

# **Bankruptcy (Amendment) Bill**

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**Bill No. 39/2008.**

*Read the first time on 17th November 2008.*

A BILL

*intituled*

An Act to amend the Bankruptcy Act (Chapter 20 of the 2000 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### Short title and commencement

1. This Act may be cited as the Bankruptcy (Amendment) Act 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 Amendment of section 2

2. Section 2(1) of the Bankruptcy Act is amended by inserting, immediately after the definition of “liability”, the following definition:

““limited liability partnership” has the same meaning given to it by section 4(1) of the Limited Liability Partnerships Act (Cap. 163A);”.

### Amendment of section 17

3. Section 17 of the Bankruptcy Act is amended —

(a) by inserting, immediately after the words “estates of bankrupts” in subsection (1), the words “and for the other purposes of this Act”; and

(b) by deleting the words “of bankrupts’ estates” in the section heading.

### Amendment of section 25

4. Section 25 of the Bankruptcy Act is amended by deleting subsection (1) and substituting the following subsections:

“(1) The Official Assignee shall, for such period as may be prescribed, keep in such form and manner as he determines —

(a) an account of his receipts and payments in respect of his administration of the estate of a bankrupt; and

(b) an account of his receipts and payments in respect of his administration of a debt repayment scheme under Part VA.

(1A) The Official Assignee shall, upon payment of the prescribed fee, permit —

(a) the inspection of an account referred to in subsection (1)(a) by the bankrupt, any creditor who has proved his debt in the bankruptcy or any other interested person; and

- (b) the inspection of an account referred to in subsection (1)(b) by the debtor to whom the debt repayment scheme relates, any creditor who has proved his debt under the debt repayment scheme or any other interested person.”.

5 **Repeal and re-enactment of section 26**

5. Section 26 of the Bankruptcy Act is repealed and the following section substituted therefor:

**“Records to be kept by Official Assignee**

10 **26.**—(1) The Official Assignee shall, for such period as may be prescribed, keep records containing entries or minutes of proceedings at any meeting held under this Act and of such other matters as may be prescribed.

(2) Any creditor of —

(a) a bankrupt; or

15 (b) a debtor referred to in Part VA,

may, upon payment of the prescribed fee and subject to the control of the court, personally or by his agent inspect any record kept by the Official Assignee under subsection (1) which pertains to that bankrupt or debtor (as the case may be).”.

20 **Amendment of section 27**

6. Section 27 of the Bankruptcy Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

25 “(1) The Official Assignee shall keep with such bank as he may think fit —

(a) an account, to be called the Bankruptcy Estates Account, into which all moneys received by the Official Assignee under this Act (with the exception of Part VA) shall, subject to this Act, be paid; and

30 (b) an account, to be called the Debt Repayment Schemes Account, into which all moneys received by the Official Assignee under Part VA shall, subject to this Act, be paid.”;

- (b) by inserting, immediately after the words “Bankruptcy Estates Account” in subsection (2), the words “or the Debt Repayment Schemes Account”; and
- (c) by inserting, immediately after the words “Bankruptcy Estates Account” in the section heading, the words “and Debt Repayment Schemes Account”.

### **Amendment of section 28**

#### **7. Section 28 of the Bankruptcy Act is amended —**

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account or the Debt Repayment Schemes Account is in excess of the amount which, in the opinion of the Official Assignee, is required for the time being to meet demands in respect of insolvent estates or debt repayment schemes administered under Part VA, as the case may be, the Official Assignee shall —

- (a) notify the excess to the Accountant-General; and
- (b) pay over the whole or any part of the excess as the Accountant-General may require to such account as the Accountant-General may direct.”;

- (b) by deleting subsection (3) and substituting the following subsection:

“(3) Where, in the opinion of the Official Assignee, any part of the money paid over from the Bankruptcy Estates Account or the Debt Repayment Schemes Account under subsection (1)(b) and invested under subsection (2) is required to meet any demand in respect of insolvent estates or debt repayment schemes administered under Part VA, as the case may be, the Official Assignee shall notify the Accountant-General of the amount so required.”;

- (c) by inserting, immediately after the words “Bankruptcy Estates Account” in subsection (4), the words “or the Debt Repayment Schemes Account, as the case may be,”;

- (d) by inserting, immediately after the words “proceedings in bankruptcy” in subsection (5), the words “and the administration of debt repayment schemes under Part VA”;
- (e) by inserting, immediately after the words “Bankruptcy Estates Account” in subsection (6), the words “or the Debt Repayment Schemes Account”; and
- (f) by inserting, immediately after the words “Bankruptcy Estates Account” in the section heading, the words “and Debt Repayment Schemes Account”.

10 **New Part VA**

**8.** The Bankruptcy Act is amended by inserting, immediately after section 56, the following Part:

“PART VA

DEBT REPAYMENT SCHEME

15 *Division 1 — Preliminary*

**Interpretation of this Part**

**56A.—**(1) In this Part, unless the context otherwise requires —

“Appeal Panel” means a panel established under section 56Q;

20 “applicant creditor”, in relation to a debtor under a debt repayment scheme, means the creditor who makes the relevant bankruptcy application against the debtor;

“debt” means any debt, or any liability to pay money, which is unsecured, present, certain, and of an amount that is fixed or liquidated;

25 “debtor” means the individual to whom a debt repayment scheme applies under this Part;

“effective date”, in relation to a debt repayment scheme, means the date on which the scheme commences under section 56E(1);

“relevant bankruptcy application”, in relation to a debtor under a debt repayment scheme, means the bankruptcy application adjourned by the court under section 65(7) or 67(3) which enabled the Official Assignee to determine the debtor’s suitability for the scheme and to implement the scheme;

“repayment period”, in relation to a debt repayment plan, means the period of time, beginning with the date on which the plan comes into effect under section 56D(8), that is allowed to a debtor under the plan to repay his debts included in the plan.

(2) For the purposes of this Part —

(a) any debt proved against a debtor under Division 2 before the effective date of a debt repayment scheme applicable to the debtor shall, upon the effective date, be deemed to have been proved under the scheme; and

(b) any claim, proof, declaration or statement filed, made or submitted by or in respect of a debtor under Division 2 before the effective date of a debt repayment scheme applicable to the debtor shall, upon the effective date, be deemed to have been filed, made or submitted under the scheme.

