



# Bankruptcy Reforms in Singapore: What Can We Learn?

## Research Policy Report

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On 1 August 2016, the Bankruptcy (Amendment) Act 2015 came into effect, drastically changing a number of aspects of bankruptcy laws in Singapore. The availability of, and process for, bankruptcy is quite a controversial and politicised topic. Some people advocate that bankruptcy should have high hurdles of entry and long periods before discharge. Others state that it is important to give people a second chance with their financial affairs to promote innovation and entrepreneurship, and having a flexible and forgiving bankruptcy process is an important way to achieve these goals. This paper will consider the bankruptcy debate in a Singaporean context, focusing on the recent reforms and considering what we can learn from the bankruptcy regimes of other countries.

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# ***Bankruptcy Reforms in Singapore: What Can We Learn?***

Jodi Gardner<sup>1</sup>

## **Abstract**

On 1 August 2016, the Bankruptcy (Amendment) Act 2015 came into effect, drastically changing a number of aspects of bankruptcy laws in Singapore. The availability of, and process for, bankruptcy is quite a controversial and politicised topic. Some people advocate that bankruptcy should have high hurdles of entry and long periods before discharge. Others state that it is important to give people a second chance with their financial affairs to promote innovation and entrepreneurship, and having a flexible and forgiving bankruptcy process is an important way to achieve these goals. This paper will consider the bankruptcy debate in a Singaporean context, focusing on the recent reforms and considering what we can learn from the bankruptcy regimes of other countries.

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## Introduction

Bankruptcy can be considered the ultimate consumer credit protection; it gives borrowers an opportunity to 'wipe the slate clean' and be forgiven for existing debt whilst still providing them with a minimum standard of living. Bankruptcy is an instrument of distributive justice. It aims to achieve a 'fair division of wealth among members of society'<sup>2</sup> and has the effect of shifting wealth from one group of people to another.<sup>3</sup> Bankruptcy is however a drastic form of protection and has a number of detrimental impacts on society in general.<sup>4</sup> As outlined by Professor Ho Peng Kee

After a person is adjudged a bankrupt, the financial embarrassment and social stigma that he faces can make it difficult for him to keep his job and, if he loses it, to secure a new one. He then faces even greater financial hardship and cannot contribute as much to his bankruptcy estate as he would have had if he had kept his job. As a result, creditors receive a smaller dividend payout.<sup>5</sup>

Bankruptcy does however have a number of positive outcomes for stakeholders. It provides the bankrupt individual with a fresh financial start, encourages people to take calculated risks and start small businesses thus providing benefits to all society. Bankruptcy also means creditors do not have to enter into costly and expensive debt recovery processes.

This paper enters this debate and explores the role of bankruptcy in Singapore, with a particular focus on the recent the Bankruptcy (Amendment) Act 2015 reforms. There are three key sections. The first briefly discusses the international bankruptcy processes in the United States, the United Kingdom and Australia, allowing us to recognise similarities and differences between these jurisdictions and Singapore. The second section then goes on to discuss the general approach to bankruptcy in Singapore, including the number of bankruptcy applications, the development of the debt repayment scheme and the recent bankruptcy reforms. The third section concludes the paper and provides a small number of recommendations, or issues justifying further consideration and research.

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<sup>2</sup> Anthony Townsend Kronman, 'Contract Law and Distributive Justice' (1980) 89 Yale Law Journal 472.

<sup>3</sup> *ibid* 473.

<sup>4</sup> Michelle White, 'Personal Bankruptcy under the 1978 Bankruptcy Code: An Economic Analysis' (1988) 63 Indiana Law Journal 1.

<sup>5</sup> Second Reading Speech on Bankruptcy (Amendment) Bill by Senior Minister of State Assoc Prof Ho Peng Kee, 19 January 2009.

## International Bankruptcy Approaches

This section will briefly outline the approaches taken to bankruptcy in a number of other countries, including the United States of America (USA), the United Kingdom (UK) and Australia.

### United States

In the USA, bankruptcies are considered as a normal, accepted part of regulatory regime. By providing people with a fresh financial start when things fail, people are encouraged to take risks and be 'entrepreneurial'. As outlined by Martin

The more activity in the economy, the stronger the economy will be. The U.S. regulatory structure has been developed to encourage people to create businesses, with the hope that they will succeed, hire employees, pay taxes, and otherwise improve the economy as a whole. We acknowledge that in the process, some businesses will fail. Thus, as a culture, we value a person's willingness to risk his or her job and money (and borrowed money, too) for the chance to succeed.<sup>6</sup>

Bankruptcy law in America is regulated by the Bankruptcy Code, which was enacted in 1978 by the Bankruptcy Reform Act of 1978 (USA). This Code has a variety of different chapters, which focus on different ways individuals and companies can seek relief. There are two formal bankruptcy procedures for individuals in the USA. The first is under Chapter 7 of the Bankruptcy Code, and is the formal mechanism for entering into bankruptcy. There is no minimum level of debt needed to commence these proceedings. Individuals are required to provide the court with a statement of their financial affairs, including all debts owing, sources of income, property/assets and monthly living expenses. A meeting of the creditors will occur, and the debtors will be required to answer any questions about their financial situation under oath. The United States Trustee will then appoint an impartial case trustee who will liquidate remaining assets and distribute the funds to creditors.<sup>7</sup> Discharge times are relatively quick in the United States; provided no one files a complaint objecting to discharge the court will usually issue a discharge date within 60-90 days after the meeting of the creditors has occurred.<sup>8</sup> Discharges occur in this way in more than 99 percent of Chapter 7 bankruptcy cases.<sup>9</sup> There are a number of fees associated with filing under Chapter 7, but the court may waive these fees if the individual's income is below a certain level.<sup>10</sup>

