

## PART VI

### PROCEEDINGS IN BANKRUPTCY

#### *Bankruptcy applications and bankruptcy orders*

##### **Persons who may make creditor's bankruptcy application**

**57.** —(1) Subject to this Part, a creditor's bankruptcy application may be made —

(a) against an individual by —

(i) one of the individual's creditors or jointly by more than one of them; or

(ii) the nominee supervising the implementation of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part V; or

(b) against a firm by —

(i) one of the firm's creditors or jointly by more than one of them, if such creditor or creditors are entitled under paragraph (a) (i) to make a creditor's petition against any one of the partners in the firm in respect of a partnership debt; or

(ii) the nominee supervising the implementation of, or any person (other than the partners in the firm) who is for the time being bound by, a voluntary arrangement proposed by the firm and approved under Part V.

(2) A creditor who is entitled to make a bankruptcy application against a firm under subsection

(1) (b) may make a bankruptcy application against any of the partners in the firm without including the others.

(3) Every creditor's bankruptcy application shall be in the prescribed form and shall be supported by an affidavit of the creditor or of some person on his behalf having knowledge of the facts.

(4) Every creditor's bankruptcy application shall be served in the manner prescribed.

##### **Persons who may make debtor's bankruptcy application**

**58.** —(1) Subject to this Part, a debtor's bankruptcy application may be made —

(a) against an individual debtor by the debtor himself; or

(b) against a firm by all the partners in the firm or by a majority of such partners who are residing in Singapore at the time of the making of the application.

(2) A debtor's bankruptcy application shall be in the prescribed form and shall be supported by an affidavit to which is exhibited —

(a) where the debtor is an individual, a statement of his affairs containing such particulars of his assets, creditors, debts and other liabilities as may be prescribed;

(b) where the debtor is a firm, a statement of —

(i) the firm's affairs containing such particulars of its assets, creditors, debts and other liabilities as may be prescribed; and

(ii) the affairs of each of the partners in the firm by whom the application is made containing such particulars of his assets, creditors, debts and other liabilities as may be prescribed; and

(c) a statement containing such other information as may be prescribed.

##### **Bankruptcy order**

**59.** Subject to this Part, the court may make a bankruptcy order on a bankruptcy application made under section 57 or 58.

**Conditions to be satisfied in respect of debtor**

**60.** —(1) No bankruptcy application shall be made to the court under section 57 (1) (a) or 58 (1) (a) against an individual debtor unless the debtor —

- (a) is 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.

(2) No bankruptcy application shall be made to the court under section 57 (1) (b) or 58 (1) (b) against a firm unless —

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

(3) The reference in subsection (1) (c) (ii) to an individual carrying on business in Singapore shall include —

- (a) the carrying on of business in Singapore by a firm in which the individual is a partner; and
- (b) the carrying on of business in Singapore by an agent or manager for the individual or for such a firm.

**Grounds of bankruptcy application**

**61.** —(1) No bankruptcy application shall be made to the court in respect of any debt or debts unless at the time the application is made —

- (a) the amount of the debt, or the aggregate amount of the debts, is not less than \$10,000;
- (b) the debt or each of the debts 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; and
- (d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or award which is enforceable by execution in Singapore.

(2) The Minister may, by order published in the *Gazette*, amend subsection (1) (a) by substituting a different sum for the sum for the time being specified therein.

**Presumption of inability to pay debts**

**62.** For the purposes of a creditor's bankruptcy application, a debtor shall, until he proves to the contrary, be presumed to be unable to pay any debt within the meaning of section 61 (1) (c) if the debt is immediately payable and —

- (a)
  - (i) the applicant creditor to whom the debt is owed has served on him in the prescribed manner, a statutory demand;
  - (ii) at least 21 days have elapsed since the statutory demand was served; and
  - (iii) the debtor has neither complied with it nor applied to the court to set it aside;
- (b) execution issued against him in respect of a judgment debt owed to the applicant creditor has been returned unsatisfied in whole or in part;

(c) he has departed from or remained outside Singapore with the intention of defeating, delaying or obstructing a creditor in the recovery of the debt; or

(d) the Official Assignee has —

(i) issued a certificate of inapplicability of a debt repayment scheme under section 56L;

(ii) issued a certificate of failure of a debt repayment scheme under section 56M(1); or

(iii) revoked a certificate of completion of a debt repayment scheme under section 56O(1), in respect of the debtor within 90 days immediately preceding the date on which the bankruptcy application is made, and the applicant creditor had proved the debt under that debt repayment scheme.

