

Proof of debts

34. Description of debts provable in bankruptcy

- (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, tort, promise or breach of trust shall not be provable in bankruptcy. (*Amended 76 of 1996 s. 25*)
- (2) Subject to section 42(5), a person having notice of a petition in bankruptcy shall not prove in bankruptcy for any debt or liability contracted by the bankrupt after the date of his so having notice. (*Replaced 76 of 1996 s. 25*)
- (3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the bankruptcy order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy order, including a liability to pay further damages as provided for in section 56A(2)(b) of the High Court Ordinance (Cap. 4) (following an award of provisional damages), shall be deemed to be debts provable in bankruptcy. (*Amended 40 of 1986 s. 5; 76 of 1996 ss. 72 & 73; 25 of 1998 s. 2*)
- (3A) Notwithstanding subsection (3), a debt owing to the Government in respect of a fine or monetary penalty imposed under an Ordinance shall not be provable in bankruptcy. (*Added 76 of 1996 s. 25*)
- (3B) Where a debt provable in bankruptcy is payable in a currency other than Hong Kong dollars, the trustee or, in the case of a voluntary arrangement, the nominee or his replacement under section 20K(3), shall convert the amount of the debt from the foreign currency into Hong Kong dollars at the midpoint between the selling and buying telegraphic transfer rates of exchange quoted by The Hong Kong Association of Banks on the day the bankruptcy order is made or, where no such rates are quoted, at an exchange rate determined by the court. (*Added 76 of 1996 s. 25*)
- (3C) The trustee may pay a dividend in respect of a foreign currency claim either in Hong Kong dollars or in the foreign currency equivalent of Hong Kong dollars, and in the latter case he shall determine the foreign currency equivalent using the same conversion method as in subsection (3B) but as of the day of the payment of the dividend. (*Added 76 of 1996 s. 25*)
- (4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value or, alternatively, the trustee may refer such debt or liability to the court for valuation in which case the court shall establish a value in accordance with subsection (7). (*Amended 76 of 1996 s. 25*)
- (5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.
- (6) (*Repealed 76 of 1996 s. 25*)
- (7) Where the trustee has referred the question of valuation to it under subsection (4), the court may direct the value to be assessed before the court itself without the intervention of a jury and may give all necessary directions for this purpose. (*Amended 76 of 1996 s. 25*)
- (7A) The trustee shall make a decision to—
 - (a) accept; or
 - (b) reject in whole or in part,a proof of debt within—
 - (i) a period, prescribed by the rules, after the proof is filed with him; or

- (ii) such longer period as the court may on application allow,
but this subsection does not apply if there is no reasonable prospect of a dividend being paid to the class of creditor to which the proof of debt relates. (*Added 76 of 1996 s. 25*)
- (8) For the purposes of this Ordinance, **liability** (債務) includes—
- (a) any compensation for work or labour done;
 - (b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the bankrupt; (*Amended 76 of 1996 s. 72*)
 - (c) generally, any express or implied engagement, agreement or undertaking to pay or capable of resulting in the payment of money or money's worth, whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on 2 or more contingencies, or, as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

[*cf. 1914 c. 59 s. 30 U.K.*]