

Purposes of bankruptcy

- Relieve bankrupt of debts he cannot pay
- Rehabilitate bankrupt and allow him to start anew
- Deterrence to irresponsible handling of finances
- Protect members of society from errant debtors
- Punish debtor for irresponsible handling of finances

Alternatives to Bankruptcy

Debtor's voluntary arrangement	Consensual settlement between debtor and creditors
Debtor apply to court to make a proposal for voluntary arrangement under Part V of the Bankruptcy Act	Negotiate for a settlement of the debt between debtor and creditor
Creditors' meeting will be convened for creditors to consider proposal.	-
Court can facilitate by making an "interim order" Moratorium – no bankruptcy/legal proceedings permitted	-

Who can apply for bankruptcy?

Section 57 BA: Creditor – Creditor's application for bankruptcy of the debtor	Section 58 BA: Debtor – Debtor's application for declaration of bankruptcy
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Requirements for Debtor

Section 60 BA:
Bankruptcy application shall only be made to Court against a debtor if he is

- (a) domiciled in Singapore;
- (b) has property in Singapore; or
- (c) has, at any time within the period of one year immediately preceding the date of the making of the application —
 - (i) been ordinarily resident or has had a place of residence in Singapore; or
 - (ii) carried on business in Singapore.

Ground of Bankruptcy application

Debtor's inability to pay debt or debts as and when they fall due ie. Insolvency

Section 61 BA
For debts incurred in Singapore:

- (a) the amount of the debt, or the aggregate amount of the debts, is not less than \$10,000;
- (b) the debt is for a liquidated sum payable to the applicant creditor immediately;
- (c) the debtor is unable to pay the debt or each of the debts



By **elementhalo**

Published 13th February, 2016.
Last updated 13th May, 2016.
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Ground of Bankruptcy application (cont)

For debts incurred outside of Singapore:

(d) such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by execution in Singapore.

Presumption of insolvency

Claimant has served a Statutory Demand on debtor and 21 days has lapsed and debtor has not complied with SD;	Execution in respect of a Judgment Debt has not be satisfied or satisfied in part;	Debtor has departed or remains outside of Singapore with the intention to evade debt obligations;	DRS inapplicability / failure / revocation of cert of completion
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Statutory demand

Rule 96 Bankruptcy Rules

Creditor shall make reasonable attempts to effect personal service of the Statutory Demand

Where the creditor is not able to effect personal service, the demand may be served by way of substituted service (by such other means as would be most effective in bringing the demand to the notice of the debtor)

Upon being served with a Statutory Demand, the debtor may:

- (a) pay/secure/compound the debt; or
- (b) apply to set aside the Statutory Demand; or
- (c) fail/refuse/neglect to comply with the Statutory Demand

Rule 97 Bankruptcy Rules

Debtor who has been served with a Statutory Demand may:

- (a) within 14 days; or
- (b) where the demand was served outside jurisdiction, within 21 days, from the date on which the demand is served apply to court by way of Originating Summons for an order setting aside the Statutory Demand

Section 62 BA

Debtor is presumed unable to pay debt if:

Debt is immediately payable and at least 21 days have elapsed since the Statutory Demand was served, the debtor has neither complied with it

Rule 102 Bankruptcy Rules

Bankruptcy application based on Statutory Demand – application shall not be made if Statutory Demand was served more than 4 months before the date of filing of the application

Execution of Judgment Debt

Writ of Seizure and Sale & Garnishee Order

Section 62 BA

Debtor is presumed unable to pay debt if:

Execution in respect of judgment debt has been returned unsatisfied in whole or in part

Rule 103 Bankruptcy Rules

The application shall not be filed if more than 4 months have elapsed since the date on which the execution was completed.



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Published 13th February, 2016.

Last updated 13th May, 2016.

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Bankruptcy Application

Debtor	Creditor
Documents required:	
Debtor's Bankruptcy Application	Creditor's Bankruptcy Application
Affidavit	Affidavit
-	Affidavit of Service
Steps:	
1. Deposit \$1,600 with OA	1. Lodgement Form to deposit \$1,600 with OA
2. File Bankruptcy Application and Affidavit in High Court	2. File Bankruptcy Application and Affidavit in High Court
3. Hearing date given by High Court Registry	3. Hearing Date given by High Court Registry
-	4. Personal service on Debtor (Rule 109) / Substituted Service
-	5. Proceed to bankruptcy hearing
-	6. Prior to hearing, creditor to file affidavit of service og BA and addidavit of non-satisfaction of debt

Receipt of Creditor's Bankruptcy Application

After being served with the application, the debtor may:

- (a) pay up/ secure/compound the debt or
- (b) fail/neglect/ refuse to pay the debt or
- (c) oppose the application

Rule 119 Bankruptcy Rules

Where the debtor intends to oppose a creditor's bankruptcy application, ... not later than 3 days before the hearing —
file a notice specifying the grounds of objection
serve copy of the notice on the applicant creditor and the Official Assignee

Effect on Bankruptcy application

Section 77(1) of the BA

Where a person is adjudged bankrupt, any disposition of property made by him during the period beginning with the day of the making of the bankruptcy application and ending with the making of the bankruptcy order shall be void except to the extent that such disposition has been made with the consent of, or been subsequently ratified by, the court.

Bankruptcy Hearing

Who may attend

Creditor making application/ Debtor/ Any Creditor who has given notice to court in Form 5 Bankruptcy Rules/ Official Assignee

Where

High Court; in Chambers (Sections 3-4 BA)



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Published 13th February, 2016.

