

RETHINKING BANKRUPTCY ALTERNATIVES IN SINGAPORE

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Bankruptcy processes are an integral part of any financial system; they provide an escape path for people burdened by problem debt, whilst also allowing businesses some level of clarity on the recovery of sums unpaid. Bankruptcy does however have a number of significant and long-term consequences for the debtor, and creditors are unlikely to have their accounts repaid in full. There has therefore been an increasing focus on the development of bankruptcy alternatives—allowing individuals to be released from debts without the strict processes and consequences of formal bankruptcy, whilst also maximising the returns to creditors. In Singapore, a wide variety of bankruptcy alternatives have developed, and indebted individuals can now make an educated choice based on their personal situation. This article analyses the different bankruptcy alternatives in Singapore, highlighting the benefits and detriments of the processes available and outlining some potential reforms to provide a comprehensive and accessible regime.

I. INTRODUCTION

When people are struggling to repay their personal debts, it is too often presumed that the only recourse they have is bankruptcy. There is, in fact, a rich array of options available in Singapore, many of which are not adequately understood or utilised. It is important that consumers are aware of these different possibilities so that they can choose the one best suited for their individual financial situation. It is also important for policy makers to understand the regime as a whole, and to see what, if any, gaps exist in the current system. This paper will analyse the different options available for over-indebted consumers in Singapore, including bankruptcy, formal alternatives (Voluntary Arrangements and the Debt Repayment Scheme), informal arrangements (Bankruptcy Mediation and Private Arrangements), and other financial options (Debt Consolidation Plans, Debt Management Programmes, and For-Profit Debt Management Services). Despite the wide range of options available, there are still small gaps in the currently available alternatives, meaning that some individuals are inadequately covered by the existing regime. On the basis of this analysis, a range

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of recommendations will be suggested. These include financial education and rehabilitation, pre-bankruptcy assistance, regulation of for-profit financial management services, and increased initiatives to tackle small debts.

II. BANKRUPTCY IN SINGAPORE

The bankruptcy regulations in Singapore are largely based on the country's colonial heritage. The *Bankruptcy Act*¹ originated from the United Kingdom's ("UK") *Bankruptcy Ordinance 1888*,² and was introduced as part of the British Straits Settlements.³ The law surrounding bankruptcy (and any alternative regime in place) is already very policy driven, reflecting the values and approach of society at the time. This has been shown in the wide-ranging reforms made by the *Bankruptcy (Amendment) Act 2015*,⁴ which 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",⁵ which reflected a more forgiving approach to problem debt. It is therefore important that the government responds appropriately and flexibly to changes in society's approach to management (and sometimes forgiveness) of debts, particularly for low-income, low-debt consumers.

The aims of the Singaporean bankruptcy system have been discussed by the former Senior Minister of State for Law, Indranee Rajah SC.⁶ Ms Rajah outlined that the system is primarily designed to provide an orderly regime for the resolution of unpaid debts. In doing this, the bankruptcy regime balances the interests of debtors, creditors and the wider society. This occurs in two main ways. First, 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 to not over-extend credit and debtors not to borrow more than they can repay.⁷

¹ *Bankruptcy Act* (Cap 20, 2009 Rev Ed Sing) [*Bankruptcy Act*].

² *Bankruptcy Ordinance 1888* (SS) (No 11 of 1888).

³ For more detail, see Insolvency Law Review Committee, *Final Report* (2013) at 4-5, online: <<https://www.mlaw.gov.sg/files/news/public-consultations/2013/10/RevisedReportoftheInsolvencyLawReviewCommittee.pdf>>.

⁴ *Bankruptcy (Amendment) Act 2015* (No 21 of 2015, Sing).

⁵ Ministry of Law, *More Rehabilitative Bankruptcy Framework to Take Effect from 1 August* (27 July 2016), online: Ministry of Law <<https://www.mlaw.gov.sg/news/press-releases/more-rehabilitative-bankruptcy-framework-to-take-effect-from-1-august>>: text=More%20Rehabilitative%20Bankruptcy%20Framework%20to%20Take%20Effect%20from%201%20August,-27%20JUL%202016&text=Reforms%20to%20Singapore's%20bankruptcy%20framework,financial%20prudence%20when%20extending%20credit [Ministry of Law, *More Rehabilitative Bankruptcy Framework*].

⁶ Ministry of Law, *Second Reading Speech by Senior Minister of State for Law, Indranee Rajah SC, on the Bankruptcy (Amendment) Bill 2015* (13 July 2015), online: Ministry of Law: <<https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-senior-minister-of-state-for-law-indra>>.

⁷ *Ibid* at para 2.

III. BANKRUPTCY PROCESS

The Minister has the power to appoint an Official Assignee of the estates of bankrupts (“the Official Assignee”) for the purposes of the *Bankruptcy Act*.⁸ The Official Assignee then has significant obligations regarding both the conduct and affairs of bankrupt individuals,⁹ and the estate of the bankrupt individuals.¹⁰

Under Part VI of the *Bankruptcy Act*, a creditor’s bankruptcy application may be made against an individual or against a partner of a firm.¹¹ The application can be made by the debtor themselves,¹² or by a creditor.¹³ This article is focused solely on the applications against individuals, as there is already significant academic literature on corporate bankruptcy in Singapore.¹⁴ For a bankruptcy order to be granted against an individual, they need to meet a range of criteria:

- Be domiciled in Singapore, own property in Singapore, or in the preceding one-year period have been a resident or carried out business in Singapore;¹⁵
- Have aggregate debts of over SGD15,000¹⁶ that are for a liquidated sum and payable immediately;¹⁷ and
- Be unable to pay the debt or debts in question.¹⁸

The *Bankruptcy Act* creates a range of presumptions to determine the inability of the debtor to pay outstanding debts.¹⁹ The Court is required to take into account the debtor’s “contingent and prospective liabilities”.²⁰ The Court also has the power to adjourn the bankruptcy application for a period of time to allow the Official Assignee to determine whether the debtor is suitable for a Debt Repayment Scheme under Part VA.²¹

Once a bankruptcy order has been made, the property of the bankrupt²² vests in the Official Assignee and becomes divisible amongst the bankrupt’s creditors.²³

⁸ *Bankruptcy Act*, *supra* note 1, s 17(1).

⁹ *Ibid*, s 21.

¹⁰ *Ibid*, s 22.

¹¹ *Ibid*, s 57(1)(a)-(b).

¹² *Ibid*, s 58(1)(a).

¹³ *Ibid*, s 57(1)(a).

¹⁴ See, for example, Meng Seng Wee, “Understanding Commercial Insolvency and Its Justifications as a Test for Winding Up” (2015) LMCLQ 62; Victor C S Yeo *et al*, *Commercial Applications of Company Law in Singapore*, 4th ed (Singapore: CCH Asia, 2011); Meng Seng Wee, “Lessons for the Development of Singapore’s International Insolvency Law” [2011] 23 Sing Ac LJ 932; Chan Sek Keong, “Cross-Border Insolvency Issues Affecting Singapore” [2011] 23 Sing Ac LJ 413; Meng Seng Wee, “Insolvency and the Survival of Contracts” (2005) JBL 494.

¹⁵ *Bankruptcy Act*, *supra* note 1, s 60(1).

¹⁶ *Ibid*, s 61(1)(a).

¹⁷ *Ibid*, s 61(1)(b).

¹⁸ *Ibid*, s 61(1)(c).

¹⁹ See details in *Bankruptcy Act*, *ibid*, s 62.

²⁰ *Ibid*, s 65(3).

²¹ *Ibid*, s 65(7). This scheme is discussed in more detail below.

²² There are a range of exceptions to the property that vests in the Official Assignee, see s 78(2) of the *Bankruptcy Act*, *ibid*, which includes property held on trust, tools needed for the bankrupt’s employment, business or vocation, items needed to satisfy the basic domestic needs of the bankrupt and their family, the remainder of the bankrupt’s monthly income after deducting the contribution and any annual bonus or wage supplement paid.

²³ *Bankruptcy Act*, *supra* note 1, s 76(1)(a).

