

THE BASICS OF BANKRUPTCY IN SINGAPORE*

*Money, money, money, must be funny, in
the rich man's world.*¹

I. INTRODUCTION

1 For a potential bankrupt, the notion of “money” is far from funny. Indeed, it is his very lifeblood – the source of both his worry and glee. To bring some assurance and clarity to persons who may have concerns about imminent bankruptcy, this article will outline the general consequences of bankruptcy in Singapore. Along the way, it will also provide some practical solutions to make the best out of such a predicament and also mitigate the hardships of bankruptcy.

II. DISCUSSION

2 Debt, as we know, is part and parcel of adulthood. Indeed, be it the money that you may need to borrow from others at times, or the money that your friend pays for (first) when he orders your share of food, debt plays an important role, lowering transaction costs (whether in terms of time and/or money) in an increasingly commercialised world. Not all debt however opens you up to the risk of being a declared a bankrupt. Under s 61 of the Bankruptcy Act (“**BA**”),² an application for bankruptcy can only be made where the debt has fallen due and is of at least \$15,000. In such a case, your existing creditors³ (and even you)⁴ may opt to bring a bankruptcy application to declare your bankruptcy. So what happens next?

A. AVOIDANCE OF LAWSUITS AND REPAYMENT DEMANDS

3 Once you are declared bankrupt, existing creditors are barred from taking legal action to reclaim debt against you.⁵ Further, you need not accede to any repayment demands of your creditors. Instead, repayment arrangements for bankrupts are tailored to their financial capabilities by an Official Assignee (“**OA**”) – who is a public servant⁶ tasked

* Written by Winie Ao, Year 4 LL.B. Undergraduate, School of Law, Singapore Management University. Edited by Victoria Ang, Year 3 LL.B. Undergraduate, School of Law, Singapore Management University.

¹ “Money, Money, Money” by ABBA.

² Bankruptcy Act (Cap 20, 2009 Rev Ed) (“**BA**”).

³ *Id.*, at s 57(1)(a).

⁴ *Id.*, at s 58(1)(a).

⁵ *Id.*, at s 64.

⁶ *Id.*, at s 20.

with supervising individuals throughout their bankruptcy⁷ – thus relieving you from the demands from your creditors. However, such benefits aside, you should be mentally prepared for the drastic changes in your lifestyle that will be caused by bankruptcy.

B. MONTHLY CONTRIBUTIONS

4 For instance, during bankruptcy, you will be required to make a certain number of monthly contributions (“**target contributions**”)⁸ to be eligible for discharge. Each contribution is meant to be a reasonable amount determined by the OA based on several factors: e.g. the income and credentials of you and your spouse (if any), your estimated household expenses and prevailing economic conditions.⁹

C. SALE OF ASSETS

5 The OA will also sell off your assets and distribute the proceeds amongst your existing creditors.¹⁰ This could include virtually every article of value that you may own, even prospective overseas properties.¹¹ If you conceal,¹² dispose of,¹³ or abscond with¹⁴ such assets or falsify related records,¹⁵ you may be found criminally liable. This means that you may be fined up to \$10,000 and/or imprisoned for up to 3 years.¹⁶ Thus, you should fully disclose all your properties to the OA, even those that you may potentially own, and not attempt to quietly squander those assets.

6 However, “protected assets” will not be sold by the OA.¹⁷ “Protected assets” are items essential for your business or domestic needs, such as Central Provident Fund monies, or Housing Development Board flats.¹⁸ These are retained to prevent you from being paralysed by the bankruptcy, so that you remain capable of maintaining your upkeep. Unfortunately, these assets are often in the minority. Hence, once bankrupt, you should

⁷ *Id.*, at s 21.

⁸ *Id.*, at s 86A.

⁹ *Id.*, at s 86A(2).

¹⁰ *Id.*, at s 78(1).

¹¹ *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2005] 1 SLR(R) 395 (“*Jeyaretnam*”) at [34].

¹² *BA*, *supra* n 2, at s 135.

¹³ *Id.*, at s 138.

¹⁴ *Id.*, at s 139.

¹⁵ *Id.*, at ss 136 and 137.

¹⁶ *Id.*, at s 146.

¹⁷ *Id.*, at s 78(2).

¹⁸ *AVM v AWH* [2015] 4 SLR 1274 at [115].

be mentally prepared to bid most of your belongings goodbye – including artworks, furniture, gifts and, unfortunately, even things of sentimental value.

