

Our Ref.: SC 101/15/34

Consultation Paper on
the Suggestion to
Dispense with Legal Practitioners' Attendance
in the hearings of Self-bankruptcy Petitions

This paper is to seek the views of the legal practitioners on the Masters' proposal to dispense with court attendance by legal practitioners in hearing cases relating to self-petitions by debtors for bankruptcy.

Background

2. Last year 26,920 petitions for bankruptcy were filed. In the first five months of this year we received 10,607 petitions and in May 2003 alone 2,328. To cope with the workload we designate a Master in each of the three mornings (viz. Monday, Tuesday and Thursday) to hear self-bankruptcy petitions whilst Wednesday is reserved for hearing creditors' petitions for winding up of companies and bankruptcy. The Masters regard hearing of self-bankruptcy petitions as routine work: checking the mistakes in the papers and pointing out the necessary amendments. Every morning we have to deal with about 230 petitions spreading over five different sessions i.e. 9.30 a.m., 10.00 a.m., 10.30 a.m., 11.00 a.m. and 11.30 a.m. At the hearing the solicitor appearing for the debtor has to do practically nothing and the Master announces the bankruptcy order made and signs on the attendance note as record. If irregularities are found in the petition or in the statement of affairs, the case is routinely adjourned to the next Thursday afternoon and leave is readily given to file supplemental affidavit for additional information or to amend the petition as the case may be. The whole process follows a fixed pattern and operates almost automatically.

3. Despite of its routine nature we must not overlook the significance and the importance of making such an order and its meaning behind. It affects the petitioners' status as well as the creditors' rights. The hearing must be conducted in open court and in a solemn form.

The suggestion

4. With these ideas in mind the Masters have discussed the matter and considered that under the present arrangement the practitioners' attendance does not serve much purpose: it wastes the time of the practitioners as well as that of the court. The practitioners' presence becomes a matter of formality: the cases will in any event follow their fixed courses. We suggest to dispense with the attendance by counsel or solicitors in such cases but subject to certain conditions as set out in paragraph 6 below.

The procedure

5. The new arrangement will operate as follows:
- (a) All self-bankruptcy cases which are legally represented will be listed at 9.30 a.m. on the same three different days of a week viz. Monday, Tuesday and Thursday but will not be given different time slots.
 - (b) If the solicitors' firms opt for this new arrangement, they must send their representatives to attend court whilst solicitors and counsel need not attend in those mornings. But, if they choose to attend, they are welcome to do so but they must inform the court clerk of their presence as usual.
 - (c) The solicitors' representatives must arrive at 9.10 a.m. for the court clerk to record attendance.

- (d) Solicitors for those petitioners who wish to withdraw or adjourn the petitions, or solicitors for creditors who appear and intend to oppose, should inform the court clerk of their intended applications or oppositions so that they will be dealt with separately.
- (e) At 9.30 a.m. the court will commence hearing in open court and the Master will announce that the court has considered the petitions fixed for that day's hearing. For cases where papers are in order (except those fall within sub paragraph (d) above), he will ask the clerk to read out the case numbers, the names of the petitioners and the firms representing them.
- (f) After that, the Master will ask whether any person has anything to say or any person wishes to address him on those cases. If there is no opposition, the Master will make bankruptcy orders in respect of those cases.
- (g) Then, the Master will deal with cases referred to in (d). Those petitioners who wish to withdraw the petition or adjourn the hearing, or any creditors who are present to oppose the petition should take this opportunity to raise their issues. The Master will deal with them one after another. But, this new arrangement will not change the practice that cases in which petitions are opposed will be adjourned to Monday morning at 9.30 a.m. before the Judge in charge of bankruptcy cases. If the Master considers appropriate, he will adjourn it to a day fixed by the Master, usually a Thursday afternoon for the solicitors in charge to attend.
- (h) Then, the Master proceeds to deal with those cases where queries are raised one by one. Before the hearing the court clerk has

distributed the requisitions. Leave is granted to file and serve supplemental affirmation or amended petition as the case may be. The case is adjourned to a day fixed (usually a Thursday afternoon) for further hearing.

- (i) At the adjourned hearing at the time fixed, the solicitor for the petitioner must attend.

