THE BANKRUPTCY (AMENDMENT) ACT 2015 from the perspective of Banks and Financial Institutions

Executive Summary

The Bankruptcy (Amendment) Act 2015 of Singapore came into effect on 01 August 2016. The reforms made to the existing regime under the Bankruptcy Act (Cap. 20) are meant to create a more rehabilitative framework for bankrupts as well as urge creditors to exercise financial judiciousness when making lending decisions.

The changes in the Act have a significant impact on the manner in which banks and financial institutions undertake recovery proceedings against individuals, particularly to enforce securities and personal guarantees given by promoters / stakeholders within the ambit of bankruptcy proceedings.

Briefly, the four key reforms to the Act introduce:

- an increased debt threshold to institute bankruptcy proceedings;
- an avenue for expedited bankruptcy applications for creditors;
- the mandatory appointment of private trustees by institutional creditors;
- a differentiated discharge regime for bankrupts;

Other miscellaneous amendments include:

- revised timelines for the filing of proofs of debt; and
- clearing the record of discharged bankrupts.

Increased Debt Threshold

The minimum amount of debt that needs to be owed before a creditor can apply to bankrupt an individual has been raised from S$10,000 to S$15,000.

The Ministry of Law has stated that this increase is due to the average income benchmarks having increased since the last revision of the debt threshold in 1999. Debts below S$15,000 will have to be resolved by means other than the formal bankruptcy regime, helping some debtors avoid the inconveniences and stigma of bankruptcy.

Expedited Bankruptcy Applications

Creditors no longer have to wait for 21 days to pass from the service of a statutory demand before filing a bankruptcy application in court if creditors can show that there is a serious possibility that the debtor's property / value of his property will be significantly diminished during that period. This addresses concerns by creditors that debtors will dissipate their assets beyond the reach of recovery during the interim period between the issuance of the statutory demand and the making of the bankruptcy application.

Mandatory appointment of Private Trustees by Institutional Creditors

Prior to the Bankruptcy (Amendment) Act 2015, the Official Assignee ("**OA**") administered most bankruptcies in Singapore (up to 99% of bankruptcies). This was unsatisfactory as the State and public resources bore the cost of resolving debts of private parties and for the benefit of private parties.

:: CONTACT PARTNERS ::

TING CHI-YEN
Head of Corporate, Banking & Finance
chiyen@oonbazul.com
DID (65) 6239 5881

FAEZAH OMAR
Partner
Corporate, Banking & Finance
faezah@oonbazul.com
DID (65) 6239 5885

"The Bankruptcy (Amendment) Act 2015 came into effect on 01 August 2016"

"The minimum amount of debt that needs to be owed has been raised to S$15,000"

Under the Bankruptcy (Amendment) Act 2015, it is now mandatory (i) for institutional creditors (or subsidiaries of institutional creditors), or (ii) where debt when incurred was payable to an institutional creditor (or its subsidiaries), to appoint private trustees to be the trustee of the bankrupt's estate (instead of the OA).

"**Institutional creditors**" are:

(a) banks licensed under the Banking Act (Cap. 19);

(b) finance companies licensed under the Finance Companies Act (Cap. 108); or

(c) companies with an annual sales turnover of more than $100 million and at the date of the bankruptcy application, has more than 200 employees.

Differentiated Discharge Framework

Under the new bankruptcy regime, there are fixed exit points for bankrupts to be discharged within clear time frames. The objective is to incentivise bankrupts to achieve their target contribution (52 monthly contributions for first time bankrupts, and 76 monthly contributions for repeat bankrupts) in order to be eligible for discharge.

Generally, first time bankrupts will be eligible for discharge in 5-7 years and repeat bankrupts will be eligible for discharge in 7-9 years. The aim of this change is to incentivise bankrupts to adhere to their repayment plans, befitting creditors in the process.

"Private Trustees must be appointed for bankruptcy applications by Institutional Creditors"

Filing of Proof of Debt

Creditors must file their proofs of debt in bankruptcy within 4 months from the administration date of the bankruptcy. Any extensions of time will require the Court's leave or the Official Assignee's consent. If a creditor does not comply with the timelines, he will not be able to prove his debt in bankruptcy.

Record of Discharged Bankrupts

To further incentivise bankrupts to adhere to their repayment plan and achieve the target contribution, a bankrupt's name will be removed from the record of bankrupts if he pays his target contribution in full prior to his discharge. The removal will be effected 5 years after the date of his discharge. However, if the bankrupt does not pay his target contribution in full, his name will remain on the record permanently and be open for public inspection.

FAQs

1. Under the new regime, has it become harder for bank creditors to apply to bankrupt debtors?

Yes. With the increase in the debt threshold and the need for banks / institutional clients to appoint private trustees (and the costs associated with the same), some debts which would previously have been sufficient for creditors to initiate bankruptcy proceedings are now unlikely to be a commercially viable option. However, the increase in the threshold and cost is likely to affect recovery matters for retail / consumer banking (for example, credit card debts and personal loans) more than trade / commercial banking (for example, trade finance, corporate loans).

2. How do the changes benefit bank creditors?

Banks no longer need to wait 21 days before initiating bankruptcy proceedings if there is a concern about the bankrupt dissipating his assets.

The greater incentives for bankrupts to adhere to their repayment plans and achieve their target contribution may also translate into a greater chance of recovery for bank creditors.

3. What are some considerations banks should have before extending credit or undertaking personal recovery in light of these changes?

Banks should exercise greater prudence in making lending decisions as it is now more costly to bring bankruptcy proceedings since it is mandatory for them to appoint private trustees to administer the bankrupt's estate. Commercially, private trustees would generally require the appointing bank creditor to pay a deposit to account for some part of their costs and disbursements prior to their appointment, with the same to be refundable out of the assets from the bankrupt's estate (if sufficient). In the event that the assets of the bankrupt's estate are insufficient, the appointing creditor may be requested to indemnify the private trustees for their costs of applying to Court for their discharge or any other expenses incurred.

As such, banks are now likely to be more circumspect in commencing bankruptcy applications as it is no longer the case that only legal costs / disbursements would be incurred in the course of the application with the administration of the bankruptcy estate to be absorbed by the State – banks would now need to also consider the cost of appointing a private trustee under the new bankruptcy regime.

Concluding Comments

The reform of the Bankruptcy Act in Singapore is consistent with the trend of jurisdictions in the present economic environment to update their insolvency regimes and to reflect social and financial realities.

The process of bankruptcy provides an orderly regime for the resolution of unpaid debts and balances the interests of debtors, creditors and society in ensuring that bankrupts are held accountable for their debts, but also allowing bankrupts a fresh start in their financial matters after a reasonable period. It also encourages creditors not to over-extend credit and for debtors not to borrow more than they can repay. The Bankruptcy (Amendment) Act seeks to further these objectives while ensuring that public resources are utilised more efficiently.

Please feel free to check in with Chi-Yen (chiyen@oonbazul.com) or Faezah (faezah@oonbazul.com) for clarifications or queries on the matters covered above.

OON & BAZUL LLP
36 Robinson Road
#08-01/06 City House
Singapore 068877
Tel: +65 62233893
Fax: +65 62236491
www.oonbazul.com