

112. Administration in bankruptcy of estate of person dying insolvent

- (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration in bankruptcy of the estate of the deceased debtor, according to the law of bankruptcy.
- (2) The petition shall be served on the legal personal representative of the deceased debtor or, if there is none in Hong Kong, on the Official Administrator, and the court may in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate or may upon cause shown dismiss the petition with or without costs. (*Amended 47 of 1984 s. 16*)
- (3) A petition for administration in bankruptcy under this section shall not be presented to the court after proceedings have been commenced under the Rules of the High Court (Cap. 4 sub. leg. A) for the administration of the deceased debtor's estate but the court may, when satisfied that the estate is insufficient to pay its debts, make an order for the administration in bankruptcy of the estate of the deceased debtor and the like consequences shall ensue as under an administration order made on the petition of a creditor. (*Amended 25 of 1998 s. 2*)
- (4) Upon an order being made for the administration in bankruptcy of a deceased debtor's estate the property of the debtor shall vest in the Official Receiver as trustee thereof and he shall forthwith proceed to realize and distribute it in accordance with the provisions of this Ordinance:

Provided that the creditors shall have the same powers as to appointment of trustees and creditors' committees as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Ordinance relating to trustees and creditors' committees shall apply to trustees and creditors' committees appointed under the power so conferred. If no creditors' committee is appointed any act or thing or any direction or permission which might have been done or given by a creditors' committee may be done or given by the court. (*Amended 76 of 1996 s. 74*)

- (5) With the modifications hereinafter mentioned, all the provisions of Part III (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (10) the following provisions, namely section 29 (which relates to inquiries as to the debtor's conduct, dealings and property) and section 86 (which relates to the costs of trustees, managers and other persons) shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Ordinance, and section 40 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.
- (6) In the administration of the property of the deceased debtor under an order of administration the Official Receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and shall, notwithstanding anything to the contrary in the provisions of this Ordinance relating to the priority of other debts, be payable in full out of the debtor's estate in priority to all other debts.
- (7) If on the administration of a deceased debtor's estate any surplus remains in the hands of the Official Receiver or trustee, after payment in full of all the debts due from the debtor together with the costs of the administration and interest as provided by this Ordinance in case of

bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or failing such representative, to the Official Administrator.

- (8) *(Repealed 76 of 1996 s. 59)*
- (9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor or by the Official Administrator; and where a petition is so presented by such a representative or by the Official Administrator this section shall apply subject to such modifications as may be prescribed by general rules made under subsection (10).
- (10) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

(Amended E.R. 2 of 2014)

[cf. 1914 c. 59 s. 130 U.K.]