# DEVELOPMENTS IN SINGAPORE INSOLVENCY LAWS IN 1999

## INTRODUCTION

During the launch of ***Technopreneurship 21 Initiative*** ("T21 Initiative") which is designed to "build up a critical mass of technopreneurial talent", Singapore's Deputy Prime Minister, Dr Tony Tan said:

> "We need to infuse in our people a culture of innovation and enterprise, and a readiness to take calculated risks. We also need to infuse in our society a willingness to accept failure as a learning process so as to encourage those who do not succeed in the first instance and give them the chance to succeed."

One of the critical pillars of the T21 Initiative is centred on the need for a supportive regulatory environment. The recent changes in the Singapore bankruptcy laws clearly form part of this pillar and the direction taken is in tandem with the T21 Initiative.

## BANKRUPTCY (AMENDMENT) ACT 1999

The bankruptcy laws have gone through significant change as a result of the enacted *Bankruptcy (Amendment) Act 1999.* This Act makes amendments to the bankruptcy regime in order to:-

- encourage technopreneurial activity;
- create a climate more conducive to entrepreneurship and responsible risk-taking while preserving commercial morality and financial discipline; and
- prepare Singaporeans to take advantage of the emerging knowledge-based economy.

The following areas were targeted for significant amendment:-

(i) **Voluntary Arrangements**

When introduced in 1995, the voluntary arrangements were to provide an avenue for negotiated debt settlement as an alternative to bankruptcy. It put in place a framework for a bankrupt to make a general offer to his creditors. However, such arrangements were seldom utilised. The amendments seek to encourage debtors to use voluntary arrangements by:

- Extending the deadline for debtors to finalise the actual terms of his proposal for voluntary arrangement from the existing 28 days to 42 days. This enables the debtor to properly organise his affairs and prepare a fully considered proposal. (Section 45(4) Bankruptcy Act)
- Allowing the Minister of Finance to make rules prescribing the scale of fees chargeable by nominees assisting debtors in such arrangements in order to ensure that the efforts made by the debtors are not hindered by the exorbitant fees charged by nominees (Section 46(3) Bankruptcy Act). The Act requires that the arrangements be administered by a nominee, who should be a public accountant or lawyer.

(ii) **Facilitate Bankrupts to Continue Being Economically Active**

Bankrupts who are economically active and productive during bankruptcy not only continue to contribute to the society, they also have the means to settle their debts more expeditiously.

Amendments have been made to both the Companies Act and the Business Registration Act to facilitate economic activity by a bankrupt. The Official Assignee is now able to grant permission to bankrupts to be either directors of companies (Section 148 Companies Act) or to engage in the management of any business (Section 22 Business Registration Act). As persons who are made bankrupt no longer need to apply for leave from Court for such permission, it is hoped that they will be more inclined to apply to the Official Assignee as the process is cheaper, simpler and more accessible.

Allowing the Official Assignee to hold a discretionary rein allows differentiation between persons who became bankrupts through misfortune and those who became so through malpractice.

(iii) **Speed Up Discharge Process and Streamline Procedures**

A scheme was introduced in 1995 to empower the Official Assignee to discharge deserving bankrupts. The advantages were two-fold: firstly, by creating an inexpensive avenue of discharging bankrupts expeditiously; and secondly, by providing incentives for bankrupts to work towards their discharge.

Section 125(2) Bankruptcy Act has now been amended such that the Official Assignee can consider discharging the bankrupt after a minimum period of 3 years instead of 5 years, as was previously the case. Prior to the Bankruptcy (Amendment) Act 1999, the Bankruptcy (Variation of Sum of Debts under section 125(2)(b)) Rules 1999 had already increased the maximum debt level for such discharge from $250,000 to $500,000, thereby increasing the scope for discharge.

The procedures for debt settlement and application for discharge by bankrupts have also been streamlined and expedited to save time and costs by:

- Allowing creditors to accept a composition or scheme by passing a special resolution by post instead of at a general meeting of creditors. (Section 95 Bankruptcy Act)

- Removing the need for an application to be made to the Court for annulment of bankruptcy orders by granting the Official Assignee power to issue a certificate when the composition or scheme has been accepted (Sections 95A and 96 Bankruptcy Act) or when the bankrupt has fully paid his debts (Section 123A Bankruptcy Act) which will have the effect of annulling the bankruptcy.

(iv) **Increase Debt Limit**

It was recognised that the previous levels of debt that would allow insolvency proceedings to be commenced were unrealistically low. As a result, in July 1999, amendments were made to provide a minimum debt level of $10,000.00 before insolvency proceedings could be commenced against an individual. Similarly, for companies, the significant amendment has been to Section 254(2)(a) Companies Act to increase the minimum debt

for a winding up petition to be presented up from $2,000 to $10,000. These amendments prevent companies or persons from being wound up or made bankrupt in respect of small claims as there are clearly other options and winding up or bankruptcy should always be the last resort.

## CONCLUSION

The changes in the bankruptcy laws have sought to strike a balance between interests of debtors and creditors. It is hoped that these changes will herald the beginning of many more exciting changes to come in other areas of law to spur Singapore in the fulfillment of the vision under the T21 Initiative.

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