

## 129. Fraudulent debtors

- (1) Any person who has been adjudged bankrupt shall in each of the cases following be guilty of an offence— (*Amended 76 of 1996 s. 63*)
  - (a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;
  - (b) if he does not deliver up to the trustee, or as he directs, all such part of his movable or immovable property as is in his custody or under his control and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
  - (c) if he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
  - (d) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he conceals any part of his property to the value of \$50 or upwards or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
  - (e) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently removes any part of his property to the value of \$50 or upwards;
  - (f) if he makes any material omission or misstatement in any statement relating to his affairs, unless he proves that he had no intent to defraud;
  - (g) if, knowing or having any reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;
  - (h) if, after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
  - (i) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he removes, conceals, destroys, mutilates or falsifies or is privy to the removal, concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
  - (j) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
  - (k) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;
  - (l) if, after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within 12 months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
  - (m)-(n) (*Repealed 21 of 1970 s. 35*)

- (o) if, within 12 months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a bankruptcy order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; (*Amended 76 of 1996 s. 73*)
- (p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

*(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)*

- (2) A person who has sent out of Hong Kong any property which he has obtained on credit and has not paid for shall until the contrary is proved be deemed to have disposed of the same otherwise than in the ordinary way of his trade if, such property not having been paid or accounted for at the date of the bankruptcy order by the person to whom the same was sent, such last-mentioned person does not pay or account for the same within a reasonable time after being called upon to do so by the trustee or cannot be found within a reasonable time. (*Amended 47 of 1984 s. 16; 76 of 1996 s. 73*)
- (3) In any prosecution under subsection (1)(i) the absence of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was removed by the bankrupt contrary to the provisions of the said paragraph or that he was privy to its removal contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so remove such book or document and that he was not privy to such removal. (*Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72*)
- (4) In any prosecution under subsection (1)(i) the mutilation or falsification of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was mutilated or falsified by the bankrupt in contravention of the provisions of the said paragraph or that he was privy to its mutilation or falsification contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so mutilate or falsify the said book or document and that he was not privy to such mutilation or falsification. (*Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72*)
- (5) Any person guilty of an offence in the cases mentioned in subsection (1)(o) shall be liable on summary conviction to imprisonment for 1 year or upon conviction on indictment to imprisonment for 5 years. (*Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4*)
- (6) For the purposes of this section, **trustee** (受託人) includes a provisional trustee and the Official Receiver, whether acting as Official Receiver or as a trustee. (*Amended 18 of 2005 s. 45*)

*[cf. 1914 c. 59 s. 154 U.K. 1926 c. 7 s. 5 U.K.]*