The alternative process is under Chapter 13, which allows the debtor to avoid going into formal bankruptcy proceedings, thus keeping their property and repaying debts over time. To be eligible for this process, individual unsecured debts must be less than \$383,175 and secured debts of \$1,149,525.<sup>11</sup> The initial process is similar to bankruptcy under Chapter 7, in that the individual must provide the court with a statement of their financial affairs, and the trustee will organise a meeting

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<sup>6</sup> Nathalie Martin, 'U.S. Bankruptcy Laws Encouraging Risk-Taking and Entrepreneurship', *IIP Digital EJournal*, July 2008.

<sup>7</sup> 11 U.S.C. §§ 701, 704.

<sup>8</sup> Fed. R. Bankr. P. 4004(c).

<sup>9</sup> United States Courts, Chapter 7 Bankruptcies, available at <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics>.

<sup>10</sup> 28 U.S.C. § 1930(f).

<sup>11</sup> 11 U.S.C. § 109(e).

of the creditors where the debtor will have to answer any questions under oath.<sup>12</sup> The debtor then files a repayment plan with the court, which will be submitted for approval. This will provide for repayment of existing debts on a regulator basis over a period of three to five years.<sup>13</sup> The trustee receives these funds and distributes them to creditors in line with the repayment plan.<sup>14</sup>

The relatively leniency of the United States' bankruptcy laws has a strong historical background and is generally a source of pride. Many famous business people succeeding after initial set-backs (and bankruptcies). This includes Presidential hopeful and billionaire Donald Trump, John Henry Heinz (condiments and ketchup), and Henry Ford (Ford Motor Group). The USA has however been plagued with stories of gross abuse of the bankruptcy processes and – sometimes quite legitimate – concerns about the ease of becoming bankrupt. In response, the Bankruptcy Abuse Prevention and Consumer Protection Act 2005 was passed, which made it more difficult to apply for bankruptcy, particularly under Chapter 7 and significantly increased the associated fees.

## United Kingdom

English law has had a significant impact on the development of the legal system in Singapore, including its bankruptcy processes.<sup>15</sup> The laws relating to bankruptcy in the UK are found in the Insolvency Act 1986 (UK), which covers both personal and corporate insolvency. This Act resulted from a comprehensive review of the existing laws which were outlined in the Cork Report in 1982. The major amendment that occurred to the existing regime was the inclusion of Voluntary Arrangements for both individuals and companies.<sup>16</sup> The cost of bankruptcy in the UK is £680, however it can be paid by instalments, and individuals need to be indebted a minimum of £5,000 of debt before they are 'entitled' to go bankrupt.

The initial processes for bankruptcy in the UK are similar to that in the United States, in that individuals are required to provide the court with detailed financial information and attend a meeting of the creditors. Bankruptcy proceedings may be commenced by either the debtor themselves, or by a creditor.<sup>17</sup> The bankrupt's assets and surplus income are then distributed amongst creditors by the Official Receiver. Discharge occurs 12 months after the bankruptcy order was made,<sup>18</sup> however this can be extended if the bankrupt did not comply with their obligations.<sup>19</sup> The individual's credit rating will record bankruptcy information for six years after the bankruptcy order was made.

In the United Kingdom, there are however multiple alternatives to formal bankruptcy proceedings.

- *Debt relief order* – suitable if the debts are less than £20,000, the debtor has less than £50/month to repay creditors and any belongings are not worth more than £1,000 in total<sup>20</sup>;

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<sup>12</sup> 11 U.S.C. § 343.

<sup>13</sup> Fed. R. Bankr. P. 3015.

<sup>14</sup> United States Court, Chapter 13 Bankruptcies, available at <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>.

<sup>15</sup> Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report*, 2013, pp. 11-12.

<sup>16</sup> Insolvency Act 1986 (UK), Part VIII.

<sup>17</sup> Insolvency Act 1986 (UK), section 264(1).

<sup>18</sup> Insolvency Act 1986 (UK), section 279.

<sup>19</sup> Insolvency Act 1986 (UK), section 279(3) & (4) and 280.

<sup>20</sup> See Insolvency Act 1986 (UK), Part 7A.

- *Individual voluntary arrangement* – suitable if the debtor has at least £100/month to repay creditors and wants to pay off their debts over a fixed period<sup>21</sup>; and
- *Administration order* – suitable if the unsecured debts are less than £5,000 and there is a county court judgment for debt.<sup>22</sup>

The appropriate alternative depends on the level of debts and amount of money available to repay creditors.

