

HONG KONG / JUDGMENT

RE LIN HAI SAN

COURT

Court of First Instance

DECIDED

18 April 2005

CASE / FILE NUMBER

HCB2848/2000

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bjbj HCB 2084/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE IN BANKRUPTCY PROCEEDINGS NO. 2084 OF 2000

BETWEEN Re: Chan Wing Hing (the Bankrupt) Ex parte: The Official Receiver

HCB 2848/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE IN BANKRUPTCY PROCEEDINGS NO. 2848 OF 2000

BETWEEN Re: Lin Hai San (the Bankrupt) Ex parte: The Official Receiver

(Heard Together) Before: Master S. Kwang in Court Date of Hearing: 3 February 2005 Date of
Filing of Further Written Submission: 22 February 2005 Date of Filing of Further Report: 4 March
2005 Date of Handing Down Decision: 18 April 2005

DECISION

Background

1. These 2 cases initially came before this Court on application taken out by the Official Receiver and Trustee (the Official Receiver) objecting the automatic discharge of the bankruptcy against the respective Bankrupt, Mr. Chan Wing Hing (Chan) and Lin Hai San () under Section 30(A)(3) the Bankruptcy Ordinance (the Ordinance). Both Chan and Lin were absent at all the hearings.

2. Both cases share one common feature: both Chan and Lin left Hong Kong frequently to China during the past years without notifying the Official Receiver. At the call over hearings, the Court upon reading Reports of the Official Receiver, raised a preliminary point whether Section 30(10)(b)(i) of the Ordinance applies to these 2 cases and if so, the period of the bankruptcy for the Bankrupt may not be expired in the usual time frame (ie. 4 years from the date of the bankruptcy order). The Official Receiver indicated to the Court that he wished to make submission on the said preliminary point since according to their internal administrative decision , the said section does not apply to these 2 cases. In the circumstances, Master Ho adjourned the hearings for both cases for the Official Receiver to make submission on the said preliminary point. In order not to prejudice the position of the Official Receiver, an interim order was made in each case suspending the automatic discharge pending the determination of the application (the Interim Order).
3. I heard the submission of the Official Receiver on the preliminary point on 3 February 2005. Before the hearing, the Official Receiver has filed in each case 3 Reports and a written submission. At the hearing, I indicated to Ms. Cheung of the Official Receiver s Office that I would first rule on the said preliminary point. If Section 30(10)(b)(i) of the Ordinance applied to these 2 cases, then the present application for objection against the automatic discharge of the Bankrupt was not necessary and became redundant. Ms. Cheung accepted that in such case, the Court should dismiss the application. If, on the other hand, I ruled for whatever reason that Section 30(10) of the Ordinance did not apply to these cases, the matter would be restored for further hearing to determine the substantive application.
4. At the end of the hearing, the Official Receiver wished to conduct further research on the legislative history of Section 30A of the Ordinance in particular the debates at the Legislative Council when the Bankruptcy (Amendment) Bill 1996 was introduced and read at the Council before its enactment. On facts, I directed the Official Receiver to confirm whether in each case, the Bankrupt had informed the Official Receiver of his intended departure from Hong Kong at any time during the past 4 years.
5. Further written submission and reports were filed by the Official Receiver on 22 February and 4 March 2005 respectively. After reading the same, I directed that decision on the preliminary point be reserved to be handed down on a date to be notified. Facts Relevant to the Preliminary Point
6. In the case of Chan, his bankruptcy order was made on 4 October 2000. He attended interviews with the Official Receiver on 2 occasions before the Official Receiver lost contact with him: one on 23 October 2000 and the 2nd one on 21 March 2001. Chan was given at the first interview a booklet entitled A Simple Guide to Bankruptcy the Guide) listing out the duties imposed by law on a bankrupt. During the interviews and for the past years, Chan failed to inform the Official Receiver that he would leave Hong Kong for whatever reasons.