*Division 2 — Proposal for debt repayment scheme*

**Referral by court**

**56B.**—(1) Upon the court adjourning a bankruptcy application made against a debtor and referring the matter to the Official Assignee under section 65(7) or 67(3), the Official Assignee shall take such steps as are necessary to —

(a) review the suitability of the debtor for a debt repayment scheme; and

(b) where the debtor is suitable, implement the debt repayment scheme in accordance with this Part.

(2) The Official Assignee shall report to the court of the debtor’s unsuitability for a debt repayment scheme if —

- (a) the aggregate of the debtor's debts exceeds \$100,000 or such other amount as the Minister may, by order published in the *Gazette*, specify;
- 5 (b) the debtor does not meet any of the qualifying criteria specified in paragraph (b), (c), (d) or (e) of section 65(7) or 67(3), as the case may be;
- (c) the debtor, knowing or believing that a false or an inaccurate debt has been claimed by any person against him under this Division, fails to inform the Official Assignee;
- 10 (d) the Official Assignee becomes aware of any circumstance referred to in section 56M(1)(a), (b), (c), (d), (h) or (i); or
- (e) the Official Assignee is satisfied that the debtor is not suitable for a debt repayment scheme for any other reason.
- (3) Subsection (2) shall cease to apply upon the commencement of  
15 a debt repayment scheme in respect of the debtor under section 56E(1).

**Debtor's statement of affairs and proposal for repayment of debts, and creditors' proofs of debts**

20 **56C.**—(1) After the court adjourns a bankruptcy application made against a debtor and refers the matter to the Official Assignee under section 65(7) or 67(3), the Official Assignee shall, by notice in writing to the debtor, require the debtor to submit in such form and manner, and within such time, as may be specified by the Official Assignee in the notice —

- 25 (a) a statement of his affairs; and
- (b) a debt repayment plan, with a repayment period not exceeding 5 years, setting out the terms for the repayment of his debts,

and the debtor shall comply with the notice.

30 (2) After receiving the debtor's statement of affairs under subsection (1), the Official Assignee shall send a notice to every creditor disclosed in the statement, requiring the creditor to file a proof of debt within such time as may be specified by the Official Assignee in the notice.

(3) Section 56G shall apply to a proof of debt filed under this Division as if it is a proof of debt filed under a debt repayment scheme.

### **Approval of debt repayment plan**

5       **56D.**—(1) Subject to subsection (7), the Official Assignee shall examine the statement of affairs and debt repayment plan submitted by a debtor under section 56C(1) and the proofs of debts filed against the debtor and may make such modifications to the plan as he considers appropriate before convening a meeting of creditors under  
10       subsection (2).

(2) The Official Assignee shall convene and preside at a meeting of creditors to review the debt repayment plan.

(3) Subject to subsection (7), the Official Assignee may, at or after the meeting of creditors, approve the debt repayment plan without  
15       any modification or subject to such, or such further, modifications as he considers appropriate.

(4) The debtor or any creditor who has proved his debt against the debtor under this Division may, within such time and in such manner as may be prescribed, appeal to the Appeal Panel against the Official  
20       Assignee's approval of the debt repayment plan under subsection (3) on the ground that the approved plan unfairly prejudices his interests.

(5) The Appeal Panel may determine the appeal by —

- (a) confirming the Official Assignee's approval of the debt repayment plan; or
- 25       (b) subject to subsection (7), making such modifications to the plan as it considers appropriate,

and the decision of the Appeal Panel shall be final.

(6) Subject to section 56I, the debt repayment plan approved by the Official Assignee or modified by the Appeal Panel under this section  
30       may require the debtor to make full repayment, or make such partial repayment as may be specified in the plan, of the debts included in the plan.

(7) The repayment period under the debt repayment plan approved by the Official Assignee or modified by the Appeal Panel under this  
35       section shall not exceed 5 years.



(8) The debt repayment plan shall come into effect on such date as may be specified by the Official Assignee in his approval of the plan under subsection (3) and shall be binding on —

(a) the debtor; and

5 (b) every creditor who has proved his debt against the debtor under this Division and whose debt is included in the plan.

(9) An appeal under subsection (4) shall not suspend the commencement, operation or effect of a debt repayment scheme under this Part.

10 *Division 3 — Commencement and administration  
of debt repayment scheme*

**Commencement and administration of debt repayment scheme**

15 **56E.**—(1) A debt repayment scheme shall commence in respect of a debtor on the date on which a debt repayment plan comes into effect under section 56D(8) in respect of that debtor.

(2) The Official Assignee —

(a) shall administer all debt repayment schemes under this Part; and

20 (b) may charge such fees as may be prescribed in respect of such administration.

(3) Upon the commencement of a debt repayment scheme in respect of a debtor, the Official Assignee shall pay out from the Bankruptcy Estates Account and into the Debt Repayment Schemes Account the balance of any deposit paid by the applicant creditor to the Official Assignee in respect of the relevant bankruptcy application made against the debtor, for the purpose of discharging the costs and expenses incurred by the Official Assignee in the administration of the scheme.

**Moratorium under debt repayment scheme, etc.**

30 **56F.**—(1) Subject to subsection (2), during the period beginning with the effective date of a debt repayment scheme applicable to a debtor and ending with the date on which the scheme ceases under section 56K(1) —

(a) no creditor to whom the debtor is indebted in respect of any debt provable under the scheme shall have any remedy against the person or property of the debtor in respect of that debt; and

5 (b) no action or proceedings shall be proceeded with or commenced against the debtor in respect of that debt,

except by leave of the court and in accordance with such terms as the court may impose.

10 (2) Subsection (1) shall not affect the right of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if that subsection had not been enacted.

