



## Schedule 1

[ss. 74A, 74B & 74C]

### Criminal Bankruptcy Orders

*(Schedule 1 added 21 of 1979 s. 3)*

*(Format changes—E.R. 1 of 2019)*

#### Part I

##### General

1. **Interpretation**

In this Schedule—

***criminal bankruptcy debt*** (刑事破產債項) means a debt deemed to be due to any person by virtue of paragraph 3.

2. **Entitlement to present bankruptcy petition**

Subject to the provisions of this Schedule, where a criminal bankruptcy order is made against any person he shall be treated as a debtor against whom grounds exist for a creditor to present a bankruptcy petition.

*(Added 37 of 1998 s. 2)*

3. **Creditors and criminal bankruptcy debts**

A person specified in a criminal bankruptcy order as having suffered loss or damage of any amount shall be treated for the purpose of any ensuing proceedings pursuant to—

- (a) a bankruptcy petition presented by virtue of paragraph 2; or
- (b) a petition under section 112 (administration in bankruptcy of estate of person dying insolvent) presented by virtue of this Schedule,

as a creditor for a debt of that amount provable in the bankruptcy of the person against whom the order was made.

#### Part II

### Application of the Ordinance in Proceedings based on a Criminal Bankruptcy Order

4. **Criminal bankruptcy petition**

No criminal bankruptcy petition shall be presented by the person who under paragraph 2 is the bankrupt; and, in relation to such a petition presented by a creditor, sections 4, 6 and 6B shall have effect with the following modifications— *(Amended 76 of 1996 ss. 70 & 72)*

- (a) sections 6(2)(a) and (b) and 6B shall not apply to a criminal bankruptcy debt; *(Replaced 76 of 1996 s. 70)*
- (b) section 4(1)(a) shall be omitted. *(Replaced 76 of 1996 s. 70)*

5. **Receiving order**

For the purposes of section 9(2) and (3) (matters to be proved before bankruptcy order is made) any criminal bankruptcy debt shall be treated as conclusively proved by the production of a copy of the criminal bankruptcy order in question and the following provisions of that section shall not apply in relation to any such debt— (*Amended 76 of 1996 ss. 70 & 73*)

- (a) (*Repealed 76 of 1996 s. 70*)
- (b) subsection (5);
- (c) subsection (6).

6. **Trustee of criminal bankrupt's property**

Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition the Official Receiver shall in the bankruptcy be the trustee of the property of the bankrupt.

*(Amended 76 of 1996 s. 70)*

7. **Proof of criminal bankruptcy debt in bankruptcy proceedings**

- (1) For the purpose of proving a criminal bankruptcy debt in proceedings pursuant to a criminal bankruptcy petition, a copy of the criminal bankruptcy order specifying the amount deemed by virtue of paragraph 3 to be due as a debt shall, subject to paragraph 5, be treated as sufficient evidence of the debt unless it is shown by any party to the proceedings that the amount of the relevant loss or damage is greater or less than the amount specified in the order or that the loss or damage did not in fact result from any offence specified in the order; and if it is shown by any party to the proceedings that the amount of the relevant loss or damage is other than that specified in the order, paragraph 3 shall have effect as if that other amount had been specified in the order, but without prejudice to the validity of the order if the amount of the relevant loss is shown not to exceed \$150,000 or such other amount as may be specified in an order made under section 84A(5) of the Criminal Procedure Ordinance (Cap. 221).
- (2) Nothing in this paragraph or paragraph 3 shall be taken as prejudicing the proof in proceedings pursuant to a criminal bankruptcy petition of debts other than criminal bankruptcy debts.
- (3) Nothing in subparagraph (1) shall be construed as entitling any person to contend that the offence or offences specified in a criminal bankruptcy order were not committed by the person against whom the order was made.

8. **Recovery of assets for benefit of criminal bankrupt's creditors**

- (1) Without prejudice to any other provision of this Ordinance, subparagraphs (2) to (5) shall apply, where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, with respect to dispositions of property or any interest in property made by the bankrupt on or after the relevant date, either by way of gift or for an under-value.

