***Tightening Up Loose Credit and Loosening Up Tight Bankruptcy in Singapore: An Asian Paradigm For Personal Debt and Insolvency Reform***

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*Abstract: Despite its traditionally "tight" social and legal culture, Singapore recently loosened its personal bankruptcy rules significantly. This reform paralleled quite similar moves in the West in recent decades, but it represents a watershed in Asian regulation of the challenges of rising personal debt. Singapore's impressively deft navigation of a sudden wave of personal overindebtedness between 1995 and 2015 is highly instructive of what a persuasive "Asian" or "tight" strategy for similar moves might look like as neighboring countries in South and East Asia undertake similar reform efforts in the aftermath of the COVID-19 pandemic and the world's slow recovery from its economic ravages.*

## I. Introduction

In a revealing new multinational socio-legal study, Singapore shares center stage among countries whose culture is most "tight."[1] An academic team surveyed seven thousand people on questions gauging the "tightness" or "looseness" of various national cultures, including attitudes and worldviews, freedom and constraint in various social situations, and the strength of their countries' norms and punishments. Noting clear national patterns in the responses, researchers assigned each of the 33 participating countries a tightness-looseness score. Singapore ranks fourth, behind only Malaysia, India, and the "tightest" country, Pakistan.[2] The study revealed "tightness" to be most prevalent among "South and East Asian countries," who (with South Korea, Japan, and China) occupy seven of the top ten spots. The "fine city"[3] of Singapore is highlighted for its strict discipline and high expectations of individual conduct, which are understandable in a city-state with a population density of over 20,000 people per square mile.[4]

So it is all the more intriguing that Singapore recently joined a worldwide trend toward loosening a historically very tight area of social regulation: personal bankruptcy law. It is one thing to observe a liberal bankruptcy law in the relatively relaxed United States (just 11 slots from the "loose" extreme of the scale), much less when the same is seen in Australia or New Zealand (the 10th and 9th, respectively, "loosest" countries on the list, just behind Greece). It is quite another thing, however, when one of the tightest cultures on Earth

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[1] MICHELE GELFAND, RULE MAKERS, RULE BREAKERS: HOW TIGHT AND LOOSE CULTURES WIRE OUR WORLD (2018).

[2] *Id.* at 23-25.

[3] "Fine" in the sense of the prevalence of monetary fines for a variety of seemingly minor infractions, though most likely also the *double-entendre* of a "fine" city that is clean and pleasant, as well, since "over 80 percent of the nation's residents express support for the government." *Id.* at 21; see also *id.* at 199 fig. 9.1 (showing Singapore as enjoying among the highest degrees of overall well-being).

[4] *Id.* at 19-21, 41-42, 61, 144-45.

undertakes to liberalize a legal regime designed to impress fiscal responsibility on those who have seemingly fallen short of expectations for discipline in borrowing and repayment.

Singapore's navigation of a sudden, rising wave of personal overindebtedness is thus highly instructive of what a persuasive "Asian" or "tight" strategy for such a move might look like in the modern world. Given Singapore's emerging leadership position in international insolvency law in particular,[5] it is much more likely than the "loose" US to serve as a bellwether for future personal bankruptcy reforms in other Asian countries as they consider introducing or reforming personal insolvency laws (e.g., Malaysia, Indonesia, Thailand, and China[6]). This leadership will be especially sought after in the wake of the personal finance and economic turmoil caused by the COVID-19 pandemic.

Characteristically, Singapore's approach included some tightening of other areas of regulation, and it retained a significant degree of tightness in its reformed personal bankruptcy regime. But its specific choices as to tightening and loosening are especially enlightening in terms of both the evolution of traditionally conservative cultures in general, and the modernization of personal bankruptcy policy in such cultures, especially in South and East Asia, in particular. Part II introduces the problem posed by a rapid spike in personal debt beginning in the 1990s and continuing to the very recent past. Part III traces the first multi-stage response of monetary authorities in tightening up personal credit that had become uncomfortably loose. Part IV traces the other blade of the scissors-like response, a contemporaneous loosening of the exceptionally tight personal bankruptcy regime. The culmination of this process, and how Singapore authorities arrived at a point so distant from where they began, is surprisingly consistent with worldwide trends in personal bankruptcy development over the past several decades. Finally, Part V offers recommendations for further, minor law reforms to complete an otherwise exemplary personal bankruptcy regime supremely worthy of emulation by other Asian law reformers seeking to balance creditor satisfaction with social inclusion and economic expansion.

## II. Singapore Joins A Risky Club: The Meteoric Rise of Personal Debt 1995 – 2015

The mid-1990s witnessed the start of a sustained and concerning rise in personal indebtedness in Singapore that would prompt the aggressive, two-pronged regulatory response described below. Total household liabilities (including mortgage- and business-related debt) rose from 118% of annual disposable income in 1995 to 174% in 2001, an almost 50% increase in just six years.[7] Mortgage loans are backed by relatively stable asset value, and business loans potentially contribute to an increase in production, income, and wealth, so these types of debts are generally less cause for concern. Official concern was

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[5] See Norton Rose Fulbright, *Singapore's efforts to become an international hub for debt restructuring* (Jan. 2019), https://www.nortonrosefulbright.com/en/knowledge/publications/8e5a46f4/singapores-efforts-to-become-an-international-hub-for-debt-restructuring (last visited 8 April 2021).

[6] See, e.g., Jason Kilborn, *Personal Bankruptcy Arrives in China in March 2021,* CREDIT SLIPS BLOG, 26 Oct. 2020, 3:35 pm, https://www.creditslips.org/creditslips/2020/10/personal-bankruptcy-arrives-in-china-in-march-2021.html.

[7] Mingyue Wen, *Development of Consumer Credit Bureaus in Singapore: Based on Strategic Management,* WASEDA UNIV. BULL. GRAD. SCH. COMMERCE, iss. 67, p. 25, 28 (25 Dec. 2008), online at https://waseda.repo.nii.ac.jp/index.php?action=pages_view_main&active_action=repository_action_common_download&item_id=13367&item_no=1&attribute_id=162&file_no=1&page_id=13&block_id=21.

prompted primarily by Singaporean individuals' enthusiastic embrace of unsecured lending for consumption, in particular via credit cards.

Over the course of a single year in 1995, outstanding non-mortgage personal loans (for a variety of financing purposes) rose an eye-catching 21% (from S$14 billion to S$17 billion), while credit card balances rose an equally notable 16% (from S$1.08 billion to S$1.26 billion).[8] Over the next decade, while personal loan balances grew only modestly, credit card debt soared. In each of the six years from 1997 through 2002, credit card balances grew by double-digit percentages, almost tripling to S$3 billion by the beginning of 2003, continuing past the four-fold mark at S$4 billion by the beginning of 2007. The ratio of total household debt to gross domestic product in Singapore skyrocketed from 55% in 1995 to nearly 93% in 2003.[9] Already in 2001, lower-level court judges began to express concern about the negative knock-on effects of rising consumer debt on individuals and families.[10]

From 2007 through 2014, the potential for such negative effects worsened, as both types of personal indebtedness rose sharply in tandem. Non-mortgage personal loans more than doubled to over S$57 billion, a 300% increase over the course of twenty years. Credit card debt also more than doubled again to nearly S$10 billion—almost ten times the volume of such worrisome indebtedness two decades earlier. Business analysts observed that the dizzying continued rise in the ratio of household debt to GDP outpaced a similar increase in the United States immediately preceding the global financial crisis and left consumers and the broader Singapore economy more vulnerable to economic shocks.[11]

Perhaps as a result of the regulatory interventions described below, these growth trends eased beginning in 2015, with personal loan balances peaking in 2018 and credit card balances peaking in 2019 before both measures fell (by 6% and 11%, respectively) by the first quarter of 2020 (after which the effects of the COVID-19 pandemic began to affect personal finances worldwide and skew all manner of data). Even better, the rate of distress and default on these various personal loans remained relatively low even at the height of the credit expansion. According to aggregate credit reporting data for 2016 through 2020, the highest rates of credit-card delinquency and default were 7.0% and 0.17%, respectively,

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[8] All of the household debt statistics reported here are drawn from Singapore Department of Statistics, Table M700981 - *Household Sector Balance Sheet (End Of Period), Quarterly,* https://www.singstat.gov.sg/find-data/search-by-theme/economy/household-sector-balance/latest-data (last visited 18 Mar. 2021).

[9] CEIC, *Singapore Household Debt: % of GDP,* https://www.ceicdata.com/en/indicator/singapore/household-debt--of-nominal-gdp (last visited 1 April 2021). The ratio has since vacillated widely, though never returning to its 1995 low. It fell back below 65% in 2010, rising again to nearly 74% in 2014, declining again to 63% in early 2020 before trending sharply back upward during the statistically abnormal COVID-19 pandemic period in late 2020-21. *Id.*

[10] Credit Counselling Singapore, *History: Our Story,* ¶1 https://www.ccs.org.sg/about-us/history (last visited 16 Mar. 2021).

[11] Jamie Lee, *Concern over indebtedness in Singapore, Asia*, BUSINESS TIMES, 21 June 2014, https://www.businesstimes.com.sg/top-stories/concern-over-indebtedness-in-singapore-asia (last visited 1 Apr. 2021).

declining steadily over these five years to 5.0% delinquency and 0.12% default.[12] Personal loans showed very similar rates of delinquency, similarly declining over time, though with higher but still moderate rates of default around 0.7%.[13] Bank account overdraft facilities showed a slightly lower maximum degree of delinquency (just over 5% declining to 4.5%) and an intermediate but rising maximum incidence of default (0.19% rising to 0.32% among 21-29 year-olds, though most age cohorts had a much lower default rate, in the region of 0.09-0.15%).[14] These modest rates of acute distress allowed policymakers to be more measured in their response to an otherwise concerning explosion of personal debt.

Nonetheless, Singapore has clearly joined the rest of the developed world facing a durable personal indebtedness burden that threatens to depress economic productivity and harm social cohesion and general well-being. Even if the overall picture seems stable, a vastly expanded debt burden increases volatility just below the surface, like a geyser waiting to erupt and scald any unsuspecting soul standing in the vicinity. Relatively minor economic disruptions can have catastrophic impacts on households who are revealed to be over-leveraged after an income interruption upends even carefully planned debt servicing projections. One analyst observed ominously, "[h]ousehold debt in Singapore has been called as one of the biggest issues facing economic growth in the years to come."[15] The unique Singaporean response to this challenge reveals an intense and interesting cultural struggle between traditional inclinations toward tightening rules versus more modern inclinations toward loosening, especially in the context of personal bankruptcy.

