

香港高等法院
司法常務官內庭用箋



REGISTRAR'S CHAMBERS
HIGH COURT
HONG KONG

Our Ref.: SC 101/15/34

LAW SOCIETY OF H.K. Tel. No.: 2825 4600

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20 September 2002

SEP 02 11: 07

Ms. Joyce Wong
Director of Practitioners Affairs
The Law Society of Hong Kong
3/F., Wing On House
71 Des Voeux Road
Central
Hong Kong

Dear Ms. Wong,

**Validation Order under
Section 42 of Bankruptcy Ordinance (Cap. 6)**

In order to facilitate and expedite the process of obtaining validation orders the Masters have agreed to dispense with court attendance if the applicants are legally represented under certain circumstances mentioned in this letter.

Section 42 restricts dispositions of properties during the prescribed period mentioned in the Ordinance except with the consent or ratification by the Court. The restrictions include withdrawals of money from banks. Many petitioners have their salaries paid through bank accounts. Very often they find their accounts frozen and cannot withdraw money for their daily expenses when their petitions are filed with the Court.

With an increase in the number of bankruptcy cases (July 2002: 2,336 and August 2002: 2,455 cases) the number of applications for Court's consent to withdraw money proportionally increase. The number of applications we can deal with each day are rather limited. The waiting time becomes longer and longer: it defeats the purpose of obtaining such an order i.e. to give immediate relief to petitioners.

To facilitate and expedite the process the Masters have agreed to dispense with court attendance by practitioners provided that they comply with the following procedure and the requirements set out below.

Procedure

1. Practitioners shall issue inter parte summons with supporting affidavit as before.

2. A return date will be given for hearing of the Summons by the Registry.
3. Practitioners shall serve the papers on the Official Receiver and request him to consider the proposal contained in the application.
4. As I understand, the Official Receiver will consider the proposal by having an interview or a discussion with the petitioner applicant personally. The Official Receiver will then inform the Court and the solicitor of his decision.
5. Upon receipt of the Official Receiver's letter the solicitor may apply to the Court by letter together with a draft order for approval requesting also for:
 - (a) dispensation of court attendance;
 - and (b) vacating the hearing date if the draft order is approved.
6. After considering the requests made, the Court may either grant an order in term as set out in the draft order or refuse the application for dispensation of court attendance and require the solicitor to attend at the returnable time of the summons.

Requirements

Such procedure may only be invoked if the following requirements are satisfied:

- (a) That it is a case of self petition for bankruptcy;
- (b) That it is restricted to cases of withdrawals from banks for the purpose of meeting the domestic needs of the petitioner and his family members (if applicable);
- (c) That the petitioner agrees to the terms as set out in the Official Receiver's letter without amendment;
- (d) That the petitioner's affidavit in support of the application must contain clear statements:
 - (i) of an undertaking to the Court that the petitioner shall use the money withdrawn from the bank account for the sole purpose of meeting the domestic needs of himself and his family members (if applicable);

and (ii) of an understanding that the order to be granted shall not affect or prejudice any rights of lien, set-off, charge security or the like which the bank has or may have over or against the money of the petitioner in the account exercisable at the time of any intended withdrawal by the petitioner from such account.

and (e) That the solicitor has to ensure:

(i) that the applicant fully understands the meaning of and consequences of giving the undertaking mentioned in paragraph (d)(i) above and that the applicant is prepared to give the undertaking to the Court;

and (ii) that the applicant fully understands the bank's rights mentioned in paragraph (d)(ii) above.

Notwithstanding the above the Court reserves its right to refuse any application for dispensation of court attendance and to require the personal attendance by the practitioner and his client in appropriate cases.

I shall be grateful if you will bring this new measure to the attention to all your members. Please note that such measure shall not apply to those cases where the applicants act in person and are not legally represented.

Such new measure can be invoked with immediate effect.

Yours sincerely,



(Christopher C. Chan)
Registrar

c.c. Official Receiver