Once this occurs, no creditors will have a remedy against them, and no action can be commenced against them without leave of the court.²⁴

The Official Assignee can summon a meeting of the bankrupt's creditors after a bankruptcy order has been made.²⁵ The bankrupt shall then submit a statement of affairs within 21 days of the date of the bankruptcy order.²⁶ This statement of affairs must contain details of the bankrupt's:

- Assets;
- Creditors, debts and other liabilities;
- Current income from any source;
- Current employment status and history;
- Educational and vocational qualifications, age and work experience;
- Family members; and
- Monthly expenses necessary for the maintenance of the bankrupt and their family.²⁷

If a statement of affairs is not provided, is provided but contains false information, does not comply with the requirements, or contains misleading information or a material omission, the bankrupt shall be liable on conviction and subject to a fine not exceeding SGD10,000 and/or imprisonment for a term not exceeding two years.²⁸ The Official Assignee may also examine any relevant person (including the bankrupt themselves²⁹), or view any document that relates to the bankrupt's affairs.³⁰

After review of the information provided, the Official Assignee must determine the bankrupt's monthly contribution and target contribution for the bankruptcy.³¹ When this occurs, a notice of determination will be served on the bankrupt and their creditors.³² In determining the monthly contribution, the Official Assignee must take into account a range of factors, including the monthly income of the bankrupt, the extent to which the bankrupt's spouse may contribute to the maintenance of the family, the amount of money the bankrupt may be reasonably expected to earn over the duration of the bankruptcy, and the reasonable expenses for the maintenance of the bankrupt and their family.³³ If the bankrupt or any creditor is dissatisfied with the monthly contribution and target contribution determined by the Official Assignee, they may apply to the court for review within 21 days of the service of the notice of determination.³⁴ The court then has the power to vary the monthly contribution and target contribution where it is "just and equitable" to do so.³⁵ The Official Assignee may also reduce the monthly contribution and target contribution during the term of

²⁴ *Ibid*, s 76(1)(c).

²⁵ *Ibid*, s 79.

²⁶ *Ibid*, s 81(1).

²⁷ *Ibid*, s 81(3)(a).

²⁸ *Ibid*, s 81(6).

²⁹ *Ibid*, s 83(1).

³⁰ *Ibid*, s 82A(1)-(2).

³¹ *Ibid*, s 86A(1)(a).

³² *Ibid*, s 86A(1)(b).

³³ *Ibid*, s 86A(2).

³⁴ *Ibid*, s 86B(1).

³⁵ *Ibid*, s 86C(2)(c).

bankruptcy if (a) the reasonable expenses for maintenance of the bankrupt's family increases as a result of an increase in the number of members of the family, (b) the contribution of the bankrupt's spouse is substantially reduced, or (c) the personal circumstances of the bankrupt change, including "debilitating illness".³⁶

There is ongoing monitoring of the bankruptcy process, albeit in a light-touch manner. Until the bankrupt is discharged, the trustee in bankruptcy must submit an annual report to the Official Assignee outlining the total amount of debts owed, the property of the bankrupt, the monthly contribution and target contribution, and payments made to the bankruptcy estate.³⁷

IV. DISCHARGE OF BANKRUPTCY

In Singapore, there is no right to automatic discharge of bankruptcy after a defined period of time. There are three ways in which a bankrupt can be discharged. First, if the bankrupt's debts and expenses have been paid in full, the Official Assignee may issue a certificate annulling a bankruptcy order.³⁸ This provides an excellent incentive for the bankrupt to work hard and try to repay the outstanding debts during the term of bankruptcy.

Secondly, the Official Assignee may discharge the bankrupt by issuing a certificate.³⁹ A certificate can be issued after a period of seven years has lapsed.⁴⁰ If the bankrupt has paid the target contribution in full, or if the Official Assignee is satisfied that the bankrupt was unable to pay the target contribution due to extenuating circumstances, the period can be reduced to five years⁴¹ and further reduced to three years if there are no objections from the creditors.⁴² This provides further incentives for the bankrupt to work hard to pay the target contribution in full.

Thirdly, in the event that proven debts exceed SGD500,000, a bankrupt or Official Assignee may apply to the High Court for an order of discharge under section 124 of the Bankruptcy Act. The application for discharge will be given to the Official Assignee and all creditors, and these parties will be allowed to address the court before any discharge order is made. When determining whether discharge should be ordered, the High Court will consider a range of factors that focus on the bankrupt's lifestyle and actions before and during bankruptcy.⁴³ It will also look at whether the bankrupt committed any offences during the bankruptcy⁴⁴ or was fraudulent.⁴⁵ Once a bankrupt has been discharged, they are released from all

³⁶ *Ibid*, s 86D(1)-(2).

³⁷ *Ibid*, s 86F(1)-(2).

³⁸ *Ibid*, s 123A.

³⁹ *Ibid*, s 125.

⁴⁰ *Ibid*, s 125(2)(a)(ii).

⁴¹ *Ibid*, s 125(2)(a)(i)(A)&(BA).

⁴² *Ibid*, s 125(2)(a)(i)(A)&(BB).

⁴³ *Ibid*, s 124(5). This includes factors such as whether the individual was living 'extravagantly' or 'recklessly' before being declared bankrupt (s 124(5)(e)).

⁴⁴ For example, entering into a sale at an undervalue or giving an unfair preference: *ibid*, s 124(5)(k)&(l).

⁴⁵ *Ibid*, s 124(5)(h).

debts provable in bankruptcy.⁴⁶ There are however some consequences that continue beyond discharge, as will be discussed below.

V. BANKRUPTCY STATISTICS

This Part discusses and analyses the most recent bankruptcy statistics (from 2016 to 2019) to determine if there are any pertinent trends or developments in the bankruptcy regime in Singapore.

Year	Bankruptcy Applications ⁴⁷	Bankruptcy Orders Made ⁴⁸	Application to Order Ratio	Bankruptcy Discharges ⁴⁹	Singapore Population	Orders to Population Ratio
2016	2,704	1,797	66.46%	4,359	5,607,300 ⁵⁰	0.032%
2017	2,932	1,638	55.87%	2,030	5,612,300 ⁵¹	0.0292%
2018	3,097	1,656	53.47%	4,027	5,638,700 ⁵²	0.0294%
2019	3,473	1,645	47.37%	5,388	5,703,600 ⁵³	0.0288%

Table 1. Bankruptcy Statistics, 2016-2019.

What is clear is that Singapore consistently has an exceptionally low bankruptcy to population ratio compared with other countries. For example, Australia has a ratio approximately three and a half times higher,⁵⁴ the UK approximately six times higher,⁵⁵ and the United States (“US”) approximately eight times higher⁵⁶ than Singapore.⁵⁷

⁴⁶ *Ibid.*, s 127(1). This does not however apply to any debt due to the government (see s 127(2)).

⁴⁷ Ministry of Law, *Number of Bankruptcy Applications, Orders Made and Discharges* (September 2019), online: Ministry of Law <[https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges\(Sep19\).pdf/](https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges(Sep19).pdf/)>. See also, Ministry of Law, *Number of Bankruptcy Applications, Orders Made and Discharges* (June 2020), online: Ministry of Law <[https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges\(Jun2020\).pdf/](https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges(Jun2020).pdf/)>.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Department of Statistics Singapore, *Population Trends* (2017) at 3, online: Department of Statistics <<https://www.singstat.gov.sg/-/media/files/publications/population/population2017.pdf/>>.

⁵¹ *Ibid.*

⁵² Department of Statistics Singapore, *Population Trends* (2018) at 3, online: Department of Statistics <<https://www.singstat.gov.sg/-/media/files/publications/population/population2018.pdf/>>.

⁵³ *Ibid.*

⁵⁴ 27,058 new personal insolvencies (including debt agreements and personal insolvency agreements) for a population of 24,600,000 (Australian Financial Security Authority, *Annual Statistics: Annual Personal Insolvency Activity in Australia*, online: Australian Financial Security Authority <<https://www.afsa.gov.au/statistics/annual-statistics/>>).

⁵⁵ 115,299 new personal insolvencies for a population of 66,440,000 (UK Government National Statistics, *Insolvency Statistics: October to December 2018*, online: UK Government <<https://www.gov.uk/government/statistics/insolvency-statistics-october-to-december-2018>>).

⁵⁶ 750,489 new personal insolvencies for a population of 327,200,000 (United States Courts, *Bankruptcy Filings Continue to Decline*, online: US Courts <<https://www.uscourts.gov/news/2019/04/22/bankruptcy-filings-continue-decline>>).

⁵⁷ It should be noted that these figures all have slightly different definitions of ‘personal insolvencies’ and this may impact the ratios.