## III. Primary Response: Tightening Loose Personal Credit

Singapore authorities responded gradually but boldly to this growing personal debt crisis by seizing on a solution panned in neo-liberal Western economies: restricting and rationing credit. Reforms to the demand-side bankruptcy system would come later, but Singapore's characteristically "tight" first reaction was to throttle the supply side. The process unfolded in three responsibly measured stages. The final stage seems in the end to have stopped the inexorable rise in personal debt, though more time—and recovery from the COVID crisis—will be needed before the ultimate effectiveness of these measures can be properly assessed.

### A. Stage One: Credit Limits Indexed to Borrower Income

Monetary authorities intervened promptly to cool the overly enthusiastic embrace of personal credit just as it was beginning. The Monetary Authority of Singapore (MAS) is

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[12] All of the delinquency and default statistics reported here are drawn from Credit Bureau Singapore's periodic *Consumer Credit Index*, issue 1 (Overview of 2016) and issues 5, 9, 13, and 17 (for the final quarter of each of the following years).

[13] It is notable that the age cohorts with the peak delinquency and default rates for various credit products were quite different, with credit card difficulties most prominent among borrowers 35-44 years old, while personal loans posed the greatest challenges for younger borrowers, from 21-29.

[14] Debts related to home mortgages and motor vehicles had consistently much lower delinquency and default rates. The highest delinquency rates for vehicle loans fell from 1.6% in 2016 to 0.5% in 2020, with maximum default rates hovering between 0.01-0.02%. Maximum mortgage delinquency rates fell from 1.5% in 2016 to 1.1% in 2020, with negligible default rates in the range of 0.002-0.007%.

[15] ValuePenguin, *Household Debt in Singapore – Trends and Causes Analyzed,* 4 Feb. 2017, https://thenewsavvy.com/plan/debt/household-debt-in-singapore/ (last visited 17 Mar. 2021).

both the country's central bank and the regulator of financial institutions.[16] To staunch the flow of consumer credit to borrowers whose tight finances made them both particularly susceptible to the frenzy of credit offers, and particularly vulnerable to economic shocks, in the mid-1990s the MAS imposed restrictions on both credit card and unsecured[17] personal loan credit extension by regulated financial institutions: Financial institutions were prohibited from issuing credit cards to borrowers with annual income below S$30,000, and the credit limit on cards issued to higher-income borrowers was capped at twice the borrower's *monthly* income. Parallel restrictions were imposed on personal loans.[18] Authorities were candid in their explanation that "[t]hese rules were put in place to implement the Government's social policy of discouraging individuals from spending beyond their means by curbing the easy access to credit through financial institutions."[19]

As the spectacular growth of personal debt in the decade following 1995 attests,[20] the MAS's initial restrictions had quite limited effects. This was inevitable in light of at least two principal factors: First, while lower-income individuals were effectively shut out of the regulated financial institution lending market by the S$30,000 annual income floor, the MAS's regulatory authority does not extend to so-called "moneylenders" who are not regulated financial institutions.[21] Not only "loan sharks," but also many less aggressive smaller unregulated (and regulated) lenders proliferated in Singapore, as elsewhere in the world, to take advantage of the credit boom,[22] and these lenders could encumber both low- and moderate-income borrowers almost as effectively as their larger financial institution cousins. Second, the credit limits for moderate-income borrowers applied on a per-lender basis, and Singapore had and still has many financial institutions (both domestic and international) eager to extend credit up to those limits.[23] Multiple lenders advancing the maximum amount of credit could encumber an individual borrower with debt equal to dozens of months of income, especially if they issued both a credit card with a two-month-income limit and a personal loan with a parallel but additional two-month-income limit.

## B. Stage Two: Fine-Tuning and Initial Aggregation

The best regulators monitor their directives and reassess the need for more or, indeed, less regulation, and the MAS is clearly a first-rate regulator. A decade of experience and observation prompted the MAS and the Ministry of Law to join forces to both tighten and

[16] See https://www.mas.gov.sg/regulation.
[17] These limits thus do not affect loans secured by collateral, such as home mortgage loans and most car loans, in addition to the exclusions discussed below, see note 33 and accompanying text.
[18] See Wen, *supra* note 7, at 29; Ministry of Law & Monetary Authority of Singapore, Consultation Paper Law 06/011/016, MAS P009 – 2006, *Unsecured Credit Rules* ¶ 1.1 (Aug. 2006).
[19] *Id.*
[20] See *supra* part II.
[21] See Ministry of Law, *supra* note 18, ¶¶ 1.2, 3.1.
[22] See, e.g., Kaiwen Leong et al., *Exploiting the Unbanked: Evidence from Singapore's Unlicensed Moneylending Market,* IZA Discussion Paper No. 11786 (2018), https://www.econstor.eu/bitstream/10419/185246/1/dp11786.pdf; Singapore Ministry of Law, *The Advisory Committee on Moneylending, Final Report* (2015), https://www.mlaw.gov.sg/files/news/press-releases/2015/05/Rep.pdf.
[23] See Wen, *supra* note 7, at 29.

loosen the initial credit-rationing approach. In 2007, the credit limit regime was fine-tuned in four ways to begin to respond to the two primary weaknesses identified above.

A first pair of modifications addressed the low-income sector of the market. MAS acknowledged that the floor of S$30,000 in annual income to qualify for credit excluded some 64% of the working population from accessing loans "at modest levels they would be able to afford."[24] A fairly robust consumer credit reporting system had been established in 2002, with the central Credit Bureau Singapore at its helm, which facilitated more responsible and effective information reporting, sharing, and loan underwriting by lenders.[25] This gave MAS comfort to moderate its earlier restrictions and defer (in part) to lenders' self-interested risk assessments for borrowers with annual income of at least S$20,000. Such borrowers would still be denied credit cards, but those with incomes between S$20,000 and S$30,000 could be extended individually underwritten personal loans.[26] This would still exclude some 44% of the working population from regulated credit,[27] but it revealed a responsible willingness on the part of MAS to loosen the area of maximum tightness in its personal credit regulation.

Part of this compromise, however, was a concomitant tightening in another area—the moneylending industry overseen by the Ministry of Law. The loophole that allowed credit to flow freely from corners of the market not regulated by MAS was cinched off by subjecting moneylenders (some of whom had become significant players in the personal loan market) to the same credit restriction regulations applicable to financial institutions.[28] In a final nod to the needs of low-income borrowers, however, the Ministry of Law acknowledged that smaller loans might represent a necessary lifeline, so loans of S$3000 or less were exempted from most of the regulatory regime.[29]

A second pair of revisions slightly loosened regulation on middle- and high-income borrowers. A relatively modest step was aggregating the two separate credit limits for credit cards and personal loans. Thus, rather than imposing independent limits of twice the borrower's monthly income separately for credit cards and personal loans, the two limitations would be aggregated, so an overall cap on debt equal to four months' income could be allocated among all lending vehicles.[30] This did not solve the problem that the limit applied per lender, and it made both types of lending all the more susceptible to unrestrained (ab)use—perhaps reflected in the fact that both personal loans and credit card balances more than doubled over the following seven years.[31]

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[24] See Ministry of Law, *supra* note 18, ¶ 2.1.1.
[25] See, e.g., Wen, *supra* note 7, at 25, 29-30, 32.
[26] Ministry of Law, *supra* note 18, ¶¶ 2.1.4-2.1.5, 2.3 (also requiring mandatory credit checks before extending any personal credit).
[27] *Id.* ¶ 2.1.4, but see immediately below regarding loans less than S$3000 from new regulations imposed on moneylenders.
[28] *Id.* ¶ 3.1.
[29] *Id.* ¶¶ 3.2, 3.3 (capping interest on such loans—and only such loans—at 18% per annum).
[30] *Id.* ¶ 2.2. Loans to borrowers with income between S$20,000 and S$30,000 would remain subject to a single limit of twice the borrower's monthly income, as issuance of credit cards to such borrowers remains prohibited. *Id.* ¶¶ 2.2.2, 3.2.2-3.2.3.
[31] See *supra* note 11 and accompanying text.

A much more powerful regulatory relaxation arrived in the form of broad exemptions for high-income borrowers and common types of substantial borrowing. High-income borrowers apparently chafed at MAS's protectionist credit rationing, and MAS agreed that these borrowers were less prone to acute financial distress. Accordingly, MAS completely lifted its restraints on lending to borrowers who could demonstrate annual income of at least S$120,000 or net personal assets in excess of S$2 million.[32] Also entirely exempted from all of these credit constraining regulations were several types of loans for purposes MAS and the Ministry of Law considered less likely to lead to financial distress—or appropriately set outside the realm of regulation for other public policy reasons. Thus, business loans, education loans, and loans for essential medical expenses were excluded from the restrictions on credit extension altogether.[33]

### C. Stage Three: Universal Limits Via Phased-In Total Aggregation

The MAS again demonstrated its top-notch regulatory competency and responsiveness by monitoring and responding to five more years of experience under the revised credit restriction regime. The real tightening was implemented in this final stage, though it was carefully considered and phased in gradually over the course of seven more years. More than anything else, an industry-wide borrowing limit and so-called Credit Limit Management Measure[34] introduced in this latest round of regulation seem to be responsible for a reversal in the rate of growth of personal debt. These measures seem likely to contribute to a continued remarkably slow uptake of Singapore's revised personal bankruptcy regime, as well, discussed further below.

