

# **Bankruptcy (Amendment) Bill**

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**Bill No. 18/2015.**

*Read the first time on 11 May 2015.*

A BILL

*intituled*

An Act to amend the Bankruptcy Act (Chapter 20 of the 2009 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 2015 and comes into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

## 5 Amendment of section 2

2. Section 2 of the Bankruptcy Act is amended —

(a) by inserting, immediately before the definition of “bankrupt” in subsection (1), the following definition:

“ “administration date” means —

10 (a) the date of submission by the bankrupt of the statement of the bankrupt’s affairs; or

(b) where the bankrupt is directed by the Official Assignee under section 81(4)(c) to submit supplementary information, the date of submission of the supplementary information if later;”;

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(b) by inserting, immediately after the definition of “goods” in subsection (1), the following definition:

20 “ “income” includes all income, whether or not accruing in or derived from Singapore, and whether received in Singapore or elsewhere;”;

(c) by inserting, immediately after the definition of “limited liability partnership” in subsection (1), the following definition:

25 “ “monthly contribution” means —

(a) the amount, determined in accordance with section 86A, that a bankrupt is required, under section 108A, to pay to the Official Assignee on a monthly basis out of the bankrupt’s income; or

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(b) if the amount referred to in paragraph (a) is varied by the court under

section 86B(5)(a), 86C(1) or 86E(4)(a) or reduced by the Official Assignee under section 86D(1) or 86F(3), that amount as varied or reduced, as the case may be;”;

(d) by deleting the words “or lien” in the definition of “secured creditor” in subsection (1) and substituting the words “, lien or other security”;

(e) by inserting, immediately after the definition of “statutory demand” in subsection (1), the following definitions:

““supplementary information” means the supplementary information that a bankrupt is directed to submit under section 81(4)(c);

“target contribution” means —

(a) an amount equal to —

(i) in any case where the bankruptcy is a repeat bankruptcy, 76 payments of monthly contributions determined in accordance with section 86A; or

(ii) in any other case, 52 payments of monthly contributions determined in accordance with section 86A; or

(b) if the amount referred to in paragraph (a) is varied by the court under section 86B(5)(a), 86C(1) or 86E(4)(a) or reduced by the Official Assignee under section 86D(1) or 86F(3), that amount as varied or reduced, as the case may be;”;

and

(f) by inserting, immediately after subsection (2), the following subsection:

“(3) In this Act, unless the context otherwise requires, a bankruptcy is a repeat bankruptcy if, before the making of the bankruptcy order in respect of which the bankrupt

was adjudged bankrupt, the bankrupt has been previously discharged from bankruptcy under this Act or any previous written law relating to bankruptcy.”.

### **Amendment of section 9**

- 5     **3.** Section 9(1) of the Bankruptcy Act is amended by deleting the words “to a police officer”.

### **Amendment of section 31**

- 4.** Section 31 of the Bankruptcy Act is amended —

10     (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) The Official Assignee may apply to the court —

(a) for directions in relation to any particular matter arising under the bankruptcy; or

15     (b) to reverse or modify any previous act or decision of the Official Assignee.”;

(b) by inserting, immediately after the words “subsection (1)” in subsection (2), the words “or (1A)”; and

(c) by deleting subsection (3) and substituting the following subsection:

20     “(3) This section applies despite the discharge of the bankrupt or the annulment of the bankruptcy order.”.

### **Amendment of section 32**

- 5.** Section 32 of the Bankruptcy Act is amended —

25     (a) by inserting, immediately after subsection (2), the following subsections:

30     “(3) No liability is to lie personally against the Official Assignee, or any of the Official Assignee’s officers acting under the direction of the Official Assignee who, acting in good faith and with reasonable care, does or omits to do anything in the course of or in connection with —

(a) the exercise or purported exercise of any power;  
or

(b) the performance or purported performance of  
any function or duty,

under section 19, 24, 82A, 95A, 108, 113, 116, 123A, 125, 132A, 163 or 165(3). 5

(4) Any liability which apart from subsection (3) would lie against the Official Assignee, or any of the Official Assignee’s officers, is to lie instead against the Government.”; and 10

(b) by deleting the section heading and substituting the following section heading:

**“Liability of Official Assignee, etc.”.**

**Amendment of section 33**

6. Section 33 of the Bankruptcy Act is amended — 15

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

“(1) The court may, in the following circumstances, appoint a person other than the Official Assignee to be the trustee of the bankrupt’s estate: 20

(a) when making a bankruptcy order, and on the application of the creditor who applied for the bankruptcy order;

(b) at any time after the making of a bankruptcy order which has not been discharged or annulled, and on the application of any creditor, the Official Assignee or any existing trustee of the bankrupt’s estate.”; 25

(b) by inserting, immediately after subsection (1), the following subsection: 30

“(1A) A creditor applying for a bankruptcy order must apply to the court for the appointment of a person other

than the Official Assignee to be the trustee of the bankrupt's estate, if —

(a) the creditor is an institutional creditor or a subsidiary of an institutional creditor; or

(b) the debt when incurred was payable to a person who is —

(i) an institutional creditor; or

(ii) a subsidiary of an institutional creditor.”; and

(c) by inserting, immediately after subsection (2), the following subsection:

“(3) In this section —

“annual sales turnover”, for a relevant period and in relation to an undertaking, means —

(a) if the relevant period is a business year that equals 12 months, the sales turnover of that undertaking in that business year; or

(b) if the relevant period is a business year that does not equal 12 months or is a business commencement period, the amount calculated using the formula  $(S \div B) \times 12$ , where —

(i) S is the sales turnover of that undertaking in that business year or business commencement period; and

(ii) B is the number of months in that business year or business commencement period;

“business commencement period” means the period between the date of commencement of the business operations of an undertaking and the date of the application for the bankruptcy

order referred to in subsection (1A) (both dates inclusive);

“business year” means a period in respect of which an undertaking prepares or is required to prepare accounts; 5

“employee” means a person who has entered into or works under a contract of service with an employer;

“institutional creditor” means a creditor which is —

(a) a bank licensed under the Banking Act (Cap. 19); 10

(b) a finance company licensed under the Finance Companies Act (Cap. 108); or

(c) an undertaking that —

(i) in the relevant period, has an annual sales turnover of more than \$100 million; and 15

(ii) at the date of the application for the bankruptcy order referred to in subsection (1A), has more than 200 employees; 20

“relevant period”, in relation to an undertaking, means —

(a) the business year of the undertaking immediately preceding the date of the application for the bankruptcy order referred to in subsection (1A); or 25

(b) if there is no such business year, the business commencement period;

“sales turnover”, in relation to an undertaking, means the aggregate of the following amounts, after deducting sales rebates, goods and services 30

tax and other taxes directly related to the amounts:

(a) the amounts derived by that undertaking from the sale of products and the provision of services falling within the ordinary activities of that undertaking;

(b) any other amounts derived from the business operations of that undertaking, but excluding gains from the sale of fixed assets, donations, grants, subsidies, subscriptions, interest, dividends, goods purchased for resale and investment income;

“subsidiary” has the same meaning as in section 5 of the Companies Act (Cap. 50);

“undertaking” means any individual, or any body corporate, unincorporated body of persons or other entity, that is capable of carrying on commercial or economic activities relating to goods or services.”.

### **Amendment of section 35**

7. Section 35 of the Bankruptcy Act is amended by deleting subsection (1) and substituting the following subsections:

“(1) A person appointed as a trustee under section 33 —

(a) must not commence acting as such trustee until the person has given security in accordance with subsection (1A); and

(b) where the trustee’s security has been forfeited under section 39(8), must not continue acting as such trustee until the person has given fresh security in accordance with subsection (1A).

(1A) The trustee must give security in the prescribed manner and to the satisfaction of the Official Assignee that the trustee will faithfully perform the trustee’s duties and duly observe all

the requirements imposed on the trustee by this Act, the rules or any other written law with respect to the performance of the trustee's duties.”.

### **Amendment of section 36**

8. Section 36(3) of the Bankruptcy Act is amended by deleting “95A, 108, 113, 116, 123A, 125” and substituting the words “32(3) and (4), 82A, 95A, 108, 113, 116, 116B, 123A, 125, 132A”.

### **Amendment of section 39**

9. Section 39 of the Bankruptcy Act is amended by inserting, immediately after subsection (5), the following subsections:

“(6) The Official Assignee may forfeit the security furnished by the trustee under section 35 if —

(a) the trustee fails to comply with section 81(9) or 86A(1);  
or

(b) the trustee fails to submit the report of the administration of the bankruptcy in accordance with section 86F.

(7) The Official Assignee must not forfeit any security until the trustee concerned has been notified in writing to appear before the Official Assignee to show cause why the security furnished by the trustee under section 35 should not be forfeited.

(8) If, after giving the trustee an opportunity to be heard, the Official Assignee is satisfied that the trustee had no reasonable excuse for the failure referred to in subsection (6)(a) or (b), the Official Assignee must forfeit all or part of the security furnished by the trustee under section 35.

(9) In determining whether to forfeit all or part of the security furnished by the trustee under section 35, the Official Assignee is to have regard to the circumstances surrounding the trustee's failure referred to in subsection (6)(a) or (b) and to any mitigating circumstances.”.

### **Amendment of section 40**

**10.** Section 40(1) of the Bankruptcy Act is amended by deleting the words “a bankrupt or any of his creditors” and substituting the words “the Official Assignee, a bankrupt, any of the bankrupt’s creditors”.

### 5 **Amendment of section 41**

**11.** Section 41 of the Bankruptcy Act is amended —

(a) by deleting subsection (3) and substituting the following subsections:

10 “(3) Subject to subsection (3A), a trustee of a bankrupt’s estate may resign from that office —

(a) by giving 2 months’ notice of the trustee’s resignation to the court and the Official Assignee; and

15 (b) by filing an application to the court for the appointment of the Official Assignee or another person to act as trustee of the bankrupt’s estate.

(3A) A trustee of a bankrupt’s estate cannot resign from that office unless the trustee —

20 (a) has submitted to the Official Assignee a report on the work done in relation to the bankrupt’s estate, containing such particulars as may be prescribed;

(b) has nominated to act as trustee of the bankrupt’s estate —

25 (i) another person who consents to act as trustee; or

(ii) the Official Assignee, if the Official Assignee consents in writing to the appointment; and

30 (c) has given the bankrupt’s creditors notice of the trustee’s intention to resign and of the identity of the person nominated under paragraph (b).”; and

(b) by inserting, immediately after subsection (4), the following subsections:

“(5) A trustee of a bankrupt’s estate must, not later than 2 months after vacating the trustee’s office under subsection (2) or such further period as the Official Assignee may allow, submit to the Official Assignee a report, on the work done in relation to the bankrupt’s estate, containing such particulars as may be prescribed.

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(6) A trustee who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

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### **Amendment of section 56I**

**12.** Section 56I of the Bankruptcy Act is amended —

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

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“(a) first, the costs and expenses incurred by the Official Assignee in the administration of the scheme;

(aa) second, the costs (whether taxed or agreed) of the applicant creditor in respect of the relevant bankruptcy application made against the debtor;”;

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(b) by deleting the word “secondly” in subsection (1)(b) and substituting the word “third”;

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(c) by deleting the word “thirdly” in subsection (1)(c) and substituting the word “fourth”;

(d) by deleting the word “fourthly” in subsection (1)(d) and substituting the word “fifth”;

(e) by deleting paragraph (e) of subsection (1) and substituting the following paragraph:

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“(e) sixth, all amounts due in respect of contributions payable during a period of 12 consecutive

months beginning not earlier than 12 months before, and ending not later than 12 months 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) by deleting the word “sixthly” in subsection (1)(f) and substituting the word “seventh”;

(g) by deleting the word “seventhly” in subsection (1)(g) and substituting the word “eighth”;

(h) by deleting subsections (2) and (3) and substituting the following subsection:

“(2) The amount payable under subsection (1)(b) and (c) must not exceed such amount as the Minister may prescribe by order published in the *Gazette*.”; and

(i) by inserting, immediately after the words “subsection (1)(a)” in subsection (7), the words “and (aa)”.

### **Amendment of section 61**

**13.** Section 61(1) of the Bankruptcy Act is amended —

(a) by deleting the word “No” and substituting the words “Subject to section 63A, no”; and

(b) by deleting “\$10,000” in paragraph (a) and substituting “\$15,000”.