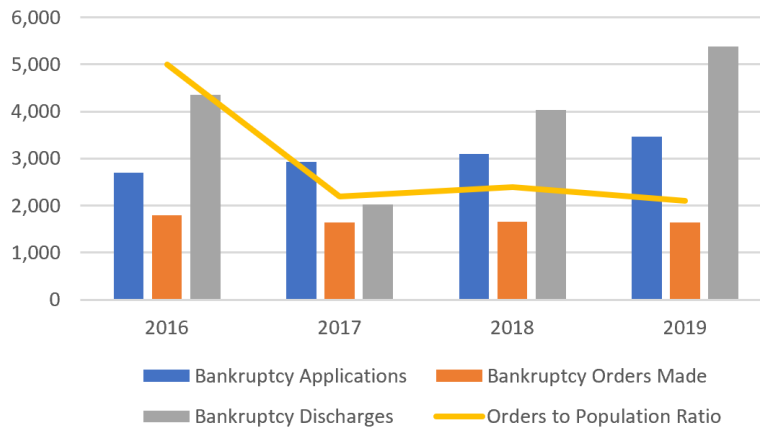


Chart 1. Bankruptcy Statistics, 2016-2019

Whilst there has been a notable increase in the number of bankruptcy applications made in 2019, the number of bankruptcy orders has been consistent over the last four years (varying from 1,638 to 1,797), as has the orders to population ratio (varying from 0.032% to 0.0294%). The number of bankruptcy discharges has increased significantly, with an almost threefold increase from 2017 (2,030) to 2019 (5,388). Bankruptcy discharge rates have a historical lag, and the significant variation is not a reflection on current consumer consumption or debt levels.

One other trend to note is that the ratio of bankruptcy applications to bankruptcy orders has noticeably dropped recently. More people are applying for bankruptcy with no order being made. This could be because they do not meet the eligibility criteria, or (hopefully) due to an increased use of the Debt Repayment Scheme, which will be discussed in more depth below.

To conclude this Part, the bankruptcy process in Singapore provides an orderly and effective way to deal with people who have become overly indebted. Bankruptcy and other debt relief processes are a drastic response to indebtedness and are at the far end of the outcome spectrum. As well as impacting the individual involved, bankruptcy has a number of detrimental consequences on society. It undermines commercial stability and lowers consumer confidence in the enforceability of financial arrangements.⁵⁸ Bankruptcy should therefore be a ‘process of last resort’, making it important that the bankruptcy regime is supported by a range of alternative and less drastic processes for people in problem debt. The next section will develop the current discussion by analysing the multiple alternatives to bankruptcy that are currently available in Singapore.

⁵⁸ Michelle White, “Personal Bankruptcy Under the 1978 Bankruptcy Code: An Economic Analysis” (1988) 63 *Indiana Law Journal* 1 [White, “Personal Bankruptcy”]. See also Joseph Spooner, “Seeking Shelter in Personal Insolvency Law: Recession, Eviction and Bankruptcy’s Social Safety Net” (2017) 44 *Journal of Law and Society* 374.

VI. BANKRUPTCY ALTERNATIVES IN SINGAPORE

Despite the many positive features of Singapore's bankruptcy regime, it is important that alternatives to bankruptcy exist for people struggling under the weight of problem debt, but who may not require the 'nuclear' option of bankruptcy. As outlined by Justice See Kee Oon (when His Honour was the Official Assignee and Public Trustee):

For some debtors, bankruptcy may be the only practical means of staving off creditors. But a record of bankruptcy will obviously have an adverse effect on an individual's credit status. The long-term consequences of bankruptcy may not be foreseen, let alone wholly understood. Alternatives to bankruptcy are thus necessary features in all bankruptcy regimes.⁵⁹

This section therefore considers the bankruptcy alternatives available to consumers in Singapore, as well as analyses the benefits and detriments of bankruptcy. It is important to look at bankruptcy reforms in the context of other financial services and social welfare support. Whilst it is crucial 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.

A. *Benefits and Detriments of Bankruptcy*

There are a number of important benefits of bankruptcy. First and foremost is that it allows over-indebted consumers a fresh start. Without some form of bankruptcy relief, individuals would be under the crushing weight of debt without any clear path of escape. This uncertainty is negative for the debtor, the creditors and for the broader society. It is therefore very important that society has a clear and available pathway for people to pay off what debts they can and be released from the remainder. It can also provide a useful 'wake-up call' for people, particularly if the debts were a result of over-consumption or mismanagement of funds. The extended bankruptcy period, particularly the restrictions on spending during this time, provide a useful opportunity for rehabilitation. In addition to providing the bankrupt individual with a fresh financial start, bankruptcy encourages people to take calculated risks and start small businesses, thus providing benefits to all of society. Bankruptcy also benefits creditors, as it means they do not have to enter into costly and expensive debt recovery processes.

Bankruptcy is an instrument of distributive justice. It aims to achieve a 'fair division of wealth among members of society,' and has the effect of shifting wealth from one group of people to another.⁶⁰ Bankruptcy is however a drastic form of protection, and has a number of detrimental impacts on society in general.⁶¹ As outlined by Professor Ho Peng Kee:

⁵⁹ See Kee Oon, "Alternatives to Bankruptcy—The Debt Repayment Scheme ("DRS")" (2008) 20 Sing Ac LJ 541 at 542 [See, "Alternatives"].

⁶⁰ Anthony Townsend Kronman, "Contract Law and Distributive Justice" (1980) 89 Yale LJ 472 at 473.

⁶¹ White, "Personal Bankruptcy", *supra* note 58.

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.⁶²

Understandably, it is important that the benefits of bankruptcy and the ‘fresh start’ come with significant limitations. There are a number of temporary and longer-term impacts on bankrupt individuals. First, there remains significant social stigma about becoming bankrupt—it is often seen as an indication that you cannot reasonably manage your finances. For example, the Law Society of Singapore lists “social stigma” as the first of many “compelling reasons why bankruptcy should be avoided by debtors as far as possible”.⁶³ There are however some positive indications that the stigma may be reducing slightly, as an increasing number of people are self-filing for bankruptcy in Singapore.

Secondly, until a bankrupt individual is discharged, there are several practical and personal restrictions put in place, including the significant financial restrictions required to pay off monthly contributions and the target contribution. There are also requirements to disclose bankruptcy when applying for credit of more than SGD1,000,⁶⁴ and significant restrictions on overseas travel by the bankrupt.⁶⁵

In addition, certain activities that would normally be permitted are potential criminal offences during bankruptcy. These include concealment of property,⁶⁶ books and/or papers,⁶⁷ engaging in a business or acting as a guarantor without disclosing the bankruptcy,⁶⁸ and gambling.⁶⁹ Bankruptcy also has significant privacy consequences, as the financial affairs of the bankrupt individual will be thoroughly investigated by the Official Assignee, and potentially by the court and creditors.⁷⁰ The privacy implications can continue during the bankruptcy, as the bankrupt’s post may be re-directed or delivered to the Official Assignee.⁷¹

B. Formal Alternatives

In light of the significant detriments of the bankruptcy processes, it is important to see what alternatives are available to indebted consumers. This section will therefore discuss the two main formal bankruptcy alternatives in Singapore—Voluntary Arrangements (“VAs”) and Debt Repayment Schemes.

⁶² Ministry of Law, *Second Reading Speech on Bankruptcy (Amendment) Bill by Senior Minister of State Assoc Prof Ho Peng* (19 January 2009) at para 3, online: Ministry of Law <<https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-on-bankruptcy-amendment-bill-by-senior-minister-of-state-assoc-prof-ho-peng>> [Second Reading Speech by Prof Ho].

⁶³ Singapore Law Society, *Legal Clinic Manual Chapter 4: Bankruptcy and Insolvency* (18 August 2017) at 106, online: <<https://docplayer.net/53868099-Law-society-of-singapore-legal-clinic-manual.html>>.

⁶⁴ *Bankruptcy Act*, *supra* note 1, s141(1)(a).

⁶⁵ *Ibid*, s 116(2).

⁶⁶ *Ibid*, s 135.

⁶⁷ *Ibid*, s 136.

⁶⁸ *Ibid*, s 141(1)(b)-(c).

⁶⁹ *Ibid*, s 143.

⁷⁰ This is discussed above, but falls under the “*Inquiry into bankrupt’s affairs, dealings and property*”: *Bankruptcy Act*, *ibid*, ss 79-86.

⁷¹ *Ibid*, s 115(1).

