

Restructuring & Insolvency

Bankruptcy Regime to be Administered by Private Trustees in Bankruptcy

Introduction

Singapore's bankruptcy and insolvency laws have been undergoing a structured reform in order to modernise the insolvency regime. As part of this reform, the personal bankruptcy regime has been moving towards administration by Private Trustees in Bankruptcy ("**PTIBs**") instead of by the Official Assignee ("**OA**").

The latest step in this reform is the Insolvency, Restructuring and Dissolution (Amendment) Bill ("**Bill**"), which was passed in Parliament on 9 January 2023. The Bill introduces amendments to mandate that all bankruptcy cases be administered by PTIBs, except those which the OA decides to administer for public interest reasons. To support the shift, the Bill also introduces amendments to improve operational flexibility in determining PTIBs' remuneration.

By moving towards PTIB-administered bankruptcy, the amendments aim to reduce the usage of public resources involved in private debt recovery while ensuring that bankruptcy cases continue to be managed in an orderly manner.

The Bill also contains miscellaneous amendments that seek to: (a) enhance protection of persons dealing with bankrupts in commercial transactions; and (b) extend the Simplified Insolvency Programme ("**SIP**") for a further two years to 28 January 2026.

This Update highlights the key features of the Bill and the main amendments which will be effected.

Singapore's Bankruptcy Regime

The move towards a PTIB-administered bankruptcy regime has been implemented in stages. Before 2016, the OA was appointed to act as the trustee in over 99% of bankruptcies.

In 2016, changes were implemented to require Institutional Creditors making bankruptcy applications to apply for PTIBs to be appointed as trustees administering the bankruptcy. By end-2021, PTIBs administered about 40% of bankruptcy cases in Singapore. These figures were shared by Second Minister for Law Mr Edwin Tong in the Second Reading Speech on the Bill ("**Second Reading Speech**"), available [here](#).

With the impending changes to the bankruptcy regime set out in the Bill, PTIBs will be responsible for administering almost all bankruptcies, and the OA will take on more of a regulatory role. The Second



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Reading Speech also stated that the Ministry of Law ("**MinLaw**") has assessed that there is sufficient capacity in the PTIB industry to take on the additional cases following these changes.

Key Amendments in the Bill

Appointment of PTIBs

PTIBs can be: (a) a solicitor; (b) a public accountant; or (c) a chartered accountant, and must hold an insolvency practitioner licence from MinLaw's Insolvency and Public Trustee Office.

The main amendment introduced in the Bill is that PTIBs must be appointed to act as trustees in all bankruptcy cases, unless the OA has consented to be the trustee.

The OA will only consent to be the trustee in a bankruptcy where it considers there to be public interest in the bankruptcy administration, such that it is appropriate in the circumstances for the OA to manage the administration. The Second Reading Speech provided that such public interest cases would typically be those where public finances are affected, such as cases involving the misuse of public funds or where there are debts owed to the Government.

PTIBs' Remuneration

The Bill provides support to the PTIB industry by improving operational flexibility for determining PTIBs' remuneration.

Currently, a trustee's remuneration must be approved in the following manner:

- (a) By agreement between the trustee and the creditors' committee;
- (b) If there is no such agreement, by a special resolution of creditors;
- (c) Where there is no determination under the previous two modes, by determination of the Court.

MinLaw indicated that PTIBs have faced challenges and extra costs where there are unsuccessful attempts at convening creditors' meetings, or where there is a lack of response from creditors. The Bill thus provides for an additional means of determining PTIBs' remuneration – by agreement between the PTIB and all the creditors.

- (a) The creditors will be deemed to have agreed to the trustee's remuneration if they have been duly notified of the remuneration sought by the trustee and have not objected within the prescribed time.
- (b) The creditors may object to the remuneration sought within the prescribed time. The trustee will then have to secure either a special resolution of creditors or approval by the Court.

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Enhanced Protection

The Bill introduces measures to protect persons dealing with bankrupts in commercial transactions, as people may not be aware when they are transacting with a bankrupt person.

- (a) It will be an offence for an undischarged bankrupt to receive advance payment for the supply of goods and services of at least S\$10,000 from any person without disclosing their bankruptcy status. This applies even if the money is received on account of another person, such as an employee receiving a deposit on behalf of their employer.
- (b) Members of the public will be able to obtain information that undischarged bankrupts have submitted to the OA regarding their current employment status and employment history.