Finally in the latest round of review, MAS closed the last and largest loophole in the credit restrictions regime. Again relying on the expanded information sharing provided by the decade-old credit reporting system, MAS noted that lenders could and should take account not only of their own credit extension, but extensions by all other lenders,[35] as well, if an over-accumulation of debt by vulnerable individuals was to be avoided. The old per-lender maximum credit limits remained in place, but augmenting them would be a new global aggregate outer boundary on outstanding personal debt: Lenders were to be proscribed from extending further credit (outside the categories exempted by earlier regulation[36]) to individuals whose aggregate debt balance to *all* lenders exceeded a single industry-wide limit.[37] Moreover, lenders would be proscribed from approving new credit for debtors with delinquencies of more than 60 days on any unsecured credit facility.[38]

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[32] Monetary Authority of Singapore, Consultation Paper P010 – 2007, *Proposed Exemption from Maximum Credit Card Limit* ¶ 2 (Oct. 2007) (noting that such borrowers are in the top 5% of income earners); Ministry of Law & Monetary Authority of Singapore, Consultation Paper Law 06/011/016, MAS P016 – 2007, *Legislative Amendments to Unsecured Credit Rules* ¶¶ 2.3 (Dec. 2007).
[33] Ministry of Law, *id.* ¶¶ 2.3, 3; Ministry of Law, *supra* note 18, ¶ 4.
[34] See https://www.mas.gov.sg/regulation/explainers/credit-limit-management-measure (last visited 2 Apr. 2021); see also https://www.mas.gov.sg/regulation/explainers/ongoing-credit-checks-and-requirements (describing other aspects of the credit limit regime).
[35] Monetary Authority of Singapore, Consultation Paper P024 – 2012, *Proposed Changes to Credit Cards & Unsecured Credit Rules* ¶ 1.1 (Dec. 2012).
[36] See supra note 33 and accompanying text.
[37] Monetary Authority of Singapore, Consultation Paper P008 – 2013, *Draft Amendments to Credit Cards & Unsecured Credit Rules* 5 n.2, 11, 32, 62, 82, 101, 121 (Sept. 2013).
[38] Monetary Authority of Singapore, *supra* note 35 ¶ 3.1 (lenders whose *existing* loans were not in delinquency could continue to allow debtors to draw on such facilities, even if a loan to that debtor

The size of the industry-wide limit would remain in flux for several more years as the MAS "allow[ed] existing over-extended borrowers more time to pay down their debts and adjust to the new measures."[39] After a phase-in period stretching from 1 June 2015 to its full implementation date of 1 June 2019,[40] the rule has imposed an industry-wide outstanding credit ceiling equal to one year (12 months) of the borrower's income.[41] Lenders are prohibited from extending further credit to borrowers who have reached and maintained this limit for three months, and as a prophylactic measure, they are further prohibited from approving new credit (as opposed to allowing draw on existing credit facilities) for debtors with industry-wide outstanding unsecured debt exceeding six months' income if the new credit would increase overall available credit beyond 12 months' income.[42] Borrowers and lenders clearly reacted to this powerful new initiative, and credit balances fell after 2015 for the first time in decades.[43] The number of borrowers with balances exceeding one year of income fell by about 21,000 by the end of 2017.[44]

## IV. Secondary Response: Loosening Tight Personal Bankruptcy

Even if the rise in personal debt was stopped, that still leaves a large debt overhang and inevitable instances of overindebtedness—due not necessarily to irresponsible overborrowing, but to economic volatility, such as unemployment (and other fluctuations in national and international economic cycles affecting small businesses in particular), unforeseen medical expenses, and other income interruptions.[45] The modern legal hospital designed to deal with these inevitable casualties of economic volatility is called bankruptcy.

As the personal credit tide was starting to rise in the mid-1990s, however, Singapore's bankruptcy law resembled less a hospital and more a debtor's prison. A remnant of the British Straits Settlements era and the English Bankruptcy Act 1883, Singapore's then-Bankruptcy Act remained a largely unaltered inheritance from the very tight, entirely

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from *another* lender was more than 60 days delinquent, but the former would be prohibited from increasing any of the current credit limits of its borrower in light of the delinquency to the latter).

[39] Monetary Authority of Singapore, Consultation Paper P010 – 2016, *Proposed Change to the Industry-Wide Borrowing Limit for Unsecured Credit* ¶ 1.2 (Sept. 2016).

[40] During the phase-in period, the industry-wide borrowing limit was 24 times the borrower's monthly income from 1 June 2015 to 1 June 2017, then 18 times the borrower's income until 1 June 2019. *Id.* ¶ 1.2.

[41] *Id.*

[42] Monetary Authority of Singapore, Response to Feedback Received, *Public Consultation on Proposed Change to the Industry-Wide Borrowing Limit for Unsecured Credit* ¶¶ 1.2, 1.4 (Dec. 2017).

[43] See *supra* text following note 11. While total personal loan debt fell during the rollout of the Credit Limit Management Measure from 2015 through 2019, credit card debt actually increased nearly 20%, though card balances fell off sharply (down 20% from their peak, for a 5% decline over the early 2015 level) by the end of the second quarter of 2020 and remained subdued through the end of that extraordinary, COVID-19 pandemic year.

[44] Monetary Authority of Singapore, Response to Feedback Received, *Public Consultation on Proposed Change to the Industry-Wide Borrowing Limit for Unsecured Credit* ¶ 2.2 (Dec. 2017); see also Angela Teng, *MAS further tightens unsecured credit limit for those heavily in debt,* TODAYONLINE, 15 Dec. 2017, https://www.todayonline.com/singapore/mas-further-tightens-unsecured-credit-limit-those-heavily-debt (reporting 47% decline in borrowers with outstanding debt exceeding 18 times their monthly income, from 51,000 in February 2015 to 27,000 in August 2017).

[45] See World Bank Group, *Report on the Treatment of the Insolvency of Natural Persons* ¶¶ 39, 103, 279 (2013), online at http://hdl.handle.net/10986/17606.

creditor-oriented English past.[46] This law was designed to squeeze out meager payments for the benefit of creditors,[47] rather than to rehabilitate debtors as the hapless victims of the vicissitudes of modern life.

Between 1995 and 2015, as Singapore was tightening its loose personal credit controls, however, it slowly loosened its tight personal bankruptcy regime. Like the credit restrictions regime, Singapore's personal bankruptcy system evolved in three distinct stages. Here again, time and a gradual culture shift will be necessary before the results of these reforms can be evaluated, but one thing is clear—Singapore's personal bankruptcy system is now on par with those of its developed peers, though it remains decidedly tighter than the international average. Its accumulated layers might present some redundancy, and it might benefit from some final tweaks, but the system's past and future can be fully understood only in contrast with the foreign models on which its various elements were based.

### A. Stage One: Hesitant Reform, Still Enforcement Rather Than Relief

Though Singapore enacted the first substantial amendment to its bankruptcy law in 1995,[48] the institution remained decidedly tight. Bankruptcy continued to be regarded primarily as a vehicle for achieving creditor satisfaction, rather than debtor relief. Though this view has moderated in 1995 and subsequent rounds of reform, it has not done so to the degree seen in contemporaneous reforms in England and other countries around the world.[49] Especially against a backdrop of strict Asian cultural discipline of paying one's (and one's collective's) debts, exacerbated by an acute fear of public stigma and losing face,[50] debtors in Singapore have always been and remain today quite reticent to seek relief in the bankruptcy procedure. Unlike in most other countries, the great majority (some 65-70%) of bankruptcy applications in Singapore even today are lodged by creditors seeking to have their debtors declared bankrupt as a means of debt collection, rather than by debtors seeking bankruptcy as a haven from such collection.[51]

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[46] Insolvency Law Review Committee, *Final Report* 5 (2013); Parliamentary Proceedings, Bankruptcy Bill, 8th Parliament, 2nd Session, vol. 63, column 399 (25 Aug. 1994) (noting initiation of law review and reform process in 1989 "in view of developments in England").

[47] This is consistent with the English heritage of the law. See generally Jason J. Kilborn & Adrian Walters, *Involuntary Bankruptcy As Debt Collection: Multi-Jurisdictional Lessons in Choosing the Right Tool for the Job,* 87 AM. BANKR. L.J. 123, 127-31, 134-36 (2013).

[48] See Insolvency Law Review Committee, *supra* note 46, at 5.

[49] See, e.g., JASON J. KILBORN, EXPERT RECOMMENDATIONS AND THE EVOLUTION OF EUROPEAN BEST PRACTICES FOR THE TREATMENT OF OVERINDEBTEDNESS, 1984–2010 (Deventer: Kluwer 2011).

[50] Though "cultural" explanations of national bankruptcy regimes are often dissatisfying, see, e.g., Joseph Spooner, *Long Overdue: What the Belated Reform of Irish Personal Insolvency Law tells us about Comparative Consumer Bankruptcy*, 86 AM. BANKR. L.J. 243 (2012), an emphasis on traditional collective-responsibility and individual-shame culture often emerges in conversation about Asian personal bankruptcy policy. In the author's conversations with high-level Singapore insolvency law authorities, this was among the first answers they offered to the question why the country has seen so few bankruptcy applications from debtors, even after recent loosening reforms.

[51] This figure is not advertised publicly but is vaguely alluded to in the reform record, see, e.g., Insolvency Law Review Committee, *supra* note 46, at 32-33, and was confirmed in the author's recent conversations with a high-level insolvency official in Singapore.

Beyond cultural inhibitors, even after the 1995 revision, three factors made the bankruptcy procedure a decidedly unwelcome place for debtors. First, the procedure is expensive. Part of the 1995 reform aimed at reducing complexity and consequent expense by following a parallel English reform and instituting a "new 2-tier court process" in place of the previous, more cumbersome 4-stage process.[52] After the reform, cases are initiated in a first stage "application" to have an individual declared bankrupt (now in light of a single factor of inability to pay in the face of a certain threshold of debt) followed by court confirmation of those circumstances and an "order" commencing bankruptcy proceedings.[53]

Despite this streamlining, the procedure remains costly. Today, debtors lodging their own bankruptcy applications must pay a deposit of S$1850 to the Official Assignee, an officer of the Insolvency Office within the Ministry of Law (along with private lawyer fees, if the debtor retains one to assist with the complex paperwork).[54] In many countries, upfront financial burdens like this have presented an all but insuperable barrier for lower-income debtors.[55] On the one hand, Singapore has remained staunchly unwilling to address this problem, rejecting the approach in England (and other countries) of instituting a much less expensive procedure for debtors with especially low incomes and few assets, "as they place what in the local context can be regarded as undue emphasis on the interests of debtors."[56] On the other hand, the credit restrictions outlined above seem likely to greatly reduce—though not eliminate—the number of lower-income debtors able to rack up the degree of unsupportable debt that would otherwise warrant a bankruptcy application.