In this subparagraph, **relevant date** (有關日期) means the date specified in the criminal bankruptcy order (in accordance with section 84A(3)(d) of the Criminal Procedure Ordinance (Cap. 221)) as the earliest date on which the offence or, as the case may be, the earliest of the offences, was committed. (*Amended E.R. 1 of 2019*)

- (2) On the application of the Official Receiver (in his capacity as trustee) the court may make orders requiring—
  - (a) the person taking under any such disposition; or
  - (b) subject to subparagraph (3), any other person who by virtue of any subsequent disposition acquired (whether or not from the person taking under the bankrupt's disposition) the whole or any part of the property or any interest therein,

to transfer the whole or any part of the property, or such interest as the order may specify, to the trustee, or to make such payments to the trustee as the court thinks just with a view to making available to the creditors the full value of the property or interest disposed of by the bankrupt (including any increase in its value since the disposition was made).

- (3) No order shall be made by virtue of subparagraph (2)(b) against a person appearing to the court to have given full value for anything taken by him under a relevant disposition or to claim (directly or indirectly) through a person who gave full value.
- (4) An order of the court under this paragraph requiring a person to transfer any property or interest may include such consequential directions for giving effect to the order, and be made on such terms (including in particular terms allowing the person to retain or recover consideration given by him for any relevant disposition) as the court thinks just in all the circumstances.
- (5) In this paragraph, **disposition** (產權處置) includes any conveyance or assurance of property of any description.

**9. Administration in bankruptcy of deceased offender's estate**

- (1) Where an order for administration is made under section 112 on a criminal bankruptcy administration petition, so much of subsection (4) of that section as enables the creditors to appoint a trustee of the property of the bankrupt in place of the Official Receiver shall not apply. (*Amended 76 of 1996 s. 72*)
- (2) Paragraph 7 shall apply in relation to proof of criminal bankruptcy debts in proceedings pursuant to a criminal bankruptcy administration petition as it applies in relation to proof of such debts in proceedings pursuant to a criminal bankruptcy petition.

**10. Bankruptcy proceedings otherwise than by virtue of this Schedule**

Where a criminal bankruptcy order has been made against any person and a bankruptcy petition has been presented in respect of him before the order was made, or is presented in respect of him thereafter otherwise than by virtue of paragraph 2, the court may, on the application of the Official Petitioner, dismiss the petition, rescind any receiving order made in pursuance thereof or, if that person has been adjudged bankrupt, annul the adjudication on such terms, if any, as the court thinks fit.

**11. Effect of appeal against conviction**

- (1) Subject to the provisions of this paragraph, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made shall not preclude the taking of any proceedings by virtue of this Schedule in consequence of the making of the order.
- (2) Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, no property shall be distributed by his trustee and no order shall be made by the court under paragraph 8 so long as an appeal is pending against his conviction of any offence by virtue of which the criminal bankruptcy order was made. (*Amended L.N. 65 of 1986; 18 of 2005 s. 46*)
- (3) For the purposes of this paragraph an appeal against a conviction is pending—
  - (a) in any case until the expiration of the time for giving notice of appeal or applying for leave to appeal under section 83Q of the Criminal Procedure Ordinance (Cap. 221) (disregarding any extension of time which may be granted under subsection (3) of that section);
  - (b) if notice of appeal or of application for leave is given during that period and during that period the appellant notifies the Official Receiver thereof, until the determination of the

appeal and thereafter for so long as an appeal to the Court of Final Appeal is pending within the meaning of section 84B(5) of that Ordinance. (*Amended 79 of 1995 s. 50*)

- (4) Where in consequence of an appeal a criminal bankruptcy order is rescinded—
- (a) any bankruptcy petition based on the order shall lapse and any adjudication of bankruptcy made in consequence thereof shall cease to have effect, but without prejudice to anything previously done thereunder; (*Amended 76 of 1996 s. 70*)
  - (b) where any such adjudication ceases to have effect, the property of the person who was adjudicated bankrupt shall revert to him for all his estate or interest therein; and
  - (c) the court may, on his application or on the application of the Official Receiver, by order give such directions, if any, as appear to the said court to be necessary or desirable in consequence of the provisions of sub-subparagraphs (a) and (b). (*Amended E.R. 1 of 2019*)
- (5) Where in consequence of an appeal a criminal bankruptcy order is amended by the deletion of any amount specified therein as the loss or damage suffered by any person, paragraph 3 shall not thereafter apply to that loss or damage but without prejudice to anything done before the amendment takes effect.