## Australia

The legal regime for bankruptcy in Australia is found in the Bankruptcy Act 1966 (Cth) and this area is regulated by the Australian Financial Security Authority (AFSA). Bankruptcy proceedings can be commenced by the debtor<sup>23</sup> or a creditor.<sup>24</sup> In some circumstances, the proceedings can also start by the debtor committing an ‘act of bankruptcy’.<sup>25</sup> After the United States, Australia has one of the lowest debt amount required, with people being able to seek bankruptcy provided they are at least \$5,000AUD in debt. Similar to other jurisdictions, the debtor is required to provide the Official Receiver and trustee with a statement of affairs within 14 days of being notified of the bankruptcy.<sup>26</sup> Once this is received, the trustee will convene a meeting of the creditors<sup>27</sup> and administer the property.<sup>28</sup> Until they are discharged, the bankrupt will also need to continue to pay contributions to the creditors of any amount of income received above the income threshold amount.<sup>29</sup>

Australia has significantly longer period for discharge, with bankrupts only being discharged three years after the date the statement of affairs is lodged.<sup>30</sup> However, this can be extended for up to an additional eight years if an objection is lodged by the bankruptcy trustee.<sup>31</sup> During this period, there are significant limitations on the bankrupt. There are significant employment restrictions (bankrupts cannot be a director or manager of a company, many professional and licensing bodies prohibit bankrupts from continuing in that profession and bankrupts are excluded from a number of public positions). They must also obtain permission from their trustee to travel overseas, which will be quite difficult to obtain without a valid work commitment or emergency situation. Finally, the bankrupt’s information will be on the National Personal Insolvency Index permanently, which is a searchable, publically available register. It will also be kept on the credit reports for up to five years. This is likely to impact the ability for people to obtain loans, rent properties, open a bank account or even make large purchases.<sup>32</sup>

<sup>21</sup> See Insolvency Act 1986 (UK), Part VIII.

<sup>22</sup> Citizens Advice Bureau, ‘Alternatives to Bankruptcy’, available at <https://www.citizensadvice.org.uk/debt-and-money/debt-solutions/bankruptcy-2/is-bankruptcy-right-for-you/checklist-is-bankruptcy-right-for-you/>.

<sup>23</sup> Bankruptcy Act 1966 (Cth), Part IV, Division 2A.

<sup>24</sup> Bankruptcy Act 1966 (Cth), Part IV, Division 2.

<sup>25</sup> Bankruptcy Act 1966 (Cth), section 40.

<sup>26</sup> Bankruptcy Act 1966 (Cth), section 54.

<sup>27</sup> Bankruptcy Act 1966 (Cth), section 64.

<sup>28</sup> Bankruptcy Act 1966 (Cth), Part VI.

<sup>29</sup> Bankruptcy Act 1966 (Cth), section 139L-P.

<sup>30</sup> Bankruptcy Act 1966 (Cth), section 149(4).

<sup>31</sup> Bankruptcy Act 1966 (Cth), section 149A.

<sup>32</sup> Australian Financial Services Authority, ‘Consequences of Bankruptcy’, available at <https://www.afsa.gov.au/debtors/bankruptcy/consequences-of-bankruptcy>.

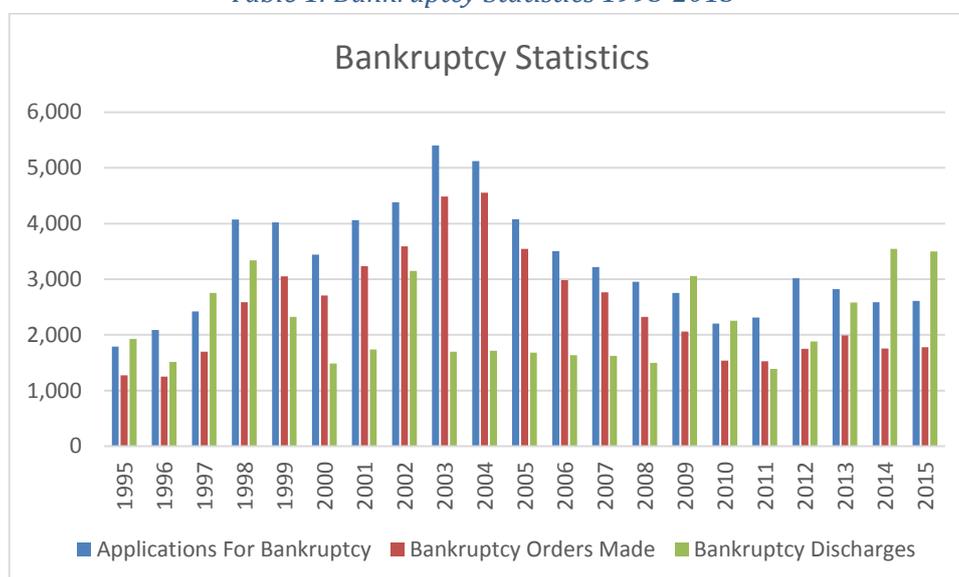
## Bankruptcy in Singapore

This section will analyse the bankruptcy laws in Singapore. There are three parts; the first will provide a general introduction, including the bankruptcy levels in Singapore. The second will analyse the debt repayment scheme initiated in 2009 as an alternative to formal bankruptcy proceedings. The third and final part then discusses the recent reforms created by the Bankruptcy (Amendment) Bill 2015.

### Introduction to Bankruptcy

Bankruptcy levels in Singapore are generally quite low. After hitting a high of over 4,500 bankruptcy orders in 2004, the levels have been steadily decreasing for the last 12 years after. In 2015 3,499 bankruptcy orders were made, equating to approximately 0.065% of the population or 6.4 bankrupts for every 10,000 people.