7. According to computer reports for the arrival/departure check of Chan obtained from the Director of Immigration, on the date of the bankruptcy order, Chan was in Hong Kong. However, since the grant of the bankruptcy order, Chan had made frequent travels between Hong Kong and China as follows:
 - (a) 30 trips each month on average to China between 4 October 2000 and 31 December 2001;
 - (b) 34 trips each month on average to China for 2002;
 - (c) 23 trips each month on average to China for 2003;
 - (d) 25 trips each month on average to China for the period from 1 January 2004 to 19 July 2004. For the above trips, Chan was absent from Hong Kong for less than 24 hours in most of the cases and for some other trips, he stayed away for no more than a couple of days. Since 19 July 2004, Chan left Hong Kong without any record of his return. According to information obtained from a lady claimed to be the wife of Chan, he was being detained in Shenzhen.
8. In the case of Lin, he was made bankrupt under an order granted on 1 November 2000. Lin only attended once at the office of the Official Receiver on 7 May 2001 and as with Chan, he was provided with the Guide. Despite Vn@S, n was also in Hong Kong on 1 November 2000 but made frequent trips to China as follows:-
 - (a) 15 trips each month on average to China between 1 November 2000 and the end of 2002;
 - (b) 10 trips each month on average to China from January 2003 to 2 June 2004;
 - (c) 9 trips each month on average to China for months from June to November 2004. For the trips above, the duration of absence from Hong Kong lasted for less than 24 hours. There were some other departures from Hong Kong which lasted for a couple of days to a week save that on 2 occasions, Lin left Hong Kong for 22 days and 11 days respectively. Section 30(10) of the Ordinance
10. The preliminary point involves the interpretation of Section 30(10) of the Ordinance which is unique to Hong Kong with no equivalent provisions in either the English Insolvency Act 1986 or the Australian Bankruptcy Acts.
11. The Section provides:
 - (10) Notwithstanding subsections (1) to (3), where a bankrupt-
 - (a) has, before the commencement of the bankruptcy, left Hong Kong and has not returned to Hong Kong, the relevant period under subsection(1) shall not commence to run until such time as he returns to Hong Kong and notifies the trustee of his return;
 - (b) after the commencement of his bankruptcy-

- (i) leaves Hong Kong without notifying the trustee of his itinerary and where he can be contacted; or (ii) fails to return to Hong Kong on a date or within a period specified by the trustee, the relevant period under subsection (1) shall not continue to run during the period he is absent from Hong Kong and until he notifies the trustee of his return.
12. From the plain and literal meaning of the said Section, the usual 4-year bankruptcy period (for those 1st-time bankrupts) will not commence to run or continue to run if the following situations apply:-
- (a) the bankrupt has, on the date of the bankruptcy order, already left Hong Kong physically and has not returned to Hong Kong. The relevant period will not commence to run until the bankrupt returns to Hong Kong and notifies the trustee of his return (emphasis added);
 - (b) after the bankruptcy order was granted, the bankrupt leaves Hong Kong without notifying the trustee of his itinerary and where he can be contacted or fails to return to Hong Kong on a date or within a period specified by the trustee. In such cases, the relevant period will cease to run during the period the bankrupt is absent from Hong Kong and will not continue to run until the bankrupt has physically returned to Hong Kong and notifies the trustee of his return (emphasis added).
13. It is worth noting that under the express wordings of the legislation, they do not specify how long the bankrupt has to leave Hong Kong before the section is triggered. However, once the bankrupt is being caught by the provisions, the relevant period will only start to run or resume to run not just after the bankrupt returns physically to Hong Kong but also he has to notify his trustee of his return. It appears to me that the subsection (10) is drafted in plain language and its application should be rather straightforward.
14. Nevertheless, the Official Receiver invited the Court to adopt a different interpretation from that stated in paragraph 12 above in light of their own internal administrative decision on the applicability of the subsection. Since it is the stance of the Official Receiver that both Chan and Lin were in Hong Kong on the date of the bankruptcy order, the Court is only concerned with the interpretation of Section 30(10)(b)(i) of the Ordinance in the present case. The Official Receiver's Position
15. The Official Receiver has adopted an internal administrative decision to treat the absence of at least 3 consecutive months from Hong Kong by the bankrupt as the threshold for triggering the operation of Section 30A(10) of the Ordinance. He takes the view that absence from Hong Kong for a period of 3 consecutive months as sufficient permanency of the bankrupt's departure from Hong Kong so as to infer that the bankrupt has absconded or fled Hong Kong, or avoided his obligation under the Bankruptcy Ordinance.
16. To justify the said internal policy, the Official Receiver has taken into account of the following considerations:-

