INDIVIDUAL BANKRUPTCY I. INDIVIDUAL BANKRUPTCY In this section, you can find general information on the bankruptcy procedures concerning individual persons, the relevant consequences on the debtors/bankrupts, and the rights of the creditors for claiming against the bankrupts. A. BRIEF INTRODUCTION OF BANKRUPTCY PROCEEDINGS A. BRIEF INTRODUCTION OF BANKRUPTCY PROCEEDINGS When debtors fail to repay their debts and the Court has granted bankruptcy orders against them, the debtors' assets are collected and realised (sold and converted to cash) by a neutral person (known as the "Trustee"). This Trustee can be the Official Receiver of the Official Receiver's Office or a professional appointed by the creditors or the Official Receiver. The proceeds from the realisation, after deducting certain costs and expenses, are then distributed to the creditors (persons who are owed money by the debtors) for repaying the relevant debts or part of the relevant debts. During the effective period of the bankruptcy order, part of the debtor's earnings may be utilised for repayment. The Trustee also investigates the causes of bankruptcy and the Court may punish the bankrupt if any provision in the Bankruptcy Ordinance (Cap. 6 of the Laws of Hong Kong) has been breached. The debtor in bankruptcy proceedings can be an individual person or the partners of a partnership, but not limited companies. When the bankruptcy order is discharged, the debtor is free from the monetary liabilities that were incurred before bankrupt. Generally speaking, a bankruptcy case commenced by a creditor will undergo the following stages: Issuing a statutory demand for debt repayment to the debtor by a creditor (if applicable) Presenting a bankruptcy petition to the Court, and sending it to the Official Receiver's Office and to the debtor Court hearing Granting of bankruptcy order by the Court The debtor's assets are collected and realised by the Trustee/Official Receiver Distributing the relevant proceeds and part of the debtor's income to the creditors Discharge of bankruptcy order B. Q&A; B. Q&A; C. CASE ILLUSTRATION C. CASE ILLUSTRATION Scenario: Mr. T is a Hong Kong merchant who frequently travels to mainland China. He borrowed $300,000 from ABC Bank, repayable by monthly instalments. He fails to make any repayment to the bank for six months despite verbal and written demands from the bank. The bank wishes to file a bankruptcy petition against Mr. T. 1. BANKRUPTCY PROCEEDINGS CAN ONLY BE COMMENCED BY CREDITORS BUT NOT BY THE DEBTORS. IS THIS TRUE? 1. BANKRUPTCY PROCEEDINGS CAN ONLY BE COMMENCED BY CREDITORS BUT NOT BY THE DEBTORS. IS THIS TRUE? No. Other than the Creditor's Bankruptcy Petition (legal action commenced by creditors), debtors can also institute bankruptcy petitions against themselves (i.e. Debtor's Bankruptcy Petition). You are recommended to consult a lawyer before you commence bankruptcy proceedings. A brief summary of the procedures for filing a Bankruptcy Petition to obtain a Bankruptcy Order: (A) Creditor's Bankruptcy Petition A creditor can file a bankruptcy petition to the High Court against a person or persons who have failed to repay debts. Under section 6 of the Bankruptcy Ordinance, the amount of debt in a creditor's petition must be equal to or exceed $10,000, and must be unsecured. Statutory Demand Before filing a bankruptcy petition, the creditor may be required to issue a statutory demand to the debtor. The creditor must use all reasonable ways to bring the statutory demand to the debtor's attention, including the delivery of the demand by hand. The creditor may instruct a lawyer to prepare and send out the relevant documents. If the creditor has reasonable grounds to believe that the debtor has absconded or is trying to avoid receiving the statutory demand, then the creditor can advertise the demand in one or more local newspapers. If the creditor has obtained a court judgment in previous legal proceedings against the debtor for the repayment of debt and the debtor has failed to pay the judgment debt, then the creditor does not have to issue a statutory demand to the debtor before filing a bankruptcy petition. Bankruptcy Petition Three weeks after issuing the statutory demand and in case the debtor is unable to pay or there is no reasonable prospect of the debtor paying the debt, the creditor, as the petitioner, can file a bankruptcy petition with the High Court. The creditor must swear the truthfulness of the relevant petition in front of a lawyer or court officer before filing it with the Court. (Note: From the judgment of Kate Gaskell Richdale v Eugene Oh Jae-Hoon, it is quite clear that the effect of section 6 and section 6A of the Bankruptcy Ordinance is that where a statutory demand is served to the debtor and is not set aside (has not been declared invalid by the Court), failure to pay in response to it

will result in the debtor being deemed to be unable to pay the debt alleged against him. Once that happens, it is perfectly in order for a creditor to present a bankruptcy petition. Even if a debtor thereafter makes payment, this does not show that he was in a position that he was able to pay the debt as at the date of the petition.) The creditor must pay a fee of $1,045 to the High Court and a deposit of $11,250 to the Official Receiver's Office to cover the fees and expenses that may be incurred by the Official Receiver (or the Trustee). The creditor is notified of the court hearing date for the petition. The creditor must send sealed copies (copies with the Court's chop) of the bankruptcy petition to the Official Receiver's Office and to the debtor, similar to the way in which a statutory demand is delivered. Bankruptcy Order At the court hearing (where the creditor is usually represented by a lawyer), the Court may grant a bankruptcy order against the debtor if there is no reasonable objection raised by the debtor, or there is no further agreement between the creditor and the debtor for the settlement of debt. (B) Debtor's Bankruptcy Petition A debtor can also file a Debtor's Bankruptcy Petition (Form 3) with the High Court. Under section 10 of the Bankruptcy Ordinance, a debtor's petition can be filed whether or not the gross amount of indebtedness equals to or exceeds $10,000 (unlike the statutory requirement for filing a creditor's petition, whereby the amount of debt must not be lower than $10,000). The debtor must file a Debtor's Bankruptcy Petition and a Statement of Affairs with the High Court. The debtor may instruct a lawyer to assist in preparing and filing the relevant documents. The debtor must swear the truthfulness of the relevant petition and statement of affairs in front of a lawyer or a court officer before filing them with the Court. The debtor must pay a court fee of $1,045 to High Court and a deposit of $8,000 to the Official Receiver's Office. There is no provision for exemption of this deposit. The debtor will be notified of the court hearing date for the petition. The debtor must send a sealed copy of the petition and copy of the Statement of Affairs to the Official Receiver's Office. At the court hearing (the debtor can be represented by a lawyer), the court may grant a bankruptcy order against the debtor if the debtor has proved unable to repay the debts and there is no reasonable objection raised by the creditor for the granting of an order. 2. WHAT ARE THE MAIN FUNCTIONS OF THE OFFICIAL RECEIVER'S OFFICE? 2. WHAT ARE THE MAIN FUNCTIONS OF THE OFFICIAL RECEIVER'S OFFICE? The Official Receiver's Office provides insolvency services to creditors and the public. The Office has five divisions: the Case Management Division, Legal Services Division 1, Legal Services Division 2, the Financial Services Division and the Departmental Administration Division. 1) Case Management Division The Case Management Division is headed by the Assistant Official Receiver (Case Management) and is staffed by Insolvency Officers. The Division is responsible for the realisation of assets, the recovery of book debts, the adjudication of claims of creditors, the distribution of dividends, investigation into the causes of the failure, conduct and financial affairs of the debtor or company, the processing of the release of liquidators and trustees in bankruptcy, and the administration of the ordinances relating to liquidation and bankruptcy. 2) Legal Services Division 1 The Legal Services Division 1 is headed by the Assistant Official Receiver (Legal Services) 1. It is responsible for providing detailed legal advice on all aspects of the administration of insolvent estate civil litigation that relates to insolvency cases, and for providing a comprehensive litigation service for the benefit of insolvent estates, including appearing in court hearings and instructing barristers in complicated cases. 3) Legal Services Division 2 The Legal Services Division 2 is headed by the Assistant Official Receiver (Legal Services) 2. Its main functions are to provide general legal advisory services, investigate and prosecute insolvency offenders, make applications for the disqualification of company directors, liquidators and receivers, and provide training for Insolvency Officers. 4) Financial Services Division The Financial Services Division is headed by the Assistant Official Receiver (Financial Services) and staffed by Treasury Accountants and Accounting Grade Officers. Its main functions include performing financial and accounting investigations into insolvency cases, conducting statutory audits of accounts that are submitted by outside liquidators, managing and investing insolvency monies and supervising outside liquidators. 5) Departmental Administration Division The Departmental Administration

Division is headed by the Departmental Secretary and staffed by General Grade Officers. The main functions of the Division are to provide general administrative support and a translation service, to arrange the storage and retrieval of seized documents for insolvency cases and to manage human resources. 3. CAN I FIND OUT THE BANKRUPTCY RECORD OF ANY PERSONS FROM THE OFFICIAL RECEIVER'S OFFICE? 3. CAN I FIND OUT THE BANKRUPTCY RECORD OF ANY PERSONS FROM THE OFFICIAL RECEIVER'S OFFICE? You can conduct a bankruptcy search on your target person(s) through the Official Receiver' s Office (please call 28672448 or email oroadmin@oro.gov.hk for details) or via the Internet. You must provide the name and ID number of the target person(s) (or the trading name of a non-limited company) and pay a search fee of $80 for each search. The bankruptcy search will show all bankruptcy orders (both undischarged and discharged) on the target person(s). 4. WHAT ARE THE CONSEQUENCES OF BANKRUPTCY? 4. WHAT ARE THE CONSEQUENCES OF BANKRUPTCY? When the Court has granted a bankruptcy order against a debtor, no other legal proceedings can be taken or continued with against the debtor or the debtor' s assets without the permission of the Court. The bankruptcy order will be advertised by the Official Receiver in the Gazette and two newspapers (one in Chinese and one in English). The Trustee (the Official Receiver if act in this capacity) will take control of the assets of the bankrupt. The bankrupt's assets will be realised by the Trustee for repaying the debts. The Trustee/Official Receiver has the right to go to the bankrupt's house for inspection if necessary. If the bankrupt is the registered owner or one of the registered owners of a real property, the real property or the bankrupt' s share in the real property will become part of the bankruptcy assets and the Trustee/Official Receiver will register the Bankruptcy Order against the real property in the Land Registry. The bankrupt's provident fund will usually be considered as part of the bankrupt's assets (subject to the provisions of the relevant provident fund scheme). If retired civil servants become bankrupt, then their pensions cease to be payable unless there are discretionary arrangements. Also as mentioned in a High Court judgment (Re Choi Lai Ming ex parte The Official Receiver), the Government has security rights over civil servants' salaries and pensions under the Home Purchase Scheme loan (a loan advanced to a civil servant under the Government's Home Financing Scheme). The Trustee/Official Receiver will distribute the balance of the realized amounts to the creditors by way of dividends after deducting certain expenses. The balance of earnings of the bankrupt during the effective period of the bankruptcy order (which is usually 4 years for first time bankrupt) after the deduction of the reasonable living expenses of the bankrupt and the bankrupt's family, will also become part of the bankruptcy assets and will be distributed to the creditors after deduction of expenses. Can the bankrupt travel outside Hong Kong without any restriction? Where a bankrupt leaves Hong Kong, the law does not impose on him an express duty to notify the Trustee of his itinerary and where he can be contacted. The bankrupt may freely leave without giving notification. Where he exercises his right to travel and leaves Hong Kong without giving the notification, he may suffer the adverse consequence that the period of his bankruptcy order may be extended by the court. The purpose of the restriction is to ensure that bankrupts stay within the radar of the Trustee so that the Trustee could if required obtain his co-operation in the administration of his estate. Effect on the bankrupt's family members (e.g. joint owners of a flat or holders of a joint account) Family members will NOT be required to bear the bankrupt's indebtedness. If the bankrupt owns a flat under the joint name of his/her spouse, then the bankrupt's share of the house may be realised. If the bankrupt holds a joint account with his family members, then the bankrupt's portion of the total amount may be drawn to pay off the debt. 6. WHAT SHOULD A BANKRUPT DO OR AVOID DOING AFTER THE GRANTING OF A BANKRUPTCY ORDER? 6. WHAT SHOULD A BANKRUPT DO OR AVOID DOING AFTER THE GRANTING OF A BANKRUPTCY ORDER? Things that should be done Bankrupts should attend interviews arranged by the Official Receiver/Trustee. If a bankrupt fails to attend an initial interview arranged by the Trustee/Official Receiver, the Court may make a non-commencement order so that the bankruptcy period will be extended in effect. They should also attend subsequent meetings with their creditors regarding the future arrangement of their assets and income and the administration of the bankruptcy estate. Bankrupts should hand over all of their assets (both local and

