

Knowledge Bank 8



BANKRUPTCY

Bankruptcy is used to deal with an individual who is unable or unwilling to pay their debts.

OBJECTIVES OF BANKRUPTCY

Debtors petition

- To allow an individual who is unable to pay their debts to declare themselves bankrupt.

CREDITORS PETITION

- To allow a creditor who is owed £750 or more to make an individual bankrupt on the grounds that the debtor cannot pay their debt
- In appropriate cases, the supervisor of a voluntary arrangement can petition if the arrangement has failed.

WHO CAN DECLARE AN INDIVIDUAL BANKRUPT?

- The courts are responsible for making a bankruptcy order – be it a debtors or creditors petition.

PROCEDURE FOR BANKRUPTCY

- A petition, be it from a creditor or debtor, is presented to the court
- A bankruptcy order is made by the court
- The official receiver (OR) is appointed as trustee and receives the bankrupt's estate by virtue of the bankruptcy order
- The OR has a duty to investigate the bankrupt's affairs and submit a report to the creditors
- The OR may interview the individual and will convene a creditors' meeting within three months of the bankruptcy order.

In some circumstances where there is support from a majority of creditors, the OR may request the Secretary of State to appoint a licensed insolvency practitioner as trustee.

DUTIES OF THE TRUSTEE

- Realise assets within the bankrupt's estate
- Agree creditors' claims and distribute funds by way of dividend
- Call a final meeting of creditors where the creditors receive an account and report on the administration of the estate.

IMPLICATIONS OF BANKRUPTCY

- A bankrupt will be unable to hold a job in certain areas of employment
- A bankrupt will have to give up any assets of value and may lose the financial interest in their home
- The OR will advertise the bankruptcy in official records and the Individual Insolvency Register
- A bankrupt is unable to apply for credit in excess of £500 without telling the lender of their bankruptcy
- A bankrupt may not act as a director of a company
- A bankrupt may not create, manage or promote a company without the court's permission
- A bankrupt must not manage a business without telling those they are doing business with that they are bankrupt.

BANKRUPTCY TERM

- A bankrupt will normally be discharged from bankruptcy after 12 months from the date they were made bankrupt. This automatic discharge may be removed in certain circumstances

Discharge does not result in the assets reverting back to the bankrupt, although the trustee has a period of three years in which to deal with the matrimonial home and this will re-vest at the end of the three year term

- However, if there is evidence of criminal, dishonest or careless behaviour, the OR may apply to the court for a Bankruptcy Restriction Order, which could maintain the bankruptcy for anywhere between two and 15 years.

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