

Bankruptcy Information Sheet for Creditors

(Updated 1 August 2016)

1. General Information

a) What is bankruptcy?

Bankruptcy is a process where a debtor is publicly recognised to be unable to pay the debts he owes.

b) How can a person be made bankrupt?

A bankruptcy application can be made by either the debtor or a creditor if the debtor is unable to pay his debts of at least S\$15,000.

In a creditor's application for a debtor to be made bankrupt, the creditor will issue the debtor with a notice known as a Statutory Demand (SD), demanding the payment of a debt owed to the creditor. If the payment is not met within the time stated in the SD, the creditor may proceed to file a bankruptcy application in Court. If the required payment is still not made by the hearing date, the Court may proceed to make a Bankruptcy Order (BO) against the debtor.

A trustee, either a Private Trustee-in-Bankruptcy (PTIB) or the Official Assignee (OA), is then appointed to administer the bankruptcy estate.

c) How can a bankrupt find out who the trustee is?

The BO will contain information on the identity of the appointed trustee for the bankruptcy. For a creditor's application, the BO is usually served on the bankrupt after the hearing by the applicant creditor or the appointed trustee. Additional copies of the BO may be obtained from the High Court at a fee.

d) What is the role of the trustee?

The trustee will be administering the bankrupt's affairs, which includes the selling of bankrupt's assets, verifying the creditor's claims and paying dividends to the creditors. In the course of administration, the trustee is also responsible for assessing the bankrupt's applications such as those made for travelling overseas and acting as a director of a company or taking part in the management of a business. The trustee may also investigate into the bankrupt's conduct and refer breaches of bankruptcy offences to the OA. At the final stage of bankruptcy, the trustee will be able to apply for the discharge of the bankrupt.

e) What are the costs involved in making a bankruptcy application?

A bankruptcy deposit of S\$1,850 must be paid to the OA and the proof of payment is to be presented to the High Court when the bankruptcy application is made. This deposit is required whether the debtor or his creditors apply for the bankruptcy.

In the course of the application, the applicant creditor may also incur other fees such document filing and legal fees.

2. Advice for Creditors Intending to Make Bankruptcy Applications

Commencing bankruptcy proceedings against a debtor will not guarantee the full recovery of the debts owed. A creditor should only commence bankruptcy proceedings against a debtor when all other debt recovery options have been exhausted. Some factors which a creditor should consider before commencing bankruptcy proceedings include:

- i) The cost of bankruptcy proceedings & bankruptcy administration;
- ii) The loss of interest on the principal sum owed after the BO is made;
- iii) The low likelihood of recovering debts in full.

The OA administers a bankrupt's affairs after the making of a BO in cases which the High Court appoints the OA as the trustee-in-bankruptcy. The OA does not assist a creditor or debtor in the application for bankruptcy.

Therefore, a creditor or debtor who intends to do so is expected to familiarise himself with the Bankruptcy Act and the application procedures at the High Court. If in doubt, a creditor or debtor should seek independent legal advice at his own cost.

a) Compulsory nomination of a PTIB in bankruptcy applications

An institutional creditor¹ or its subsidiary is required to nominate a PTIB in his application. Noninstitutional creditors may also nominate a PTIB to administer the bankruptcy if they prefer this.

Candidates who possess the following qualifications will qualify as PTIBs:

- i) A registered public accountant under the Accountants Act (Cap. 2) or an advocate and solicitor; and
- ii) Has not been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.

A written consent from the PTIB to being appointed as trustee must be obtained and submitted along with the creditor's application to the High Court.

In bankruptcy applications made by debtors or non-institutional creditors, the OA will be appointed as the trustee for the bankruptcies unless otherwise ordered by the High Court.

In OA administered bankruptcies where 50% or more in value of the bankrupts' proved debts are owed to institutional creditors, the OA may invite all creditors who have proven their claims to consider appointing a PTIB to administer the bankruptcy. If no PTIB is then appointed to take over from the OA as the trustee, the OA will not be liable to proceed with the realisation of the bankrupt's assets as the OA is legally not liable to incur any further expenses in these activities.

¹ An Institutional Creditor is defined as a bank, a financial company or a creditor which has annual sales turnover of more than \$100 million and has more than 200 employees (section 33(3) of the Bankruptcy Act).

b) Avoid concurrent applications

Before you or your solicitor file a bankruptcy application at the High Court, it is advisable to conduct a Cause Book Search to ascertain whether there is an on-going bankruptcy application already submitted by either another creditor(s) or the debtor himself.