*Table 1: Bankruptcy Statistics 1995-2015<sup>33</sup>*



The aims of the Singaporean bankruptcy system have been discussed by Senior Minister of State for Law, Indranee Rajah SC. Mr Rajah outlines that primarily it is designed to provide an orderly regime for the resolution of unpaid debts. However, in doing this, the bankruptcy regime balances the interests of debtors, creditors and the wider society. This occurs in two main ways. Firstly, by ensuring that bankrupts are accountable for their debts whilst also allowing them a fresh start to their financial matters after a reasonable period of time has elapsed. Secondly, the bankruptcy regime recognises the importance of both responsible borrowing and responsible lending, creating incentives for creditors not to over-extend credit and debtors not to borrow more than they can repay.<sup>34</sup>

Compared to a number of overseas jurisdictions, Singapore has quite a strict approach to bankruptcy. Instead of having a fixed level of income and assets in which the bankrupt individual is allowed to maintain until discharge, Singapore has a flexible system to determine the amount of

<sup>33</sup> Information obtained from SingStat Table Builder, M890561 - Number Of Bankruptcy Applications, Orders Made And Discharges, Annual, statistics up to date as of 24 August 2016.

<sup>34</sup> Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Bankruptcy (Amendment) Bill 2015, 13 July 2015.

money, as well as a requirement for the bankrupt to keep very detailed records of how they are spending money.

If an individual is unable to pay their debts as and when they fall due, the debtor or their creditors may apply for a bankruptcy order.<sup>35</sup> It will be presumed that a person is unable to pay their debts if they do not settle or set aside a statutory demand within 21 days of it being served.<sup>36</sup> The debts however have to be able to the statutory threshold, has been \$10,000 since the Bankruptcy Act 1995 was passed.<sup>37</sup> An individual with debts less than this amount will not qualify for bankruptcy.

Once a bankruptcy order has been made,<sup>38</sup> the bankrupt's property will vest in the Official Assignee or occasionally with a private trustee.<sup>39</sup> The trustee's job is to investigate the bankrupt's financial affairs, determine what property is available for distribution amongst creditors, determine what debts are valid and how much is owed to each creditor and then realise the property available for repayment. If there are sufficient funds, the trustee declares an amount payment in respect of the valid debts.<sup>40</sup> Certain types of property are protected in bankruptcy, including the bankrupt individual's HDB apartment,<sup>41</sup> tools of the trade and general living necessities.

In addition to the wage and asset realisation, there are significant limitations on the bankrupt until they are discharged. They must keep very strict and accurate records of their expenses, they cannot travel outside Singapore without obtaining permission (which is generally only provided for work reasons or very extenuating circumstances). Being a bankrupt can also create difficulties for people when looking for employment, restrictions in obtaining credit over \$1,000 and restrictions in managing businesses or acting as a director of a company.<sup>42</sup> As bankruptcy information is freely available, current and future employers – as well as the general public – will be able to obtain information on the bankrupt individual.

Prior to the reforms discussed below, there were also no statutorily mandated exit points for the discharge of bankruptcy. Bankrupt individuals would generally only be able to be discharged if they repaid all their debts, by an order of the High Court, or a certificate of discharge from the Official Assignee (if their debts were less than \$500,000).<sup>43</sup> This created significant uncertainty for bankrupts as there was no clear 'end point', thus undermining the rehabilitative aspect of bankruptcy.

## Debt Repayment Scheme

The Bankruptcy Act 1995 was amended in 2009 to provide for, amongst other things, a Debt Repayment Scheme (DRS).<sup>44</sup> The aim of this scheme is to allow people to avoid bankruptcy if they meet specific eligibility criteria, whilst also providing creditors with the same amount of funds they

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<sup>35</sup> Bankruptcy Act 1995, sections 57 & 58.

<sup>36</sup> Bankruptcy Act 1995, section 62(a).

<sup>37</sup> Bankruptcy Act 1995, section 61(1)(a).

<sup>38</sup> Bankruptcy Act 1995, section 59.

<sup>39</sup> Bankruptcy Act 1995, section 17. The Court has the power to appoint a private trustee instead of the Official Assignee, see Bankruptcy Act 1996, Part IV especially section 33. This is however very infrequently used and the Official Assignee is the trustee in over 99% of bankruptcies in Singapore; Second Reading Speech by Senior Minister of State for Law, Indraneel Rajah SC, on the Bankruptcy (Amendment) Bill 2015, 13 July 2015.

<sup>40</sup> These details are outlined in the Bankruptcy Act 1995, Part VII and sections 107-122.

<sup>41</sup> Under most circumstances. However, if the flat has been refinanced, there is the possibility that

<sup>42</sup> Ministry of Law, 'Reasons to Avoid Bankruptcy', updated July 2016, <https://www.mlaw.gov.sg/content/io/en/bankruptcy-and-debt-repayment-scheme/information-for-bankrupts1.html>.

<sup>43</sup> Ministry of Law, Press Release, 'More Rehabilitative Bankruptcy Framework to Take Effect from 1 August', 27 July 2016.