### **New section 63A**

**14.** The Bankruptcy Act is amended by inserting, immediately after section 63, the following section:

### **“Expedited bankruptcy application**

**63A.** A creditor’s bankruptcy application which relies on a statutory demand may be made before the end of the period of 21 days referred to in section 62(a), if —

- (a) there is a serious possibility that the debtor’s property, or the value of all or any of the debtor’s property, will be significantly diminished during that period; and
- (b) the application contains a statement to that effect.”.

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### **Amendment of section 65**

**15.** Section 65 of the Bankruptcy Act is amended by inserting, immediately after subsection (1), the following subsection:

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“(1A) Where a creditor’s bankruptcy application which relies on a statutory demand is made, pursuant to section 63A, before 21 days have elapsed since the statutory demand was served, the court hearing the application must not make a bankruptcy order until at least 21 days have elapsed since the statutory demand was served.”.

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### **Repeal and re-enactment of section 71**

**16.** Section 71 of the Bankruptcy Act is repealed and the following section substituted therefor:

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#### **“Continuance of proceedings on death of debtor**

**71.** If a debtor by or against whom a bankruptcy application has been made dies, unless the court otherwise directs, the proceedings in the matter are to be continued as if the debtor were alive, and the court may —

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- (a) order that the application be served on the debtor’s personal representative or such other person as the court thinks fit; or
- (b) dispense with service of the application on the debtor.”.

**Amendment of section 73**

17. Section 73(2) of the Bankruptcy Act is amended by inserting, immediately after the words “the debtor” in paragraph (b), the words “in respect of that debt”.

5 **Amendment of section 76**

18. Section 76 of the Bankruptcy Act is amended by deleting subsection (4) and substituting the following subsection:

10 “(4) Despite subsection (3) and section 94, a secured creditor is not entitled to any interest in respect of the secured creditor’s debt after the making of a bankruptcy order if the secured creditor does not realise the secured creditor’s security within 12 months after the date of the bankruptcy order or such further period as the Official Assignee may determine.”.

**Amendment of section 78**

15 19. Section 78(2) of the Bankruptcy Act is amended —

(a) by deleting paragraph (b) and substituting the following paragraph:

20 “(b) such tools, books, vehicles and other items of equipment as are needed by the bankrupt for the bankrupt’s personal use in the bankrupt’s employment, business or vocation;”;

(b) by deleting the word “and” at the end of paragraph (c); and

25 (c) by deleting the full-stop at the end of paragraph (d) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(e) the remainder of the bankrupt’s monthly income after deducting the bankrupt’s monthly contribution; and

30 (f) any annual bonus or annual wage supplement paid as part of the bankrupt’s income.”.

### **Amendment of section 80**

**20.** Section 80(4) of the Bankruptcy Act is amended by deleting the words “for more than 2 months from Singapore” and substituting the words “from and not represented at 3 consecutive meetings of the committee”.

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### **Amendment of section 81**

**21.** Section 81 of the Bankruptcy Act is amended —

(a) by deleting the words “The statement of affairs referred to in subsection (2) shall” in subsection (3) and substituting the words “A statement of affairs referred to in subsection (1) or (2)(a) or (b) must be submitted in such form and manner as may be prescribed, and must”;

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(b) by deleting paragraph (a) of subsection (3) and substituting the following paragraph:

“(a) such particulars of all or any of the following matters as may be prescribed:

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(i) the bankrupt’s assets;

(ii) the bankrupt’s creditors, debts and other liabilities;

(iii) the bankrupt’s current income from any source;

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(iv) the bankrupt’s current employment status and employment history;

(v) the educational and vocational qualifications, age and work experience of the bankrupt;

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(vi) the members of the bankrupt’s family;

(vii) the monthly expenses necessary for the maintenance of the bankrupt and the bankrupt’s family;”;

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(c) by deleting the word “or” at the end of subsection (4)(a);

(d) by deleting the full-stop at the end of paragraph (b) of subsection (4) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

5 “(c) direct the bankrupt in writing to submit, within 21 days after the date of the direction, such supplementary information specified in the direction as the Official Assignee considers necessary to make the statement of the bankrupt’s affairs complete.”;

10 (e) by deleting the words “this section” in subsection (6)(a) and substituting the words “subsection (1) or (2), or with a direction under subsection (4)(c)”;

15 (f) by inserting, immediately after the word “affairs” in subsection (6)(c) and (d), the words “, or any supplementary information,”; and

(g) by inserting, immediately after subsection (8), the following subsection:

20 “(9) Where a trustee in bankruptcy is appointed under section 33 to administer a bankrupt’s estate, the trustee must, not later than one month after receiving the statement of affairs or, where the bankrupt has been directed to submit any supplementary information under subsection (4)(c), not later than one month after receiving such supplementary information —

25 (a) notify the Official Assignee of the administration date for the bankruptcy; and

(b) submit a copy of the statement of affairs and supplementary information (if any) to the Official Assignee.”.

30 **Amendment of section 82**

**22.** Section 82 of the Bankruptcy Act is amended —

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

“(1) A bankrupt who has not obtained a discharge must, when directed by the Official Assignee, submit to the Official Assignee an account of —

(a) all moneys and property which have come to the bankrupt’s hands for the bankrupt’s own use during such period as the Official Assignee may specify; and 5

(b) the moneys and property which have been expended in the expenses necessary for the maintenance of the bankrupt and the bankrupt’s family during the same period.”; and 10

(b) by deleting the words “subsection (1)(a) or (b)” in subsection (2) and substituting the words “subsection (1)”.

### **New section 82A**

**23.** The Bankruptcy Act is amended by inserting, immediately after section 82, the following section: 15

#### **“Powers of Official Assignee to examine persons, etc.**

**82A.**—(1) The Official Assignee or any officer authorised by the Official Assignee may at any time, before or after a bankrupt’s discharge, by notice in writing — 20

(a) summon any person listed in subsection (2) to appear before the Official Assignee, on such date and at such time as may be specified in the notice, to be examined on oath in relation to the bankrupt’s affairs, dealings and property; and 25

(b) require that person to produce and surrender any book, document or copy of a book or document in that person’s possession or control that relates to the bankrupt’s affairs, dealings and property, and without payment, inspect, keep, copy, photograph or take extracts from the book, document or copy. 30

(2) The persons referred to in subsection (1) are —

(a) the bankrupt;

- (b) the bankrupt's spouse;
- (c) a person known or suspected by the Official Assignee to possess any of the bankrupt's property or any document relating to the bankrupt's affairs, dealings and property;
- 5 (d) a person believed by the Official Assignee to owe the bankrupt money;
- (e) a person believed by the Official Assignee to be able to give information regarding —
  - (i) the bankrupt; or
  - 10 (ii) the bankrupt's affairs, dealings and property; and
- (f) a trustee of a trust of which the bankrupt is a settlor or is or has been a trustee.

(3) The Official Assignee may apply to the court for a warrant to be issued for the arrest of a person summoned under subsection (1)(a), where —

- 15 (a) the person without reasonable excuse fails to appear for the examination on the date and at the time specified in the notice; or
- (b) there are reasonable grounds for believing that the  
20 person has absconded, or is about to abscond, with a view to avoiding compliance with this section.

(4) The court may authorise any person arrested under subsection (3) to be kept in custody until that person is brought before the court or until such other time as the court  
25 may order.

(5) Where a person has been arrested under subsection (3), the court may order the person's release, either with or without security to the satisfaction of the court that the person will abide by such conditions as the court may think fit to impose.

30 (6) Any person who, without reasonable excuse, does any of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,500 or to imprisonment for a term not exceeding one month or to both:

- (a) fails to appear before the Official Assignee as required by a notice under subsection (1)(a);
- (b) fails to answer any question relating to the bankrupt's affairs, dealings or property that is posed to that person in an examination under subsection (1)(a); 5
- (c) fails to produce or surrender any book, document or copy of a book or document, in that person's possession or control, as required by a notice under subsection (1)(b).".

### **Amendment of section 83**

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**24.** Section 83 of the Bankruptcy Act is amended —

- (a) by deleting the words “or by a creditor who has tendered a proof,” in subsection (1) and substituting the words “at any time (whether before or after the discharge of the bankrupt), or upon an application made by a creditor (who has tendered a proof)”; 15
- (b) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:
  - “(b) summon any other person to appear before the court on the same or another appointed day and examine the person, if it appears to the court that the person would be able to give information concerning the bankrupt or the bankrupt's affairs, dealings or property.”; and 20
- (c) by inserting, immediately after the words “do so” in subsection (12), the words “, whether before or after the bankrupt has been discharged from bankruptcy”. 25

### **New sub-heading to Part VII and new sections 86A to 86F**

**25.** Part VII of the Bankruptcy Act is amended by inserting, immediately after section 86, the following sub-heading and sections: 30

*“Monthly contribution and target contribution***Determination of monthly contribution and target contribution**

5 **86A.**—(1) The Official Assignee must, not later than 2 months after the administration date of a bankruptcy —

(a) determine the bankrupt’s monthly contribution and target contribution in respect of the bankruptcy; and

(b) serve a notice of the determination on —

(i) the bankrupt;

10 (ii) every creditor who has filed a proof of debt in respect of the bankruptcy; and

15 (iii) in a case where the determination is made before the expiry of the period referred to in section 88A(2), every creditor who is mentioned in the statement of the bankrupt’s affairs but has not filed a proof of debt.

(2) For the purposes of determining the monthly contribution referred to in subsection (1)(a), the Official Assignee must take into account —

20 (a) the current monthly income of the bankrupt;

(b) the extent to which the current monthly income of the bankrupt’s spouse may contribute to the maintenance of the bankrupt’s family;

25 (c) the monthly income that the bankrupt may reasonably be expected to earn over the duration of the bankruptcy, taking into account —

(i) the previous and current monthly income of the bankrupt;

30 (ii) the educational and vocational qualifications, age and work experience of the bankrupt;

(iii) the range of monthly income earned by persons who are employed in occupations, positions or

roles similar to that in which the bankrupt is, or can be expected to be, employed;

(iv) the effect which the bankruptcy may have on the bankrupt's earning capacity or other income;

(v) the prevailing economic conditions; and 5

(vi) the period of time during which the bankrupt is likely to be capable of earning a meaningful income; and

(d) the reasonable expenses for the maintenance of the bankrupt and the bankrupt's family. 10

(3) Where the determination under subsection (1) is made by a trustee in bankruptcy appointed under section 33 to administer the bankruptcy, the trustee must also serve the notice of the determination, together with an explanation of the basis for making the determination, on the Official Assignee. 15

### **Review by court of determination of monthly contribution and target contribution**

**86B.**—(1) If a bankrupt or any creditor of the bankrupt is dissatisfied with the monthly contribution and target contribution determined under section 86A, the bankrupt or the creditor (as the case may be) may, within 21 days after the service of the notice of the determination, apply to the court to review the determination. 20

(2) The court may, in any particular case, extend the period for the making of the application under subsection (1), if the court is satisfied that it is just to do so. 25

(3) An application under subsection (1) must be served, within 3 days after the date on which the application is filed, on —

(a) the Official Assignee, or the trustee in bankruptcy appointed under section 33, whose determination under section 86A is the subject of the application; and 30

(b) the bankrupt, unless the application was made by the bankrupt.

5 (4) Upon being served with the application under subsection (3)(a), the Official Assignee or the trustee in bankruptcy (as the case may be) must forthwith give notice of the application to every person on whom the notice of the determination was served under section 86A(1)(b)(ii) and (iii) and (3) (except, where the application was made by a creditor, that creditor).

(5) On hearing an application under subsection (1), the court may —

10 (a) confirm or vary the monthly contribution and target contribution in respect of which the application is brought; or

15 (b) give such directions to the Official Assignee or trustee in bankruptcy (as the case may be), or make such order, as the court may think fit.

(6) Unless the court orders otherwise, a variation under subsection (5)(a) of the monthly contribution and target contribution takes effect on the date of the order.

20 (7) A variation of the monthly contribution and target contribution made under subsection (5)(a) does not affect any payment made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of the variation.