15 (3) Where the creditor of a debtor (to whom a debt repayment scheme applies) has issued execution against the goods or lands of the debtor, or has attached any debt due or property belonging to the debtor, the creditor shall not be entitled to retain the benefit of the execution or attachment against the debtor unless the creditor has completed the execution or attachment before the effective date of the scheme, except that —

20 (a) a person who purchases in good faith under a sale by the Sheriff any goods of the debtor on which an execution has been levied shall in all cases acquire a good title to them against the debtor; and

25 (b) the rights conferred by this subsection on the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(4) For the purposes of subsection (3) —

(a) an execution against goods is completed by seizure and sale;

30 (b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land or any interest therein is completed by registering under any written law relating to the registration of land a writ of seizure and sale attaching the interest of the debtor in the land described therein.

### **Proving of debts under debt repayment scheme**

**56G.**—(1) Subject to section 56I, the following debts shall be provable under a debt repayment scheme in respect of a debtor:

- 5 (a) any debt to which the debtor is subject at the effective date of the scheme, and any interest on such debt which is payable by the debtor for any period before the effective date;
- 10 (b) any debt to which the debtor becomes subject after the effective date of the scheme but before the cessation of the scheme by reason of any obligation incurred before the effective date, and any interest on such debt which is payable by the debtor for any period before the effective date;
- 15 (c) any debt being the balance due from the debtor after the security in respect of a secured debt owing by the debtor at the effective date of the scheme is realised at any time before the cessation of the scheme.

(2) A creditor shall file his proof of debt with the Official Assignee under this Part in such form and manner as may be prescribed.

20 (3) The Official Assignee shall, in accordance with such rules as may be prescribed, admit or reject, in whole or in part, any proof of debt filed under this Part.

25 (4) Any debtor or creditor who is dissatisfied with the Official Assignee's decision under subsection (3) may, within such time and in such manner as may be prescribed, appeal to the court against the decision.

(5) The court may, on hearing an appeal under subsection (4), confirm, reverse or vary the decision of the Official Assignee.

30 (6) An appeal under subsection (4) shall not suspend the commencement, operation or effect of a debt repayment scheme.

### **Modification of debt repayment plan**

**56H.**—(1) Subject to subsection (6), the Official Assignee may at any time on or after the effective date of a debt repayment scheme, of his own volition or at the request of —

- (a) the debtor to whom the scheme applies;
- (b) a creditor who is bound by the debt repayment plan under the scheme; or
- (c) a creditor, not being a creditor referred to in paragraph (b),

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modify the plan in such manner as he considers appropriate.

(2) Before making any modification to the debt repayment plan, the Official Assignee shall, by notice in writing to the debtor and all the creditors who have proved their debts under the debt repayment

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scheme, convene and preside at a meeting of creditors.

(3) Subject to subsection (6), the Official Assignee may, at or after the meeting of creditors, refuse to modify the debt repayment plan or may make such modifications to the plan as he considers appropriate.

(4) The debtor or any creditor who has proved his debt under the debt repayment scheme may, within such time and in such manner as may be prescribed, appeal to the Appeal Panel against the Official Assignee's decision under subsection (3) on the ground that the decision unfairly prejudices his interests.

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(5) The Appeal Panel may determine the appeal by —

- (a) confirming the Official Assignee's decision; or
- (b) subject to subsection (6), making such or such further modifications to the debt repayment plan as it considers appropriate,

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and the decision of the Appeal Panel shall be final.

(6) Subject to such further restrictions on the extension of the repayment period of a debt repayment plan as may be prescribed, any extension under this section of the repayment period of the plan shall be subject to the repayment period not exceeding at any time —

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- (a) where the plan includes a debt referred to in section 56G(1)(b) or (c), 7 years; or
- (b) in any other case, 5 years.

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(7) If a debt repayment plan is modified under this section, the modification shall take effect on such date as may be specified by the

Official Assignee in his modification of the plan under subsection (3) and as from that date, the plan as modified shall be binding on —

- (a) the debtor;
- (b) every creditor who is bound by the plan before the modification; and
- (c) where the plan is modified to include the debt of a creditor referred to in subsection (1)(c), that creditor.

(8) An appeal under subsection (4) shall not suspend the commencement, operation or effect of a debt repayment scheme.

### **Priority of debts and interest on debts**

**56I.**—(1) The following shall be paid under a debt repayment plan applicable to a debtor in priority to all other debts proved under the debt repayment scheme (to which the plan relates) and included in the plan:

- (a) firstly, the cost and expenses incurred by the Official Assignee in the administration of the scheme, and the costs (whether taxed or agreed) of the applicant creditor in respect of the relevant bankruptcy application made against the debtor;
- (b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating the conditions of employment of any employee;
- (c) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or award or agreement that regulates the conditions of employment, whether such amount becomes payable before, on or after the effective date of the scheme;
- (d) fourthly, all amounts due in respect of any work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the effective date of the scheme;

(e) fifthly, all amounts due in respect of contributions payable during the 12 months immediately before, on or after the effective date of the scheme by the debtor as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act (Cap. 134);

(f) sixthly, all remuneration payable to any employee in respect of vacation leave or, in the case of his death, to any other person in his right, accrued in respect of any period before, on or after the effective date of the scheme; and

(g) seventhly, the amount of all taxes assessed and any goods and services tax due under any written law on or before the effective date of the scheme.

(2) The amount payable under subsection (1)(b) and (c) shall not exceed an amount that is equivalent to 5 months' salary whether for time or piecework in respect of services rendered by any employee to the debtor or \$7,500, whichever is the lesser.

(3) The Minister may, by order published in the *Gazette*, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1)(b) and (c).

(4) The debts in each class specified in subsection (1) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the amount standing to the credit of the debtor in the Debt Repayment Schemes Account is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(5) Where any payment has been made to any employee of the debtor on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, under the debt repayment plan, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority under this section has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(6) Subject to subsection (7), where a debt proved by a creditor under a debt repayment scheme includes interest, the interest shall be calculated —

(a) at such rate to which the creditor is entitled under any written law or rule of law if that rate does not exceed the rate prescribed under paragraph (b); or

(b) in any other case, at such rate as may be prescribed unless the debt repayment plan under the scheme stipulates that the rate shall be the higher rate to which the creditor is entitled under any written law or rule of law.

