

A Guide to Bankruptcy and Debt Recovery in Singapore*

I. Introduction

1. For some, a man is only as good as his word. There is logic in this, given that creditors (also known as moneylenders) often worry about whether borrowers will repay their debts. Debt recovery, after all, can be a tedious and frustrating process. Creditors may often receive no response despite calling, e-mailing, and sending letters to the borrower. Looking for them at their home or workplace may be a similarly futile endeavour. And on the off chance that the borrower can be contacted, a common refrain will be that the borrower has no money now, and will repay you later.
2. Frustration sets in, and firmer action is required. Suing for bankruptcy is perhaps the most intuitive response for all creditors. This is also known as the “in-court” recovery option. However, there are other “out-of-court” recovery options that may be more effective. This article provides an overview of the options available to the creditor, and explains the factors that should be considered when choosing a debt recovery route.¹

II. Discussion

A. *In-court options*

3. There are several in-court options for debt recovery, such as submitting a claim at the Small Claims Tribunal (“SCT”) or commencing civil or bankruptcy proceedings. The optimal choice will depend on factors such as the amount owed, the costs that you are willing to incur to recover the debt, and the state of your relationship with the debtor. These options and factors to consider are discussed below.

(1) Small Claims Tribunal

4. Filing a claim at the SCT is an option when less than \$10,000 is owed to the creditor.² The creditor may file a claim online through the Community Justice Tribunals System

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¹ Due to the measures under the COVID-19 (Temporary Measures) Act 2020 (No. 14 of 2020), the threshold for taking action against debtors has been temporarily raised. The debt threshold for individual bankruptcy has been raised from \$15,000 to \$60,000 (s 20(1)(d)), and individuals have 6 months, rather than only 21 days, to respond to creditor demands before being presumed unable to pay off their debts (ss 20(1)(e), (f) and (g)).

² Small Claims Tribunal Act (Cap 308, 1998 Rev Ed) s 2.

via SingPass or CorpPass.³ The SCT provides a relatively quick and inexpensive forum for dispute resolution, suitable for creditors who are owed a relatively modest sum. Decisions made by the SCT can be enforced like a court judgment.⁴ However, the SCT can only hear claims for debts arising out of the situations stated in Schedule One of the Small Claims Tribunal Act, which includes debts arising out of a supply contract or from a lease not exceeding two years.⁵

(2) *Civil proceedings*

5. Alternatively, creditors can bring the claim to court. As court proceedings are costly,⁶ this option is not economically worthwhile for creditors owed relatively lower sums, and hence should only be considered when the claim cannot be brought to the SCT. Creditors who successfully prove their debt will obtain a judgment, which then needs to be enforced. Enforcement may be done through a Writ of Seizure and Sale (“WSS”) and/or a garnishee order.
6. The WSS is a suitable enforcement option if the debtor owns property with sufficient value to repay the debt. The WSS authorises an officer of the court, also known as the Bailiff, to seize and sell the debtor’s property.⁷ Common types of property seized include valuable jewellery or vehicles owned by the debtor. After seizure, the property will be sold, and the proceeds are used to pay the debt. More information on this process can be found at [the Supreme Court Website](#).
7. On the other hand, a garnishee order may be a useful tool where the debtor is owed money by a third party. A creditor can obtain a garnishee order against the third party who owes the debtor money, compelling the third party to pay the debt directly to him instead of the debtor.⁸ In simple terms, if *A* owes *B* money, and *B* owes *C* money, *C* may recover his debt from *A* directly, assuming, of course, *A*’s debt to *B* is due.

³ Community Justice Tribunals System Promotional Brochure, <<https://www.statecourts.gov.sg/cws/SmallClaims/Documents/CJTS-Promotional-Brochure.pdf>> (accessed 20 June 2020).

⁴ Small Claims Tribunal Act (Cap 308, 1998 Rev Ed) s 36.

⁵ Schedule One Small Claims Tribunal Act (Cap 308, 1998 Rev Ed).

⁶ There is an initial deposit of \$1,850 to be placed with the Official Assignee for a bankruptcy application. Further, there may also be professional costs in hiring a lawyer to aid in the process.

⁷ Supreme Court website, <<https://www.supremecourt.gov.sg/docs/default-source/default-document-library/quick-links/supreme-court-enforcement-proceedings-brochure.pdf>> (accessed 20 June 2020).

⁸ *Ibid.*

(3) *Bankruptcy proceedings*

8. Commencing bankruptcy proceedings against the debtor is an option if the debt exceeds \$15,000.⁹ However, under this option, creditors will often recover only a fraction of the debt since the debtor's assets will have to be divided amongst all his creditors.¹⁰ As such, it is crucial to assess the debtor's financial situation before commencing such proceedings, as other options, such as working out an instalment plan with the debtor, may allow for greater recovery.
9. The Bankruptcy Act¹¹ provides that creditors may only make bankruptcy applications against debtors residing or who have property in Singapore, or debtors who resided or carried on business in Singapore within a year from the application.¹² Once an application is made, all interests on all debts owed will stop accruing and the applicant cannot bring other legal actions against the debtor on the debt. For an application to be approved, the applicant must show that the debtor is *unable* to pay the debt, either through an unsatisfied statutory demand ("SD"), a judgment debt, or by showing that the debtor had left Singapore with the intention of evading payment.¹³
10. In most cases, an unsatisfied SD is the most effective way of showing the debtor's inability to pay. An SD is a formal written notice¹⁴ informing the debtor that bankruptcy proceedings will be commenced if the debt is left unpaid by the stated deadline, which is often 21 days from the date of the SD.
11. Creditors should also note that bankruptcy applications involving debts worth less than \$100,000 will be *automatically* referred by the court to the Official Assignee ("OA") – an officer of the court, in-charge of managing the debtor's assets at bankruptcy – to consider the debtor's suitability for the Debt Repayment Scheme ("DRS").¹⁵

⁹ Bankruptcy Act (Cap 20, 2009 Rev Ed), s 61(1)(a).