25 (8) The Official Assignee or trustee in bankruptcy (as the case may be) must, within 14 days after the variation of the monthly contribution and target contribution under subsection (5)(a), serve a notice of the variation order on —

(a) the bankrupt;

30 (b) every creditor who has filed a proof of debt in respect of the bankruptcy; and

(c) in a case where the variation is made before the expiry of the period referred to in section 88A(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

**Power of court to vary monthly contribution and target contribution**

**86C.**—(1) Where the court is satisfied, on the application of the Official Assignee or the trustee in bankruptcy appointed under section 33, a bankrupt or any creditor of the bankrupt, that any of the conditions described in subsection (2) apply, the court may make such order as it thinks fit to vary the bankrupt’s monthly contribution and target contribution. 5

(2) The conditions referred to in subsection (1) are as follows:

(a) before the determination of the monthly contribution and target contribution under section 86A was made, the bankrupt concealed from, or failed to disclose to, the Official Assignee or trustee in bankruptcy (as the case may be) information which the bankrupt knows or ought reasonably to know would have a material impact on the determination; 10 15

(b) information which would have a material impact on the determination of the bankrupt’s monthly contribution and target contribution under section 86A —

(i) was not available to the bankrupt before the making of that determination; and 20

(ii) is now available;

(c) it is otherwise just and equitable to vary the monthly contribution and target contribution determined under section 86A. 25

(3) An application under subsection (1) must be served, within 3 days after the date of filing, on —

(a) the Official Assignee, or the trustee in bankruptcy appointed under section 33, whose determination under section 86A is the subject of the application, unless the application was made by the Official Assignee or the trustee (as the case may be); and 30

(b) the bankrupt, unless the application was made by the bankrupt.

(4) Upon —

(a) the filing of an application under subsection (1) by the Official Assignee or trustee in bankruptcy (as the case may be); or

5 (b) being served with an application under subsection (3)(a), where the application is not filed by the Official Assignee or trustee in bankruptcy (as the case may be),

the Official Assignee or trustee in bankruptcy (as the case may be) must forthwith give notice of the application to every person on whom the notice of the determination was served under section 86A(1)(b)(ii) and (iii) and (3) (except, where the application was made by a creditor, that creditor).

15 (5) Unless the court orders otherwise, a variation under subsection (1) of the monthly contribution and target contribution takes effect on the date of the order.

20 (6) A variation of the monthly contribution and target contribution made under subsection (1) does not affect any payments made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of the variation.

(7) The Official Assignee must, within 14 days after the variation of the monthly contribution and target contribution under subsection (1), serve a notice of the variation order on —

(a) the bankrupt;

25 (b) every creditor who has filed a proof of debt; and

(c) in a case where the variation is made before the expiry of the period referred to in section 88A(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

30 **Power of Official Assignee to reduce monthly contribution and target contribution**

**86D.**—(1) The Official Assignee may, on the application of a bankrupt, issue a certificate reducing the bankrupt's monthly

contribution and target contribution to such extent as the Official Assignee thinks fit, if the Official Assignee is satisfied that one or more of the conditions described in subsection (2) arose after the determination of the monthly contribution and target contribution.

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(2) The conditions referred to in subsection (1) are as follows:

(a) the reasonable expenses for the maintenance of the bankrupt's family have increased as a result of an increase in the number of the members of the bankrupt's family;

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(b) the contribution by the bankrupt's spouse to the maintenance of the bankrupt's family has been substantially reduced as a result of a substantial reduction in the monthly income earned by the bankrupt's spouse, and that reduction in income is not likely to be transient in nature;

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(c) the bankrupt is unable to pay the monthly contribution in full due to the personal circumstances of the bankrupt, including but not limited to a debilitating illness, which resulted in a substantial reduction in the bankrupt's income, and that reduction in income is not likely to be transient in nature.

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(3) A certificate issued under subsection (1) takes effect on the date it is issued.

(4) A certificate issued under subsection (1) does not affect any payments made by the bankrupt in respect of the monthly contribution or target contribution prior to the date of issue of the certificate.

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(5) The Official Assignee must, within 14 days after the issue of a certificate under subsection (1), serve a notice of the issue of the certificate on —

30

(a) the bankrupt;

(b) every creditor who has filed a proof of debt; and

(c) in a case where the reduction is made before the expiry of the period referred to in section 88A(2), every creditor who is mentioned in the statement of the bankrupt's affairs but who has not filed a proof of debt.

5 (6) Where the bankruptcy is being administered by a trustee in bankruptcy, and the certificate under subsection (1) was issued by the trustee, the trustee must also serve the notice of the issue of the certificate, together with an explanation of the basis for issuing the certificate, on the Official Assignee.

10 **Review by court of decision of Official Assignee under section 86D**

15 **86E.**—(1) Where a bankrupt or any creditor of the bankrupt is dissatisfied with the decision of the Official Assignee under section 86D(1), the bankrupt or the creditor (as the case may be) may, within 21 days after the service of the notice referred to in section 86D(5), apply to the court to review the decision.

(2) The court may, in any particular case, extend the period for the making of an application under subsection (1) if the court is satisfied that it is just to do so.

20 (3) An application under subsection (1) must be served, within 3 days after the date of filing, on the Official Assignee, who must forthwith —

(a) serve a copy of the application on the bankrupt, unless the application was made by the bankrupt; and

25 (b) give notice of the application to every creditor who was, under section 86D(5)(b) or (c), entitled to service of the notice referred to in section 86D(5) (except, where the application was made by a creditor, that creditor).

30 (4) On hearing an application under subsection (1), the court may —

(a) confirm, vary or cancel the certificate under section 86D(1) in respect of which the application is brought; or

(b) give such directions to the Official Assignee, or make such order, as the court may think fit.

(5) Unless the court orders otherwise, a variation made under subsection (4)(a) of the certificate under section 86D(1) takes effect from the date of issue of the certificate. 5

(6) A variation of the certificate does not affect any payment made by the bankrupt, prior to the date of the variation, in respect of any reduced monthly contribution pursuant to the certificate.

(7) The Official Assignee must, within 14 days after a variation under subsection (4)(a) of the certificate under section 86D(1), serve a notice of the variation order on every person who was, under section 86D(5) or (6), entitled to service of the notice of the issue of the certificate. 10

### **Review by Official Assignee of administration by trustee in bankruptcy** 15

**86F.**—(1) A trustee in bankruptcy must, not later than one month after each relevant anniversary of the administration date for the bankruptcy, submit to the Official Assignee a report (in such form as may be prescribed) of the trustee’s administration of the bankruptcy. 20

(2) The report under subsection (1) is to contain particulars of —

(a) the total amount of debts owed to creditors who have filed their proof of debt;

(b) the property of the bankrupt comprised in the bankruptcy estate and the status of the realisation of such property; 25

(c) the monthly contribution and target contribution for the bankruptcy;

(d) the payments that have been made by the bankrupt to the bankruptcy estate; and 30

(e) any other payments that have been made to the bankruptcy estate.

(3) Upon receipt of a report under subsection (1), if the Official Assignee is of the opinion that the monthly contribution and target contribution determined by the trustee are excessive, the Official Assignee may issue a certificate reducing the monthly contribution and target contribution.

(4) In this section, “relevant anniversary”, in relation to the administration date for a bankruptcy, means —

(a) in any case where the bankruptcy is a repeat bankruptcy, the seventh and every subsequent anniversary of the administration date; and

(b) in any other case, the fifth and every subsequent anniversary of the administration date.”.

### **Amendment of section 87**

**26.** Section 87 of the Bankruptcy Act is amended —

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

“(1) Subject to this section and section 90, the following are provable in bankruptcy:

(a) any debt or liability to which a bankrupt —

(i) is subject at the date of the bankruptcy order; or

(ii) may become subject before the bankrupt’s discharge by reason of any obligation incurred before the date of the bankruptcy order;

(b) any interest payable by the bankrupt on any debt or liability referred to in paragraph (a) for any period before the date of the bankruptcy order.”; and

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

“(3) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, breach of trust, tort or bailment, or an obligation to make restitution, are not provable in bankruptcy.

(3A) For the purposes of subsection (1), in determining whether any liability in tort is provable in bankruptcy, the bankrupt is deemed to be subject to that liability by reason of an obligation incurred at the time when the cause of action for that tort accrued.”.

### **New section 88A**

**27.** The Bankruptcy Act is amended by inserting, immediately after section 88, the following section:

#### **“Creditors to file proof of debts within time limited**

**88A.**—(1) The Official Assignee must, not later than one month after the administration date for a bankruptcy, give notice, in such manner as may be prescribed, of the bankruptcy order and of the time within which creditors are required under subsection (2) to file their proof of debt, to —

- (a) every creditor mentioned in the statement of affairs or supplementary information (if any); and
- (b) every other person who, to the Official Assignee’s knowledge, claims to be a creditor.

(2) Subject to subsections (3) and (4), a creditor cannot prove a debt in a bankruptcy unless the creditor files a proof in respect of the debt not later than 4 months after the administration date of the bankruptcy.

(3) The court may, on the application of a creditor made at any time, extend the period during which the creditor may prove a debt, if the court considers it just to do so.

(4) The Official Assignee may, on the application of a creditor made at any time, extend the period during which the creditor may prove a debt, if the Official Assignee is satisfied that —

- (a) the creditor did not know, and could not reasonably be expected to know, of the bankruptcy order before the expiry of the period referred to in subsection (2); or
- (b) the creditor could not reasonably be expected to prove the debt before the expiry of the period referred to in subsection (2).”.

### **Amendment of section 90**

**28.** Section 90 of the Bankruptcy Act is amended —

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

“(a) first, the costs and expenses of administration or otherwise incurred by the Official Assignee;

(aa) second, the costs of the applicant for the bankruptcy order (whether taxed or agreed) and the costs and expenses properly incurred by a nominee in respect of the administration of any voluntary arrangement under Part V;”;

(b) by deleting the word “secondly” in subsection (1)(b) and substituting the word “third”;

(c) by deleting the word “thirdly” in subsection (1)(c) and substituting the word “fourth”;

(d) by deleting the word “fourthly” in subsection (1)(d) and substituting the word “fifth”;

(e) by deleting paragraph (e) of subsection (1) and substituting the following paragraph:

“(e) sixth, all amounts due in respect of contributions payable, during a period of 12 consecutive months commencing not earlier than 12 months before and ending not later than 12 months after the date of the bankruptcy order, by the bankrupt 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) by deleting the word “sixthly” in subsection (1)(f) and substituting the word “seventh”;

(g) by deleting the word “seventhly” in subsection (1)(g) and substituting the word “eighth”;

(h) by deleting the word “eighthly” in subsection (1)(h) and substituting the word “ninth”; and

(i) by deleting subsections (2) and (3) and substituting the following subsection:

“(2) The amount payable under subsection (1)(b) and (c) must not exceed such amount as the Minister may prescribe by order published in the *Gazette*.”.

## **Repeal and re-enactment of section 94**

**29.** Section 94 of the Bankruptcy Act is repealed and the following section substituted therefor:

### **“Interest on debts**

**94.—(1)** Where interest on a debt was not previously reserved or agreed, interest is allowed on the debt at a rate not exceeding the prescribed rate of interest in the following circumstances:

(a) in any case where the debt is due by virtue of a written instrument and payable at a certain time, interest is allowed for the period between that time and the date of the bankruptcy order;

(b) in any other case, if a demand for payment was made in writing by or on behalf of the creditor before the making of the bankruptcy application, and notice was given that interest would be payable from the date of the demand to the date of the payment, interest is allowed for the period between the date of the demand and the date of the bankruptcy order.

(2) For the purposes of distribution of dividend —

(a) where a debt which has been proved in a bankruptcy includes interest, and the rate of such interest was previously agreed or reserved, the interest is calculated —

(i) from the date the interest was payable to the date of the bankruptcy order; and

(ii) at the rate previously agreed or reserved, or at the prescribed rate of interest, whichever is the lower,

without prejudice to the right of a creditor to receive out of the surplus of the estate, after all the debts proved in the bankruptcy have been paid in full, any higher interest in the manner provided for in section 121A; and

(b) where a debt which has been proved in a bankruptcy includes interest, and the rate of such interest was not previously agreed or reserved, the interest is calculated —

(i) from the date the interest was payable to the date of the bankruptcy order; and

(ii) at the prescribed rate of interest.

(3) Interest on preferential debts rank equally with interest on other debts.

(4) In this section, “interest” includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called.”.

### **Amendment of section 95**

**30.** Section 95(7) of the Bankruptcy Act is amended by inserting, immediately after the words “relates is”, the words “discharged or”.

