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16 November 2022

OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 1/2022

Abuse of Bankruptcy Process

It has come to the attention of the Official Receiver that there are debtors presenting petitions for their own bankruptcy (“**self-petitions**”) who have no intention to seek a bankruptcy order from the Court, rather the aim is to achieve a moratorium to facilitate negotiation with creditors.

In the Reasons for Judgment recently delivered by the Honourable Madam Justice Linda Chan in *Re So Tsz Man* [2021] HKCFI 3732, her Ladyship held that this is an abuse of process, as debtors should not present self-petitions if they do not wish the Court to make a bankruptcy order against them, and it is not the function of a self-petition to allow a debtor to achieve a moratorium with creditors, still less a bargaining tool to enable a debtor to negotiate with creditors

In the Reasons for Judgment delivered by the Honourable Madam Justice Linda Chan in *Re Lau Yu Leong* [2022] HKCFI 3386, her Ladyship was critical of a firm for inducing a debtor to present a self-petition with the aim of compelling creditors to reduce or waive interest and for charging exorbitant service fees. She noted that such conduct might constitute misrepresentation and abuse of process. Her Ladyship also reminded practising solicitors that they have an obligation to assist the Court in upholding the judicial process, and they should not assist such agencies or firms who are encouraging abuse of the bankruptcy process; who should be reported to the relevant authorities (including the Official Receiver).

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The above-mentioned judgments can be found from the links or QR codes below:-

<p><i>Re So Tsz Man</i> [2021] HKCFI 3732</p>	 https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=140873&QS=%2B%7C%28HCB7033%2F2020%29&TP=JU
<p><i>Re Lau Yu Leong</i> [2022] HKCFI 3386</p>	 https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=148503&QS=%2B%7C%28HCB1969%2F2022%29&TP=JU

In bankruptcy proceedings, it is the duty of petitioners (including petitioning creditors in creditor’s petition cases and debtors in self-petition cases) and their legal representatives to ensure that bankruptcy petitions presented by them to Court are proper, and prosecuted efficiently and expeditiously. The duty includes (but not limited to) attending the petition hearing and adjourned hearings (if any) at the appointed date and time, communicating proactively with the Court on matters regarding the petition, responding timely to the requisitions that may be raised by the Court from time to time, proceeding with the petition efficiently, and applying for adjournment only where circumstances fully justify.

Any petitions presented that do not comply with the relevant requirements, or amount to an abuse of process (e.g. the bankruptcy proceedings being invoked in an improper manner or for an improper purpose such as using it as a means for debt collection or negotiation with creditors) are liable to be dismissed by the Court with costs ordered against the petitioner.

Where the aim is to facilitate negotiation with creditors, the procedures for Individual Voluntary Arrangement, as set out in Sections 20 – 20L of the Bankruptcy Ordinance, Cap 6 and corresponding rules, are available to debtors.

In case there is any question regarding this Circular, please contact Mr Michael Cheung, Chief Insolvency Officer (Compliance and Regulatory Section) of this office at 2867 2515.

Signed
(Ms Phyllis McKenna)
Official Receiver

To: The Hong Kong Institute of Certified Public Accountants
The Law Society of Hong Kong
The Hong Kong Chartered Governance Institute