 31 March in each year transfer to the general revenue any interest paid in respect of deposits under subsection (1).

(Added 65 of 1976 s. 5)

PART VIII

BANKRUPTCY OFFENCES

129.

Fraudulent debtors

(1)

Any person who has been adjudged bankrupt shall in each of the cases following be guilty of an offence—

(Amended 76 of 1996 s. 63)

(a)

if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;

(b)

if he does not deliver up to the trustee, or as he directs, all such part of his movable or immovable property as is in his custody or under his control and which he is required by law to deliver up, unless he proves that he had no intent to defraud;

(c)

if he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;

(d)

if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he conceals any part of his property to the value of \$50 or upwards or conceals any debt due to or from him, unless he proves that he had no intent to defraud;

(e)

if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently removes any part of his property to the value of \$50 or upwards;

(f)

if he makes any material omission or misstatement in any statement relating to his affairs, unless he proves that he had no intent to defraud;

(g)

if, knowing or having any reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;

(h)

if, after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(i)

if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he removes, conceals, destroys, mutilates or falsifies or is privy to the removal, concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(j)

if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he makes or is privy to the making of any

false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(k)

if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;

(l)

if, after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within 12 months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;

(m)-(n)

(Repealed 21 of 1970 s. 35)

(o)

if, within 12 months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a bankruptcy order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;

(Amended 76 of 1996 s. 73)

(p)

if he 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.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

(2)

A person who has sent out of Hong Kong any property which he has obtained on credit and has not paid for shall until the contrary is proved be deemed to have disposed of the same otherwise than in the ordinary way of his trade if, such property not having been paid or accounted for at the date of the bankruptcy order by the person to whom the same was sent, such last-mentioned person does not pay or account for the same within a reasonable time after being called upon to do so by the trustee or cannot be found within a reasonable time.

(Amended 47 of 1984 s. 16; 76 of 1996 s. 73)

(3)

In any prosecution under subsection (1)(i) the absence of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was removed by the bankrupt contrary to the provisions of the said paragraph or that he was privy to its removal contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so remove such book or document and that he was not privy to such removal.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72)

(4)

In any prosecution under subsection (1)(i) the mutilation or falsification of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was mutilated or falsified by the bankrupt in contravention of the provisions of the said paragraph or that he was privy to its mutilation or falsification contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so mutilate or falsify the said book or document and that he was not privy to such mutilation or falsification.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72)

(5)

Any person guilty of an offence in the cases mentioned in subsection (1)(o) shall be liable on summary conviction to imprisonment for 1 year or upon conviction on indictment to imprisonment for 5 years.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

(6)

For the purposes of this section, “

trustee

” (

受託人

) includes a provisional trustee and the Official Receiver, whether acting as Official Receiver or as a trustee.

(Amended 18 of 2005 s. 45)

[cf. 1914 c. 59 s. 154 U.K. 1926 c. 7 s. 5 U.K.]

130.

Certain offences by persons other than the bankrupt

(1)

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), or is privy to any such act whether committed by the bankrupt or by any other person, such manager, accountant or book-keeper shall be deemed to be guilty of an offence.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4; 76 of 1996 s. 72)

(2)

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 shall be liable on summary conviction to imprisonment for 1 year or upon conviction on indictment to imprisonment for 5 years.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

[cf. 1926 c. 7 s. 5(2) U.K.]

(3)

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 this Ordinance is guilty of an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(Added 76 of 1996 s. 64)

131.

Undischarged bankrupt obtaining credit

Any undischarged bankrupt shall in each of the cases following be guilty of an offence—

(a)

if either alone or jointly with any other person he obtains credit to the extent of \$100 or upwards from any person without first informing that person that he is an undischarged bankrupt; or

(b)

if he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt and in the course of such trade or business obtains credit from any person without first disclosing to such person the name or names under which he was adjudicated bankrupt; or

(c)

if he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt without first publishing, once in the Gazette, and in 3 successive issues of 2 local newspapers one of which shall be Chinese, a notice containing the following particulars—

(i)

the name or names under which he was adjudicated bankrupt;

(ii)
the last address at which he carried on any trade or business prior to the adjudication;

(iii)
the name or names under which he intends to carry on the trade or business;

(iv)
the nature of the trade or business which he intends to carry on; and

(v)
the address or addresses at which he intends to carry it on.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4; 50 of 1991 s. 4)
[cf. 1914 c. 59 s. 155 U.K.]

132.

Frauds by bankrupts, etc.

