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Insolvency, Restructuring and Dissolution (Amendment) Bill

Bill No. 37/2022.

Read the first time on 28 November 2022.

A BILL

i n t i t u l e d

An Act to amend the Insolvency, Restructuring and Dissolution Act 2018.

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 is the Insolvency, Restructuring and Dissolution (Amendment) Act 2023 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 36

2. Section 36 of the Insolvency, Restructuring and Dissolution Act 2018 (called in this Act the principal Act) is amended —

(a) by deleting the words “of the creditor” in subsection (1)(a) and substituting the words “under subsection (2) of the person”;

(b) by inserting, immediately after the word “creditor,” in subsection (1)(b), the words “the bankrupt,”;

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

“(2) A person 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, unless the Official Assignee has consented to be the trustee of the bankrupt’s estate.”; and

(d) by deleting subsection (4).

Amendment of section 41

3. Section 41 of the principal Act is amended —

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

“(b) where there is no agreement with the creditors’ committee or where there is no such committee —

(i) by a special resolution of the creditors whose debts have been admitted for the purpose of voting and who are present (in person or by proxy) and voting at a meeting to be convened by the trustee by a notice to each creditor in accordance with subsection (2); or 5

(ii) by agreement between the trustee in bankruptcy and all the creditors;”;
and 10

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

“(4) For the purposes of subsection (1)(b)(ii), a creditor is deemed to have agreed with the trustee in bankruptcy if — 15

(a) the trustee has notified the creditor in the prescribed manner of the remuneration sought by the trustee; and

(b) the creditor has not objected to the remuneration sought by the trustee in the prescribed manner and within the prescribed time.”. 20

Amendment of section 72B

4. Section 72B(1) of the principal Act is amended by deleting the words “3 years” and substituting the words “5 years”. 25

Amendment of section 250B

5. Section 250B(1) of the principal Act is amended by deleting the words “3 years” and substituting the words “5 years”.

New section 318A

6. The principal Act is amended by inserting, immediately after section 318, the following section: 30

“Proceedings on certain bankruptcy applications

318A. The Court hearing a bankruptcy application must not make a bankruptcy order on the application if —

- (a) no licensed insolvency practitioner has consented to act as the trustee of the bankrupt’s estate; and
- (b) the Official Assignee has not consented to act as the trustee of the bankrupt’s estate.”.

Amendment of section 333

7. Section 333(1) of the principal Act is amended —

- (a) by deleting the words “an account of”;
- (b) by inserting, immediately before the word “all” in paragraph (a), the words “an account of”;
- (c) by inserting, immediately after the word “specify” in paragraph (a), the words “, including a statement of specified particulars of the bankrupt’s current employment status and employment history if the Official Assignee so directs”; and
- (d) by inserting, immediately before the words “the moneys” in paragraph (b), the words “an account of”.

Amendment of section 384

8. Section 384 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) 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 consists of 12 months, the sales turnover of the undertaking in the relevant period; or

(b) if the relevant period is a business year that does not consist of 12 months or is a period mentioned in paragraph (b) of the definition of “relevant period”, the amount calculated using the formula $\frac{S}{B} \times 12$, where —

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(i) S is the sales turnover of the undertaking in the relevant period; and

(ii) B is the number of months in the relevant period;

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

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

“institutional creditor”, in relation to a bankrupt, means a creditor that is —

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(a) a banking corporation;

(b) a finance company licensed under the Finance Companies Act 1967;

(c) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act 2001; or

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(d) an undertaking that —

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

(ii) at the date of the bankruptcy application on which the bankrupt was adjudged bankrupt, has more than 200 employees;

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“relevant condition”, in relation to a bankrupt, 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;

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

(a) the business year of the undertaking immediately preceding the date of the bankruptcy application on which the bankrupt was adjudged bankrupt; or

(b) if there is no such business year, the period between the date of commencement of the business operations of the undertaking and the date of the bankruptcy application on which the bankrupt was adjudged bankrupt (both dates inclusive);

“sales turnover”, in relation to an undertaking, means the aggregate of the following amounts, after deducting sales rebates, goods and services tax and other taxes directly related to those 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;

“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, but excludes a body corporate or unincorporate established by or under any public Act to perform or discharge a public function.”.