(7) For the purposes of paragraph (b) of subsection (6), a debtor shall not be required under a debt repayment plan to pay interest at a rate higher than the rate prescribed under that paragraph unless the Official Assignee is satisfied that the debtor has sufficient funds to pay in full all his debts proved under the scheme and included in the plan, interest on such debts at the higher rate, and the costs and expenses specified in subsection (1)(a).

(8) Interest on preferential debts shall rank equally with interest on debts other than preferential debts.

(9) In this section —

“employee” means a person who has entered into or works under a contract of service with the debtor and includes a subcontractor of labour;

“ex gratia payment” means the amount payable to an employee on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

“interest” includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called;

“preferential debt” means any debt specified in subsection (1);

“retrenchment benefit” means the amount payable to an employee on the termination of his service by his employer on

the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and “the amount payable to an employee” for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be or, if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour;

“wages or salary” includes —

(a) all arrears of money due to a subcontractor of labour;

(b) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the effective date of the debt repayment scheme; and

(c) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates the conditions of his employment, whether such amount becomes payable before, on or after the effective date of the debt repayment scheme.

### **Payment and distribution of moneys under debt repayment scheme**

**56J.**—(1) A debtor to whom a debt repayment scheme applies shall make all payments under his debt repayment plan to the Official Assignee.

(2) The Official Assignee may, from time to time, subject to the retention of such sums as may be necessary for the costs and expenses of the administration of the debt repayment scheme, and in accordance with section 56I, the debt repayment plan and such rules as may be prescribed, declare and distribute dividends amongst the creditors who have proved their debts under the scheme and whose debts are included in the plan.

(3) No action for a dividend shall lie against the Official Assignee.

(4) If the Official Assignee refuses to pay any dividend, the court may, if it thinks fit, order the Official Assignee to pay the dividend,



and also to pay out of the Consolidated Fund interest thereon for the period that it is withheld and the costs of the application to the court.

*Division 4 — Cessation of debt repayment scheme*

**Cessation of debt repayment scheme**

5 **56K.**—(1) A debt repayment scheme applicable to a debtor shall cease —

- (a) on the date a certificate of inapplicability of the scheme is issued under section 56L;
- 10 (b) on the date a certificate of failure of the scheme is issued under section 56M(1);
- (c) on the date a certificate of completion of the scheme is issued under section 56N(1), notwithstanding any subsequent revocation of the certificate under section 56O(1);
- 15 (d) upon the debtor being adjudged a bankrupt under this Act; or
- (e) upon the death of the debtor,

whichever first occurs.

20 (2) Upon the cessation of a debt repayment scheme, the debt repayment plan under the scheme shall cease to have effect.

**Certificate of inapplicability of debt repayment scheme**

**56L.** The Official Assignee shall issue a certificate of inapplicability of a debt repayment scheme in respect of a debtor if —

- 25 (a) the aggregate of the debts referred to in section 56G(1)(a) and proved under the scheme exceeds, at any time, \$100,000 or such other amount as may be specified by the Minister under section 56B(2)(a); or
- (b) the aggregate of the debts referred to in section 56G(1)(b) and (c) and proved under the scheme exceeds, at any time, 30 \$50,000 or such other amount as the Minister may, by order published in the *Gazette*, specify.

### **Certificate of failure of debt repayment scheme**

**56M.**—(1) The Official Assignee may issue a certificate of failure of a debt repayment scheme in respect of a debtor if —

- 5           (a) the debtor submits a statement of affairs under section 56C, or furnishes any other information or document to the Official Assignee in relation to his property, debts or other financial affairs, which is false or misleading in any material particular, or contains any material omission;
- 10          (b) the debtor fails to furnish any information or document relating to his property, debts or other financial affairs that the Official Assignee may require;
- (c) the debtor fails to disclose to the Official Assignee his property (or any part thereof) or the disposal of his property (or any part thereof);
- 15          (d) the debtor attempts to account for any part of his property by fictitious losses or expenses;
- (e) the debtor fails to comply with any term of the debt repayment plan under the scheme;
- 20          (f) the debtor fails without sufficient cause to attend any meeting of creditors convened under section 56H;
- (g) the debtor incurs a debt in excess of \$1,000 after the effective date of the scheme without disclosing the fact that he is subject to the scheme to the person to whom the debt is owed;
- 25          (h) the debtor has entered into a transaction with any person at an undervalue at any time during the period commencing 5 years before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme;
- 30          (i) the debtor has given an unfair preference (which is not a transaction at an undervalue) at any time to —
  - (i) his associate during the period commencing 2 years before the day on which the relevant bankruptcy application is made against the debtor and ending on

the day immediately preceding the completion of the scheme; or

(ii) any other person during the period commencing 6 months before the day on which the relevant bankruptcy application is made against the debtor and ending on the day immediately preceding the completion of the scheme;

(j) knowing or believing that a false or an inaccurate debt has been claimed by any person under the scheme, the debtor fails to inform the Official Assignee;

(k) the debtor obtains the approval or modification of the debt repayment plan under the scheme by means of fraud, false representation or the concealment of any material fact; or

(l) the debtor becomes a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership during the scheme without the consent of the Official Assignee.

(2) Subsection (1)(c), in relation to the disposal of property, shall not apply to the payment of ordinary expenses of the debtor and his dependants.

(3) For the purpose of subsection (1)(h), a debtor enters into a transaction with a person at an undervalue if the debtor —

(a) makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the debtor to receive no consideration;

(b) enters into a transaction with that person in consideration of marriage; or

(c) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.

(4) The Official Assignee shall not issue any certificate of failure of a debt repayment scheme under subsection (1) in respect of any transaction entered into by the debtor at an undervalue unless the debtor was insolvent at the time he entered into the transaction or became insolvent in consequence of the transaction.

(5) Where a debtor enters into a transaction at an undervalue with a person who is an associate of his (otherwise than by reason only of being his employee), the requirements under subsection (4) shall be presumed to be satisfied unless the contrary is shown.

5 (6) For the purpose of subsection (1)(i), a debtor gives an unfair preference to a person if —

(a) that person is one of the debtor's creditors or a surety or guarantor for any of his debts; and

10 (b) the debtor does anything or suffers anything to be done which has the effect of putting that person into a position which is better than the position he would have been in if that thing had not been done.

