

BANKRUPTCY PROCEDURE

Procedure

A petition is an application to Court for a bankruptcy order and may be made by a creditor, the debtor himself or the supervisor or a creditor of a failed voluntary arrangement. Bankruptcy commences when the Court makes a Bankruptcy Order. Some aspects of bankruptcy are backdated to the date when the petition was first issued by the Court offices.

The application (or "petition") for a bankruptcy order can be based on an unsatisfied "statutory demand", an unsatisfied judgement or certain other less commonly used grounds. The statutory demand must be for at least £750, must be due and must not be disputed. The debtor must not have a counterclaim against it.

The petition must comply with certain requirements in the insolvency rules. Particulars of the debtor's name, address, occupation, business, details of the debt and the grounds for the petition must be set out. The petition will generally be made to the County Court. In certain situations, including where the petitioner is not resident in England or Wales, it must be presented to the High Court. The petition must be served on (i.e. delivered to) the debtor personally. When an application for bankruptcy is made to the Court, it is registered in the Register of Pending Actions.

On the hearing of a petition for bankruptcy, the Court has a number of options. It may dismiss the petition, if it is satisfied the debtor is able to pay the debts or where the creditor has unreasonably refused the debtor's offers to secure or compromise. It may adjourn or stay the petition. It may make a Bankruptcy Order.

There are limited grounds for resisting a petition for bankruptcy if the debt is due and unsatisfied. One option may be to pay the debt or offer to settle it in some way. Another may be to oppose the petition on the grounds that the debt is not properly due or there are other appropriate defences or grounds for dispute. A further alternative is to make an application for an interim order in relation to entering an Individual Voluntary Arrangement (IVA).

Debtor's Petition

The debtor himself can make a petition for bankruptcy based on his inability to pay his debts. He will request that a Bankruptcy Order be made. The purpose is to protect the bankrupt from his creditors. The Debtor must file the petition and his Statement of Affairs with the Court together with an Affidavit verifying this Statement.

The Court will hear the petition or fix a date. It will give notice to the Land Registry for registration in the Register of Pending proceedings. The Court may stay proceedings or appoint an interim receiver.

The Statement of Affairs must contain the following and be verified by Affidavit:

- list of secured creditors;
- list of unsecured creditors; inventory of assets;
- name;
- list of dependents;
- name, age details of relationship of the dependants;
- details of attempts made to come to an agreement with the creditors;
- debtor's opinion as to whether it is likely a voluntary arrangement will be acceptable;
- statement of means (income and expenditure).

Relationship with IVA

At the hearing of a petition for bankruptcy, the Court may appoint an Insolvency Practitioner to enquire and report into the viability of an IVA.

Conversely, a supervisor or any creditor bound by an IVA may make a petition for bankruptcy. The grounds for presenting a petition are that the debtor has failed to comply with the obligations of voluntary arrangement, has given false and material misinformation or has failed to comply with the supervisor's reasonable requests. In that event the insolvency practitioner who is supervisor must file a report in Court. The supervisor of the IVA may become trustee.

Interim Receiver

An interim receiver may be appointed by the Court at any time after issue of a bankruptcy petition, but before a Court Order. Generally, the Official Receiver will be appointed as interim receiver. An insolvency practitioner may be appointed provided he consents. The purpose is to protect the debtor's property.

An interim receiver takes immediate possession of the property. He has the rights and duties of a receiver and manager. The debtor must give the interim receiver details of his property, provide additional information as requested and attend the interim receiver as required. Other creditors may not commence action against the debtor without leave of the Court.

The Court may also appoint a special manager where an interim receiver has been appointed and it appears that it is in the interests of the creditor that the appointment be made to manage the debtor's assets or business. The procedure is similar.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.