Simplified Insolvency Programme

The SIP was introduced on 29 January 2021 to help eligible micro and small companies ("**MSCs**") facing financial difficulties restructure their debts or wind up via simpler, faster, and lower-cost restructuring processes.

The validity period of the SIP was set to end on 28 January 2024. The Bill will extend this period for an additional two years, to 28 January 2026, allowing MSCs a longer runway to utilise the SIP, particularly amidst the challenging economic situation.

The Second Reading Speech further provides that MinLaw is reviewing the SIP with a view to make certain features permanent.

Concluding Words

As a leading regional hub for restructuring and insolvency, Singapore's insolvency laws are being continually updated. Here, the Bill introduces changes to Singapore's bankruptcy regime aimed at achieving greater operational and financial efficiency.

Bankruptcy applicants should note that a PTIB must be appointed to administer any bankruptcy once the amendments in the Bill come into operation. The Courts will not make a bankruptcy order if a PTIB (or the OA in a public interest case) has not consented to act as the trustee.

For further queries, please feel free to contact our team below.

Restructuring & Insolvency

Contact



Chua Beng Chye
Deputy Head, Restructuring &
Insolvency

T +65 6232 0419

beng.chye.chua@rajahtann.com



Cherie Tan
Partner, Restructuring &
Insolvency

cherie.tan@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

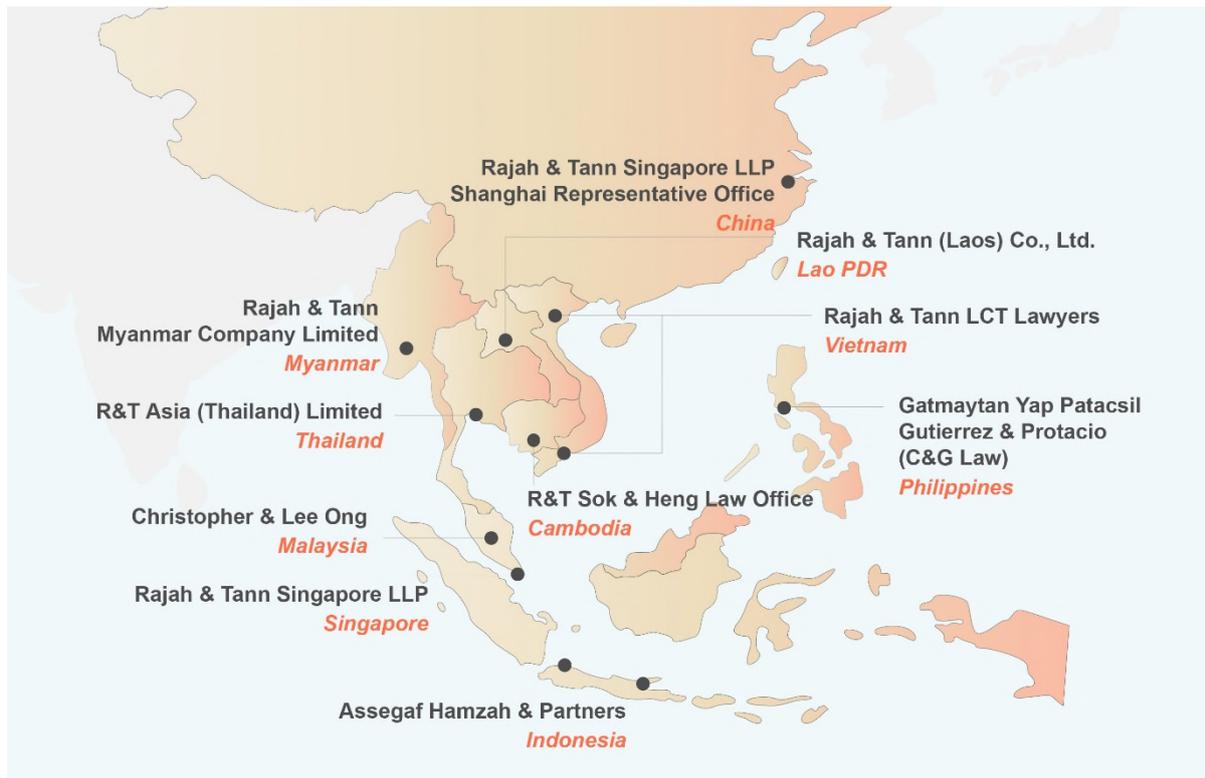
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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