Second, debtors are subjected to fairly severe depredations during the pendency of a bankruptcy case. Bankruptcy is fundamentally a general debt collection proceeding in which the Official Assignee (or a private trustee) represents all of the debtor's creditors in seeking and liquidating property value for distribution among those creditors. Thus, upon the issuance of an order commencing a bankruptcy administration, all of the debtor's property (aside from a narrow range of "exempt" essential property and subsistence income to cover the debtor's family's "basic domestic needs") acquired before or after the entry of the bankruptcy order must be revealed to and is vested in the OA (or trustee) and subject to sale and distribution to creditors.[57] In addition, the OA (or trustee) is entitled to redirect

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[52] Parliamentary Proceedings, *supra* note 46, columns 399-400; Insolvency Law Review Committee, *supra* note 46, at 32.
[53] Parliamentary Proceedings, *supra* note 46, column 403; Insolvency Law Review Committee, *supra* note 46, at 32-33. Today, the threshold is S$15,000, and the debtor is presumed unable to pay 21 days if the debtor fails to pay after a creditor serves on the debtor a "statutory demand" to pay a debt. Insolvency, Restructuring and Dissolution Act No. 40 of 2018 [hereafter IRDA] ss. 311(a), 312(a), 318 (effective 30 July 2020) [Singapore].
[54] Insolvency, Restructuring and Dissolution (Official Assignee's Fees) Regulations 2020, No. S 590, s. 4; see also Singapore Legal Advice, *Process of Filing for Bankruptcy in Singapore & What's Next?*, 22 Feb. 2021, https://singaporelegaladvice.com/law-articles/filing-for-bankruptcy-singapore/ (last visited 5 April 2021).
[55] See Jason J. Kilborn, *Fatal Flaws in Financing Personal Bankruptcy: The Curious Case of Russia in Comparative Context,* 94 AM. BANKR. L.J. 419 (2020).
[56] Insolvency Law Review Committee, *supra* note 46, at 32 (objecting that these low-income procedures in other countries do not "require[] any form of repayment to the creditors."). For a discussion and a quite different critique of the English Debt Relief Order procedure, see JOSEPH SPOONER, BANKRUPTCY: THE CASE FOR RELIEF IN AN ECONOMY OF DEBT 122-30, 144-45 (2019).
[57] See IRDA ss. 328-329, 399; Insolvency Law Review Committee, *supra* note 46, at 34-35.

and examine the debtor's mail for evidence of hidden value, and the debtor is prohibited from leaving the small island city-state of Singapore without the OA's (or trustee's) permission,[58] which can take a painfully long time to be forthcoming when, for example, a job opportunity in neighboring Malaysia is pending.[59] The debtor is also prohibited from serving in a fiduciary capacity, including as director of a small business, without the OA's (or trustee's) permission.[60] Here again, while England has since limited similar restrictions to a one-year period for most debtors (extended for a small few by Bankruptcy Restrictions Orders for up to 15 more years[61]), Singapore has left its long-term bankruptcy disabilities in place, despite international principles against such practices.[62]

Third and finally, the biggest problem: These burdens continue until the debtor is "discharged."[63] In most other countries, the *quid pro quo* for debtors voluntarily revealing their assets and income is that, after enduring a period of one to three years in this lockdown state, the debtor is discharged, freed of most debts and set back on the road to productivity with a fresh start.[64] Not so in Singapore's traditional bankruptcy system. Until quite recently, the law offered debtors very weak incentive to seek relief, as it offered no sure path to a discharge. Without paying off their debts in full or forging an agreement with their creditors, bankrupts remained so potentially for life before the 1995 amendment.[65] Lawmakers cited "the difficulty in obtaining a discharge" as the very first "main weakness" of the law that the reform sought to overcome, noting the number of undischarged bankrupts had more than tripled in the previous decade, from 4297 to 13,733.[66]

The 1995 revision empowered the court or Official Assignee to confer a discharge, but such grants were relegated to the broad discretion of these officials and were made sparingly and exceptionally.[67] Even if discharge were granted, the grant could be made subject to

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[58] See IRDA ss. 381-382, 401.

[59] See Parliamentary Proceedings, Bankruptcy (Amendment) Bill, 11th Parliament, 1st Session, vol. 85, column 1152-53 (19 Jan. 2009) (recounting a parliamentarian's general complaint about "highly onerous and often cumbersome rigamarole" of securing Official Assignee approval for travel for job duties, and an individual story about a constituent jailed for three months for inadvertent violation of this requirement).

[60] Undischarged bankrupts are also prohibited from serving as Members of Parliament. For an especially interesting critique of this, and the Singapore courts' general hesitancy to grant discharge, see Kelley Bryan & Howard Rubin, Lawyers' Rights Watch Canada, *The Misuse of Bankruptcy Law in Singapore: An Analysis of the Matter of Re Joshua Benjamin Jeyaretnam, ex parte Indra Krishnan* (Oct. 2004), http://www.lrwc.org/ws/wp-content/uploads/2012/03/MisuseOfBankruptcyLaw.pdf.

[61] See Citizens Advice, Bankruptcy restrictions orders, https://www.citizensadvice.org.uk/debt-and-money/debt-solutions/bankruptcy-2/bankruptcy-restrictions-orders/ (last visited 5 April 2021).

[62] See World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency* 7 (2019), online at http://hdl.handle.net/10986/30474; see also *infra* part V.A.

[63] See IRDA s. 326.

[64] See World Bank Group, *supra* note 45, at 117; World Bank Group, *supra* note 62, at 3-4.

[65] Parliamentary Proceedings, *supra* note 46, column 400.

[66] *Id*.

[67] The OA could confer a discharge by administrative "certificate," but only after the case had been pending for at least several years, and only in cases involving debts below a certain threshold (starting at S$100,000 and by 2013 having risen to S$500,000) and if no creditor objected. Parliamentary Proceedings, *supra* note 46, column 401-02; Insolvency Law Review Committee, *supra* note 46, at 41.

whatever conditions (including future payment) as the court saw fit.[68] Both the court's and OA's discretionary consideration of discharge came to be guided by a long list of vague factors developed in caselaw, including "the interests of the bankrupt and the creditors," "public interest and commercial morality," "the contributions made by the bankrupt, for the benefit of the creditors," and of course "the circumstances in which the debt was incurred, the bankrupt's conduct and the extent of cooperation given to the Official Assignee."[69]

Here again, Singapore expressly refused to adopt the 1986 English reform of an automatic discharge after three (and later one) years.[70] In advancing the original proposal, lawmakers explained that "[a]fter examining the actual experience in England and elsewhere which have the automatic approach, we decided to be more cautious."[71] Despite pleas for automatic discharge from debtors languishing in the purgatory state of "undischarged bankrupt," the special committee ultimately concluded "it would not be advisable to introduce the concept of automatic discharges in Singapore" for three reasons: "Firstly, it would be difficult to arrive at a set of criteria for the introduction of an automatic discharge from bankruptcy that would satisfy all parties as demonstrated by the diverse suggestions received from representors. Secondly, automatic discharges would not encourage debtors to take their financial obligations seriously if they know that they would be automatically discharged from bankruptcy after a specific period of time. Thirdly, automatic discharges would not provide any incentive for bankrupts to cooperate with the Official Assignee in the administration of their bankruptcy affairs and to work towards a speedy discharge from bankruptcy."[72]

This reform seems to have had an immediate but still limited effect on the availability of discharge relief. A year after adoption of the 1995 amendments, in response to Parliamentary questions about the number of undischarged bankrupts, it was revealed that the number of discharges granted had more than tripled, from 554 in 1994 to 1926 in 1995. Nonetheless, 12,853 people remained undischarged bankrupts, nearly 4000 of whom had been so for more than 5 years, and almost 3000 more had languished in that state for more than 10 years.[73] After the spike in 1995, the number of discharges granted annually remained fairly limited, especially in relation to the number of undischarged bankrupts augmented by an ever-growing stable of orders commencing new cases. From 1995 to 1998, discharges exceeded new orders each year, by an aggregate total of about 2700, only beginning to make a dent in the accumulated backlog of 13,000 undischarged bankrupts.[74]

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[68] For a historical perspective on the quite similar discharge regime in England before that country's 1986 reform, see Douglass G. Boshkoff, *Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings,* 131 U. PENN. L. REV. 69 (1982).
[69] Parliamentary Proceedings, *supra* note 46, column 401-02; Insolvency Law Review Committee, *supra* note 46, at 40.
[70] See World Bank Group, *supra* note 62, at 10.
[71] Parliamentary Proceedings, *supra* note 43, column 411.
[72] Parliamentary Proceedings, Bankruptcy Bill, 8th Parliament, 2nd Session, vol. 64, column 1082-83 (23 Mar. 1995).
[73] Parliamentary Proceedings, Oral Answers to Questions, 8th Parliament, 2nd Session, vol. 66, column 964 (11 Dec. 1995).
[74] Data on bankruptcy applications, orders, and discharges discussed here are based on Singapore Department of Statistics, Table M890561 - Number Of Bankruptcy Applications, Orders Made And Discharges, Annual (last updated 2 Feb. 2021).

For the next decade, new case orders exceeded discharges in every year, often by a very large margin (more than two-and-a-half times as many new case orders as discharges in each of 2003 and 2004, for example).[75] By the end of 2008, the aggregate surplus of new case orders over discharges exceeded 14,600—well more than doubling the ranks of undischarged debtors. While the Official Assignee apparently made it clear that "working and actively contributing towards settling their debts" was a practical requirement for debtors to obtain discharge,[76] it remained unclear what precise time period, payment amounts, or other terms might be required of these debtors to achieve their release from potentially very long-term bankruptcy. Despite the reforms discussed below and a significant excess of discharges over new case orders from 2009 through 2020, Singapore began 2021 with a stock of over 10,000 debilitated undischarged bankrupts[77]—very nearly where it started at the beginning of its reform process 25 years earlier.[78]

### B. Stage Two: Debt Repayment Scheme and Other Bankruptcy Alternatives

Ironically, bankruptcy in Singapore, as in most of the world, has two quite negative aspects: Not only does it impose all manner of discomfort and burden on debtors' lives, but the payoff for creditors is usually negligible. In justifying the latest round of reform described in part IV.C., below, the Ministry of Law explained that the "prolonged period of bankruptcy has not necessarily benefitted creditors, as debt recovery rates have remained low."[79] The vast, vast majority of debtors find themselves in bankruptcy not because they are obstinate in refusing to pay; rather, they are trapped in bankruptcy because they are unable to pay, generally due to circumstances mostly if not entirely outside of their control.[80]

Squeeze as the system might, no blood will be extracted from stones, and no one is better off for the waste of time, resources, and productive capacity in pursuing phantom asset value. Without a sure path to discharge, debtors have little motivation or incentive to increase their toil to produce extra income for the benefit of creditors, with no end in sight. Worse yet, in a country where bankruptcy carries a heavy stigma, a bankruptcy adjudication can lead to job loss and/or inability to obtain a new job.[81] Consequently, a second series of reforms concentrated on finding more positive and productive alternatives to bankruptcy.