Any person who has been adjudged bankrupt shall in each of the cases following be guilty of an offence—

(Amended 76 of 1996 s. 63)

(a)
(Repealed 21 of 1970 s. 35)

(b)
if with intent to defraud his creditors or any of them he has made or caused to be made any gift or transfer of or charge on his property; or

(c)
if 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

(d)
if with intent to defraud his creditors or any of them he has caused or connived at the levying of any execution against his property.

[cf. 1926 c. 7 s. 6 U.K.]

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4; 50 of 1991 s. 4)

[cf. 1914 c. 59 s. 156 U.K.]

133.

Bankrupt guilty of gambling, etc.

(1)

Any person who has been adjudged bankrupt shall be guilty of an offence if, 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—

(Amended 50 of 1991 s. 4)

(a)

he has within 2 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

(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

(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:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused

person at the time when he entered into the speculations shall be taken into consideration.

(Amended 76 of 1996 s. 65)

(2)

A prosecution shall not be instituted against any person under this section except by order of the court.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule)

[cf. 1914 c. 59 s. 157 U.K.]

134.

Bankrupt failing to keep proper accounts

(1)

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 2 years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that 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:

(Amended 50 of 1991 s. 4; 76 of 1996 s. 66)

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section—

(a)

if his unsecured liabilities at the date of the bankruptcy order did not exceed, in the case of a person who has not on any previous occasion in Hong Kong or elsewhere been adjudged bankrupt or entered into a voluntary arrangement with his creditors, \$5,000 or in any other case \$1,000; or

(Amended 47 of 1984 s. 16; 76 of 1996 s. 66)

(b)

if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2)

A prosecution shall not be instituted against any person under this section except by order of the court.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule)

(3)

For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and where the trade or business has involved dealings in goods, statements of annual stock-takings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified. In the case of books or accounts kept in the Chinese language a person shall, for the purposes of this section, be deemed not to have kept proper books of account if he has not kept such books or accounts as may be proved to be usual and necessary, for the purposes aforesaid, in the particular trade or business carried on by the bankrupt.

(Amended 76 of 1996 s. 72)

[cf. 1914 c. 59 s. 158 U.K.; 1926 c. 7 s. 7 U.K.]

135.

Bankrupt absconding with property

If any person who is adjudged bankrupt after the presentation of a bankruptcy petition by or against him, or within 6 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 \$100 or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

(Amended 47 of 1984 s. 16; 50 of 1991 s. 4; 76 of 1996 s. 67)

[cf. 1914 c. 59 s. 159 U.K.]

136.

Debtor concealing himself to avoid service, etc.

If any person against whom a bankruptcy order is made conceals himself 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, he shall be guilty of an offence. A person who, after the presentation of a bankruptcy petition by or against him or within 3 months next before such presentation, conceals or absents himself as aforesaid or quits Hong Kong shall until the contrary is proved be deemed to have concealed or absented himself or quitted Hong Kong with such intent as is mentioned in this section.

(Amended 47 of 1984 s. 16; 50 of 1991 s. 4; 76 of 1996 s. 73)

137.

(Repealed 21 of 1970 s. 35)

138.

Order by court for prosecution on report of trustee

Where the Official Receiver or a trustee in a bankruptcy reports to the court that in his opinion a bankrupt who has been adjudged bankrupt has been guilty of any offence under this Ordinance, or where the court is satisfied upon the representation of any creditor or member of the creditors' committee that there is ground to believe that the bankrupt has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the bankrupt will be convicted and that the circumstances are such as to render a prosecution desirable, order that the bankrupt be prosecuted for such offence, but no such order shall be a condition antecedent to any prosecution under this Ordinance.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 ss. 63, 72 and 74)

[cf. 1914 c. 59 s. 161 U.K.; cf. 1926 c. 7 s. 8 U.K.]

139.

Criminal liability after discharge or composition

Where a bankrupt has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a voluntary arrangement has been approved.

(Amended 76 of 1996 ss. 68 & 72)

[cf. 1914 c. 59 s. 162 U.K.]

140.

Trial and punishment of offences

(1)

A person guilty of an offence under this Ordinance in respect of which no special penalty is imposed by this Ordinance shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 2 years.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 22 of 1950 s. 3; 50 of 1991 s. 4)

(2)

Summary proceedings in respect of any such offence shall not be instituted after 1 year from the first discovery thereof either by the Official Receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after 3 years from the commission of the offence.

(3)

In an indictment for an offence under this Ordinance it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without

alleging or setting forth any debt, trading, adjudication, or any proceedings in, or order, warrant or document of, the court acting under this Ordinance.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 69)

[cf. 1914 c. 59 s. 164 U.K.; 1926 c. 7 s. 10 U.K.]

