



**JUDICIARY  
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**BANKRUPTCY**



### **WHAT IS BANKRUPTCY?**

Bankruptcy is a way of saying "I can't pay my debts!".

Bankruptcy is not to be taken lightly - it has serious effects. You should seek professional help before acting, if a Receiving Order has been made against you.

### **HOW DO I BECOME BANKRUPT?**

There are two types of bankruptcy:

- **Voluntary Bankruptcy**

You, as a debtor owing any amount can apply for a Receiving Order to be made against yourself. A "Debtor's Petition" and a "Declaration of inability to pay" must be filed at the High Court.

- **Forced Bankruptcy**

A creditor must apply under a Creditor's petition for a Receiving Order and subsequently an Adjudication Order if you owe that creditor or several creditors more than \$10,000 in total.

### **WHO WOULD HANDLE MY BANKRUPTCY?**

The Official Receiver will take charge of your property and handle the Bankruptcy. You must co-operate with the Official Receiver or his Deputies in every way possible. After the Receiving Order (RO) or Adjudication Order (AO), creditors are required to deal only through the Official Receiver, which takes the pressure off you. If creditors contact you, refer them to the Official Receiver.

### **WHAT HAPPENS TO MY DEBTS AFTER RO AND AO?**

#### **1) Unsecured Creditors**

Unsecured creditors cannot take further action to recover debts; but they may lodge "proof of debt" with the Official Receiver.

#### **2) Secured Creditors**

Creditors who hold security over your assets can sell the assets and recover the money lent to you. They can then lodge a "Proof of Debt" at any shortfall. If the selling price exceeds the amount payable by you to the secured creditors, the difference will be paid to the Official Receiver.

**WHAT HAPPENS TO SOMEONE WHO GUARANTEED MY DEBT?**

A creditor is not prevented from claiming under a guarantee and recovering payment from the guarantor.

**WHAT HAPPENS TO SOMEONE WHO JOINTLY SIGNED A LOAN AGREEMENT WITH ME?**

He or she will still be liable for the total amount outstanding on all debts incurred in your joint names.

**WHAT ABOUT DEBTS INCURRED JUST BEFORE MY RO OR AO?**

If you cannot pay your debts, you should not incur further debts. Doing so is an offence under the Bankruptcy Act.

**WHAT ABOUT DEBTS INCURRED AFTER RO OR AO?**

You are responsible for paying all debts you incur after your bankruptcy.

**CAN A CREDITOR CONTACT ME AND INSIST ON PAYMENT ONCE THERE IS A RECEIVING ORDER AGAINST ME OR I AM BANKRUPT?**

No, the Bankruptcy Act stops creditors from recovering monies from you. An exception is a secured creditor with whom you have made arrangements to retain secured property as described above. If other creditors attempt to recover from you, tell them about your bankruptcy and advise them to prove their debts at the Official Receiver's Chambers.

**CAN I CONTINUE TO USE MY CREDIT CARDS AFTER RO OR AO?**

The issuing bank of finance company will decide whether to continue extending credit to you. It is an offence to obtain credit over \$100 without disclosing to the person you are dealing with that you are under RO or AO.

### **HOW DOES BANKRUPTCY AFFECT MY JOB?**

Your bankruptcy might prevent you from getting or keeping employment in certain occupations or from holding various licences. Your employer is not normally notified of your bankruptcy unless circumstances require him to be notified.

### **WHAT IS A "STATEMENT OF AFFAIRS"?**

Upon the making of a RO, you are required by law to complete and file a 'statement of affairs'. This form will be furnished to you by the Official Receiver's Chambers. You have to list your debts and your income/assets in the statement. You commit an offence if you make any material omission or misstatement relating to your affairs.

### **WHAT IS CREDITOR'S MEETING?**

The Official Receiver will call a Creditor's Meeting upon the written request of a creditor. These meetings are usually held at the same time as the public Examination of the Debtor.

The Creditors who have been listed in the filed "Statement of Affairs", will be notified of the meeting. They are required to file a "Proof of Debt" before being allowed to attend the meeting.

The meeting is called :

(1) to consider and, if thought desirable, accept the offer of composition or full settlement of debts;

(2) to pass an ordinary resolution to adjudge the debtor bankrupt.

### **WHAT IS A PUBLIC EXAMINATION OF DEBTOR?**

This examination is an investigation into your financial affairs and you are required to attend in person to answer questions posed to you.

## **RIGHTS AND RESPONSIBILITIES OF A BANKRUPT**

- **Obtain Credit.**

When you, either alone or jointly with any other person, obtain credit to the extent of \$100 or upwards from any person without first informing that person that you are an undischarged bankrupt, you commit an offence.

- **Operating a business**

You can still operate a business while bankrupt. If you trade under a name other than that under which you are adjudged bankrupt, you have to disclose to anyone with whom you obtain credit your bankrupt status.

Under Company Law, you cannot be a director of a company or be involved in its management without the permission of the Court.

- **Change of Address**

You must, in writing, inform the Official Receiver of any change of your address.

## **ARE THERE ANY OFFENCES UNDER BANKRUPTCY LAW?**

Yes. The most important are summarized below.

- ◆ Disposing of property before bankruptcy with intent to defeat your creditor's claims;
- ◆ Failure to disclose assets;
- ◆ Deliberately obtaining credit when you know you cannot pay;
- ◆ Gambling and speculation which results in bankruptcy;
- ◆ Incurring debts during bankruptcy for over \$100 without disclosing that you are bankrupt;
- ◆ Operating a business under an assumed name, without disclosing your real name and your bankruptcy.

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