D. RESTRICTED CONDUCT

7 The day-to-day conduct of a bankrupt is also largely subject to restrictions under the BA. For instance, fines and imprisonment may be imposed if bankrupts gamble¹⁹ or obtain credit of at least \$1,000 without disclosing their bankruptcy status.²⁰ Partaking in the management of a business²¹ (“**business restriction**”) and traveling²² (“**travel restriction**”) will also require the permission of the OA. Similarly, non-Singaporean bankrupts are required to remain in Singapore. You may then wonder – how can I improve my chances of getting approval to travel or manage my business?

8 The answer ultimately lies in compliance. The business restriction prevents bankrupt directors and managers from potentially exploiting corporate structures for their own improper purpose.²³ Hence, if you actively cooperate with the OA and try your best to settle your debts, the OA could deem you trustworthy enough to manage a business.²⁴ Although the OA also considers potential hardships that you and your business may face,²⁵ compliance with the OA's instructions is the most salient factor within your control. Thus, you should cooperate with the OA by submitting documents on time and duly filing for requests to manage your business. This will likely enhance your chances of obtaining the relevant approval. Likewise, as the travel restrictions guard against the dissipation of a bankrupt's assets overseas,²⁶ such permissions are more readily granted to cooperative bankrupts. These approvals could even be automatic for the most well-behaved of bankrupts.²⁷

¹⁹ BA, *supra* n 2, at s 143.

²⁰ *Id.*, at s 141(1)(a).

²¹ Companies Act (Cap 50, 2006 Rev Ed) (“CA”) at s 148(1).

²² BA, *supra* n 2, at s 131(1)(b); see also *Public Prosecutor v Chee Soon Juan* [2007] SGDC 183 at [93].

²³ *Yap Guat Beng v Public Prosecutor* [2011] 2 SLR 689 at [1]-[2].

²⁴ Kala Anandarajah, *Corporate Governance – Practice and Issues* (Academic Publishing, 2010) at para 05-049.

²⁵ *Id.*, at para 05-048.

²⁶ *Singapore Parliamentary Debates, Official Report* (19 January 2009) vol 85 at col 1157 (Assoc Prof Ho Peng Kee; Senior Minister of State for Law); see also *Ganesh s/o M Sinnathamby v Public Prosecutor* [2008] 1 SLR(R) 495 at [17].

²⁷ *Public Prosecutor v Mohamed Mansoor* [2007] SGDC 152 at [7].

9 Finally, even if you harbour dissatisfaction with the OA's refusal to grant permission, it is better to ask the court to review the OA's decision²⁸ instead of disregarding the restrictions altogether. This is because a violation of the restrictions imposed under the BA could attract criminal penalties and make it harder to obtain future approval.

E. OBTAINING DISCHARGE

10 The shackles and hardships of bankruptcy, however, will mostly be released upon discharge. Although bankrupts may still need to collaborate with the OA to repay any outstanding debt post-discharge, they are generally freed from the BA restrictions.²⁹ As an aside, curiously enough, discharge is commonly misconceived to be automatic after the three-year mark in bankruptcy.³⁰ In reality, it will only be granted by either the OA³¹ or the High Court,³² after certain conditions are fulfilled.

(1) DISCHARGE BY CERTIFICATION OF THE OA

11 A first-time bankrupt whose proven debts do not exceed \$500,000³³ may be discharged by the OA at least three to seven years after being declared bankrupt.³⁴ In contrast, a repeat bankrupt requires at least five to nine years.³⁵ Within this range, bankrupts that have repaid their target contributions in full will be discharged earlier: between three to five years for first-timers,³⁶ and five to seven years for repeat bankrupts.³⁷ Thus, the consistent repayment of your target contributions could significantly speed up your release from bankruptcy.

(2) DISCHARGE BY ORDER OF THE HIGH COURT

12 Alternatively, a bankrupt whose proven debts exceed \$500,000³⁸ may apply to the High Court³⁹ to grant him an Order of Discharge. The High Court will make a decision after

²⁸ BA, *supra* n 2, at s 31.

²⁹ For example, the travel restriction under s 131(1)(b) of the BA only applies "where a bankrupt has not obtained discharge" and business restriction under s 148 of the CA only applies to an "undischarged bankrupt".