### **Amendment of section 95A**

**31.** Section 95A of the Bankruptcy Act is amended —

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

“(1) Where a composition or scheme is accepted by the creditors by a special resolution under section 95, the Official Assignee may —

- (a) discharge the bankrupt by issuing a certificate of discharge; or 5
- (b) if the composition or scheme is accepted by all creditors, annul the bankruptcy order by issuing a certificate of annulment.”;
- (b) by inserting, immediately after the word “every” in subsection (2), the words “discharge or”; 10
- (c) by inserting, immediately after the words “copy of the” in subsection (3), the words “certificate of discharge or”;
- (d) by inserting, immediately after the word “A” in subsection (4), the words “certificate of discharge or”;
- (e) by deleting subsection (6) and substituting the following subsections: 15
  - “(6) The court may, on an application by the Official Assignee or any creditor, annul the composition or scheme by revoking the certificate of discharge or certificate of annulment (as the case may be), if — 20
    - (a) the bankrupt defaults in paying any instalment due under the composition or scheme; or
    - (b) the court is satisfied that —
      - (i) the composition or scheme cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the bankrupt; or 25
      - (ii) the acceptance of the proposal by the creditors was obtained by fraud. 30
- (6A) An annulment of the composition or scheme under subsection (6) does not affect the validity of any sale, disposition or payment duly made or thing duly

done under or pursuant to the composition or scheme.”;  
and

(f) by deleting the word “Annulment” in the section heading and substituting the words “Discharge or annulment”.

5 **Amendment of section 97**

**32.** Section 97 of the Bankruptcy Act is amended —

(a) by deleting the words “in the subsequent bankruptcy” in subsection (1) and substituting the words “in the second or subsequent bankruptcy or administration in bankruptcy (as the case may be)”;

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) For the purposes of subsection (1) —

(a) any unsatisfied debts provable in the last preceding bankruptcy, which were under section 90(1) to be paid in priority to all other debts in that bankruptcy, continue to enjoy the same priority and the same rank in the order specified in section 90(1) in the second or subsequent bankruptcy or administration in bankruptcy; and

(b) any unsatisfied debts of a class specified in section 90(1) in the last preceding bankruptcy rank equally with debts of the same class in the second or subsequent bankruptcy or administration in bankruptcy.”;

(c) by inserting, immediately after subsection (4), the following subsection:

“(5) Where a second or subsequent bankruptcy order is made against a bankrupt —

(a) section 108A(1) ceases to apply to the last preceding bankruptcy, with effect from the date of that order; and

- (b) section 125(2) does not apply to the last preceding bankruptcy for the duration of the second or subsequent bankruptcy.”; and
- (d) by deleting the word “bankruptcy” in the section heading and substituting the words “or subsequent bankruptcy, etc.”. 5

### **Amendment of section 101**

**33.** Section 101(1) of the Bankruptcy Act is amended by deleting the words “and 100” and substituting the words “, 100 and 102”.

### **Amendment of section 102**

**34.** Section 102 of the Bankruptcy Act is amended — 10

- (a) by deleting the words “in good faith, for value and without notice of the relevant circumstances” in subsection (3)(a) and (b) and substituting in each case the words “in good faith and for value”;

- (b) by inserting, immediately after subsection (3), the following subsection: 15

“(3A) For the purposes of subsection (3)(a) and (b), a person (called in this section the relevant person) who has acquired an interest in property from a person other than the individual in question, or who has received a benefit from the transaction or unfair preference, is presumed (unless the contrary is shown) to have acquired the interest or received the benefit (as the case may be) otherwise than in good faith if, at the time of the acquisition or receipt — 20

- (a) the relevant person had notice of the relevant surrounding circumstances and of the relevant proceedings; or

- (b) the relevant person was an associate of, or was connected with — 25

- (i) the individual in question; or 30

(ii) the person with whom the individual in question entered into the transaction, or to whom the individual gave the unfair preference, as the case may be.”; and

5 (c) by deleting subsection (5) and substituting the following subsections:

“(5) For the purposes of subsection (3A)(a), the relevant surrounding circumstances are —

10 (a) the fact that the individual in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the unfair preference by the individual in question.

15 (6) For the purposes of subsection (3A)(a), the relevant person has notice of the relevant proceedings if the relevant person has notice of —

(a) the making of the bankruptcy application on which the individual in question is adjudged bankrupt; or

20 (b) the fact that the individual in question has been adjudged bankrupt.

(7) Despite section 101(1), for the purposes of subsection (3A)(b)(ii), a company is regarded as an associate of another company if —

25 (a) the same person controls both companies;

(b) a person controls one company and either an associate of that person controls, or that person and the associate control, the other company; or

30 (c) each company is controlled by a group of 2 or more persons, and the groups —

(i) consist of the same persons; or

(ii) can be regarded as consisting of the same persons if (in one or more cases) a

member of either group is replaced by an associate of that member.

(8) For the purposes of subsection (3A)(b), the relevant person is connected with a company if the relevant person —

(a) is a director of the company; or

(b) is an associate of —

(i) the company; or

(ii) a director of the company.

(9) In subsection (8), “director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).”

### **New section 108A**

**35.** The Bankruptcy Act is amended by inserting, immediately after section 108, the following section:

#### **“Payment of monthly contribution**

**108A.**—(1) Subject to subsection (2), a bankrupt who is not discharged must pay to the Official Assignee, on or before such day of each month as the Official Assignee may specify in writing, an amount not less than the bankrupt’s monthly contribution.

(2) Where the target contribution for a bankruptcy has been paid in full, whether through payments by the bankrupt or otherwise, subsection (1) ceases to apply to the bankrupt.

(3) To avoid doubt, subsection (1) does not prevent any person other than the bankrupt from paying, to the Official Assignee, any amount towards the bankrupt’s target contribution.”

### **Amendment of section 109**

**36.** Section 109 of the Bankruptcy Act is amended —

(a) by deleting the words “subsection (5)” in subsection (4) and substituting the words “subsection (5)(a) but subject to subsection (5)(b)”; and

(b) by deleting subsection (5) and substituting the following subsection:

“(5) The court —

(a) may, in its discretion, fix a larger or smaller amount than the amount provided in the scale; but

(b) must not do any of the following:

(i) order the payment, on a monthly basis out of the bankrupt’s monthly income, of any amount which exceeds the bankrupt’s monthly contribution;

(ii) order the payment of any amount which exceeds the difference between the bankrupt’s target contribution and what has been paid towards the bankrupt’s target contribution;

(iii) order the payment of any amount that is needed for the maintenance of the bankrupt and the bankrupt’s family.”.

## **New sections 116A and 116B**

**37.** The Bankruptcy Act is amended by inserting, immediately after section 116, the following sections:

### **“Incurring expenses where property insufficient**

**116A.**—(1) Subject to this section and section 116B, the Official Assignee is not liable to incur any expense in relation to the realisation and distribution of a bankrupt’s property unless there is sufficient available property in the bankrupt’s estate.

(2) The court may, on the application of a creditor, direct the Official Assignee to incur a particular expense on condition that the creditor indemnifies the Official Assignee in respect of the recovery of the amount expended and, if the court so directs, gives such security to secure the amount of the indemnity as the court thinks reasonable.

(3) Nothing in this section relieves the Official Assignee of any obligation under section 86A, 86B, 86C, 86D, 86E or 86F.

(4) Nothing in this section relieves a trustee in bankruptcy of any obligation to submit or serve a document (including a report) to or on the Official Assignee under any provision of this Act by reason only that the trustee in bankruptcy would be required to incur expense in order to perform that obligation.

**Official Assignee not to incur further expenses if majority in value of debts owed to institutional creditors**

**116B.**—(1) The Official Assignee is not liable to incur any expense in relation to the realisation and distribution of a bankrupt’s property, other than expenses in relation to payments made towards the target contribution —

- (a) if, and only so long as, the relevant condition is met; and
- (b) if the Official Assignee has given to every creditor who has filed a proof of debt, a notice in writing in accordance with subsection (2).

(2) After the expiry of the time within which creditors are required under section 88A(2) to file their proof of debt, if the Official Assignee is satisfied that the relevant condition is met, the Official Assignee may give to each of the bankrupt’s creditors who has filed a proof of debt, a notice in writing —

- (a) informing the creditors that the Official Assignee is satisfied that the relevant condition is met;
- (b) informing the creditors that they may wish to consider making an application under section 33 for the appointment of a person other than the Official Assignee to act as the trustee of the bankrupt’s estate; and
- (c) providing a summary of the administration of the bankrupt’s estate that contains such particulars as may be prescribed.

(3) Nothing in this section relieves the Official Assignee of any obligation under section 86A, 86B, 86C, 86D, 86E, 86F or 88A.

(4) In this section —

“institutional creditor” has the same meaning as in section 33(3), except that the reference, in paragraph (c)(ii) of the definition of “institutional creditor” in section 33(3), to the date of the application for the bankruptcy order referred to in section 33(1A) is to be read as a reference to the date of the bankruptcy application on which the bankrupt was adjudged bankrupt;

“relevant condition” means a majority in value of the total debts of the bankrupt that have been proved (and are not withdrawn) are owed to one or more persons who are either an institutional creditor or a subsidiary of an institutional creditor.”.

#### **Amendment of section 117**

**38.** Section 117(5) of the Bankruptcy Act is amended by deleting paragraph (a).

#### **New section 121A**

**39.** The Bankruptcy Act is amended by inserting, immediately after section 121, the following section:

#### **“Payment of interest exceeding what is allowed under section 94 out of surplus**

**121A.**—(1) Where any amount remains after the debts and expenses of the bankruptcy have been paid (called in this section the surplus), the interest referred to in subsection (2) must be paid before the bankrupt is entitled under section 122 to any of the surplus.

(2) The surplus is to be paid towards interest in the following priority:

(a) first, any higher rate of interest on a debt which any creditor may be entitled over and above the prescribed rate of interest referred to in section 94(1), from the date

the interest was payable to the date of the bankruptcy order;

(b) second, interest on each debt proved in bankruptcy, from the date of the bankruptcy order to the date that debt was paid, calculated at such rate of interest as the creditor may be entitled under an agreement or, in the absence of any such agreement, at such rate as may be prescribed.

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(3) For the purposes of subsection (2) —

(a) interest on preferential debts rank equally with interest on other debts;

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(b) interest of the same class rank equally between themselves; and

(c) if the surplus is insufficient to pay all interest of the same class, the interest in that class is to abate in equal proportions between themselves.”

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### **Amendment of section 123**

**40.** Section 123 of the Bankruptcy Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) An application to annul a bankruptcy order under subsection (1)(a) must be made to the court within 12 months after the making of the bankruptcy order, unless the court gives leave for the application to be made later.”

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### **Amendment of section 123A**

**41.** Section 123A(3) of the Bankruptcy Act is amended by deleting the words “or any other interested person”.

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### **Amendment of section 125**

**42.** Section 125 of the Bankruptcy Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) The Official Assignee must not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless —

(a) in any case where the bankruptcy is not a repeat bankruptcy of the bankrupt —

(i) both of the following apply:

(A) the target contribution has been paid in full, or the Official Assignee is satisfied that the bankrupt is unable to pay the target contribution in full due to extenuating circumstances;

(B) either —

(BA) a period of 3 years has lapsed after the administration date of the bankruptcy, and no objection to the discharge is entered by the relevant threshold of creditors; or

(BB) a period of 5 years has lapsed after the administration date of the bankruptcy; or

(ii) a period of 7 years has lapsed after the administration date of the bankruptcy; or

(b) in any case where the bankruptcy is a repeat bankruptcy of the bankrupt —

(i) both of the following apply:

(A) the target contribution has been paid in full, or the Official Assignee is satisfied that the bankrupt is unable to pay the

target contribution in full due to  
extenuating circumstances;

(B) either —

(BA) a period of 5 years has  
lapsed after the 5  
administration date of the  
bankruptcy, and no  
objection to the discharge  
is entered by the relevant  
threshold of creditors; or 10

(BB) a period of 7 years has  
lapsed after the  
administration date of the  
bankruptcy; or

(ii) a period of 9 years has lapsed after the 15  
administration date of the bankruptcy.”;  
and

(b) by deleting subsection (4) and substituting the following  
subsections:

“(4) The Official Assignee — 20

(a) must, upon the application of a bankrupt, any  
creditor of the bankrupt or any other interested  
person, and upon the payment of the prescribed  
fee, issue to the applicant a copy of the  
certificate discharging the bankrupt from 25  
bankruptcy; but

(b) must not issue any copy of such certificate to  
any person except the bankrupt, where —

(i) the bankrupt’s target contribution was  
paid in full before the bankrupt’s 30  
discharge from bankruptcy; and

(ii) 5 years have lapsed after the date of  
discharge.

(5) For the purposes of calculating the periods of time referred to in subsection (2), there must be disregarded any period —

5 (a) during which the bankrupt was outside Singapore; and

(b) for which the bankrupt did not obtain the Official Assignee's permission to leave, remain or reside outside Singapore.