¹⁰ Singapore Legal Advice website, <<https://singaporelegaladvice.com/law-articles/filing-for-bankruptcy-singapore/>> (accessed 7 July 2020).

¹¹ Bankruptcy Act (Cap 20, 2009 Rev Ed).

¹² Bankruptcy Act (Cap 20, 2009 Rev Ed), ss 60 and 61.

¹³ Bankruptcy Act (Cap 20, 2009 Rev Ed), s 62.

¹⁴ See Bankruptcy Rules (Cap 20, Section 166, 2006 Rev Ed), s 95 for specific requirements.

¹⁵ Subject to conditions as stated in Bankruptcy Act (Cap 20, 2009 Rev Ed), s 56B(2).

12. The DRS is a pre-bankruptcy scheme administered by the OA where a repayment plan is formulated to ensure repayment of debts within 5 years.¹⁶ Creditors may thus find themselves in a better position under the DRS as the debtor will be obliged to repay all debts owed, in accordance with a formulated instalment plan.¹⁷ A debtor is eligible only if the debt does not exceed \$100,000 and he is not a bankrupt or he has not entered into a DRS in the last 5 years. Further, the debtor must also not be a sole proprietor or partner in a partnership.
13. If the debtor is found unsuitable for the DRS regime, the court will hear the bankruptcy application. The court will grant the bankruptcy order if it is convinced that the debtor is unable to repay the debt. The debtor will then be pronounced a bankrupt and the OA will take over all his financial affairs, including the repayment of his debts. The OA will decide on a *target* repayment sum, determined by the value of the debtor's assets and his financial ability to contribute to his repayment plan – which may mean that the debtor only *partially* repays his debts. Once the debtor repays the target sum, he will be deemed to have discharged *all* his debt obligations, meaning that the creditor cannot sue for the balance. It is noteworthy that despite the foregoing discussion, secured creditors will still be able to enforce their security (*i.e.*, to sell the property or goods over which they hold security) for its *full* value, which may mean that secured creditors can still obtain full repayment of their loans.¹⁸
14. As creditors may not get back all monies owed at the debtor's bankruptcy, it prudent for creditors to only consider this option as a last resort. However, given that bankruptcy brings about personal restrictions,¹⁹ the *threat* of bankruptcy may at times convince the debtor to deal with his debts. Although some debtors may simply ignore such threats, creditors can nonetheless consider using the threat of proceedings as a tool to compel repayment of debts.

¹⁶ Bankruptcy Act (Cap 20, 2009 Rev Ed), s 56C(1)(b).

¹⁷ See Ministry of Law Insolvency Office, "Information for Creditors" <<https://io.mlaw.gov.sg/bankruptcy/information-for-stakeholders/information-for-creditors/>> (accessed 8 July 2020).

¹⁸ See Ministry of Law Insolvency Office, "Information for Creditors" <<https://io.mlaw.gov.sg/bankruptcy/information-for-stakeholders/information-for-creditors/>> (accessed 8 July 2020).

¹⁹ Bankruptcy Act (Cap 20, 2009 Rev Ed), ss 75 – 78, 131.

B. Out-of-court options

15. Apart from taking things to court, there are other cost-effective “out-of-court” debt recovery options that can be considered by the creditor.

(1) Negotiating a settlement

16. Possibly the most cost-effective option, creditors can choose to re-negotiate repayment terms with the debtor, perhaps by offering a longer repayment period or a discounted lump sum payment. The point is to keep a zone of potential agreement open, where frank communication can eventually pave the way for a mutually beneficial solution, without incurring additional legal costs. Understandably, this may not always be an option as the relationship of the parties may be strained by this point. Nevertheless, it remains a creditor’s best chance at obtaining close to, or even full, repayment.

(2) Hiring a debt collection agency

17. Creditors who have no time to pursue the debt personally can hire a debt collection agency to aid in the process. It would be prudent for creditors choosing this option to make enquiries to ensure that the agency engaged complies with the law. This is to ensure that the debt recovery process is not hindered because of illegal actions taken, and to minimise the risk of the creditor being sued for the actions of the debt collectors.

(3) Letter of Demand

18. Creditors with evasive debtors may engage a lawyer to send a letter of demand (“**LOD**”) to the debtor, informing him of the consequences of non-payment. The LOD can highlight the severity of the situation to the debtor, which may prompt a response. Although the LOD is different from an SD, the LOD can be used as evidence of debt recovery attempts later on, should the matter be brought to court.

III. Conclusion

19. As discussed above, there are several debt recovery options, ranging from hardline options such as commencing bankruptcy proceedings, to collaborative ones like negotiating with the debtor. However, creditors should note that although options are available, it is generally difficult to fully recover the debt, as debtors often simply do not have enough money to pay. The difficulty in debt recovery highlights the importance of conducting due diligence before lending money to a potential debtor, and

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to request for a guarantee where possible before any loan is advanced. These precautions will save the creditor the trouble of undergoing the burdensome process of debt recovery later on.

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