overseas) to the Official Receiver/Trustee and submit all documents related to their assets such as bank account statements or business account books, etc. They should also inform the Official Receiver/Trustee of all of their income and earnings. Bankrupts may commit a bankruptcy offence and be liable to imprisonment if they fraudulently remove or transfer any part of their personal properties. If the bankrupts are also civil servants, then the Official Receiver will inform the departmental secretary of the relevant government department, the Civil Services Bureau and the Treasury. If the bankrupts work in banks, then their employer must be informed. If the bankrupts work in another part of the private sector, however, then the Official Receiver/Trustee will not approach their employers unless it is necessary for the collection or investigation of the bankrupts' financial information. Things that should NOT be done Bankrupts should not make repayments directly to individual creditors without the approval of the Court and the Official Receiver/Trustee. They should stop using credit cards or applying for loans from financial institutions. They should also stop paying life insurance premiums. Bankrupts will not be able to act as company directors and may not be able to practise in certain professions such as lawyer, estate agent or insurance agent, etc. They cannot purchase luxuries such as buying cars or travelling overseas unless they have reasonable grounds to do so. Bankrupts may commit a bankruptcy offence and be liable to imprisonment if they try to quit Hong Kong and take with them personal assets that should be distributed among their creditors. Bankrupts may also be liable to imprisonment if they try to conceal or avoid receiving legal documents in the bankruptcy proceedings or cause any unnecessary delay in the proceedings. For more details of bankruptcy offences, please refer to question 11. 7. WHAT CAN THE CREDITORS DO AFTER THE GRANTING OF BANKRUPTCY ORDER? 7. WHAT CAN THE CREDITORS DO AFTER THE GRANTING OF BANKRUPTCY ORDER? Any creditor of the bankrupt may request the Official Receiver to call for a general meeting of all the creditors to appoint a Trustee for the bankrupt's assets. If the total value of those assets is unlikely to exceed $200,000, then the Official Receiver or a person appointed by the Official Receiver will normally be appointed as the Trustee. Each creditor must complete a Proof of Debt Form with supporting documents to prove any debt contracted by the Bankrupt. The Proof of Debt Form should be submitted to the Official Receiver's Office. If necessary, creditors can request the Official Receiver to apply to the Court for a public examination of the bankrupt in open court (section 19 of the Bankruptcy Ordinance). The Official Receiver sometimes takes the view that the bankrupt has been un-cooperative, and that he is not making full and frank disclosure of his financial affairs. In such circumstances, the Official Receiver and the petitioner might have legitimate reasons to believe that a private examination would be beneficial to the administration of the assets in that more substantial and useful information might be obtained regarding the financial affairs of the bankrupt. Upon application by the Official Receiver, the court will decide if the case is appropriate for an order for private examination. If the answer is in the affirmative, the court is likely to order the bankrupt to attend before a Master of the High Court to be examined under section 29 of the Bankruptcy Ordinance at such time as directed by the court, with an estimated length of examination (e.g. 2 hours). The petitioner is to have the conduct of the examination by his solicitor or barrister. The court may further order the bankrupt to provide to the petitioner all documents in his possession, custody or power relating to himself, his dealings or property within certain days of the order (e.g. 21 days). 9. CAN I INSTITUTE BANKRUPTCY PROCEEDINGS AGAINST MY EMPLOYER FOR UNPAID WAGES? 9. CAN I INSTITUTE BANKRUPTCY PROCEEDINGS AGAINST MY EMPLOYER FOR UNPAID WAGES? If employees are owed wages, wages in lieu of notice, severance payment s or other contractual sums by the employer, then they may (as creditors) petition to the Court for a bankruptcy order (if their employer is an individual person or a partnership), or a winding-up order (if their employer is a limited compan y). If a bankruptcy or winding-up order has been granted against an employer, then the relevant employees are entitled to receive payment out of their employer's assets in preference to most other creditors in respect of wages, wages in lieu of notice and severance payments under the statutory limits. Take arrears of wages as an example, employees can recover wages up to a maximum of $8,000 each in respect of

services rendered to their employer in preference. However, any arrears of wages, wages in lieu of notice or severance payments exceeding the statutory limits are non-preferential debts, and employees will be treated as ordinary creditors on claiming the exceeded amount. Alternatively, employees can apply for ex-gratia payments from the Protection of Wages on Insolvency Fund through the Labour Department. For details regarding bankruptcy claims on employment matters, please visit the webpage on Employment Disputes. 10. WHEN WILL THE BANKRUPT BE DISCHARGED FROM THE BANKRUPTCY ORDER? WILL THE BANKRUPT STILL BE LIABLE FOR THE DEBTS AFTER THE DISCHARGE OF THE BANKRUPTCY ORDER? 10. WHEN WILL THE BANKRUPT BE DISCHARGED FROM THE BANKRUPTCY ORDER? WILL THE BANKRUPT STILL BE LIABLE FOR THE DEBTS AFTER THE DISCHARGE OF THE BANKRUPTCY ORDER? If the bankrupt has not previously been adjudged bankrupt, then the bankruptcy order will be discharged in 4 years after the date of issue, provided that there is no valid objection from creditors and the bankrupt has fully complied with the provisions of the Bankruptcy Ordinance. If the bankrupt has been previously adjudged bankrupt, then the order will be discharged in 5 years after its date of issue. If creditors have valid objections (due to the bankrupt's unsatisfactory conduct or failure to fully disclose the assets or earnings, etc.) against the discharge of the bankruptcy order, then the order may be extended for a maximum period of 4 years. In case the bankrupt has been previously adjudged bankrupt, the maximum period of the extension is 3 years. You should also refer to Question 4 about the possible suspension of the date of discharge (if the bankrupt fails to attend an initial interview). When a bankruptcy order is discharged, the bankrupt is released from all provable debts, including any debts or liabilities that were proved in the bankruptcy proceedings. However, the bankrupt remains liable for the following debts regardless of the discharge of the bankruptcy order: those incurred by fraud, fines imposed for offences, or damages in respect of personal injuries to other persons, etc. 11. WHAT CRIMINAL OFFENCES ARE RELATED TO BANKRUPTCY? 11. WHAT CRIMINAL OFFENCES ARE RELATED TO BANKRUPTCY? Some of the bankruptcy offences with imprisonment penalties are summarised as follows. Bankruptcy Ordinance(Cap. 6) Section Brief description of the offences Penalty 43A Failure to submit annual statement of earnings Undischarged bankrupts must submit to the Trustee annually a statement of earnings during the preceding year, and details of any property acquired during the period. Liable to imprisonment for up to six months. 129 (1) Fraudulent Debtors Any persons who have been adjudicated bankrupt are guilty of an offence if, for example, (i) they do not fully divulge to the Trustee all of their properties and their disposal; (ii) they fail to deliver to the Trustee all such property in their custody or control; (iii) after the presentation of a bankruptcy petition or within 12 months before such presentation (the “Relevant Period”), they conceal or fraudulently remove any part of their properties to the value of $50 or more or conceal any debts due to or from them; (iv) they make any material omission or misstatement in any statement relating to their affairs; (v) during the Relevant Period, they remove, conceal, destroy, mutilate or falsify any book or document affecting or relating to their properties or affairs; (vi) during the Relevant Period, they pawn, pledge or dispose of any properties that they have obtained on credit and have not paid for unless such pawning, pledging or disposing is within the ordinary manner of the bankrupt’s trade. (vii) They are guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors or coming to an agreement with any of them with reference to the debtors’ affairs or bankruptcy. Liable to imprisonment for up to two years, except for (vi). Liable on summary conviction to imprisonment for up to one year or upon conviction on indictment to imprisonment for up to five years for (vi) 130(1) 130(2) 130(3) Certain offences by persons other than the bankrupt If any manager, accountant or book-keeper in the employment of the bankrupt commits any act during the Relevant Period to conceal, destroy or falsify any book or document that affects or relates to the bankrupt’s property or affairs, then that person will be deemed to be guilty of an offence. Where any person pledges or disposes of any property in circumstances that amount to an offence under section 129(1), 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, will be guilty of an offence and liable for imprisonment. 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 the Bankruptcy Ordinance is guilty of an offence and is liable to a fine and to imprisonment. Liable to imprisonment for up to two years. Liable on summary conviction to imprisonment for up to one year or upon conviction on indictment for up to five years. Liable to a fine and to imprisonment for up to six months. 131 Undischarged bankrupt obtaining credit It is a criminal offence for the bankrupts, for example, to obtain credit of $100 or more either alone or jointly with any other persons, without first informing the persons from whom they obtain credit that they are undischarged bankrupts. Liable to imprisonment for up to two years. 132 Fraud by bankrupts Any persons who have been adjudged bankrupt will be guilty of an offence if, for example, they have made or caused to be made any gifts or transfers of or charges on their properties with the intent to defraud their creditors. Liable to imprisonment for up to two years. 133(1) Gambling etc. Any adjudged bankrupts who, 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, are guilty of an offence if, for example, (i) they have, within two years before the presentation of the bankruptcy petitions, materially contributed to or increased the extent of their insolvency by gambling or by rash and hazardous speculation and such gambling or speculation are unconnected with their trade or business; or (ii) they have, between the date of the presentation of the petitions and the date of the bankruptcy orders, lost any part of their estate by such gambling or rash and hazardous speculation. (However, in determining for the purposes of this section whether any speculation was rash and hazardous, the financial position of the accused persons at the time that they entered into the speculation will be taken into consideration.) Liable to imprisonment for up to two years. 135 Bankrupt absconding with property Any persons who are adjudged bankrupt will (unless they prove that they had no intent to defraud) be guilty of an offence if after the presentation of a bankruptcy petition, or within six months before such presentation, they quit Hong Kong and takes with them, or attempt or make preparation to quit Hong Kong and take with him, any part of their properties to the amount of $100 or more, which should by law be divided amongst their creditors. Liable to imprisonment for up to two years. 136 Debtors concealing themselves to avoid service (bankruptcy documents) Any persons against whom bankruptcy orders are made will be guilty of an offence if they conceal or absent themselves from their usual or last known place of abode or business, or quit Hong Kong, with intent to avoid service (delivery) of any legal documents in bankruptcy or to avoid examination of their affairs or otherwise to delay any proceedings against them in bankruptcy. Liable to imprisonment for up to two years. Companies Ordinance(Cap.622) Section Description of the Offence Penalty 480(1) (Companies Ordinance) Undischarged bankrupts acting as directors If the undischarged bankrupts act as directors of, or directly or indirectly take part in or are concerned with the management of any company except with the leave (approval) of the court by which they were adjudged bankrupt, then they will be guilty of an offence and liable to imprisonment and a fine. Liable on summary conviction to imprisonment for up to one year and a fine of up to $150,000, or upon conviction on indictment to imprisonment for up to two years and fine of up to $700,000. (For more details of bankruptcy offences, please see the webpage of the Official Receiver’s Office.) 1. CAN ABC BANK FILE A BANKRUPTCY PETITION AGAINST MR. T AT THIS STAGE? 1. CAN ABC BANK FILE A BANKRUPTCY PETITION AGAINST MR. T AT THIS STAGE? Before filing the petition with the High Court, the bank should issue a statutory demand to Mr. T stating the details of loan arrears with the demand, and the time limit for repayment. Standard bank demand notes or reminders cannot be treated as statutory demands. In usual practice, the bank will instruct a lawyer to prepare the statutory demand and the subsequent bankruptcy petition. The bank or its lawyer must use all reasonable ways to bring the statutory demand to Mr. T’s attention, such as by sending the demand to Mr. T by hand. 2. WHAT CAN ABC BANK DO IF THE STATUTORY DEMAND FAILS TO REACH MR. T, OR IF MR. T TRIES TO AVOID RECEIVING THE DEMAND? 2. WHAT CAN ABC BANK DO IF THE STATUTORY DEMAND FAILS TO REACH MR. T, OR IF MR. T TRIES TO AVOID RECEIVING THE DEMAND? The bank should first make sure that the demand has been sent to the last known