1. Voluntary arrangement

Part V of the *Bankruptcy Act* outlines the process for VAs between creditors and debtors. This is similar to a private arrangement (discussed below) but formalised under the *Bankruptcy Act*. To do so, the debtor must file an application for an interim order,⁷² which—if granted—has the effect of stopping all bankruptcy applications or proceedings against them.⁷³ The debtor must propose a nominee to operate as a trustee for the purpose of supervising the implementation of the VA.⁷⁴ The interim order will only be granted if there are no previous applications for an interim order during the preceding 12 months, and if there is a qualified nominee who is willing to act in relation to the proposal.⁷⁵

Once the interim order is made, the nominee shall submit a report outlining whether a meeting of the debtor's creditors should be summoned to consider the proposal, as well as the date, time and place this meeting should occur.⁷⁶ This report should also include the particulars of the debtor's assets, creditors, debts and other liabilities, and the proposed VA from the debtor.⁷⁷ If the court is satisfied that a meeting of the debtor's creditors should be summoned, the court shall make an order enabling the debtor's proposal to be considered by the creditors.⁷⁸ A creditors' meeting will then be summoned,⁷⁹ and the creditors can approve the proposal (or a modified version of the proposal) by special resolution.⁸⁰ If this is approved, the arrangement shall become binding on every person who had notice of and was entitled to vote at the meeting.⁸¹

The nominee shall supervise the implementation of the VA once the arrangement is approved at the creditors' meeting.⁸² However the debtor and any of the creditors have the right to apply to the court to review the act, omission or decision in question.⁸³ On application the court may confirm, reverse or modify the actions of the nominee, or give the nominee such directions as the court thinks fit.⁸⁴ It can also make an order to substitute the existing nominee for another qualified person.⁸⁵ If the debtor fails to comply with any of the obligations under the VA, the nominee or any creditor bound by the arrangement may then make a bankruptcy application under Part VI of the Act.⁸⁶

⁷² *Bankruptcy Act 1995* (No 15 of 1995, Sing), s 45(1) [*Bankruptcy Act 1995*].

⁷³ *Ibid*, s 45(3) and s 47(1).

⁷⁴ *Ibid*, s 46(1). This person must be a registered public accountant, advocate or solicitor or another person prescribed by the Minister: *ibid*, s 46(2).

⁷⁵ *Ibid*, s 48(1)(b)-(c).

⁷⁶ *Ibid*, s 49(1).

⁷⁷ *Ibid*, s 49(2).

⁷⁸ *Ibid*, s 49(5).

⁷⁹ *Ibid*, s 50.

⁸⁰ *Ibid*, s 51(1)-(3).

⁸¹ *Ibid*, s 53(1)(a)-(b).

⁸² *Ibid*, s 55(1).

⁸³ *Ibid*, s 55(2).

⁸⁴ *Ibid*, s 55(3).

⁸⁵ *Ibid*, s 55(5).

⁸⁶ *Ibid*, s 56.

The court will generally not make a bankruptcy order if the nominee or any creditor is bound by a VA.⁸⁷ The exceptions to this include: if the debtor has failed to comply with the obligations under the VA; the relevant documentation included information of a false or misleading nature, contained material omissions; or if the debtor failed to do all such things as may be required for the purposes of the VA.⁸⁸

The limits of the VA have been effectively summarised by Justice See Kee Oon, who stated that:

The Singapore experience suggests that the [Individual Voluntary Arrangement] IVA scheme, while useful in certain contexts, is not well suited to meet the needs of most consumer debtors. Debtors are often unable to obtain the requisite majority approval from the creditors. Moreover, the process is court-based and can be protracted and costly for consumer debtors. The majority of these debtors do not avail themselves of this process. IVAs may work best particularly where there are complex debtor proposals such as might feature in business or partnership debts. There have, however, been relatively few successful IVAs in Singapore.⁸⁹

This Scheme is therefore clearly not appropriate for the majority of Singaporean creditors as an alternative to bankruptcy. On 2 March 2007, the then Senior Minister of State for Law, Associate Professor Ho Peng Kee, announced the decision to implement a Debt Repayment Scheme (“DRS”) in Singapore.

2. Debt repayment scheme

In 2009 the *Bankruptcy Act* is amended to include Part VA, which was the implementation of debt repayment plans. Part VA is supplemented by the *Bankruptcy (Debt Repayment Scheme) Rules 2009*.⁹⁰ The creation of this debt repayment scheme reflected the approach taken in many overseas countries and provided an effective alternative to bankruptcy. The DRS works as an alternative to bankruptcy for debtors who have less than SGD100,000 in debts and would like to avoid some of the negative ramifications of bankruptcy discussed above. It allows the debtor to repay the outstanding debts (or make partial repayment if approved) under an approved debt repayment plan. 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

⁸⁷ *Ibid*, s 66.

⁸⁸ *Ibid*, s 66(a)-(c).

⁸⁹ See, “Alternatives”, *supra* note 59 at 550.

⁹⁰ *Bankruptcy (Debt Repayment Scheme) Rules 2009* (Cap 20, 2009 Rev Ed Sing).

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.⁹¹

The Official Assignee has the power to review the suitability of the debtor for the DRS and, where suitable, implement the scheme in accordance with Part VA of the *Bankruptcy Act*.⁹² The debtor will not be deemed suitable for the DRS if:

- The debtor's debt exceeds SGD100,000;⁹³
- The debtor is an undischarged bankrupt;⁹⁴
- The debtor is under a voluntary arrangement or has been within the last five years;⁹⁵
- The debtor is subject to an existing DRS or has been within the last five years;⁹⁶
or
- The debtor is a sole proprietor, a partner of a firm or a partner in a limited liability partnership.⁹⁷

The debtor will then be required to submit a statement of affairs and a debt repayment plan that has a repayment period not exceeding five years.⁹⁸ The Official Assignee will send a notice with this statement to each creditor, requiring the creditor to file a proof of debt.⁹⁹ Once the proofs of debts are received, the Official Assignee must examine the statement of affairs and convene a meeting of creditors to review the debt repayment plan.¹⁰⁰ The debt repayment plan can include full repayment or partial repayment of the debtor's outstanding debts, whatever is deemed more appropriate by the Official Assignee.¹⁰¹ The debt repayment plan is then prescribed by the Official Assignee, who makes all payments on behalf of the debtor.¹⁰²

Once the debt repayment plan has come into effect, it is binding on the individual debtor and every creditor who has proved their debt, and whose debt is included in the plan.¹⁰³ Both the debtor and creditors have the right to appeal the debt repayment plan approved by the Official Assignee.¹⁰⁴ This appeal mechanism is very rarely used and has yet to be successful. There were eight appeals from January 2016 until August 2019, five from debtors and three from creditors. All eight appeals were unsuccessful.¹⁰⁵

⁹¹ Second Reading Speech by Prof Ho, *supra* note 62.

⁹² *Bankruptcy Act 1995*, *supra* note 72, s 56B(1).

⁹³ *Ibid*, s 56B(2)(a); s 65(7)(a); s 67(3)(a).

⁹⁴ *Ibid*, s 65(7)(b); s 67(3)(b).

⁹⁵ *Ibid*, s 65(7)(c); s 67(3)(c).

⁹⁶ *Ibid*, s 65(7)(d); s 67(3)(b).

⁹⁷ *Ibid*, s 65(7)(e); s 67(3)(b).

⁹⁸ *Ibid*, s 56C(1).

⁹⁹ *Ibid*, s 56C(2); s 56D(7).

¹⁰⁰ *Ibid*, s 56D(1)-(2).

¹⁰¹ *Ibid*, s 56D(6).

¹⁰² *Ibid*, s 56J.

¹⁰³ *Ibid*, s 56D(8).

¹⁰⁴ *Ibid*, s 56D(4).

¹⁰⁵ Ministry of Law, *Result of DRS Appeals for the period: January 2016 to August 2019*, online: Ministry of Law <<https://io.mlaw.gov.sg/files/DRSAppeal.pdf>>.

