

Official Receiver's Office

"What you need to know about bankruptcy" video transcript

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Presentation video contents

What you need to know about bankruptcy

Consequences of Bankruptcy

The following Q&A is intended to brief you on the effects and consequences of bankruptcy and to help you decide whether bankruptcy is the best option for you.

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A. Bankruptcy

Q: What is bankruptcy?

A: Bankruptcy is a legal process which a debtor who cannot repay debts may seek as a last resort. The main objective of bankruptcy is to make sure that your assets are shared out fairly and orderly amongst your creditors by your trustee in bankruptcy.

Q: How am I made bankrupt?

A: Upon a bankruptcy petition presented by yourself or your creditor, the Hong Kong Court of First Instance can make a bankruptcy order against you.

Q: Who will deal with my case?

A: Either the Official Receiver or a private insolvency practitioner may be appointed as your trustee in bankruptcy to deal with your case. You have no right to choose your trustee in bankruptcy.

B. Impact of bankruptcy on your property and income

Q: What is the effect of a bankruptcy order on my property?

A: Upon the making of a bankruptcy order, all of your property, wherever it is in the world, including your share of any family home, will vest in your trustee in bankruptcy and will remain vested in your trustee until the administration of your bankruptcy estate has been completed. Discharge from bankruptcy and completion of administration of your estate by your trustee are not the same.

Q: How long will bankruptcy last?

A: In the usual case, if it is your first bankruptcy and if there is full co-operation with the trustee, your bankruptcy period will be 4 years from the date of the making of the bankruptcy order. After 4 years there will be automatic discharge from bankruptcy, unless your trustee or creditors objects to your discharge. A second or subsequent bankruptcy will last for 5 years. An objection by the trustee or one of your creditors, if upheld by the court, may extend your bankruptcy period so that it lasts for a total of 8 years.

Please note that full co-operation with your trustee is necessary for you to be automatically discharged.

Q: When I am discharged will I get my property back?

A: No, whilst discharge means that you are no longer a bankrupt and are not subject to the restrictions and obligations imposed by the law on a bankrupt, all of your property which vested in your trustee will remain vested in your trustee, who will continue to administer your bankruptcy estate for the benefits of creditors.

Administration of your estate will continue until all of your assets have been distributed amongst your creditors and your trustee has been released.

Q: What if I own or co-own a flat for landed property?

A: (A) Your share of the property will vest in your trustee in bankruptcy, who will attempt to sell your share of the property and distribute the sale proceeds amongst your creditors. Even if the trustee does not sell the flat or your share in the flat before your discharge, it will remain vested in the trustee after your discharge and your trustee will continue with attempts to sell it.

(B) For sale and purchase of the property vested in the trustee, its price will be determined based on the market value of the concerned property, which may fluctuate.

Q: What if the flat is my home?

A: There is no exemption for the family home.

Q: What about property that I receive during my bankruptcy?

A: Your trustee is entitled to claim such property for the benefit of your creditors as after-acquired property.

Q: What about my income?

A: The trustee will assess how much of your income you should be required to pay to your trustee for the benefit of your creditors. You will be entitled to retain enough of your income to meet your reasonable domestic needs. Your trustee will decide how much that is.

Q: Am I required to pay my debts? What will happen to my property and income?

A: In principle, your debts will be met from your property and income. For this purpose, you must hand over all your assets, both overseas and local, to the trustee immediately upon the making of the bankruptcy order. You must also inform the trustee of your income for assessment as mentioned above.

Q: Will my property outside Hong Kong be realised?

A: The trustee will realise your property in and outside Hong Kong. It is an offence for you to conceal information relating to your property or to fail to deliver your property to the trustee, and you may be liable to be prosecuted. As mentioned above, so long as the property is vested in the trustee, the trustee has the power to continue to administer the property even after your discharge from bankruptcy.

Q: What will happen to my provident fund?

A: Your provident fund is regarded as part of your property, but whether or not it vests in your trustee is subject to provisions of the individual provident fund.

Q: What will happen to my MPF?

A: The MPF Schemes Ordinance provides that any accrued benefits (derived from mandatory contributions) in a registered scheme are excluded from the property of the scheme member for the purposes of the Bankruptcy Ordinance. That said, should there be any payment out of accrued benefits from your MPF during bankruptcy, your trustee is entitled to claim such property for the benefit of your creditors.

Q: If I am a civil servant, what will happen to my pension?

A: In general, your pension will cease to be payable upon the making of the bankruptcy order. You may submit an application to the Chief Executive through the Civil Service Bureau for approval of ex-gratia payments. In the event it is approved, the trustee will assess your reasonable domestic needs and if there is any surplus, you will be required to remit to your trustee.

Q: What will happen if I transfer my property before bankruptcy?

A: The trustee will investigate all assets disposed of by you prior to the presentation of the bankruptcy petition. It is an offence for you to transfer any of your property with a fraudulent intent, and you may be liable to be prosecuted, and the trustee will have a legal right to recover any unfair preference paid or set aside any transaction made at an undervalue.

