Carter Clark
Financial Recovery

Briefing Sheet

Bankruptcy

What is bankruptcy?

Bankruptcy is a final option for individuals who are insolvent and whose assets are outweighed by their liabilities. Record numbers of debt burdened individuals are now opting to file for their own bankruptcy. This procedure is extremely useful in situations where there are no real assets, such as equity in the matrimonial home or investments.

How does bankruptcy operate?

Bankruptcy is a Court based procedure and can be instituted via three different routes:

Debtors petition: this is initiated by the person opting for bankruptcy and requires completion of specific documentation now obtainable on the GOV.UK website. The documentation is filed online and an adjudicator will either make a bankruptcy order or reject the application. The adjudicator has 28 days to make a decision.

Creditors petition: this is initiated by a creditor, often HMRC, in pursuit of a debt of £5,000 or more following a County Court Judgment or a Statutory Demand.

Court petition by the supervisor of an individual voluntary arrangement, normally when an IVA has failed.

Once a petition is received by the Court a hearing date is set. The Court will consider the debtors circumstances and, if there is no viable alternative, make a Bankruptcy Order. Normally the Official Receiver is appointed as trustee in bankruptcy but an insolvency practitioner (IP) may take on the role if there are significant assets and creditors support the appointment.

In bankruptcy

All assets are included in the debtor's estate, although some may be charged to, or be partially owned, by third parties. The proportion of ownership must be estimated and items such as motor vehicles, often under finance agreements, and the matrimonial home are often only partially available to the trustee and creditors. Tools of the debtor's trade, items essential for normal living and pensions are also excluded from the bankruptcy estate.

Typically where a matrimonial home is jointly owned, 50% of the equity will be available to the trustee in bankruptcy for the creditors. It may be possible, however, to retain the home. If there is capacity to continue mortgage payments – and the mortgage company is prepared to receive them – the trustee may agree to retain the property throughout the bankruptcy period. In some cases the trustee may lodge an interest on behalf of creditors on mortgaged property that is retained.

Executive summary

Bankruptcy is seen as the final option for individuals in financial difficulty.

It can be a complex process which puts the financial affairs of the person declared bankrupt in the hands of a trustee. Whilst it can provide a relatively clean start when the discharge from bankruptcy is obtained, all other options such as an IVA may be better for those who wish to retain a degree of control. It is, however, better to petition for bankruptcy personally than to have it forced upon you by a creditor pressing for payment.

Have a question?

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If the matrimonial home is to be sold, normally the Official Receiver or trustee in bankruptcy will look to sell any interest back to the debtor or a family member.

If the bankrupt should acquire, during the bankruptcy period, a higher disposable income it is possible for the trustee to seek to recover some of this excess salary through an Income Payments Order or Income Payments Agreement. Failure to agree may result in application to the Court for this order to be ratified by a judge and failure to maintain payments may be an offence with a possible prison sentence. The trustee may look to sell property or other assets that he holds on the creditor's behalf to ensure payment. In addition, any after acquired property prior to discharge, may be claimed by the trustee.

A bankrupt is prevented by law from undertaking a number of actions, some of which include:

- acting, without the permission of the Court, as a director of a limited company in the United Kingdom;
- obtaining credit greater than £500 without disclosing bankruptcy status;
- trading under a new name or different name from that used prior to being made bankrupt;
- take a position as a Justice of the Peace or a Member of Parliament or member of a local authority.

Certain professional qualifications may also be threatened by bankruptcy and contravening the regulations set out above is a criminal offence.

Discharge from bankruptcy

This happens once the bankruptcy term is completed and the requests of the trustee have been met. In cases of consumer debt, discharge may be granted prior to the 12 month automatic bankruptcy period. Most debts are written off – including liabilities to HMRC and other trade creditors in the period prior to the bankruptcy – but some are not. Bankruptcy restrictions are lifted and it may be possible to start rebuilding financial credibility.

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