

## **PRESS STATEMENT**

**- RELEASED ON 2nd July 1999**

1. Changes will be made to the bankruptcy regime to foster a climate of greater tolerance for failure in order to further promote entrepreneurship and responsible risk-taking. The present set of changes is a further move, since the last major review of the bankruptcy regime in 1995, to cultivate a calculated risk-taking culture. The aim is to foster a climate for greater tolerance for failure, and allowing those who failed honestly to restart afresh, while at the same time preserving financial responsibility and commercial morality. To this end, proposals which would work against creditors' interests were avoided. The changes therefore cover :

- (a) measures to promote use of alternatives to bankruptcy;
- (b) measures to facilitate bankrupts continuing to be economically productive during bankruptcy; and
- (c) measures to facilitate earlier discharge from bankruptcy in appropriate cases.

2. Some of the measures have already been put in place and some will require legislative amendments to be introduced later this year.

### **Measures To Promote Use Of Alternatives To Bankruptcy**

3. A number of measures are proposed to promote use of alternatives to bankruptcy. Debt settlement without resort to bankruptcy allows debtors to avoid the cost, stigma and inconvenience of bankruptcy and gives creditors greater prospects for debt recovery. This will eventually foster a climate where business failure need not result in bankruptcy.

4. The measures to promote use of alternatives to bankruptcy are :

- (a) Increasing the minimum debt for bankruptcy petition from \$2,000 to \$10,000;
- (b) Measures to make the use of Voluntary Arrangement regime easier and more attractive;
- (c) greater public education effort on use of alternatives to bankruptcy.

5. At the same time, the Government will further explore the role which mediation can play in averting bankruptcy. Further study will be undertaken into the feasibility of institutionalising pre-bankruptcy mediation as part of the bankruptcy process in order to provide a forum of last resort for debtors to work out settlement plans with their creditors.

### **Allowing Bankrupts to be Economically Productive**

6. It is important that a bankrupt be economically productive even during bankruptcy. This will allow the bankrupt to pay off his debts earlier (and get out of bankruptcy earlier). It will also allow the bankrupt to continue contributing economically to society during the bankruptcy.

7. The measures to allow bankrupts to be economically productive are :

- (a) allowing bankrupts, in selected circumstances, to do business or act as company directors with the permission of the Official Assignee/Official Receiver;
- (b) assisting bankrupts in obtaining gainful employment.

8. The T21 Committees also called on professional and statutory bodies who now exclude bankrupts from their ranks to reconsider their policy towards bankrupts. In particular, they are asked to consider whether they need to continue their present policy of excluding all bankrupts or whether a more flexible approach will suffice.

### **Earlier Discharge from Bankruptcy**

9. The measures to facilitate earlier discharge from bankruptcy and quicker restarts are :

- (a) expanding the scope of application of discharge by certificate to :
  - (i) include bankrupts with debts less than \$500,000; and
  - (ii) reduce the period of eligibility of consideration for discharge by certificate from 5 years to 3 years;

- (b) reduce unnecessary resort to courts for discharges in cases where the bankrupt has paid his creditors in full or where a bankrupt's offer of composition or scheme of arrangement has been accepted by creditors;
- (c) allowing offers of composition and schemes of arrangements to be accepted by creditors by post;
- (d) encouraging early debt settlement through bankruptcy mediation.

10. Details of the measures are set out in Annex A.

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ANNEX A:

### **CHANGES TO BANKRUPTCY REGIME TO CULTIVATE A CALCULATED RISK-TAKING CULTURE AND FOSTER A CLIMATE OF GREATER TOLERANCE FOR FAILURE**

1. Changes will be made to the bankruptcy regime to foster a climate of greater tolerance for failure in order to further promote entrepreneurship and responsible risk-taking. Among the main changes are :

- (a) to disallow bankruptcy petitions for debts smaller than \$10,000;
- (b) to allow bankrupts, with the permission of the Official Assignee/Official Receiver, to continue to act as company directors and to do business; and
- (c) to allow the Official Assignee, in his discretion, to discharge bankrupts with debts less than \$500,000 and who have been in bankruptcy more than 3 years.

