



A MORE REHABILITATIVE FRAMEWORK FOR BANKRUPTS BANKRUPTCY (AMENDMENT) BILL 2015

A note from Indranee Rajah S.C., Senior Minister of State for Law

A NEW REHABILITATIVE BANKRUPTCY FRAMEWORK

On 14 July 2015, the Bankruptcy (Amendment) Bill was passed by Parliament. The amendments create a more rehabilitative framework for bankrupts and facilitate the discharge of bankrupts who make serious efforts to pay their debts. It also encourages prudent lending by creditors. The Bill:

- Raises the minimum debt threshold to apply for bankruptcy;
- Provides for expedited bankruptcy applications where there is a danger of dissipation or diminution of assets;
- Requires institutional creditors to appoint private trustees instead of the Official Assignee (“OA”) in certain circumstances; and
- Introduces a differentiated discharge framework.

My second reading speech and the Bankruptcy (Amendment) Bill 2015 can be accessed [here](#). The main reforms are set out below.

RAISING THE DEBT THRESHOLD

The minimum debt amount for making a person a bankrupt has been increased from \$10,000 to \$15,000.

EXPEDITED BANKRUPTCY APPLICATION

A creditor can now make an expedited bankruptcy application before the expiry of the 21-day period in the statutory demand if there is serious possibility that the debtor’s property will be significantly diminished during this period.

A creditor can appoint an interim receiver, or trigger statutory restrictions against dispositions of and execution against the debtor’s property, thereby preserving distributable assets at an earlier stage.

However, the Court will not make a bankruptcy order until the 21-day period expires. This ensures that debtors will still have the full 21-day period to settle or set aside the statutory demand.

APPOINTMENT OF PRIVATE TRUSTEES

Presently, the OA acts as the trustee in over 99% of bankruptcies, because it is not mandatory to appoint a private trustee to act as a trustee in bankruptcy. Around 60% of bankruptcies are initiated by institutional creditors. This means the State (and hence the taxpayer) bears the bulk of the cost of resolving debts entered into between private parties, the majority of which are brought by institutional lenders. The question is whether ordinary taxpayers should bear the costs of bankruptcy administration when the creditor is a large institution. Our view is that in this scenario the institutions should bear the costs of administration. Where the person initiating the bankruptcy is an individual, a small business or the bankrupt himself, the State will continue to bear the cost of administration.

Going forward, therefore, institutional creditors will have to nominate private trustees to be appointed to administer a bankruptcy (instead of the OA), if they (or their subsidiaries) are applying to bankrupt the debtor. If the debt was initially incurred to an institutional creditor, a private trustee would similarly have to be appointed.

Institutional creditors are defined under Section 33 of the amended Act as:

- Banks or finance companies that are regulated by the Monetary Authority of Singapore; or
- Business undertakings with more than \$100 million annual sales turnover and more than 200 employees.

The Bankruptcy Rules will provide that the supporting affidavit must contain a declaration as to whether the applicant is an institutional creditor or its subsidiary.

The OA will administer the bankruptcy where:

- The bankruptcy application is made by the debtor; or
- The petitioning creditors are not institutional creditors or their subsidiaries.

Where more than half the bankrupt's creditors are institutional creditors, the creditors as a whole will be invited to appoint a private trustee.

If they do so, they may have to bear the costs of the private trustee (should the bankrupt's estate be insufficient to cover the costs).

If the creditors decline to appoint a private trustee, the OA will remain the trustee in bankruptcy but will not be required to incur further expense to realise and distribute the bankrupt's property.

DIFFERENTIATED DISCHARGE FRAMEWORK

The current law provides for discharge by:

- Certificate issued by the OA; or
- Order of Court.

The amendments introduce a differentiated discharge framework which gives bankrupts clear targets and time-frames to work towards being eligible for discharge through a certificate issued by the OA. This framework strikes a balance between holding bankrupts accountable and giving them an opportunity to make a fresh start after a reasonable period of time. The clear time-frames also address one of the key issues that bankrupts have — when they can be discharged.

The existing procedure for discharge by an Order of Court remains unchanged.

After the Statement of Affairs is finalised (the “Administration Date”), the trustee in bankruptcy will calculate a Target Contribution. The bankrupt is expected to meet these targets and the bankrupt’s eligibility for discharge will depend largely on whether and when he has met this Target Contribution.

Once determined, the Target Contribution will not generally be varied without good reason. The Target Contribution may be varied by:

- The Court, on application by a creditor or the bankrupt;
- The trustee administering the bankruptcy, who can reduce the Target Contribution if certain criteria is met (this reduction can be further reviewed by a court); or
- The OA, in cases administered by a private trustee. The OA can reduce the Target Contribution five years after the Administration Date, if the OA is of opinion that the Target Contribution is excessive.

The bankrupt will become eligible for discharge if certain conditions are met within fixed time periods. The time periods differ for first-time or repeat bankruptcies. Creditors will have the opportunity to object to the discharge. Details are set out below.

First-time Bankrupt	Repeat Bankrupt	Condition	Creditor Objections
3-5 years after Administration Date	5-7 years after Administration Date	Target Contribution paid in full or extenuating circumstances exist (e.g. the bankrupt has died or is unable to earn a meaningful income).	Bankrupt will not be discharged if a majority in number or 25% in value of the bankrupt’s creditors oppose the discharge.
5-7 years after Administration Date	7-9 years after Administration Date	Target Contribution paid in full or extenuating circumstances exist.	Creditors may apply to Court to oppose the discharge.
7 years after Administration Date	9 years after Administration Date	Target Contribution not paid in full.	Creditors may apply to Court to oppose the discharge.

These timelines will be suspended if the bankrupt travels or remains overseas without permission from his trustee in bankruptcy.

After the bankrupt has been discharged, his record will remain on a public register maintained by the OA. If the bankrupt had paid his Target Contribution in full, his record will be expunged five years after the date of discharge. Otherwise, the records will remain on the register permanently.

MISCELLANEOUS REFORMS

Other miscellaneous reforms in the Bill include:

- Not requiring trustees in bankruptcy to incur further expense in administering a bankruptcy, if there are insufficient assets;
- A requirement that creditors file proofs of debts within four months from the Administration Date. In limited circumstances, extensions of time can be granted by the Court or the trustee in bankruptcy;
- A new defence for certain bankruptcy offences where the bankrupt did not know, or have reason to know, of his bankruptcy;
- Revision of the elements of certain bankruptcy offences; and
- New investigatory powers and powers to forfeit a private trustee's security deposit for the OA.

CONCLUSION

The revised bankruptcy framework balances the interests of debtors, creditors and the wider society. It ensures bankrupts are held accountable for their debts and incentivises repayment and timely submission of the Statement of Affairs, while allowing them to make a fresh start after a reasonable period. It also encourages creditors to exercise financial prudence when extending credit, and allows for better utilisation of public resources in the administration of bankruptcy.

*– Indraneel Rajah S.C., Senior Minister of State for Law
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