Amendment of section 399

9. Section 399(1) of the principal Act is amended —

- (a) by deleting the words “papers including (but not limited to),” in paragraph (b) and substituting the words “papers, including (but not limited to);”
- (b) by deleting the words “property or affairs” in paragraph (b) and substituting the words “property, affairs, current employment status and employment history”; and
- (c) by deleting the words “dealings and property” in paragraph (c) and substituting the words “dealings, property, current employment status and employment history”.

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Amendment of section 412

10. Section 412 of the principal Act is amended —

- (a) by deleting the word “or” at the end of subsection (1)(b);
- (b) by deleting the full-stop at the end of paragraph (c) of subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

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“(d) the individual receives money or other consideration of at least \$10,000 (or such higher amount as may be prescribed) from a person that is advance payment for the supply of goods or services, without informing that person, at the time the money or other consideration is received, that the individual is an undischarged bankrupt, regardless of —

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- (i) whether the money or other consideration is received on the individual’s own account or on account of another person; and

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(ii) whether the money or other consideration received is full or partial payment for the supply of the goods or services.”; and

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

“(3) The Minister may, by order in the *Gazette*, exempt any person or class of persons from subsection (1)(d).”.

10 **Amendment of section 433**

11. Section 433 of the principal Act is amended —

(a) by deleting the word “and” at the end of subsection (1)(e);

(b) by deleting the full-stop at the end of paragraph (f) of subsection (1) and substituting the word “; and”, and by
15 inserting immediately thereafter the following paragraph:

“(g) a record of the particulars of the current employment status and employment history of every undischarged bankrupt, as provided to the Official Assignee under section 332(3)(a)(iv) or (4)(c), 333(1)(a) or 399(1)(b) or (c).”; and

(c) by inserting, immediately after the words
20 “subsection (1)(a) to (e)” in subsection (2), the words “and (g)”.

25 **Amendment of section 525**

12. Section 525 of the principal Act is amended —

(a) by inserting, immediately before the words “Parts 3 and 13 to 22 do not” in subsection (1), the words “Subject to subsection (7).”; and

(b) by inserting, immediately after subsection (6), the
30 following subsection:

“(7) Despite subsection (1) —

(a) section 38 of the repealed Act as in force immediately before 30 July 2020 applies to or in relation to a trustee in bankruptcy of an estate of a bankrupt who is a bankrupt pursuant to a bankruptcy order made under the repealed Act (including the repealed Act as applied by subsection (1)), as if paragraph (b) of subsection (1) of that section were substituted with the following paragraph: 5 10

“(b) where there is no agreement with the creditors’ committee or where there is no such committee — 15

(i) by a special resolution of the creditors whose debts have been admitted for the purpose of voting and who are present (in person or by proxy) and voting at a meeting to be convened by the trustee by a notice to each creditor in accordance with subsection (2); or 20 25

(ii) by agreement between the trustee in bankruptcy and all the creditors, each of whom is deemed to have agreed with the trustee in bankruptcy if — 30

(A) the trustee has notified the creditor, in the manner prescribed in regulations made for the purposes of 35

section 41(4) of the
Insolvency,
Restructuring and
Dissolution Act 2018,
of the remuneration
sought by the trustee;
and

(B) the creditor has not
objected, in the
manner and within
the time prescribed
by those regulations,
to the remuneration
sought by the
trustee;”;

(b) section 82 of the repealed Act as in force
immediately before 30 July 2020 applies to
or in relation to an undischarged bankrupt
who is a bankrupt pursuant to a bankruptcy
order made under the repealed Act
(including the repealed Act as applied by
subsection (1)), as if paragraph (a) of
subsection (1) of that section were
substituted with the following paragraph:

“(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,
including a statement of
specified particulars of the
bankrupt’s current employment
status and employment history
if the Official Assignee so
directs; and”;

(c) section 129 of the repealed Act as in force immediately before 30 July 2020 applies to or in relation to a bankrupt who is a bankrupt pursuant to a bankruptcy order made under the repealed Act (including the repealed Act as applied by subsection (1)), as if paragraphs (b) and (c) of subsection (1) of that section were substituted with the following paragraphs: 5

“(b) deliver to the Official Assignee all books, records, documents, writings and papers, including (without restricting the generality of the foregoing) any documents or deeds of title, insurance policies and tax records and returns and copies thereof in any way relating to his property, affairs, current employment status and employment history; 10 15 20

(c) at such time and place as may be fixed by the Official Assignee, attend before the Official Assignee and answer such questions as the Official Assignee may put to him with respect to his affairs, dealings, property, current employment status and employment history and the causes of his failure;” 25 30

(d) section 163(1) and (1A) of the repealed Act as in force immediately before 30 July 2020 applies to the Official Assignee in relation to every undischarged bankrupt who is a bankrupt pursuant to a bankruptcy order made under the repealed Act (including the repealed Act as applied by subsection (1)), subject to the following modifications:

(i) the following paragraph appears after paragraph (d) of section 163(1) of the repealed Act as in force immediately before 30 July 2020:

“(da) a record of the particulars of the employment status and employment history of every undischarged bankrupt, as provided to the Official Assignee under section 81(3)(a)(iv) or (4)(c), 82(1)(a) or 129(1)(b) or (c);”;

(ii) the reference in subsection (1A) of section 163 of the repealed Act as in force immediately before 30 July 2020 to subsection (1)(a) to (e) of that section includes a reference to subsection (1)(da) of that section; and

- (e) section 412(1)(d) and (3) applies to or in relation to an undischarged bankrupt who is a bankrupt pursuant to a bankruptcy order made under the repealed Act (including the repealed Act as applied by subsection (1)).”.

Saving and transitional provisions

13.—(1) Despite section 2(a), section 36(1)(a) of the principal Act as in force immediately before the date of commencement of section 2(a) continues to apply where the Court makes a bankruptcy order on a bankruptcy application made before that date.

(2) Despite section 2(b), section 36(1)(b) of the principal Act as in force immediately before the date of commencement of section 2(b) continues to apply in relation to a bankruptcy order —

(a) that was made on a bankruptcy application that was made before that date; and

(b) that has not been discharged or annulled.

(3) Section 318A of the principal Act (as inserted by section 6) does not apply where the Court hears a bankruptcy application made before the date of commencement of section 6.

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

EXPLANATORY STATEMENT

This Bill seeks to amend the Insolvency, Restructuring and Dissolution Act 2018 (the Act) for the following purposes:

- (a) to amend provisions relating to the appointment of a person other than the Official Assignee as a trustee in bankruptcy;

- (b) to amend provisions relating to the remuneration of a trustee in bankruptcy;
- (c) to extend the periods of application of Parts 5A and 10A of the Act;
- (d) to provide that the General Division of the High Court (the Court) must not make a bankruptcy order if no licensed insolvency practitioner has consented to act as the trustee of the bankrupt's estate, and the Official Assignee has not consented to act as the trustee of the bankrupt's estate;
- (e) to amend provisions relating to information of a bankrupt that may be obtained by, or that must be provided to, the Official Assignee;
- (f) to make it an offence for a bankrupt not to disclose his or her bankruptcy status when receiving certain advance payments;
- (g) to amend the saving and transitional provisions in the Act relating to the repeal of the Bankruptcy Act (Cap. 20, 2009 Revised Edition).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 36.