³⁰ *Singapore Parliamentary Debates, Official Report* (10 March 2004) vol 77 at col 1044 (Prof Jayakumar).

³¹ BA, *supra* n 2, at s 125.

³² *Id.*, at s 124.

³³ Ministry of Law Website, "Discharge from Bankruptcy" <<https://io.mlaw.gov.sg/bankruptcy/information-for-bankrupts/discharge-from-bankruptcy/>> ("***Discharge from Bankruptcy***") (accessed 12 July 2020).

³⁴ BA, *supra* n 2, at s 125(2)(a).

³⁵ *Id.*, at s 125(2)(b).

³⁶ *Id.*, at s 125(2)(a).

³⁷ *Id.*, at s 125(2)(b).

³⁸ Discharge from Bankruptcy, *supra* n 33.

³⁹ BA, *supra* n 2, at s 124.

weighing the interests of both the bankrupt and his creditors.⁴⁰ In this regard, generally, the court will be reluctant to discharge bankrupts who have violated BA restrictions,⁴¹ since these bankrupts may refuse to cooperate with the OA and discontinue repayment efforts post-discharge. On the other hand, the court may also empathise with and thus discharge older bankrupts,⁴² due to the difficulties of sustaining repayment at their age.

F. POST-BANKRUPTCY MATTERS

13 However, even if discharge is granted, it may not be absolute. For instance, the court may still require you to vest newly-acquired properties with the OA for further distribution to creditors if there is still outstanding debt post-discharge.⁴³ This means that the OA has control over your newly-acquired properties and can sell it to satisfy your outstanding debts.⁴⁴ If you disagree with such conditions, you should first consult the OA before applying to court,⁴⁵ so as to ascertain the viability of your concerns. This would invariably help to save time and cost for all parties involved.⁴⁶

14 Alas, even post-discharge, the stigma of bankruptcy may still long continue. Discharged bankrupts that have fully paid off their target contributions can only have their records of bankruptcy removed five years after discharge.⁴⁷ Otherwise, for other discharged bankrupts that have not paid off their target contributions, these records are permanent. These publicly-accessible records may be a potential red flag for future employers and creditors⁴⁸ alike and could also attract social stigma.

III. CONCLUSION

15 The nightmares of bankruptcy might seem endless. From the series of restrictions governing day-to-day conduct to the stressful requirement of monthly contributions, bankruptcy will no doubt be a taxing period for both the bankrupt and his or her loved

⁴⁰ *Jeyaretnam*, *supra* n 11, at [25].

⁴¹ *Id.*, at [28]-[30].

⁴² *Id.*, at [32].

⁴³ BA, *supra* n 2, at s 124(3)(c); see also *Lim Lye Hiang v Official Assignee* [2012] 1 SLR 228 ("*Lim Lye Hiang*") at [46]-[47].

⁴⁴ *Lim Lye Hiang*, *supra* n 43, at [56].

⁴⁵ *Id.*, at [67].

⁴⁶ *Ibid.*

⁴⁷ BA, *supra* n 2, at s 163(1C).

⁴⁸ See Kee Oon, "Alternatives to bankruptcy – The Debt Repayment Scheme ("DRS")" (2008) 20 SAclJ 541 at [3].

ones. Further, the far-reaching and unpredictable effects of bankruptcy post-discharge could also add to their worries.

16 However, there is yet hope of a brighter future. Given the rehabilitative focus of the BA,⁴⁹ the OA and the court will consider various factors that would affect your financial capabilities and needs in their decisions so as to better enable your financial recovery. Moreover, cooperative behaviour, such as adherence to procedural requirements and sustaining repayment efforts, could entitle you to more allowances. This may include managing a business, traveling or even expediting your discharge. Thus bankruptcy, although painful, is not impossible to survive.

17 Ultimately, the law will only help you as much as you help yourself. Although the BA allows for some leniency in guiding the bankrupt towards recovery depending on his or her situation, bankrupt persons would do well to remember that second chances, though possible, must be earned.

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⁴⁹ Ministry of Law Press Release, "More Rehabilitative Bankruptcy Framework to Take Effect from 1 August" (27 July 2016) <[https://www.mlaw.gov.sg/news/press-releases/more-rehabilitative-bankruptcy-framework--to-take-effect-from-1->](https://www.mlaw.gov.sg/news/press-releases/more-rehabilitative-bankruptcy-framework--to-take-effect-from-1-) (accessed 6 July 2020).