Appendix below. The warrant for committal must be in Form 105 of the Bankruptcy (Forms) Rules (see Appendix below): see the Bankruptcy Rules, rule 26 in the Appendix. Pursuant to the issuance of a warrant of committal under Form 105 of the Bankruptcy (Forms) Rules (see Appendix below), the bankrupt will be delivered to the Commissioner of Correctional Service and held in custody until such time as the court may order. For form of an order for discharge, see Form 106 of the Bankruptcy (Forms) Rules in the Appendix below.

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved beyond reasonable doubt: see *Re Bramblevale Ltd* [1970] Ch 128 at p 137, per Lord Denning MR. A Magistrate has the power to commit a person in a summary way for contempt of court to ensure the due administration of justice, and to preserve the court's dignity and the efficacy of its process However, it has been held that the power to summarily commit for contempt is 'both salutary and dangerous: salutary because it gives those who administer justice the protection necessary to secure justice for the public, dangerous because it deprives a citizen of safeguard generally necessary to secure justice for him': see *Balough v St Alban's Crown Court* [1975] QB 73. Therefore, the rules of natural justice should be observed, and the judge should give the person an opportunity of seeking and taking legal advice and being represented: see *R v K* (1983) 78 Cr App R 82.

An appeal can be made to the Court of Appeal by the person against whom the order for contempt was made, or by the applicant as the case may be, and the Court of Appeal may on the appeal reverse or vary the order or decision of the court, and make such other order as may be just: see s 50 of the High Court Ordinance (Cap 4) (formerly known as the Supreme Court Ordinance).

[18.06] Definitions

For 'Affidavit', 'Official Receiver', and 'trustee', see s 2 above; and for 'bankruptcy order', see s 3(1) above.

Public examination of debtor

19. Public examination of bankrupt

(1) Where a bankruptcy order has been made, the Official Receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.

(Amended 18 of 2005 s 9)

(2) Unless the court otherwise orders, the Official Receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than 1/4 in value of such creditors (including the creditor giving notice).

(Amended 18 of 2005 s 9; E.R. 1 of 2019)

(3) Where one of the bankrupt's creditors, without the requisite concurrence under subsection (2), so requests, the Official Receiver shall make an application under subsection (1) but, notwithstanding subsection (4), the court may decline to direct that a public examination of the bankrupt be held.

(Amended 18 of 2005 s 9)

(4) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4A) The trustee may, before or at any time after making an application under subsection (1), in writing request the creditor at whose instance the application is made to deposit with him within the specified time such sum or further sum as he considers necessary to pay his costs and expenses in holding the public examination.

(Added 18 of 2005 s 9)

(4B) Notwithstanding anything in subsections (2) and (3), the trustee may refuse to make an application under subsection (1) or discontinue the public examination concerned if the creditor to whom a request is made under subsection (4A) fails to comply with the request.

(Added 18 of 2005 s 9)

(5) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure—

(a) the Official Receiver and, in the case of a debtor adjudged bankrupt on a petition under section 3(1)(d), the Official Petitioner;

(b) the trustee;

(Added 18 of 2005 s 9)

(c) any person who has been appointed as special manager of the bankrupt's estate or business;

(d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(6) The bankrupt may, but not at the expense of the estate, employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answer given by him, and may

make representations on his behalf.

(7) There shall be made in writing such record of the examination as the court thinks proper and the record shall be read over either to or by the bankrupt, signed by him, and verified by affidavit at a venue fixed by the court.

(8) *(Repealed 18 of 2005 s 9)*

(9) It shall be the duty of a bankrupt examined under this section to answer all questions that the court may put or allow to be put to him.

(10) Evidence given on oath under this section shall not be admissible in criminal proceedings other than for perjury by the person who gave it.

(Replaced 76 of 1996 s 13)

[19.01] Enactment history

This section was substituted pursuant to s 13 of the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996), commencing 1 April 1998.

Subsections (1), (2), (3) & (5) will be amended pursuant to s 9 of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005).

Subsections (4A) & (4B) will be added pursuant to s 9 of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005).

Subsection (8) will be repealed pursuant to s 9 of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005).

[19.02] England

Cf s 290 of the Insolvency Act 1986 c 45 (UK).

[19.03] General note

Public examination of debtors are held 'not merely for the purposes of debt collecting on behalf of creditors or of ascertaining simply what sum can be made available for the creditors who are entitled to it, but also for the purpose that the public shall be protected in the cases in which bankruptcy proceedings apply, and that there shall be a full and searching examination as to what has been the conduct of the debtor, in order that a full report may be made to the court by those who are charged to carry out the examination of the debtor. To concentrate attention on the mere debt collecting and distribution of assets is to fail to appreciate one very important side of bankruptcy proceeding and law ... the duty of the Official Receiver is a wide one and a wide one in the interests of the public': see *Re Paget, ex p Official Receiver* [1927] All ER Rep 465 at p 465, per Lord Hanworth MR.

See also the *Report on Bankruptcy* (May 1995) of the Law Reform Commission of Hong Kong, para 11.2, at p 94.

