

SUMMARY OF KEY REFORMS MADE BY THE BANKRUPTCY (AMENDMENT) BILL

(A) Introduction

1. The Bankruptcy (Amendment) Bill (the “Bill”) seeks to introduce reforms to Singapore’s bankruptcy regime via various amendments to the Bankruptcy Act (“Act”). These include:

- (a) Increasing the debt threshold for bankruptcy from \$10,000 to \$15,000;
- (b) Mandating the appointment of private trustees when defined “institutional creditors” apply to bankrupt individuals;
- (c) Introducing a differentiated discharge framework;
- (d) Adopting the recommendations of the ILRC Report; and
- (e) Miscellaneous and technical amendments to the Act.

2. Through this public consultation, the Ministry of Law (“MinLaw”) seeks the public’s views on the reforms that will be introduced by the Bill. A summary of the key reforms is set out below.

(B) Increasing the Debt Threshold from \$10,000 to \$15,000

3. When the bankruptcy debt threshold was last revised to \$10,000 in 1999, this figure was equivalent to (i) the 36th to 40th percentile of the average annual household income (excluding employer CPF contributions) per household member amongst resident employed households, and (ii) the 10th percentile of the gross annual income from work (excluding employer CPF contributions) of full-time employed residents aged 21 years and above. By 2012, these figures have increased to around \$18,000 and \$13,000 respectively. It is proposed that the debt threshold be increased to \$15,000, which is the midpoint of the two benchmarks.

4. Taking into account the effects of inflation over the intervening years, the policy rationale for this reform is to encourage debtors and creditors to resolve debts falling below the threshold without having to resort to the formal bankruptcy process. This will help debtors falling below the revised threshold avoid the inconvenience and stigma associated with bankruptcy.

(C) Mandating the Appointment of Private Trustees for Defined “Institutional Creditors”

5. At present, the Official Assignee (“OA”) administers the vast majority of bankruptcies in Singapore. This is notwithstanding that the Act allows for the appointment of private trustees in bankruptcy, and large corporate institutional creditors have sufficient resources and are well-placed to appoint such trustees.

6. With the growing sophistication of institutional creditors, it is timely for them to play a more active role in the administration of bankruptcy and be incentivised to undertake better risk assessments before granting credit.

i. The role of institutional creditors

7. Amendments in the Bill will require an “institutional creditor” to nominate a private trustee to administer the bankruptcy (instead of the OA) when bringing a bankruptcy application. As a public agency, the OA will focus its resources on administering cases where the applicant creditor is either an individual or a small business.

8. “Institutional creditors” will mean either (i) banks and finance companies regulated by MAS; or (ii) business undertakings with annual sales turnover of more than \$100 million and more than 200 employees.

ii. Resignation of private trustees

9. To ensure continuity in cases where a private trustee wishes to vacate office, a private trustee cannot resign from office unless: (i) a report on the work done in relation to the bankruptcy has been submitted to the OA; (ii) another trustee in bankruptcy who consents to act has been nominated to act in place of the outgoing private trustee; and (iii) the bankrupt’s creditors have been given notice of the private trustee’s intention to resign and the name of the replacement trustee.

10. In exceptional cases, when a private trustee has taken reasonable efforts but is unable to find a replacement, the OA may consent to take over the administration of the estate where there are valid reasons to do so, such as where the major tasks in the bankruptcy administration have been completed, a significant amount of money or property has been realised or collected from the bankrupt, and there is only a small amount of work left to do before discharging the bankrupt.

iii. Private trustee’s costs

11. As is currently the case, the costs of the private trustee will be paid out of the bankrupt’s estate in priority to the claims of the bankrupt’s creditors, after approval is obtained from the creditors’ committee, the general body of creditors, or the court. The private trustee may also enter into a separate agreement with the creditors (including the appointing institutional creditor) to indemnify the private trustee for any costs that are not recoverable from the estate in bankruptcy.

iv. Supervision of private trustees

12. The OA has powers under section 39 of the Act to supervise private trustees and conduct investigations into the private trustee’s administration of a bankruptcy. Additionally, under the differentiated discharge framework, once a bankruptcy exceeds its 5-year mark (or 7-year mark for repeat bankruptcies), the private trustee will be required to submit an annual report to the OA on the administration of the bankruptcy. The OA will be able to monitor private trustees through such powers and reports.