<sup>44</sup> Bankruptcy (Amendment) Bill 2009; Bankruptcy (Amendment) Act 2009.

would have received if the debtor had been made bankrupt. It is based strongly on Chapter 13 of the Bankruptcy Code in the USA. However, Chapter 13 arrangements in the USA require individuals to undertake mandatory basic financial management education and financial counselling. These obligations are not part of the Singaporean equivalent.<sup>45</sup>

The aims of the DRS have been outlined by Professor Ho Peng Kee in his Second Reading Speech for the Bankruptcy (Amendment) Bill 2009,

Where a debtor has a regular income and his debts are not large, a better alternative would be to have a non court-based approach that gives him a reasonable opportunity to pay off all or some of his debts through a repayment plan over a period of time. By avoiding bankruptcy through this debtor-driven scheme, the intention is that the debtor will keep his job and apportion part of his monthly income towards repaying his debts. The aim is that creditors will receive no less than what they would have otherwise received had the debtor gone into bankruptcy. The benefit for the debtor is that if he successfully meets his financial obligations under the repayment plan, he will avoid the stigma and restrictions of bankruptcy. But the point is: he has to do his part; for example, adjust his lifestyle or spending habits so that repayments are made.<sup>46</sup>

There are a number of eligibility requirements for participation in the DRS, including:

- 1) the debt owed needs to total \$100,000 or less. The Ministry of Law determined this figure by balancing the objectives to help sincere wage-earning debtors meet their financial obligations, and the need to ensure that creditors are treated fairly for their forbearance in obtaining a bankruptcy order against the debtor;<sup>47</sup>
- 2) in the preceding five years, the debtor must not have been a bankrupt, or on a voluntary arrangement or the DRS; and
- 3) the debtor was not a sole proprietor or a partner in a business partnership.<sup>48</sup>

If the debtor is potentially a suitable candidate for DRS, the court will adjourn the bankruptcy proceedings for six months to determine the debtor's eligibility for the scheme. If they are eligible, a Debt Repayment Plan will be drafted and approved by a meeting of the creditors. Once this has occurred, there are three potential outcomes. If the debtor completes their statutory obligations and makes all the repayments under the Debt Repayment Plan, the Official Assignee will issue them with a Certificate of Completion. If the debtor does not complete their obligations and/or fails to make repayments, the Official Assignee will issue them with a Certificate of Failure. The creditors can then recommence fresh bankruptcy proceedings against the debtor. If after the Debt Repayment Plan is entered into, the individual's debts exceed \$100,000, the Official Assignee will issue them with a Certificate of Inapplicability. The creditors can then recommence fresh bankruptcy proceedings against the debtor.<sup>49</sup>

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<sup>45</sup> Adrian Peh Nam Chuan, Jean Koh and Stella Teo Lu Jin, 'Debt Repayment Scheme: Three Years On', *Law Gazette Article*, June 2012.

<sup>46</sup> Second Reading Speech on Bankruptcy (Amendment) Bill by Senior Minister of State Assoc Prof Ho Peng Kee, 19 January 2009.

<sup>47</sup> Bankruptcy Act 1995, section 56B(2)(a).

<sup>48</sup> Discussed in the Second Reading Speech on Bankruptcy (Amendment) Bill by Senior Minister of State Assoc Prof Ho Peng Kee, 19 January 2009.

<sup>49</sup> Details for discharge from the scheme are found under Bankruptcy Act 1995, sections 56K-56O. They are also summarised by Ministry of Law, *Debt Repayment Scheme (DRS) Information Sheet*, <https://www.mlaw.gov.sg/content/io/en/bankruptcy-and-debt-repayment-scheme/debt-repayment-scheme.html>.

Reports on the success of the DRS have been mixed. It was designed to encourage debtors with regular income and small, generally unsecured debts, to take responsibility of their financial situation instead of going into bankruptcy. It therefore emphasises self-help, consumer empowerment and financial management. There are however concerns that DRS may encourage irresponsible borrowing and spending. Thus there have been suggestions that the DRS should be moved to a more flexible scheme where the courts consider how the individual originally become indebted.<sup>50</sup> This has yet to occur, and there is no indication the Ministry of Law has considered this recommendation.

## Recent Reforms

On 14 July 2015, the Bankruptcy (Amendment) Bill 2015 was passed by Parliament. The resulting Act, the Bankruptcy (Amendment) Act 2015, came into effect on 1 August 2016 and made a number of drastic changes to the bankruptcy regime in Singapore. As outlined by the Ministry of Law, the aim of these reforms was to “create a more rehabilitative environment for bankrupts and encourage creditors to exercise financial prudence when extending credit”.<sup>51</sup> The recommendations for reform largely arose from a 2013 report prepared by the Insolvency Law Review Committee.<sup>52</sup> In addition, the Ministry of Law undertook a detailed public consultation and closed dialogue sessions with key stakeholders. These were designed to obtain further feedback on the proposed reforms.<sup>53</sup>

The Bankruptcy (Amendment) Bill 2015 is 48 pages in length and contains a large number of provisions. Many of these amendments are procedural in nature, including security realisation, proofs of debt and bankruptcy records, and will not be addressed in this paper. Instead, the focus will be on the four key framework changes.