- If there is an existing bankruptcy application made by another creditor, you may wish to approach that creditor and collaborate on the application, e.g. on the appointment of a PTIB or to include yourself as a joint applicant. Concurrent applications should be avoided as the High Court will only grant one BO even if there are multiple bankruptcy applications filed against the same debtor. In the alternative, you may consider withholding your application until the outcome of the earlier application is known.
- If there is an existing bankruptcy application made by the debtor himself and you are interested in nominating a PTIB to deal with the bankruptcy estate, you may approach the applicant debtor to let him know of your intention. Thereafter, you may attend the hearing to raise your request to appoint a PTIB for the High Court's consideration.

c) Applicant creditor responsible for all related costs of the bankruptcy proceedings

The OA is not liable to pay you for the costs of your bankruptcy application, court proceedings, bankruptcy administration and the appointment of a PTIB. These payments may be paid out to you from the bankruptcy estate, if there are sufficient funds to do so.

Please note that the PTIB's fees have priority over your legal costs of the bankruptcy proceedings and creditors' claims which are filed against the bankruptcy estate. In this regard, you and the PTIB should have an understanding on how the PTIB's fees are to be paid, even when there are no or insufficient funds in the bankruptcy estate to cover the PTIB's fees in full.

3. Discharge from Bankruptcy

While there is no automatic discharge from bankruptcy, the trustee will assess the bankrupt's suitability for discharge and make the recommendation for his discharge after a period of time has elapsed.

a) BOs made on bankruptcy applications filed on or after 1 August 2016

For bankrupts with BOs made on bankruptcy applications filed on or after 1 August 2016, there are fixed points in time when the trustee will review the bankrupt's suitability for discharge and make the recommendation for his discharge.

A first-time bankrupt will generally be eligible for discharge in five to seven years from the Administration Date if he has paid his Target Contribution² in full. In the case of a repeat

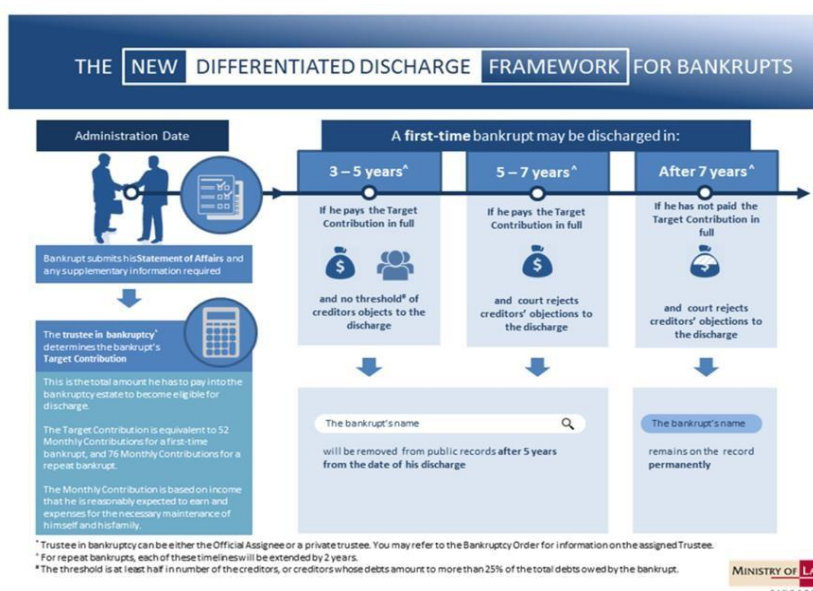
² The Administration Date is the date of submission of a complete Statement of Affairs by the bankrupt. After the making of the bankruptcy order, the trustee will determine the bankrupt's Monthly Contribution and Target Contribution by reviewing the bankrupt's income and relevant expenses required for himself and the maintenance of his family.

bankrupt, the timeline will be further extended by two years (i.e. seven to nine years from the Administration Date if he has paid his Target Contribution in full).

If a bankrupt had spent time outside Singapore without the prior permission of the trustee, the duration of his bankruptcy will be extended by the time period(s) in which the bankrupt had remained outside Singapore without the trustee's permission.

While reviewing a bankrupt for discharge, the trustee will seek the views of all the creditors, who may object to the discharge. These objections will be reviewed by the trustee who may accept them and decline to proceed with the discharge, or reject them and proceed with the discharge. An application to discharge the case from bankruptcy may also be brought before the High Court.

An overview of the discharge process is shown below:



b) Effect of a discharge from bankruptcy

Upon discharge from bankruptcy, a bankrupt's record will be kept on a register and be publicly available for 5 years if he paid his Target Contribution in full. Otherwise, his bankruptcy record will be made available permanently.

You should also note that when a bankrupt gets discharged from bankruptcy, debts which are not fully settled will be extinguished (with the exception of debts owed to the Government and those provided for under the law) and you will not be able to pursue the recovery of the debts thereafter.

4. Annulment of a Bankruptcy Order

If the bankrupt is able to repay all of his debts in full or makes an offer of composition which is accepted by all of his creditors, the OA will issue a Certificate of Annulment to annul the BO.

Upon the annulment of the BO, the bankrupt's record will be removed from the register immediately and not be publicly available.