The conditions

6. The practitioners representing the petitioners must attend the hearing unless the following conditions are complied with by the solicitors.

- (a) At the time of filing the petition apart from the usual documents the solicitor must lodge for each case:
 - (i) an attendance sheet in the form as set out in the Appendix and duly completed;
 - and (ii) a draft order signed by the solicitor in charge for approval.
- (b) In the attendance sheet, the solicitor representing a petitioner must clearly state whether he will instruct counsel, attend by a solicitor, or send a representative to attend. The representative must be a trainee solicitor, a legal executive of the firm or a clerk of the firm.
- (c) The person who attends the hearing must arrive at court at 9.10 a.m., before the commencement of the hearing for the court clerk to take attendance.
- (d) The representative appearing on behalf of the firm must be the one duly authorized by the firm and must have familiarized

himself with the case. The firm must ensure its representative attend Court in time, and understand the proceeding and the requisition raised, if any.

- (e) If the bankruptcy order is granted, the draft order will be approved and returned in due course. If the bankruptcy order is not granted, the draft order will be kept in the file for future use.
- (f) The representative does not have any right of audience except with the leave of the court which will rarely be given.
- (g) It is strictly prohibited to make telephone enquiry or any form of communication with the Registry on the status of any petition. Practitioners should appreciate that the Registry is dealing with 230 cases per day and they are normally represented by more than 50 firms. It is impossible for the Registry to entertain any enquiry. Neither is it right to ask for results before hearing.

Application

7. The proposal does not apply to (a) petitions for bankruptcy presented by creditors or (b) petitions presented by debtors in person. It only applies to self-petitions by debtors who are legally represented.

8. The proposal does not intend to preclude counsel or solicitors from attending hearing. But, the proceedings shall not be changed because of their presence.

The advantages

9. This arrangement does not save much of the Masters' court time but a lot of the legal practitioners' time. It will also have the effect of reducing the legal costs. The most significant advantage is that it has the capacity of taking in many more cases. If the number of petitions rises

(which is not unlikely under the present Hong Kong economic condition), the court does not require additional Masters, courtrooms or much extra court time to cope with the additional burden.

Time for consultation

10. We shall be grateful to have your views and comments on the proposal on or before 15 July 2003. All comments and views should be sent to the Registrar, High Court, Queensway, Hong Kong (Ref.: Self-Bankruptcy Petitions hearing) or by e-mail to dipaconsultation@judiciary.gov.hk. We hope we can **implement the scheme in September 2003** when the appropriate practice directions will be issued.

Registrar, High Court

10 June 2003

Attendance slip for Self-bankruptcy Petition hearing (represented cases) before Master

Case No. HCB _____ / 200 _____ Name of Petitioner: _____
 Date of Hearing _____ Time: _____ a.m.
 *Mr/Miss/Mrs _____
 *counsel/*solicitor/*trainee solicitor/*legal executive/*clerk
 *instructed by/of (firm) _____
 If trainee solicitor/legal executive/clerk shall attend the hearing the following authorisation has to be completed.

AUTHORISATION

The above named *Mr/Miss/Mrs _____ who has familiarized himself with this case is hereby authorized by our firm to be present at the petition hearing.

Signed by: _____
 Solicitor in charge

* Delete whichever is inapplicable.
 (Note: Draft bankruptcy order is required to be submitted with this attendance slip.)

Official Use

Coram: Registrar/Master _____ in Court
 - Legal Representative for the petitioner (Present/Absent)

Checklist:-

- 1) Papers in order
 2) Papers not in order:
 2.1) Supplemental affidavit(s) at folio () without leave; otherwise, papers in order.
 2.2) See requisitions attached
 2.3) Others: _____

Order:-

- 1) Bankruptcy order made.
 2) Adjourned to the date before a Master as stated in requisitions sheet.
 3) Adjourned to the _____ day of _____ 200() at 9:30 a.m. before a Bankruptcy Judge.
 4) Leave to file and serve supplemental affidavit(s) granted.
 5) Undertaking noted.
 6) Others: _____

 7) Costs reserved / No order as to costs for today's hearing.