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[75] From 1992 through 2019, new case opening orders have averaged roughly 2000 per year, below this from 1992-1997, above (often well above) from 1998-2009, and then falling back to an average of only about 1700 per year thereafter.
[76] Parliamentary Proceedings, *supra* note 73.
[77] Insolvency Service, *Number Of Bankruptcy Applications, Orders Made And Discharges as at 31 January 2021* (reporting 10,140 undischarged bankrupts).
[78] This is approximately equivalent to the number of new case opening orders entered in the preceding six-and-a-half years, though it is impossible to deduce from publicly available data when the cases involving these currently undischarged bankrupts were opened and therefore how long they have been pending.
[79] Ministry of Law, *Public Consultation on the Bankruptcy (Amendment) Bill, Annex B, Summary of Key Reforms Made by the Bankruptcy (Amendment) Bill* ¶ 13 (16 Jan. 2015).
[80] For just one enunciation of this well-accepted axiom, see World Bank Group, *supra* note 45, ¶¶ 39, 103, 279.
[81] Parliamentary Proceedings, *supra* note 59, column 1145.

### 1. Individual Voluntary Arrangements

The first, in 1995, followed in the steps of a parallel English innovation: Individual Voluntary Arrangements.[82] An IVA is an out-of-court negotiated workout plan, presented by the debtor to creditors via a private insolvency practitioner who has assessed the plan as viable and appropriate. While a completely private arrangement generally would require the assent of all creditors, an IVA can be imposed by law on a few dissenting creditors so long as acceptance is obtained from a majority of creditors, whose claims constitute at least 75% of all claims affected by the plan.[83]

The process of negotiating and sanctioning an IVA has been aptly characterized as "cumbersome and costly," but such a negotiated alternative to bankruptcy was thought to be useful mainly for "debtors who manage businesses or who have large debts."[84] Special emphasis must be placed on the word "large" here, because for consumers and most small business owners, the relatively paltry values of their property, the size of the debts involved, and the significant degree of uncertainty and risk in the future operation of such businesses deprive such debtors of any leverage in negotiating with creditors.[85] Indeed, a worldwide problem has been a high degree of apathy and disengagement from creditors in these small cases, which by and large are simply not worth the creditors' time to seriously negotiate.[86] As a consequence, while the contribution of IVAs to the insolvency-resolution landscape cannot be confirmed empirically, IVAs have never served as an effective bankruptcy alternative for most debtors.

### 2. Debt Repayment Scheme (DRS)

A second alternative was thus instituted in 2009, drawing on the experience of another sophisticated personal bankruptcy regime. Targeting debtors with regular income and fairly modest debts, the Debt Repayment Scheme (DRS) was modeled on the longstanding payment-plan alternative to bankruptcy in "Chapter 13" of the Bankruptcy Code of the United States.[87] This option is most clearly an alternative to bankruptcy, as it is triggered only after a bankruptcy application is filed by or against a debtor who appears eligible for the Scheme. Unlike in the US, debtors eligible for DRS are diverted out of the court system to an administrative alternative run by the Insolvency Office.

Debtors are eligible for the DRS only if their aggregate fixed, unsecured debt is S$150,000 or less, they have not been adjudged bankrupt or entered an IVA or DRS in the preceding five years, and they are not a sole proprietor or a partner in either a general or limited

[82] Parliamentary Proceedings, *supra* note 46, column 401; Insolvency Law Review Committee, *supra* note 46, at 28.
[83] See IRDA ss. 276-287; Insolvency Law Review Committee, *supra* note 46, at 27-28.
[84] Insolvency Law Review Committee, *supra* note 46, at 28; Parliamentary Proceedings, *supra* note 81, column 1145.
[85] See, e.g., Jason J. Kilborn, *Small Business Bankruptcy Reform in the Arab World: Two Steps Forward, One Step Back,* 36 ARAB L.Q. 1, 11-12 (*forthcoming* 2021).
[86] See World Bank Group, *Report on the Treatment of MSME Insolvency* 6, 9-17 (2017); World Bank Group, *supra* note 62, at 1, 3.
[87] Insolvency Law Review Committee, *supra* note 46, at 28; see 11 U.S. CODE ss. 1301-1330.

liability partnership.[88] Oddly, this latter restriction excludes from DRS the very small business people for whom an IVA is too "cumbersome and costly" and for whom DRS should be most useful.[89] Such debtors are not arbitrarily excluded from Chapter 13 payment plan cases in the US.[90] They were excluded in Singapore because this population was prejudged "unlikely to be assured of a regular income stream to see through a debt repayment plan" and likely to require further credit to run their business, which might push their total debt above the maximum eligibility threshold.[91]

The court in cases involving potentially DRS-eligible debtors adjourns the bankruptcy proceedings for six months to allow the debtor and Official Assignee to work out a payment plan of up to five years, with payments to be administered through the Official Assignee's office.[92] If the OA concludes that the debtor is either not eligible for or not suitable for a viable DRS for any reason, the case is returned to the court for continuation of proceedings on the bankruptcy application.[93] Debtors who obtain approval and complete their DRS plans, on the other hand, are released (discharged) from the remaining unpaid portions of debts administered within the DRS.[94]

While the Official Assignee is obliged to convene a meeting of creditors at which questions may be posed to the debtor and creditors may express their views on the debtor's proffered debt repayment plan, the approval or rejection of a DRS plan is within the discretion of the Official Assignee alone.[95] In contrast to an IVA, then, the negotiation of a DRS plan is with the OA, rather than with creditors, though the latter's views doubtless influence the OA considerably. The law explicitly states that a DRS plan may require the debtor to offer full

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[88] IRDA ss. 289, 316(9), 318(3); Insolvency, Restructuring and Dissolution (Debt Repayment Scheme) Regulations 2020 s. 4(1). The threshold was S$100,000 before the IRDA became effective in July 2020. Ministry of Law, Press Release, *Insolvency, Restructuring and Dissolution Act to Commence on 30 July 2020* ¶ 4 (23 July 2020).

[89] One parliamentarian raised precisely this criticism during the discussion of the DRS bill, rejecting the ministry's justification of the exclusion of small business people based on unpredictable income and excessive debt. See Parliamentary Proceedings, *supra* note 59, column 1155-56.

[90] See 11 USC s. 109(e) (limiting eligibility only to debtors with regular income and fixed unsecured debts less than US$420,000 and secured debts less than US$1,260,000).

[91] Parliamentary Proceedings, *supra* note 59, column 1148. For the latest development, a special Sole Proprietors and Partnerships (SPP) debt rescheduling scheme sponsored by participating lenders and administered by Credit Counselling Singapore, see *infra* part IV.B.3.

[92] IRDA ss. 289-90, 292, 297, 316(9), 318(3).

[93] IRDA s. 316(10), 318(4).

[94] IRDA s. 301(2). For debtors who fail to complete their plans, or who are found to have violated several other complex provisions of the law (e.g., transactions at undervalue within 3 preceding years, unfair preference to a creditor within 1-2 preceding years), the OA issues a certificate of failure, which creditors may use as *prima facie* support for a subsequent bankruptcy application against that debtor. IRDA ss. 300, 312(d).

[95] IRDS s. 291; Insolvency, Restructuring and Dissolution (Debt Repayment Scheme) Regulations 2020 s. 18. The debtor or any creditor may appeal the OA's decision to an appellate panel, but such appeals are rare, and even more rarely granted. See Ministry of Law, *Result of DRS Appeals for the period: January 2016 to August 2019,* https://mlaw-io-prod.netlify.app/files/DRSAppeal.pdf (last visited 6 April 2021) (reporting only 7 appeals during this 3.5-year period, 4 by debtors, 3 by creditors, none of which was successful).

payment or a prescribed partial payment,[96] and while no official guidelines or public empirical data attest to the content of approved (or rejected) DRS plans, purely anecdotal indications suggest that approved DRS plans commonly propose 70-80% payment to creditors. The responsible ministry explained in parliamentary proceedings leading to the adoption of the DRS that the five-year repayment term was chosen to allow "the time needed for creditors to recover some, if not all, the debts owed to them," and the ministry immediately remarked that the OA was to examine plans "to ensure that the interests of the creditors are not prejudiced."[97] The administrators of this system in the Official Assignee's office have fairly clearly internalized these expectations in evaluating debtors' proposed plans for an appropriately substantial benefit to creditors.[98]

With such stringent access and approval requirements, DRS has diverted a fairly small portion of cases from bankruptcy, and many approved DRS plans have failed.
The debt limit for eligibility was set at a level that would make DRS available to over 40% of the population of debtors in bankruptcy proceedings.[99] From the implementation of DRS in 2009 through the end of 2020, however, the total number of initiated DRS cases constitutes just under 9% of the total number of bankruptcy applications during that same 12-year period.[100] Of the plans that have terminated in the 12 years from 2009 through 2020, about 40% ended in failure.[101] Thus, while likely more effective than IVAs, the DRS procedure successfully diverts only a small fraction of debtors from bankruptcy.