(D) Introducing a Differentiated Discharge Framework

13. As there are presently no statutorily mandated exit points for bankrupts to be discharged, bankruptcy administration is often lengthy. This prolonged period of bankruptcy has not necessarily benefitted creditors, as debt recovery rates have remained low on the whole. Bankrupts may also not be incentivised to work towards their discharge. It is thus intended to introduce a more rehabilitative regime to allow bankrupts to be discharged within clear time frames, where justifiable. This will give bankrupts an incentive to achieve their discharge. At the same time, adequate punitive measures will be imposed to prevent moral hazard.

14. Amendments in the draft Bill propose reforms to the present system of discharge by way of an OA Certificate by introducing a new “differentiated discharge” framework. This is in addition to the present method of discharge by a court order, which will remain unchanged.

15. Under the differentiated discharge framework, “first-time bankrupts” (i.e. persons who have not been made bankrupt previously) will generally be eligible for discharge in 5 to 7 years. “Repeat bankrupts” (i.e. persons who have previously been discharged from bankruptcy) will generally be eligible for discharge in 7 to 9 years. The bankrupt’s eligibility for discharge will depend on whether he has met his Target Contribution to the bankruptcy estate over the course of the bankruptcy.

16. The key components of the new differentiated discharge framework are as follows.

i. Start of the administration of the differentiated discharge framework

17. The differentiated discharge framework will begin on the date a bankrupt satisfactorily submits his statement of affairs (“Statement of Affairs”). This will be known as the “Administration Date” and the timelines of the framework, including those for discharge, will run from the Administration Date. This will incentivise bankrupts to submit their Statement of Affairs promptly.

ii. Monthly and Target Contributions

18. After the bankrupt submits his Statement of Affairs, the trustee in bankruptcy will determine the bankrupt’s “Monthly Contribution” based on the information contained in the Statement of Affairs. The Monthly Contribution will reflect the amount that the bankrupt ought to contribute to the bankruptcy estate having regard to his income (or income that he is reasonably expected to earn) and the expenses for the necessary maintenance of himself and his family.

19. Once the Monthly Contribution has been determined, the trustee in bankruptcy will also determine the “Target Contribution”. This is the total amount that the bankrupt is obliged to pay into the bankruptcy estate from income he has earned during bankruptcy in order to become eligible for a discharge. All other property of the bankrupt that is divisible amongst the creditors will continue to be realised by the trustee in bankruptcy and be distributed to the creditors. The Target Contribution will be ascertained once the trustee in bankruptcy determines the monthly contributions, specifically:

- (a) For a first-time bankrupt, the target contribution will be equivalent to 52 monthly contributions; and
- (b) For a repeat bankrupt, the target contribution will be equivalent to 76 monthly contributions.

(These being the number of monthly contributions that the bankrupt will pay if he is discharged after 5 or 7 years respectively from the Administration Date, accounting for 2 months for the trustee to determine the monthly contribution and 6 months to process the bankrupt's discharge.)

20. After the Monthly Contribution and Target Contribution have been determined, the trustee in bankruptcy will serve notice of his determination on the bankrupt and creditors. If the bankrupt or any creditor is dissatisfied with the trustee's determination, they are entitled to appeal to court.

21. The Monthly Contribution and the Target Contribution will generally not vary over the course of the bankruptcy. This will ensure that bankrupts have a clear goal to meet to become eligible for their discharge.

22. In exceptional cases, the Court may vary the Monthly Contribution and Target Contribution. For example, (i) if the bankrupt concealed or withheld information which would have a significant impact on the determination of the Monthly Contribution and Target Contribution; or (ii) if information which would have had a significant impact on the Monthly Contribution and Target Contribution was not available at the time of the determination but later becomes available.

23. The trustee in bankruptcy may also reduce the Monthly Contribution and Target Contribution in certain circumstances, for example, (i) where there has been an increase in the number of the members of the bankrupt's family; (ii) the monthly income of the bankrupt's spouse has been substantially reduced, and such reduction is not transient; or (iii) the bankrupt is unable to pay the Target Contribution in full due to his personal circumstances such as debilitating illness which causes a substantial reduction of the bankrupt's income for the remaining period of his bankruptcy.

24. Variation of the Contributions will generally not have retrospective effect.

25. The bankrupt's monthly payments of the Monthly Contribution will go towards satisfying the Target Contribution. Additionally, the Target Contribution may be paid from sources that do not originate from the bankrupt's estate, such as payments from third parties and payments from the bankrupt's surplus income.