Last updated 13th May, 2016.

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Bankruptcy Hearing (cont)

Before whom

The Registrar (Section 5 BA)

Powers of Court

To adjourn/ give directions/ refer to DRS/make Bankruptcy Order/order stay of proceedings

What happens

Court decides on: Whether the Debtor is insolvent/ Whether a Bankruptcy Order should be made

Bankruptcy Hearing

Section 65(1) BA

Court may make an order for bankruptcy where

- (a) the debt has neither been paid nor secured or compounded for; and
- (b) where the debtor does not appear at the hearing, the application has been duly served on him.

Section 65(2) BA

Court may dismiss the application :

If court not satisfied with proof of debt owed by debtor

If court not satisfied with proof of service

If court satisfied that debtor can pay debt

If court satisfied that debtor has made offer to secure or compound debt – offer is unreasonably refused

If court satisfied that there are other sufficient reason not to make order.

Debt Repayment Scheme

Requirements for Eligibility:

- Debts owed are less than \$100,000,
- Not bankrupt within last 5 years
- No voluntary arrangement within last 5 years
- No DRS within last 5 years
- Not sole-proprietor/partner
- Earning a regular income

Where eligible, at Bankruptcy Hearing, Court will adjourn Bankruptcy Application for OA to assess on suitability of DRS

If OA assesses that DRS is unsuitable, OA will issue Notice of Unsuitability -> Bankruptcy Hearing

If OA assesses that DRS is suitable, OA will administer DRS. Bankruptcy Application withdrawn.

Where DRS is implemented by debtor fails to provide information or complies with scheme,

- Certificate of Failure of DRS (Section 56M BA)
- Deemed to be insolvent
- Creditor can take out another Bankruptcy Application

Section 62 BA : presumed to be unable to pay the debt if :

- Certificate of Inapplicability for DRS
- Certificate of Failure of DRS



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Published 13th February, 2016.

Last updated 13th May, 2016.

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Debt Repayment Scheme (cont)

- Revocation of Certificate of Completeness for DRS

Bankruptcy Order

Rule 128 Bankruptcy Rules
Bankruptcy Order (Form 8) issued by the Court
Rule 129 Bankruptcy Rules
Applicant creditor shall serve Bankruptcy Order on OA
Rule 131 Bankruptcy Rules
OA shall cause the Bankruptcy Order to be advertised in the local newspapers

Effect of Bankruptcy

Section 81 BA
Debtor is required to disclose all assets and liabilities to the Official Assignee
Produce Statement of Affairs within 21 days of date of Bankruptcy Order
Creditors will be notified to submit their Proof of Debt against the bankrupt – Proof of Debt may be submitted online via the IPTO website
And other disqualification

Ending Bankruptcy

Discharge	Annulment
Bankruptcy ends as a consequence of fulfilment of obligations under bankruptcy	Bankruptcy order removed because it should not have been made in the first place or all the debts and expenses have not been paid

Discharge

By Court (s124)	By Official Assignee (s125)
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Discharge by Court

Who can apply
Official Assignee/ Bankrupt/ Any person having interest

When can apply
at any time and for any debt size

What can the Court do
Refuse to discharge/ Discharge/ Discharge with conditions

Creditor can object but Court has the discretion:

- Length of bankruptcy
- Amount of debt owed
- Amount of dividend
- Conduct of bankrupt
- Reason for bankruptcy
- Reason for objection



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Published 13th February, 2016.
Last updated 13th May, 2016.
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Discharge by OA

What conditions are there?

Min 3 years and debts proved must not exceed \$500k

Creditors can first raise objections to the OA (S126(2))

If OA rejects the creditor's objection, creditor may then apply to Court to prohibit the OA from issuing the Certificate of Discharge (S126(4))

Annulment

Annulment by the Court – S 123 BA

Circumstances :

- (a) the order ought not to have been made;
- (b) both the debts and the expenses of the bankruptcy have all either been paid or secured for to the satisfaction of the court;
- (c) proceedings are pending in Malaysia under the bankruptcy law of Malaysia and that distribution ought to take place there; or
- (d) a majority of the creditors are resident in Malaysia, and that his estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.

Annulment by OA – S 123A BA

OA may issue a certificate annulling a bankruptcy order ... the debts which have been proved and the expenses of the bankruptcy have all, since the making of the order, been paid.

Annulment by OA – S 95A BA

Where a composition or scheme is accepted by the creditors by a special resolution under section 95, the Official Assignee may annul the bankruptcy order by issuing a certificate of annulment.

Effect of Discharge

S127

Release from all debts provable in the bankruptcy

No release from :

- any debt due to the Government;
- any provable debt which incurred in respect of fraud or fraudulent breach of trust to which he was party;
- any liability in respect of a fine imposed for an offence.
- any debt which has been proved and which —
 - (a) consists a liability to pay damages in respect of personal injuries to any person;
 - (b) arises under any order made in proceedings under the Women's Charter relating to family matters; or
 - (c) arises under an order involving the confiscation of the proceeds of crime.

S128

A discharged bankrupt shall give assistance as OA requires in the realisation and distribution of such of his property as is vested in the OA

If the discharged bankrupt fails to give assistance to OA —

- (a) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000; and
- (b) the court may, if it thinks fit, revoke his discharge.



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Published 13th February, 2016.

Last updated 13th May, 2016.

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