Section 36(1)(a) is amended such that the Court may, when making a bankruptcy order, appoint a person other than the Official Assignee to be the trustee of the bankrupt's estate, regardless of whether the application for bankruptcy was made by a creditor or a debtor. Section 36(1)(b) is amended such that, after a bankruptcy order is made, the bankrupt may apply to the Court for the appointment of a person other than the Official Assignee to be the trustee of a bankrupt's estate.

Section 36(2) is amended to require a person applying for a bankruptcy order to apply to the Court for the appointment of a person other than the Official Assignee to be the trustee of the bankrupt's estate, unless the Official Assignee has consented to be the trustee of the bankrupt's estate (under section 37, such a person would be a licensed insolvency practitioner who has consented to being appointed as a trustee in bankruptcy).

Section 36(4) is deleted because it is no longer necessary.

Clause 3 amends section 41 to provide that, in relation to the remuneration of a trustee in bankruptcy, where there is no agreement with the creditors' committee or where there is no such committee, the remuneration of a trustee in bankruptcy may be determined by agreement between the trustee in bankruptcy and all the creditors (as an alternative to a special resolution of the creditors). Under the new section 41(4), for the purposes of such an agreement between the trustee in bankruptcy and all the creditors, a creditor is deemed to have agreed if the creditor does not object to a remuneration proposed by the trustee in bankruptcy within a prescribed time and in a prescribed manner.

Clauses 4 and 5 amend sections 72B and 250B to extend the periods of application of Parts 5A and 10A of the Act, respectively, from 3 years to 5 years (beginning on 29 January 2021).

Clause 6 inserts a new section 318A, which provides that the Court must not make a bankruptcy order if no licensed insolvency practitioner has consented to act as the trustee of the bankrupt's estate, and the Official Assignee has not consented to act as the trustee of the bankrupt's estate.

Clause 7 amends section 333 to provide that an undischarged bankrupt must provide a statement of specified particulars of the bankrupt's current employment status and employment history to the Official Assignee if so directed by the Official Assignee.

Clause 8 amends section 384 to make amendments consequential to the deletion (by clause 2) of section 36(4).

Clause 9 amends section 399(1)(b) to require a bankrupt to deliver to the Official Assignee all books, records, documents, writings and papers relating to the bankrupt's current employment status and employment history. Clause 9 also amends section 399(1)(c) to require a bankrupt to answer questions put by the Official Assignee with respect to the bankrupt's current employment status and employment history.

Clause 10 amends section 412 to make it an offence for an undischarged bankrupt to receive money or other consideration of at least \$10,000 (or such higher amount as may be prescribed) from a person that is advance payment for the supply of goods or services, without informing that person, at the time the money or other consideration is received, that the individual is an undischarged bankrupt. It is immaterial whether the individual receives the money or other consideration on the individual's own account or on account of another person. It is also immaterial whether the money or other consideration is received as full or partial payment. The Minister may exempt any person or class of persons from the new offence by order in the *Gazette*.

Clause 11 amends section 433 to require the Official Assignee to maintain a record of the particulars of the current employment status and employment history of every undischarged bankrupt, as provided to the Official Assignee under certain provisions of the Act that require those particulars to be provided to the Official Assignee. The Official Assignee may allow any person to inspect or have access to those records, on payment of the prescribed fee.

Clause 12 amends section 525, which applies certain provisions of the repealed Bankruptcy Act (Cap. 20, 2009 Revised Edition) in relation to certain bankruptcies and bankrupts, including bankruptcies that result from, and persons made bankrupt as a result of, a bankruptcy application made before 30 July 2020. Section 525 also excludes the application of certain provisions of the Act in relation to those bankruptcies and bankrupts. The amendments to

section 525 are intended to modify certain provisions of the repealed Bankruptcy Act for the purposes of their application to those bankruptcies and bankrupts, and to apply the new section 412(1)(*d*) and (3) to those bankruptcies and bankrupts.

Clause 13 empowers the Minister to make provisions of a saving or transitional nature for any provision of the Bill for a period of 2 years after the date of commencement of any provision of the Bill.

EXPENDITURE OF PUBLIC MONEY

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