

# Bankruptcy Information Sheet for Debtors & Bankrupts

(Updated 27 October 2017)

## 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) Who may be appointed as a PTIB?

Any registered public accountant or an advocate and solicitor may be appointed as a PTIB.

### d) Can a debtor oppose the creditor's nomination of a PTIB prior to the making of the Bankruptcy Order?

There is no provision for a debtor to formally oppose a creditor's nomination of a PTIB to be the trustee of his bankruptcy estate. However, a debtor with valid concerns over the nomination of a particular PTIB may raise it to the Court at the bankruptcy hearing.

### e) Should a bankrupt be concerned if a PTIB is appointed by the applicant creditor?

Although the PTIB and OA possess similar powers, a PTIB is expected to act in good faith and the PTIB's administration of a case is subject to an annual review by the OA under section 39 of the Bankruptcy Act.

Any person aggrieved by the malpractice of a PTIB may lodge a complaint with the OA. The OA will look into the matter and take action where necessary. However, the OA may have no grounds to start an investigation if the complaint is made without relevant supporting evidence.

**f) Can there be more than one PTIB appointed in a bankruptcy and does the bankrupt need to report to both trustees?**

It is not uncommon for two or more PTIBs to be appointed to administer a bankruptcy estate in order to have some flexibility in case administration. The bankrupt need not report to both PTIBs as administration of the bankruptcy will be done collectively and the cost of administration is not expected to be higher compared to a case where only one PTIB is appointed.

**g) How can a bankrupt find out who his trustee is?**

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

**h) 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 creditors' 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.

**i) How will the trustee contact the bankrupt with instructions on what the next steps to be taken are?**

The trustee will normally contact the bankrupt by post within 2 to 3 weeks from the date of the BO. The trustee may also contact the bankrupt using other modes of communication, if the other contact information has been made available to the trustee.

Prior to that, a bankrupt may contact his trustee by using the contact information stated on the BO if he needs urgent assistance. The bankrupt may also provide the trustee with additional contact information to facilitate future communication.

**j) 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 must 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 may also incur other fees such as document filing and legal fees.

## 2. Restrictions as a Bankrupt

With the making of a BO, a bankrupt is subject to the following restrictions:

### a) Cannot deal with property

A bankrupt cannot sell, transfer or give his property away as the property vests in the trustee. Any actions taken by the bankrupt on his property will be deemed ineffective.

In the case of residential property, a bankrupt should consult his trustee on whether the property is to be sold for the benefit of his creditors. For example, a HDB flat with at least one Singapore Citizen owner is protected from creditors (HUDC flats and the HDB Executive Condominiums are not similarly protected). The bankrupt may continue to reside in the property until the trustee advises him otherwise.

### b) Cannot travel or stay overseas without trustee's permission

A bankrupt is not allowed to travel or remain outside Singapore without the prior permission of the trustee. A bankrupt should submit his travel application electronically to the trustee, with supporting documents, at least 14 days in advance. This is required even if the bankrupt is residing overseas.

The outcome of a bankrupt's travel application is dependent on whether the bankrupt is regular with the payment of his monthly contributions and the level of co-operation that the bankrupt provides to the trustee. A bankrupt should only travel after he is informed by his trustee of the approval.

### c) Cannot start or continue legal action in courts without trustee's permission

Other than matrimonial proceedings or legal actions for damages for personal injuries, a bankrupt cannot start, continue or defend any court action without obtaining prior permission from his trustee.

### d) Cannot obtain credit without disclosing bankruptcy status

A bankrupt is not allowed to obtain credit of \$1,000 or more without revealing his bankruptcy status to the person granting the credit.

### e) Cannot act as trustee or personal representative without permission of Court

A bankrupt is automatically disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement without the permission of the Court.

### f) Cannot act as a director of a company or be involved in the management of a business without permission

A bankrupt cannot act as a director or manager of any corporation, limited liability partnership, limited partnership or business, except with the written permission of the Court or the trustee. If the bankrupt is a director or involved in the management of any corporation and has not obtained such permission, the Accounting and Corporate Regulatory Authority will remove his name from the business entity.

Failure to comply with any of these restrictions is an offence punishable on conviction with fine, imprisonment or both. By acting responsibly, co-operating and complying with the duties and restrictions of a bankrupt, a bankrupt may be recommended by his trustee for discharge from bankruptcy when he is found to be eligible.