141.

Evidence as to frauds by agents

A statement or admission made by any person in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person in any proceeding in respect of an offence under the Theft Ordinance (Cap. 210).

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 21 of 1970 s. 35; 76 of 1996 s. 71)

[cf. 1914 c. 59 s. 166 U.K.]

142.

Summary prosecution

Any offence under this Ordinance may be dealt with summarily by a magistrate.

(Amended 23 of 1933 s. 2; 33 of 1939; G.N. 840 of 1940 Supp. Schedule)

PART IX

MISCELLANEOUS

143.

(Omitted as spent)

SCHEDULE 1

[ss. 74A, 74B & 74C]

CRIMINAL BANKRUPTCY ORDERS

PART I

GENERAL

1.

Interpretation

In this Schedule—

“

criminal bankruptcy debt

” (

刑事破産債項

) means a debt deemed to be due to any person by virtue of paragraph 3.

2.

Entitlement to present

bankruptcy petition

Subject to the provisions of this Schedule, where a criminal bankruptcy order is made against any person he shall be treated as a debtor against whom grounds exist for a creditor to present a bankruptcy petition.

(Added 37 of 1998 s. 2)

3.

Creditors and criminal bankruptcy debts

A person specified in a criminal bankruptcy order as having suffered loss or damage of any amount shall be treated for the purpose of any ensuing proceedings pursuant to—

(a)

a bankruptcy petition presented by virtue of paragraph 2; or

(b)

a petition under section 112 (administration in bankruptcy of estate of person dying insolvent) presented by virtue of this Schedule,

as a creditor for a debt of that amount provable in the bankruptcy of the person against whom the order was made.

ART

II

APPLICATION OF THE
ORDINANCE IN PROCEEDINGS
BASED ON A
CRIMINAL BANKRUPTCY
ORDER

4.

Criminal bankruptcy petition

No criminal bankruptcy petition shall be presented by the person who under paragraph 2 is the bankrupt; and, in relation to such a petition presented by a creditor, sections 4, 6 and 6B shall have effect with the following modifications—

(Amended 76 of 1996 ss. 70 & 72)

(a)

sections 6(2)(a) and (b) and 6B shall not apply to a criminal bankruptcy debt;

(Replaced 76 of 1996 s. 70)

(b)

section 4(1)(a) shall be omitted.

(Replaced 76 of 1996 s. 70)

5.

Bankruptcy order

For the purposes of section 9(2) and (3) (matters to be proved before bankruptcy order is made) any criminal bankruptcy debt shall be treated as conclusively proved by the production of a copy of the criminal bankruptcy order in question and the following provisions of that section shall not apply in relation to any debt—

(Amended 76 of 1996 ss. 70 & 72)

(a)

(Repealed 76 of 1996 s. 70)

(b)

subsection (5);

(c)

subsection (6).

6.

Trustee of criminal bankrupt's property

Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition the Official Receiver shall in the bankruptcy be the trustee of the property of the bankrupt.

(Amended 76 of 1996 s. 70)

7.

Proof of criminal bankruptcy debt in bankruptcy proceedings

(1)

For the purpose of proving a criminal bankruptcy debt in proceedings pursuant to a criminal bankruptcy petition, a copy of the criminal bankruptcy order specifying the amount deemed by virtue of paragraph 3 to be due as a debt shall, subject to paragraph 5, be treated as sufficient evidence of the debt unless it is shown by any party to the proceedings that the amount of the relevant loss or damage is greater or less than the amount specified in the order or that the loss or damage did not in fact result from any offence specified in the order, and if it is shown by any party to the proceedings that the amount of the relevant loss or damage is other than that specified in the order, paragraph 3 shall have effect as if that other amount had been specified in the order, but without prejudice to the validity of the order if the amount of the relevant loss is shown not to exceed \$150,000 or such other amount as may be specified in an order made under section 84A(5) of the Criminal Procedure Ordinance (Cap. 221).

(2)

Nothing in this paragraph or paragraph 3 shall be taken as prejudicing the proof in proceedings pursuant to a criminal bankruptcy petition of debts other than criminal bankruptcy debts.

(3)

Nothing in sub-paragraph (1) shall be construed as entitling any person to contend that the offence or offences specified in a criminal bankruptcy order were not committed by the person against whom the order was made.

8.

Recovery of assets for benefit of criminal bankrupt's creditors

(1)

Without prejudice to any other provision of this Ordinance, sub-paragraph (2) to (5) shall apply, where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, with respect to dispositions of property or any interest in property made by the bankrupt on or after the relevant date, either by way of gift or for an under-value.

