



OFFICIAL RECEIVER'S OFFICE

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22 December 2023

OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 1 of 2023

Reporting Bankruptcy Offences

(I) Background

1. This Circular sets out the background to, and guidelines for, the reporting of bankruptcy offences to the Official Receiver pursuant to section 86A(2)(a) of the Bankruptcy Ordinance (Cap. 6) ("Cap. 6"), in cases where the bankruptcy petition was presented on or after 10 December 2007.
2. Section 86A(2) of Cap. 6 provides that in the case of a trustee other than the Official Receiver, it shall 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 Cap. 6; 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.
3. The Official Receiver acts under the authority of the Secretary for Justice to institute a prosecution in respect of insolvency related offences under Cap. 6, the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). A schedule of the relevant bankruptcy offences together with a brief description is at Annex 1 ("**Offence**"). Please refer to the relevant ordinances for a full description.

(II) Making a report

4. If in the course of investigating the affairs of the bankrupt, the trustee (which term includes the provisional trustee) has reason to believe that the bankrupt has committed an Offence, the trustee should report the matter to the Official Receiver in Form B1.
5. If the Offence alleged to have been committed is the failure to submit an annual statement of earnings contrary to section 43A(7) of Cap. 6, the trustee should report to the Official Receiver in Form B2.
6. If the Offence alleged to have been committed by the bankrupt involves section 43A(7) of Cap. 6 and any other Offence, the trustee should submit both Form B1 and Form B2.
7. If in the course of investigating the affairs of the bankrupt, the trustee has information that any person other than the bankrupt has committed an Offence, including aiding and abetting the commission of an Offence by the bankrupt, the trustee should report to the Official Receiver in Form B3.
8. The Official Receiver's Office ("ORO") will launch an Electronic Submission System ("ESS") on 29 December 2023 and the ESS will provide a convenient and efficient means for insolvency practitioners to submit documents to ORO. Insolvency practitioners are encouraged to register as users of the ESS and make use of it to submit the relevant forms when reporting Offences to the Official Receiver. Electronic versions of Form B1, Form B2 and Form B3 are available at ORO website.
9. For details of the ESS and registration, please refer to the letter of 19 December 2023 issued by ORO in this connection (https://www.oro.gov.hk/pdf/eng/compliance/launch_of_phase_1.pdf).

(III) Duties after making a report

10. After making a report to the Official Receiver, the trustee shall conduct further investigation of the reported Offence(s) as the Official Receiver may direct, including but not limited to interviewing witnesses and the bankrupt, obtaining relevant documents and making enquiries with any

other parties likely to provide information relevant to the Offence(s) under investigation.

11. The trustee, or any person under the employ of the trustee who has been involved in the investigation, may be required to give witness statements and to act as a witness for the prosecution.

(IV) Limitation period

12. For offences under Cap. 6, summary proceedings for prosecution must be issued within 1 year from the date of first discovery of the offence by the Official Receiver or by the trustee **and** within 3 years from the date of commission of the offence (section 140(2) of Cap. 6).
13. “Discovery” means discovery of facts upon which reliance might be placed and which covered the essential elements of the offence, as opposed to discovery of admissible evidence to support those facts.

(V) Effect of discharge on prosecution

14. Section 139 of Cap. 6 provides that where a bankrupt has been guilty of any criminal offence, he shall not be exempt from being prosecuted by reason that he has obtained his discharge or that a voluntary arrangement has been approved.
15. **ORO Circular No.8/2014 dated 14 March 2014 is cancelled and is superseded by this Circular with immediate effect.**

Signed

(Ms Phyllis McKenna)

Official Receiver

To all insolvency practitioners

via (1) The Hong Kong Institute of Certified Public Accountants

(2) The Hong Kong Chartered Governance Institute

(3) The Law Society of Hong Kong

SCHEDULE OF BANKRUPTCY OFFENCES

I. Bankruptcy Ordinance, Cap. 6

Section No.	Brief description of the offence
S.43A(7)	Bankrupt failing to submit annual statement of earnings and acquisition
S.129(1)	Offences by fraudulent debtors - <ul style="list-style-type: none">(a) failure to fully and truly discover to the trustee his property and the disposal thereof(b) failure to deliver his property as directed or required by law(c) failure to deliver up to the trustee books or documents relating to his property or affairs(d) concealing any part of his property or any debt due to or from him(e) fraudulent removal of his property(f) making material omission or misstatement in any statement relating to his affairs(g) failure to inform the trustee within 1 month after knowing a false debt had been proved(h) preventing the production of any books and records relating to his property or affairs(i) mutilating or falsifying any book or document relating to his property or affairs or being privy to such acts(j) making or being privy to the making of any false entry in any book or document relating to his property or

Section No.

Brief description of the offence

affairs

- (k) fraudulently parting with or altering any documents relating to his property or affairs
- (l) attempting to account for any part of his property by fictitious losses or expenses
- (m) pawns, pledges or disposes of any property which the bankrupt has obtained on credit and has not paid for unless in the ordinary way of the bankrupt's trade
- (n) false representation or other fraud for the purpose of obtaining the consent of his creditor(s) to an agreement with reference to his affairs or bankruptcy

S.130

Certain offences by persons other than the bankrupt –

- (a) 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 S. 129(1)(i) or (j)
- (b) person who takes in pawn or pledge or otherwise receives property, knowing it to be pawned, pledged or disposed in circumstances which amount to an offence under S. 129(1)(o)
- (c) person knowingly makes a false statement when proving a debt in bankruptcy

S.131

Undischarged bankrupt obtaining credit -

- (a) bankrupt either alone or jointly with any other person obtains credit from any person without disclosing he is an undischarged bankrupt

Section No.**Brief description of the offence**

- (b) bankrupt obtains credit from any person in the course of trade or business without disclosing he is an undischarged bankrupt
- (c) bankrupt engaging in trade or business in another name without publishing the prescribed particulars

S.132 Bankrupt making any gift or transfer of his property with intent to defraud his creditors

S.133(1) Bankrupt having been engaged in trade or business materially increased the extent of his insolvency by gambling

S.134(1) Bankrupt failing to keep proper books of account of his trade or business

S.135 Bankrupt absconding from Hong Kong with his property

S.136 Debtor concealing himself to avoid service of any process in bankruptcy

II. Companies Ordinance, Cap. 622**Section No.****Brief description of the offence**

S.480 Undischarged bankrupt acting as director, or taking part in the management, of a company

N.B. if an offence under the equivalent provision in S. 156 of the Companies Ordinance, Cap.32 as in force before 3 March 2014 was committed before its repeal, the said S. 156 continues to have effect