- (a) the political reality after 1997 has made the habitual commuting between mainland China and Hong Kong a common occurrence for people living in the territory. Therefore, frequent travel pattern in and out of Hong Kong cannot be taken as evidence for absconding, fleeing or staying away from Hong Kong in order to avoid the obligations of the bankrupt under the Ordinance;
 - (b) the 3 months threshold is on the lenient side to the benefit of the bankrupt, given the spirit of rehabilitation of cooperative bankrupt under the new bankruptcy regime; and
 - (c) if the plain meaning of Section 30A (10) was adopted, which means every transient departure of the bankrupt made would be caught by the section, it would create an unwanted consequence in that a great majority of cases would fall under the said section with the result that there would be no automatic discharge for most bankrupts and the whole intention of the legislation would be defeated.
17. In summary, Ms. Cheung of the Official Receiver relied upon the following matters in support of her arguments:-
- (a) the dictionary meaning of the word leave ;
 - (b) the legislative history of the section including consideration of the recommendations as contained in the Report on Bankruptcy issued in May 1995 by the Law Reform Commission of Hong Kong (the Commission Report) and the reports made to the Bills Committee of the Legislative Council with a view to ascertaining the intention of the legislature;
 - (c) 2 cases on the interpretation of Section 2(4)(b) of the Immigration Ordinance: Fateh Muhammad v. Commissioner of Registration & Another [2001] 2 HKLRD 659 and Prem Singh v. Director of Immigration [2003] 1 HKLRD 550;
 - (d) Section 19 of the Interpretation and General Clauses Ordinance for the liberal construction of legislation.
18. I would in turn deal with the arguments of the Official Receiver. The Dictionary Meaning
19. Section 30(10)(a) and (b) refer to left Hong Kong and leaves Hong Kong . So what is the meaning of left or leaves in the context of the provision? Such words are not defined in the Ordinance itself.
20. The Official Receiver referred to the definition of leave as illustrated by the Concise Oxford Dictionary, 10th Edition. It is defined as go away from, depart from permanently . Another definition relied by the Official Receiver is go away from that place or go away permanently from that place (see Collin Cobuild English Language Dictionary). It is argued by the Official Receiver that the meaning of leave Hong Kong under Section 30(10) imports element of permanency.