address or usual place of abode or business of Mr. T. Otherwise, Mr. T may challenge the validity of the statutory demand in the subsequent bankruptcy proceedings. If the bank or its lawyer has repeatedly sent the statutory demand by post or by hand, and they have reasonable grounds to believe that Mr. T has absconded or is trying to avoid receiving the demand, the bank or its lawyer can advertise the demand in one or more local newspapers. The Court may accept this as a reasonable way of serving the statutory demand. 3. APART FROM VALIDLY SERVING THE STATUTORY DEMAND ON MR. T, WHAT OTHER CONDITIONS MUST BE SATISFIED BEFORE ABC BANK CAN FILE A BANKRUPTCY PETITION? 3. APART FROM VALIDLY SERVING THE STATUTORY DEMAND ON MR. T, WHAT OTHER CONDITIONS MUST BE SATISFIED BEFORE ABC BANK CAN FILE A BANKRUPTCY PETITION? According to section 6 of the Bankruptcy Ordinance, the conditions are as follows: the amount of debt for the petition should be equal to or exceed $10,000; the debt is for a “liquidated” sum (i.e. a sum with precise calculation) payable to the petitioning creditor either immediately or at some certain time in future, and is unsecured; the debtor appears to be unable to pay or has no reasonable prospect of being able to pay the debts; and there is no outstanding application to Court to set aside (make it invalid) the statutory demand. For proving the inability to pay or no reasonable prospect to pay the debt, the creditor should show that the debtor has failed to comply with or set aside the statutory demand within 3 weeks after the demand was served (if served by a newspaper advertisement, then from the date of posting in the newspaper). If ABC Bank has fulfilled the above conditions, then it or its lawyer can file the bankruptcy petition with the High Court and serve the sealed copy of the petition on Mr. T. 4. DURING THE COURT HEARING FOR THE BANKRUPTCY PETITION, MR. T SAID THAT HE HAD SPENT A LONG PERIOD IN MAINLAND CHINA AND HAD NOT RECEIVED THE STATUTORY DEMAND. HE ONLY RECEIVED THE BANKRUPTCY PETITION TWO DAYS BEFORE THE HEARING. CAN HE ASK THE COURT TO SUSPEND OR DISMISS THE BANKRUPTCY PROCEEDINGS? 4. DURING THE COURT HEARING FOR THE BANKRUPTCY PETITION, MR. T SAID THAT HE HAD SPENT A LONG PERIOD IN MAINLAND CHINA AND HAD NOT RECEIVED THE STATUTORY DEMAND. HE ONLY RECEIVED THE BANKRUPTCY PETITION TWO DAYS BEFORE THE HEARING. CAN HE ASK THE COURT TO SUSPEND OR DISMISS THE BANKRUPTCY PROCEEDINGS? If the bank or its lawyer has used all reasonable ways to send the demand and the petition to Mr. T, such as advertising them in local newspapers with approval from the Court, Mr. T has little chance of avoiding or suspending the proceedings by challenging the ways in which the documents were delivered by the creditor. 5. IF A BANKRUPTCY ORDER IS GRANTED AGAINST MR. T, THEN WHAT WILL HAPPEN TO MR. T? 5. IF A BANKRUPTCY ORDER IS GRANTED AGAINST MR. T, THEN WHAT WILL HAPPEN TO MR. T? When a bankruptcy order has been granted against Mr. T, no other legal proceedings can be taken or proceeded with against him or his assets without the permission of the Court. The bankruptcy order will be advertised by the Official Receiver in the Gazette and two newspapers (one in Chinese and one in English). Mr. T should attend the Official Receiver’s Office for an interview about his current financial status and the future arrangement of his assets. He should also submit a Statement of Affairs (a document that includes the details of his financial status and all of his current liabilities) to the Official Receiver. He may also be required to attend all subsequent meetings with his creditors, the Official Receiver and the Trustee regarding the future arrangement of his assets and repayment procedures. Mr. T should not make repayments directly to individual creditors, including ABC Bank without the approval of the Court and the Official Receiver. He should stop using credit cards or apply for loans from financial institutions. He should also cease payment of any life insurance premium. He cannot enjoy luxuries such as buying a car or travelling overseas unless he has reasonable grounds to do so. The Official Receiver/Trustee will take control of Mr. T’s assets and income. The Trustee or the representative of the Official Receiver has the right to inspect Mr. T’s house if necessary. His provident fund (if any) will be considered as part of his assets (subject to the provisions of the relevant provident fund scheme). Mr. T should hand over all of his assets (both local and overseas) to the Official Receiver/Trustee and submit all documents related to his assets such as bank account statements or the account books of his business, etc. He should also inform the Official Receiver/Trustee of all of his income/earnings. If Mr. T owns a flat under the joint name of his wife, then his share may be realised for the

repayment of his debts. If he owns any property outside of Hong Kong, then the Official Receiver/Trustee will require him to sell that property for the benefit of the creditors and to sign all necessary authorities, deeds and documents for such purpose. If Mr. T refuses to do so, then he may be punished for contempt of court. After the deduction of administrative expenses, the Official Receiver/Trustee will distribute Mr. T's assets (including his surplus income) to his creditors by way of dividends. However, Mr. T's family members will not be required to bear his indebtedness. With regard to the matter of reasonable living expenses as mentioned above, the High Court has made the following ruling (as per the case of Re Lau Nga Yee Christine): A person's "reasonable domestic needs" should be the same whatever the size of his debt. The mere fact that a large amount is due cannot somehow make a basic need less reasonable. In principle the education of one's children can constitute a "domestic need" of the bankrupt and her family. The expense is "domestic" in the sense that the education of sons and daughters is a conventional incident of maintaining a family and home. It is a "need" in the sense that, especially in Hong Kong, the education (including the tertiary education) of one's offspring is regarded as an important parental and social responsibility, irrespective of any obligations imposed by the letter of the law. In view of the bankrupt's genuine need to support her family, together with the special nature of her job, the Court (in the subject case) also allowed reasonable expenses in the following areas: expenses of a part-time domestic helper; emergency taxi fare (to deal with emergency duty calls from her employer, i.e. Hospital Authority); support for the bankrupt's parents (both nearly 80 years old, whilst the bankrupt's 2 siblings were also in financial difficulties); job-related expenses. 6. WHAT ARE THE EFFECTS OF BANKRUPTCY ON MR. T'S JOB? 6. WHAT ARE THE EFFECTS OF BANKRUPTCY ON MR. T'S JOB? Mr. T will not be able to act as company director or and may not be able to practice certain professions such as lawyer, estate agent or insurance agent, etc. If Mr. T works in a private company, then the Official Receiver/Trustee will not approach his employer unless it is necessary for the collection or investigation of his financial information. 7. IF MR. T ABSCONDS TO CHINA AND TAKES $100,000 IN CASH, THEN WHAT POSSIBLE LEGAL ACTION WILL HE FACE? 7. IF MR. T ABSCONDS TO CHINA AND TAKES $100,000 IN CASH, THEN WHAT POSSIBLE LEGAL ACTION WILL HE FACE? According to section 135 of the Bankruptcy Ordinance, any persons who are adjudged bankrupt will be guilty of an offence (unless they prove that they had no intent to defraud) if after the presentation of a bankruptcy petition, or within six months before such a presentation, quit Hong Kong and take with them, or attempt or make preparations to quit Hong Kong and take with them, any part of their properties to the amount of $100 or more, which should by law be divided among their creditors. Such persons will be liable to imprisonment for up to two years. Also with reference to section 136 of the Bankruptcy Ordinance, any persons against whom bankruptcy orders are made will be guilty of an offence if they conceal or absent themselves from their usual or last known place of abode or business or quit Hong Kong, with intent to avoid service of any legal documents in bankruptcy or to avoid examination of their affairs or otherwise to delay any bankruptcy proceedings against them. Such persons will also be liable to imprisonment for up to two years. In that case, Mr. T might have committed bankruptcy offences and may be liable to imprisonment. 8. IF MR. T GIVES HIS CAR TO HIS BROTHER AS A GIFT, THEN WHAT POSSIBLE LEGAL ACTION WILL HE FACE? 8. IF MR. T GIVES HIS CAR TO HIS BROTHER AS A GIFT, THEN WHAT POSSIBLE LEGAL ACTION WILL HE FACE? According to section 132 of the Bankruptcy Ordinance, any persons who have been adjudged bankrupt will be guilty of an offence if they have made any gifts or transfers of, or charges on, their properties with the intent to defraud their creditors. Such persons will be liable to imprisonment for up to a maximum of two years. If Mr. T transfers his car to his brother to defraud his creditors, then he has committed a bankruptcy offence and may be liable to imprisonment. 9. WHAT CAN ABC BANK DO AFTER A BANKRUPTCY ORDER HAS BEEN GRANTED AGAINST MR. T? 9. WHAT CAN ABC BANK DO AFTER A BANKRUPTCY ORDER HAS BEEN GRANTED AGAINST MR. T? ABC Bank must complete a Proof of Debt Form with supporting documents to prove that Mr. T has contracted the $300,000 debt. The Proof of Debt Form should be submitted to the Official Receiver's Office. The bank may request the Official Receiver to call a general meeting of all of Mr. T's creditors to appoint a Trustee for Mr. T's assets. If

the total value of Mr. T's assets is less than $200,000, then the Official Receiver or a person appointed by the Official Receiver will usually act as the Trustee. If necessary, the bank can request the Official Receiver to apply to the Court for a public examination of Mr. T in open court. Such an application must receive consent from the creditors with not less than 25% in gross value of the debt. 10. WHEN WILL MR. T BE DISCHARGED FROM HIS BANKRUPTCY ORDER? 10. WHEN WILL MR. T BE DISCHARGED FROM HIS BANKRUPTCY ORDER? The bankruptcy order will be discharged in 4 years after its issuance if : Mr. T has not been previously adjudged bankrupt; There is no valid objection from the Trustee or the creditors against the discharge; and Mr. T has fully complied with the provisions in the Bankruptcy Ordinance If Mr. T has been previously adjudged bankrupt, then the order will be discharged in 5 years. If the Trustee or the creditors successfully object to the discharge of the bankruptcy order (e.g. due to Mr. T's unsatisfactory conduct, failure to fully disclose his assets/earnings, etc.), then the order may be extended for a maximum of 4 years (if Mr. T has previously been adjudged bankrupt, the maximum extension is 3 years). When the bankruptcy order is discharged, Mr. T will be released from all provable debts, including any debts or liabilities that were proved in the bankruptcy proceedings. However, Mr. T remains liable for the following debtsregardless of the discharge of the bankruptcy order: those incurred by fraud, fines imposed for offences, or damages in respect of personal injuries on other persons, etc. The Court may, as a condition of granting the discharge, order Mr. T to continue to make contributions to repaying his debt in such amount and for such period as it considers appropriate but not exceeding eight years from the date the bankruptcy order. 11. CAN MR. T APPLY FOR AN EARLY DISCHARGE OF THE BANKRUPTCY ORDER EVEN IF ITS EFFECTIVE PERIOD HAS NOT EXPIRED? 11. CAN MR. T APPLY FOR AN EARLY DISCHARGE OF THE BANKRUPTCY ORDER EVEN IF ITS EFFECTIVE PERIOD HAS NOT EXPIRED? If Mr. T has not previously been adjudged bankrupt, then he may at any time apply to the Court for an early discharge. If he has been previously adjudged bankrupt, then he may make the application not less than 3 years after the date of the bankruptcy order. However, the Court may not make the order for early discharge if, for example, the bankrupt: has previously entered into an individual voluntary arrangement (IVA); has unsecured liabilities that exceed 150% of the income which the trustee determines that was derived by the bankrupt during the year immediately before the date of the bankruptcy order; has failed to disclose a beneficial interest in any property; has failed to disclose any liability that existed at the date of the bankruptcy order; 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 permission of the court; or has failed to co-operate with the trustee. In addition, the Court may not grant the order for early discharge if the creditors raise valid objections against the discharge. Alternatively, Mr. T can apply to Court for annulment of the bankruptcy order if his debts and the expenses of the bankruptcy have all been paid after the making of the bankruptcy order. INDIVIDUAL VOLUNTARY ARRANGEMENT II. INDIVIDUAL VOLUNTARY ARRANGEMENT In this section, you can find general information on debtors ' individual voluntary arrangements. In IVAs, individual persons can settle their debts through repayment proposals without declaring bankrupt. 1. IF A DEBTOR DOES NOT WANT TO BE BANKRUPT, THEN IS THERE ANY ALTERNATIVE SOLUTION? 1. IF A DEBTOR DOES NOT WANT TO BE BANKRUPT, THEN IS THERE ANY ALTERNATIVE SOLUTION? The debtor can apply for an Individual Voluntary Arrangement ("IVA"). With an IVA, the debtor makes a repayment proposal to the High Court and the creditors. If the IVA proposal is approved by the Court and more than 75% of the creditors in value voting at the creditors' meeting, then it will legally bind all creditors under section 20H of the Bankruptcy Ordinance. An undischarged bankrupt can also apply for an IVA because an IVA is not equivalent to bankruptcy. 2. WHAT ARE THE ADVANTAGES OF AN IVA?(WITH A BRIEF PROCEDURAL GUIDE FOR APPLYING FOR AN IVA) 2. WHAT ARE THE ADVANTAGES OF AN IVA?(WITH A BRIEF PROCEDURAL GUIDE FOR APPLYING FOR AN IVA) You are recommended to consult a lawyer if you want to apply for an IVA. The advantages of IVA An IVA is a voluntary agreement with your creditors. As such, there is far less stigma with an IVA agreement compared with bankruptcy. However, a record will still be kept by the Official Receiver's Office and is open to public search. If you are made bankrupt, then all your assets will be