15 (7) The Official Assignee shall not issue any certificate of failure of a debt repayment scheme under subsection (1) in respect of any unfair preference given by a debtor to any person unless the debtor —

(a) was insolvent at the time he gave the preference or became insolvent in consequence of the preference; and

20 (b) was influenced in deciding to give the preference by a desire to produce in relation to that person the effect mentioned in subsection (6)(b).

25 (8) A debtor who has given an unfair preference to a person who, at the time the unfair preference was given, was an associate of his (otherwise than by reason only of being his employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (7)(b).

(9) The fact that something has been done pursuant to an order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

30 (10) For the purposes of this section, a debtor is insolvent if —

(a) he is unable to pay his debts as they fall due; or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

(11) Any question whether a person is an associate of another person shall be determined in accordance with section 101(2) to (10).

### **Certificate of completion of debt repayment scheme**

5 **56N.**—(1) The Official Assignee shall issue a certificate of completion of a debt repayment scheme in respect of a debtor if the debtor repays, in accordance with this Part and the debt repayment plan under the scheme, his debts which have been proved under the scheme and included in the plan.

10 (2) Subject to this Act and any other written law, the certificate of completion of the debt repayment scheme shall, upon being issued, release the debtor from all his debts provable under the scheme except a debt which —

(a) the debtor had failed to disclose to the Official Assignee; and

15 (b) in respect of which a proof of debt was not filed under the scheme.

20 (3) Subsections (2) to (8) of section 127 shall apply to or in respect of the debtor as if a reference to discharge in those provisions is a reference to the certificate of completion of the debt repayment scheme and a reference to bankrupt in those provisions is a reference to the debtor.

### **Revocation of certificate of completion of debt repayment scheme**

25 **56O.**—(1) The Official Assignee may at any time, by notice in writing to a debtor, revoke a certificate of completion of a debt repayment scheme issued under section 56N(1) in respect of the debtor if he is satisfied that the debtor —

(a) did not to the best of his knowledge or belief disclose to the Official Assignee all his property or the disposal of his property (or any part thereof); or

30 (b) had obtained the approval or modification of the debt repayment plan under the scheme by means of fraud, false representation or the concealment of any material fact.

(2) Subsection (1)(a), in relation to the disposal of property, shall not apply to the payment of ordinary expenses of the debtor and his dependants.

(3) Upon the revocation of the certificate of completion of the debt repayment scheme, the debtor's release from his debts under section 56N(2) shall cease.

### *Division 5 — Miscellaneous*

#### **Duties of debtor**

**56P.** A debtor shall, in addition to any other duty specified in this Part in relation to a debt repayment scheme —

- (a) disclose to the Official Assignee —
  - (i) all his property; and
  - (ii) the disposal of any of his property during the period commencing 5 years before the day on which the relevant bankruptcy application is made against him and ending on the day immediately preceding the completion of the scheme;
- (b) furnish such information or document within such time and in such manner as the Official Assignee or the Appeal Panel may require in relation to the scheme;
- (c) attend any meeting of his creditors convened by the Official Assignee under section 56D or 56H, and such other meetings as may be required by the Official Assignee, unless prevented by any illness or other sufficient cause;
- (d) examine the correctness of all proofs of debts filed under the scheme and inform the Official Assignee if any person has, to his knowledge or belief, made a false or an inaccurate claim;
- (e) discharge his obligations under the debt repayment plan under the scheme;
- (f) before incurring any debt in excess of \$1,000 after the effective date of the scheme, disclose the fact that he is subject to the scheme to the person to whom the debt is to be owed;

- (g) keep the Official Assignee advised at all times of his place of residence and such other contact details as may be required by the Official Assignee; and
- (h) generally do all such acts and things in relation to the scheme as may be reasonably required by the Official Assignee or as may be prescribed.

### **Appeal Panel and Appeal Panel Committee**

**56Q.**—(1) For the purpose of hearing appeals from the decisions of the Official Assignee under sections 56D and 56H, there shall be established an Appeal Panel consisting of such members as may be appointed by the Minister from time to time.

(2) The appointment of the members of the Appeal Panel shall be for such period and on such terms as the Minister may determine.

(3) The Minister may appoint from amongst the members of the Appeal Panel, for such period and on such terms as the Minister may determine —

- (a) a Chairman of the Appeal Panel; and
- (b) such number of Deputy Chairmen of the Appeal Panel as the Minister thinks fit.

(4) There shall be paid to the Chairman, Deputy Chairmen and other members of the Appeal Panel such remuneration and allowances as the Minister may determine.

(5) The Minister may at any time revoke any appointment under subsection (2) or (3).

(6) Every member of the Appeal Panel shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224).

(7) All the powers, functions and duties of the Appeal Panel may be exercised, discharged and performed by an Appeal Panel Committee consisting of such number of members of the Appeal Panel as may be prescribed, at least one of whom shall be the Chairman or a Deputy Chairman of the Appeal Panel.

(8) Subject to subsection (7), the members of an Appeal Panel Committee shall be determined by the Minister.

(9) Any act or decision of an Appeal Panel Committee shall be deemed to be an act or a decision of the Appeal Panel.

(10) An appeal under section 56D(4) or 56H(4) —

(a) shall be addressed to the Chairman of the Appeal Panel;

5 (b) shall provide adequate details of the grounds for the appeal;  
and

(c) shall be accompanied by the prescribed fee.

### **Validity of things done under debt repayment scheme**

10 **56R.** The cessation of a debt repayment scheme or the revocation of a certificate of completion of the scheme shall be without prejudice to the validity of anything done under or in relation to the scheme.

### **Offences**

15 **56S.—**(1) Any creditor who makes or submits any claim, proof, declaration or statement of account under a debt repayment scheme which is untrue in any material particular shall be guilty of an offence unless he satisfies the court that he had no intent to defraud.

(2) Any person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both.

20 (3) Fines imposed under this section shall be paid into the Debt Repayment Scheme Assistance Fund maintained under section 164A.

### **Rules for purposes of this Part**

**56T.—**(1) The Minister may make such rules as may be necessary or expedient for carrying out the purposes and provisions of this Part.