21. However, the word leave is defined in other dictionaries with no reference to the element of permanency. In the Shorter Oxford English Dictionary (5th edition), leave has the meaning of go away, depart, move away from a place . Oxford Advanced Learner s English-Chinese Dictionary (4th edition) gives leave with one of the meanings of going away from a place . While different dictionaries may have slightly different definitions, it can safely accept that the ordinary meaning of leave is to go away from one place to another.
22. Dictionaries may be a literal source in aid of interpretation. However, the learned authors of R. Cross, Statutory Interpretation (3rd Edition), (page 144) have expressed caution in referring to dictionary meaning of a word for the purpose of statutory interpretation. Word in different context may have a different meaning from the ordinary dictionary meaning. Instead of construing one word in isolation, it is better to look at the whole provision in question to find out the real meaning. The Legislative History
23. The Official Receiver urged the Court to ascertain the intention of the legislature from the Commission Report and the reports submitted to the Bills Committee by the administration. It is contended by the Official Receiver that from the tenor of the Commission Report, the main purpose of enacting Section 30(10) of the Ordinance was to penalize bankrupts who abscond flee or staying away from Hong Kong in order to avoid their obligations under the Bankruptcy Ordinance .
24. Before I go into the relevant parts of the Commission Report, I need to mention at this stage that in construing a provision in a statute, it is not always necessary at all to refer to the legislative history of its enactment if the wordings of the provision in question are clear and unambiguous.
25. The learned author of R. Cross, Statutory Interpretation (3rd Edition) explained the essential rule of interpretation: The essential rule is that words should generally be given the meaning which the normal speaker of the English language would understand them to bear in the context in which they are used. It would be difficult to over-estimate the importance of this rule because the vast majority of statutes never come before the courts for interpretation. If it were not a known fact that, in the ordinary case in which the normal user of the English language would have no doubt about the meaning of the statutory words, the courts will give those words their ordinary meaning, it would be impossible for lawyers and other experts to act and advise on the statute in question with confidence. This is commonly known as the plain meaning rule . It is stated in Bennion, Statutory Interpretation (4th Edition) at Section 195 (page 470) that the plain meaning rule determines the operation of nearly every enactment, simply because nearly every enactment has a straightforward and clear meaning with no counter-indication . In such cases, the words and sentences must be construed in their ordinary and natural meaning.

26. In *Pinner v. Everett* [1969] 1 WLR 993 at 999, Lord Reid defined the plain meaning rule as: In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural and ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase
27. In the circumstances, where the meaning of the words used in a statute is clear, with no ambiguity, the statutory intention must be found within those words (see *Macarthys Ltd. v. Smith* [1979] 3 All ER 325 at 332).
28. Ever since the English House of Lords decision in *Pepper v. Hart* [1993] AC 593, the Court is now entitled to study the legislature debates reported in the Hansard together with any Law Reform Commission Report as an aid to the construction of a statute. In fact, in a previous case decided by me in 2003: *Nanyang Commercial Bank Ltd. v. Lam Man Ki* [2003] 2 HKLRD 432, I followed the said House of Lords decision and considered the contents of the Commission Report for the purpose of the interpretation of Section 43F of the Ordinance. In that case, since the plain wording of Section 43F is unclear as to whether it would affect the interest of a secured creditor, in my judgment, I held that it is appropriate and proper to ascertain the legislature's intention for enacting Section 43F and find out the mischief that it intends to remedy from what was written in the Commission Report.
29. Where a statute is based on a report by the Law Reform Commission, the court is usually very ready to refer to the report in order to construe a doubtful provision in the statute. However, it is suggested in Bennion, *Statutory Interpretation* at Section 216 (page 525) that a law commission report should not be relied on to alter the clear meaning of an enactment.
30. It was submitted by the Official Receiver that Section 30(10) of the Ordinance is ambiguous as there are 2 different constructions from the words leave Hong Kong : firstly, go away from Hong Kong which denotes both transient departure and permanent departure and secondly, go away from Hong Kong permanently. As such, the Official Receiver argued that the court is entitled to look into the legislative intention for aid on the construction of the section to resolve the ambiguity. It seems from the submission of the Official Receiver that even if there is any ambiguity, such ambiguity only applies to Section 30(10)(b) (i) but not subsection (ii).
31. Are the wordings of Section 30(10)(b)(i) unclear and ambiguous? In my judgment, I must disagree with the Official Receiver. I find no ambiguity in the wordings of said section especially if one reads the whole section in its own context rather than isolating the phrase leaves Hong Kong .
32. Upon the grant of the bankruptcy order against the bankrupt, the Ordinance imposes various positive duties on the bankrupt to fulfill during the period of his bankruptcy including but not limited to submit a statement of affairs making full and frank disclosure of his assets and liabilities, to assist the trustee to realize his property and to submit annual

report of his earnings and acquisitions. Section 30(10)(b) clearly imposes a positive duty on the bankrupt to notify the trustee his itinerary and where he can be contacted if he wishes to leave Hong Kong. When he returns, he has to duly notify the trustee of his return. If he so performed his duty, the relevant period of his bankruptcy would continue to run; otherwise, such period would cease to run. Such duty is expressly spelt out in paragraph 15 (viii) of the Guide invariably provided to all bankrupts when they first attended interview with the Official Receiver. The said paragraph does not make any reference to the internal administrative policy of the Official Receiver.