### *Increase in Bankruptcy Threshold*

The threshold for bankruptcy was increased from \$10,000 to \$15,000.<sup>54</sup> This means that a debtor must have at least \$15,000 in debts to become bankrupt. As outlined by the Ministry of Law, this figure is in line with the income-related benchmarks from the Bankruptcy Act 1995. The purpose of the threshold is to encourage both debtors and creditors of smaller loans to sort out payment without needing to resort to the bankruptcy regime.<sup>55</sup> It does however exclude a larger number of people – mostly lower-income individuals – from obtaining the relief associated with bankruptcy.<sup>56</sup>

This difficulty is further compounded by amendments to the Bankruptcy Rules, the Bankruptcy (Costs) Rules and the Bankruptcy (Fees) Rules. These changes have increased the deposit to the Official Assignee from \$1,600 to \$1,850. The cost for commencing bankruptcy proceedings have also

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<sup>50</sup> Adrian Peh Nam Chuan, Jean Koh and Stella Teo Lu Jin, ‘Debt Repayment Scheme: Three Years On’, *Law Gazette Article*, June 2012.

<sup>51</sup> Ministry of Law, Press Release, ‘More Rehabilitative Bankruptcy Framework to Take Effect from 1 August’, 27 July 2016.

<sup>52</sup> Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report*, 2013.

<sup>53</sup> Ministry of Law, Press Release, ‘More Rehabilitative Bankruptcy Framework to Take Effect from 1 August’, 27 July 2016.

<sup>54</sup> Bankruptcy (Amendment) Act 2015, section 11 amending Bankruptcy Act 1995, section 61(1).

<sup>55</sup> Ministry of Law, Press Release, ‘More Rehabilitative Bankruptcy Framework to Take Effect from 1 August’, 27 July 2016.

<sup>56</sup> This is discussed in Jodi Gardner, ‘Consumer Credit in the United Kingdom: Meeting the Needs of the Modern Borrower’, *Masters of Philosophy Thesis*, University of Oxford, 2013, pp. 99-100. This issue was also recognised in Fiona Guthrie, *Too Poor to go Bankrupt: The Impact of the New Fee for Lodging a Debtor’s Petition* (Financial Counselling Australia 2014).

increased dramatically from \$700 to \$1,200.<sup>57</sup> These fees now put the relief of bankruptcy out of the reach of an even bigger group of people, which has both positive and negative outcomes. Whilst it promotes creditors and debtors working together to manage small debts and saves significant Official Assignee resources, there are concerns that it marginalises people on low incomes making them vulnerable to further debt or even pushing them into illegal lending to pay off their existing (legal) loans.

### *Expedited Bankruptcy Processes*

Creditors will now have the right to an expedited bankruptcy application process. Under the previous system, creditors had to wait a minimum of 21-days after issuing a demand for payment before filing a bankruptcy application. However, under the new section 63A, creditors will now be able to file this application immediately if they can show “a serious possibility that the debtor’s property or the value of any of his property will be significantly diminished during that period”.<sup>58</sup> This reforms are being introduced because of the risk that a debtor could dissipate their assets during the 21-day period after the demand for payment has been issued.<sup>59</sup>

### *Introduction of Differentiated Discharge Framework*

A differentiated discharge framework has also been instituted. This aims to create a more rehabilitative bankruptcy regime, providing exit points for bankrupts to be discharged. It is hoped that these timeframes will provide an additional incentive for the bankrupt individuals to gain (or maintain) employment, as well as following their payment plans and conditions of bankruptcy as a way of achieving their eventual discharge.<sup>60</sup> The differentiated discharge framework is divided between first-time bankrupts, who will generally be eligible for discharge within five to seven years,<sup>61</sup> and repeat bankrupts, who will only be eligible for discharge after seven to nine years.<sup>62</sup>

The key consideration for determining the timing of discharge will be whether the bankrupt individual has been able to pay the ‘Target Contribution’ in full.<sup>63</sup> The bankrupt individual’s monthly contribution and Target Contribution will be determined by the Official Assignee based on their current monthly income, reasonable expenses required for the maintenance of the bankrupt and their family, the potential earnings abilities (including qualifications, age and work experience) and prevailing economic conditions.<sup>64</sup> The Target Contribution is equivalent to 52 monthly contributions for first-time bankrupts and 76 monthly contributions for repeat bankrupts. The Court can however review both the monthly contribution and Target Contribution on application by the bankrupt or a creditor.<sup>65</sup> The Official Assignee now also has the power to reduce these amounts for a variety of

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<sup>57</sup> See discussion in Chua Beng Chye and Ryan Loh, ‘Singapore Bankruptcy Amendment Act Comes Into Force’ *Rajah & Tann Client Update*, July 2016.

<sup>58</sup> Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, section 86D.

<sup>59</sup> Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Bankruptcy (Amendment) Bill 2015, 13 July 2015.

<sup>60</sup> Ministry of Law, Press Release, ‘More Rehabilitative Bankruptcy Framework to Take Effect from 1 August’, 27 July 2016.

<sup>61</sup> Bankruptcy (Amendment) Act 2015, section 38 amending Bankruptcy Act 1995, section 125(2)(a).

<sup>62</sup> Bankruptcy (Amendment) Act 2015, section 38 amending Bankruptcy Act 1995, section 125(2)(b).

<sup>63</sup> For details on ‘Target Contributions’, see Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, sections 86A, 86B, 86C, 86D, 86E and 86F.

<sup>64</sup> Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, section 86A(2).