25 (2) Without prejudice to the generality of subsection (1), the Minister may make rules for or with respect to —

(a) the releasing of a debtor from any obligation under this Part;

(b) the circumstances to be taken into account in the approval or modification of a debt repayment plan;

30 (c) the circumstances in which a creditor may claim interest in his proof of debt notwithstanding the absence of any



previous agreement or reservation as to interest, and the rate of interest that may be claimed in such circumstances;

- (d) the powers and procedures of the Appeal Panel;
- (e) the procedures of an Appeal Panel Committee;
- 5 (f) the information and documents to be furnished by a debtor to the Official Assignee relating to his property, debts and other financial affairs;
- (g) the convening and conduct of, and the participation of a debtor and his creditors in and their respective obligations at, meetings held under this Part;
- 10 (h) the inspection of documents submitted to the Official Assignee under this Part;
- (i) the sending of notices and other documents under this Part; and
- 15 (j) all matters and things which are required or permitted to be prescribed under this Part.”.

### **Amendment of section 62**

**9.** Section 62 of the Bankruptcy Act is amended —

- (a) by deleting the word “or” at the end of paragraph (b); and
- 20 (b) by deleting the full-stop at the end of paragraph (c) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:
  - “(d) the Official Assignee has —
  - 25 (i) issued a certificate of inapplicability of a debt repayment scheme under section 56L;
  - (ii) issued a certificate of failure of a debt repayment scheme under section 56M(1); or
  - (iii) revoked a certificate of completion of a debt repayment scheme under section 56O(1),
  - 30 in respect of the debtor within 90 days immediately preceding the date on which the bankruptcy application is made, and the applicant creditor had proved the debt under that debt repayment scheme.”.

### **Amendment of section 65**

**10.** Section 65 of the Bankruptcy Act is amended by inserting, immediately after subsection (6), the following subsections:

5 “(7) If a bankruptcy order may be made on the bankruptcy application, the court shall, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under  
10 Part VA, if the following qualifying criteria are satisfied:

- (a) the debt or the aggregate of the debts in respect of which the bankruptcy application is made does not exceed \$100,000 or such other amount as the Minister may, by order published in the *Gazette*, specify;
- 15 (b) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;
- (c) a voluntary arrangement under Part V in respect of the debtor is not in effect, and was not in effect at any time  
20 within the period of 5 years immediately preceding the date on which the bankruptcy application is made;
- (d) the debtor is not subject to any debt repayment scheme under Part VA, and has not been subject to any such debt  
25 repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made; and
- (e) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in  
30 a limited liability partnership.

(8) The court shall proceed to hear a bankruptcy application adjourned under subsection (7) if —

- (a) the Official Assignee reports to the court under section 56B(2) that the debtor is not suitable for a debt repayment  
35 scheme under Part VA; or

(b) at the expiry of the period of adjournment, a debt repayment scheme has not commenced under Part VA in respect of the debtor.

(9) If at any time during the period of adjournment of a bankruptcy application under subsection (7) a debt repayment scheme commences under Part VA in respect of the debtor, the bankruptcy application shall be deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(10) The court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application referred to in subsection (7).

(11) For the purpose of subsection (7)(d), a person in respect of whom the Official Assignee issues —

(a) a certificate of inapplicability of a debt repayment scheme under section 56L; or

(b) a certificate of completion of a debt repayment scheme under section 56N(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 56O(1),

shall not be treated as having been subject to that debt repayment scheme.

(12) In subsection (7)(a), “debt” has the same meaning as in section 56A(1).

(13) Subsections (7) to (12) shall only apply to bankruptcy applications made on or after the commencement of section 10 of the Bankruptcy (Amendment) Act 2008.”.

### **Amendment of section 67**

**11.** Section 67 of the Bankruptcy Act is amended by inserting, immediately after subsection (2), the following subsections:

“(3) If a bankruptcy order may be made on the bankruptcy application, the court shall, instead of making the order, adjourn the bankruptcy application for a period of 6 months or such other period as the court may direct and refer the matter to the Official Assignee for the purpose of enabling the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme under Part VA, if the following qualifying criteria are satisfied:

- (a) the aggregate of the debts specified in the statement of affairs exhibited to the debtor’s affidavit under section 58(2) does not exceed \$100,000 or such other amount as the Minister may specify under section 65(7)(a);
- (b) the debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made, under this Act;
- (c) a voluntary arrangement under Part V in respect of the debtor is not in effect, and was not in effect at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made;
- (d) the debtor is not subject to any debt repayment scheme under Part VA, and has not been subject to any such debt repayment scheme at any time within the period of 5 years immediately preceding the date on which the bankruptcy application is made; and
- (e) the debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership.

(4) The court shall proceed to hear a bankruptcy application adjourned under subsection (3) if —

- (a) the Official Assignee reports to the court under section 56B(2) that the debtor is not suitable for a debt repayment scheme under Part VA; or
- (b) at the expiry of the period of adjournment, a debt repayment scheme has not commenced under Part VA in respect of the debtor.

(5) If at any time during the period of adjournment of a bankruptcy application under subsection (3) a debt repayment scheme commences under Part VA in respect of the debtor, the bankruptcy application shall be deemed to be withdrawn on the date of commencement of the debt repayment scheme.

(6) The court may give such orders or directions as it thinks fit for the adjournment, hearing or disposal of a bankruptcy application referred to in subsection (3).

(7) For the purpose of subsection (3)(d), a person in respect of whom the Official Assignee issues —

(a) a certificate of inapplicability of a debt repayment scheme under section 56L; or

(b) a certificate of completion of a debt repayment scheme under section 56N(1) —

(i) which states that all the debts (including interest on each of such debts at the rate to which a creditor is entitled under any written law or rule of law) of the person which have been proved under, and all the costs and expenses of, the debt repayment scheme have been paid in full; and

(ii) which has not been revoked under section 56O(1),

shall not be treated as having been subject to that debt repayment scheme.

(8) In subsection (3)(a), “debt” has the same meaning as in section 56A(1).

(9) Subsections (3) to (8) shall only apply to bankruptcy applications made on or after the commencement of section 11 of the Bankruptcy (Amendment) Act 2008.”.

