

# Bankruptcy (Amendment) Bill

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**Bill No. 26/99.**

*Read the first time on 3rd August 1999.*

A BILL

*intituled*

An Act to amend the Bankruptcy Act (Chapter 20 of the 1996 Revised Edition) and to make related amendments to the Business Registration Act (Chapter 32 of the 1985 Revised Edition) and the Companies Act (Chapter 50 of the 1994 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  
5 1999 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### **Amendment of section 45**

2. Section 45 (4) of the Bankruptcy Act is amended by deleting the words “28 days” and substituting the words “42 days”.

### **Amendment of section 46**

3. Section 46 of the Bankruptcy Act is amended by inserting, 5  
immediately after subsection (2), the following subsection:

“(3) The Minister may make rules prescribing the scale of fees to be charged by nominees assisting debtors in respect of voluntary arrangements.”.

### **Repeal and re-enactment of section 95 and new section 95A** 10

4. Section 95 of the Bankruptcy Act is repealed and the following sections substituted therefor:

#### **“Creditors may accept composition or scheme by special resolution**

**95.—**(1) Where a bankruptcy order has been made, the 15  
creditors who have proved their debts may, if they think fit —

- (a) at a general meeting of creditors; or
- (b) in writing,

by special resolution, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the 20  
bankruptcy, or for a scheme of arrangement of the bankrupt’s affairs.

(2) A meeting under subsection (1) (a) shall be summoned by the Official Assignee by not less than 21 days’ notice.

(3) A special resolution in writing under subsection (1) (b) 25  
shall be sought by a notice from the Official Assignee giving the creditors 21 days to reply.

(4) Any notice under this section shall state generally the terms of the proposal and shall be accompanied by a report of the Official Assignee thereon. 30

(5) Where a special resolution is sought at a general meeting of creditors under subsection (1) (a), any creditor who has proved his debt may assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee in the

prescribed form, and attested by a witness, and sent or posted so as to be received by the Official Assignee not later than 3 days preceding the meeting, and a creditor so assenting or dissenting shall be taken as having been present and voting at that meeting.

(6) Where a special resolution is sought in writing under subsection (1) (b), any creditor who has proved his debt shall assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee, and sent or posted so as to be received by the Official Assignee not later than 21 days from the date of the Official Assignee's notice.

(7) The composition or scheme shall not be binding on the creditors unless the bankruptcy order to which it relates is annulled under section 95A.

(8) For the purposes of this section, "special resolution" means —

(a) in relation to a special resolution sought under subsection (1) (a), a resolution passed at a general meeting of creditors by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who do not attend personally or by proxy at the meeting as having voted in favour of the resolution; and

(b) in relation to a special resolution sought under subsection (1) (b), a resolution approved in writing by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who fail to assent to or dissent from the composition or scheme in writing as having assented to the resolution.

### **Annulment of bankruptcy order by certificate of Official Assignee where composition or scheme accepted by creditors**

**95A.**—(1) Where a composition or scheme is accepted by the creditors by a special resolution under section 95, the Official Assignee may annul the bankruptcy order by issuing a certificate of annulment.

(2) Notice of every annulment under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

(3) The Official Assignee shall, upon the application of a bankrupt or his creditor or any other interested person, issue to the applicant a copy of the certificate of annulment upon the payment of the prescribed fee.

(4) A certificate of annulment issued under subsection (1) shall be binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy. 5

(5) The provisions of a composition or scheme under this section may be enforced by the court on an application by any person interested, and any contravention of or failure to comply with an order of the court made on such an application shall be deemed to be a contempt of court. 10

(6) If default is made in payment of any instalment due under the composition or scheme, or if the court is satisfied that 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 that the acceptance of the proposal by the creditors was obtained by fraud, the court may, if it thinks fit, on an application by the Official Assignee or any creditor, annul the composition or scheme by revoking the certificate of annulment, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme. 15 20 25

(7) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment duly made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall revert to the bankrupt or, on an application by any person interested, vest in such person as the court may appoint and on such terms as the court may direct, and the court may include in its order such supplemental provisions as may be authorised by the rules.”. 30

## **Amendment of section 96**

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5. Section 96 of the Bankruptcy Act is amended by deleting the words “Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme” in the 1st and

2nd lines and substituting the words “A composition or scheme accepted under section 95”.

### **New section 123A**

6. The Bankruptcy Act is amended by inserting, immediately after  
5 section 123, the following section:

#### **“Annulment of bankruptcy order by certificate of Official Assignee where debts and expenses fully paid**

10 **123A.**—(1) The Official Assignee may issue a certificate annulling a bankruptcy order if it appears to the Official Assignee that, to the extent required by the rules, the debts which have been proved and the expenses of the bankruptcy have all, since the making of the order, been paid.

15 (2) Notice of every certificate of annulment under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

(3) The Official Assignee shall, upon an application of a bankrupt or his creditor or any other interested person, issue to the applicant a copy of the certificate of annulment upon the payment of the prescribed fee.

20 (4) A certificate of annulment issued under subsection (1) shall be binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy.

25 (5) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall revert to the bankrupt or, on an application by any person interested, vest in  
30 such person as the court may appoint and on such terms as the court may direct, and the court may include in its order such supplemental provisions as may be authorised by the rules.”.

### **Amendment of section 125**

35 7. Section 125 (2) of the Bankruptcy Act is amended by deleting the words “5 years” in paragraph (a) and substituting the words “3 years”.