### **Part III**

#### **Functions of Official Petitioner**

**12. Presentation of criminal bankruptcy petition by Official Petitioner**

- (1) The Official Petitioner may present a criminal bankruptcy petition, and a bankruptcy order may be made on that petition. (*Amended 76 of 1996 s. 73*)
- (2) Sections 4, 6 and 6B, as modified by paragraph 4 of this Schedule, shall apply to a criminal bankruptcy petition presented by the Official Petitioner as it applies to a petition presented by a creditor. (*Amended 76 of 1996 s. 70*)
- (3) The following provisions—
  - (a) section 9(2) (making of bankruptcy order on creditor's petition); and (*Amended 76 of 1996 s. 73; E.R. 1 of 2019*)
  - (b) section 9(3) (dismissal of petition), (*Amended E.R. 1 of 2019*)
  - (c) (*Repealed 76 of 1996 s. 70*)

shall apply in relation to a criminal bankruptcy petition presented by the Official Petitioner as if any reference to the debt of the petitioning creditor were a reference to any criminal bankruptcy debt within the meaning of this Schedule; and paragraph 5 shall have effect in relation to section 9(2) and (3) as they apply by virtue of this paragraph.

**13. Presentation of criminal bankruptcy administration petition by Official Petitioner**

- (1) The Official Petitioner may present a petition under section 112 in any case in which a creditor could do so by virtue of this Schedule, and an order may be made under that section on that petition.
- (2) Section 112(2) shall have effect in relation to a petition presented by the Official Petitioner as if the reference to the petitioner's debt were a reference to any criminal bankruptcy debt within the meaning of this Schedule.

14. **Participation of Official Petitioner in proceedings brought by virtue of this Schedule (whether by the Official Petitioner or by a creditor)**

- (1) In the case of proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition, the Official Petitioner shall be entitled—
  - (a) to attend any meeting of creditors and, before the meeting, to receive any notice or other document required to be sent before such a meeting to any creditor;
  - (b) to be a member of any creditors' committee appointed under section 24; (*Amended 76 of 1996 ss. 70 & 74*)
  - (c) to be a party to any such proceedings before the court.
- (2) In the case of proceedings pursuant to—
  - (a) a criminal bankruptcy petition or a criminal bankruptcy administration petition, the provisions of the Ordinance mentioned in subparagraph (3) shall have effect as if any reference to a creditor, or to a creditor who has proved or tendered a proof, included a reference to the Official Petitioner; and
  - (b) a criminal bankruptcy administration petition, the expression ***a petition under this section*** (本條所指的呈請書) in section 112(8) shall include a reference to a petition by the Official Petitioner.
- (3) The provisions referred to in subparagraph (2) are—
  - (a) section 15 (power to appoint special manager);
  - (b) section 18(1) and (5) (statement of affairs); (*Amended 76 of 1996 s. 70*)
  - (c) section 19(5) and (10) (public examination of bankrupt); (*Amended 76 of 1996 ss. 70 & 72; 18 of 2005 s. 46*)
  - (d) sections 20 to 20K (interim orders and voluntary arrangements); (*Replaced 76 of 1996 s. 70*)
  - (e)-(f) (*Repealed 76 of 1996 s. 70*)
  - (g) section 86B(1)(d) (report to creditors of bankrupt's proposal); (*Amended 76 of 1996 s. 72; 18 of 2005 s. 46*)
  - (h) section 83 (appeal to court against act or decision of trustee). (*Amended 76 of 1996 s. 70; 80 of 1997 s. 102*)

(*Amended 39 of 1992 s. 6*)

[*cf. 1973 c. 62 Schedule 2 U.K.*]