2. As high-tech start-ups are risky and ideas may not always result in a successful venture, these changes to the bankruptcy regime will support the T21 initiative by producing a more conducive environment for high-tech start-ups. To achieve this aim, the bankruptcy regime seeks to provide assistance to persons who fall into dire financial straits due to normal business risks, as opposed to malpractice or mismanagement, and to provide adequate opportunities for such debtors to restructure their debts, so as to enhance the prospects for settlement of debts to creditors' satisfaction without resort to bankruptcy. Declaring them bankrupt will be the last resort and even in that event, they will be given early opportunities to restart new businesses afresh. Falling into bankruptcy should also not be seen as a stigma, since failure is part of normal business risk.

3. The present set of changes is a further move, since the last major review of the bankruptcy regime in 1995, to further cultivate a calculated risk-taking culture, by fostering a climate for greater tolerance for failure, and allowing those who failed honestly to restart afresh, while at the same time preserving financial responsibility and commercial morality.

#### **Changes**

4. The changes to the bankruptcy regime are comprehensive and cover :

- (d) measures to promote use of alternatives to bankruptcy;
- (e) measures to facilitate bankrupts continuing to be economically productive during bankruptcy; and
- (f) measures to facilitate earlier discharge from bankruptcy in appropriate cases.

#### **Measures To Promote Use Of Alternatives To Bankruptcy**

5. As more debtors succeed in achieving debt settlement without resort to bankruptcy, a climate will emerge where business failure need not result in bankruptcy, and where creditors of failed businesses will first use alternatives to bankruptcy to reach debt settlement with their debtors and turn to bankruptcy only as a last resort.

6. Increased use of informal debt settlement will also work to the advantage of creditors. Bankruptcy is expensive. If debt settlement can be achieved without resort to bankruptcy, there will be cost savings for creditors. Also, if a creditor can enter into a satisfactory

arrangement with the debtor for debt adjustment, chances are that he will be able to recover a greater proportion of his debts than if he had proceeded to bankruptcy.

### **Increasing Debt threshold for filing Bankruptcy Petition**

7. The debt threshold for filing for bankruptcy will be increased from \$2,000 to \$10,000. Once the change is in place, a person cannot be made a bankrupt unless the debts he owes his creditors exceed \$10,000 in total. This change will come into effect on 3rd July 1999 and will apply to all new bankruptcy petitions (even those founded on existing debts, judgments and statutory demands).

8. The figure of \$10,000 is chosen as it is also the jurisdiction limit of the Small Claim Tribunal.

9. Raising the debt threshold for bankruptcy does not affect the right of creditors to use other means of enforcing debts (e.g. seizure of debtor's property for sale and attachment of income).

### **Encouraging Greater Use of Voluntary Arrangements**

10. Changes will be made to the Voluntary Arrangement regime to increase the chances of Voluntary Arrangements succeeding and to encourage greater use of Voluntary Arrangements. The Voluntary Arrangement regime allows a debtor who is unable to pay his debt to apply to court for a moratorium so that he could have time to reorganise his affairs and make a proposal for settlement of his debts with his creditors. If the proposal is accepted by the creditors, bankruptcy is averted. Greater use by debtors of Voluntary Arrangements will reduce the incidence of bankruptcy. The specific changes to be made are :

(a) to extend the deadline for the debtor to make a proposal from 28 days to 42 days. This will increase the chances of better considered proposals being made;

(b) to provide a fixed scale of costs and fees to be charged by the nominee who helps advise the court on the acceptability of the debtor's proposal and helps putting the proposal into effect. Having a fixed scale of fees will remove a level of uncertainty and encourage debtors to make more use of Voluntary Arrangements;

(c) to make it easier for debtors to find suitable nominees to help them by expanding the pool of nominees beyond lawyers and accountants and by making the list of available nominees readily accessible to debtors.