In this sub-paragraph, “

relevant date

” (

有關日期

) means the date specified in the criminal bankruptcy order (in accordance with section 84A(3)(d) of the Criminal Procedure Ordinance (Cap. 221)) as the earliest date on which the offence or, as the case may be, the earliest of the offences, was committed.

(2)

On the application of the Official Receiver (in his capacity as trustee) the court may make orders requiring—

(a)

the person taking under any such disposition; or

(b)

subject to sub-paragraph (3), any other person who by virtue of any subsequent disposition acquired (whether or not from the person taking under the bankrupt's disposition) the whole or any part of the property or any interest therein,

to transfer the whole or any part of the property, or such interest as the order may specify, to the trustee, or to make such payments to the trustee as the court thinks just with a view to making available to the creditors the full value of the property or interest disposed of by the bankrupt (including any increase in its value since the disposition was made).

(3)

No order shall be made by virtue of sub-paragraph (2)(b) against a person appearing to the court to have given full value for anything taken by him under a relevant disposition or to claim (directly or indirectly) through a person who gave full value.

(4)

An order of the court under this paragraph requiring a person to transfer any property or interest may include such consequential directions for giving effect to the order, and be made on such terms (including in particular terms allowing the person to retain or recover consideration given by him for any relevant disposition) as the court thinks just in all the circumstances.

(5)

In this paragraph, “

disposition

”(

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) includes any conveyance or assurance of property of any description.

9.

Administration in bankruptcy of deceased offender's estate

(1)

Where an order for administration is made under section 112 on a criminal bankruptcy administration petition, so much of subsection (4) of that section as enables the creditors to appoint a trustee of the property of the bankrupt in place of the Official Receiver shall not apply.

(Amended 76 of 1996 s. 72)

(2)

Paragraph 7 shall apply in relation to proof of criminal bankruptcy debts in proceedings pursuant to a criminal bankruptcy administration petition as it applies in relation to proof of such debts in proceedings pursuant to a criminal bankruptcy petition.

10.

Bankruptcy proceedings otherwise than by virtue of this Schedule

Where a criminal bankruptcy order has been made against any person and a bankruptcy petition has been presented in respect of him before the order was made, or is presented in respect of him thereafter otherwise than by virtue of paragraph 2, the court may, on the application of the Official Petitioner, dismiss the petition, rescind any receiving order made in pursuance thereof or, if that person has been adjudged bankrupt, annul the adjudication on such terms, if any, as the court thinks fit.

11.

Effect of appeal against conviction

(1)

Subject to the provisions of this paragraph, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made shall not preclude the taking of any proceedings by virtue of this Schedule in consequence of the making of the order.

(2)

Where a person is adjudged bankrupt in proceedings pursuant to criminal bankruptcy petition, no property shall be distributed by his trustee and no order shall be made by the court under paragraph 8 so long as an appeal is pending

against his conviction of any offence by virtue of which the criminal bankruptcy order was made.

(Amended L.N. 65 of 1986; 18 of 2005 s. 46)

(3)

For the purposes of this paragraph an appeal against a conviction is pending—

(a)

in any case until the expiration of the time for giving notice of appeal or applying for leave to appeal under section 83Q of the Criminal Procedure Ordinance (Cap. 221) (disregarding any extension of time which may be granted under subsection (3) of that section);

(b)

if notice of appeal or of application for leave is given during that period and during that period the appellant notifies the Official Receiver thereof, until the determination of the appeal and thereafter for so long as an appeal to the Court of Final Appeal is pending within the meaning of section 84B(5) of that Ordinance.

(Amended 79 of 1995 s. 50)

(4)

Where in consequence of an appeal a criminal bankruptcy order is rescinded—

(a)

any bankruptcy petition based on the order shall lapse and any adjudication of bankruptcy made in consequence thereof shall cease to have effect, but without prejudice to anything previously done thereunder;

(Amended 76 of 1996 s. 70)

(b)

where any such adjudication ceases to have effect, the property of the person who was adjudicated bankrupt shall revert to him for all his estate or interest therein; and

(c)

the court may, on his application or on the application of the Official Receiver, by order give such directions, if any, as appear to the said court to be necessary or desirable in consequence of the provisions of sub-paragraphs (a) and (b).

(5)

Where in consequence of an appeal a criminal bankruptcy order is amended by the deletion of any amount specified therein as the loss or damage suffered by any person, paragraph 3 shall not thereafter apply to that loss or damage but without prejudice to anything done before the amendment takes effect.

PART

III

FUNCTIONS OF OFFICIAL PETITIONER

12.