The Official Assignee also has a right to modify the debt repayment plan of its own volition, or at the request of the debtor, a creditor bound by the debt repayment plan, or a creditor who is not included under the debt repayment plan but who proves his or her debt under the scheme.¹⁰⁶ Again, the Official Assignee must convene a meeting of the creditors and, at this meeting, approve the request or refuse to modify the debt repayment plan.¹⁰⁷

The DRS ceases as a result of one of the following—on a date of a certificate of inapplicability of the scheme, if the scheme is completed, or if the debtor becomes bankrupt or dies.¹⁰⁸ The DRS will also cease if the Official Assignee issues a certificate of failure of the debt repayment scheme. This could occur because the debtor did any of the following—provided misleading or false information,¹⁰⁹ failed to furnish information as required,¹¹⁰ attempted to account for fictitious losses,¹¹¹ failed to comply with a debt of the debt repayment plan,¹¹² failed to attend a meeting of creditors,¹¹³ incurred a debt in excess of SGD1,000 after the scheme had been implemented,¹¹⁴ obtained the approval or modification of the debt repayment plan by means of fraud,¹¹⁵ made a false representation or concealed a material fact, or, without the consent of the Official Assignee, became a sole proprietor,¹¹⁶ a partner of a firm or a partner in a limited liability partnership during the scheme.¹¹⁷

The DRS provides the debtor with ‘breathing space’ to repay their debts and get back on their feet. There are some limitations in place, but they are nowhere near as onerous as for bankruptcy. For example, the debtor must disclose to the Official Assignee all property and the disposal of any property in the five years before the bankruptcy application was made,¹¹⁸ furnish any information or document required by the Official Assignee,¹¹⁹ attend any meeting required by the Official Assignee,¹²⁰ disclose the fact that there is a DRS in place before incurring debts in excess of SGD1,000,¹²¹ and inform the Official Assignee of their place of residence.¹²²

When a debt repayment plan is in place, no creditor with a provable debt under the scheme has a remedy against the debtor,¹²³ and no action or proceedings can be commenced in respect of that debt (without leave of court given).¹²⁴ Despite being a relatively new scheme, there is significant potential for the DRS in Singapore and the process seems to be highly successful. As of September 2019, there have been

¹⁰⁶ *Bankruptcy Act 1995*, *supra* note 72, s 56H(1).

¹⁰⁷ *Ibid*, s 56H(2)-(3).

¹⁰⁸ *Ibid*, s 56K(1).

¹⁰⁹ *Ibid*, s 56M(a).

¹¹⁰ *Ibid*, s 56M(b).

¹¹¹ *Ibid*, s 56M(d).

¹¹² *Ibid*, s 56M(e).

¹¹³ *Ibid*, s 56M(f).

¹¹⁴ *Ibid*, s 56M(k).

¹¹⁵ *Ibid*, s 56M(l).

¹¹⁶ *Ibid*, s 56M(a).

¹¹⁷ *Ibid*, s 56M(a).

¹¹⁸ *Ibid*, s 56P(a).

¹¹⁹ *Ibid*, s 56P(b).

¹²⁰ *Ibid*, s 56P(c).

¹²¹ *Ibid*, s 56P(f).

¹²² *Ibid*, s 56P(g).

¹²³ *Ibid*, s 56F(1)(a).

¹²⁴ *Ibid*, s 56F(1)(b).

1,874 in-progress debt repayment cases. There were also 927 successfully completed cases and 671 failed cases, giving an impressive success to failure ratio of 69.1%.¹²⁵

The DRS clearly provides a number of benefits for debtors as they avoid many of the negative consequences of bankruptcy, and individuals retain control over their assets. It will not be suitable for all indebted consumers as the DRS is premised on the concepts of responsibility and self-help. It is therefore likely to “work best in a climate of earnest debtor co-operation, commitment and good faith; dishonest or uninterested debtors are unlikely to find any solace in the DRS”.¹²⁶ There will also be a number of debtors who do not meet the eligibility criteria of the scheme and therefore cannot benefit from the opportunities it provides.

C. Informal Alternatives

In addition to the two ‘formal’ bankruptcy alternatives, there are also two—less known and utilised—‘informal’ alternatives to bankruptcy, namely mediation and private arrangements.

1. Mediation

There is the possibility for the debtor and creditors to enter into bankruptcy mediation. This allows the parties to resolve the debt that is owed by the debtor and to organise a debt payment process, without the need to go to court or go into bankruptcy. Despite this being available, there is very little information on the mediation process and it does not appear that there are records of the frequency of bankruptcy mediations. It is however likely to be limited to high wealth and high debt individuals with a limited number of creditors, and therefore not applicable to the vast majority of indebted individuals.

2. Private arrangement

Debtors also have the ability to enter into private arrangements with their creditors to pay off debts in instalments. This allows the debtor to ask for an extension of time for payments or even a reduction in the amount paid. The Ministry of Law Insolvency Office provides some advice to debtors about private arrangements, including informing the creditor of their latest financial position truthfully and completely. It is also important for debtors to make a serious effort to keep up to date with their repayments after entering into the arrangement.¹²⁷

The success and enforceability of a private arrangement is however questionable. First, the creditor is under no legal obligation to accept the private arrangement—they can insist on payment of the original amount and under the original terms. Secondly,

¹²⁵ Ministry of Law, *Number of In-Progress, Completed and Failed Cases for Debt Repayment Scheme* (September 2019), online: Ministry of Law <[https://io.mlaw.gov.sg/files/NumberofIn-Progress,CompletedandFailedCasesforDRS\(Sep19\).pdf/](https://io.mlaw.gov.sg/files/NumberofIn-Progress,CompletedandFailedCasesforDRS(Sep19).pdf/)>.

¹²⁶ See, “Alternatives”, *supra* note 59 at 557.

¹²⁷ Ministry of Law, *Information for Bankrupts*, online: Ministry of Law <<https://io.mlaw.gov.sg/bankruptcy/information-for-bankrupts/>>.

if the debtor has loans with multiple creditors, they will have to organise (and keep up to date with) separate private arrangements with each creditor.

Finally, whilst the law is unsettled on the topic, it is quite possible that the creditor will not be bound by the amended contract and will be able to enforce the entirety of the original contract against the debtor. This is because the debtor has not provided fresh consideration for the amended agreement.¹²⁸ The law is not however settled in this area; for example, in the case of *Chwee Kin Keong v Digilandmall.com Pte Ltd*,¹²⁹ VK Rajah JC stated that “the modern approach in contract law requires very little to find the existence of consideration. Indeed, in difficult cases, the courts in several common law jurisdictions have gone to extraordinary lengths to conjure up consideration.”¹³⁰

There are ways in which the court has gotten around the lack of consideration for amended agreements. An example of this is *Williams v Roffey Brothers*,¹³¹ where the House of Lords in the UK held that the practical benefit associated with a carpenter completing his contractually agreed work on time was sufficient consideration for additional payment. This principle has been upheld by the Singapore Court of Appeal in *Gay Choon Ing v Loh Sze Ti Terence Peter and Another*.¹³² There is also the potential for the *Contracts (Rights of Third Parties) Act*¹³³ to provide some assistance, as long as the agreement is worded correctly to provide a specific third party beneficiary.¹³⁴ The application of these principles to the part-payment of debts is however complex and uncertain, in both the UK and Singapore.¹³⁵

The opportunity to enter into a private arrangement could be a useful alternative for debtors with large debts to a small number of creditors. Because of the practical and enforcement challenges associated with private arrangements, they are unlikely to provide significant benefits for the majority of indebted individuals.

D. Other Financial Options

For the purpose of completeness, this section will (briefly) summarise the other financial options available for indebted consumers in Singapore. These include a debt consultation plan, a debt management programme, and utilising for-profit debt management services.

1. Debt consolidation plan

The Debt Consolidation Plan (“DCP”) was initiated by the Association of Banks in Singapore to provide a debt refinancing program of unsecured credit across multiple

¹²⁸ *Stilk v Myrick* [1809] 170 ER 1168.

¹²⁹ [2004] 2 SLR 594 (SGHC).

¹³⁰ *Ibid* at para 139.

¹³¹ [1991] 1 QB 1 (EWCA).

¹³² [2009] 2 SLR 332 (SGCA).

¹³³ *Contracts (Rights of Third Parties) Act* (Cap 53B, 2002 Rev Ed Sing) [CRTPA].

¹³⁴ For further discussion of the CRTPA, *ibid*, see Justice Andrew Phang Boon Leong and Chee Ho Tham, “Exceptions to the Rule of Privity” in Justice Andrew Phang Boon Leong *et al*, eds, *The Law of Contract in Singapore* (Singapore: Academy Publishing, 2012) at ch 15. Edwin Lee Peng Khoo, *Building Contract Law in Singapore*, 2d ed (Singapore: Acumen Publishing, 2003) at ch 7.