**Where applicant for bankruptcy order is secured creditor**

**63.** —(1) Where the applicant for a bankruptcy order is a secured creditor of the debtor, he shall in his application —

(a) state that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of the other creditors of the bankrupt; or

(b) give an estimate of the value of his security, in which case he may to the extent of the balance of the debt due to him, after deducting the value so estimated, be admitted as a creditor in the same manner as if he were an unsecured creditor.

(2) Where an applicant for a bankruptcy order who is a secured creditor of the debtor fails to disclose his security in the application, he shall be deemed to have given up his security for the benefit of the other creditors of the debtor and upon the making of a bankruptcy order —

(a) he shall not be entitled to enforce his security against the estate of the bankrupt or to retain any proceeds from the realisation of such security; and

(b) he shall execute such document of release as is required by the Official Assignee or account and pay over to the Official Assignee all proceeds from any realisation of his security.

(3) Where any secured creditor fails to execute any document of release as is required by the Official Assignee under subsection (2) (b), the Official Assignee may execute the document on his behalf and the execution of the document by the Official Assignee shall have the same effect as the execution thereof by the secured creditor.

(4) Any secured creditor who fails to account or pay over to the Official Assignee the proceeds from any realisation of his security under subsection (2) (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

(5) Any fine imposed under subsection (4) shall be deemed part of the property of the bankrupt and shall vest in the Official Assignee for the purposes of this Act.

**Power of court to stay or dismiss proceedings on bankruptcy application**

**64.** —(1) The court may at any time, for sufficient reason, make an order staying the proceedings on a bankruptcy application, either altogether or for a limited time, on such terms and conditions as the court may think just.

(2) Without prejudice to subsection (1), where it appears to the court that the person making a bankruptcy application has contravened any of the provisions of this Act or any rules in relation to proceedings on a bankruptcy application, the court may, in its discretion, dismiss the application in lieu of staying any proceedings thereon under that subsection.

**Proceedings on creditor's bankruptcy application**

**65.** —(1) The court hearing a creditor's bankruptcy application shall not make a bankruptcy order thereon unless it is satisfied that —

- (a) the debt or any one of the debts in respect of which the application is made is a debt which, having been payable at the date of the application, 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.
- (2) The court may dismiss the application if —
- (a) it is not satisfied with the proof of the applicant creditor's debt or debts;
  - (b) it is not satisfied with the proof of the service of the application on the debtor;
  - (c) it is satisfied that the debtor is able to pay all his debts;
  - (d) it is satisfied that the debtor has made an offer to secure or compound for the applicant creditor's debt the acceptance of which offer would have required the dismissal of the application and the offer has been unreasonably refused by the applicant creditor; or
  - (e) it is satisfied that for other sufficient cause no order ought to be made thereon.
- (3) In determining for the purposes of subsection (2) (c) whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.
- (4) When a bankruptcy application has been made against a debtor on the ground that the debtor —
- (a) has failed to pay a judgment debt, and there is pending an appeal from or an application to set aside, the judgment or order by virtue of which the judgment debt is payable; or
  - (b) has failed to comply with a statutory demand, and there is pending an application to set aside the statutory demand,
- the court may, if it thinks fit, stay or dismiss the application.
- (5) Where the debtor appears at the hearing of the application and denies that he is —
- (a) indebted to the applicant; or
  - (b) indebted to such an amount as would justify the applicant making a bankruptcy application against him,
- the court may, on condition that the debtor furnishes such security as the court may order for payment to the applicant of —
- (i) any debt which may be established against the debtor in due course of law; and
  - (ii) the costs of establishing the debt,
- stay all proceedings on the application for such time as may be required for trial of the question relating to the debt.
- (6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a bankruptcy order on the application of some other creditor, and shall thereupon dismiss, on such terms as it may think just, the application in which proceedings have been stayed.
- (7) If a bankruptcy order may be made on the bankruptcy application, the court shall, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under Part VA, if the following qualifying criteria are satisfied:
- (a) the debt or the aggregate of the debts in respect of which the bankruptcy application is made does not exceed \$100,000 or such other amount as the Minister may, by order published in the *Gazette*, specify;
  - (b) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;