33. In my judgment, Section 30(10)(b)(i) of the Ordinance clearly envisages that if a bankrupt wishes to leave Hong Kong for whatever period, he can do so provided that he has to notify the trustee of his itinerary and where he can be contacted. Reading the whole subsection together, it clearly intends to cover situation whereby a bankrupt may have to leave Hong Kong temporarily instead of permanently. Therefore, if a bankrupt has to work in mainland China and has to leave Hong Kong everyday, what he is required by law to do is to notify his trustee in bankruptcy his itinerary, i.e. his daily requirement to leave Hong Kong to mainland China say in the morning and return to Hong Kong after work. Of course, the bankrupt has to inform the trustee where he can be contacted in China. He is only required to notify his trustee his itinerary one time before he embarks on his frequent trips to and from China and there is no need to notify his trustee everyday. This applies equally to those bankrupts who may have to reside in China for whatever period. I see no difficulty on part of the bankrupt to fulfill such positive duty and this will clearly allow the trustee to locate the whereabouts of the bankrupt and if necessary, to make request on the bankrupt to be physically present in Hong Kong in order to assist the trustee to administer the estate.
34. The section has no intention to limit the liberty of the bankrupt from leaving Hong Kong to work or live in the mainland China provided that his positive duty imposed under the section is duly complied with. Balancing the minimum inconvenience and trouble that may cause to the bankrupt in compliance of the said positive duty and the substantial benefit that may be accrued to the trustee by insisting on strict compliance of such duty, I have no hesitation to hold that no matter how long a bankrupt wishes to leave Hong Kong, he has to notify the trustee as required under the section.
35. In the premises, the plain meaning of Section 30(10)(b) as stated in paragraph 12 above should be adopted and I see no unwanted consequence as contended by the Official Receiver arising out of such interpretation.
36. For reasons stated above, it is wholly unnecessary to go into the legislative history of the enactment. However, for sake of completeness, I shall deal with it briefly.
37. It has been suggested that the courts now adopt a purposive approach which seeks to give effect to the true purpose of the legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted (see Lord Griffiths judgment in *Pepper v. Hart*, op cit.).

38. Section 30A was added into the Ordinance under the recommendations made in the Commission Report. Paragraph 17.49 of the Commission Report states the background of Section 30A (10) as follows: We consider that in cases where the bankrupt has, whether before or after the date of bankruptcy, left Hong Kong and has not returned to Hong Kong or where, while the bankrupt was absent from Hong Kong he was requested by the trustee to return to Hong Kong by a particular date or within a particular period but the bankrupt failed to return by that date or within that period, the running of time of the bankruptcy should not begin, or should be suspended where appropriate, until the date on which the bankrupt returns to Hong Kong. This recommendation reflects provisions under the new Australian provisions. The adoption of these provisions would assist in ensuring that bankrupts could not avoid their obligations under the Bankruptcy Ordinance by staying away from Hong Kong until the end of the bankruptcy period. It is not unusual for bankrupts to leave the jurisdiction to avoid the present provisions and we would not like our recommendations to make absconding an attractive proposition for bankrupts.
39. Relying upon the said statement, it was suggested by the Official Receiver that the introduction of subsection 10 was to target against those bankrupts who absconded from Hong Kong in order to avoid their obligations under the Ordinance. The Official Receiver takes the view that absence from Hong Kong for a period of 3 consecutive months as sufficient permanency of the bankrupt's departure from Hong Kong to infer that the bankrupt has absconded from Hong Kong.
40. The Commission Report only referred to absconding from Hong Kong as one of the examples for bankrupt avoiding his obligation under the Ordinance. The main objective of the provision is to prevent a bankrupt from avoiding his obligations under the Ordinance by staying away from Hong Kong. If the legislature really intended to use Section 30A(10)(b) to target against absconding bankrupt only, they should have used such word expressly in the provision. To illustrate this, Section 27(1) of the Ordinance empowers the Court to issue warrant of arrest against debtor if there is evidence to prove that he has absconded or is about to abscond, with a view of avoiding payment of a debt, etc.
41. On the other hand, there was no debate in the Legislative Council specifically on the subject provision when the Bankruptcy (Amendment) Bill 1996 was introduced. Only at one of the meetings of the Bills Committee held on 7 November 1996, the Administration explained the intention of Section 30A (10) as follows: The intention of the proposed Section 30A(10) was that where a bankrupt had left Hong Kong before the commencement of the bankruptcy, the bankruptcy period should not commence to run until the bankrupt returned to Hong Kong. Where a bankrupt left Hong Kong after the commencement of the bankruptcy period but failed to notify the trustee of his departure, the bankruptcy period should cease to run until he returned and the cessation would not be subject to any maximum limit. No reference was made at all in the said explanation to absconding from Hong Kong .