### 3. Responsibilities of a Bankrupt

In the course of his bankruptcy, a bankrupt must do the following:

#### a) File the Statement of Affairs (SA)

A bankrupt must submit his SA within 21 days from the date of the BO. In this statement, the bankrupt must truthfully disclose everything he owns (assets) and owes (liabilities).

Along with the submission of his Statement of Affairs, the bankrupt must provide documents to support his declaration of assets, income and expenses. A bankrupt must not submit wrong or false information.

#### b) Make contributions to pay off debts

A bankrupt must start a debt repayment plan to pay off his creditors. The trustee will discuss with the bankrupt and determine the monthly contribution that the bankrupt needs to pay into his bankruptcy estate.

For bankrupts with BOs made on bankruptcy applications filed on or after 1 August 2016, a Target Contribution<sup>1</sup> will be determined by the trustee and made known to the bankrupt at the beginning of the bankruptcy. The bankrupt will be eligible for discharge if he pays the Target Contribution in full.

#### c) Surrender assets to the trustee

A bankrupt must surrender his assets to the trustee when instructed to do so. These assets will be sold by the trustee and the proceeds remitted to the bankruptcy estate to pay his creditors.

#### d) Comply with Bankruptcy Laws

A bankrupt must comply with the duties and restrictions in bankruptcy. Failure to comply may amount to an offence punishable under the Bankruptcy Act.

#### e) Cooperate with the trustee's directions

A bankrupt must cooperate with his trustee. For example, a bankrupt is required to submit a statement of moneys and property received at intervals as advised by the trustee.

<sup>1</sup> 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.

If the bankrupt maintains satisfactory conduct and contributes regularly to the bankruptcy estate to meet the repayment plan or Target Contribution, the trustee will be able to recommend his discharge from bankruptcy sooner.

**f) Keeping the trustee informed of changes in contact information**

A bankrupt must keep his trustee informed of all changes in his residential/ mailing address and contact numbers, and remain contactable throughout his bankruptcy. A bankrupt can update his trustee using any means of communication allowed by his trustee.

**4. Annulment of Bankruptcy Order/Discharge from Bankruptcy**

**a) For bankrupts with BOs made on bankruptcy applications filed before 1 August 2016**

A bankrupt may be discharged from bankruptcy or have the BO annulled through the following ways:

Method	Pre-Requisites	Outcome	Bankruptcy records
Section 95A Annulment of BO by Certificate of OA	More than 50% in number of creditors which comprises at least 75% in value of debt agreed to the special resolution	Annulment of BO by Certificate of OA	Removed from register immediately on the date of annulment
Section 123 Annulment by Court	Court is satisfied that a BO should not have been made in the first place or debts and expenses of the bankruptcy are fully paid	Annulment granted by High Court	Removed from register immediately on the date of annulment
Section 123A Annulment of BO by Certificate of OA	All debts and expenses of the bankruptcy are fully paid	Annulment of BO by Certificate of OA	Removed from register immediately on the date of annulment
Section 124 Discharge by Order of High Court	High Court is satisfied with the grounds presented during the hearing for discharge	Discharge from bankruptcy by Order of High Court	Removed from register 5 years after discharge
Section 125 Discharge by Certificate of OA	Bankrupt has met the relevant tenure in bankruptcy (minimum 3 years) and total debts do not exceed S\$500,000.	Discharge from bankruptcy by Certificate of OA	Removed from register 5 years after discharge