(c) a voluntary arrangement under Part V in respect of the debtor is not in effect, and was not in effect at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(d) the debtor is not subject to any debt repayment scheme under Part VA, and has not been subject to any such debt repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made; and

(e) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership.

(8) The court shall proceed to hear a bankruptcy application adjourned under subsection (7) if —

(a) the Official Assignee reports to the court under section 56B(2) that the debtor is not suitable for a debt repayment scheme under Part VA; or

(b) at the expiry of the period of adjournment, a debt repayment scheme has not commenced under Part VA in respect of the debtor.

(9) If at any time during the period of adjournment of a bankruptcy application under subsection (7) a debt repayment scheme commences under Part VA in respect of the debtor, the bankruptcy application shall be deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(10) The court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application referred to in subsection (7).

(11) For the purpose of subsection (7)(d), a person in respect of whom the Official Assignee issues —

(a) a certificate of inapplicability of a debt repayment scheme under section 56L; or

(b) a certificate of completion of a debt repayment scheme under section 56N(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 56O(1),

shall not be treated as having been subject to that debt repayment scheme.

(12) In subsection (7)(a), “debt” has the same meaning as in section 56A(1).

(13) Subsections (7) to (12) shall only apply to bankruptcy applications made on or after the commencement of section 10 of the Bankruptcy (Amendment) Act 2009.

### **Proceedings on bankruptcy application by nominee or creditor bound by voluntary arrangement**

**66.** The court shall not make a bankruptcy order on a bankruptcy application made under section 57 (1) (a) (ii) or (b) (ii) by the nominee or any creditor bound by a voluntary arrangement unless it is satisfied —

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement;

(b) that information which was false or misleading in any material particular or which contained material omissions —

(i) was contained in any statement of affairs or other document supplied by the debtor under Part V to any person; or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under Part V; or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the nominee of the arrangement.

### **Proceedings on debtor's bankruptcy application**

**67.** —(1) The court hearing a debtor's bankruptcy application shall not make a bankruptcy order thereon unless it is satisfied that the debtor is unable to pay his debts.

(2) Where a debtor's bankruptcy application has been made against a firm by some, but not all, of the partners in the firm, the court shall not make a bankruptcy order thereon unless it is satisfied that notice of the application in the prescribed form has been served in the prescribed manner on each of the partners who did not join in the application.

(3) If a bankruptcy order may be made on the bankruptcy application, the court shall, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under Part VA, if the following qualifying criteria are satisfied:

(a) the aggregate of the debts specified in the statement of affairs exhibited to the debtor's affidavit under section 58(2) does not exceed \$100,000 or such other amount as the Minister may specify under section 65(7)(a);

(b) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;

(c) a voluntary arrangement under Part V in respect of the debtor is not in effect, and was not in effect at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;

(d) the debtor is not subject to any debt repayment scheme under Part VA, and has not been subject to any such debt repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made; and

(e) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership.

(4) The court shall proceed to hear a bankruptcy application adjourned under subsection (3) if

—  
(a) the Official Assignee reports to the court under section 56B(2) that the debtor is not suitable for a debt repayment scheme under Part VA; or

(b) at the expiry of the period of adjournment, a debt repayment scheme has not commenced under Part VA in respect of the debtor.