### 3. (Privately Negotiated) Debt Management and Consolidation

While public authorities were struggling to fine-tune official alternatives to bankruptcy proceedings to increase returns to creditors, private actors were pursuing parallel efforts to develop frameworks for forging full-payment loan modification arrangements between overindebted debtors and their creditors. Much like in Western countries like the United

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[96] IRDA s. 291(6). Chapter 13 in the US does not explicitly allow the court to demand a certain dividend to creditors as a condition of confirmation of a plan, though the law does call on the court to establish that the plan has been filed in "good faith," 11 USC s. 1325(a)(3), which empirical observers discovered in the early 1990s some courts were using as an unsanctioned way to impose unofficial minimum payment requirements. Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures,* 67 AM. BANKR. L.J. 501, 532, 546-47, 550-51 (1993) (reporting Bankruptcy Court in San Antonio required 100% payment, Cincinnati 70%, Austin 25-33%, and Dayton 10%).
[97] Parliamentary Proceedings, *supra* note 59, column 1148.
[98] See, e.g., Bryan & Rubin, *supra* note 60, at 7 (describing a case from 2004, in which 75-year-old debtor applied for discharge after offering to pay 20% of his debt, OA opposed discharge, and court denied it).
[99] Parliamentary Proceedings, *supra* note 59, column 1147 (recognizing that this figure would overestimate eligible debtors, who also must be employed, and not running their own business).
[100] Ministry of Law, *Number of In-Progress, Completed and Failed Cases for Debt Repayment Scheme for period: Dec 2020* (reporting cumulative totals of 2938 in-progress, 1142 completed, and 690 failed); Singapore Department of Statistics, Table M890561 - Number Of Bankruptcy Applications, Orders Made and Discharges, Annual (last updated 2 Feb. 2021) (reporting 33,351 bankruptcy applications 2009-2020). The DRS statistics are reported in a somewhat ambiguous way, but even if one combines the three "cumulative" figures for cases underway, successfully completed, and failed (though the latter two never seem to reduce the former, so combining the figures seems inappropriate), the highest number one can establish for total DRS cases is 4771, which is still just over 14% of the total for contemporaneous bankruptcy applications.
[101] *Id.*

States and the Netherlands,[102] institutional creditors in Singapore initiated a credit counselling industry in part to divert their debtors from bankruptcy and the inevitable losses that creditors suffered when their debtors collapsed into that process.

In 2002-03, a committee of judges, the state-owned lottery company (Singapore Pools), and the Association of Banks in Singapore (ABS) organized a conference that eventually led to the 2004 official launch of Credit Counselling Singapore.[103] Along with offering general personal financial planning advice, the cornerstone of the effort was a Debt Management Programme (DMP), in which distressed borrowers were guided in developing and negotiating monthly-installment payment plans with concessions from creditors in terms of lower interest rates and longer payment terms, up to 10 additional years.[104] While laudable, credit counseling and the DMP effectively serve a quite different, only mildly distressed constituency and are thus not really an alternative to bankruptcy. Like its counterparts in other advanced countries, the DMP facilitates (and does not even guarantee) only mild concessions and "kicking the can down the road" in anticipation of full payment of all debts, which might well suffice for some debtors but is not particularly effective for severely distressed debtors already facing bankruptcy.

Later, these same institutional creditors initiated a second, limited alternative of their own. In January 2017, 14 financial institutions who were members of the ABS launched the Debt Consolidation Program (DCP). The program is available only to borrowers with incomes subject to the industry-wide borrowing limits (S$20,000 to S$120,000[105]) and debt exceeding one year's income. Through direct application with any one of its member banks, the DCP offers consolidation loans to concentrate debt service in the hands of one member-bank, with payments stretched out over as long as 10 years.[106] The terms of these loans are private, but member banks reportedly offer reduced interest rates on the consolidation loan, making it very much like a DMP.[107] The private DMP and DCP are thus quite similar, neither of which really serves as an adequate substitute for bankruptcy or DRS for truly insolvent debtors.

A similar third and final overture was made by institutional lenders to the sole proprietors and partners (SPP) left out of the DRS procedure.[108] In November 2020, the ABS brokered

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[102] See, e.g., Jason J. Kilborn, *The Hidden Life of Consumer Bankruptcy Reform: Danger Signs for the New U.S. Law From Unexpected Parallels in the Netherlands,* 39 VANDERBILT J. TRANSNAT'L L. 77 (2006) (describing history of credit counseling, financed and/or organized by banks, as diversion from bankruptcy in United States and Netherlands).
[103] See Credit Counseling Singapore, *supra* note 10.
[104] *Id.;* Credit Counseling Singapore, *Debt Settlement Options: Debt Management Program (DMP),* https://www.ccs.org.sg/debt-management/debt-options/#1502063063071-ce8e731e-1b21 (last visited 6 April 2021).
[105] See *supra* part III.B.
[106] See Teng, *supra* note 44; Association of Banks of Singapore, Media Release, *Financial Institutions Offer Debt Consolidation Plan* (17 Jan. 2017).
[107] See, e.g., Lorna Tan, *Deep in debt? There's help,* Straits Times, 11 June 2017 (quoting a member-bank representative describing impact of DCP, including reduced effective interest rate from 20% to 10%); DBS financial planning, *Ease your financial burden by consolidating your debt,* https://www.dbs.com.sg/personal/nav/debt-consolidation-plan.page?pid=sg-dbs-pweb-nav-featured-managing-debt-accordion-others-debt-consolidation-plan (last visited 5 April 2021).
[108] See *supra* part IV.B.2.

the SPP Scheme as a framework for applying the approach of the DMP specifically to loans issued by a group of 17 participating institutional lenders owed by small business borrowers with total unsecured debt of S$1 million or less. Here again, the SPP Scheme simply offers a platform for negotiating lower monthly payments in light of extended loan repayment periods, up to 8 years, and a maximum interest rate of 7%, all subject to the "sole discretion of the participating lenders."[109] None of these privately negotiated options is an alternative for bankruptcy, especially in its recently revised form that finally offers (for a price) the type of relief that insolvent debtors truly need.

### C. Stage Three: Fundamental Reform, Differentiated Discharge

As soon as the ink was dry on the DRS initiative of 2009,[110] Singapore lawmakers forged on with their exemplary process of examination and reform. This latest round of personal bankruptcy reforms saw a mid-stream phase-shift and critical loosening of attitudes toward bankruptcy and its role not only in facilitating payment to creditors but also in rehabilitating and unencumbering overwhelmed debtors. It brought Singapore's personal bankruptcy system into much closer coherence with other world models and evolving international best practices for an optimally balanced insolvency regime.

In November 2010, the Ministry of Law convened a blue-ribbon committee to continue the ongoing process of reviewing the entire body of Singapore insolvency law.[111] Much of the committee's final report dealt with a panoply of complex issues affecting large corporate reorganization; the discussion of personal bankruptcy was largely inconclusive. The committee endorsed the then-current state of affairs, observing that the "overall experience on the ground appears to be that the bankruptcy regime is operating and discharging its functions well."[112] The key topic of automatic discharge divided the panel. Some committee members favored a move to mirror those taken in England and Australia to allow for automatic discharge after a certain period of years unless the Official Assignee objected on specific grounds, while others insisted that if the English and Australian model were followed, the "disincentive against reckless incurring of credit or financial liability will be diluted too far" and the cost of credit might be increased due to individuals filing simply to

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[109] Ministry of Law, Press Release, *Sole Proprietors and Partnerships (SPP) Scheme launched to help businesses in financial distress* (1 Nov. 2020), https://www.mlaw.gov.sg/news/press-releases/2020-11-01-sole-proprietors-and-partnerships-scheme (last visited 6 April 2021); Sean Lee & Amanda Tan, *Simplified Solutions for Small Businesses in a COVID-19 Crisis: The SIP and SPP Scheme,* INSOL WORLD, Q1 2021, pp. 16-17.

[110] See *supra* part IV.B.2.

[111] Insolvency Law Review Committee, *supra* note 46, at 1. The committee consulted with experts from the UK and Australia as to "the comparative approach taken in those equivalent regimes," *id.* at 3, 6-7, 11-12, though it seems to have largely ignored the growing body of literature on rapid developments in personal insolvency elsewhere in the world, especially Europe. See, e.g. KILBORN, *supra* note 49.

[112] Insolvency Law Review Committee, *supra* note 46, at 26; see also *id.* at 31 (concluding that bankruptcy alternatives in IVAs and DRS similarly "have worked fairly well" and warranted "no major changes").

obtain “a quick discharge of debts with little or no payment at all.”[113] In the end, the committee demurred on this issue, suggesting further review of the discharge regime.[114]

Eventually, concerns about boundless administrative burdens and other negative effects of a bankruptcy regime with “no definite exit points”[115] convinced lawmakers that the time had come for a sea change. By 2015, a major reform was on the parliamentary agenda, aimed at unencumbering both state organs and debtors from undue burdens. As to the former, creditors had chosen to apply for appointment of private trustees in fewer than 1% of cases, imposing on the Official Assignee the usually fruitless administrative burden of case administration and the search for asset value.[116] After the reform became effective on 1 August 2016,[117] however, institutional creditors would be required to apply for the appointment of a private trustee in order to obtain a bankruptcy order against an individual debtor.[118]

Perhaps as a result of this one seemingly small change, the percentage of bankruptcy applications that resulted in orders opening new cases has fallen dramatically. While the rate of conversion of bankruptcy applications into bankruptcy orders had averaged about 75% for the 35 years preceding this reform, in the year following the reform (2017) that rate took an unprecedented dive to about 55% and then to 47% in 2018 and 2019 before the bottom fell out in 2020, when only 34% of bankruptcy applications resulted in case commencement orders (likely due in large part to disruptions associated with the COVID-19 pandemic).[119] It seems fairly likely that private trustees were unwilling to accept these mostly low-value cases and/or that institutional creditors were unwilling to fund the upfront costs of private trustees, even with the promise that these funds would be recovered if distributable value were discovered for creditors.

[113] *Id.* at 43.
[114] *Id.* at 39-45.
[115] See *id.* at 44.
[116] Parliamentary Proceedings, Bankruptcy (Amendment) Bill, 12th Parliament, 2nd Session, vol. 93 (13 July 2015) (noting ruefully that “it is common for the OA to administer bankruptcies where the value of the estate is insufficient to cover the OA's costs which results in the taxpayers bearing such costs where there is little prospect of recovery”).
[117] See Ministry of Law, Press Release, *More Rehabilitative Bankruptcy Framework to Take Effect from 1 August* (27 July 2016).
[118] IRDA s. 36(2). Also, for cases administered by the Official Assignee, the OA is now explicitly allowed to refuse to incur any expense related to realization and distribution of value other than the debtor’s “target contribution” in cases in which the majority of debts are owed to institutional creditors (who are to be repeatedly invited to apply for appointment of a private trustee if they believe further value is available for discovery and distribution). IRDA s. 384.
[119] Singapore Department of Statistics, Table M890561 - Number Of Bankruptcy Applications, Orders Made And Discharges, Annual (last updated 2 Feb. 2021). A certain share of the later falloff in bankruptcy orders is likely attributable to increasing diversion of debtors into the DRS since 2009, discussed *supra* in part IV.B.2. Statistics for DRS are published only for recent years, but subtracting out reverse engineered and rough estimated DRS figures since 2009, the percentage of bankruptcy applications *not* diverted to DRS that resulted in bankruptcy orders still declined dramatically after 2016, to about 60% in 2017 through 2019 and fairly clearly below 50% for 2020. Even bearing the COVID-19 caveat in mind, this is a notable drop-off in the application-to-order conversion rate.