(6) In this section —

10 “extenuating circumstances” means any of the following circumstances:

(a) the death of the bankrupt;

15 (b) any personal circumstances of the bankrupt (including, but not limited to, debilitating illness) that prevent the bankrupt from earning a meaningful salary for the remaining period of the bankruptcy before the expiry of —

20 (i) where the bankruptcy is not a repeat bankruptcy of the bankrupt, the period referred to in subsection (2)(a)(ii); or

25 (ii) where the bankruptcy is a repeat bankruptcy of the bankrupt, the period referred to in subsection (2)(b)(ii);

30 “relevant threshold of creditors” means not less than half in number or more than one-fourth in value or both of the creditors who have proved their debts.”.

## Amendment of section 126

43. Section 126 of the Bankruptcy Act is amended —

- (a) by inserting, immediately after the words “section 125” in subsection (1), the words “in respect of any bankruptcy administered by the Official Assignee”;
- (b) by inserting, immediately after subsection (5), the following subsections:

“(5A) Before requesting the Official Assignee to issue a certificate of discharge under section 125, a trustee in bankruptcy administering a bankrupt’s estate must serve, on each creditor who has filed a proof of debt, a notice of the trustee’s intention to request the Official Assignee to discharge the bankrupt, together with a statement of the trustee’s reasons why the bankrupt ought to be discharged.

(5B) A creditor who has been served with a notice under subsection (5A) and who wishes to enter an objection to the Official Assignee issuing a certificate discharging the bankrupt may, within 21 days after the date of the trustee’s notice, furnish to the trustee a statement of the grounds of the creditor’s objection.

(5C) A creditor who does not furnish to the trustee a statement of the grounds of the creditor’s objection in accordance with subsection (5B) is deemed to have no objection to the discharge.

(5D) A creditor who has furnished the trustee with a statement of the grounds of the creditor’s objection in accordance with subsection (5B) may, within 21 days after being informed by the trustee that the creditor’s objection has been rejected, make an application to the court for an order prohibiting the Official Assignee from issuing a certificate of discharge.

(5E) Every application under subsection (5D) must be served on the Official Assignee, the trustee and the bankrupt, and the court must hear the Official Assignee,

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the trustee and the bankrupt before making an order on the application.”;

(c) by inserting, immediately after the words “subsection (4)” in subsection (6), the words “or (5D)”;

5 (d) by inserting, immediately before the word “make” in subsection (6)(b), the words “subject to subsections (8) and (9),”; and

(e) by inserting, immediately after subsection (6), the following subsections:

10 “(7) The court must, when making an order under subsection (6)(b) on an application under subsection (4), appoint a trustee in bankruptcy to administer the bankrupt’s estate in place of the Official Assignee.

15 (8) Subject to subsection (9), an order made under subsection (6)(b) must not postpone the grant of the certificate of discharge beyond —

(a) in any case where the bankruptcy is not a repeat bankruptcy of the bankrupt, 9 years after the administration date of the bankruptcy; or

20 (b) in any case where the bankruptcy is a repeat bankruptcy of the bankrupt, 11 years after the administration date of the bankruptcy.

25 (9) When making an order under subsection (6)(b), the court may, in an exceptional case, postpone the grant of the certificate of discharge beyond the period referred to in subsection (8)(a) or (b), but not beyond the period referred to in subsection (6)(b), if the court, having regard to the conduct of the bankrupt, considers it just to do so.

30 (10) For the purposes of calculating the periods of time referred to in subsection (8), there must be disregarded any period —

(a) during which the bankrupt was outside Singapore; and

- (b) for which the bankrupt did not obtain the Official Assignee’s permission to leave, remain or reside outside Singapore.”.

### **Amendment of section 129**

**44.** Section 129(1) of the Bankruptcy Act is amended — 5

- (a) by deleting paragraph (i) and substituting the following paragraph:

“(i) aid the Official Assignee in the realisation of the bankrupt’s property and the distribution of the proceeds among the bankrupt’s creditors;” and 10

- (b) by inserting, immediately after paragraph (l), the following paragraph:

“(la) disclose to the Official Assignee any matter in respect of which the bankrupt is or may become a defendant or respondent in proceedings (including criminal proceedings), to such extent as the Official Assignee may require;” 15

### **Amendment of section 131**

**45.** Section 131 of the Bankruptcy Act is amended —

- (a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph: 20

“(a) unless the bankrupt has obtained the previous sanction of the Official Assignee, the bankrupt is incompetent to commence, continue or defend — 25

- (i) any action other than —

(A) an action for damages in respect of any injury to the bankrupt’s person; or

(B) a matrimonial proceeding; or 30

- (ii) any appeal arising from any action referred to in sub-paragraph (i); and”;

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) Despite subsection (1)(a), the bankrupt must notify the Official Assignee of any proceedings referred to in subsection (1)(a)(i)(A) or (B), or any appeal arising from any such proceedings, not later than 3 days before commencing, continuing or defending the proceedings or appeal, as the case may be.”; and

(c) by inserting, immediately after subsection (2), the following subsection:

“(3) In this section —

“action” and “proceedings” include arbitration;

“matrimonial proceeding” means —

(a) a proceeding under Part VIII, IX or X of the Women’s Charter (Cap. 353); or

(b) a proceeding referred to in section 35(2)(a), (b), (c), (d) or (e) or 35A of the Administration of Muslim Law Act (Cap. 3).”.

## **New section 132A**

**46.** The Bankruptcy Act is amended by inserting, immediately after section 132, the following section:

### **“Powers of investigation**

**132A.**—(1) For the purpose of investigating any offence under this Act, the Official Assignee or any officer authorised by the Official Assignee (called in this section an authorised officer) may do all or any of the following:

(a) require, by notice in writing, any person who appears to be acquainted with the facts and circumstances relating to the offence to attend before the Official Assignee or authorised officer (as the case may be) on such date and at such time as may be specified in the notice;

(b) examine any person who appears to be acquainted with the facts and circumstances relating to the offence, and require that person to answer such questions relating to the offence as may be posed by the Official Assignee or authorised officer (as the case may be); 5

(c) require any person to furnish any information, or produce any book, document or copy of a book or document, which may relate to the offence, that is in the possession of that person and, without payment, inspect, keep, copy, photograph or take extracts from any such book, document or copy. 10

(2) A statement made by any person examined under this section must —

(a) be reduced to writing;

(b) be read over to that person; 15

(c) if that person does not understand English, be interpreted to that person in a language which that person understands; and

(d) after correction, if necessary, be signed by that person.

(3) Any person who, without reasonable excuse, does any of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,500 or to imprisonment for a term not exceeding one month or to both: 20

(a) fails to attend before the Official Assignee or an authorised officer as required by a notice under subsection (1)(a); 25

(b) fails to furnish any information, or produce any book, document or copy of a book or document, in that person's possession as required under subsection (1)(c).

(4) Any person who, without reasonable excuse, fails to answer any question posed to that person as required under subsection (1)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months or to both.” 30

### **Amendment of section 133**

47. The Bankruptcy Act is amended by renumbering section 133 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

5           “(2) An individual who is a bankrupt is not guilty of any  
 offence under section 135(a), (b) or (d), 136(a), (b), (c), (d) or  
 (e), 139(a) or 141(1)(a), (b) or (c) if the individual proves that, at  
 the time of the conduct constituting the offence, the individual  
 10           did not know or have any reason to believe that the individual  
 had been made a bankrupt.”.

### **Amendment of section 135**

48. Section 135 of the Bankruptcy Act is amended by deleting “\$500” in paragraphs (b) and (d) and substituting in each case the words “\$1,000 (or such higher amount as may be prescribed)”.

### **Amendment of section 138**

49. Section 138(1) of the Bankruptcy Act is amended by inserting, immediately after the words “his property” in paragraph (a), the words “, with the intention of defrauding his creditors, or of depriving his creditors of the property in the event that a bankruptcy order is made  
 20           against him”.

### **Amendment of section 139**

50. Section 139 of the Bankruptcy Act is amended by deleting the words “\$500 or more” in paragraph (a) and substituting the words “not less than \$1,000 (or such higher amount as may be prescribed)”.

### **Amendment of section 141**

51. Section 141 of the Bankruptcy Act is amended —

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

30           “(1) An individual shall be guilty of an offence if,  
 being an undischarged bankrupt —

- (a) either alone or jointly with any other person, the individual obtains credit to the extent of not less than \$1,000 (or such higher amount as may be prescribed) from any person without informing that person, at the time the credit is obtained, that the individual is an undischarged bankrupt; 5
- (b) the individual engages in any trade or business under a name other than that under which the individual was adjudged bankrupt without disclosing to every person with whom the individual enters into any business transaction, at the time the transaction is entered into, the name under which the individual was adjudged bankrupt; or 10
- (c) the individual provides a guarantee, indemnity or security to the extent of not less than \$1,000 (or such higher amount as may be prescribed) in respect of any amount borrowed or charged or any credit obtained by another person, without informing the lender or creditor, at the time the guarantee, indemnity or security is provided, that the individual is an undischarged bankrupt.”; and 15 20

- (b) by deleting the section heading and substituting the following section heading: 25

**“Obtaining credit, engaging in business, or standing as guarantor”.**

### **Amendment of section 143**

**52.** Section 143(1) of the Bankruptcy Act is amended by deleting the words “2 years” in paragraph (a) and substituting the words “12 months”. 30

### **Amendment of section 148**

**53.** Section 148(8) of the Bankruptcy Act is amended —

(a) by inserting, immediately after the word “Sections”, “82A,”;  
and

5 (b) by inserting, immediately after the words “administration order under this section”, the words “, and for the purposes of such application, unless the context otherwise requires, every reference to a bankrupt is to be read as a reference to the legal representative of the deceased debtor”.

### **Amendment of section 149**

**54.** Section 149 of the Bankruptcy Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

15 “(2) Unless agreed to by the Official Assignee, all bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons must be taxed by the court.”; and

(b) by deleting the words “to the prescribed officer for taxation” in subsection (3) and substituting the words “for taxation by  
20 the court”.

### **Amendment of section 157**

**55.** Section 157(1) of the Bankruptcy Act is amended by deleting the words “Where, by any provision of this Act, any summons, notice or document is required or authorised to be served on any person, it may be served” and substituting the words “Every summons, notice or  
25 document required or authorised to be served on any person under any provision of this Act and, despite anything to the contrary in the Criminal Procedure Code (Cap. 68), every summons issued by a court for the attendance of any person accused of any offence under this  
30 Act, may be served on the person”.

### **Amendment of section 160**

**56.** Section 160 of the Bankruptcy Act is amended by deleting paragraph (c) and substituting the following paragraph:

“(c) a person who lacks capacity may act by —

- (i) a donee of a lasting power of attorney granted by the person with powers in relation to the person for the purposes of this Act; or 5
- (ii) a deputy appointed or deemed to be appointed for the person by the court under the Mental Capacity Act (Cap. 177A) with powers in relation to the person for the purposes of this Act.”. 10

### **Repeal of section 161**

**57.** Section 161 of the Bankruptcy Act is repealed.

### **Amendment of section 163**

**58.** Section 163 of the Bankruptcy Act is amended — 15

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

“(1) The Official Assignee must maintain, in such form or manner as the Official Assignee thinks fit —

- (a) a list of undischarged bankrupts; 20
- (b) a list of discharged bankrupts;
- (c) a record of every bankruptcy order;
- (d) a record of every order rescinding a bankruptcy order;
- (e) a record of every order, and every certificate of the Official Assignee, discharging a bankruptcy order; and 25
- (f) a record of every order, and every certificate of the Official Assignee, annulling a bankruptcy order. 30

(1A) Subject to subsections (1B) and (1C), the Official Assignee may allow any person, on payment of the prescribed fee, to inspect or otherwise have access to the whole or any part of any list or record referred to in subsection (1)(a) to (e) as the Official Assignee may determine.

(1B) Subject to section 123A(3), where a bankruptcy order has been annulled, no person may inspect or have access to any part of any record maintained by the Official Assignee which relates to the bankruptcy order or the annulment of the bankruptcy order.

