

# THE OFFICIAL ASSIGNEE PRACTICE CIRCULAR NO. 5 OF 2016

## MATRIMONIAL PROCEEDINGS INVOLVING BANKRUPTS

### 1 INTRODUCTION

The Bankruptcy (Amendment) Act 2015 will come into effect on 1 August 2016 (“the effective date”).

This Practice Circular sets out the revised requirements for the need for all lawyers acting in matrimonial proceedings involving bankrupts to keep the Official Assignee (“OA”) informed of the proceedings and their outcome.

“Matrimonial proceedings” in this Practice Circular refers to a proceeding under Part VIII, IX or X of the Women’s Charter (Cap. 353) or a proceeding under section 35(2)(a), (b), (c), (d) or (e) or 35A of the Administration of Muslim Law Act (Cap. 3).

### 2 COMMENCEMENT OF MATRIMONIAL PROCEEDINGS

A bankrupt will not require the sanction of the OA to commence, continue or defend matrimonial proceedings on or after the effective date<sup>1</sup>. However, the lawyer acting for the bankrupt must notify the OA of the matrimonial proceedings not later than 3 days<sup>2</sup> before commencing, continuing or defending the proceedings and provide the necessary and relevant information and/or cause papers upon the request of the OA.

If the bankrupt is not represented, the lawyer acting for the other party is to inform the OA of the commencement, continuation or defence of the matrimonial proceedings by or against the bankrupt.

For matrimonial proceedings commenced, continued or defended with the sanction of the OA before the effective date and which have yet to be concluded, the conditions

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<sup>1</sup> Section 131(1)(a) of the amended Bankruptcy Act (Chapter 20) (“BA”) provides:

*“Where a bankrupt has not obtained his discharge, unless the bankrupt has obtained the previous sanction of the Official Assignee, the bankrupt is incompetent to commence, continue or defend -*

*(i) any action other than-*

*(A) an action for damages in respect of any injury to the bankrupt’s person;*

*or*

*(B) a matrimonial proceeding; or*

*(ii) any appeal arising from any action referred to in sub-paragraph (i).”*

<sup>2</sup> Section 131(1A) of the amended BA provides: *“Despite subsection (1)(a), the bankrupt must notify the Official Assignee of any proceedings referred to in subsection (1)(a)(i)(A) or (B), or any appeal arising from any such proceedings, not later than 3 days before commencing, continuing or defending the proceedings or appeal, as the case may be”.*

upon which the sanction was granted continue to apply<sup>3</sup>. The lawyer acting for the bankrupt is also to continue to provide the necessary and relevant information and/or cause papers upon the request of the OA.

### **3 UNCONTESTED ANCILLARY MATTERS PROCEEDINGS**

For matrimonial proceedings wherein parties have agreed on ancillary matters (regardless of the commencement date of the matrimonial proceedings), the lawyer acting for the bankrupt is to seek the views of the OA on the draft consent order pertaining to:

- i. any maintenance payable by the bankrupt; and/or
- ii. any proposed division of matrimonial assets, that part of which vests in the OA,

before any order is obtained from the court.

If the bankrupt is not represented, the lawyer acting for the other party is to inform the OA of the proceedings and the terms of the proposed consent order, as well as ascertain if the OA has any views thereon before the order is obtained from court.

### **4 CONTESTED ANCILLARY MATTERS PROCEEDINGS**

For matrimonial proceedings wherein parties have not agreed on ancillary matters (regardless of the commencement date of the matrimonial proceedings and excluding custody, care & control and access), the lawyer acting for the bankrupt must keep the OA informed of all the hearing dates and furnish copies of the relevant cause papers filed.

The lawyer acting for the bankrupt is also to seek the views of the OA on:

- i. any maintenance payable by the bankrupt; and
- ii. any proposed division of matrimonial assets, that part of which vests in the OA,

before any order is obtained from the court.

If the bankrupt is not represented, the lawyer acting for the other party is to inform the OA of the proceedings and the terms of the proposed order and furnish copies of the

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<sup>3</sup> Section 59(35) of the Bankruptcy (Amendment) Act 2015 provides that the amendments to section 131 BA do not apply to any action that was commenced, continued or defended or any appeal that was lodged by a bankrupt before the effective date.

relevant cause papers filed, as well as ascertain if the OA has any views thereon before the order is obtained from court.

## **5 VARIATION OF/APPEAL AGAINST ORDERS**

A bankrupt does not require the sanction of the OA to vary or appeal any order arising from the matrimonial proceedings on or after the effective date. However, the lawyer acting for the bankrupt must notify the OA of the application to vary or appeal any order arising from the matrimonial proceedings not later than 3 days before commencement of the application to vary or appeal.

For applications to vary or appeals lodged with the sanction of the OA before the effective date and which have yet to be concluded, the conditions upon which the sanction was granted continue to apply.

The lawyer acting for the bankrupt (regardless of the commencement date of the application to vary or appeal and whether the application to vary or appeal is filed by the bankrupt) must also furnish copies of the relevant cause papers filed and notify the OA of the hearing dates. If the bankrupt is not represented, the lawyer acting for the other party is to inform the OA of the proceedings and notify the OA of the hearing dates.

## **6 EFFECTIVE DATE**

This Practice Circular shall take effect on 1 August 2016 and supersedes the OA's Practice Circular No.2 of 2016.

## **7 CONTACT PERSON**

For any queries on this Practice Circular, please contact Mr Sebastian Chew, Senior Assistant Director, Individual Insolvency & Debt Repayment Scheme Division by email at [oneminlaw@mlaw.gov.sg](mailto:oneminlaw@mlaw.gov.sg).



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27 July 2016

(This Practice Circular is also available on our website at [www.mlaw.gov.sg/io](http://www.mlaw.gov.sg/io))