Signed by: _____

Court:

To: Messrs. _____

Re: Bankruptcy Petition No. _____

(A) After reading the Bankruptcy Petition and the Statement of Affairs filed herein, the Master has the following requisitions:

(I) As to the Bankruptcy Petition:

- 1) Identity card number should be provided.
- 2) If Petitioner carried on business; please state the business name and address.
- 3) Petition should be attested by a solicitor or the Official Receiver.
- 4) The identity of the person attesting the signing of the Petition should be provided.

Amended petition be re-signed, re-attested, with date of re-attestation. The original date of the Petition do remain.

(II) As to the Statement of Affairs (Form 28C)

- 5) Petitioner's occupation and address should be provided.
- 6) The prescribed form of Form 28C should be used and completed accordingly. (re: List(s) _____)
- 7) List A: Secured Creditors:
 - description/value of property should be stated (column 4).
 - As the property has been sold, the balance of the debt should be listed under List B.
- 8) List B: Unsecured Creditors:
 - a. Full detail of the names and addresses of the creditors should be provided (column 3) (re: item no: _____).
 - b. Full detail of creditors' names and addresses not supplied, please state by way of affirmation/affidavit the attempts taken to ascertain/locate the name or address of the creditors (column 2/3, re: item no. _____).
 - c. Amount the creditors say the Petitioner owes (column 4) (re: item no: _____); and the amount the Petitioner thinks he owes (column 5) should be stated (re: item no: _____).
 - d. Do the following items incurred from business? If yes, steps should be taken to amend the Petition to state the business name and address. (re: item no: _____)
- 9) List C1: Assets:
 - a. Bank account number should be provided.
 - b. The balance/share of the bank account should be stated.
 - c. Did the Petitioner have any bank account in the past 6 months prior to the presentation of the Petition –
 - i) if no, a verifying affirmation/affidavit should be filed;
 - ii) if yes, List C1 should be amended to state the particulars of the account.
 - d. Section 2: Business Bank Account
 - Is the account with _____ bank a business bank account –
 - i) if no, the particulars of the account should be placed under Section 1;
 - ii) if yes, steps should be taken to amend the Petition to state the business name and address, if necessary and the name of the business bank account should be provided.

- 10) List C3: Assets:
 - a. The insurance policy number / surrender value / beneficiary should be provided (re: item b).
 - b. The number of shares of the limited company held by the Petitioner and the value thereof should be stated.
 - c. Please specify the contents of the safety box and their estimated value (re: item e).

- 11) List D: Dependants:
 - a. The relation between the dependant and the Petitioner should be provided.
 - b. With reference to List G, the following person(s) appears to be a dependant of the Petitioner: _____ . Please clarify and consider to revise the List.

- 12) List E: Legal process outstanding:
 - a. Type and date of legal process issued (column 3) should be stated.
 - b. Description and estimated value of any property seized (column 4) should be provided.

- 13) List E: Income payments order:
 - a. Total amount paid under the order (column 5) should be provided.
 - b. State the type of legal proceedings, the court, the case number, names of parties and nature of the proceedings.

- 14) List G: Income and expenditure:
 - a. Items of expenditure with their breakdown should be specified.
 - b. Each item should be completed.

- 15) List H: Statement of recent and expected income:
 - a. Drawings from business if self-employed: Has the Petitioner lately carrying on business? If yes, steps should be taken to amend the Petition to state the business name and address.
 - b. The disposal of the lump sum received (HK\$ _____) during the past 12 months should be explained in details by way of affirmation/affidavit with supporting documents, if any.
 - c. Has the insurance policy mentioned been terminated? If no, List C3 item b should be completed.
 - d. Use prescribed form: every item required to be mentioned and completed.

16) Others: _____

(D) The Master intends to make the following order:

- (1) The hearing of this Petition be adjourned to (Thursday) _____ at 2:30 pm/3:00 pm.
- (2) Supplemental Affirmation/Affidavit/Amended petition on matters referred to at (A) above be filed and served on or before _____.