As for unburdening debtors, the discharge regime was to undergo a revolution with the introduction of the "differentiated discharge."[120] The former regime of discretionary discharge by court order, considering various factors, remained in place,[121] but discharge by administrative certificate from the Official Assignee would finally become all but automatic[122] for all bankrupt debtors, without regard to debt levels.[123] This would be an earned start, rather than simply a fresh start, however, with debtors required to at least attempt to make a "target contribution" to their creditors, calculated based on the debtor's disposable income over the next several years. Within two months after the debtor submits a statement of affairs at the commencement of an opened bankruptcy case, the Official Assignee reviews that statement, assesses the debtor's ability to pay in light of projected available household income in excess of reasonable household expenses, and thus determines that debtor's "monthly contribution" to be relinquished to the OA for distribution among creditors.[124] A number of months of these payments comprise a "target contribution" on which the debtor's discharge is based: For first-time bankrupts, the target is 52 months of these contributions, 76 for those who are the subject of a second or subsequent bankruptcy order.[125]

No official guidelines or benchmarks constrain the OA's projections and determinations as to the debtor's finances over the ensuing several years, and one fears that the OA's view of income that debtors "may reasonably be expected to earn" may be based less on debtor's actual abilities and more on "the range of monthly income earned by persons who are employed in occupations … similar to … that in which the bankrupt is, or can be expected to be, employed."[126] This approach has been criticized in international commentary,[127] but time will tell whether the OA's expectations are realistic.[128] Moreover, this flexible approach allows Singapore the comfort to preserve a healthy element of "tightness" in the face of an otherwise loosened bankruptcy culture. This increases the likelihood that the revolutionary move to automatic discharge will survive in a historically hostile environment.[129] It also allows the flexibility for local culture to evolve on its own terms, in light of on-the-ground experience, over time.

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[120] Parliamentary Proceedings, *supra* note 116.
[121] See *supra* part IV.A.
[122] The statute retains language of discretion, IRDA s. 395(1), but it seems fairly clearly understood that debtors are essentially entitled to discharge by certificate once they reach their target contribution, absent circumstances warranting outright denial of discharge.
[123] Parliamentary Proceedings, *supra* note 116.
[124] IRDA ss. 339, 371. The contribution amount is designed to be a stable projection for the duration of the period leading to discharge, but it can be modified (up or down) under certain conditions. See IRDA ss. 341-42.
[125] IRDA s. 273.
[126] IRDA s. 339(2).
[127] World Bank Group, *supra* note 45, ¶¶ 277, 279.
[128] While the OA's determinations may be appealed to the court, IRDA ss. 340-41, one expects such appeal to be both rare and rarely successful, much like the OA's payment assessments in the DRS context. See *supra* part IV.B.2.
[129] One of the primary revelations of the study referenced in the Introduction, *supra* part I., is that moderation of tightness and looseness is generally optimal, but rapid transitions between tightness and looseness can be destructive and undermine long-term success. GELFAND. *supra* note 1, at 141-64, 192-97, 201-17 (specifically contrasting clashing tight and loose business cultures in Singapore and Israel).

Thus, with a few months' delay for the debtor's filing of the statement of affairs and the OA's assessment of the case, debtors who make their target contributions can now expect to be discharged from bankruptcy within five years (or seven years for subsequent bankruptcy cases).[130] Indeed, a first-time bankrupt debtor might be discharged after as few as three years, though the paired conditions for this seem unlikely: The first of these paired conditions is that either the debtor has managed to accumulate and turn over the entire target contribution early (e.g., thanks to a generous gift from a relative) or the OA has determined that "extenuating circumstances" render the debtor durably unable to accumulate the target contribution.[131] While this first condition might be met, the second is that no objection to discharge is lodged by creditors holding more than 25% of claims against the debtor, or representing half of creditors in number. While creditors are obliged to state the basis for such an objection, they need not have a specific basis, and none is listed in the statute.[132] Experience in other countries has shown creditors willing to object on the simple basis that they oppose discharge in principle.[133]

Even debtors who are unable to fulfill their target contributions can count on a discharge after 7 years (9 years for repeat bankrupts)[134] unless they have abusively refused to cooperate with the OA's administration of the case. To avoid such "can't pay" cases, however, the law contains a significant additional incentive. The OA's office maintains a public list of bankrupts (both undischarged and discharged), and having one's name on this stigmatizing list can lead to all manner of negative emotional and practical effects.[135] While debtors who fail to make their target contribution are likely to obtain a discharge of unpaid debts, the stigma of their bankruptcy remains permanently open for public inspection (even after death).[136] For debtors who make their target contributions timely, however, the records of their bankruptcy and discharge are removed from public access five years after the date of their discharge.[137]

Insolvency officials have been quite clear, at least in private conversation, that this reform was simply designed to mark clear exit point(s) from bankruptcy, not to entice debtors into a new bankruptcy relief system, and filing figures indeed show no increased enthusiasm among debtors seeking discharge relief. Even today, five years after the introduction of predictable discharge, creditors still file 70% of bankruptcy applications in Singapore,[138]

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130 IRDA s. 395(2)(a)(i)(B)(BB); Ministry of Law, *supra* note 117.

131 IRDA s. 395(2)(a)(i). Such "extenuating circumstances" are defined in subsection (6) as those that "prevent the bankrupt from earning a meaningful salary for the remaining period of the bankruptcy," which may well have been present at the beginning of the case, not necessarily arising later.

132 IRDA s. 396.

133 See Jason J. Kilborn, *Out with the New, In with the Old: As Sweden Aggressively Streamlines Its Consumer Bankruptcy System, Have U.S. Reformers Fallen Off the Learning Curve?*, 80 AM. BANKR. L.J. 435, 460 (2007).

134 While discharge objections filed in court could theoretically put off any discharge date by a maximum of two more years, IRDA s. 396(9)-(11), it seems unlikely that creditors will be frequently willing to throw good money after bad by both opposing the OA's intention to grant a discharge certificate and filing a motion in court to oppose otherwise inevitable discharges.

135 See, e.g., *supra* note 81 (noting negative effect of bankruptcy adjudication on employment).

136 Parliamentary Proceedings, *supra* note 116.

137 IRDA s. 433(4).

138 See *supra* note 51 and accompanying text.

and applications rose by only single-digit percentages in 2016, 2017 and 2018, and only 12% in 2019 before plummeting 18% in 2020 (doubtless due to a variety of factors related to the COVID-19 pandemic).[139] Debtors are likely still dissuaded by several years of toil, restrictions, and disabilities resulting from bankruptcy, not to mention the powerful cultural stigma of publicly admitting financial failure.[140]

## V. Recommendations for Final, Limited Post-COVID Bankruptcy Reform

Slow cultural shifts notwithstanding, the trend in debtor-initiated bankruptcy filings may well be poised for an upswing in the wake of the COVID-19 pandemic and the widespread destruction is has wrought on economies around the world, including Singapore's.[141] Restrictions on movement and access to government offices, temporary heightened requirements for filing bankruptcy applications, and a variety of government stimulus measures depressed filings of bankruptcy applications in the later months of 2020, but as all of these factors begin to fade away in 2021, it is highly likely that a mountain of deeply distressed personal debt will be revealed and a search for solutions of unprecedented scale will begin. In anticipation of this coming wave, Singapore might consider one more round of small reforms indicated by international norms that have emerged since Singapore's previous rounds of law reform.

### A. Limit or Eliminate Restrictions and Disabilities

Singapore's impressive reform effort has produced a personal insolvency system on par with any in the world today. Nonetheless, it remains encumbered by a smattering of traditional—one might say outdated—personal bankruptcy shibboleths. For the benefit of debtors, creditors, and society, a final reform push should sweep away these remnants of the distant past.

Now that bankruptcy in Singapore has made the modern transition from debtor's prison to hospital, it would be timely for policymakers to remove artificial and counterproductive inhibitions on patients seeking treatment. The restrictions and disabilities imposed on undischarged bankrupts do not achieve their goal of increasing debtor cooperation with the Official Assignee and the search for asset value. They perpetuate destructive myths about the causes of financial distress and the character of those afflicted by it. They serve only to further stigmatize an already deeply embarrassed group and prevent these otherwise productive people from realizing their potential for the benefit of themselves, their neighbors, and the nation. Restrictions on travel by undischarged bankrupts, and

[139] Singapore Department of Statistics, Table M890561 - Number Of Bankruptcy Applications, Orders Made And Discharges, Annual (last updated 2 Feb. 2021) (reporting just over 2700 applications in 2016, a 3.5% rise from 2600 applications in 2015, cresting at 3473 in 2019).

[140] A recent article presents evidence that the stigma associated with bankruptcy is actually rising, even in countries with much longer histories of liberal bankruptcy laws and a much higher degree of tolerance for risk and failure. Michael D. Sousa, *The Persistence of Bankruptcy Stigma,* 26 AMERICAN BANKRUPTCY INSTITUTE L. REV. 217 (2018).

[141] See Chanjaporn Chanjaroen & Don Ong, *Singapore Bankruptcies Started Surging Even Before Coronavirus Hit,* BLOOMBERG.COM, 24 Mar. 2020, https://www.bloomberg.com/news/articles/2020-03-24/singapore-s-surging-bankruptcies-bode-ill-for-banks-bad-loans (last visited 24 Mar. 2021).

disabilities prohibiting them from managing businesses and serving in fiduciary capacities, should be scrapped in the absence of demonstrated fraud or malfeasance.[142]

In a country as small as Singapore, where job opportunities are frequently available only just across the border in Malaysia, restricting debtor movement not only serves no useful, non-punitive purpose, it unduly interferes with debtors' efforts to respond to incentives to maximize their productivity and fulfill their financial responsibilities to their creditors.[143] In an increasingly global economy, in which Singapore strives to have its citizens play a leading role, disabling talented Singaporeans from exporting their skills to neighboring countries powerfully undermines these efforts. The process of requesting official permission for such travel is not only too cumbersome and slow, it is entirely unnecessary. Undischarged bankrupts are still obliged to cooperate with the OA's search for asset value, and their discharge can be denied if they refuse to do so, but particularly in light of modern communications technology that has developed in the century since this restriction was first imposed in England, cooperation does not require constant presence within the narrow boundaries of Singapore.