<sup>65</sup> Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, section 86B, with the power for the court to vary these amounts under section 86C.

reasons, including an increase in number of members of the bankrupt's family or a decrease in the income received by the bankrupt or their spouse.<sup>66</sup>

Bankrupt individuals will now have the opportunity to have their names taken off the register, thus providing them with a clearer 'fresh start' post-bankruptcy. The Official Assignee has an obligation to keep a registry of undischarged bankrupts, discharged bankrupts and bankruptcy orders.<sup>67</sup> This information is generally available for people to view. However, if an individual repays their Target Contribution in full prior to discharge, they are entitled to have their name removed from the register five years after discharge.<sup>68</sup> If they repay their Target Contribution within seven years, they are entitled to have their name removed from the register if the court rejects any creditors' objections to discharge. If after seven years, they have not repaid the Target Contribution, the bankrupt's name will remain on the register permanently.

### *Private Trustees for Institutional Creditors*

The final reform that will be discussed are the new provisions creating a mandatory appointment of private trustees for 'institutional creditors'. This will take a burden away from the Official Assignee, who will now have more resources to devote to the administration of individuals and small businesses.<sup>69</sup> This is strongly justified, as the work completed by the Official Assignee is for the benefit of the private companies (the creditors), thus they should bear some of the costs associated with the process.<sup>70</sup> Institutional creditors (defined as a bank, a finance company or a business with an annual sales turnover of \$100 million and employing over 200 employees<sup>71</sup>) upon applying to make a debtor bankrupt will now be required to nominate private trustees to administer the estate.<sup>72</sup> This is because the Ministry of Law believes that institutional creditors are better placed for these administrative responsibilities and clearly have sufficient resources to undertake this task. It will also have the added benefit of making these creditors more risk adverse before lending, as there will be more significant consequences on the creditor if the debtor goes into bankruptcy.<sup>73</sup> There will be protections in place to ensure that the trustee is acting appropriately. Each month, the trustee will be required to submit to the Official Assignee a report of the trustee's administration of the bankruptcy. This must contain the total amount of debts owed, the amount of bankrupt's property and the extent it has been realised, the monthly contribution and the target contribution and any payments that have been made.<sup>74</sup>

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<sup>66</sup> Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, section 86D. This decision is reviewable by the bankrupt or any creditor under section 86E.

<sup>67</sup> Bankruptcy (Amendment) Act 2015, section 54 amending Bankruptcy Act 1995, section 163(1).

<sup>68</sup> Bankruptcy (Amendment) Act 2015, section 54 inserting Bankruptcy Act 1995, section 163(1C).

<sup>69</sup> Ministry of Law, Press Release, 'More Rehabilitative Bankruptcy Framework to Take Effect from 1 August', 27 July 2016.

<sup>70</sup> Discussed in Second Reading Speech by Senior Minister of State for Law, Indraneel Rajah SC, on the Bankruptcy (Amendment) Bill 2015, 13 July 2015.

<sup>71</sup> See definition in Bankruptcy (Amendment) Act 2015, section 5 amending Bankruptcy Act 1995, section 33(3).

<sup>72</sup> Bankruptcy (Amendment) Act 2015, section 5 amending Bankruptcy Act 1995, section 33(1A).

<sup>73</sup> Ministry of Law, Press Release, 'More Rehabilitative Bankruptcy Framework to Take Effect from 1 August', 27 July 2016.

<sup>74</sup> Bankruptcy (Amendment) Act 2015, section 23 inserting Bankruptcy Act 1995, section 86D. This decision is reviewable by the bankrupt or any creditor under section 86F.

## Conclusion and Recommendations

Bankruptcy has two key aims, firstly punishment of the bankrupt individual and a deterrence for others and secondly, rehabilitation – giving people who have become weighed down by problem debt the opportunity for a fresh financial start and allowing them to become productive members of society again. All bankruptcy regimes have aspects of both aims, however – as highlighted in the above discussion of the different international approaches – the balance between the two shifts quite dramatically between different countries. The recent bankruptcy amendments provide the Singaporean regime with an increased focus on rehabilitation, which should provide benefits to society as a whole and well as the individuals involved in the bankruptcy process.

The Ministry of Law and the Insolvency and Public Trustee's Office should be congratulated for their hard work and dedication in this area. The proposed bankruptcy reforms should make a significant impact on a number of people who are struggling under the weight of problem debt. It is clear that these new reforms have been well thought through and provide a much needed update and modernisation of the bankruptcy procedures in Singapore. Below are a few recommendations to continue the benefits of the recent reforms, or areas which could benefit from further consideration and research.

### *Reduced Access to Debt Repayment Scheme*

It is important to look at bankruptcy reforms in the context of other financial services and social welfare support. Whilst it is important to have a fair, transparent and accessible bankruptcy process to provide people with a much needed 'second chance', this does need to be weighed up against the potential negative consequences. Bankruptcy is expensive, time-consuming and has negative outcomes for the bankrupt individual, their creditors and society in general. The creation of a debt repayment scheme in Singapore in 2009 reflected the approaches taken in many overseas countries and provided an effective alternative to bankruptcy.

The Debt Repayment Scheme is modelled on Chapter 13 of the United States' Bankruptcy Code. In the USA there are no minimum debt levels for bankruptcy under either Chapter 7 or 13. This is not the case in Singapore, where the bankruptcy threshold was recently increased to \$15,000. As the debt repayment scheme and bankruptcy work in conjunction with each other in Singapore, there will be a corresponding increase in the threshold for accessing the debt repayment scheme. This means that more people will miss out on accessing this scheme and will therefore be dependent on their ability to negotiate an Individual Voluntary Arrangement. For people on low incomes and/or with limited education, this may be a daunting and difficult process.