## **Repeal and re-enactment of section 157**

**8.** Section 157 of the Bankruptcy Act is repealed and the following section substituted therefor:

### **“Service of summons, notice, etc.**

**157.**—(1) Where, by any provision of this Act or any rules made thereunder, any summons, notice or document is required or authorised to be served on any person, it may be served —

- (a) by delivering it to him;
- (b) by delivering it to any adult person residing at his usual or last known place of residence or employed at his last known place of business;
- (c) by leaving it at his usual or last known place of residence or business; or
- (d) by forwarding it by registered post in a cover addressed to him at his usual or last known place of residence or business or at any address furnished by him.

(2) In proving service by registered post, it shall be sufficient to prove that the registered cover containing the summons, notice or document was duly addressed and posted.”.

## **New section 165A**

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**9.** The Bankruptcy Act is amended by inserting, immediately after section 165, the following section:

### **“Composition of offences**

**165A.**—(1) The Official Assignee may, in his discretion, compound any such offence under this Act or any rules made thereunder as may be prescribed as being an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

(2) The Minister may make rules prescribing the offences which may be compounded.”.

## **Amendment to Business Registration Act**

**10.** Section 22 of the Business Registration Act (Cap. 32) is repealed and the following section substituted therefor:

### **“Restriction on undischarged bankrupt being manager**

5       **22.**—(1) Any person who, being an undischarged bankrupt, directly or indirectly, takes part in or is concerned in the management of any business carried on by any person required to be registered under this Act, without the leave of the High Court or the written permission of the Official Assignee, shall be  
10       guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) On an application by an undischarged bankrupt under subsection (1) to the High Court or the Official Assignee, as the  
15       case may be, the High Court or the Official Assignee may refuse the application or approve the application subject to such condition as the High Court or the Official Assignee, as the case may be, may impose.

(3) The leave of the High Court for the purpose of this section  
20       shall not be given unless notice of intention to apply therefor has been served on the Official Assignee and the Official Assignee is heard on the application.”.

## **Amendments to Companies Act**

**11.** The Companies Act (Cap. 50) is amended —

25       (a) by repealing section 148 and substituting the following section:

### **“Restriction on undischarged bankrupt being director or manager**

30       **148.**—(1) Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the leave of the Court or the  
35       written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine

not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) On an application by an undischarged bankrupt under subsection (1) to the Court or the Official Assignee, as the case may be, the Court or the Official Assignee may 5  
refuse the application or approve the application subject to such condition as the Court or the Official Assignee, as the case may be, may impose.

(3) The Court shall not give leave under this section unless notice of intention to apply therefor has been 10  
served on the Minister and on the Official Assignee and the Minister and the Official Assignee or either of them may be represented at the hearing of and may oppose the granting of the application.”; and

(b) by deleting “\$2,000” in section 254 (2) (a) and substituting 15  
“\$10,000”.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Bankruptcy Act (Cap. 20) to put in place measures in support of the Technopreneurship 21 initiative and to make related amendments to the Business Registration Act (Cap. 32) and the Companies Act (Cap. 50).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 45 (4) to extend the deadline for a bankrupt to make a proposal for voluntary arrangement from 28 days to 42 days.

Clause 3 inserts a new subsection (3) to section 46 to empower the Minister to regulate the fees for appointing nominees in voluntary arrangements so as to make them more accessible to debtors.

Clause 4 repeals and re-enacts section 95 and inserts a new section 95A.

The re-enacted section 95 seeks to reduce the existing 2-stage procedure to one stage for a bankrupt’s proposal for a composition or scheme of arrangement to be accepted by his creditors and to allow the special resolution for the acceptance of the proposal to be passed by the creditors by post instead of at a general meeting of creditors. The section also widens the circumstances in which a special resolution may be passed by creditors of a bankrupt. The new section 95A empowers the Official Assignee to annul a bankruptcy order by issuing a certificate of annulment

where a composition or scheme of arrangement has been accepted by the creditors by a special resolution under section 95.

Clause 5 makes a consequential amendment to section 96 to preserve the current effect of a composition or scheme of arrangement on the issuance of a certificate of annulment under the new section 95A.

Clause 6 inserts a new section 123A to empower the Official Assignee to issue a certificate of annulment to annul a bankruptcy order where a bankrupt has paid his debts in full to his creditors, so as to expedite his discharge from bankruptcy.

Clause 7 amends section 125 (2) to reduce the period of bankruptcy before the Official Assignee may issue a certificate of discharge from 5 years to 3 years.

Clause 8 repeals and re-enacts section 157 to widen the scope of substituted service by making it easier for the Official Assignee to serve any summons, notice or document on interested parties.

Clause 9 inserts a new section 165A to provide for the composition by the Official Assignee of offences under the Act or any rules made thereunder.

Clause 10 repeals and re-enacts section 22 of the Business Registration Act (Cap. 32) to allow the Official Assignee to be represented in any hearing of any application by an undischarged bankrupt for leave of the High Court to participate in any business and to empower the Official Assignee to give written permission to an undischarged bankrupt to participate in any business.

Clause 11 repeals and re-enacts section 148 of the Companies Act (Cap. 50) to empower the Official Assignee to give written permission to an undischarged bankrupt to act as a director of a corporation or to manage a corporation. The clause also amends section 254 (2) (a) of that Act to raise the debt limit for statutory demands on companies from \$2,000 to \$10,000.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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