vested in your Trustee. It is very likely that the Trustee will sell your major assets, in order to repay your debts. Unlike bankruptcy, however, you do not necessarily have to sell your home and other major assets under IVA agreements. If you set up an IVA, your professional or employment status is less likely to be affected. By contrast, your professional career may be in jeopardy, if you are a bankrupt. In addition, you can continue to serve as a director in a company or run your own business, neither of which is allowed in bankruptcy. There is a better chance for you to obtain credit after you have repaid your debts pursuant to an IVA agreement. Legal proceedings for bankruptcy can involve considerable time and cost. Creditors may expect better repayment from a debtor. The disadvantages of IVA The period of an IVA is usually longer than that of bankruptcy (assuming the bankrupt co-operates fully with the Official Receiver/Trustee). If there is no realistic prospect of an IVA, then you may still have to face a bankruptcy lawsuit (the relevant consequences are listed in the previous section). A brief summary of the procedures for applying for an IVA The debtor must propose a person to act as the Nominee to implement and monitor the IVA. The debtor must submit a proposal to the Nominee. The debtor can appoint a lawyer to prepare the documentation. The debtor must also submit a Statement of Affairs to the Nominee. Before the approval of the proposal by the creditors, the debtor should apply to the Court for an Interim Order (for a 14-day-period during which no bankruptcy or other legal proceedings can be taken or continued against the debtor without the permission of the Court). According to the Bankruptcy (Fees & Percentages) Order (Cap. 6C), a court fee is charged and computed by the following rates on the gross amount of the proposal: a. $15 on every $1,000 or fraction of $1,000 up to $100,000 of the repayment amount; and b. $7.50 on every $1,000 or fraction of $1,000 beyond $100,000 of the repayment amount. Example: If the gross amount of repayment stated in the proposal is $150,000, then the court fee would be: $[15 x (100,000÷1,000)] + $[7.5 x (50,000÷1,000)] = $1,875. The Nominee must submit a report concerning the debtor's proposal to the Court, stating whether a creditors' meeting should be held. If the Court is satisfied that a meeting should be held, then it can extend the Interim Order so that the proposal can be considered by the creditors. During the creditors' meeting, there will be negotiations amongst the creditors and the debtor on the repayment matters. Approval or modification of the proposal requires the agreement of the majority of the creditors who totally hold in excess of 75% of the gross amount of the debts owed and who present in person or by proxy and vote on the resolution. Any modification of the proposal also requires the debtor's consent. If the proposal is approved, then it will bind all the relevant creditors whether or not they were present at the meeting. The Chairman of the meeting must submit a report to the Court within 7 days of the meeting. Within 28 days of submitting the report, the debtor, creditors, Nominee, Trustee or the Official Receiver (in case the IVA applicant is a bankrupt) may apply to the Court to challenge the decision of the meeting. The role of the Court Section 20K of the Bankruptcy Ordinance provides that the nominee may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement. The whole provision applies only to implementation and supervision of approved voluntary arrangement. The role of the Court is limited to giving directions on matters relating to implementation and supervision, although no provision is specifically made as to the nature of the order that the court may make. It seems that the section is limited to enabling the nominee to seek assistance of the Court for a situation which is not envisaged by the proposal itself and which, for whatever reason, cannot be determined by the nominee exercising his own professional judgment. 3. WHAT SHOULD BE STATED ON THE IVA PROPOSAL? 3. WHAT SHOULD BE STATED ON THE IVA PROPOSAL? Followings are some items suggested by the Official Receiver's Office (with reference to Rule 122C(2) of the Bankruptcy Rules). Overview of the contents The following matters or items must be stated or otherwise dealt with in the proposal: (i) the debtor's assets, with an estimate of their respective values and the basis of that estimate, and the extent (if any) to which the assets are charged in favour of the creditors; (ii) particulars of any property, other than assets of the debtor, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(iii) the nature and amount of the debtor's liabilities (to the debtor's immediate knowledge), the manner in which they will be met, modified, postponed or otherwise dealt with by means of the arrangement; (iv) the proposed duration of the voluntary arrangement and the proposed dates of repayment distributions to creditors, with estimates of their amounts; (v) whether any, and if so what, guarantees have been given for the debtor's debts by other persons; (vi) whether, for the purposes of the voluntary arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought; (vii) the name, address and qualification of the person proposed as the Nominee of the voluntary arrangement, and confirmation that the person is (as far as the debtor is aware) experienced and qualified to act as a Nominee in relation to the voluntary arrangement either as Trustee or otherwise for the purpose of supervising its implementation; (viii) the amount that will be paid to the nominee by way of remuneration and expenses; (ix) the functions that are to be undertaken by the nominee; (x) the manner in which funds (e.g. debtor's assets) that are to be held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors; (xi) if the debtor has any business, then the manner in which it will be conducted during the course of the arrangement. (For more details of the suggested content for IVA proposals, please see the webpage of the Official Receiver's Office. 4. WHAT ARE THE CONSEQUENCES FOR THE DEBTOR IF THE IVA PROPOSAL IS APPROVED? 4. WHAT ARE THE CONSEQUENCES FOR THE DEBTOR IF THE IVA PROPOSAL IS APPROVED? The proposal is effective from the date of the creditors' meeting on approval of the proposal. The Nominee appointed at the meeting will take control of all of the debtor's assets that are included in the IVA proposal, and the debtor should follow the approved proposal to repay the debts. Any bankruptcy petition entered previously against the debtor will be dismissed by the Court. In case of any existing Bankruptcy Order, the Court may cancel it, with or without conditions. However, if the IVA proposal cannot be approved by all necessary parties or if the debtor has failed to perform all of the obligations as stated on the IVA proposal, then the creditors may still proceed with the bankruptcy petition against the debtor. 5. CASE ILLUSTRATION 5. CASE ILLUSTRATION Individual Voluntary Arrangement (IVA) Scenario Miss M borrowed a total sum of $100,000 from 3 financial institutions. She is now unable to repay any of the loans. She does not want to be declared bankrupt because she wants to retain her existing job as an insurance agent. She wishes to apply for an IVA to settle her debts. 1. WHAT MAKES AN IVA BETTER THAN BANKRUPTCY IN MISS M'S CASE? 1. WHAT MAKES AN IVA BETTER THAN BANKRUPTCY IN MISS M'S CASE? Miss M can retain her existing job as an insurance agent. In contrast, a bankrupt cannot act as a company director or may not practise in certain professions such as lawyer, estate agent or insurance agent, etc. The bankrupt cannot purchase luxuries such as new car or travel overseas unless the bankrupt has reasonable grounds to do so. Although the Official Receiver or the Nominee may approach Miss M's employer to gather information about her case, this will not be carried out unless it is necessary to do so. Miss M can also avoid the stigma of bankruptcy, and be free from the legal restrictions imposed on a bankrupt. For example, she can travel freely in and out of Hong Kong without having to report to the Trustee or the Official Receiver. She can also act as a company director or an insurance agent. 2. WHAT SHOULD MISS M DO DURING THE IVA APPLICATION? 2. WHAT SHOULD MISS M DO DURING THE IVA APPLICATION? Miss M should first propose a Nominee to implement and monitor her voluntary arrangement. She must then submit her IVA proposal and her Statement of Affairs to her Nominee for checking. She should also apply to the Court for an Interim Order (for a 14-day-period in which no other legal proceedings can be taken or continued against her without the Court's permission) to allow the relevant parties to have adequate time for considering or revising her proposal. The Nominee will submit a report concerning her proposal to the Court stating whether a creditors' meeting with Miss M should be held to discuss the proposal. Such a meeting will be held in usual circumstances. 3. WHAT SHOULD BE STATED ON MISS M'S IVA PROPOSAL? 3. WHAT SHOULD BE STATED ON MISS M'S IVA PROPOSAL? In general, Miss M must clearly state her assets owned and the details of her liabilities to her immediate knowledge. She must also propose the duration of the voluntary arrangement, repayment dates and the amount to be paid in each

time. Her proposal should also include the functions to be undertaken by the Nominee and the Nominee's personal details. For more details of the IVA proposal, please refer to "What should be stated on the IVA proposal?" on this website or see the webpage of the Official Receiver's Office. 4. WHAT WILL HAPPEN DURING THE CREDITORS' MEETING? 4. WHAT WILL HAPPEN DURING THE CREDITORS' MEETING? During the creditors' meeting, the creditors and Miss M will negotiate on the IVA matters. The approval or modification of the proposal requires a majority of those creditors who totally hold in excess of 75% in gross amount of the debts owed and who are present in person or by proxy and vote on the resolution. Any modification of the proposal also requires consent from Miss M. 5. WHAT ARE THE CONSEQUENCES FOR MISS M IF HER PROPOSAL IS APPROVED? 5. WHAT ARE THE CONSEQUENCES FOR MISS M IF HER PROPOSAL IS APPROVED? Once the proposal is approved during the creditors' meeting, it will legally bind every creditor and Miss M. The proposal is effective from the date of the meeting. The Chairman of the meeting must submit a report to the Court within 7 days of the creditors' meeting. Miss M must follow the approved proposal to repay her debts. Any bankruptcy petition entered previously against Miss M will be dismissed by the Court. The Court can cancel any existing Bankruptcy Order with or without conditions. 6. CAN THE DECISION MADE AT THE CREDITORS' MEETING BE CHALLENGED? 6. CAN THE DECISION MADE AT THE CREDITORS' MEETING BE CHALLENGED? The debtor, the creditors, the Nominee, and in the case of an undischarged bankrupt, the Trustee or the Official Receiver, may submit an application to the Court to challenge the decision of the meeting within 28 days after the submission of the Chairman's report to the Court. 7. CAN MISS M AVOID BANKRUPTCY PROCEEDINGS AGAINST HER DURING THE EFFECTIVE PERIOD OF THE IVA PROPOSAL? 7. CAN MISS M AVOID BANKRUPTCY PROCEEDINGS AGAINST HER DURING THE EFFECTIVE PERIOD OF THE IVA PROPOSAL? Miss M can avoid bankruptcy proceedings if she complies with her obligations under the IVA. Under section 20L of the Bankruptcy Ordinance, however, the Court can still make a bankruptcy order against the debtor if: the debtor has failed to comply with the relevant obligations under the IVA; or the debtor provided false or misleading information or omitted items that were important for considering and approving the IVA proposal; or the debtor failed to do all such things for the purpose of the IVA that have been reasonably required by the Nominee of the voluntary arrangement. WINDING-UP OF COMPANIES III. WINDING-UP OF COMPANIES In this section, you can find general information on the procedures of winding-up of companies and the consequences on the relevant parties (including the creditors, employees, company directors and shareholders). A. WHAT KIND OF COMPANIES CAN BE WOUND-UP? A. WHAT KIND OF COMPANIES CAN BE WOUND-UP? Only a limited company can be wound-up. The term "winding-up" (or "wound-up") bears a similar meaning of "liquidation". It generally means that all the assets of the company would be realized (sold and converted to cash) through a legal process in order to repay its debts. Winding-up would bring a company to an end. A limited company is a company that is registered under the Companies Ordinance (Cap. 622 of the Laws of Hong Kong). It is a separate legal entity (i.e. it can sue or be sued in legal proceedings). The liabilities of shareholders are limited to the value of the company's shares held by them (limited by shares). Another situation, which is not common in commercial organizations, is that the liabilities of shareholders are limited to the amount in which the shareholders have agreed to contribute to the company's assets if the company is being wound-up (limited by guarantee). An "unlimited company" is not a "company" in a strict sense. It is a business operated in the form of a sole proprietorship or a partnership. A sole proprietorship is owned by an individual. A sole proprietor is solely and personally responsible for the liability of the business. A partnership is a form of business owned by two or more persons (partners). The partners are personally jointly and severally liable (i.e. every partner should be liable) for the liability of the business. An overview of winding-up procedures You can get a general picture on the winding-up procedures (except " voluntary winding-up ") from the following chart: Issuing a written demand for debt repayment to the target company Presenting a winding-up petition to the Court and the company (Note) Court hearing for the petition Granting of winding-up order by the Court Meeting of creditors and other relevant parties Appointment of liquidator Realization and distribution of company's assets to the

creditors Release of duties for liquidator Dissolution of the company Note: The winding-up proceedings should be deemed to commence at the time of presenting the winding-up petition to the Court. B. THINGS YOU NEED TO NOTE BEFORE PRESENTING A WINDING-UP PETITIONYOU NEED TO NOTE BEFORE PRESENTING A WINDING-UP PETITION B. THINGS YOU NEED TO NOTE BEFORE PRESENTING A WINDING-UP PETITION Under sections 177 & 178 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32), it is a ground for petition if the company is unable to pay a debt of $10,000 or above (or an amount prescribed by the Financial Secretary of the HKSAR Government in special circumstances). If it is anticipated that there will be a genuine dispute over the debt (the company is likely to argue, or just denying its liability for the debt), the creditor may sue the company for a judgment instead of presenting a winding-up petition. In other words, the creditor may institute legal proceedings against the company in order to obtain a court judgment to ascertain the company's liability for the debt. If the company still fails to comply with a court judgement to repay the debt, the creditor may then proceed to enforce the judgement by filing a winding-up petition (or enforce it through other legal proceedings). C. SEARCH OF WINDING-UP RECORDS C. SEARCH OF WINDING-UP RECORDS It is my intention to present a winding-up petition against a company. How can I find out if there is already a petition presented against this company? A request to search the compulsory company winding-up records is available at the Official Receiver' s Office at a search fee of $80. The relevant application form is available at the website of the Official Receiver' s Office. You can contact the staff of the Official Receiver' s Office at 28672448, or e-mail at oroadmin@oro.gov.hk for more details. You may also conduct a search of compulsory winding-up proceedings via the Internet. Please note that the Official Receiver' s Office does not keep records of companies being wound-up voluntarily (not wound-up by court order) You must contact the Companies Registry for information related to the voluntary winding-up of a particular company. D. CONSEQUENCES OF THE PRESENTATION OF A WINDING-UP PETITION D. CONSEQUENCES OF THE PRESENTATION OF A WINDING-UP PETITION After the commencement of winding-up proceedings (that is, after the presentation of the winding-up petition), all dispositions of the property of the company is void pursuant to section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32). In other words, no transfer of any property of the company is allowed. Therefore, banks will usually freeze a company's account when they know that a winding-up petition has been presented against that company. 1. CAN ANYTHING BE DONE TO REACTIVATE THE COMPANY' S BANK ACCOUNT? 1. CAN ANYTHING BE DONE TO REACTIVATE THE COMPANY' S BANK ACCOUNT? You may apply to the Court to grant an order to reactivate the company' s bank account. The Court will only grant such order if it will be beneficial to the company. The application is made by summons (a demand for the relevant parties in the proceedings to attend court hearing) with an affirmation (a supporting document which is made on oath) explaining why an order to reactivate the company' s account is beneficial and also the facts relied upon. The Court will hear the application. You are advised to seek assistance from a lawyer if you have to make such an application. 2. THE COMPANY IS OF THE VIEW THAT THE DEBT ALLEGEDLY OWNED TO THE PETITIONER IS NOT GENUINE. IS THERE ANYTHING ELSE THE COMPANY CAN DO PENDING THE HEARING OF THE WINDING-UP PETITION? 2. THE COMPANY IS OF THE VIEW THAT THE DEBT ALLEGEDLY OWNED TO THE PETITIONER IS NOT GENUINE. IS THERE ANYTHING ELSE THE COMPANY CAN DO PENDING THE HEARING OF THE WINDING-UP PETITION? The Company can consider making an application to the Court for an order to strike out the petition. However, it is not easy for a Company to obtain such an order. 3. I AM A CREDITOR OF A COMPANY WHICH HAS REFUSED TO REPAY A DEBT TO ME. I ALSO HAVE GROUNDS TO BELIEVE THAT THE ASSETS OF THE COMPANY ARE IN JEOPARDY AND ARE BEING DISSIPATED. I KNOW I CAN PRESENT A WINDING-UP PETITION BUT IT WILL TAKE A FEW MONTHS BEFORE THE COMPANY CAN BE WOUND UP. WHAT CAN I DO TO PROTECT MY INTEREST AND TO SAFEGUARD THE COMPANY' S ASSETS IN THE MEANTIME? 3. I AM A CREDITOR OF A COMPANY WHICH HAS REFUSED TO REPAY A DEBT TO ME. I ALSO HAVE GROUNDS TO BELIEVE THAT THE ASSETS OF THE COMPANY ARE IN JEOPARDY AND ARE BEING DISSIPATED. I KNOW I CAN PRESENT A WINDING-UP PETITION BUT IT WILL TAKE A FEW MONTHS BEFORE THE COMPANY CAN BE WOUND UP. WHAT CAN I DO TO PROTECT MY INTEREST AND TO SAFEGUARD THE COMPANY' S ASSETS IN THE MEANTIME? You can apply to the Court for the appointment of a provisional liquidator

