(This article appeared in the Sunday Times Investment Column on May 22, 2005)

HEADLINE: Broken bonds: Guarantors bear brunt; Typically, they are given a short period of time to pay damages of hundreds of thousands of dollars

WHEN a scholarship holder decides to break his bond, sure, his benefactor will miss his employment service. But often, it is his guarantors who suffer the most.

They are the ones who usually have to pay back to the scholarship provider liquidated damages that can run into as much as hundreds of thousands of dollars for overseas studies.

The biggest chunk of the damages covers the cost of the scholar's undergraduate studies and his living expenses.

But there are several 'add-ons' that cause the payback to escalate.

The damages also include the interest rate on the amount the scholarship giver has spent on the student.

Until recently, many scholarships came with a hefty interest rate of 20 per cent a year for the duration of the studies. The norm now is for the interest rate to be pegged at a less punitive 10 per cent a year.

Damages also include an administrative charge of, say, $5,000 a year for the duration of the studies.

The guarantee obliges the guarantor for, typically, nine years to bear the bill of a broken bond.

The nine years is made up of the scholar's three years of studies plus six years of employment.

Guarantors often come in pairs - usually, a parent of the scholar and a relative or a friend. They are required to be earning a minimum income of, say, $60,000 a year.

Statistics are hard to come by, but the occasional news report suggests a rising number of scholars breaking their bonds. Burning issues that can arise concerning money are dealt with here.

Who pays the liquidated damages?

Sometimes, the bond breaker can get his next employer to pay the liquidated damages.

If not, and if the scholar and his family are unable to pay, then the

scholarship giver is entitled to look to the guarantor for payment, says lawyer Vijai Parwani, the principal partner of Parwani & Company.

Commonly, the payment has to be made within a short period of time, possibly 30 days of being notified in writing.

If the parent or guarantor does not have enough money to pay, will he be able to turn to a bank overdraft?

It depends on the applicant's financial standing. If he manages to obtain the loan, the bank usually does not care what the money is used for, says Mr Leong Yung Chang, a director of law firm Veritas Law Corp.

Ms Doris Chia, a partner at Harry Elias Partnership, says that if the loan is large, some form of security such as a property or shares will be needed by the bank.

Can the liquidated damages be paid by instalment?

The guarantor usually has no right to an instalment scheme, says Mr Leong. It is the scholarship giver's prerogative to agree or not agree to a request for such a scheme.

A human resource manager in a major company says that even if instalment payment is allowed, the period of repayment will be no more than a year.

Can the scholarship giver be 'kind' enough to reduce the liquidated damages?

In any contract, it is always open to one party not to enforce his legal rights to the fullest extent, so a 'discount' on liquidated damages is possible, says Mr Amolat Singh of Amolat and Partners.

How are the liquidated damages split between two guarantors?

The guarantee document may expressly state the portion that each guarantor must bear.If it is not so stated, the liability would be split into equal portions, says Mr Parwani.

He adds that if the scholarship giver goes after only one guarantor when there are, say, three, that guarantor can subsequently seek to recover one-third of the payment from each of the other two guarantors.

If the scholar dies - through illness, accident or suicide - or if he is terminated at work, are liquidated damages still payable?

This would depend on the terms of the guarantee. In any event, if the student has died, it is unlikely that the scholarship giver would extract every ounce of its legal rights, says Mr Amolat.

Otherwise, 'word of that will get around, and in future, no student would wish to take up a scholarship offered by that organisation or body', he says.

Ms Chia of Harry Elias says that if a scholar's employment is terminated, liquidated damages will be payable if there is a provision for that in the guarantee.

Can the scholarship giver look to a guarantor's spouse and children for payment?

Only if the spouse and children, who are above 21 years of age, are co-guarantors, says Mr Parwani. Otherwise, the guarantor's wife and children will not be liable.

Will the guarantor be forced to sell his biggest asset - his home?

If the house is in the joint names of the guarantor and his spouse, and if the spouse is not a guarantor, the scholarship giver cannot force the sale of the house, says Mr Parwani.

However, if the couple are guarantors, then it is possible that the scholarship giver can apply for a writ of seizure and sale against the house.

If the house is mortgaged, the bank's consent needs to be obtained first before the writ of seizure and sale can take place.

Can the guarantor be made a bankrupt?

Any creditor is entitled to set in motion the bankruptcy process once it is owed more than $10,000.

If a guarantor is made a bankrupt, will the bank foreclose on his private property?

If the guarantor is a bankrupt, all his assets will be in the hands of the Official Assignee.

However, for a property which the bank has first charge over, it can be seized and sold off to repay the outstanding housing loan, says Ms Chia.

Only if there is a surplus, will there be money channelled to the Official Assignee for distribution to other creditors, including the scholarship giver.

What if the home is an HDB flat?

If the flat has a mortgage with the CPF Board only, then it will not be seized and sold by the board, says Ms Chia.

If the flat is mortgaged to a bank, then the same principles apply as for a private property, she says.

After settling the liquidated damages, can a guarantor seek to recover the money from the bond breaker?

Yes, the guarantor has a legal right to do so as he was already indemnified against the liability when he signed the guarantee, says Mr Amolat.

However, there may be practical difficulties in trying to recover the money, such as locating the scholar overseas to serve the legal papers on him. And he is unlikely to have assets or money to repay.

Mr Amolat says it is possible for the guarantor to pin the scholar down with an agreement for repayment to be made in the years ahead.

Ms Chia agrees, saying: 'You can try to get him to agree to an instalment scheme.'

Can a guarantor get the parents of the scholar to sign an agreement under which the guarantor can claim from the parents any liquidated damages the guarantor pays out?

Yes. It is all a matter of contract, says Ms Chia. Such a contract can be signed at the time when the guarantee for the scholarship is signed.

If the bond has already been broken, the guarantor can still seek such an agreement from the scholar's parents.