(1C) Where an individual's target contribution was paid in full before the individual's discharge from bankruptcy, and 5 years have lapsed after the date of discharge, no person (except the individual) may inspect or otherwise have access to —

(a) the part of the list referred to in subsection (1)(b) relating to the bankruptcy which the individual was discharged from; and

(b) the part of any record referred to in subsection (1)(c) or (e) relating to the bankruptcy which the individual was discharged from.”; and

(b) by deleting the section heading and substituting the following section heading:

**“List of undischarged bankrupts, etc., to be kept”.**

### **Savings and transitional provisions**

**59.**—(1) Despite section 2(d), the definition of “secured creditor” in section 2(1) of the Bankruptcy Act as in force immediately before the date of commencement of section 2(d) continues to apply to the references to “secured creditor” in the following contexts as if section 2(d) had not been enacted:

(a) section 51(5) of the Bankruptcy Act, in any case where the creditors' meeting summoned under section 50 of the

Bankruptcy Act relates to an interim order for which the application under section 45 of the Bankruptcy Act was made before that date;

- (b) section 56F(2) of the Bankruptcy Act, in any case where the secured debt is provable under a debt repayment scheme arising from a bankruptcy application made before that date; 5
  - (c) section 63(1), (2), (3) and (4) of the Bankruptcy Act, in any case where the secured creditor is the applicant for a bankruptcy application made before that date;
  - (d) section 76(3) and (4) of the Bankruptcy Act, in any case where the secured debt is provable in a bankruptcy arising from a bankruptcy order the application for which was made before that date; 10
  - (e) section 127(4) of the Bankruptcy Act, in any case where the secured debt from which the bankrupt is released is provable in a bankruptcy, from which the bankrupt is discharged, arising from a bankruptcy application made before that date. 15
- (2) Section 5 does not apply to anything done or omitted to be done by the Official Assignee, or by any of the Official Assignee's officers, before the date of commencement of that section, and section 32 of the Bankruptcy Act as in force immediately before that date continues to apply to any such act or omission as if section 5 had not been enacted. 20
- (3) Section 6(b) and (c) does not apply to any bankruptcy application made before the date of commencement of section 6(b) and (c). 25
- (4) Section 11 does not apply to any trustee of a bankrupt's estate who was appointed as trustee before the date of commencement of that section, and section 41 of the Bankruptcy Act as in force immediately before that date continues to apply to any such trustee as if section 11 had not been enacted. 30
- (5) Despite section 12, section 56I of the Bankruptcy Act as in force immediately before the date of commencement of section 12 continues to apply to any debt repayment plan arising from any bankruptcy application made before that date, as if section 12 had not been enacted. 35

(6) Section 13(b) does not apply to any bankruptcy application made before the date of commencement of section 13(b), and paragraph (a), as in force immediately before that date, of section 61(1) of the Bankruptcy Act continues to apply to any such  
5 bankruptcy application as if section 13(b) had not been enacted.

(7) Section 14 does not apply to any creditor's bankruptcy application which relies on a statutory demand that is served before the date of commencement of that section.

(8) Section 18 does not apply to a secured creditor in relation to any  
10 bankruptcy order that was made before the date of commencement of that section, and section 76(4) of the Bankruptcy Act as in force immediately before that date continues to apply to a secured creditor in relation to any such bankruptcy order as if section 18 had not been enacted.

(9) Section 19 does not apply to the property of any bankrupt who  
15 was adjudged bankrupt pursuant to a bankruptcy application made before the date of commencement of that section, and section 78 of the Bankruptcy Act as in force immediately before that date continues to apply to the property of any such bankrupt as if section 19 had not  
20 been enacted.

(10) Section 20 does not apply to a member of a creditor's committee in relation to any meeting of the committee that took place before the date of commencement of that section.

(11) Section 21 does not apply to any statement of affairs submitted  
25 in relation to a bankruptcy arising from a bankruptcy application made before the date of commencement of that section, and section 81 of the Bankruptcy Act as in force immediately before that date continues to apply to any such statement of affairs as if section 21 had not been enacted.

(12) Section 22 does not apply to any bankrupt who was adjudged  
30 bankrupt pursuant to a bankruptcy application made before the date of commencement of that section, and section 82 of the Bankruptcy Act as in force immediately before that date continues to apply to any such bankrupt as if section 22 had not been enacted.

(13) Section 23 does not apply to or in relation to any bankrupt who was discharged from bankruptcy before the date of commencement of that section.

(14) Section 24 does not apply to or in relation to any bankrupt who was discharged from bankruptcy before the date of commencement of that section. 5

(15) Section 25 does not apply to any bankrupt who was adjudged bankrupt pursuant to a bankruptcy application made before the date of commencement of that section.

(16) Despite section 26, section 87 of the Bankruptcy Act as in force immediately before the date of commencement of section 26 continues to apply to any bankruptcy arising from a bankruptcy application made before that date, as if section 26 had not been enacted. 10

(17) Section 27 does not apply to any bankruptcy arising from a bankruptcy application made before the date of commencement of that section. 15

(18) Despite section 28, section 90 of the Bankruptcy Act as in force immediately before the date of commencement of section 28 continues to apply to either of the following as if section 28 had not been enacted: 20

(a) the distribution of the property of a bankrupt —

- (i) who was adjudged bankrupt pursuant to a bankruptcy application made before that date;
- (ii) against whom a second or subsequent bankruptcy order is made on or after that date, but before the bankrupt is discharged from a preceding bankruptcy arising from a bankruptcy application made before that date; or 25
- (iii) against whom a subsequent bankruptcy order is made on or after that date, but before the bankrupt is discharged from a preceding bankruptcy that is a second or subsequent bankruptcy referred to in sub-paragraph (ii); 30

(b) the administration in bankruptcy of the estate of a deceased bankrupt (being a bankrupt referred to in paragraph (a)).

5 (19) Despite section 29, section 94 of the Bankruptcy Act as in force immediately before the date of commencement of section 29 continues to apply to any bankruptcy arising from a bankruptcy application made before that date, as if section 29 had not been enacted.

10 (20) Despite section 31, section 95A of the Bankruptcy Act as in force immediately before the date of commencement of section 31 continues to apply to any composition or scheme of arrangement accepted by a special resolution at a meeting summoned by a notice under section 95(2) of the Bankruptcy Act given before that date, or by a special resolution in writing sought by a notice under section 95(3) of the Bankruptcy Act given before that date, as if  
15 section 31 had not been enacted.

(21) Despite section 32(a), section 97(1) of the Bankruptcy Act as in force immediately before the date of commencement of section 32(a) continues to apply to any administration in bankruptcy of the estate of a deceased bankrupt arising from an application for an order for the  
20 administration in bankruptcy of that estate made before that date, as if section 32(a) had not been enacted.

(22) Section 32(b) does not apply to —

25 (a) any second or subsequent bankruptcy order made against a bankrupt arising from a bankruptcy application made before the date of commencement of that provision; or

(b) any order made for the administration in bankruptcy of the estate of a deceased bankrupt arising from an application for an order for the administration in bankruptcy of that estate made before the date of commencement of that provision.

30 (23) Section 32(c) does not apply to any second or subsequent bankruptcy order made against a bankrupt arising from a bankruptcy application made before the date of commencement of that provision.

35 (24) Section 34 does not apply to any interest in property that was acquired, or to any benefit from a transaction or an unfair preference that was received, by any person before the date of commencement of

that section, and section 102(3) and (5) of the Bankruptcy Act as in force immediately before that date continues to apply to any such interest or benefit as if section 34 had not been enacted.

(25) Section 35 does not apply to any bankrupt who was adjudged bankrupt pursuant to a bankruptcy application made before the date of commencement of that section. 5

(26) Section 36 does not apply to any bankrupt who was adjudged bankrupt pursuant to a bankruptcy application made before the date of commencement of that section, and section 109(4) and (5) of the Bankruptcy Act as in force immediately before that date continues to apply to any such bankrupt as if section 36 had not been enacted. 10

(27) Section 37 does not apply to any bankruptcy arising from, or any bankrupt who was adjudged bankrupt pursuant to, a bankruptcy application made before the date of commencement of that section.

(28) Section 38 does not apply to any bankruptcy arising from, or any bankrupt who was adjudged bankrupt pursuant to, a bankruptcy application made before the date of commencement of that section, and section 117(5) of the Bankruptcy Act as in force immediately before that date continues to apply to any such bankruptcy or bankrupt as if section 38 had not been enacted. 15  
20

(29) Section 39 does not apply to any bankruptcy arising from, or any bankrupt who was adjudged bankrupt pursuant to, a bankruptcy application made before the date of commencement of that section.

(30) Section 40 does not apply to any bankruptcy order arising from a bankruptcy application made before the date of commencement of that section. 25

(31) Section 41 does not apply to any application under section 123A(3) of the Bankruptcy Act made before the date of commencement of section 41, and section 123A(3) of the Bankruptcy Act as in force immediately before that date continues to apply to any such application as if section 41 had not been enacted. 30

(32) Section 42 does not apply to any bankruptcy arising from, or any bankrupt who was adjudged bankrupt pursuant to, a bankruptcy application made before the date of commencement of that section, and section 125(2) and (4) of the Bankruptcy Act as in force 35

immediately before that date continues to apply to any such bankruptcy or bankrupt as if section 42 had not been enacted.

5 (33) Section 43 does not apply to any bankruptcy arising from, or any bankrupt who was adjudged bankrupt pursuant to, a bankruptcy application made before the date of commencement of that section, and section 126(1) and (6) of the Bankruptcy Act as in force immediately before that date continues to apply to any such bankruptcy or bankrupt as if section 43 had not been enacted.

10 (34) Section 45(a) does not apply to any action that was commenced, continued or defended, or any appeal that was lodged, by a bankrupt before the date of commencement of that provision, and section 131(1)(a) of the Bankruptcy Act as in force immediately before that date continues to apply to any such action or appeal as if section 45(a) had not been enacted.

15 (35) Section 45(b) and (c) does not apply to any action that was commenced, continued or defended, or any appeal that was lodged, by a bankrupt before the date of commencement of section 45(b) and (c).

20 (36) Section 51 does not apply to any conduct of a bankrupt before the date of commencement of that section, and section 141 (subsection (1) and section heading) of the Bankruptcy Act as in force immediately before that date continues to apply to any such conduct as if section 51 had not been enacted.

25 (37) Section 52 does not apply to any conduct of a bankrupt before the date of commencement of that section, and section 143(1)(a) of the Bankruptcy Act as in force immediately before that date continues to apply to any such conduct as if section 52 had not been enacted.

30 (38) Section 54 does not apply to any bankruptcy arising from a bankruptcy application made before the date of commencement of that section, and section 149(2) and (3) of the Bankruptcy Act as in force immediately before that date continues to apply to any such bankruptcy as if section 54 had not been enacted.

(39) Section 55 does not apply to any summons to a person accused of an offence under the Bankruptcy Act that was issued by a court before the date of commencement of that section.

(40) Despite section 57, the repealed section 161 of the Bankruptcy Act as in force immediately before the date of commencement of section 57 continues to apply to any request made before that date for an inspection under the repealed section, as if section 57 had not been enacted.

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(41) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by rules, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

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## EXPLANATORY STATEMENT

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

- (a) to raise the minimum debt threshold for the making of a bankruptcy application from \$10,000 to \$15,000;
- (b) to require an institutional creditor (or its subsidiary) which is making a bankruptcy application to apply to the court for the appointment of a trustee instead of the Official Assignee;
- (c) to implement a new regime under which the Official Assignee may not issue a certificate of discharge to a bankrupt before a prescribed minimum period has elapsed since the administration date of the bankruptcy, with a shorter minimum period applicable where certain conditions (for example, the payment of the target contribution in respect of the bankruptcy) are met;
- (d) to implement the following changes which are related to recommendations in the report of the Insolvency Law Review Committee issued on 4 October 2013:
  - (i) to provide for an expedited bankruptcy application which will allow a creditor to make a bankruptcy application relying on a statutory demand before the expiry of 21 days after the service of the statutory demand, where there is a serious possibility that the debtor's property or the value of the debtor's property will be significantly diminished before the expiry of the period of 21 days;

- (ii) to extend the court’s powers of examination of a bankrupt and other persons, and the power to require the delivery of property to the Official Assignee or the trustee, to instances where the bankrupt has already been discharged;
- (iii) to provide that the Official Assignee may issue a certificate of annulment only where all creditors of a bankrupt have approved a composition or scheme of arrangement;
- (iv) to provide that a bankrupt is to obtain the Official Assignee’s previous sanction before commencing, continuing or defending any action (including arbitration), except an action for damages in respect of an injury to the bankrupt’s person or matrimonial proceedings;
- (v) to provide that no previous sanction of the Official Assignee is required before a bankrupt may commence, continue or defend any matrimonial proceedings and its related ancillary matters pertaining to maintenance and custody;
- (vi) to require the bankrupt to notify the Official Assignee, within a specified time period, of the bankrupt’s involvement in any action for damages or matrimonial proceedings;
- (vii) to introduce a new defence to certain offences under the Act, which is available if, at the time of the conduct constituting the offence, the bankrupt did not know or have any reason to believe that the bankrupt had been made a bankrupt;

(e) to make other changes relating to the administration of a bankrupt’s estate.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 —

- (a) to expand the definition of “secured creditor”, in relation to a debtor, to include a person holding other security against the property of the debtor; and
- (b) to insert new definitions for “administration date”, “income”, “monthly contribution”, “supplementary information”, “target contribution” and “repeat bankruptcy”.