¹³⁵ *Rock Advertising Ltd v MWB Business Exchange Centres Ltd* [2018] UKSC 24 at para 18; *Sea-Land Service Inc v Cheong Fook Chee Vincent* [1994] 3 SLR(R) 250 (SGCA).

financial institutions into one loan with a single financial institution. 14 different financial institutions currently offer DCPs.¹³⁶ To be eligible for a DCP, the debtor must:

- Be a Singaporean citizen (or Permanent Resident);
- Earn between SGD20,000 and SGD120,000 with assets of less than SGD2 million; and
- Have interest-bearing unsecured debt that exceeds 12 times their monthly income.

When the DCP is approved, the debtor will be given a revolving credit facility equivalent to one month's salary, and all further unsecured credit facilities will be closed or suspended. The relevant financial institution will pay the outstanding balance of the loans to all the other financial institutions, and organise a repayment plan for the entire amount with the debtor at the agreed interest rate and charges.¹³⁷ If they default on their DCP, the debtor is subject to the standard collection processes of the financial institution.

Whilst the DCP provides an excellent opportunity for individuals to manage their debt and have one simple monthly payment, it has limitations. First, not everyone is eligible for the DCP. Secondly, there are some potential negative credit-reporting consequences. The debtor's Credit Bureau record will be updated to include the DCP plan, and this credit information will be included on the report for three years after the DCP closure. Finally and most importantly, the DCP does not cover all types of credit. There are a number of unsecured loans that cannot be included in the DCP, including joint accounts, renovation loans, education loans, medical loans, and loans for business purposes.

The DCP will therefore provide a useful alternative to bankruptcy for many individuals, but a significant proportion of individuals with problem debt will not be able to effectively utilise this program, or it would not provide them with sufficient benefits.

2. Debt management programme

Credit Counselling Singapore, Singapore's leading debt charity, provides individuals with the opportunity to enter into a Debt Management Programme ("DMP"). Since 2004, Credit Counselling Singapore has provided assistance to over 28,000

¹³⁶ American Express International Inc, online: <<https://www.americanexpress.com/sg/>>; Bank of China Limited Singapore, online: <<https://www.bankofchina.com/sg/>>; CIMB Bank Berhad, online: <<https://www.cimb.com/en/home.html>>; Citibank Singapore Limited, online: <<https://www.citibank.com.sg/portal/bluehome/index.htm>>; DBS Bank Ltd, online: <<https://www.dbs.com.sg/index/default.page>>; Diners Club Singapore Pte Ltd, online: <<https://www.dinersclub.com.sg/>>; HL Bank, online: <<https://www.hlbank.com.sg/en/personal-banking.html>>; HSBC Bank (Singapore) Limited, online: <<https://www.hsbc.com.sg/>>; Industrial and Commercial Bank of China Limited, online: <<http://www.icbc-ltd.com/icbcltd/en/>>; Standard Chartered Bank (Singapore) Limited, online: <<https://www.sc.com/sg/>>; Maybank Singapore Limited, online: <<https://www.maybank2u.com.sg/en/personal/index.page>>; Oversea-Chinese Banking Corporation Limited, online: <<https://www.ocbc.com/group/group-home.html>>; RHB Bank Berhad, online: <<https://rhbgroup.com.sg/>>; United Overseas Bank Limited, online: <<https://www.uobgroup.com/uobgroup/index.page>>.

¹³⁷ This rate can be as low as 3.80% with no processing fees; see MoneySmart, *Get the Best Debt Consolidation Plan Interest Rates for 2019 Now!*, online: MoneySmart <<https://www.moneysmart.sg/debt-consolidation-plan>>.

people.¹³⁸ A DMP is similar to the DCP discussed above, but it is managed by Credit Counselling Singapore instead of a financial institution. The debtor will enter into a plan to repay the unsecured debts that are owed to creditors, and the plan is monitored and run by Credit Counselling Singapore.

There are some drawbacks to a DMP. First, it is a voluntary arrangement between individual creditors and debtors, and so financial institutions can refuse to enter into a DMP. Secondly, similar to a DCP, a DMP will be registered with Credit Bureau Singapore and will therefore have negative credit implications on the debtor.¹³⁹

One significant benefit unique to the DMP is that Credit Counselling Singapore provides a range of talks and workshops on financial literacy, debt management and money handling skills. The debtor will therefore have the opportunity to benefit from financial rehabilitation at the same time as utilising the DMP.¹⁴⁰

3. For-profit debt management services

The final financial option to consider is for-profit debt management services. There are a small number of private debt consultants that provide financial advice and debt assistance, but for a fee. The majority of these organisations in Singapore offer an initial free consultation, and (perhaps purposely) do not provide information about their ongoing fee structure on their websites.¹⁴¹ Whilst there may be a number of benefits from these organisations, there are some significant concerns that they could do more harm than good as the services cost the borrower money—and at a time they can least afford further expenses. These companies have the potential to exploit the vulnerabilities of people who use them. Both Australia¹⁴² and the UK¹⁴³ have experienced significant controversies with the provision of for-profit debt management services.

¹³⁸ Credit Counselling Singapore, *Who We Are*, online: Credit Counselling Singapore <<https://www.ccs.org.sg/about-us/>>.

¹³⁹ Credit Counselling Singapore, *Debt Management Programme (DMP)*, online: Credit Counselling Singapore <<https://www.ccs.org.sg/debt-management/debt-options/#1502063063071-ce8e731e-1b21>>.

¹⁴⁰ Credit Counselling Singapore, *How We Can Help You*, online: Credit Counselling Singapore <<https://www.ccs.org.sg/get-help/>>.

¹⁴¹ See, for example, Smartdebt Asia, online: <<https://www.smartdebt.asia/>>; Debtpedia, online: <<https://www.debtpedia.sg/>>; Ethiqal, online: <https://ethiqal.sg/debt-management/>>.

¹⁴² Greg Hoy, “Financial counsellors urge caution over new industry offering help for budget difficulties” *ABC News* (9 December 2013), online: ABC News <<http://www.abc.net.au/news/2013-12-09/financial-counsellors-urge-caution-over-new-industryoffering-h/5145550>>.

¹⁴³ BBC News, “Some debt management firms ‘exploiting’ people in debt” *BBC News* (28 September 2010), online: BBC News <<https://www.bbc.com/news/business-11419812>>; Citizens Advice Scotland, “People in debt being ‘exploited’ by rogue advice companies”, online: Citizens Advice Scotland <<http://www.cas.org.uk/news/people-debt-being-exploited-rogue-advice-companies>>; The Office of Fair Trading, *Debt management guidance compliance review* (September 2010), online: <<https://getoutofdebt.org/wp-content/uploads/OFT1274.pdf>> and CreditMan, “OFT refuses to licence three debt management companies in ongoing drive to push up standards” (1 February 2013), online: CreditMan <<https://www.creditman.co.uk/news/oft-refuses-to-licence-three-debt-management-companies-in-ongoing-drive-to-push-up-standards/>>.

E. Analysis of Bankruptcy Alternatives

Singapore should be congratulated on the number and scope of the different bankruptcy alternatives currently available to consumers with problem debt. The options are provided not only by government, but also by financial institutions and not-for-profit organisations. This shows that all the sectors of the financial market are genuinely committed to providing a wealth of opportunities for people to undertake fiscal rehabilitation, whilst avoiding the stigma and negative consequences of bankruptcy.

Despite the wealth of options available to indebted consumers in Singapore, there are some gaps in these alternatives. This means that small sectors of society do not have access to alternatives to bankruptcy, and in some cases to bankruptcy itself. This includes individuals who have,

- Unsecured debts of less than SGD15,000;
- A large number of small debts; and/or
- A majority of debts with lenders other than mainstream banks (*ie*, moneylenders).¹⁴⁴

These individuals are likely to already be financially vulnerable, and therefore most in need of financial rehabilitation and security. The purpose of the SGD15,000 bankruptcy threshold is to encourage both debtors and creditors of smaller loans to sort out payment without needing to resort to the bankruptcy regime.¹⁴⁵ It does however exclude a larger number of people—mostly lower-income individuals—from obtaining the relief associated with bankruptcy, as well as from accessing the main bankruptcy alternative, the DRS.¹⁴⁶ This is an unfortunate limitation to the current system that will be discussed in more detail in the next section.