Q: Can I buy property such as a flat, a car etc. during bankruptcy?

A: No.

C. Consequences of bankruptcy --- public knowledge of my bankruptcy, employment and daily life, etc.

Q: Will my bankruptcy be made known to the public?

A: Pursuant to the bankruptcy provisions, the Official Receiver is obliged to advertise notice of your bankruptcy order in the gazette. The Official Receiver is also obliged to enter your bankruptcy record in a register for search by members of the public upon payment of prescribed fee. The law does not provide that such record be removed from the said register.

Q: Will my employer be informed?

- A: (A) If you are working in the private sector, the trustee will not approach your employer unless during the course of investigation and assessment, the trustee finds it necessary to do so.
- (B) If you are a civil servant, the Official Receiver must, under CSR459, inform the Departmental Secretary of your department, the Civil Service Bureau and the Treasury.

Q: Will bankruptcy affect my employment?

- A: (A) You may not be able to practise in certain professions such as lawyer, estate agent, securities dealer or act as a director of a limited company. You should consult the relevant professional bodies for further information.
- (B) If you are working in the banking sector, you are required to inform your employer under the Banking Ordinance.
- (C) In case you are working in other sectors, you should check whether there is any stipulation of such in your employment contract or other company documents.

Q: Will the staff of the Official Receiver's Office go to my house for inspection?

A: The Official Receiver has the right to do so under the legislation and may do so if necessary.

Q: Am I required to inform my trustee of any change in my contact details?

A: You should immediately notify your trustee of your change in name, address and telephone number (also fax number and e-mail address, if any) in Hong Kong and elsewhere. You should respond to the trustee's inquiries within a reasonable period of time. Co-operation with your trustee is the key to your automatic discharge.

Q: Will my family members be required to bear my indebtedness?

A: Generally not unless for example any of your family members has executed a personal guarantee for your indebtedness.

Q: Can I travel by taxi?

A: You should not unless there are reasonable grounds for doing so.

Q: Can I travel overseas?

A: You should not unless the expenses are not met from your property and income. You should provide evidence of your source of funds to your trustee if you are asked to do so.

Q: Can I continue to make payments in respect of the life insurance policy taken out?

A: The trustee will not usually allow you to make payments in respect of the life insurance policy taken out.

Q: Can I obtain a loan after presentation of a bankruptcy petition?

A: After a bankruptcy petition has been presented to the court, you should refrain from obtaining any further loans. It is an offence to obtain any credit without disclosing your bankruptcy status.

D. Discharge

Q: When will I be discharged from bankruptcy? Is there any minimum period of time?

A: If you are a first time bankrupt and conform to the stipulations and conditions under the Bankruptcy Ordinance and fully co-operate with your trustee, you will be automatically discharged 4 years from the date of the bankruptcy order provided that there is no non-commencement order or objection to your discharge from the creditors and the trustee. If you are made bankrupt again, the period will be 5 years.

Q: What is non-commencement order?

A: Where a bankruptcy order is made on or after 1 November 2016 and the bankrupt fails to physically attend the initial interview, or has physically 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 provisional trustee/trustee, the provisional trustee/trustee may apply to court for an order that the relevant period shall not commence to run. The effect of the non-commencement order is to delay the commencement of the relevant period of bankruptcy until compliance with the terms of the order. As a result, the date of the automatic discharge will be delayed accordingly.

Q: Where the non-commencement order has been issued by the court against me, how can the relevant period for bankruptcy be commenced to run?

A: To commence running of the relevant period of bankruptcy, you have to contact the provisional trustee/trustee and comply with the terms of the non-commencement order. If the provisional trustee/trustee is satisfied that you have complied with the relevant terms, the provisional trustee/trustee shall file a notice with the court to confirm the compliance of the relevant terms. The relevant period of bankruptcy shall commence to run on the date of compliance as stated in the notice.

Q: What are the grounds for the creditors or the trustee to object to my automatic discharge?

A: The creditors or the trustee may object to your automatic discharge on the grounds listed out in section 30A(4) of the Bankruptcy Ordinance which includes non-cooperation, unsatisfactory conduct, failure to prepare an annual statement of earnings and acquisitions, etc.

Q: What can I do when the trustee or the creditors object to my automatic discharge?

A: You may file a defence to the court and there will be a hearing. However, you have to bear in mind that in case the court rules against your defence, the court may make a cost order against you.

Q: Am I required to settle my debts after discharge?

A: When you are discharged, the discharge releases you from all the provable debts, but not those incurred by fraud, a fine imposed for an offence, damages in respect of personal injuries to any person, etc.

Alternative to Bankruptcy

Depending on the extent of your insolvency, sometimes it may be advantageous to both you and your creditors to use one of the following alternative procedures as opposed to bankruptcy.

E. Alternative procedures available

Q: Is there any alternative procedure available for me as opposed to bankruptcy?