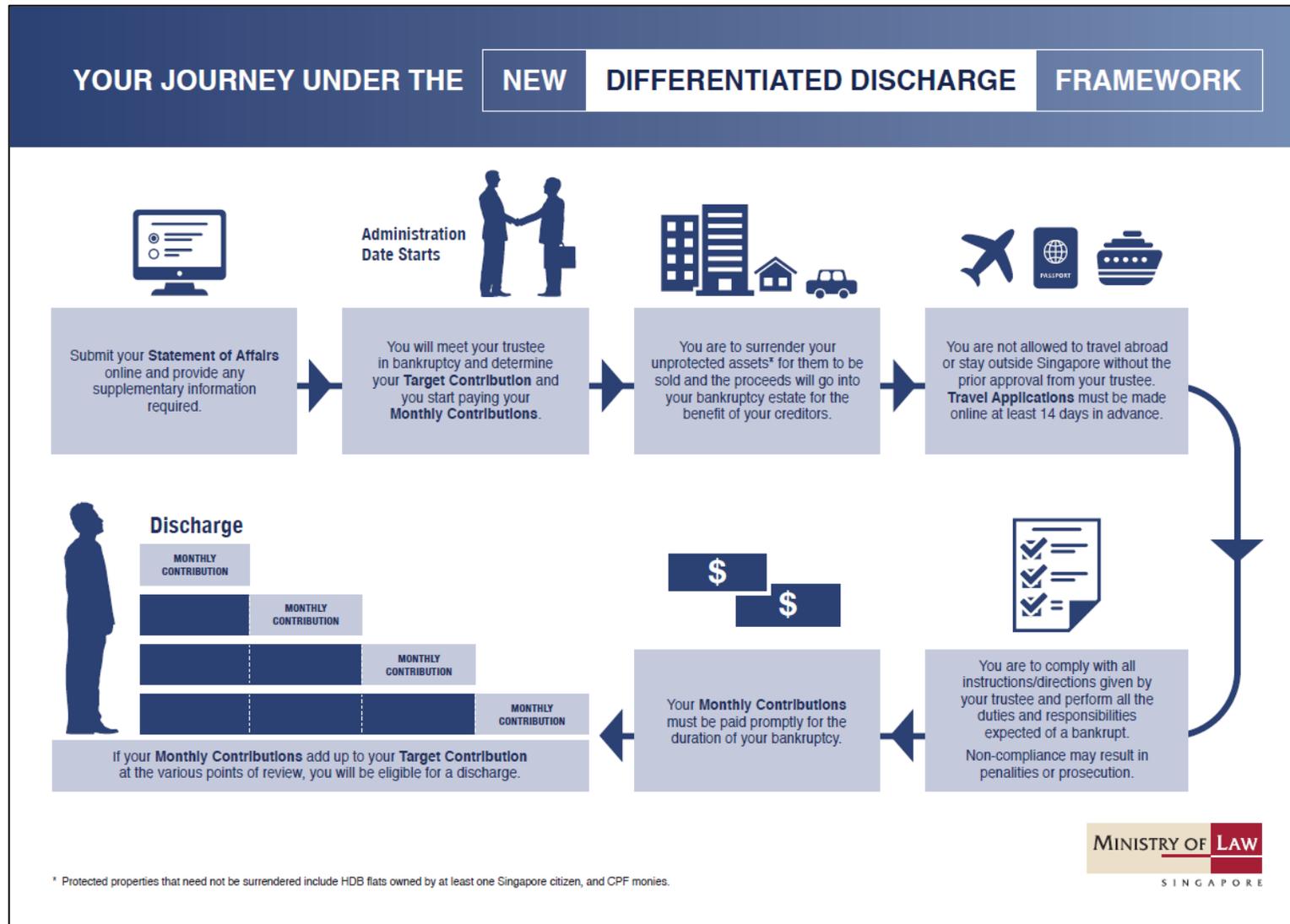
**b) For bankrupts with BOs made on bankruptcy applications filed on or after 1 August 2016**

A bankrupt may be discharged from bankruptcy or have the BO annulled through the following ways  
(An info-graphic on the discharge timelines is provided at the end of this infosheet for easy reference.)