VII. RECOMMENDATIONS GOING FORWARD

In this final section, a number of suggestions will be discussed. These suggestions in no way criticise the current legal and regulatory regime, but instead propose ways that the benefits of the system can be extended to more indebted consumers in Singapore. The recommendations put forward include an increased focus on financial education, pre-bankruptcy assistance, monitoring and regulation of for-profit debt consultants,

¹⁴⁴ It is recognised that there are currently steps in place to develop a Debt Restructuring Programme for moneylending. See Imelda Saad, “Debt Restructuring Programme for Debtors of Licensed Moneylenders” *Channel News Asia* (22 November 2014), online: Channel News Asia <<http://www.channelnewsasia.com/news/singapore/debtstructuring/1488140.html>>; Association of International Accountants, *Debt Restructuring Programme for Debtors of Licensed Moneylenders*, online: Association of International Accountants <<https://www.aiaworldwide.com/news/debt-restructuring-programme-debtors-licensed-moneylenders>> [Association of International Accountants].

¹⁴⁵ Ministry of Law, *More Rehabilitative Bankruptcy Framework*, *supra* note 5.

¹⁴⁶ Financial Counselling Australia, *FCA Releases “Too Poor to Go Bankrupt”* (22 June 2014), online: Financial Counselling Australia <<https://www.financialcounsellingaustralia.org.au/fca-releases-too-poor-to-go-bankrupt/>>; Jodi Gardner, “High-Cost Credit in the United Kingdom: A Philosophical Justification for Government Intervention” in K Fairweather, P O’Shea & R Grantham, eds, *Consumers, Credit and the Law: After the Global Storm* (UK: Routledge Publishing, 2016).

and, most importantly increasing the assistance available for consumers with small levels of debt.

A. Financial Education and Rehabilitation

Singapore has a high level of financial literacy. For example, the 2005 National Financial Literacy Survey found that:

Singaporeans have fairly healthy attitudes towards basic money management, financial planning and investment matters. A majority of Singaporeans save, monitor their spending and are generally responsible in the use of credit. Most Singaporeans also recognize the importance of financial planning and have done some basic financial planning.¹⁴⁷

Regardless of the positive reports on financial literacy, there are still a significant number of individuals getting into problem debt. Many Singaporeans falsely believe that only people who are involved in illegal or illicit activities, such as gambling or drugs, need to consider bankruptcy or bankruptcy alternatives.¹⁴⁸ This is sadly far from the truth. Credit Counselling Singapore President Kuo How Nam noted that the main reasons for over-indebtedness include overspending on lifestyle, employment issues (*ie*, the borrower or a family member loses their job), the failure of investments and/or lending of money to family or friends. One of the most significant contributors to bankruptcy in Singapore is however gambling: 25% of people with significant debts stated that gambling was a key factor in their financial position.¹⁴⁹ It is well documented that Singapore has ongoing issues with gambling, both legal and illegal, and increasing numbers of people have obtained help for gambling addictions.¹⁵⁰ Tackling the underlying difficulties associated with gambling will therefore address some of the problem debt issues that lead to the need for bankruptcy and its alternatives. Fortunately, Singapore's Ministry of Home Affairs is planning to overhaul the country's gambling regulations, including the establishment of a new regulatory authority in 2021. It is hoped that the relationship between gambling and bankruptcy will be considered during this regulatory reform.

Despite the issues, DMPs are the only bankruptcy alternative that automatically comes with financial rehabilitative education. This can be contrasted with the Chapter 13 arrangements in the US (the DRS equivalent),¹⁵¹ which require individuals to undertake mandatory basic financial management education and financial

¹⁴⁷ The MoneySENSE Financial Education Steering Committee, *Quantitative Research on Financial Literacy Levels in Singapore*, at 1, online: Monetary Authority of Singapore <https://www.mas.gov.sg/-/media/MAS/resource/news_room/press_releases/2005/Financial-Literacy-Levels-in-Singapore-Full-Report.pdf?la=en&hash=3AF434C39B8636A5B0F6F464BD1AA14FFA8F697D>.

¹⁴⁸ Jodi Gardner, *Regulating Moneylending in Singapore: Looking at All Sides – Research Policy Report*, National University of Singapore, Centre for Banking & Finance Law, CBFL-Rep-JG 1 (July 2005) [Gardner, "Regulating Moneylending"].

¹⁴⁹ Rachael Boon, "Well-educated, well-paid, but mired in debt" *The Straits Times* (8 April 2015), online: *The Straits Times* <<http://www.straitstimes.com/business/well-educated-well-paid-but-mired-in-debt>>.

¹⁵⁰ Theresa Tan & Rahimah Rashith, "More people in Singapore seek help for gambling problems" *The Straits Times* (8 April 2019), online: *The Straits Times* <<https://www.straitstimes.com/singapore/more-see-help-for-gambling-problems>>.

¹⁵¹ 11 USC §1301-1330 (2005) [Chapter 13, *US Bankruptcy Code*].

counselling. These obligations are not part of the Singaporean equivalent.¹⁵² It is acknowledged that creating a budget, enforcing that budget and paying off outstanding debts are highly likely to have a rehabilitative effect on many debtors. It would however be useful to supplement this with formal financial education, hopefully tackling the underlying causes of the over-indebtedness and preventing individuals from getting into further problem debt.

A second aspect of financial education should be to reduce the stigma associated with bankruptcy, and—by extension—bankruptcy alternatives.¹⁵³ It is important for debtors to be proactive and ask for assistance when they first experience difficulties, as opposed to leaving it until the issues have snowballed into an untenable financial situation. The more the stigma associated with indebtedness is reduced, the more likely people will ask for help earlier, which is a benefit to the debtor, creditors and society in general.

B. Pre-Bankruptcy Assistance

Another important recommendation is to increase access to pre-bankruptcy assistance for indebted borrowers in Singapore. 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.¹⁵⁴ 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 provide 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 them getting into problem debt, and secondly providing services for people who do become overly indebted to help them regain control of their finances. These support services are not designed to give indebted borrowers an ‘easy way out’, but instead to 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 UK, 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 does not have the capacity to assist everyone in financial difficulties; further support is therefore crucial.

¹⁵² Adrian Peh Nam Chuan, Jean Koh & Stella Teo Lu Jin, “Debt Repayment Scheme: Three Years On” *Law Gazette* (June 2012), online: *Law Gazette* <<https://v1.lawgazette.com.sg/2012-06/442.htm>>.

¹⁵³ For a discussion of the stigma issues, see text associated with 62, 63, and 91.

¹⁵⁴ Marie Burton, *Keeping the plates spinning: Perceptions of payday loans in Great Britain*, online: British Library <<https://www.bl.uk/collection-items/keeping-the-plates-spinning-perceptions-of-payday-loans-in-great-britain>>; StepChange Debt Charity, *Life on the Edge: Towards more resilient family finances*, online: StepChange Debt Charity <<https://www.stepchange.org/portals/0/stepchangelifeontheedgereport.pdf>>.

C. Regulation of For-Profit Debt Management Services

As outlined above, there is currently a market in Singapore for commercial debt management programmes. Whilst there do not appear to have been any complaints made about these services yet, the mere concept of providing for-profit assistance to financially vulnerable individuals is concerning. Giving private market solutions to borrowers with problem debt is not the answer; it merely creates opportunities for business to further exploit the vulnerability of these consumers. By definition these firms will have to charge a fee for the services, and this is money that would be much better spent on repaying the outstanding debts.

This situation is further complicated by the fact that there are currently no regulatory restrictions or licensing requirements for the provision of these for-profit debt management services. This lack of regulatory oversight makes the debtors dealing with such companies even more vulnerable if something goes wrong. It should be emphasised that these recommendations are not meant to be a reflection on the services currently provided in Singapore; there is no evidence of the occurrence of inappropriate or unscrupulous dealings by these companies. The mere existence of an unregulated commercial market for these services does however create the potential for exploitation. It is unlikely that existing statutory provisions, namely sections 2, 3 or 13 of the *Unfair Contract Terms Act*¹⁵⁵ would be able to prevent for-profit debt management services taking advantage of people in problem debt, many of whom are already vulnerable. The ability for this to happen, and the potential negative outcomes, have been shown in both the Australian and UK markets.¹⁵⁶ Singapore would do well to learn from the experiences of these countries, and address the issue proactively instead of waiting for a controversy to arise.