A: Yes, you can choose either entering into an informal arrangement or a formal individual voluntary arrangement ("IVA") with your creditors. You should approach your major creditors, for example your bank and they may be able to help you with an informal arrangement.

Q: What is an informal arrangement and what are the advantage and disadvantage?

A: If you know that you cannot pay all your debts, you could consider contacting your individual creditors to see if you can reach some compromise, including terms and schedule of repayment. The advantage of an informal arrangement is that usually it is less costly as compared to IVA. However, the disadvantage with an informal arrangement is that it is not legally binding and as such, your creditors could ignore it later on and demand you to pay in full. Hence, before doing so, it is advisable for you to approach some local debt counselling agencies (reference materials will be shown on next slide) to make a full assessment of your case.

Q: Are there any debt counselling agencies available?

A: The commonly-known non-government organisations offering free debt counselling advice are listed below for your reference:-

<http://fdcc.tungwahcsd.org/en/>

Tung Wah Group of Hospitals

Healthy Budgeting Family Debt Counselling Centre

<http://debt.caritas.org.hk/>

Caritas Family Crisis Line & Education Centre

Q: What is an IVA?

A: IVA is a formal procedure under the Bankruptcy Ordinance to provide an alternative to bankruptcy. Under this formal arrangement, you have to make a repayment proposal to the court and the creditors. If it is approved, it will legally bind all creditors.

Q: What are the advantages of IVA?

- A: (A) You can avoid the stigma of bankruptcy. You will be free from the legal restrictions provided for under the Bankruptcy and other Ordinances and may be able to retain your job/profession.
- (B) For the creditors, as compared with bankruptcy, they may consider it more likely for them to get a better return.

Applying for Bankruptcy

It may be the case that after assessing your own financial situation critically, you still consider that going for bankruptcy is the best option to you. The final part of the Q&A shall brief you on the criteria, cost and procedures of applying for bankruptcy by a debtor's petition.

F. Procedures of filing a debtor's petition for bankruptcy

Q: What are the criteria for me to file a petition for bankruptcy?

A: If you wish to present a petition for bankruptcy, you must satisfy the court that you are unable to pay your debts.

Q: How much will it cost me to file a petition for bankruptcy?

A: You will be required to deposit with the Official Receiver a sum of \$8,000 to cover the fees and expenses to be incurred by the Official Receiver (or trustee) and pay a court fee of \$1,045 at the High Court.

Q: What are the procedures for filing a debtor's petition for bankruptcy?

A: The procedures are:-

- (A) Complete a "Debtor's Bankruptcy Petition" on Form 3 of Bankruptcy (Forms) Rules and a "Statement of Affairs (Debtor's Petition)" on Form 28C of Bankruptcy (Forms) Rules. These forms are contained in 'Debtor's Bankruptcy Petition Procedural Guide' which can be obtained by the following ways at \$28 each :-
- (I) Calling the Publications Sales Section of ISD at 2537 1910
- (II) Visiting the online government bookstore at
<http://www.gov.hk/en/residents/government/publication/publication/bookstore.htm>
- (III) Downloading the order form from the ISD website at
<http://www.oro.gov.hk/eng/publications/debtor.htm>
and submit the order online or by fax to 25237195

(IV) Placing order with ISD by e-mail at puborder@isd.gov.hk.
or Downloading from the website of the Official Receiver's Office free of charge at

https://www.oro.gov.hk/eng/our_services/publications/bankruptcy/index.html

- (B) Deposit with the Official Receiver a sum of \$8,000 to cover the fees and expenses to be incurred by the Official Receiver (or trustee).
- (C) Have the petition attested and the statement of affairs sworn.
- (D) Go to the Registry of High Court to:-
 - (I) Pay a court fee of \$1,045;
 - (II) Obtain date for the hearing of the petition; and
 - (III) File the petition and the statement of affairs.
- (E) Submit a sealed copy of the petition and a copy of the statement of affairs to the Official Receiver immediately after (D) (III) above.

Q: Where can I seek help in case I don't know how to proceed with the filing of petition for bankruptcy?

A: You may seek advice from lawyers offered under the free legal advice scheme and tel-law scheme as follows:

<http://www.dutylawyer.org.hk/en/free/free.asp>

Free legal advice scheme

http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp

Tel-law scheme

Q: What happens if I have no money to petition for bankruptcy?

- A: (A) In case you file a debtor's petition for bankruptcy, you must deposit with the Official Receiver a sum of \$8,000 to cover the fees and expenses to be incurred by the Official Receiver (or trustee). There is no provision in the Bankruptcy Ordinance for exemption of the deposit. You are also required to pay a court fee of \$1,045 at the High Court.
- (B) Creditors can also file a bankruptcy petition against you. A creditor who files a petition must deposit with the Official Receiver a sum of \$11,250 to cover the fees and expenses to be incurred by the Official Receiver (or trustee) and pay a court fee of \$1,045 at the High Court.

Thanks for Watching

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