Clause 3 amends section 9(1) by deleting the words “to a police officer” so that the execution of a warrant of arrest issued under that provision will be carried out in accordance with section 69 of the Criminal Procedure Code (Cap. 68).

Clause 4 amends section 31 to allow the Official Assignee or the trustee of a bankrupt’s estate to apply to the court for directions or to reverse or modify any previous act or decision of the Official Assignee or the trustee (as the case may be).

The clause also amends section 31 to provide that the court's power of review under the section is applicable despite the discharge of the bankrupt or the annulment of the bankruptcy order.

Clause 5 amends section 32 to confer upon the Official Assignee, and any officer acting under the Official Assignee's direction, personal immunity for any act or omission in the exercise of any power, or the performance of any function or duty, under the specified provisions, if the Official Assignee or the officer has exercised reasonable care and acted in good faith. Any liability which will otherwise lie against the Official Assignee or the officer will lie instead against the Government.

Clause 6 amends section 33 to require a creditor making a bankruptcy application to apply to the court to appoint a trustee instead of the Official Assignee if the creditor is an institutional creditor or a subsidiary of an institutional creditor, or if the debt upon which the application is made was, when incurred, payable to a person who is, at the time of the application, an institutional creditor or a subsidiary of an institutional creditor.

An "institutional creditor" is defined as a creditor which is a bank licensed under the Banking Act (Cap. 19), a finance company licensed under the Finance Companies Act (Cap. 108), or an undertaking with an annual sales turnover of more than \$100 million and having more than 200 employees. The clause also introduces other definitions which determine when a creditor is an institutional creditor or a subsidiary of an institutional creditor for the purposes of the amended section 33.

Clause 7 amends section 35 to provide that a person appointed as a trustee of a bankrupt's estate must not, if the security the person had previously furnished has been forfeited, continue acting as trustee until the person has furnished fresh security.

Clause 8 amends section 36(3) to provide that 4 new provisions introduced by the Bill, namely, sections 32(3) and (4), 82A, 116B and 132A, do not apply to a trustee of a bankrupt's estate.

Clause 9 amends section 39 to establish a procedure by which the Official Assignee is to require a trustee of a bankrupt's estate to show cause why the security furnished by the trustee should not be forfeited, if the trustee fails to comply with the new section 81(9) or 86A(1), or fails to submit the report of the administration of a bankruptcy in accordance with the new section 86F.

Clause 10 amends section 40(1) to allow the Official Assignee to apply to the court to review any act, omission or decision of a trustee in relation to the trustee's administration of a bankrupt's estate.

Clause 11 amends section 41(3) to provide that a trustee of a bankrupt's estate may resign from the office of trustee by giving 2 months' notice of the trustee's resignation to the court and to the Official Assignee, and by filing an application to

the court for the appointment of the Official Assignee or another person to act as trustee.

Clause 11 inserts a new section 41(3A) which requires the trustee to carry out the following steps before resigning from the office of trustee:

- (a) to submit to the Official Assignee a report of the work done in relation to the bankrupt's estate;
- (b) to nominate another person (whether the Official Assignee or otherwise) who consents to act as trustee;
- (c) to give notice of the trustee's intention to resign to the creditors.

Clause 11 also inserts a new section 41(5) which requires a trustee who vacates his or her office under section 41(2) to submit to the Official Assignee a report of the work done in relation to the bankrupt's estate within 2 months of vacating the office.

Clause 12 amends section 56I —

- (a) to confer priority to the costs and expenses incurred by the Official Assignee in the administration of a debt repayment scheme, over the costs of the applicant creditor in respect of the relevant bankruptcy application made against the debtor, and to make consequential changes in subsection (1) arising from this amendment;
- (b) to clarify that the preferential debt referred to in subsection (1)(e), namely, amounts due from a debtor, as the employer of any person, in respect of contributions under any written law relating to superannuation or provident funds, or under any scheme of superannuation, applies to contributions payable over a period of 12 consecutive months, commencing not earlier than 12 months before, and ending not later than 12 months after, the effective date of the debt repayment scheme; and
- (c) to empower the Minister to vary the maximum amount payable under the amended subsection (1)(b) and (c).

Clause 13 amends section 61(1) —

- (a) to raise the minimum debt threshold for the making of a bankruptcy application from \$10,000 to \$15,000; and
- (b) to create an exception to the mandatory requirements for the making of a bankruptcy application, in the form of an expedited bankruptcy application under the new section 63A.

Clause 14 inserts a new section 63A which provides for an expedited bankruptcy application. Under the new section 63A, where a creditor has served a statutory demand on a debtor, and there is a serious possibility that the debtor's property or the value of all or any of the debtor's property will be significantly diminished

before 21 days have elapsed since the statutory demand was served, the creditor may make a bankruptcy application before the end of the period of 21 days.

Clause 15 inserts a new section 65(1A) to provide that where a creditor has made an expedited bankruptcy application under the new section 63A, the court must not make a bankruptcy order until at least 21 days have elapsed since the relevant statutory demand was served.

Clause 16 repeals and re-enacts section 71 to allow the court to order the service of a bankruptcy application on a deceased debtor's personal representative or such other person as the court thinks fit.

Clause 17 amends section 73(2)(b) to align the language in that provision with the language in section 76(1)(c)(ii). When an interim receivership is in force, no creditor of the debtor in respect of a debt provable in bankruptcy is able to commence or continue any action or other legal proceedings in respect of that provable debt against the debtor.

Clause 18 amends section 76(4) so that a secured creditor is entitled to interest in respect of a debt if the secured creditor realises the security within 12 months after the making of the bankruptcy order (or such further period as the Official Assignee or the trustee may determine).

Clause 19 amends section 78(2) —

- (a) to update the language of paragraph (b); and
- (b) to provide that the following are not divisible among a bankrupt's creditors:
  - (i) the remainder of the bankrupt's monthly income after deducting the bankrupt's monthly contribution;
  - (ii) any annual bonus or annual wage supplement paid as part of the bankrupt's income.

Clause 20 amends section 80(4) to remove the ground of absence from Singapore for more than 2 months, as a ground for vacating the office of a member of the creditors' committee, and to replace it with the ground of being absent from and not being represented at 3 consecutive meetings of the committee.

Clause 21 amends section 81 —

- (a) to provide, in new subsection (3)(a), for the matters which a statement of a bankrupt's affairs is to contain particulars of;
- (b) to empower the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to direct the bankrupt to submit, within 21 days after the date of the direction, supplementary information so as to make the statement of the bankrupt's affairs complete, and to make a failure to comply with the direction an offence;

- (c) to make the submission by a bankrupt of any supplementary information which is false, or which the bankrupt either knows or believes to be false or does not believe to be true, an offence;
- (d) to make the submission by a bankrupt of any supplementary information which is misleading in any material particular or contains any material omission, an offence; and
- (e) to require the trustee of a bankrupt's estate to, not later than one month after receiving the statement of the bankrupt's affairs (or the supplementary information, if the bankrupt had been directed to submit supplementary information), notify the Official Assignee of the administration date for the bankruptcy, and submit a copy of the statement of affairs and any supplementary information to the Official Assignee.

Clause 22 amends section 82(1) to remove the obligation of a bankrupt to pay and make over the moneys and property which have come into the hands of the bankrupt but not expended in the necessary expenses of maintenance of the bankrupt and the bankrupt's family. Instead, the amended section 82(1) requires the bankrupt to give an account, when directed by the Official Assignee or the trustee of the bankrupt's estate (as the case may be), of the moneys and property which have come into the bankrupt's hands for the bankrupt's own use during a specified period, and of such moneys and property which have been expended for the maintenance of the bankrupt and the bankrupt's family during the same period.

Clause 23 inserts a new section 82A which provides for the Official Assignee's power to examine persons listed in subsection (2). The Official Assignee may summon any such person to appear before the Official Assignee and to be examined under oath in relation to the bankrupt's affairs, dealings and property. The Official Assignee may also require the person to produce any book or document or any copy of such book or document, and may inspect, copy or take extracts from the book or document or copy of the book or document.

Clause 24 amends section 83(1) to allow the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to make an application at any time, whether before or after the discharge of the bankrupt, for the court to examine the bankrupt or some other person as to the bankrupt's affairs, dealings or property. Under the amended section 83(12), the court may also direct a further examination of the bankrupt or other person whether before or after the bankrupt has been discharged.

Clause 25 inserts new sections 86A to 86F.

The new section 86A requires the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to determine, within 2 months after the administration date of the bankruptcy, the bankrupt's monthly contribution and target contribution, by taking into account the factors listed in subsection (2). Upon making the determination, the Official Assignee or the trustee (as the case may be)

must serve a notice of the determination on the bankrupt and each creditor of the bankrupt. If the determination is made by a trustee, the trustee must serve the notice of the determination on the Official Assignee, together with an explanation of the basis for making the determination.

The new section 86B allows a bankrupt or any creditor of the bankrupt to apply to the court for a review of the determination made under the new section 86A. A variation of the monthly contribution and target contribution by the court does not affect any past payments of the monthly contribution or target contribution. A notice of any variation by the court must be served on the bankrupt and each creditor of the bankrupt.

The new section 86C allows the Official Assignee or the trustee of a bankrupt's estate (as the case may be), the bankrupt or a creditor of the bankrupt to apply to the court for a variation of the bankrupt's monthly contribution and target contribution when certain conditions listed in subsection (2) are applicable — concealment of material information, availability of previously unavailable material information, or where it is otherwise just and equitable to vary the monthly contribution and target contribution. A variation of the monthly contribution and target contribution by the court does not affect any past payments of the monthly contribution or target contribution. A notice of any variation by the court must be served on the bankrupt and each creditor of the bankrupt.

The new section 86D allows the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to issue a certificate reducing the bankrupt's monthly contribution and target contribution upon the application of the bankrupt. The certificate may be issued only if the Official Assignee or the trustee (as the case may be) is satisfied that one or more of the conditions specified in subsection (2) arose after the determination of the monthly contribution and target contribution. The conditions relate to non-transient changes in the personal or family circumstances of the bankrupt that have affected either the income or the expenses of the bankrupt's family. A certificate issued under this section does not affect any past payments of the monthly contribution or target contribution. A notice of the issue of the certificate must be served on the bankrupt and each creditor of the bankrupt. If the certificate was issued by a trustee, the trustee must serve the notice of the issue of the certificate on the Official Assignee together with an explanation of the basis for issuing the certificate.

The new section 86E allows a bankrupt or a creditor of the bankrupt to apply to the court to review a decision of the Official Assignee or the trustee under the new section 86D. Upon hearing such an application, the court may confirm, vary or cancel the certificate issued under the new section 86D. A variation of the certificate under this section does not affect any past payments of reduced monthly contribution made pursuant to the certificate.

The new section 86F establishes a mechanism for the Official Assignee to review a trustee's administration of a bankruptcy after either 5 or 7 years have

elapsed after the administration date for the bankruptcy. A trustee must, not later than one month after each relevant anniversary of the administration date for the bankruptcy, submit to the Official Assignee a report of the administration containing particulars of the matters specified in subsection (2). If the Official Assignee is of the opinion that the monthly contribution and the target contribution determined by the trustee are excessive, the Official Assignee may issue a certificate reducing the monthly contribution and target contribution.

Clause 26 amends section 87 to make a demand in the nature of unliquidated damages arising by reason of a tort or bailment or an obligation to make restitution, provable in a bankruptcy.

Clause 27 inserts a new section 88A which requires the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to, within one month after the administration date for the bankruptcy, give to every creditor notice of the bankruptcy order and the time within which creditors must file their proof of debt. A creditor who does not file a proof of debt within 4 months after the administration date cannot prove the debt in the bankruptcy, unless the court or the Official Assignee extends the period for filing the proof of debt upon the application of the creditor.

Clause 28 amends section 90 —

- (a) to confer priority to the costs and expenses incurred by the Official Assignee or the trustee of a bankrupt's estate (as the case may be) in the administration of a bankruptcy, over the costs of the applicant for the bankruptcy order, and to make consequential changes in subsection (1) arising from this amendment;
- (b) to clarify that the preferential debt referred to in subsection (1)(e), namely, amounts due from a bankrupt, as the employer of any person, in respect of contributions under any written law relating to superannuation or provident funds, or under any scheme of superannuation, applies to contributions payable over a period of 12 consecutive months, commencing not earlier than 12 months before, and ending not later than 12 months after, the date of the bankruptcy order; and
- (c) to empower the Minister to vary the maximum amount payable under the amended subsection (1)(b) and (c).