after you have presented a winding-up petition. The provisional liquidators will take the necessary steps to preserve the assets of the Company. A sum of $3,500 must be deposited to the Official Receiver's Office for the appointment of a provisional liquidator (for the purpose of covering the fees and expenses to be incurred in relation to such application). Additional sums may be required to be deposited when necessary. 4. DO I NEED TO ASK MY OWN LAWYER/ACCOUNTANT TO BE APPOINTED AS THE PROVISIONAL LIQUIDATOR? CAN A GOVERNMENT OFFICIAL (E.G. THE OFFICIAL RECEIVER) ACT AS THE PROVISIONAL LIQUIDATOR SO THAT I DO NOT NEED TO PAY FOR MY OWN LAWYER/ACCOUNTANT TO ACT AS THE PROVISIONAL LIQUIDATOR? 4. DO I NEED TO ASK MY OWN LAWYER/ACCOUNTANT TO BE APPOINTED AS THE PROVISIONAL LIQUIDATOR? CAN A GOVERNMENT OFFICIAL (E.G. THE OFFICIAL RECEIVER) ACT AS THE PROVISIONAL LIQUIDATOR SO THAT I DO NOT NEED TO PAY FOR MY OWN LAWYER/ACCOUNTANT TO ACT AS THE PROVISIONAL LIQUIDATOR? Yes. You may apply for the Court to appoint either qualified persons or the Official Receiver to act as the provisional liquidator. However, you will still have to deposit $3,500 to the Official Receiver's Office. E. ALTERNATIVES TO WINDING-UP E. ALTERNATIVES TO WINDING-UP A petition has been presented against my company which is in heavy debt and is obviously insolvent. We have managed to locate an investor but the capital injection the investor can provide is not sufficient to pay off all of the company's debts. What options are available to the company to avoid its being wound up? The company may try to negotiate with the creditors in order to reach a compromise regarding the repayment of the debts, and see if the creditors can be persuaded to withdraw the petition. Alternatively, the company can propose a scheme of arrangement under section 674 of the Companies Ordinance (Cap.622). Upon application by the company, the creditors, or the liquidator (in the case where a winding-up order has been granted), the Court may order a meeting of all the relevant parties be held to discuss and negotiate the details of an arrangement for debt repayment. If a majority in number representing at least three-fourths in value of the creditors (who are voting either in person or by proxy at the meeting) agree to any compromise or arrangement, the compromise or arrangement shall be binding on all the creditors if it is also sanctioned by the court. Sometimes the approved arrangement may involve the re-organization or transfer of the company's share capital, or even the merging of 2 or more companies. The above procedures are complex and are usually carried out with the assistance of lawyers and professional financial advisors. Another note is that whilst it is in the power of the Court to adjourn (postpone) winding-up proceedings, in order to enable a scheme of arrangement to be put in place, any such adjournment would generally only be ordered in the absence of opposition from the petitioning creditor. Even then that should only be done in circumstances where the court can see that there would be a realistic probability for a scheme of arrangement to be approved and can be sure that no adverse consequence to the parties involved will be occasioned as a result of the order made. (You may read the judgment from the case of Credit Lyonnais v SK Global Hong Kong Ltd for more details.) F. VOLUNTARY WINDING-UP BY THE COMPANY ITSELF F. VOLUNTARY WINDING-UP BY THE COMPANY ITSELF No matter whether the company is in financial difficulty or not, it may hold a general meeting of its shareholders to bring itself to an end by winding-up procedures. If a special resolution is passed for winding-up, the company may then apply to the Court for a winding-up order (via procedures similar to a creditor's petition). Alternatively, a special resolution that the company be wound up voluntarily may be passed. In that case, no winding-up order from the Court is necessary. 2. WHAT ARE THE EFFECTS OF VOLUNTARY WINDING-UP? 2. WHAT ARE THE EFFECTS OF VOLUNTARY WINDING-UP? Upon the commencement of the voluntary winding-up, the company will cease to carry on business except that which may be required for the benefit of winding- up smoothly. The legal status and powers of the company will continue until it is dissolved. Furthermore, any transfer of shares (except a transfer made by the liquidator or made with his/her approval), and any alteration to the status of the members of the company which is made after the commencement of a voluntary winding-up, will be void. 1. MY COMPANY IS IN HEAVY DEBT AND WE WILL NOT BE ABLE TO CONTINUE BUSINESS OR PAY OFF THE DEBTS. WHAT SHOULD BE DONE TO BRING THE COMPANY TO AN END? 1. MY COMPANY IS IN HEAVY DEBT AND WE WILL NOT BE ABLE TO CONTINUE BUSINESS OR PAY OFF THE DEBTS. WHAT SHOULD BE DONE TO BRING THE COMPANY TO AN END? You may consider the option of voluntary

winding-up. The relevant procedures include:- A special resolution for voluntary winding-up to be passed by the shareholders. A notice of the resolution has to be advertised in the Government Gazette within 14 days of the passing of the resolution. The company has to call a meeting of creditors. The notice for the meeting has to be advertised in the Government Gazette and in Chinese and English newspapers. The directors of the company have to make a full statement of the position of the company' s affairs, together with a list of creditors and the estimated amount of their claims, to be laid before the meeting. Resolution (concerning the details of the winding-up matter or process) may be passed at the meeting. During the meeting, a liquidator may be nominated and appointed. Further, an inspection committee may be appointed to supervise the exercise of power by the liquidator. The liquidator will deal with the affairs of the company. The liquidator will call further meetings of the company or creditors each year to account for his acts concerning the winding-up. When the affairs of the company have been fully wound up, the liquidator will produce an account of the winding-up, and call a final meeting of the company and of the company' s creditors. If no special resolution can be passed at a general meeting of shareholders, the board of directors may nevertheless pass a resolution that the company be wound up. The relevant resolution shall include the following contents: The company cannot because of its liabilities continue its business; The directors consider it necessary that the company be wound up; Why it is not reasonably practical to use other provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance to wind up the company; and A meeting of the company and of its creditors will be summoned and held on a date not later than 28 days after the delivery of a declaration to the Registrar of Companies. A declaration recording such resolution has to be signed by a director and be delivered to the Registrar of Companies within seven days of the date of the resolution. Meetings of the company and of the creditors have to be summoned within 28 days of the delivery of such resolution to the Registrar of Companies. A provisional liquidator also has to be appointed upon the delivery of the declaration. Due to the complexity of the above procedures, you are advised to consult a lawyer or other qualified professionals before commencing such actions. G. GROUNDS FOR MAKING A WINDING-UP ORDER G. GROUNDS FOR MAKING A WINDING-UP ORDER What does the Court consider in deciding whether or not a winding up order should be made? The usual circumstances under which the Court would make a winding-up order are: the company itself has, by a special resolution of the members (subscribers or shareholders), resolved that the company be wound up by the Court; the company does not commence its business within a year from its date of incorporation, or suspends its business for a whole year; the company has no subscriber or no shareholder; the company is unable to pay its debts; an event occurs on the occurrence of which the company's memorandum or articles of association provides that the company is to be dissolved; or the Court is of an opinion that it is just and equitable (reasonable) to do so. A winding-up order may also be made if it is proved that the affairs of the company have been conducted in a manner unfairly and prejudicial to the interest of some shareholders of the company, or its shareholders generally. In considering these grounds, the Court will usually take into account the circumstances of the company including whether it is insolvent and whether there is an alternative solution to the dispute, such as buying out the shares of a disgruntled/dissatisfied shareholder. H. CONSEQUENCES OF MAKING A WINDING-UP ORDER H. CONSEQUENCES OF MAKING A WINDING-UP ORDER 1. ON THE LEGAL PROCEEDINGS RELATED TO THE COMPANY, DEBTORS OF THE COMPANY OR LIQUIDATORS 1. ON THE LEGAL PROCEEDINGS RELATED TO THE COMPANY, DEBTORS OF THE COMPANY OR LIQUIDATORS When a winding-up order has been made, no legal proceeding shall be continued or commenced against the company without approval from the Court. In other words, all the other legal proceedings against the company will be automatically stayed or “frozen” upon the making of a winding-up order. 1. I AM THE DEFENDANT OF A LEGAL ACTION BROUGHT AGAINST ME BY A COMPANY. I JUST DISCOVERED THAT A WINDING UP ORDER HAS BEEN MADE AGAINST THIS COMPANY. DOES IT FOLLOW THAT THE ACTION AGAINST ME WILL COME TO AN END AUTOMATICALLY? 1. I AM THE DEFENDANT OF A LEGAL ACTION BROUGHT AGAINST ME BY A COMPANY. I JUST DISCOVERED THAT A WINDING UP ORDER HAS BEEN MADE AGAINST THIS COMPANY. DOES IT FOLLOW THAT THE ACTION AGAINST ME WILL COME TO AN END AUTOMATICALLY? No. The

action does not come to an end. The liquidator may, with the approval of the Court, continue and conduct the action against you in the name of and on behalf of the company. 2. I OWE A SUBSTANTIAL AMOUNT OF MONEY TO A COMPANY THAT HAS JUST BEEN WOUND UP. DOES IT FOLLOW THAT I DO NOT HAVE TO REPAY THE DEBT? 2. I OWE A SUBSTANTIAL AMOUNT OF MONEY TO A COMPANY THAT HAS JUST BEEN WOUND UP. DOES IT FOLLOW THAT I DO NOT HAVE TO REPAY THE DEBT? No. The liquidator may bring action against you to recover the unpaid debt. 3. WHAT ARE THE POWERS OF LIQUIDATORS WHEN A COMPANY IS WOUND UP BY THE COURT? 3. WHAT ARE THE POWERS OF LIQUIDATORS WHEN A COMPANY IS WOUND UP BY THE COURT? The liquidator can exercise the following powers with the approval of either the Court or the committee of inspection: to bring or defend any action or other legal proceedings in the name of and on behalf of the company; to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof; to appoint a solicitor to assist the liquidator in the performance of the relevant duties; to pay any classes of creditors in full; to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof. The liquidator can exercise the following powers without seeking prior approval from the Court or committee of inspection (while nevertheless the Court may order to limit and restrict the powers of the liquidator, if necessary): to sell the real and personal property and things in action (e.g. shares or debentures) of the company 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; to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors; to draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business; to raise on the security of the assets of the company any money requisite; to take out in the liquidator's official name letters of administration to any deceased contributory, and to do in such an official name any other act necessary for obtaining payment of any money due from a contributory or the relevant estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself; to appoint an agent to do any business which the liquidator is unable to do himself/herself; to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets. 4. WHAT ARE THE POWERS OF THE COURT UNDER SECTION 286B OF THE COMPANIES ORDINANCE? 4. WHAT ARE THE POWERS OF THE COURT UNDER SECTION 286B OF THE COMPANIES (WINDING UP & MISCELLANEOUS PROVISIONS) ORDINANCE? Section 286B of the Companies (Winding Up & Miscellaneous Provisions) Ordinance (Cap.32) confers a power on the Court to examine a person on oath either by word of mouth or on written inquiries. The person that may be examined refers to the officer of the company or other person deemed capable of giving information, and includes a body corporate. The authority of the Court under section 286B is limited to the production of documents which relate to the company in liquidation and does not extend to documents which relate to its current or former