11. The necessary legislative changes to give effect to this proposal will be introduced in Parliament later this year.

### **Use of Pre-Bankruptcy Mediation**

12. Consistent with the rising emphasis on debt settlement without resort to bankruptcy, the Government will further explore the role which mediation can play in averting bankruptcy. In this connection, further study will be undertaken into the feasibility of institutionalising pre-bankruptcy mediation as part of the bankruptcy process in order to provide a forum of last resort for debtors to work out settlement plans with their creditors.

### **Allowing Bankrupts to be Economically Productive**

13. The law will be changed to allow bankrupts to do business and act as company directors, in selected circumstances, with the permission of the Official Assignee/Official Receiver. Currently, they can only do so with the permission of the court. Giving the Official Assignee/Official Receiver power to grant such permission will make the process cheaper, simpler and more accessible to bankrupts. After the change is in place, a greater number of deserving bankrupts will be able to engage in business. This will allow them to be economically productive while still a bankrupt. It will allow the bankrupt to pay off his debts earlier (and get out of bankruptcy earlier). It will also allow the bankrupt to continue contributing economically to society during bankruptcy.

14. The necessary legislative changes to give effect to this proposal will be introduced in Parliament later this year.

15. Apart from the proposal to allow selected bankrupts to do business, the Government has also been helping to keep bankrupts economically productive through other means, such as job placement schemes like the Employment Assistance Scheme ("EASE") initiated by the Insolvency and Public Trustee's Office.

### **Earlier Discharge from Bankruptcy**

#### **Use of Mediation During Bankruptcy to Encourage earlier Settlement and Discharge**

16. The Insolvency and Public Trustee Office has set up a Mediation Unit in February 1999 to provide mediation service during bankruptcy to help bankrupts and creditors resolve their differences more quickly. From the moment a person is made a bankrupt, the Official Assignee will screen his case for suitability for mediation. If identified as suitable, the Official Assignee will call up the bankrupt and the creditors for mediation. This will ensure that cases amenable to resolution by mediation will be given a fair chance to do so. It will enable creditors to receive faster payments and debtors to get out of bankruptcy earlier.

#### **Widening the Scope of Discharge by Certificate**

17. The scope of application of the system of discharge by certificate will be widened. Since 1st May this year, the avenue of discharge by certificate has been made available to bankrupts with debts not exceeding \$500,000 who have been in bankruptcy for more than 5 years (previously, the limit was \$250,000). Changes Legislative amendments will also be introduced in Parliament reduce the 5 year period to 3 years.

18. Discharge by certificate is not automatic. It is at the discretion of the Official Assignee. In deciding whether to discharge a bankrupt, the Official Assignee will take into account the cause of the bankruptcy and the efforts made by the bankrupt to repay his creditors. This will create an incentive for bankrupts to work towards their discharge. The result of these changes is that a greater number of deserving bankrupts will be returned to society more quickly without eroding financial discipline and commercial morality.

19. Prior to 1995, a bankrupt could only be discharged by a Court order if he settled his debts in full or offered part payment acceptable to his creditors. In 1995, a more liberal regime in bankruptcy discharges was introduced. This allows the Official Assignee to issue a certificate to discharge someone who has been a bankrupt for more than 5 years and whose debts do not exceed \$100,000. (The figure of \$100,000 was raised to \$250,000 in 1997.)

#### **Streamlining of Discharge Process for Savings in Time and Costs**

20. Measures will also be introduced to streamline the process for discharge. In future, when a bankrupt makes an offer of composition or proposes a scheme of arrangement, there will be no need to call a general meeting of creditors as the offer/proposal can be considered and accepted by post. After an offer/proposal is accepted by the creditors, there will be no need to apply to court for a discharge. The Official Assignee will then be able to administratively discharge the bankrupt by issuing a certificate. Similarly, if a bankrupt pays up his debt in full, there will be no need to go back to court. The bankrupt can be discharged administratively by the Official Assignee.

#### **Increased Public Education Effort**

The Government will also be stepping up on public education effort to clarify misconceptions about bankruptcy law and to educate creditors and debtors on alternatives to bankruptcy. An example of recent effort at public education is the pamphlet "[Alternatives to Bankruptcy](#)" published earlier this year.