Clause 29 repeals and re-enacts section 94 to consolidate, in a single provision, the rules on interest allowed on debts contained in the Act and in rule 184 of the Bankruptcy Rules (Cap. 20, R 1). The re-enacted section 94 sets out the scenarios in which interest on debts is provable, the rate of such interest, and the period for which the interest is to be calculated.

Clause 30 makes an amendment to section 95(7) that is consequent to the amendments to section 95A.

Clause 31 amends section 95A to restrict the Official Assignee's power to issue a certificate of annulment to instances where all creditors of a bankrupt have accepted a composition or scheme of arrangement. Where a composition or scheme of arrangement that was accepted by special resolution was not accepted by all creditors, the Official Assignee may issue a certificate of discharge instead. Section 95A(6) is also consequently amended to provide for the court's power to annul a composition or scheme of arrangement by revoking the certificate of discharge issued by the Official Assignee.

Clause 32 inserts a new section 97(1A) to preserve the priority of unsatisfied preferential debts provable under a preceding bankruptcy, in a second or subsequent bankruptcy or administration in bankruptcy. Any unsatisfied debts of a class specified in section 90(1) in the preceding bankruptcy will rank equally with debts of the same class in the second or subsequent bankruptcy or administration in bankruptcy.

Clause 33 makes an amendment to section 101(1) that is consequent to the amendments to section 102 which use the word "associate".

Clause 34 amends section 102 —

- (a) to provide in the new subsection (3A) for a rebuttable presumption of lack of good faith on the part of a person (relevant person) who acquired an interest in property from a person other than a bankrupt, or who received a benefit from a transaction or unfair preference, if the relevant person had notice of the relevant surrounding circumstances and the relevant proceedings, or if the relevant person was an associate of, or was connected with, the bankrupt or the person with whom the bankrupt entered into the transaction or to whom the bankrupt gave the unfair preference; and
- (b) to specify what constitutes relevant surrounding circumstances and relevant proceedings, when a company is regarded as an associate of another company, and when a relevant person is regarded as being connected to a company.

Clause 35 inserts a new section 108A to require an undischarged bankrupt to pay to the Official Assignee, on a monthly basis, an amount not less than the bankrupt's monthly contribution towards the bankrupt's target contribution. Any other person may pay any sum towards the bankrupt's target contribution.

Clause 36 amends section 109 to provide that in making any order for the appropriation of a bankrupt's salary or income, the court must not —

- (a) order the payment, on a monthly basis, of any amount exceeding the bankrupt's monthly contribution;

- (b) order the payment of any amount that, taken together with what has been paid towards the bankrupt's target contribution, will exceed the bankrupt's target contribution; or
- (c) order the payment of any amount that is needed for the maintenance of the bankrupt and the bankrupt's family.

Clause 37 inserts new sections 116A and 116B.

The new section 116A provides that the Official Assignee or trustee of a bankrupt's estate is not liable to incur any expense in relation to the realisation and distribution of a bankrupt's property unless there is sufficient available property in the estate.

The new section 116B provides that the Official Assignee is not liable to incur any expense in relation to the realisation and distribution of a bankrupt's property, other than expenses in relation to payments made towards the target contribution, if a majority in value of the total debts that have been proved (and are not withdrawn) are owed to institutional creditors (or their subsidiaries), and the Official Assignee has given the requisite notice to all the creditors after the expiry of the time limited for the filing of proofs of debt. The requisite notice is to contain such particulars of the administration of the bankrupt's estate as may be prescribed, which will seek to provide sufficient information to allow the creditors to consider whether to make an application under section 33 for the appointment of a person other than the Official Assignee to act as the trustee of the bankrupt's estate.

Clause 38 deletes section 117(5)(a) to remove the requirement for the Official Assignee or the trustee of a bankrupt's estate (as the case may be) to make provision for any provable debt which appears to be due to any person who may not have had sufficient time to tender and establish the person's proof by reason of the distance of the person's place of residence.

Clause 39 inserts a new section 121A which provides for the payment, out of any surplus, of interest exceeding the amount of interest allowed under section 94. The interest specified in the new section 121A(2) must be paid before a bankrupt is entitled under section 122 to any of the surplus.

Clause 40 inserts a new section 123(1A) to provide that an application to annul a bankruptcy order under section 123(1)(a), on the ground that it ought not to have been made, must be made within 12 months after the making of the bankruptcy order, unless the court gives leave for a late application.

Clause 41 amends section 123A(3) to allow only a bankrupt or a creditor of the bankrupt to apply for a copy of a certificate of annulment in respect of that bankrupt.

Clause 42 amends section 125 to establish a new regime under which the Official Assignee may not issue a certificate of discharge to a bankrupt before a prescribed minimum period has elapsed since the administration date of the

bankruptcy. The prescribed minimum period that must elapse before a bankrupt is eligible for a certificate of discharge differs according to whether the following conditions are met:

- (a) whether the target contribution has been paid in full;
- (b) whether the bankrupt is unable to pay the target contribution in full due to extenuating circumstances;
- (c) whether any objection to the discharge has been entered by the relevant threshold of creditors.

The prescribed minimum periods are shorter where the bankruptcy is not a repeat bankruptcy of the bankrupt.

The new section 125(5) provides that for the purposes of calculating the time that has lapsed after the administration date for a bankruptcy, any period during which the bankrupt was outside Singapore without the Official Assignee's permission is to be disregarded.

For the purposes of the amended section 125, "extenuating circumstances" means either the death of the bankrupt, or any personal circumstances of the bankrupt (including, but not limited to, debilitating illness) which prevent the bankrupt from earning a meaningful salary for the remaining period of the bankruptcy before the expiry of 7 years (where the bankruptcy is not a repeat bankruptcy) or 9 years (where the bankruptcy is a repeat bankruptcy) after the administration date for the bankruptcy.

Clause 43 amends section 126 by inserting new subsections (5A) to (5E) which provide for the procedure to be followed —

- (a) where the trustee of a bankrupt's estate intends to request that the Official Assignee issue a certificate discharging the bankrupt under section 125; and
- (b) where a creditor of the bankrupt wishes to object to the issue of a certificate of discharge by the Official Assignee.

Clause 43 also inserts new subsections (7) to (10) in section 126. The new section 126(7) provides that when a court hearing a creditor's application under subsection (4) makes an order under subsection (6)(b) prohibiting the Official Assignee from issuing a certificate of discharge, the court must appoint a trustee in bankruptcy to administer the bankrupt's estate in place of the Official Assignee.

The new section 126(8) provides that, subject to subsection (9), an order under subsection (6)(b) prohibiting the Official Assignee from issuing a certificate of discharge (for a period not exceeding 2 years) must not postpone the grant of the certificate of discharge beyond 9 years after the administration date for the bankruptcy (where the bankruptcy is not a repeat bankruptcy) or 11 years after the administration date for the bankruptcy (where the bankruptcy is a repeat

bankruptcy). Under the new subsection (9), the court may, in an exceptional case, postpone the grant of the certificate of discharge beyond the period referred to in the new subsection (8) if the court, having regard to the conduct of the bankrupt, considers it is just to do so. The new subsection (10) provides that for the purposes of calculating the periods of time referred to in the new subsection (8), any period during which the bankrupt was outside Singapore without the Official Assignee's permission is to be disregarded.

Clause 44 amends section 129(1) to clarify the language of paragraph (i), and to insert a new paragraph (la) to provide for the bankrupt's duty to disclose to the Official Assignee or the trustee of a bankrupt's estate (as the case may be) any matter in respect of which the bankrupt is or may become a respondent in legal proceedings.

Clause 45 amends section 131(1)(a) to provide that a bankrupt is not competent to commence, continue or defend any action (other than an action for damages in respect of injury to the bankrupt's person or a matrimonial proceeding) or any appeal arising from any such action, unless the bankrupt has obtained the previous sanction of the Official Assignee or the trustee of the bankrupt's estate (as the case may be). The new section 131(1A) provides that in any case where no previous sanction is required, the bankrupt is nevertheless required to notify the Official Assignee or the trustee (as the case may be) of the relevant proceedings or appeal not later than 3 days before commencing, continuing or defending the proceedings or appeal. In the amended section 131, "action" and "proceedings" include arbitration, and "matrimonial proceeding" means a proceeding under Part VIII, IX or X of the Women's Charter (Cap. 353) or a proceeding referred to in section 35(2) or 35A of the Administration of Muslim Law Act (Cap. 3).

Clause 46 inserts a new section 132A which provides for the Official Assignee's powers to investigate any offence under the Act. A person who, without reasonable excuse, fails to attend before the Official Assignee as required by a notice issued by the Official Assignee, to answer any question posed to the person when examined by the Official Assignee, or to furnish any information or document in the person's possession when required by the Official Assignee, is guilty of an offence.

Clause 47 inserts a new section 133(2) to introduce a defence to certain offences under the Act which is available if, at the time of the conduct constituting the offence, the individual did not know or have any reason to believe that he or she had been made a bankrupt.

Clause 48 amends section 135 to change the minimum value of property referred to in paragraphs (b) and (d) to \$1,000 or such higher amount as may be prescribed.

Clause 49 inserts an additional mental element in section 138(1)(a), so that a bankrupt commits the offence only if the bankrupt makes a gift or transfer of, or charge on, his or her property with the intention of defrauding his or her creditors,

or of depriving his or her creditors of the property in the event that a bankruptcy order is made against the bankrupt.

Clause 50 amends section 139 to change the minimum value of property referred to in paragraph (a) to \$1,000 or such higher amount as may be prescribed.

Clause 51 amends section 141(1) —

- (a) to change the minimum amount of credit referred to in paragraph (a) to \$1,000 or such higher amount as may be prescribed;
- (b) to provide that the offence in paragraph (b) is committed by an individual who, whilst being an undischarged bankrupt, engages in any trade or business under a name other than that under which the individual was adjudged bankrupt, if the individual does not disclose, at the time a business transaction is entered into, the name under which the individual was adjudged bankrupt; and
- (c) to insert a new paragraph (c) to provide that an individual is guilty of an offence if the individual, whilst being an undischarged bankrupt, provides a guarantee, indemnity or security to the extent of \$1,000 (or such higher amount as may be prescribed) in respect of any credit obtained by another person, without informing the lender or creditor, at the time the guarantee, indemnity or security is provided, that the individual is an undischarged bankrupt.

Clause 52 amends section 143(1)(a) by replacing the words “2 years” with “12 months”, so that a bankrupt is guilty of an offence if the bankrupt, in the 12 months before the making of a bankruptcy application by or against the bankrupt, materially contributed to, or increased the extent of, the bankrupt’s insolvency by gambling or rash and hazardous speculations.

Clause 53 amends section 148(8) —

- (a) to provide that the new section 82A, so far as it relates to persons other than the deceased debtor whose estate is the subject of an administration order, and so far as it is applicable, is to apply to the case of an administration order; and
- (b) to provide that every reference to a bankrupt in the provisions referred to in section 148(8) is to, so far as the provisions are applicable to the case of an administration order, be read as a reference to the legal representative of a deceased debtor.

Clause 54 amends section 149 to provide for the taxation by the court, instead of by the prescribed officer, of all bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons.

Clause 55 amends section 157 to provide that the alternative modes of service in subsection (1) are to apply to the service of a summons issued by a court for the attendance of a person accused of an offence under the Act.

Clause 56 amends section 160 to provide that for all or any purposes of the Act, a person who lacks capacity may, in addition to what is provided for in paragraph (c), act by a donee of a lasting power of attorney granted by the person.

Clause 57 repeals section 161 as a creditor's right of access to books, papers or documents in the possession of the Official Assignee is specifically provided for in other provisions of the Act.

Clause 58 amends section 163 to specify the lists and records that the Official Assignee is required to maintain, and those lists or records maintained by the Official Assignee that any person may inspect or have access to upon the payment of the prescribed fee.

The new section 163(1B) also provides that where a bankruptcy has been annulled, subject to section 123A(3), no person may inspect or have access to any part of any record maintained by the Official Assignee which relates to the bankruptcy order. Under the new section 163(1C), where an individual's target contribution was paid in full before the individual's discharge from bankruptcy, and 5 years have lapsed after the date of discharge, no person (except the individual) may inspect or have access to any list or record relating to the bankruptcy order or to the discharge of the bankruptcy.

Clause 59 sets out savings and transitional provisions.

## 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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