

Just What the Lawyer Ordered – Bankruptcy

Ever wondered how it can come to be that you might end up losing everything? Legal eagles Nicholas Aw and Montague Choy now take on your greatest financial fear: Bankruptcy!

What does it mean when one is declared bankrupt?

Monty says: When someone is declared a bankrupt, he is made insolvent. This essentially means that he is declared as being unable to meet his financial obligations. Being declared a bankrupt also has its more practical effects. A bankrupt will discover that there are numerous restrictions placed on him as a result of the bankruptcy order. Some primary examples are the imposition of the need to report and work with the Official Assignee (OA) from the Insolvency and Public Trustees Office in the administration of his personal estate (i.e. filing a Statement of Affairs), which may include reporting his asset holding and liabilities and restrictions on travel and the freedom to contract.

How is one made bankrupt?

Nicholas says: One is made a bankrupt pursuant to an order of the High Court. The order is obtained after your creditor has succeeded in presenting a petition before the Court. This follows the expiration of a prescribed period of time stated in a document known as the Statutory Demand. The Statutory Demand states the nature and particulars of the debt owed (which must be a minimum sum of S\$10,000) and carries with it a legal presumption that if the debt is not paid within the prescribed time period (21 days), the debtor is deemed unable to pay off the debt.

Will one end up in court?

Monty says: An appearance in Court is essential if you want to be heard or want to defend yourself. In the event that the creditor has difficulty locating you for the service of the necessary Court papers, the creditor will take out what is called an application for substituted service. One of the modes of service permitted by the Court would be to serve the petition on the debtor by advertisement in the newspaper.

What are my rights and obligations as a bankrupt?

Monty says: Evidently you will be left feeling as if your rights have been curtailed and that obligations have been levied on you. Though all your assets vest in the OA, you can still own a HDB flat. Travel is restricted and permission is required from the OA. You can be jailed and/or fined if you do not get permission. It is not illegal to get good food or buy nice things, as long as it is not from somewhere like Prada or Gucci (and no fake goods either-you'll be infringing intellectual property rights!).

What are my employment prospects as a bankrupt?

Monty says: There are also restrictions imposed on where bankrupts can work, such as jobs that require licences to be renewed, for eg, remisiers, insurance agents and financial advisors. Some employment contracts require an employee to resign if he is declared a bankrupt.

How might I be discharged from bankruptcy?

Nicholas says: By annulment of the bankruptcy order upon full payment, or upon successful proposal of settlement of the debt by an offer of composition or scheme of arrangement. Another way is via a Discharge by the Court, where the OA is able to convince the Court that the bankrupt should be discharged. The latter is done subject to the discretion of the OA, if

the debt does not exceed \$500,000 or further amounts as may be prescribed, and at least three years has lapsed since the bankruptcy order. The OA will also consider, for example, the cause of insolvency, period of bankruptcy, bankrupt's assets, payments made to the bankruptcy account, the bankrupt's conduct and the general level of co-operation given to the OA in the administration of his affairs.

Nicholas Aw and Montague Choy are directors of Clifford Law Corporation, a limited liability law corporation. Clifford Law Corporation is a full service law firm that is familiar with the handling of Probate and Estate matters, Corporate and Commercial matters, Family issues, Civil and Criminal litigation as well as Intellectual property matters.

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