Although examination of debtors is an important aspect of bankruptcy proceedings, it has only been held in a very small number of bankruptcy proceedings since 1983. One reason is that under the pre-amendment practice, debtors were usually co-operative and were willing to provide sufficient information to the Official Receiver upon the making of the receiving order: see the *Report on Bankruptcy* (May 1995) of the Law Reform Commission of Hong Kong para 11.20, at p 99. Under the old s 19, the court must hold a public examination upon the making of a receiving order except in exceptional circumstances, such as where the Official Receiver applies for the dispensation of the examination. On the basis of recommendations made by the Law Reform Commission of Hong Kong, the new s 19 was enacted which abolished the requirement for a public examination upon the making of a receiving order. The Official Receiver was given the discretion to decide when a public examination should be held.

[19.04] Subsection (1): The Official Receiver may ... apply to the court for the public examination

The application to the court for a public examination of the bankrupt by the Official Receiver must be made inter partes and be supported by a report setting out the grounds of the examination: see the Bankruptcy Rules, rule 82A(1) in the Appendix below.

When an order for public examination is made by the court, unless otherwise ordered by the court, the Official Receiver has to conduct a preliminary examination of the bankrupt as to his affairs For provisions relating to preliminary examinations: see the Bankruptcy Rules, rule 82B in the Appendix below.

Even if a bankrupt is automatically discharged under s 30A, if a public examination is adjourned and not yet completed, the discharged bankrupt is still under a duty to supply information to the Official Receiver. The property of the discharged bankrupt vested in the Official Receiver as his trustee remains so vested for the benefit of those who were his creditors at the time of his bankruptcy. The discharged bankrupt remains under an obligation to assist the Official Receiver by continuing to provide information in relation to his affairs, and doing such things as the Official Receiver requires for the purpose of completing the administration of his estate: see s 30A(8) of the Ordinance. See also *Re Li Tat Kong* (unreported, HCB 741/1995, 23 December 2002).

For power of the court to adjourn *sine die* the public examination: see the Bankruptcy Rules, rule 83 in the Appendix below.

For power of the court to reconvene a public examination adjourned sine die: see the Bankruptcy Rules, rule 84 in the Appendix below.

For duty of the Official Receiver to inform all relevant persons of the public examination or a public examination adjourned sine die: see the Bankruptcy Rules, rule 86 in the Appendix below.

[19.05] Subsection (6): Solicitor ... counsel

The word 'counsel' means a person admitted to practice as counsel before the Court of First Instance (formerly known as the 'High Court'); and the word 'solicitor' means a person admitted to practice as a solicitor before the Court of First Instance (formerly known as the 'High Court'): see s 3 of the Interpretation and General Clauses Ordinance (Cap 1).

[19.06] Subsection (8): Frivolous or vexatious

The words 'frivolous or vexatious' are not defined in the Ordinance. An examination is frivolous and vexatious if the questions put at the examination were not made in the interests of the creditors: see *Re Hope, ex p Hope* (1878) 9 Ch D 398.

The words 'frivolous or vexatious' also appear in O 18 r 19 of the Rules of the High Court (formerly known as the Rules of the Supreme Court) and s 27(1) of the High Court Ordinance(Cap 4). The meaning of these words is often considered in the context of legal proceedings which are instituted without reasonable grounds The court is then allowed to strike out or dismiss the proceeding on the ground that the action is frivolous or vexatious.

[19.07] Subsection (9): Duty ... to answer all questions

For persons who may take part in the public examination of the bankrupt and question him concerning his affairs: see subsection (5) above.

The purpose of public examination of debtors is that there shall be a full and complete examination and disclosure of the facts relating to the bankruptcy in the interests of the public and not merely in the interests of those who are the creditors of the debtors to the bankrupt's estate. A debtor is not entitled to refuse to answer any questions put to him in the course of the examination on the ground that the answers may incriminate him; he is under a duty to answer all questions that the court may put or allow to be put to him: see *Re Atherton* [1912] 2 KB 251, followed in *Re Paget, ex parte Official Receiver* [1927] All ER Rep 465. Evidence given on oath, however, is inadmissible in any criminal proceedings against the bankrupt except in proceedings for perjury against him.

Answers given by the bankrupt at his public examination are admissible against him in any civil proceedings: see *Re A Solicitor* (1890) 25 QBD 17, and *Re Cunningham* (1899) 6 Mans 199. But these answers are not, however, admissible in subsequent motions in the same bankruptcy against parties other than the bankrupt: see *Re Brunner* (1887) 19 QBD 572.

It is well established that where a debtor refuses or fails to answer a question which has been allowed by the court to be put to him, such refusal or failure can be punished as a civil contempt, and that in certain circumstances, such a course may open to the court notwithstanding that the witness has purported to answer the question put: see eg, *Coward v Stapleton* (1953) 90 CLR 573. However, as the High Court of Australia pointed out in its judgment in that case (at p 578):

> It is only in a strictly limited class of cases that a witness can properly be convicted of refusing to answer a question which he has purported to answer.