

ZHONG LUN PRACTICE NEWS

First Court of Final Appeal case of Zhong Lun HK Office

On 5 November 2015, Mr. Louis Pe, Partner of Zhong Lun Law Firm Hong Kong Office (“ZLHK”) and his team has successfully challenged the constitutionality of s.30A(10)(a) of the Bankruptcy Ordinance (“BO”) in the Hong Kong Court of Final Appeal (FACV No.8 of 2015).

The client was Korean Hong Kong permanent resident living abroad from 2003 to 2012. He was adjudged bankrupt by the Hong Kong court in December 2006. Under normal circumstances, his bankruptcy order would have been automatically discharged after 4 years, i.e. in 2010. However, under s.30A(10)(a) of BO, the time would not start to run until (i) he returns to Hong Kong; and (ii) notifies the trustee in bankruptcy of his return. Given such circumstances, our client’s bankruptcy order was still effective in 2015, 10 years after it was made.

ZLHK took out an application to the High Court for a declaration that s.30A(10)(a) of BO was unconstitutional as it infringed the freedom to travel and to enter and leave Hong Kong guaranteed under the Basic Law and the Hong Kong Bill of Rights Ordinance. The application was however, dismissed.

We then appealed to the Court of Appeal who reversed the decision of the High Court; and the Official Receiver appealed to the Court of Final Appeal. In the end, the Court of Final Appeal ruled in our client’s favour and his bankruptcy order was discharged. As a collateral result, over 2,000 other individuals who were abroad during the time of their bankruptcy orders also have their orders discharged.

The Hong Kong Legislative Council now has to redraft the relevant provisions in the Bankruptcy Ordinance.

This is the first Final Court of Appeal case handled by Zhong Lun Law Firm since its change of name on 30 March 2015.

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Hong Kong Judiciary Press Release:

http://legalref.judiciary.gov.hk/doc/judg/html/vetted/other/en/2015/FACV000008_2015_files/FA CV000008_2015ES.htm

