

POST BANKRUPTCY PROCEDURE

Bankruptcy Order

Once a Bankruptcy Order is made by the Court, the bankrupt person becomes subject to the legal restrictions and consequences that arise from bankruptcy. The Enterprise Act which was introduced in 2002, was designed to remove some of the stigma and disadvantages of bankruptcy.

The Official Receiver (who is a Government official) takes control of the Bankrupt's affairs and the debtor's assets pass to him. The ownership of the bankrupt's assets are transferred to the Official Receiver for the purpose of eventual distribution to creditors. Under certain circumstances, a "private" Insolvency Practitioner may be appointed to act instead of the Official Receiver.

Where on a debtor's application for his own bankruptcy an insolvency practitioner is ordered to inquire and report on the possibility of an IVA, the Court may appoint an insolvency practitioner to act as trustee. An IP may also be appointed trustee where there was a previous voluntary arrangement.

After the making of the Bankruptcy Order, all transfers of property and assets by the debtor are void. Legal proceedings may only be commenced with Court consent. Existing legal proceedings are stopped. Execution and enforcement of judgement completed after commencement of bankruptcy is void. Landlords can only collect rent for pre-bankruptcy arrears.

Obligations of Bankrupt

The bankrupt person has a number of duties and obligations. A Statement of Affairs must be filed within 21 days of bankruptcy. The statement must be in a prescribed form and must set out the secured creditors, unsecured creditors and an inventory of assets. It must be verified by a sworn affidavit. Copies must be delivered to the Official Receiver. The Official Receiver may demand further written particulars in order to expand or update the Statement of Affairs.

The bankrupt must co-operate with the Court and attend meetings. He must attend public or private examination, if required. The bankrupt must deliver up all books, papers and assets to the Official Receiver. He must give an account of his assets. He must deliver possession of his assets to the Official Receiver. He must attend the Official Receiver as required. He must provide accounts for previous three years if he had a business. He must notify the Official Receiver within 21 days of acquiring property after bankruptcy and of increases in income.

The Official Receiver may apply to Court for a public examination of the bankrupt. A public examination must be applied for if more than half of the creditors require. The examination is under oath. The Official Receiver and creditors may ask questions either directly or through their lawyers. A record of the hearing is kept, which the bankrupt must sign and verify. It is not admissible against him in a criminal prosecution .

The Official Receiver may apply to Court for a private examination of the bankrupt, the bankrupt's spouse or former spouse, persons believed to have property comprised the bankrupt's estate, the bankrupt's debtors or any persons appearing to have information which relevant to the bankrupt's dealings or affairs.

The Court may require persons possessing the bankrupt's property or having relevant information to submit affidavits of their dealings and knowledge of the bankrupt and or to produce documents in their control. The Court may issue a warrant for arrest of any person summoned or for the service of books, papers, records in that person's possession.

Meetings of Creditors

The Official Receiver must decide as soon as possible (and within 12 weeks) whether to call a meeting of creditors. He must investigate the conduct and affairs of the bankrupt unless he thinks an investigation is unnecessary. He has discretion to report to the Court on the outcome of the investigation

The Official Receiver/trustee may convene meetings for the purpose of ascertaining the wishes of the creditors in relation to the bankruptcy. Creditors may requisition a meeting by making a request. A meeting must be called if 25% in value of the

creditors, require it. Where a meeting is called the Court must be notified. 21 days notice must be given to creditors, identified in the Statement of Means or otherwise known.

The function of the meeting of creditors is to appoint a trustee in place of the Official Receiver and/or establish a creditors committee. If the Official Receiver decides not to call a meeting, he must give notice of his decision to the Court and to all creditors known to him. The Official Receiver becomes trustee from the date of this notice.

Notice must state the purpose of the meeting, the time, the place and must include a proxy. Trustees may give notice by advertisement if they see fit. This will depend on the cost of the advertisement, the interests of creditors and the funds available in the bankrupt's estate.

Creditors are entitled to vote provided they have lodged proof of their debt by the deadline and their proof has been admitted. Liquidated or unascertained debts will only be permitted if the chairman agrees an estimated minimum value. Secured creditors can only vote in respect of the unsecured elements of the debt.

At the first meeting of creditors, the resolutions are:

- to appoint and name an insolvency practitioner to be trustee;
- to consider whether to establish a creditors committee if applicable;
- to specify the terms in which the trustees be remunerated unless there is a creditors committee;
- if there are joint trustees specifying which acts must be done jointly or separately;
- authorising payment of expense of the cost of summoning of a meeting;
- adjourning the meeting for more than three weeks or such other appropriate resolutions.

If the meeting fails to appoint a trustee or the OR decides whether to refer the need to appoint to the Secretary of State (or Government Department) The Secretary of State may appoint a trustee. If he decides not to refer, the OR will become trustee and must notify the Court.

A final meeting of creditors must be called to receive the trustee's report and to release the trustee. The trustees give 28 days' notice of a meeting to all creditors who have proved their debt in the bankruptcy. He lays a report before the meeting which includes a summary of receipts and payments and a statement that he has reconciled his accounts with the Insolvency Service Account.

The creditors may question the trustee with regard to any matter in his report. They can resolve against him being released. The trustee gives notice to the Court that a final meeting has been held and sends a copy of his report. A copy of the notice is sent by the trustee to the Official Receiver.

Creditor's committee

A creditor's committee with between 3 and 5 members may be established at the first or subsequent meeting of the creditors. If no committee is appointed, its functions vest in the Secretary of State (a Government Body). Creditors who have proved their debt may sit on the committee. There are designated procedures in relation to the operation of the committee.

The Trustee must report to the committee unless there are no assets or the cost of compliance will be too great having regard to the importance of the matter. The committees' consent is required to the trustee appointing the bankrupt to manage his estate, carry out business on the creditor's behalf or assist in the administration. Committee members are entitled to receive 6 monthly reports from the Trustee.

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.