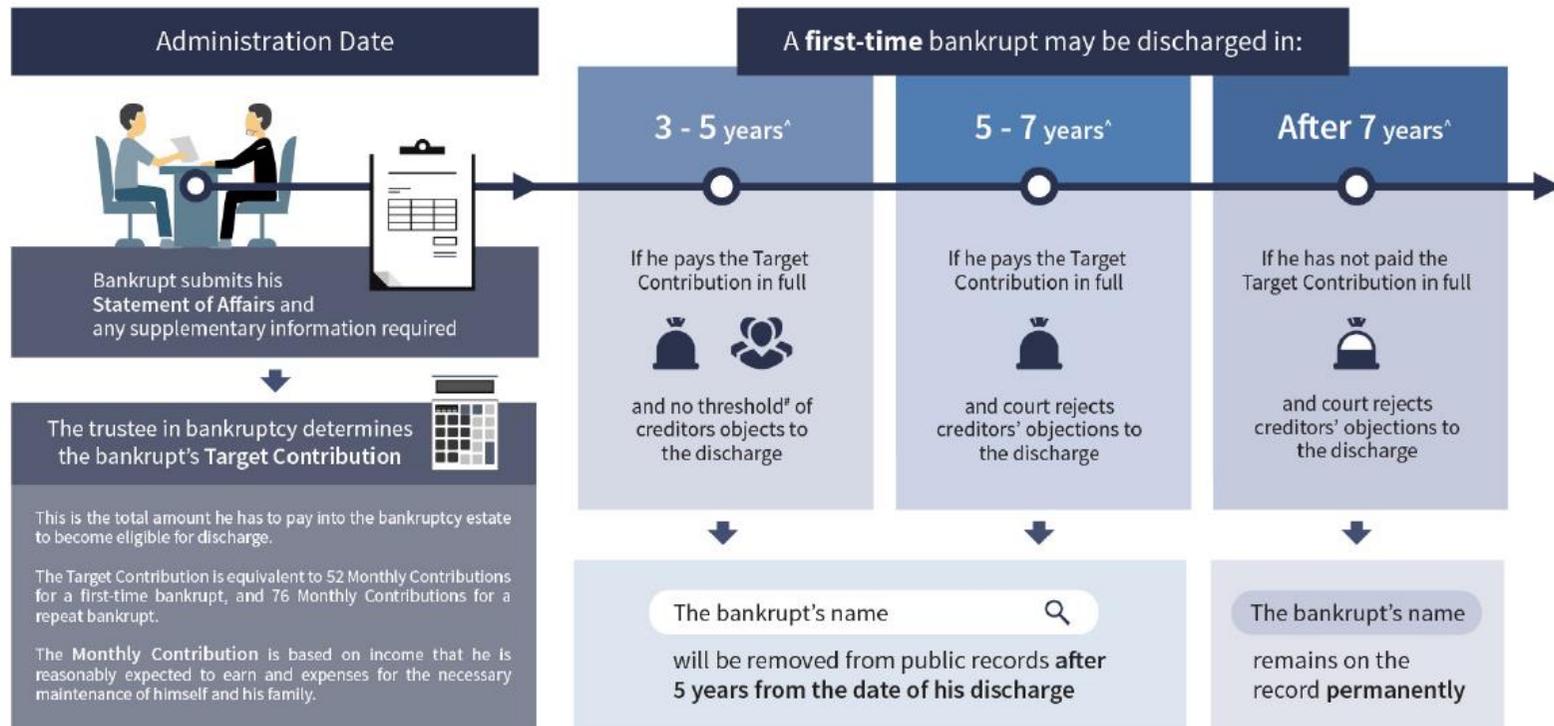
Method	Pre-Requisites	Outcome	Bankruptcy records
Section 95A Annulment of BO or Discharge by Certificate of OA	50% in number of creditors which comprises at least 75% in value of debt agreed to the proposal for composition or scheme of arrangement	Discharge by Certificate of Discharge	Removed from register after 5 years from date of discharge if Total Contribution is paid.  Otherwise bankrupt's name will be kept in register permanently.
	100% in number of creditors agreed to the special resolution	Annulment of BO by Certificate of Annulment	Removed from register immediately at the date of annulment.
Section 123 Annulment by Court	Court is satisfied that a BO should not have been made in the first place or debts and expenses of the bankruptcy are fully paid	Annulment granted by High Court	Removed from register immediately at the date of annulment.
Section 123A Annulment by Certificate of OA	All debts and expenses of the bankruptcy are fully paid	Annulment of BO by Certificate of Annulment	Removed from register immediately at the date of annulment.
Section 124 Discharge by Order of High Court	High Court is satisfied with the grounds presented during the hearing for discharge	Discharge from bankruptcy by Order of High Court	Removed from register 5 years after discharge if Total Contribution is paid.  Otherwise bankrupt's name will be kept in register permanently.
Section 125 Discharge by Certificate of OA	Bankrupt has paid the Total Contribution in full, met the relevant tenure in bankruptcy and no threshold of creditors object to discharge.  A first-time bankrupt will typically be eligible for discharge at the 5 <sup>th</sup> / 7 <sup>th</sup> year of bankruptcy. A repeat bankrupt will typically be eligible at the 7 <sup>th</sup> / 9 <sup>th</sup> year.*  However, the High Court may extend the period in bankruptcy for up to 2 years each time.	Discharge from bankruptcy by Certificate of OA	Removed from register 5 years after discharge if Total Contribution is paid.  Otherwise bankrupt's name will be kept in register permanently.

*\*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) for which the bankrupt remained outside Singapore without the trustee's permission.*

The timelines for a bankrupt to be discharged from bankruptcy (only applicable to bankrupts with BOs made on bankruptcy applications filed on or after 1 August 2016):



# THE NEW DIFFERENTIATED DISCHARGE FRAMEWORK FOR BANKRUPTS



<sup>\*</sup> For repeat bankrupts, each of these timelines will be extended by 2 years.

<sup>†</sup> The threshold is at least half in number of the creditors, or creditors whose debts amount to more than 25% of the total debts owed by the bankrupt.