(5) If at any time during the period of adjournment of a bankruptcy application under subsection (3) a debt repayment scheme commences under Part VA in respect of the debtor, the bankruptcy application shall be deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(6) The court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application referred to in subsection (3).

(7) For the purpose of subsection (3)(d), a person in respect of whom the Official Assignee issues —

(a) a certificate of inapplicability of a debt repayment scheme under section 56L; or

(b) a certificate of completion of a debt repayment scheme under section 56N(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 56O(1),

shall not be treated as having been subject to that debt repayment scheme.

(8) In subsection (3)(a), “debt” has the same meaning as in section 56A(1).

(9) Subsections (3) to (8) shall only apply to bankruptcy applications made on or after the commencement of section 11 of the Bankruptcy (Amendment) Act 2009.

**Consolidation of bankruptcy applications**

**68.** Where 2 or more bankruptcy applications are made against the same debtor, the court may consolidate the proceedings or any of them on such terms as the court thinks fit.

**Power to dismiss application against some respondents only**

**69.** Where there are 2 or more respondents to an application, the court may dismiss the application as to one or more of them, without prejudice to the effect of the application as against the other or others of them.

**Power to change conduct of proceedings**

**70.** Where any applicant for a bankruptcy order does not proceed with due diligence on his application, the court may substitute as applicant —

(a) in the case of a creditor’s bankruptcy application, any other creditor to whom the debtor is indebted in the amount required under section 61 (1) (a); or

(b) in any other case, the Official Assignee,

and thereafter the proceedings shall, unless the court otherwise directs, be continued as though no change had been made in the conduct of the proceedings.

**Continuance of proceedings on death of debtor**

**71.** If a debtor by or against whom a bankruptcy application has been made dies, the proceedings in the matter shall, unless the court otherwise directs, be continued as if he were alive, and the court may dispense with service of the application upon him.

**Withdrawal of bankruptcy application**

**72.** Subject to sections 65(9) and 67(5), a bankruptcy application shall not be withdrawn without the leave of the court.

*Protection of debtor’s property*

**Appointment of interim receiver**

**73.** —(1) The court may, if it thinks it necessary or expedient for the protection of the debtor’s property, at any time after the making of a bankruptcy application and before making a bankruptcy order, appoint the Official Assignee to be interim receiver of the debtor’s property or any part thereof and direct him to take immediate possession of the same, including any books of accounts and other documents relating to the debtor’s business.

(2) Where the court has appointed an interim receiver under subsection (1), no person who is a creditor of the debtor in respect of a debt provable in bankruptcy shall —

(a) have any remedy against the person or property of the debtor in respect of that debt; or

(b) while the appointment of the interim receiver is in force, commence or continue any action or other legal proceedings against the debtor,

except with the leave of the court and on such terms as the court may impose.

(3) Upon the appointment of an interim receiver under subsection (1), the debtor shall —

(a) give to the interim receiver such inventory of his property and such other information; and

(b) attend on the interim receiver at such times,

as the interim receiver may for the purpose of carrying out his functions under this section reasonably require.

(4) Upon the appointment of an interim receiver under this section, sections 83 and 84 shall apply, with the necessary modifications, and any reference in those sections to —

(a) the making of a bankruptcy order shall be read as a reference to the appointment of an interim receiver under this section;

(b) the Official Assignee shall be read as a reference to the interim receiver; and

(c) the bankrupt or his estate shall be read (respectively) as a reference to the debtor or his property.

(5) The Official Assignee shall cease to be the interim receiver of a debtor's property if —

(a) the bankruptcy application made against the debtor is dismissed or withdrawn;

(b) a bankruptcy order is made on the application; or

(c) the court by order terminates the appointment.

**Power to stay proceedings against person or property of debtor**

**74.** —(1) Any court may by order, at any time after the making of a bankruptcy application, stay any action, execution or other legal process against the person or property of the debtor.

(2) Where an order is made under subsection (1) staying any action or proceedings or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by prepaid registered post to the address for service of the plaintiff or other party prosecuting such proceedings.