42. As stated above, Section 30A(10)(b) imposes a positive duty on part of the bankrupt with automatic sanction of suspending the running of the relevant period of bankruptcy. Therefore, it was reasonable and there was good policy reason for the legislature to draft such provision in simple and straightforward manner so that a layman bankrupt can understand his obligation easily from reading the provision and to know what consequences that he may face if he fails to comply with such duty. To import the notion of permanency into the provision as suggested by the Official Receiver would, in my view, create uncertainty and confusion and may result in unnecessary arguments and litigations. The Immigration Cases
43. In support of the contention of the Official Receiver, Ms. Cheung also referred to 2 immigration cases: *Fateh Muhammad v. Commissioner of Registration & Another* [2001] 2 HKLRD 659 and *Prem Singh v. Director of Immigration* [2003] 1 HKLRD 550. Both cases were decided by the Court of Final Appeal on the interpretation of Section 2(4)(b) of the Immigration Ordinance.
44. The Immigration Ordinance requires that one has to ordinarily reside in Hong Kong for a continuous period of not less than 7 years to be qualified as a permanent resident. The Appellants in both cases challenged whether their imprisonments would break the counting of the 7 years ordinary and continuous residence. In both cases, the Court of Final Appeal adopted the de minimis principle so that short and trivial imprisonment would not interrupt the continuous residence. The Official Receiver urged this court to adopt the same de minimis principle in construing Section 30A(10) of the Ordinance. It was submitted by the Official Receiver that by ignoring the de minimis principle, it would result in penalizing people who commute regularly for work, for residence or family visit, which are temporary departure with no intention to abscond.
45. It is always emphasized by the court that in interpreting a specific section of an ordinance, the court has to read such section in the context of the ordinance in question. Unless other statute contains exact or substantially similar provision, case law on interpretation of the other statute, unless laying down general principle of law, would only have little relevance. On the other hand, if the term in question was borrowed from another legislation and the same had received judicial interpretation in its other context, such interpretation may be relevant to understanding the meaning of the term in question (see Section 210, Bennion, *Statutory Interpretation*).
46. I must say that the decisions in the said 2 immigration cases have no relevance in aid of the interpretation of Section 30A(10)(b)(i) of the Ordinance. The context under the provisions of the Immigration Ordinance is totally different from that under the Ordinance. The former concerns the right of a person to be a permanent resident after continuous residence for a period of 7 years and what kind of imprisonment would interrupt the continuous residence. Section 30A(10)(b)(i) of the Ordinance concerns duty imposed on the bankrupt to notify his trustee if he wishes to leave Hong Kong and failing such duty, the period of his bankruptcy would be suspended from running. On the other hand, Section 30A(10)(b) of the Ordinance

does not expressly require a continuous departure from Hong Kong before its application. As such, I do not see the justification for application of the de minimis principle in Section 30A (10)(b) of the Ordinance and no such penalty as suggested by the Official Receiver would be imposed on the bankrupt unless he failed his duty to notify. Liberal Interpretation