subsidiary or associated companies unless they also relate to the liquidated company itself, but this cannot be assumed. In exercising its discretion, the Court must endeavour to strike a balance between the liquidator' s reasonable requirements and the need to avoid making an order that is unreasonable, unnecessary or oppressive to the party from whom the documents or information are sought. 2. ON CREDITORS OR EMPLOYEES OF THE COMPANY 2. ON CREDITORS OR EMPLOYEES OF THE COMPANY After a winding-up order has been granted by the Court, the company's creditors will be asked to attend the "First Meeting of Creditors and Contributories". A statement of the company's affairs (Form 23), which is prepared by the director or responsible officer of the wound-up company, will be presented at the meeting. This statement is similar to a balance sheet of the company and contains details of all the company's assets and liabilities. Furthermore, resolutions may be passed in relation to the further conduct of the winding-up, such as whether or not to apply for the appointment of a liquidator in place of the provisional liquidator, and whether or not to appoint a committee of inspection. If the creditors wish to attend the meeting but are unable to do so, they may send proxies to represent their interests and to vote on behalf of them. A creditor can appoint someone to attend the meeting and to vote on the creditor's behalf by completing either a General Proxy From or a Special Proxy Form (if the creditor has a decision on a particular resolution), and return the relevant form to the Official Receiver's Office. 1. FROM SOMEWHERE I HAVE HEARD ABOUT A "SUMMARY PROCEDURE" FOR WINDING UP A COMPANY HAVING ASSETS OF LESS THAN $200,000 IN VALUE. HOW DOES THIS PROCEDURE WORK? 1. FROM SOMEWHERE I HAVE HEARD ABOUT A "SUMMARY PROCEDURE" FOR WINDING UP A COMPANY HAVING ASSETS OF LESS THAN $200,000 IN VALUE. HOW DOES THIS PROCEDURE WORK? This procedure applies if, after the presentation of the winding up petition, either the Court is satisfied that the property of the company is not likely to exceed $200,000 in value, or the Official Receiver (or the provisional liquidator) so reports. Upon an order that the company be wound up in a summary manner, there will be no first meeting of creditors and contributories. The provisional liquidator will become the liquidator without a committee of inspection. 2. I AM AN EMPLOYEE OF A COMPANY THAT HAS JUST BEEN WOUND-UP. CAN I RECOVER MY UNPAID WAGES? 2. I AM AN EMPLOYEE OF A COMPANY THAT HAS JUST BEEN WOUND-UP. CAN I RECOVER MY UNPAID WAGES? As an employee you are considered to be a "preferential" creditor of the company. If a bankruptcy or winding-up order has been granted against the employer, the employee is entitled to receive payments (in respect of wages, wages in lieu of notice and severance payments that fall under the statutory limits) out of the employer's assets in preference (with priority) to most other creditors. For example, an employee (as a preferential creditor) can recover the arrears of wages up to a maximum of $8,000 in respect of services rendered to his/her employer. Any arrears of wages, wages in lieu of notice, or severance payments in excess of the statutory limits are considered "non-preferential debts", and the employee will be treated as an ordinary creditor with respect to any amounts claimed in excess of the statutory limits . However, whether you will be paid even the amounts within the statutory limits will depend on the company's assets available. You may consider applying to the Labour Department for gratuitous payment from the Protection of Wages on Insolvency Fund . For more details on insolvency claims which relate to employment matters, please go to another topic - Employment Disputes in CLIC. 3. I AM A CREDITOR OF A COMPANY THAT HAS BEEN WOUND UP. CAN I DO ANYTHING TO RECOVER THE DEBT? 3. I AM A CREDITOR OF A COMPANY THAT HAS BEEN WOUND UP. CAN I DO ANYTHING TO RECOVER THE DEBT? You have to prove that the company owes you the debt by completing a Proof of Debt Form (Form 63A). You should submit the form to the provisional liquidator or liquidator, together with documentary evidence, if any, after the winding-up order has been made against the company. A filing fee of $35 is required if the debt exceeds $250 or it is not an employee' s claim. Also, you may attend or even summon a general meeting of creditors so that you can participate in decisions concerning the distribution of the remaining property of the company. Unless the debt owed to you by the company is secured and the value of the assets covered by the security is sufficient to repay the debt, you are not guaranteed that you can recover all the money. Unsecured creditors may recover money only if there are funds remained in the assets of the company after the

realizations of all the company’s assets (i.e. all the assets were sold and converted to cash) and the deduction of all fees and expenses incurred in the winding-up process. Usually the unsecured creditors could not recover the full amount and they will be paid in proportion to the size of their debts. 4. I AM DISSATISFIED WITH THE LIQUIDATOR’S DECISION IN RESPECT OF A PROOF OF DEBT FILED BY ME. FOR EXAMPLE, THE LIQUIDATOR DENIED THAT THE COMPANY OWES ME A CERTAIN AMOUNT OF MONEY. CAN I APPEAL AGAINST THE DECISION? 4. I AM DISSATISFIED WITH THE LIQUIDATOR’S DECISION IN RESPECT OF A PROOF OF DEBT FILED BY ME. FOR EXAMPLE, THE LIQUIDATOR DENIED THAT THE COMPANY OWES ME A CERTAIN AMOUNT OF MONEY. CAN I APPEAL AGAINST THE DECISION? Yes. You may apply to the Court for a reversion or modification of the decision but you must do so within 21 days from the date of service of the written decision of the liquidator. 5. THE COMPANY BORROWED A SUBSTANTIAL AMOUNT OF MONEY FROM ME BUT IT IS NOT REPAYABLE UNTIL NEXT YEAR UNDER THE TERMS OF THE LOAN. NOW THAT THE COMPANY HAS BEEN WOUND UP, CAN I RECOVER THE DEBT IMMEDIATELY? 5. THE COMPANY BORROWED A SUBSTANTIAL AMOUNT OF MONEY FROM ME BUT IT IS NOT REPAYABLE UNTIL NEXT YEAR UNDER THE TERMS OF THE LOAN. NOW THAT THE COMPANY HAS BEEN WOUND UP, CAN I RECOVER THE DEBT IMMEDIATELY? A creditor may prove for a debt not payable at the time of the winding-up order. Therefore, it is possible for you to recover the debt. However, depending on the company’s assets at the time of winding-up, it may not be paid in full, and may not be paid immediately. 3. ON SHAREHOLDERS OR DIRECTORS OF THE COMPANY 3. ON SHAREHOLDERS OR DIRECTORS OF THE COMPANY After the granting of winding-up order, the shareholders’ liabilities are limited to the value of shares held by them (limited by shares). In this case, there will be no liability further than the value of any shares in the relevant shareholders’ names in which they have not yet paid for at the time the company is wound up. Another case, which is not common in the commercial field, is that the liabilities of shareholders are limited to the amount in which they have agreed to contribute to the company’s assets if the company is being wound-up (limited by guarantee). Directors will not be subject to personal liability unless they have obtained advantages from the company unlawfully or in breach of the duties as a director or they have given personal guarantees to the creditors (which is not uncommon in particular for bank loans). The powers of all directors of the company will cease after the making of a winding-up order. 1. I AM A SHAREHOLDER OF A COMPANY IN WHICH A WINDING-UP ORDER HAS BEEN GRANTED. I HAVE DECIDED TO PAY OFF ALL DEBTS OF THE COMPANY. CAN I “REVIVE” THE COMPANY? 1. I AM A SHAREHOLDER OF A COMPANY IN WHICH A WINDING-UP ORDER HAS BEEN GRANTED. I HAVE DECIDED TO PAY OFF ALL DEBTS OF THE COMPANY. CAN I “REVIVE” THE COMPANY? If you have decided to pay off all the company’s debt, you can apply to the Court for a permanent stay (suspension) of all further proceedings in the winding-up of the company under section 209 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32). The Court will grant a stay if it is satisfied that the rights of creditors and members are provided for; the liquidators are remunerated, and there are no further matters in the affairs of the company that call for investigation. The effect of a permanent stay is that the company is “revived”. 2. AFTER THE MAKING OF A WINDING-UP ORDER, WHAT ARE MY DUTIES (AS A DIRECTOR OF THE COMPANY) IN RELATION TO THE WINDING-UP PROCEEDINGS? 2. AFTER THE MAKING OF A WINDING-UP ORDER, WHAT ARE MY DUTIES (AS A DIRECTOR OF THE COMPANY) IN RELATION TO THE WINDING-UP PROCEEDINGS? On the appointment of a provisional liquidator, or the making of the winding-up order, the powers of the directors of the company will cease. The directors are legally required to:- deliver to the provisional liquidator or liquidator the company’s assets, accounts’ books and records, and seal; attend the office of the provisional liquidator or liquidator for interviews to provide information about the company’s assets and dealings; submit a sworn statement of affairs of the company (similar to a balance sheet) within 28 days after the appointment of a provisional liquidator or the making of the winding-up order; attend meetings of creditors and contributories when notified to do so by the provisional liquidators or liquidators; continue to co-operate with the provisional liquidator or liquidator until the liquidation is concluded; and notify the provisional liquidator or liquidator of any change in address. 3. AS A DIRECTOR OF THE COMPANY, I HAVE JUST RECEIVED A COURT ORDER DIRECTING ME TO ATTEND A PUBLIC EXAMINATION. DO I HAVE TO ATTEND? WHAT HAPPENS AT THE

HEARING? 3. AS A DIRECTOR OF THE COMPANY, I HAVE JUST RECEIVED A COURT ORDER DIRECTING ME TO ATTEND A PUBLIC EXAMINATION. DO I HAVE TO ATTEND? WHAT HAPPENS AT THE HEARING? You have to attend the publication examination hearing. According to Rule 56 of the Companies (Winding-up) Rules: “If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, it shall be lawful for the court, upon its being proved to the satisfaction of the court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court shall think just”. At the hearing, you may be asked questions concerning the promotion, formation and the conduct of the business of the company, and also your conduct and dealings as a director of the company. You will be required to answer the questions on oath. You are recommended to obtain legal advice before attending the hearing, or to instruct a lawyer to present with you during the hearing. The Official Receiver or the Liquidator (or their legal representatives) will take part in the examination. 4. IF I AM A DIRECTOR OF A COMPANY BEING WOUND UP, WILL THE WINDING-UP PROCEDURES HAVE ANY PRACTICAL IMPACT ON MY PERSONAL LIFE? 4. IF I AM A DIRECTOR OF A COMPANY BEING WOUND UP, WILL THE WINDING-UP PROCEDURES HAVE ANY PRACTICAL IMPACT ON MY PERSONAL LIFE? Generally speaking, it will not affect your personal life, unless: Case 1 1. you are convicted of unlawful conduct; or Case 2 2. your conduct as a director makes you unfit to be involved in the management of a company; or Case 3 3. you have attracted liability due to any unlawful acts, a breach of director’s duties or personal guarantees given to the creditors. In case 1, you may be subject to a criminal sentence including a fine. The following table (as extracted from the website of the Official Receiver’s Office) highlights some of these offences: Companies Ordinance (Cap. 622) Sections Brief descriptions of the offences Penalties 373(5)&(6) 374(4)&(5) 377(3)&(4) Director failing to take reasonable steps to ensurethat proper books of account are kept and preserved. Liable to a maximum fine of $300,000 and imprisonment for up to amaximum of 1 year. 429(3)&(4) Director failing to take reasonable steps to ensurethat accounts are tabled at the Annual General Meeting. Liable to a maximum fine of $300,000 and imprisonment for up to amaximum of 1 year. Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) Sections Brief descriptions of the offences Penalties 190(5) Person failing to comply with requirements to submit a statement of affairs or a supplementary affidavit. Liable to a maximum fine of $50,000 and a daily default fine of $300 271(1)(o) Officers disposed any property of the company which had been obtained on credit and had not been paid for within 12 months next before the commencement of the winding-up or at any time there after. On indictment : liable to imprisonment for up to a maximum of 5 years. Summary prosecution :liable to a maximum of 2 years imprisonment. 271(1) [relating to all paragraphs except (o)] Officers failing to comply with section 271,including: (i) Officers failing to deliver to the liquidator all theproperty, books and records or disclose their information; and (ii) Officers concealed or fraudulently removed any part of the property or the books of the company within 12 months next before the commencement of winding-up. On indictment : liable to a maximum fine of $150,000 and imprisonment for up to amaximum of 2 years. Summary prosecution :liable to a maximum fine of $50,000 and imprisonment for up to amaximum of 6 months. 272 Officers falsifying books. On indictment : liable to amaximum fine of $150,000 and imprisonment for up to amaximum of 2 years. Summary prosecution :liable to a maximum fine of $50,000 and imprisonment for up to a maximum of 6 months. 273 Officers acting with intent to defraud creditors by giving, or concealing, property of company. On indictment : liable to amaximum fine of $150,000 and imprisonment for up to amaximum of 2 years. Summary prosecution :liable to a maximum fine of $50,000 and imprisonment for up to a maximum of 6 months. 274(1) Officers failing to keep proper books for the 2 years prior to the winding-up of the company. On indictment : liable to a maximum fine of $150,000 and imprisonment for up to a maximum of 2 years. Summary prosecution :liable to a maximum fine of $50,000 and imprisonment for up to a maximum of 6 months. 275(3) Person being a party to carrying on the businessof a company with intent to defraud creditors. On