Likewise, prohibiting bankrupt entrepreneurs from managing or directing small businesses runs counter to the fundamental premise of entrepreneurship—society needs people to take business risks. Some risks will turn out poorly, and entrepreneurs need to be *not* punished for doing just what society needed of them; they need to be encouraged to learn from their experiences and carry on doing what society needs of them. Here again, a process of asking permission from the OA to sidestep this disability is simply unnecessary. Developments in communications technology and the Official Assignee's public databases put sufficient information at the disposal of potential business clients to allow them to choose whether they wish to engage with an undischarged bankrupt. Artificial restrictions on productive activities are unnecessary and counterproductive.

A collateral benefit of these mild but important reforms would be a further disencumbering of the Official Assignee. No longer forced to police and administer these restrictions and disabilities, the OA would be free to concentrate on that office's most important task: finding and distributing value to creditors. This task is likely to be both more burdensome and more productive today with the duties and incentives that the differentiated discharge creates. Assessing, collecting, and distributing debtors' monthly contributions[144] will be an investment of time that will actually produce a positive return, rather than the drag on productivity resulting from travel restrictions and prohibitions on managing businesses.

Reformers need not choose between all and nothing. In England, from which Singapore inherited these bankruptcy disabilities and restrictions, the Enterprise Act 2002 greatly reduced (to one year) the period during which bankrupt debtors labor under similar disabilities, and for cases involving fraud and demonstrable bad behavior by debtors, restrictions and disabilities can be carried forward by official imposition of Bankruptcy Restrictions Orders.[145] Given the sophistication of Singapore's Insolvency Office and

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[142] World Bank Group, *supra* note 62, at 7.
[143] See *supra* note 59 and accompanying text.
[144] See *supra* part IV.C.
[145] See *supra* notes 61 and 70 and accompanying text.

Official Assignee, there seems to be no good reason for Singapore not to follow this precedent and bring its bankruptcy system decisively into the 21st century.

## B. Eliminate or Distinguish Redundant DRS

If these restrictions and disabilities are eliminated, the Debt Repayment Scheme is either redundant or poised for further distinction. Now that bankruptcy, too, results in a predictable discharge in exchange for surrender of the debtor's disposable income after (in most cases) five years, DRS has more or less outlived its original purpose. "Less" only in that some (especially repeat) debtors might obtain discharge in five rather than seven or more years in DRS as opposed to bankruptcy, and in light of two remaining distinctions: (1) bankruptcy involves a liquidation of the debtor's non-exempt assets, as well, in addition to potential claw-back of some pre-bankruptcy transactions,[146] and (2) the record of a debtor's participation in DRS is likely regarded as somewhat less stigmatizing.

The burdens on the Official Assignee of administering the DRS system seem to far outweigh whatever nuanced benefits might accrue to the thin slice of debtors diverted to that procedure.[147] In the United States, Chapter 13 still functions primarily as a means of preserving exempt assets and/or slowing or preventing the foreclosure of a lien on the debtor's home or automobile.[148] DRS does not practically serve these functions in Singapore, and further unlike the US Chapter 13, DRS is restricted to debtors with quite limited debts and is unavailable to most small entrepreneurs. Its original purpose of providing an incentive to a few debtors to increase dividends to creditors is replicated as to *all* debtors by the differentiated discharge framework today, leaving DRS and bankruptcy no longer apples and oranges, but rather two similar varieties of (somewhat sour) apples.

If DRS is to be retained, it would be sensible to distinguish it from bankruptcy by expecting a greater degree of creditor satisfaction in exchange for the incremental benefits. Based on anecdotal accounts,[149] it seems likely already that the OA's expectations of creditor dividends in approved DRS plans exceed the "monthly contributions" in bankruptcy cases, as the latter should be based at least a bit less on creditor expectations and more on debtor abilities. This might be made clearer or more emphatic, officially or at least unofficially, if the DRS pathway to discharge is to be maintained alongside the parallel highway of the differentiated bankruptcy discharge.

But it may be most sensible to simply revert to the *status quo ante*. IVAs offered a creditor-negotiated pathway to bankruptcy-alternative workout plans, and DRS was initiated simply to offer another, OA-negotiated alternative that encouraged debtors to produce a return for creditors. Now that the differentiated discharge calls for the OA to impose clear payment expectations on all bankrupt debtors, another OA-administered payment alternative is redundant, again more or less. If an additional payment alternative to bankruptcy is desirable, IVAs seem to fit that bill perfectly well. Moreover, the predictable bankruptcy discharge now provides precisely the leverage that debtors need to support

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[146] IRDA ss. 328-29, 361-80.
[147] See *supra* note 100 and accompanying text.
[148] See, e.g., Administrative Office of US Courts, *Chapter 13 – Bankruptcy Basics,* https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited 8 April 2021).
[149] See *supra* note 96 and following text.

fruitful IVA negotiations.[150] The circle is complete without DRS, which today seems like adding feet on a drawing of a snake.[151]

### C. Eventually … Reduce Cost Access Barrier

Once society becomes more comfortable with the basic notions of rehabilitative bankruptcy, debtors should begin coming to the hospital for proper treatment, which in the long run will benefit everyone around them. As this happens, policymakers might eventually consider reducing a significant remaining barrier to access to relief: the S$1850 deposit. Reducing the burdens imposed on the Official Assignee's office will ease the need for such significant monetary contributions from users, though further reducing administrative expense would be a welcome and natural next step in the evolution.

England took this step in 2016, inaugurating a simple online platform where debtors can lodge applications for relief,[152] and the Official Receiver administers whatever value passes through the case.[153] This streamlined process allowed England to reduce the cost of access to bankruptcy relief to £680 (approximately S$1250), consisting of £130 for the initial review and the Official Receiver's minimum administrative fee of £550.[154]

Preventing lower-income borrowers from accumulating too much debt is an admirable step, but it only goes so far. Bankruptcy most often results not from a simple mismatch between present borrowing and current payment capacity, but rather from an unexpected reversal of the debt-to-income ratio.[155] Job loss, business failure, unexpected medical expenses, and other uncontrollable events can quickly transform a manageable debt burden into an endless nightmare of unsupportable claims. This is especially true for families with thin margins, where a few dollars can mean the difference between maintaining a modest existence and collapsing into insolvency. The best-laid plans for limiting overextension of credit can be laid waste in an instant alongside the best-laid home finance plans of such low- and middle-income families struggling with the volatility of modern, global economic fluctuations. Governments cannot completely control who becomes overindebted any more than they can control who needs an ambulance as a result of a car wreck or sudden illness. For those casualties of otherwise healthy modern risks, government should provide ready access to a hospital.

## VI. Conclusion

A protracted and remarkably responsive decade of reform has brought Singapore into surprising alignment with similar reforms in Europe since the mid-1980s. For middle- and higher-income debtors, Singapore joined the majority of countries adopting personal insolvency procedures with a "can-pay, should-pay" compromise. No haven for "abusers," bankruptcy still demands substantial sacrifice of debtors in a best-efforts attempt at

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[150] See *supra* notes 85-86 and accompanying text.
[151] See Henry Li, 画蛇添足 To Draw a Snake and Add Feet (21 Feb. 2020), https://ancientchengyu.com/draw-snake-add-feet/.
[152] SPOONER, *supra* note 56, at 123, 125 (2019); Insolvency Service, *Applying to become bankrupt,* https://www.gov.uk/bankruptcy.
[153] Insolvency Act 1986 ss. 291A(1) [England].
[154] SPOONER, *supra* note 56, at 125.
[155] See World Bank Group, *supra* note 45, ¶¶ 39, 103, 279.

satisfying obligations to creditors, but predictable discharge relief is extended to all overwhelmed debtors in exchange for that reasonable sacrifice. Singapore authorities demand more austerity and sacrifice from debtors to earn relief (particularly with respect to the extended repayment period), but this is a predictable expression of the traditional local legal culture. A stable compromise thus seems to have been struck between "tight" cultural expectations of duty and "loose" willingness to relax those expectations under appropriate conditions.

For lower-income borrowers, lending authorities in Singapore implemented credit rationing regulations that would be anathema to prevailing neo-liberal regulatory policy in the Western world. But this move powerfully advanced a desire—also prevalent in the West—to prevent overindebtedness among the most vulnerable households. Singapore's bold move may well have prevented (on the front end) most of the instances of severe insolvency for which Western countries have increasingly been pressed (on the back end) to adopt special low-income insolvency procedures.[156] The significant cost barrier for accessing bankruptcy relief, however, may mask a significant degree of heartache among low-income borrowers caught in a surprise debt trap with no effective means of escape. This is a challenge with which lawmakers around the world continue to grapple.

Singapore has shown that a traditionally exceptionally tight Asian legal culture can responsibly accommodate a relief-oriented personal bankruptcy regime. This benefits not only debtors, but also creditors and, more importantly, society as a whole.[157] The terms of discharge relief need not be so liberal as to offend popular norms of payment responsibility, though they also need not be so restrictive or burdensome as to undermine the rehabilitative goals of the system. Singapore has charted the way for traditionally conservative Asian countries to join a worldwide movement toward more constructive personal bankruptcy policy,[158] though policymakers in Singapore might consider one final series of small reform steps—especially as the world emerges from an economy ravaged by the COVID-19 pandemic and policymakers search for effective solutions for recovering from the economic disease brought on by the physical one.

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[156] See Kilborn, *supra* note 55.

[157] For an extended discussion of these benefits, see World Bank Group, *supra* note 45, at 20-40.

[158] It is worth noting that Singapore's model is heavily dependent on an exceptionally sophisticated (and therefore expensive) institutional setting. Singapore's Insolvency Office, including its Official Assignee, are highly skilled and able public officials who stand at the helm of a fairly elaborate administrative infrastructure. One must acknowledge that other countries, especially in Southeast Asia, might be harder-pressed to afford such a luxury, but most of the virtues of Singapore's approach to personal bankruptcy can be replicated in lower-cost models. Ultimately, the success or failure of any insolvency system depends crucially on the skills and attitudes of the institutional actors chosen to administer the system. See World Bank Group, *supra* note 62, at 35-37.