Even small amounts of debt can become unmanageable and create difficulties for borrowers, particularly those on lower incomes. Debt repayment schemes are very useful, and it would be preferable if people with debts less than the bankruptcy threshold would be able to access this assistance. Singapore may therefore want to consider moving towards a system similar to the UK, where there are multiple alternatives to bankruptcy with different entry requirements.

### *Flexible Fee Arrangements*

It is important to have some sort of fee arrangement in place to both cover the cost of the Official Assignee and to make people think carefully before applying for bankruptcy. However, it could be useful to have a more flexible approach to fee arrangements. The current process of requiring debtors to pay for the costs of bankruptcy upfront could have a number of potential negative outcomes, including encouraging people to apply for further credit (to cover these fees), delaying people applying for bankruptcy until they have this money available (potentially allowing them to increase their debts in the process) or putting bankruptcy out of the reach of anyone who cannot afford the cost. Other jurisdictions have responded to this concern by providing a process by which individuals can apply for a waiver of the fees in certain circumstances, or allowing them to be paid by instalments over a period of time. The Ministry of Law may therefore wish to think about instituting a similar scheme.

### *Providing Early Assistance*

Problem debt is a cycle. People generally start with a small amount of problem debt, which gradually builds up over time until it is unsustainable and the debtor can no longer cope.<sup>75</sup> If the borrower cannot then repay the initial loan, they will need to take out further credit and can become stuck in a harmful debt cycle. It is therefore very important to ensure that procedures are in place to providing people with support and assistance when they first struggle with problem debt. If we can access and help people at this early stage, it is likely to reduce the number of individuals needing to go through bankruptcy.

It is important to recognise this issue and provide adequate financial support for people who are starting down the road of unsuitable debt. This support has two main parts – firstly, helping people manage their finances to prevent getting into problem debt and secondly, services for people who do become overly indebted to help them regain control of their finances. These support organisations and services are not designed to give indebted borrowers an ‘easy way out’, but instead provide them with support and assistance so that they can take control of their financial situation. Similar programs are currently run in a number of other countries, including the Money Advice Service and StepChange Debt Charity in the United Kingdom and the Financial Counsellors Association in Australia. These organisations provide assistance to people who are suffering financial difficulties so that they can repay their existing debts without obtaining further credit. Whilst Credit Counselling Singapore provides excellent care to many people in need, it currently does not have a debt restructuring program for moneylending borrowers<sup>76</sup> and also does not have the capacity to assist everyone in financial difficulties; further support is therefore crucial.

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<sup>75</sup> Marie Burton, *Keeping the plates spinning: perceptions of payday loans in Great Britain* (Consumer Focus 2010). StepChange Debt Charity, *Life on the Edge: Towards more resilient family finances* (2014).

<sup>76</sup> Although there are hopes that this will change shortly – Imelda Saad (2014), ‘Debt Restructuring Programme for Debtors of Licensed Moneylenders’, *Channel NewsAsia* 22 November 2014, <http://www.channelnewsasia.com/news/singapore/debt-restructuring/1488140.html>.

### *Bankruptcy and Illegal Lending*

There is a complicated, but largely unexplored relationship between bankruptcy and illegal lending. For example, there are concerns that the strict limitation on bankrupts obtaining further credit may push people into illegal lending. Whilst, there does not appear to be any formal research on the link between bankruptcy and illegal lending activity in Singapore, there is evidence of individuals resorting to loan sharks during bankruptcy. This is generally because they are absolutely desperate and could not access any legal loans. For example, one person who was an undischarged bankrupt urgently needed money to cover the costs of his hawker stand, which was his only source of income. When he was unable to obtain loans from legal sources, he went to a loan shark. As bankruptcy does not provide relief over illegal loans, this creates difficult and complex circumstances for people unfortunate enough to be in this situation. It is also unclear how people who have pre-existing illegal loans could pay these debts whilst in bankruptcy, as their income is monitored so closely by the trustee. As these loan sharks are capable of resorting to very violent means for repayment, it makes borrowers who become bankrupt highly vulnerable, and may prevent them from using these processes for financial relief. It is therefore clear that the relationship between bankruptcy and illegal lending is complex and multi-faceted, and would be a very useful area for further research and consideration.

## Table of Comparisons

	<b>Minimum Level of Debt</b>	<b>Length of Time until Discharge</b>	<b>Available Alternatives</b>	<b>Notable Features</b>
<b>Singapore</b>	\$15,000SGD	Three to nine years depending on repayment of contributions and first or subsequent bankruptcy	Debt repayment scheme (\$15,000 minimum debt) or voluntary undertaking	Significant restrictions. Name removed from register if target contribution is made
<b>United States</b>	Nil	Discharge by court order (generally 60-90 days after creditors meeting)	Chapter 13 bankruptcy	Very forgiving, but potential for abuse
<b>United Kingdom</b>	£5,000GBP	One year (delayed discharge possible)	Multiple, depending on amount of debt and income	Information recorded for six years after bankruptcy
<b>Australia</b>	\$5,000AUD	Three years (with a possible extension of additional eight years)	Part IX Debt Agreement with creditors (income limitations apply) and personal insolvency agreements (no limitations applicable)	Significant restrictions. Permanent inclusion on National Personal Insolvency Index

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