



OFFICIAL RECEIVER'S OFFICE

破產管理署

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8 April 2008

來函請註明本署檔號

IN REPLY PLEASE QUOTE THIS REF:

T1/4

來函檔號 YOUR REF:

電話 TEL. NO.: 2867 2426

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OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 1/2008

Reporting Bankruptcy Offences

GENERAL

1. Section 86A was added to the Bankruptcy Ordinance (Cap. 6) by virtue of the Bankruptcy (Amendment) Ordinance 2005. The Amendment Ordinance came into operation on 10 December 2007¹. The amendments effected under the Amendment Ordinance apply to cases where the bankruptcy petition was presented on or after 10 December 2007².
2. This Circular sets out the background to and guidelines for the reporting of bankruptcy offences in respect of cases where the bankruptcy petition was presented on or after 10 December 2007 to the Official Receiver pursuant to S.86A(2)(a) of the Bankruptcy Ordinance.
3. Section 86A(2) of the Bankruptcy Ordinance 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 the Bankruptcy 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.

¹ See Bankruptcy (Amendment) Ordinance 2005 (Commencement) Notice, LN 185 of 2007.

² See section 49 Transitional and savings provisions, Bankruptcy (Amendment) Ordinance 2005.

4. The Official Receiver acts under the authority of the Secretary for Justice (“the Authorisation”) to institute a prosecution in respect of insolvency related offences under the Bankruptcy Ordinance and the Companies Ordinance (Cap. 32). A schedule of the relevant bankruptcy offences together with a brief description is at Annex 1. Please refer to the Ordinances for a full description.

Annex 1

MAKING A REPORT

5. 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 a bankruptcy offence, he should report the matter to the Official Receiver in Form B1 as per Annex 2.

Annex 2

6. If the offence alleged to have been committed is the failure to submit an annual statement of earnings contrary to S.43A(7), the trustee should report to the Official Receiver in Form B2 as per Annex 3.

Annex 3

7. Where the offences alleged to have been committed by the bankrupt involve S.43A(7) and one or more of other sections set out in Annex 1, the trustee should submit both Form B1 and Form B2.

8. If in the course of investigating the affairs of the bankrupt, the trustee has information that any person other than the bankrupt has committed a bankruptcy offence, including aiding and abetting the commission of a bankruptcy offence by the bankrupt, he should report it to the Official Receiver in Form B3 as per Annex 4.

Annex 4

DUTIES AFTER MAKING A REPORT

9. 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.

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

LIMITATION PERIOD

11. For offences under the Bankruptcy Ordinance, 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 (S.140(2) Bankruptcy Ordinance).
12. "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.

EFFECT OF DISCHARGE ON PROSECUTION

13. S.139 of the Bankruptcy Ordinance 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.

Eamonn O'Connell

(Eamonn O'Connell)
Official Receiver

To all insolvency practitioners
via (1) Hong Kong Institute of Certified Public Accountants
(2) The Hong Kong Institute of Company Secretaries
(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 -
	(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 affairs

Section No.

Brief description of the offence

- (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
- (o) 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
- (p) 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 –

- (1) 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)
- (2) 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 section 129(1)(o)
- (3) 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
- (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

Section No.

Brief description of the offence

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. 32

Section No.

Brief description of the offence

- S.156 Undischarged bankrupt acting as director, or taking part in the management, of a company

Form B1

REPORT ON CONDUCT OF BANKRUPT UNDER SECTION 86A OF THE BANKRUPTCY ORDINANCE (CAP. 6)

To: Official Receiver (Attn: IOI(PDD)2/Prosecution & Directors Disqual Section)

Ref: B of

Name of the Bankrupt _____

Date of petition _____ *self/creditor

Date of bankruptcy order _____

Latest address of Bankrupt _____

Telephone number of Bankrupt _____

Name of trustee _____

Address of trustee _____

Telephone and fax numbers of trustee _____

1. I am the trustee of the property of the Bankrupt. I have investigated the conduct of the Bankrupt and have reason to believe that the Bankrupt has committed an act that constitutes a bankruptcy offence.

2. Description of the offence(s)

3. Date of first discovery of the offence(s) by the trustee _____

4. Date of receipt of complaint (if applicable) _____
(Attach copy of complaint letter)

5. Brief account of the trustee's investigations/findings in relation to the alleged offence(s)

6. Documents attached to this Report

7. Other relevant information (if any)

Trustee's signature _____ Date _____

[Note: Provide information on separate sheets if the space provided is not sufficient]

Form B2
**Offence contrary to
 Section 43A(7) Bankruptcy Ordinance**

To: Official Receiver (Attn: IOI(PDD)1/Prosecution & Directors Disqual Section)

Ref: **B** _____ of _____

1. Bankrupt _____
 (name as per ID)

2. Last known address of the bankrupt where he could be contacted

3. Date of petition _____ *self/creditor

4. Date of bankruptcy order _____

5. Date of summary procedure order/
 resolution of appointment of
 trustee in bankruptcy _____

6. Date of acknowledgment of receipt
 of the Annual Statement of
 Earnings and Acquisition form _____

7. Date of notice of default in submitting
 the annual statement after the *1st/*2nd/*3rd
 anniversary date of bankruptcy order _____

8. (a) After sending out the notice of default
 mentioned above, any further attempts
 (i.e. telephone calls or letters) in pursuing
 the submission of the annual statement * Yes / No

(b) If yes, please specify _____

9. Date when the bankrupt was last contacted _____

Signature of trustee: _____

Name of trustee: _____

Address of trustee: _____

Telephone and fax numbers of trustee: _____

Date: _____

Important Notes:

1. If the latest notice of default sent to the bankrupt has been returned by post, there is no need to refer the case for prosecution until the bankrupt can be located.
2. If the annual statement is submitted after referral, the trustee should inform the Official Receiver BY EMAIL immediately and then by fax to the Official Receiver attaching the annual statement.

* Delete where inappropriate

Form B3

Report on bankruptcy offence(s) by person(s) other than the bankrupt

To: Official Receiver (Attn: IOI(PDD)2/Prosecution & Directors Disqual Section)

Ref: B _____ of _____

Name of the Bankrupt _____

Date of petition _____ *self/creditor

Date of bankruptcy order _____

Name of trustee _____

Address of trustee _____

Telephone and fax numbers of trustee _____

1. I am the trustee of the property of the Bankrupt. I have investigated the affairs of the Bankrupt and have reason to believe that the following person(s) has committed an act that constitutes a bankruptcy offence -

(1) Name _____

Last known address _____

Telephone number _____

Relationship with Bankrupt (if any) _____

(2) Name _____

Last known address _____

Telephone number _____

Relationship with Bankrupt (if any) _____

2. Description of the offence(s)

3. Date of first discovery of the offence(s) by the trustee _____

4. Date of receipt of complaint (if applicable) _____
(Attach copy of complaint letter)

5. Brief account of the trustee's investigations/findings in relation to the alleged offence(s)

6. Documents attached to this Report

7. Other relevant information (if any)

Trustee's signature _____ Date _____

[Note: Provide information on separate sheets if the space provided is not sufficient].