Presentation of criminal bankruptcy petition by Official Petitioner

(1)

The Official Petitioner may present a criminal bankruptcy petition, and a bankruptcy order may be made on that petition.

(Amended 76 of 1996 s. 73)

(2)

Sections 4, 6 and 6B, as modified by paragraph 4 of this Schedule, shall apply to a criminal bankruptcy petition presented by the Official Petitioner as it applies to a petition presented by a creditor.

(Amended 76 of 1996 s. 70)

(3)

The following provisions—

(a)

section 9(2) (making of bankruptcy order on creditor's petition);

(Amended 76 of 1996 s. 73)

(b)

section 9(3) (dismissal of petition); and

(c)

(Repealed 76 of 1996 s. 70)

shall apply in relation to a criminal bankruptcy petition presented by the Official Petitioner as if any reference to the debt of the petitioning creditor were a reference to any criminal bankruptcy debt within the meaning of this Schedule; and paragraph 5 shall have effect in relation to section 9(2) and (3) as they apply by virtue of this paragraph.

13.

**Presentation of criminal bankruptcy administration
petition by Official Petitioner**

(1)

The Official Petitioner may present a petition under section 112 in any case in which a creditor could do so by virtue of this Schedule, and an order may be made under that section on that petition.

(2)

Section 112(2) shall have effect in relation to a petition presented by the Official Petitioner as if the reference to the petitioner's debt were a reference to any criminal bankruptcy debt within the meaning of this Schedule.

14.

**Participation of Official Petitioner in proceedings brought by virtue of this
Schedule (whether by the Official Petitioner or by a creditor)**

(1)

In the case of proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition, the Official Petitioner shall be entitled—

(a)

to attend any meeting of creditors and, before the meeting, to receive any notice or other document required to be sent before such a meeting to any creditor;

(b)

to be a member of any creditors' committee appointed under section 24;

(Amended 76 of 1996 ss. 70 & 74)

(c)

to be a party to any such proceedings before the court.

(2)

In the case of proceedings pursuant to—

(a)

a criminal bankruptcy petition or a criminal bankruptcy administration petition, the provisions of the Ordinance mentioned in sub-paragraph (3) shall have effect as if any reference to a creditor, or to a creditor who has proved or tendered a proof, included a reference to the Official Petitioner; and

(b)

a criminal bankruptcy administration petition, the expression “

a petition under this section

” (

本條所指的呈請書

) in section 112(8) shall include a reference to a petition by the Official Petitioner.

(3)

The provisions referred to in sub-paragraph (2) are—

(a)

section 15 (power to appoint special manager);

(b)

section 18(1) and (5) (statement of affairs);

(Amended 76 of 1996 s. 70)

(c)

section 19(5) and (10) (public examination of bankrupt);

(Amended 76 of 1996 ss. 70 & 72; 18 of 2005 s. 46)

(d)

sections 20 to 20K (interim orders and voluntary arrangements);

(Replaced 76 of 1996 s. 70)

(e)-(f)

(Repealed 76 of 1996 s. 70)

(g)

section 86B(1)(d) (report to creditors of bankrupt's proposal);

(Amended 76 of 1996 s. 72; 18 of 2005 s. 46)

(h)

section 83 (appeal to court against act or decision of trustee).

(Amended 76 of 1996 s. 70; 80 of 1997 s. 102)

(Schedule 1 added 21 of 1979 s. 3. Amended 39 of 1992 s. 6)

[cf. 1973 c. 62 Schedule 2 U.K.]

Schedule 2

[ss. 75 & 76]

PART I

Assistant Official Receiver (Legal)

Assistant Principal Solicitor

Senior Solicitor

Solicitor

PART II

Assistant Director of Accounting Services

Chief Insolvency Officer

Senior Insolvency Officer

Insolvency Officer

Senior Treasury Accountant

Treasury Accountant

Accounting Officer I

Accounting Officer II

Assistant Official Receiver (Case Management)

(Schedule 2 replaced L.N. 465 of 1994)

SCHEDULE 3

[s. 12(1A) & section (1C)]

QUALIFICATIONS FOR APPOINTMENT UNDER SECTION 12(1A)

To qualify for appointment under section 12(1A) of this Ordinance, a person shall—

(a)

be—

(i)

a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

(ii)

a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or

(iii)

a current member of The Hong Kong Institute of Chartered Secretaries; and

(Amended L.N. 102 of 2007)

(b)

satisfy any reasonable conditions that the Official Receiver may impose and has made accessible to the public.

(Schedule 3 added 18 of 2005 s. 47)