### **Amendment of section 72**

**12.** Section 72 of the Bankruptcy Act is amended by deleting the words “A bankruptcy application” and substituting the words “Subject to sections 65(9) and 67(5), a bankruptcy application”.

**Amendment of section 76**

**13.** Section 76(1) of the Bankruptcy Act is amended by inserting, immediately after the words “against the bankrupt” in paragraph (c)(ii), the words “in respect of that debt”.

5 **Amendment of section 100**

**14.** Section 100 of the Bankruptcy Act is amended —

(a) by deleting paragraphs (a), (b) and (c) of subsection (1) and substituting the following paragraphs:

“(a) in the case of a transaction at an undervalue —

10 (i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption referred to in section 62(d), within the period commencing 5 years before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is

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adjudged bankrupt; or

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(ii) in any other case, within the period of 5 years ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt;

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(b) in the case of an unfair preference which is not a transaction at an undervalue and which is given to a person who is an associate of the individual (otherwise than by reason only of being his employee) —

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(i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption referred to in section 62(d), within the period commencing 2 years before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or

- (ii) in any other case, within the period of 2 years ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or
- 5 (c) in any other case of an unfair preference which is not a transaction at an undervalue —
- (i) where the bankruptcy application on which the individual is adjudged bankrupt is based on a presumption referred to in section 62(d), within
- 10 the period commencing 6 months before the day on which the relevant bankruptcy application is made and ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt; or
- (ii) in any other case, within the period of 6 months ending on the day of the making of the bankruptcy application on which the individual is adjudged bankrupt.”; and
- 15 (b) by inserting, immediately after subsection (4), the following subsection:
- 20 “(5) In this section, “relevant bankruptcy application” means the bankruptcy application made against an individual that resulted in the debt repayment scheme referred to in section 62(d) in respect of the individual.”.

25 **Amendment of section 117**

**15.** Section 117(6) of the Bankruptcy Act is amended by deleting “\$20” and substituting “\$50”.

**Amendment of section 164**

**16.** Section 164 of the Bankruptcy Act is amended —

- 30 (a) by deleting “\$20” in subsection (3)(a) and substituting “\$50”; and
- (b) by inserting, immediately after subsection (3), the following subsection:

“(4) The Official Assignee shall from time to time pay out of the Debt Repayment Schemes Account and into the Debt Repayment Scheme Assistance Fund maintained under section 164A so much of the sums standing to the credit of the Account as it represents —

(a) balances in the Account which do not exceed \$50; and

(b) balances in the Account in respect of a debt repayment scheme which have remained unclaimed for a period of 6 years from the date on which the debt repayment scheme has ceased under section 56K(1).”.

#### **New section 164**

17. The Bankruptcy Act is amended by inserting, immediately after section 164, the following section:

#### **“Debt Repayment Scheme Assistance Fund**

**164A.**—(1) The Official Assignee shall maintain and administer a fund to be known as the Debt Repayment Scheme Assistance Fund (referred to in this section as the Fund) in accordance with such rules as may be prescribed.

(2) There shall be paid into the Fund —

(a) all moneys referred to in section 164(4); and

(b) all costs and fees recovered by the Official Assignee in any proceedings under Part VA in which moneys from the Fund were applied.

(3) The Fund may be applied by the Official Assignee for such purposes as may be prescribed.

(4) The Minister may from time to time pay such sums of moneys out of the Fund and into the Consolidated Fund as he may determine.

(5) If any claimant makes any demand against the Official Assignee for any amount of unclaimed moneys paid into the Fund under subsection (2)(a), the Minister may direct that payment of that amount, free of interest, be made to the claimant out of the Consolidated Fund.”.



## **Transitional and savings provision**

18. For a period of 2 years after the date of commencement (referred to in this section as the commencement date) of sections 4 and 5 of the Bankruptcy (Amendment) Act 2008, the Minister may make rules to prescribe such provisions of a transitional or savings nature as he may consider necessary or expedient as regards the retention of accounts and records existing on the commencement date.

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## **EXPLANATORY STATEMENT**

This Bill seeks to amend the Bankruptcy Act (Cap. 20) for the following purposes:

- (a) to implement a pre-bankruptcy scheme called the debt repayment scheme that would give debtors who qualify for the scheme an opportunity to avoid bankruptcy by repaying their debts, wholly or in part, in accordance with the scheme; and
- (b) to make the necessary consequential amendments to the Act arising from the introduction of the scheme.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to insert the definition of “limited liability partnership” as that expression is used in the Act.

Clause 3 amends section 17 (which concerns the appointment of the Official Assignee) to clarify that the Official Assignee is appointed to administer the estates of bankrupts as well as for the other purposes of the Act.

Clause 4 amends section 25 (which concerns the Official Assignee’s accounts) to provide for accounts to be kept by the Official Assignee in respect of debt repayment schemes administered under the new Part VA, and for the inspection of such accounts.

Clause 5 repeals and re-enacts section 26 to provide that the Official Assignee is only required to keep the records specified in that section for a prescribed period, and to provide for the inspection of such records, upon the payment of a fee (to be prescribed in the rules), by a creditor of a bankrupt or by a creditor of a debtor under a debt repayment scheme, as the case may be.

Clause 6 amends section 27 to provide for the Debt Repayment Schemes Account into which moneys received by the Official Assignee under a debt repayment scheme are to be paid.

Clause 7 expands section 28 to provide for the investment of surplus funds in the Debt Repayment Schemes Account.

Clause 8 inserts a new Part VA, comprising new sections 56A to 56T, on the debt repayment scheme.

The new section 56A defines the various expressions used in the new Part VA.

The new section 56B empowers the Official Assignee to review the suitability of a debtor (referred by the High Court to the Official Assignee following the adjournment of a bankruptcy application against the debtor) for a debt repayment scheme. A debtor's suitability depends on several factors, including the amount of his debts. If the debtor is not suitable, the Official Assignee will report to the High Court after which the High Court may proceed with the bankruptcy application against the debtor.