Order made as set out above

Master's Clerk
Date:

Master
Date:

致：債務人_____

關於破產呈請書編號：_____

就你送交法院存檔的呈請書，聆案官現命令如下：—

(甲) 本呈請的聆訊押後至 2003 年____月____日星期四下午____時 30 分。

(乙) 你須遵行下列事項：

(I) 關於破產呈請書：

- 1) 須提供身份證號碼。
- 2) 若債務人曾經營業務，請述明公司名稱及地址。
- 3) 呈請書須經一名律師或破產管理署署長簽署見證。
- 4) 須提供見證人的身份。

經修訂的呈請書須由債務人再簽署，並經律師、破產管理署署長或司法常務官簽署再見證，及列明再見證的日期；呈請書原有的日期則須保留。

(II) 關於資產負債狀況說明書（表格 28C）

- 5) 須提供債務人的職業及地址。
- 6) 須採用訂明格式表格 28C 填妥所有項目（關於_____表）
- 7) A 表：有抵押債權人：
 - 須述明被申索的資產及其價值（第 4 欄）。
 - 資產既已出售，欠額餘款應列於 B 表。
- 8) B 表：無抵押債權人：
 - a. 須提供債權人的詳盡姓名/地址（第 3 欄）（第_____項）
 - b. 如你未能提供債權人的詳盡姓名/地址，則須以誓章形式述明你曾採取何等行動尋找債權人的詳盡姓名/地址（第 2/3 欄）（第_____項）。
 - c. 須述明債權人聲稱你欠他/她的款額（第 4 欄）（第_____項）；以及你認為你欠的款額（第 5 欄）。（第_____項）
 - d. 下列欠款是否因經營業務而招致？（第_____項）若是，須修改破產呈請書，述明公司名稱及地址。
- 9) C1 表：資產：
 - a. 須提供銀行帳戶號碼。
 - b. 須述明在有關銀行帳戶中所佔的權益及結餘。
 - c. 在提交破產呈請書前六個月內，債務人有否擁有任何銀行帳戶？
 - i) 若無，請以誓章/誓詞証實。
 - ii) 若有，須修改 C1 表提供詳情。
 - d. 第二部份：業務銀行帳戶
 - 設於_____銀行的帳戶是不是一個業務銀行帳戶？
 - i) 若否，有關的資料應填在第一部份內。
 - ii) 若是，須修訂破產呈請書，述明公司名稱及地址，以及提供業務銀行帳戶的名稱。

- 10) C3 表：資產：
- a. 須提供保險單的號碼/現金價值/受益人 (b 項)。
 - b. 須列明債務人持有的有限公司股份數量及其價值。
 - c. 須列出保險箱內的物品及其估計價值 (e 項)。
- 11) D 表：受養人：
- a. 須提供與受養人的關係。
 - b. 參照 G 表，請澄清以下人士是否須由債務人供養：_____。若是，須更正第一部份。
- 12) E 表：尚未解決的法律程序：
- a. 須列明已發出的程序文件的類型及日期 (第 3 欄)。
 - b. 須描述所有被檢取的財產及提供其估計價值 (第 4 欄)。
- 13) E 表：收入付款令：
- a. 須述明根據命令而繳付的總款額。(第 5 欄)。
 - b. 須述明該法律程序的類別、所屬法院、案件號碼、訴訟各方的姓名及該程序的性質。
- 14) G 表：收入及支出：
- a. 須述明附有細目分類的開支項目。
 - b. 須填妥所有項目。
- 15) H 表：近期及預期收入說明書：
- a. (如屬自僱) 從業務提取的款項：債務人是否經營業務？若是，須修改破產呈請書，述明公司名稱及地址。
 - b. 須以誓章/誓詞 (並附上有關證明文件，如有的話)，詳細述明於過去 12 個月內所收取的款項 (港幣_____元) 的用途。
 - c. 表格提及的保險單是否已取消？若否，須填妥 C3 表 b 項。
 - d. 須採用訂明的格式：每一項目均須提及和填妥。
- 16) 其他： _____

(III) 注意事項：

- 1) 債務人可向破產管理署尋求協助把有關文件作出更正及由該署為更正的文件作重新簽署見證或安排宣誓。
- 2) 債務人須把已更正及經簽署見證或已宣誓的文件於 2003 年____月____日下午 4 時或以前交存高等法院低層 1 樓 115 室聆案官書記主任辦事處。
- 3) 其副本亦須盡快交存破產管理署。

聆案官書記主任

日期： _____