26. The failure of a bankrupt to pay a Monthly Contribution in a given month will not constitute an offence or attract a specific penalty. However, if the bankrupt fails to pay the Monthly Contribution regularly, he will not have paid the Target Contribution within 5 (or 7) years and will only become eligible for discharge at a later date. Conversely, if the bankrupt

pays an amount greater than the Monthly Contribution each month, he will become eligible for discharge earlier. This reflects the policy intent to give bankrupts greater control over their eligibility for discharge.

iii. Timelines for discharge from bankruptcy

27. A first-time bankrupt will become eligible for discharge:

(a) during the period between 3 to 5 years from the Administration Date, if he pays the Target Contribution in full and no creditors object to the discharge;

(b) during the period between 5 to 7 years from the Administration date, if he pays the Target Contribution in full; and

(c) after 7 years from the Administration Date, even if he has not paid the Target Contribution in full.

For repeat bankrupts, each of these timelines will be extended by 2 years.

28. Under certain extenuating circumstances, a first-time bankrupt may be discharged after 3 years even if the Target Contribution has not been paid in full (this will be 5 years for repeat bankrupts). These circumstances are where the bankrupt has died (as the bankruptcy regime will still continue to apply to the deceased's estate), or where he has suffered such personal circumstances causing him to be unable to earn any meaningful income.

29. If the bankrupt goes overseas without seeking prior approval from the OA, or remains overseas after such approval has expired, the bankrupt will be committing a 'disqualifying act'. The period of time in which the disqualifying act is continuing and not rectified will not be factored into the counting of the timelines for discharge. A bankrupt's eligibility for discharge will thus be delayed, possibly indefinitely, if he commits a continuing disqualifying act. MinLaw welcomes views on whether any other acts committed by bankrupts ought to be deemed as 'disqualifying acts' and attract similar consequences.

30. For cases administered by private trustees, the OA will review these cases 5 years after the Administration Date (7 years in the case of repeat bankrupts). If the OA is of the view that the Monthly Contribution and Target Contribution fixed by the private trustee have been excessive and the bankrupt has paid in at least an amount equivalent to what the OA may have determined if the OA were the trustee in bankruptcy of the case, then the OA may consider taking steps to discharge the bankrupt.

iv. Objections to discharge

31. When the bankrupt qualifies for a discharge in accordance with the timelines set out above, the trustee in bankruptcy will trigger the discharge process by giving notice to the creditors of the intention to discharge the bankrupt.

32. Where the bankrupt is eligible for discharge pursuant to paragraphs 27(a) or 28, creditors who wish to object to the discharge will give notice of their objection to the trustee in bankruptcy. If any objections are made, the bankrupt will not be discharged.

33. In all other cases where a bankrupt is eligible for discharge and creditors wish to object, they will have to do so by applying to court. If the OA is the trustee in bankruptcy, the objecting creditor must nominate a private trustee who consents to take over the case from the OA in the event that the objection is granted.

34. The Court hearing an application to object to a bankrupt's discharge will be able to:

- (a) make an order to discharge the bankrupt;
- (b) impose conditions on the discharge of the bankrupt;
- (c) direct that the OA not issue an OA Certificate for up to 2 years; and
- (d) appoint a nominated private trustee in place of the OA.

35. The Court will not be able to prohibit the OA from issuing an OA Certificate 9 years (for first-time bankrupts) or 11 years (for repeat bankrupts) after the Administration Date (subject to the bankrupt committing a disqualifying act under paragraph 29, in which case the period of time in which the disqualifying act is continuing will be discounted).

vii. Supporting features

36. The following reforms will also be made to support the differentiated discharge framework.

Record of discharged bankrupts

37. The OA will maintain a record of the name and relevant particulars of every person who has been discharged from bankruptcy. This record will be made available for public search on payment of a prescribed fee.

38. If a bankrupt has paid his Target Contribution in full prior to his discharge, his name and particulars will not be made available for public search after 5 years from the date of his discharge. If the bankrupt does not pay the Target Contribution in full, his name remains on the record permanently for public inspection. This will incentivise bankrupts to pay their Target Contribution in full prior to discharge, while carrying a punitive element for those who fail to do so.

Deadline for creditors to file proofs of debt

39. To ensure that creditors file their proofs of debt promptly, a cut-off date of 4 months after the Administration Date will be imposed. A creditor who does not file his proof of debt within the deadline will be excluded from the benefit of any distributions made from the

bankrupt’s estate. A creditor who requires an extension of time to file his proof of debt will need to make an application to court.

Forfeiture of trustee’s security deposit

40. To ensure that private trustees administer the differentiated discharge process with diligence, the OA will be entitled to forfeit the security deposit furnished by the private trustees if they fail to determine the Monthly Contribution and Target Contribution within 2 months from the Administration Date, or fail to submit reports to the OA as required.