indictment : liable to unlimited fine and imprisonment for up to a maximum of 5 years. Summary prosecution :liable to a maximum fine of $150,000 and imprisonment for up to a maximum of 1 year. In case 2, you may be subject to a disqualification order so that you cannot take up the office of director of any company within a specific period. In case 3, you may be liable to the company for the advantages gained by you or the loss suffered by the company due to the breach or the unlawful act or you may be liable to the creditors under the personal guarantees given to them. 5. I BECAME A “NOMINEE” DIRECTOR OF A COMPANY CONTROLLED BY MY EMPLOYER ONLY BECAUSE MY EMPLOYER ASKED ME TO DO SO. I WAS NOT INVOLVED IN THE OPERATION AND THE MANAGEMENT OF THAT COMPANY, AND IT IS NOW BEING WOUND UP. DO I NEED TO BEAR ANY LIABILITY IN THIS REGARD? 5. I BECAME A “NOMINEE” DIRECTOR OF A COMPANY CONTROLLED BY MY EMPLOYER ONLY BECAUSE MY EMPLOYER ASKED ME TO DO SO. I WAS NOT INVOLVED IN THE OPERATION AND THE MANAGEMENT OF THAT COMPANY, AND IT IS NOW BEING WOUND UP. DO I NEED TO BEAR ANY LIABILITY IN THIS REGARD? Again, no matter whether you are a nominee director or not, no personal financial liability for the company’s debts has to be borne by you. However, a nominee director has the same duty to the company as a “real” director does. Therefore, if a nominee director has committed any wrongs, omissions, or criminal offences, that nominee director will suffer the same consequences as a director who took active part in the Company. Also, if you have given any personal guarantees in your name to the creditors of the company, you will be liable for the debts under the personal guarantees given. 6. MY COMPANY IS IN HEAVY DEBT. SOME CREDITORS HAVE THREATENED TO PRESENT A WINDING-UP PETITION. I HAVE THEREFORE TRANSFERRED ALL THE COMPANY’S ASSETS TO MY WIFE. A PETITION WAS PRESENTED 2 MONTHS AFTER THE TRANSFER, AND A WINDING-UP ORDER WAS EVENTUALLY MADE. CAN ANYONE GO AFTER MY WIFE FOR THE ASSETS? 6. MY COMPANY IS IN HEAVY DEBT. SOME CREDITORS HAVE THREATENED TO PRESENT A WINDING-UP PETITION. I HAVE THEREFORE TRANSFERRED ALL THE COMPANY’S ASSETS TO MY WIFE. A PETITION WAS PRESENTED 2 MONTHS AFTER THE TRANSFER, AND A WINDING-UP ORDER WAS EVENTUALLY MADE. CAN ANYONE GO AFTER MY WIFE FOR THE ASSETS? Yes. Any transfers or dispositions of assets made by a company within 2 years before the commencement of winding up can be set aside (made invalid) if the company does not receive full value for the transfer or disposition. This is called a transaction undervalue. If the transfer or disposition is made more than 2 years and within 5 years of the commencement of winding up, it can still be set aside if the company was insolvent or had become insolvent after the transfer or disposition. Hence, in this case, the transfer can be set aside. The liquidator will go after your wife for the assets. The situation is the same if your company sold your company’s assets (e.g. a piece of land) to a third party at an undervalue within 2 years before the commencement of winding up. Generally, the date of commencement of winding up is the date of filing of the petition for winding up if it is a case of a winding up by the court. In case of a voluntary winding up, the commencement date is the date of the resolution passed for winding up the company. 7. FURTHER TO THE ABOVE QUESTION, WHAT IF I ONLY ARRANGE PAYMENT TO ONE OF THE CREDITORS IMMEDIATELY BEFORE THE COMMENCEMENT OF WINDING-UP PROCEEDINGS? 7. FURTHER TO THE ABOVE QUESTION, WHAT IF I ONLY ARRANGE PAYMENT TO ONE OF THE CREDITORS IMMEDIATELY BEFORE THE COMMENCEMENT OF WINDING-UP PROCEEDINGS? Even though the person who received payment is your company's creditor, the transaction is still invalid if it is made within 6 months of the commencement of the winding up and with the intention to prefer a particular creditor. It is called a preferential payment. If the person who received the assets is an “associate” of a company (e.g. a director), the relevant period is 2 years prior to the commencement of winding-up. For example, if your company owes you (as a director or shareholder) or your wife or your relatives money and arrange payment immediately before the commencement of winding up, it would be a preferential payment as there is a clear intention that the company will “prefer” to repay these creditors than the others. The reason behind is that your company's assets should be realized and all the relevant proceeds should be used to: i) settle all the expenses incurred in the winding-up proceedings; and ii) share with all the creditors but not only the one that you “prefer” to pay for. In this case, the creditor (who received your money) may be ordered by the Court to refund the money back to your company. I. CONCLUSION OF WINDING-UP I. CONCLUSION OF WINDING-UP When will the

liquidator be released from the relevant duties in a winding-up proceedings? When will the company be dissolved? The liquidator can apply to the Court for the release of the duties once the followings have been accomplished: - all the assets of the company have been realized (i.e. all assets have been sold and converted to cash); - investigations related to the winding-up proceedings are completed; and - a final dividend (if any) has been paid to the creditors to settle the debts The liquidator will send notices, together with a summary of the relevant receipts and payments in the liquidation, to the creditors and contributories of the company of the intention to apply to the Court for release from the duties as liquidator. At this point, any creditor or contributory has 21 days from the date of the notice to raise objection to the intended release of the liquidator. After obtaining the order for release from the court, the liquidator will file a “Certificate of Release of Liquidator” with the Registrar of Companies. The company shall be dissolved two years after the filing of the “Certificate of Release of Liquidator”. J. CASE ILLUSTRATION J. CASE ILLUSTRATION Winding-up scenario AZ Company owes Mr. C and other vendors a total sum of $500,000. Despite repeated verbal or written demands from those creditors, the company has failed to repay the debts. Mr. C, after chasing AZ Company for 2 two months in respect of his debt of $100,000, plans to institute winding-up proceedings against the company so that he can try to recover at least part of the debt. 1. CAN MR. C FILE A WINDING-UP PETITION AGAINST AZ COMPANY AT THIS STAGE? 1. CAN MR. C FILE A WINDING-UP PETITION AGAINST AZ COMPANY AT THIS STAGE? Firstly, Mr. C should make sure that "AZ Company" is a limited company. He could find out the registered details of this company by conducting a company search at the Companies Registry and a business registration search at the Inland Revenue Department. If it is confirmed that AZ Company is a limited company, Mr. C should also issue a formal written demand to the company requiring it to pay the debt before presenting a winding-up petition. The written demand must be left (not sent by post, by registered post, by fax or by electronic means) by Mr. C or his lawyer at the registered office of the company. The company must be given 21 days in which to pay the debt before any further action can be taken against it. 2. THERE IS STILL NO REPLY FROM AZ COMPANY, EVEN AFTER IT RECEIVED THE WRITTEN DEMAND. CAN MR. C PROCEED TO FILE A WINDING-UP PETITION IN COURT? 2. THERE IS STILL NO REPLY FROM AZ COMPANY, EVEN AFTER IT RECEIVED THE WRITTEN DEMAND. CAN MR. C PROCEED TO FILE A WINDING-UP PETITION IN COURT? Mr. C can file a winding-up petition against AZ Company if the company is still “unable to pay its debts” 21 days after receiving the written demand. With reference to Section 178 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32), a company shall be deemed to be unable to pay its debts if: “a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due equal to or exceeding the specified amount ($10,000), has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.” 3. IN ADDITION TO DELIVERING THE WINDING-UP PETITION TO ALL RELEVANT PARTIES, MUST MR. C ALSO ADVERTISE THE PETITION IN NEWSPAPERS? 3. IN ADDITION TO DELIVERING THE WINDING-UP PETITION TO ALL RELEVANT PARTIES, MUST MR. C ALSO ADVERTISE THE PETITION IN NEWSPAPERS? The petition must be advertised 7 clear days before the date on which the petition will be heard by the court, once in the Gazette, and once at least in two local daily newspapers (one in Chinese and one in English). The advertisement must state the date on which the petition was presented, the date set for the court hearing, and the name and address of the petitioner and the petitioner’s solicitors. The advertisement should also contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose it or support it, must send notice of such intention to the petitioner, or to the petitioner’s solicitors, not later than 6 o’clock in the afternoon of the day previous to the hearing or not later than 1 o’clock in the afternoon of Saturday if the hearing is on the coming Monday. An advertisement of a petition for the winding up of a company by the court which does not contain such a note shall be deemed irregular. 4. MR. C KNOWS THAT AZ COMPANY’S BANK ACCOUNT WILL BE FROZEN AFTER THE PRESENTATION OF A WINDING-UP PETITION AGAINST IT, BUT HE IS STILL AFRAID THAT

THE COMPANY' S ASSETS MAY BE DISSIPATED IN OTHER WAYS. WHAT SHOULD HE DO? 4. MR. C KNOWS THAT AZ COMPANY' S BANK ACCOUNT WILL BE FROZEN AFTER THE PRESENTATION OF A WINDING-UP PETITION AGAINST IT, BUT HE IS STILL AFRAID THAT THE COMPANY' S ASSETS MAY BE DISSIPATED IN OTHER WAYS. WHAT SHOULD HE DO? Mr. C may apply to the Court for the appointment of a provisional liquidator after the presentation of the winding-up petition. The provisional liquidators will take the necessary steps to preserve the assets of the Company. A sum of $3,500 is required to be deposited with the Official Receiver' s Office. But sometimes additional sum is necessary if so required. 5. AFTER THE PRESENTATION OF A WINDING-UP PETITION, AZ COMPANY IS TRYING TO RAISE MONEY TO PAY OFF ITS DEBTS. THE COMPANY HAS SHOWN SOME WRITTEN EVIDENCE TO THE COURT AND ITS CREDITORS REGARDING SUCH EFFORT. CAN THE COMPANY APPLY TO THE COURT FOR DISMISSING MR. C' S PETITION? 5. AFTER THE PRESENTATION OF A WINDING-UP PETITION, AZ COMPANY IS TRYING TO RAISE MONEY TO PAY OFF ITS DEBTS. THE COMPANY HAS SHOWN SOME WRITTEN EVIDENCE TO THE COURT AND ITS CREDITORS REGARDING SUCH EFFORT. CAN THE COMPANY APPLY TO THE COURT FOR DISMISSING MR. C' S PETITION? A possibility that the company might be able to make full repayment of its debts is not a sufficient ground on which to object to the petition. However, an application can be made to the Court for an adjournment of the winding-up proceedings so that appropriate arrangements can be made with the creditors. The Court has discretion as to whether the Company should be wound up, or there should be further negotiations between the company and its creditors before the granting of a winding-up order. Suppose the debtor company applies to the Court for dismissal or a stay of (suspend) Mr. C's petition on the ground of cross-claim against Mr. C. What then would be the chance of success by the debtor company? The answer would depend on the fact of each case. Generally, that company must establish a genuine cross-claim with substance in it. The amount of cross-claim itself must exceed the amount of the debt claimed by Mr. C against that company. Where both requirements are met, the court would exercise its discretion to dismiss or stay the petition in the absence of special circumstances. 6. A WINDING-UP ORDER IS FINALLY GRANTED BY THE COURT AGAINST AZ COMPANY. WHAT SHOULD MR. C DO IN ORDER TO SECURE HIS RIGHTS ON RECOVERING THE DEBT? 6. A WINDING-UP ORDER IS FINALLY GRANTED BY THE COURT AGAINST AZ COMPANY. WHAT SHOULD MR. C DO IN ORDER TO SECURE HIS RIGHTS ON RECOVERING THE DEBT? Mr. C has to supply proof of the debt owed to him by AZ Company by completing a Proof of Debt Form (Form 63A). He should submit the form to the provisional liquidator or liquidator together with any documentary evidence that he may have. A filing fee of $35 is required if the debt exceeds $250. Mr. C may attend or even summon a general meeting of creditors so that he can participate in the decisions concerning the distribution of the remaining property of AZ Company. 7. WILL THE SHAREHOLDERS OF AZ COMPANY BE PERSONALLY LIABLE FOR THE DEBT OF THE COMPANY WHEN THEIR COMPANY IS WOUND-UP? 7. WILL THE SHAREHOLDERS OF AZ COMPANY BE PERSONALLY LIABLE FOR THE DEBT OF THE COMPANY WHEN THEIR COMPANY IS WOUND-UP? The shareholders' liabilities are limited to the value of shares owned by them (limited by shares). Therefore, there will be no liability further than the value of any shares in their names that they have not yet paid for at the time the company is wound up. Another case, which is not common in the commercial field, is that the liabilities of shareholders are limited to an amount in which they have agreed to contribute to the company's assets if the company is being wound-up (limited by guarantee). 8. WHAT SHOULD THE DIRECTORS OF AZ COMPANY DO AFTER THE MAKING OF A WINDING-UP ORDER? 8. WHAT SHOULD THE DIRECTORS OF AZ COMPANY DO AFTER THE MAKING OF A WINDING-UP ORDER? On the appointment of a provisional liquidator or the making of the winding-up order, the powers of the directors of AZ Company will cease. The directors are legally required to:- deliver to the provisional liquidator or liquidator the company' s assets, accounts' books and records, and seal; attend the office of the provisional liquidator or liquidator for interviews to provide information about the company' s assets and dealings; submit a sworn statement of affairs of the company (similar to a balance sheet) within 28 days after the appointment of a provisional liquidator or the making of the winding-up order; attend meetings of creditors and contributories when notified to do so by the provisional liquidators or liquidators; continue to co-operate with the provisional liquidator or liquidator until the liquidation is concluded; and notify the provisional liquidator or liquidator of any