47. Finally, the Official Receiver relied upon Section 19 of the Interpretation and General Clauses Ordinance (Chapter 1) in ascertaining the true meaning of Section 30A(10) of the Ordinance.
48. Section 19 provides: An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.
49. The Official Receiver suggested that when there are a number of meanings to a word, the true meaning of the word in any particular statute must be construed from the context in which it was used and the object of the enactment. According to the Official Receiver, the object of the introduction of automatic discharge under Section 30A was to give a greater incentive to co-operate with the trustee and the rehabilitation of a bankrupt would be assured subject to the delay of such rehabilitation resulted from the own failings of the bankrupt. It was contended by the Official Receiver that it would go against the said objective if Section 30A (10) was interpreted in such a way that a transient departure from Hong Kong would be caught and the relevant period of bankruptcy would cease to run. The true meaning of the word leave Hong Kong , as argued by the Official Receiver, should be to go away from Hong Kong permanently.
50. It appears that Section 19 requires no more than a purposive construction of a statute to give effect to what was fairly construed as the legislature s intention.
51. While I have no doubt on the objective of the automatic discharge of a bankrupt as suggested by the Official Receiver, I cannot come up with the same interpretation as contended by him. As decided above, the plain meaning of the provision clearly impose a straightforward and positive duty on the bankrupt to notify his trustee if he intends to leave Hong Kong for whatever period. The requirement to notify the trustee of the itinerary must cover transient departure from Hong Kong as opposed to leaving Hong Kong permanently contended by the Official Receiver. Failing such duty, the rehabilitation of the bankrupt should be delayed. Adopting the plain meaning of the provision would not, in my view, defeat the said objective of the enactment. In fact, a number of cases came before me recently whereby those bankrupts who left Hong Kong frequently for transient period failed to notify the trustee as required. These cases presented considerable difficulty to the trustee to locate the whereabouts of the bankrupts and gave rise to problems for the administration of the estate. I see no good reason why Section 30A (10)(b) of the Ordinance should not apply to this kind of frequent-travelling bankrupts.

52. For Section 30A (10)(b)(i) of the Ordinance, I must say that adopting a purposive interpretation will come up with the same conclusion as with adopting the plain meaning rule.

Conclusion

52. In light of the above rulings, I must reject the interpretation of Section 30A(10)(b)(i) of the Ordinance as suggested by the Official Receiver. A bankrupt is required to notify his trustee his itinerary and where he can be contacted if he intends to leave Hong Kong for whatever period; failing which, his period of bankruptcy will cease to run until the bankrupt physically returns to Hong Kong and notifies his trustee of his return.
53. For the cases of Chan and Lin, both of them left Hong Kong frequently without notifying the Official Receiver of their itinerary. Chan left Hong Kong since July last year and did not return to Hong Kong. Lin might have returned to Hong Kong but failed to notify the Official Receiver of his return. Their respective period of bankruptcy should have ceased running from the very first day when they left Hong Kong without notifying the Official Receiver. In the premises, the period of bankruptcy for both Chan and Lin has not yet been expired. As such, the application by the Official Receiver under Section 30A(3) of the Ordinance to suspend the automatic discharge against Chan and Lin is pre-mature. Thus, the application should be dismissed. I make no order as to costs of the application.
54. Finally, I would like to remark that the function of the Court is to interpret the law according to established legal principles. If such interpretation leads to any unfairness to certain classes of persons, it is the administration who should consider whether it is necessary to amend the law in order to meet any social and economic changes in the society. (S. Kwang) Master, High Court Ms. Karen Cheung, Solicitor of the Official Receiver s Office Both Bankrupts absent PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V i\$&`G :1ea :1ea setup ABC Paper.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title _AdHocReviewCycleID _EmailSubject _AuthorEmail _AuthorEmailDisplayName _PreviousAdHocReviewCycleID

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