(E) ILRC Report Recommendations

41. The Bill will adopt the recommendations made in the ILRC Report and introduce amendments to give effect to ILRC Recommendations 2.5, 3.2, 3.5, 3.6, 3.7 and 3.8.

(F) Technical amendments

42. In addition to the reforms proposed above, MinLaw will also be proposing miscellaneous technical and consequential amendments to the Act. The table below highlights some of these remaining amendments.

Clause No.	Section in the Act	Change / Rationale
2	2	Amendments to the definition of secured creditor to include “other sufficient security”.
3	31	<p><u>Section 31(1A)</u> Amended to provide for the OA to apply to court for directions in matters relating the bankruptcy or to rectify or reverse a previous decision or act of the OA, eg upon discovery of fraud by the bankrupt or an innocent administrative error on the OA’s part.</p> <p><u>Section 31(3)</u> To permit the review of a decision or act of the OA notwithstanding the discharge of the bankrupt or the annulment of the bankruptcy order.</p>
4	32	<p><u>Section 32(3)</u> Provides the OA and the OA’s officers immunity from personal liability in connection with the exercise of powers or performance of duties under sections 19, 24, 82A, 95A, 108, 113, 116, 123A, 125, 132A, 163 or 165(3) of the Act.</p>
20	82	<p><u>Section 82(1)</u> Section 82(1)(a) has been amended such that the bankrupt will submit an account of his receipts and expenses when</p>

		directed to do so by the OA, instead of every 6 months. Section 82(1)(b) will be deleted in view of the introduction of the differentiated discharge framework. As the bankrupt will only be obliged to pay up to his monthly contribution each month, there should not be a need to examine the account of his receipts and expenses every 6 months.
21	82A	<u>Section 82A</u> Gives the OA powers to conduct examinations of the bankrupt and certain persons in relation to the bankrupt's affairs, dealings and property and also to require the bankrupt or such persons to produce books and documents.
26	90	<u>Section 90(1)(a)</u> Previously, the same priority was afforded to the OA in respect of the costs and expenses of administration, the applicant in respect of the costs for the bankruptcy order, and the nominee in respect of the costs and expenses incurred in the administration of a voluntary arrangement. Section 90(1)(a) is amended to now provide that while as a class the OA, the applicant in a bankruptcy order, and the nominee take priority over other debts, as between these three parties, the costs of the OA take priority.
27	94	<u>Section 94</u> Provides that where parties agree to a lower rate of interest than that set out in the Rules of Court, the lower agreed interest will apply. Previously, contractual interest is automatically adjusted to the rate fixed by the Rules of Court even if the agreed interest was a lower figure.
32	102	<u>Section 102(3A), (5) and (7)</u> These new subsections introduce a presumption against raising the good faith defence in section 102(3) for transactions at an undervalue or undue preferences in certain circumstances, specifically, when the person relying on the good faith defence: <ul style="list-style-type: none"> - has notice of the bankruptcy or that a bankruptcy application has been made; or - is an associate of or is connected with the bankrupt or with the person that received the transaction at an undervalue or undue preference.

37	123	<u>Section 123(1A)</u> New language has been inserted into section 123(1)(a) to impose a 12-month deadline (subject to the court granting an extension of time) on the making of the annulment of a bankruptcy order on the grounds that the bankruptcy order should not have been made.
42	132A	<u>Section 132A</u> Grants the OA powers for the purpose of investigating offences committed under the Act.
44, 46, 47	135, 139, 141	<u>Sections 135(b) and (d), 139(a) and 141(1)(a)</u> Amends the relevant amount before an offence is committed from \$500 to \$1,000 (or such higher amount as may be prescribed).
47	141	<u>Section 141(3)(c)</u> New subsection creates an offence where a bankrupt provides a guarantee, indemnity or security on behalf of another person of not less than \$1,000 (or such higher amount as may be prescribed), without informing the lender that he is an undischarged bankrupt.
48	143	<u>Section 143(1)</u> The length of time from the making of the bankruptcy application within which it is an offence for the bankrupt to have contributed to or increased his insolvency by gambling is changed from 2 years to 12 months.
49	148	<u>Section 148(8)</u> Amendments made to clarify that the duties and obligations of the bankrupt are to be carried out by the personal representative.
51	157	<u>Section 157</u> Amendments made to reflect that any summons, order, notice or document to be served on a person under provisions of this Act, including court summons issued in connection with offences in the Act, may be served in accordance with this section, including by registered post.
52	161	<u>Section 161</u> The section will be repealed as creditors are already able to obtain key records and documents relating to the bankruptcy estate under other specific provisions e.g. sections 25(1)(b), 26(2), 29 and 81(7).