The new section 56C requires a debtor to submit a statement of his affairs and a debt repayment plan to the Official Assignee. The new section 56C also provides for the filing of proofs of debts by creditors of the debtor.

The new section 56D empowers the Official Assignee to approve the debt repayment plan of a debtor, with or without making any modification to the plan. Before approving the plan, the Official Assignee is required to convene a meeting of the debtor's creditors to discuss the plan. The debtor or any of his creditors may appeal to an Appeal Panel (established under the new section 56Q) if the Official Assignee's approval of the plan unfairly prejudices his interests. The Appeal Panel will either confirm the Official Assignee's decision or modify the plan. The plan will come into effect on a date specified by the Official Assignee.

The new section 56E states that a debt repayment scheme will commence in respect of a debtor on the date the debtor's debt repayment plan comes into effect under the new section 56D. The new section 56E also empowers the Official Assignee to administer debt repayment schemes and to collect fees in relation to such administration.

The new section 56F provides for the operation of a moratorium on legal proceedings against a debtor until the cessation of the debt repayment scheme applicable to him. The new section 56F mirrors sections 76(1)(c) and 105.

The new section 56G describes the debts which are provable under a debt repayment scheme and provides for the manner of proving of the debts. An appeal against the Official Assignee's admission or rejection of a proof of debt lies to the High Court.

The new section 56H provides for the modification of a debt repayment plan on or after a debt repayment scheme commences.

The new section 56I provides for the payment of certain debts in priority to all other debts proved under a debt repayment scheme, and also for the payment of interest on debts. The new section 56I largely mirrors sections 90 and 94.

The new section 56J provides for the distribution of moneys collected by the Official Assignee under a debt repayment scheme to the creditors who have proved their debts under the scheme and whose debts are included in the debt repayment plan under the scheme.

The new section 56K specifies when a debt repayment scheme ceases. The scheme will cease if the Official Assignee issues a certificate under the new section 56L, 56M or 56N, or if the debtor becomes a bankrupt, or upon the death of the debtor. When a scheme ceases, the debt repayment plan under the scheme will cease to have effect.

The new section 56L empowers the Official Assignee to issue a certificate of inapplicability of a debt repayment scheme if the debtor's debts exceed the amounts specified in that section.

The new section 56M empowers the Official Assignee to issue a certificate of failure of a debt repayment scheme if any of the grounds specified in that section exist.

The new section 56N empowers the Official Assignee to issue a certificate of completion of a debt repayment scheme if the debtor repays his debts in accordance with his debt repayment plan under the scheme. Upon the issue of the certificate, the debtor will be released from all his debts which are provable under the scheme except those which he had failed to disclose to the Official Assignee (provided no proof of debt has been filed with the Official Assignee in respect of that debt) and those which are specified in section 127(2) to (8).

The new section 56O empowers the Official Assignee to revoke the certificate of completion of a debt repayment scheme issued under the new section 56N if the debtor had failed to disclose his property, failed to disclose the disposal of his property or obtained the approval or modification of his debt repayment plan under the scheme by means of fraud, false representation or concealment of material facts. If a certificate of completion of the scheme is revoked, the debtor will not be released from the debts provable under the scheme.

The new section 56P spells out the duties of a debtor under a debt repayment scheme.

The new section 56Q establishes the Appeal Panel for the purpose of hearing of appeals against the decisions of the Official Assignee under the new sections 56D and 56H. The new section 56Q also provides for the setting up of Appeal Panel Committees within the Appeal Panel to hear the appeals.

The new section 56R ensures the validity of acts carried out under a debt repayment scheme notwithstanding the cessation of the scheme or the revocation of the certificate of completion of the scheme.

The new section 56S specifies the offences under the new Part VA and the applicable penalties.

The new section 56T empowers the Minister to make rules for the purposes of the new Part VA.

Clause 9 amends section 62 by inserting a new paragraph (*d*) to enable the presumption of a debtor's inability to pay his debts to arise when a certificate of inapplicability or failure of a debt repayment scheme applicable to the debtor has been issued, or the certificate of completion of the scheme has been revoked, by the Official Assignee under the new Part VA. A creditor who has proved his debt under the scheme may rely on this presumption to commence bankruptcy proceedings against the debtor in respect of that debt.

Clause 10 amends section 65 to facilitate the implementation of a debt repayment scheme. If a creditor's bankruptcy application is filed against a debtor who meets certain qualifying criteria, and a bankruptcy order may be made against the debtor, then

instead of making the bankruptcy order, the court is required to adjourn the bankruptcy application and refer the matter to the Official Assignee in order for the Official Assignee to determine whether the debtor is suitable for a debt repayment scheme. If the Official Assignee reports to the court that the debtor is not suitable for a debt repayment scheme, or if at the end of the adjournment period there is no debt repayment scheme in place, the court will proceed to hear the bankruptcy application against the debtor. If during the period of adjournment, a debt repayment scheme commences in respect of the debtor, the bankruptcy application pending against the debtor will be treated as having been withdrawn.

Clause 11 amends section 67 to facilitate the implementation of a debt repayment scheme. The amendments mirror the amendments to section 65, except that section 67 refers to a bankruptcy application which is filed by a debtor against himself.

Clause 12 makes a consequential amendment to section 72 arising from the amendments to sections 65 and 67.

Clause 13 amends section 76(1) to clarify that leave of court is only required for the commencement or continuation of legal proceedings against a bankrupt if the proceedings are in respect of a debt which is provable in his bankruptcy.

Clause 14 amends section 100 to increase the applicable period for determining undervalue transactions and unfair preferences in cases where the bankruptcy application is based on the failure or inapplicability of a debt repayment scheme.

Clause 15 amends section 117(6) to increase the amount of dividend (from \$20 to \$50) that the Official Assignee is not required to pay to a creditor of a bankrupt.

Clause 16 amends section 164 to provide for the transfer of moneys from the Debt Repayment Schemes Account to the Debt Repayment Scheme Assistance Fund where the moneys are unclaimed or do not exceed \$50.

Clause 17 inserts a new section 164A which establishes a Debt Repayment Scheme Assistance Fund and empowers the Minister to prescribe in the rules the use of the Fund.

Clause 18 contains a transitional and saving provision.

## EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

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