D. Tackling Small Debts

The final recommendation to consider is a further development of the bankruptcy alternatives to better respond to small debts. The minimum threshold of SGD15,000 in unsecured debts to access either the DRS or bankruptcy means that low-income and low-debt consumers have very little opportunity for a fresh start. This is another way that the Singaporean DRS differs from Chapter 13 of the *US Bankruptcy Code*, where there are no minimum debt levels.¹⁵⁷ In 2016, the threshold for bankruptcy in Singapore was increased from SGD10,000 to SGD15,000.¹⁵⁸ This means that a debtor must have at least SGD15,000 in debts to become bankrupt. Whilst the purpose of this increase was to prevent people from becoming bankrupt over relatively small debts, it does mean that increasing numbers of low-income and low-debt consumers will no longer be able to access either bankruptcy or the DRS.

Whilst SGD15,000 may seem like relatively a small amount of debt for the majority of people in Singapore, it is very much not the case for all income earning individuals. The 2018 Key Household Income Trends in Singapore outlined that the

¹⁵⁵ *Unfair Contract Terms Act* (Cap 396, 1994 Rev Ed Sing).

¹⁵⁶ See discussion associated with notes 142 and 143 above.

¹⁵⁷ Chapter 13, *US Bankruptcy Code*, *supra* note 151.

¹⁵⁸ *Bankruptcy (Amendment) Act 2015* (No 21 of 2015, Sing), s 11, amending *Bankruptcy Act 1995*, *supra* note 72, s 61(1).

bottom 10% of households in Singapore earn an average monthly household income from work of SGD570. The 11th to 20th percentile group earns SGD1,124 and the 21st to 30th percentile income group earns an average of SGD1,583 per month.¹⁵⁹ Whilst there are no statistics on what, if any difficulties exist with low-income and low-debt consumers, it is highly likely that, while many people in these percentile income groups may have a significant problem with debt, they would struggle to accrue SGD15,000 in unsecured debts. This is likely to be exacerbated by the recent restrictions on unsecured lending in Singapore.¹⁶⁰ In fact, as these restrictions prevent unsecured borrowing of over 12 times the individual's monthly income, debtors in the two bottom percentile income groups should not be able to accrue SGD15,000 in unsecured debt, as it would be directly against the the Monetary Authority of Singapore ("MAS") restrictions.

Another issue is that the majority of bankruptcy alternatives are limited to debts with financial institutions, and do not cover loans from licensed moneylenders. This means that people with multiple moneylending loans will not be able to access many of the bankruptcy alternatives. It is recognised that there are current plans to develop a moneylending debt restructuring programme, but the details of this are yet to be confirmed.¹⁶¹

The combination of the reduction in access to unsecured lending and the increase in the threshold of bankruptcy proceedings (both of which have a number of positive impacts to many people) is likely to result in an increased number of low-income and low-debt consumers becoming 'trapped' in problem debt with no clear pathway out. This means that more people will miss out on accessing the benefits of bankruptcy and will be dependent on their ability to negotiate a Voluntary Arrangement.¹⁶² For people on low incomes and/or with limited education, this may be a daunting and difficult process. Alternatively, they could be encouraged to utilise a for-profit debt management programme, which could potentially do more harm than good. As discussed earlier, this would mean that the debtor's funds are going to pay for a commercial service instead of paying off their debts. If the debtor is under increasing pressure to pay their existing legal loans, such as being subject to intensive debt collection practices, they may also be tempted to borrow from illegal lenders (known as '*ah longs*' in Singapore). This could seem like a temporary fix but it would merely increase their difficulties in the long run.¹⁶³ In light of the resources that Singapore has put into tackling the issues associated with illegal moneylending, any reform that discourages people from engaging with *ah longs* should be welcome.

Even small amounts of debt can become unmanageable and create difficulties for borrowers, particularly those on lower incomes. Debt repayment plans under the DRS are very useful, and it would be preferable if people with debts less than the

¹⁵⁹ Department of Statistics Singapore, *Key Household Income Trends, 2018*, at 7, online: Department of Statistics Singapore <<https://www.singstat.gov.sg/-/media/files/publications/households/pp-s25.pdf>>.

¹⁶⁰ On 6 April 2015, the Monetary Authority of Singapore announced additional restrictions on the amount of unsecured credit that Singaporean borrowers will be entitled to obtain from banks and other financial institutions. For more details on these reforms, see Jodi Gardner, "Unsecured Credit, Moneylending & Protection of a Social Minimum in Singapore" (2017) 4(1) *Studies in Asian Social Sciences* 1.

¹⁶¹ Association of International Accountants, *supra* note 144.

¹⁶² Or alternatively have the creditors accept a DMP through Credit Counselling Singapore.

¹⁶³ For more detailed discussion on illegal moneylending, see Gardner, "Regulating Moneylending", *supra* note 148 at 37-38.

bankruptcy threshold could access this type of assistance. Whilst the exact details would need to be thought through by the relevant regulator, this could be through an extension of the current DRS to lower level debtors, or through the creation of a suitable bespoke arrangement. It may be useful for Singapore to consider moving towards a system similar to the UK, where there are multiple alternatives to bankruptcy with different entry requirements. The threshold for bankruptcy in the UK is £5,000. Regardless, there are alternatives available for low-income and low-debt individuals, including a debtor relief order (if debts are less than £20,000) and an administrative order (if debts are less than £5,000).¹⁶⁴ It is also interesting to note that there is no financial threshold to access the corporate insolvency regime in Singapore, making it difficult to see why there should be such a threshold on small amount debts for consumers.

The development of such a system would be a very helpful step to assist lower income individuals and therefore reduce inequality. These issues were highlighted in Oxfam's "The Commitment to Reducing Inequality Index 2018", where Singapore was in the bottom 10 countries in terms of reducing inequality, being ranked 149 in an index of 157 countries.¹⁶⁵ It is recognised that this Index has been subject to significant criticism, specifically on the grounds that it focuses on a range of indicators as opposed to measuring real outcomes.¹⁶⁶ Regardless of this debate, addressing the current gap in bankruptcy alternatives would be another example of Singapore taking active steps to reduce inequality for its citizens.

VIII. CONCLUSION

Policy considerations are central to questions on if and how society assists people struggling under problem debt. Balancing the need for financial rehabilitation and providing borrowers with a second chance against the desire to ensure maximum payment for creditors, is a difficult task for all bankruptcy regimes. Singapore has a regime that effectively navigates this difficult pathway. The bankruptcy process is supplemented with a wide range of alternatives, including formal schemes (Voluntary Arrangements and the Debt Repayment Scheme) and informal schemes (mediation and private arrangements). There are also a number of other financial options for over-indebted individuals including a Debt Consolidation Plan, a Debt Management Programme, and For-Profit Debt Management Services. Whilst these options mean that most individuals with problem debt are adequately catered for, there are some gaps in the current regime—namely debtors who have less than SGD15,000 of unsecured debts and people with multiple small debts, particularly to moneylenders. The final section of this paper therefore made a range of recommendations going forward

¹⁶⁴ For more details on the UK system, see Jodi Gardner, *Bankruptcy Reforms in Singapore: What Can We Learn?—Research Policy Report*, at 4-5, online: National University of Singapore Faculty of Law <<http://law.nus.edu.sg/cbfl/pdfs/reports/CBFL-Rep-JG2.pdf>>.

¹⁶⁵ Max Lawson & Matthew Martin, *The Commitment to Reducing Inequality Index 2018*, online: Oxfam <<https://www.oxfam.org/en/research/commitment-reducing-inequality-index-2018>>.

¹⁶⁶ Channel News Asia, "Oxfam inequality index: Singapore achieves real outcomes rather than satisfies indicators, says Desmond Lee" *Channel News Asia* (9 October 2018), online: Channel News Asia <<https://www.channelnewsasia.com/news/singapore/oxfam-inequality-index-singapore-achieves-real-outcomes-rather-10808172>>.

to increase the provision of the benefits of the current system to more individuals. This includes an enhanced focus on financial education and rehabilitation, additional pre-bankruptcy assistance for people in financial difficulties, and the regulation of for-profit debt management services. The main recommendation was to develop a system where people with small debts (namely, less than SGD15,000 in total) have the ability to utilise either bankruptcy or an effective alternative. These individuals are currently struggling to access any structured and effective relief from debt, which can have a range of other negative outcomes—including potentially pushing them to illegal lenders. The development of a process to allow these individuals a pathway out of their problem debt and give them the opportunity for financial rehabilitation would provide significant benefits not only to the debtors, but to the creditors and to society more generally.