change in address. 9. WHEN WILL THE WINDING-UP PROCESS BE COMPLETED? 9. WHEN WILL THE WINDING-UP PROCESS BE COMPLETED? The liquidator will apply to the Court for the release of the relevant duties once the followings have been accomplished: all the assets of AZ Company have been realized (i.e. all assets have been sold and converted to cash); investigations related to the winding-up proceedings are completed; and a final dividend (if any) has been paid to the creditors to settle the debts The liquidator will send notices, together with a summary of the relevant receipts and payments in the liquidation, to the creditors and contributories of the company of the intention to apply to the Court for release from the duties as liquidator. At this point, any creditor or contributory has 21 days from the date of the notice to raise objection to the intended release of the liquidator. RELATED WEBSITES IV. RELATED WEBSITES Official Receiver's Office (www.info.gov.hk/oro) Labour Department (www.labour.gov.hk) The Companies Registry (www.info.gov.hk/cr) Hong Kong Institute of Certified Public Accountants (www.hkicpa.org.hk) Hong Kong e-Legislation (www.elegislation.gov.hk) Hong Kong Judiciary (www.judiciary.gov.hk) The Law Society of Hong Kong (www.hklawsoc.org.hk) 1. A BRIEF SUMMARY OF THE PROCEDURES FOR PRESENTING A WINDING-UP PETITION 1. A BRIEF SUMMARY OF THE PROCEDURES FOR PRESENTING A WINDING-UP PETITION You are recommended to seek assistance from a lawyer if you decided to institute winding-up procedures. Before presenting a petition, a written demand in the prescribed form (Form 1A) issued by the creditor requiring the company to pay the debt must be left by hand (not sent by post, by registered post, by fax, or by electronic means) at the registered office of the company. 21 days must be given to the company to pay the debt. Except that a demand letter as described above must first be sent to the company in the case of a petition based on the company's inability to repay debt, there is no legal requirement that any documents must be sent to the company before the winding-up petition is presented. If the company fails to pay the debt within 21 days, the creditor can present the petition to the Court. The creditor may prepare a petition without assistance from lawyers. The Appendix of the Companies (Winding-up) Rules has the required form (i.e. Form 2 or 3 with such variations as circumstances may require). Fees payable Apart from any legal fees that the creditor may owe to lawyers if the creditor has instructed lawyers to do the work, the creditor/petitioner will be required to pay the followings upon filing the petition: A sum of $11,250 must be deposited with the Official Receiver's Office for the purpose of covering the fees and expenses to be incurred by the Official Receiver; A court fee of $1,045 must be paid to the Registry of the High Court; If a creditor applies for the appointment of a provisional liquidator after the commencement of winding-up, a further deposit of $3,500 (or further sum as required), has to be deposited with the Official Receiver's Office. Obtain a hearing date for the winding-up petition when filing the petition at High Court. Copy of the petition should be submitted to the Official Receiver's Office and the Chief Bailiff. In addition, a sealed copy (copy with the Court's chop) of the petition should be delivered to the company at its registered office. Please note that the petition should also be left by hand (not sent by post, by registered post, by fax, or by electronic means) at the registered office of the company. The petition should be advertised 7 clear days before the hearing of the petition once in the Gazette and once at least in two local daily newspapers (one in Chinese and one in English), unless the Court has made an order otherwise. The advertising fee depends on the size of the advertisement. Lawyers are not necessary for the preparation of the advertisement. Form 4 of the Companies (Winding-up) Rules is the standard from of the advertisement (you can search the sample of Form 4 here). The advertisement must state the date on which the petition was presented, the date of the court hearing, and the name and address of the petitioner and the petitioner's solicitors. 2. WHAT SHOULD THE PETITION CONTAIN? 2. WHAT SHOULD THE PETITION CONTAIN? Generally, the full name, title (if any) and address of the petitioner; the name and the full address of the registered office of the company; the information concerning the capital of the company; and the objects of the company (i.e. the main aims or the functions of the company which are stated on the company's memorandum of association) are required. The grounds and the facts to be relied on in support of the petition are also required. Sample forms for winding-up petition are provided at the Appendix of the

Companies (Winding-up) Rules. 3. I HAVE ALREADY OBTAINED A COURT JUDGMENT AGAINST A LIMITED COMPANY, BUT THE COMPANY STILL REFUSES TO PAY. SHOULD I PRESENT A WINDING-UP PETITION? 3. I HAVE ALREADY OBTAINED A COURT JUDGMENT AGAINST A LIMITED COMPANY, BUT THE COMPANY STILL REFUSES TO PAY. SHOULD I PRESENT A WINDING-UP PETITION? If a court judgment has been obtained and there is no appeal against the judgment or no attempt by the company to set aside the judgment (to make it invalid), there is generally no dispute over the debt. A winding-up petition may be presented 21 days after a written demand is sent. However, a number of matters should be considered beforehand: Is it anticipated that the company is solvent (i.e. it has financial ability to pay the debt or part of it)? If "yes", will it be commercially wiser to seek an order from the Court to execute a judgement by some other enforcement mechanism? For example, to seize and sell the company's property forthwith through a court order. If it is anticipated that the company is insolvent, and therefore it is unlikely that much of the debt can be repaid upon winding-up, will it be commercially wiser to negotiate with the company, or even with other creditors, in order to explore the possibility of reaching a compromise or an arrangement which may maximize the recovery? 4. APART FROM A CREDITOR, WHO ELSE CAN PRESENT A WINDING-UP PETITION? 4. APART FROM A CREDITOR, WHO ELSE CAN PRESENT A WINDING-UP PETITION? A shareholder or the company itself can also present a winding-up petition. The company may also be wound-up voluntarily without a Court's winding-up order. For more details, please go to Section F: Voluntary Winding-up by the company itself. 5. I AM A DIRECTOR AND MINORITY SHAREHOLDER OF A COMPANY. THE MAJORITY SHAREHOLDERS OF THE COMPANY HAVE CONTINUED TO EXCLUDE ME FROM THE MANAGEMENT OF THE COMPANY. CAN I PRESENT A WINDING-UP PETITION? 5. I AM A DIRECTOR AND MINORITY SHAREHOLDER OF A COMPANY. THE MAJORITY SHAREHOLDERS OF THE COMPANY HAVE CONTINUED TO EXCLUDE ME FROM THE MANAGEMENT OF THE COMPANY. CAN I PRESENT A WINDING-UP PETITION? Yes. In this kind of situation, the usual grounds for winding-up are that the affairs of the company are being, or have been, conducted in a manner unfairly prejudicial to the interests of part of the members/shareholders (Section 724 of the Companies Ordinance) and it is just and equitable (fair and reasonable) for the company to be wound up (Section 177(1)(f) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance). Examples of this are: A minority shareholder who used to manage the company is excluded from the management by a majority shareholder; A majority shareholder takes steps to dilute the voting rights of a minority shareholder; and A minority shareholder is denied access to information or documents of the company. The law in this area is rather complex and the assistance of lawyers is recommended. 6. I JUST FOUND OUT THAT ANOTHER CREDITOR HAS ALREADY PRESENTED A PETITION AGAINST THE COMPANY. SHOULD I NEVERTHELESS PRESENT ANOTHER PETITION? IF NOT, WHAT ARE MY OPTIONS? 6. I JUST FOUND OUT THAT ANOTHER CREDITOR HAS ALREADY PRESENTED A PETITION AGAINST THE COMPANY. SHOULD I NEVERTHELESS PRESENT ANOTHER PETITION? IF NOT, WHAT ARE MY OPTIONS? Since a winding-up order will operate in favour of all creditors, you may leave the petition to the present petitioner without further participation before the winding-up order is made. Alternatively, if the court hearing of the petition has not yet commenced, you may issue a notice in Form 10 to the present petitioner and appear at the hearing to support the petition. The advantage of appearing as a supporting creditor is that if the petitioner decides to withdraw or have the petition dismissed (because of having reached a compromise with the Company), you will be able to "substitute" as the petitioner and continue pursuing the petition yourself. 7. MY COMPANY HAS RECEIVED A WRITTEN DEMAND FROM AN ALLEGED CREDITOR REQUIRING US TO PAY THEM WITHIN 21 DAYS. WE STRENUOUSLY DENY THAT OUR COMPANY IS INDEBTED TO THE ALLEGED CREDITOR. IS THERE ANYTHING OUR COMPANY CAN DO TO PROTECT ITS INTEREST? 7. MY COMPANY HAS RECEIVED A WRITTEN DEMAND FROM AN ALLEGED CREDITOR REQUIRING US TO PAY THEM WITHIN 21 DAYS. WE STRENUOUSLY DENY THAT OUR COMPANY IS INDEBTED TO THE ALLEGED CREDITOR. IS THERE ANYTHING OUR COMPANY CAN DO TO PROTECT ITS INTEREST? You may send a letter to that creditor disputing the debt and request him to withdraw the demand. Furthermore, you can apply to the Court to set aside the demand (i.e. to make it invalid) if a winding up petition is presented. 8. WE HAVE WRITTEN TO THE CREDITOR WHO SERVED A WRITTEN DEMAND ON US ASKING HIM TO WITHDRAW THE DEMAND BUT THERE IS NO REPLY FROM HIM. 21 DAYS HAVE PASSED AND WE FEAR THAT A PETITION MAY BE

PRESENTED AT ANY MOMENT. WHAT ARE THE COMPANY'S OPTIONS? 8. WE HAVE WRITTEN TO THE CREDITOR WHO SERVED A WRITTEN DEMAND ON US ASKING HIM TO WITHDRAW THE DEMAND BUT THERE IS NO REPLY FROM HIM. 21 DAYS HAVE PASSED AND WE FEAR THAT A PETITION MAY BE PRESENTED AT ANY MOMENT. WHAT ARE THE COMPANY'S OPTIONS? You can apply to the Court for an injunction restraining the creditor from presenting a petition. However, you must have substantial grounds, and be able to show that there is a genuine dispute against the claim before an injunction will be granted. 1. FURTHER TO THE ABOVE QUESTION, CAN I PRESENT A WINDING-UP PETITION AGAINST "ABC TRADING COMPANY" IF IT HAS REFUSED TO REPAY A DEBT TO ME? 1. FURTHER TO THE ABOVE QUESTION, CAN I PRESENT A WINDING-UP PETITION AGAINST "ABC TRADING COMPANY" IF IT HAS REFUSED TO REPAY A DEBT TO ME? The answer depends on whether "ABC Trading Company" is a limited company or not. Usually a limited company will include the word "Limited" or "Ltd" as part of its name. However, in the course of conducting business, a limited company may use a "trade name", i.e. a name other than its "real name". Therefore, your best course of action is to do a company search at the Companies Registry and a business registration search at the Inland Revenue Department in order to find out the full registered identity of the company in question, or the name of the limited company that owns the "trade name" (i.e. ABC Trading Company). If you have clarified that "ABC Trading Company" is a limited company, then you can institute winding-up proceedings against it (by specifying its "real name", such as ABC Trading Company Limited, in the winding-up petition). If "ABC Trading Company" is not a limited company then it cannot be subject to winding-up procedures. If "ABC Trading Company" is not a limited company and is owned by an individual person (or several partners), you should commence bankruptcy proceedings against that person(s). You can find out the details of a sole-proprietor or partners, by doing a business registration search at the Inland Revenue Department. 5. IS THE BANKRUPT REQUIRED TO HAND OVER ALL OF HIS/HER INCOME TO THE TRUSTEE? 5. IS THE BANKRUPT REQUIRED TO HAND OVER ALL OF HIS/HER INCOME TO THE TRUSTEE? No. The Bankrupt can retain part of his/her income to meet the reasonable domestic needs of himself/herself and his/her family. The surplus shall be handed over to the Trustee. What amounts to reasonable domestic needs depends on circumstances of the each case. For example, while the need for a domestic helper may be reasonable for a single parent family, it may not be reasonable if the spouse of the bankruptcy is unemployed. 8. WHAT IS THE ORDER OF PAYMENT AFTER THE BANKRUPTCY' S ASSETS ARE SOLD? 8. WHAT IS THE ORDER OF PAYMENT AFTER THE BANKRUPTCY' S ASSETS ARE SOLD? Generally speaking, the money received by the bankruptcy estate after the bankruptcy assets are sold will be applied in the following order: the fees and charges of the Official Receiver; the petitioner' s costs (if it is a creditors' petition); the fees and charges of the Trustee; repayment to preferential creditors (e.g. tax); repayment to ordinary creditors (e.g. bank loans); interest on the debts. 4. PRIORITY OF DISTRIBUTION OF ASSETS 4. PRIORITY OF DISTRIBUTION OF ASSETS Generally speaking, funds realized during the process of the wind up will be used in the following priority: - To pay for the costs and expenses of the realization; To pay for the costs and expenses of the petition for winding up; To pay for the costs and expenses of the liquidator; and If there are funds remaining, it will be used for distribution of dividends to the creditors on a pro rata basis with the following priority: Preferential creditors: For example, tax owed to the government and wages owed to employees of the company; and Ordinary creditors.