

A BILL

i n t i t u l e d

An Act to amend the Bankruptcy Act 1967.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Bankruptcy (Amendment) Act 2016.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Substitution of long title

2. The Bankruptcy Act 1967 [*Act 360*], which is referred to as the “principal Act” in this Act, is amended by substituting for the long title the following long title:

“An Act relating to the insolvency and bankruptcy of an individual and a firm and for connected matters.”.

General amendment

3. The principal Act is amended—

(a) by substituting for the word “receiving”, wherever appearing in sections 4, 10, 13, 17, 40, 41, 43, 44, 50, 51, 54, 73, 84, 93, 100, 110, 111, 112, 113, 115, 121, 122 and 125, Schedule A and Schedule C, the word “bankruptcy”.

(b) by substituting for the word “debtor”, wherever appearing in sections 17, 71, 115, 116 and 118, Schedule A and Schedule C, the word “bankruptcy”.

Amendment of section 1

4. Subsection 1(1) of the principal Act is amended by substituting for the word “Bankruptcy” the word “Insolvency”.

Reference to Bankruptcy Act 1967

5. All references to the Bankruptcy Act 1967 in any written law or document shall, when this Act comes into operation, be construed as references to the Insolvency Act 1967.

Amendment of section 2

6. Section 2 of the principal Act is amended—

(a) in the definition of “available act of bankruptcy”, by substituting for the word “receiving” the word “bankruptcy”;

(b) by substituting for the definition of “bankruptcy petition” the following definition:

‘ “bankruptcy petition” means a creditor’s petition or a debtor’s petition for bankruptcy;’;

(c) by deleting the definition of “deed of arrangement”;

(d) by inserting after the definition of “ordinary resolution” the following definition:

‘ “prescribed” means prescribed by the Minister by rules made under this Act;’; and

(e) in the definition of “special resolution”, by inserting after the words “meeting of creditors” the words “, or in writing,”.

Amendment of heading of Part I

7. The principal Act is amended by substituting for the heading of Part I the following heading:

“VOLUNTARY ARRANGEMENT AND PROCEEDINGS IN BANKRUPTCY”.

New sections 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O, 2P and 2Q

8. The principal Act is amended by inserting after the heading of Part I the following sections:

“Voluntary Arrangement

Voluntary arrangement

2A. For the purposes of sections 2A to 2Q, “voluntary arrangement” means a composition in satisfaction of a debtor’s debt or a scheme of arrangement of a debtor’s affairs.

Non-application

2B. Sections 2A to 2Q shall not apply to an undischarged bankrupt and a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2012 [*Act 743*].

Intention to propose voluntary arrangement

2c. (1) A debtor may propose a voluntary arrangement to his creditors at any time before he is adjudged bankrupt.

(2) A debtor who intends to propose a voluntary arrangement shall—

- (a) appoint a nominee to act in relation to the voluntary arrangement or for the purpose of supervising the implementation of the voluntary arrangement; and
- (b) make an application as prescribed to the court for an interim order of voluntary arrangement and submit a copy of the application to the Director General of Insolvency.

(3) A firm shall not propose to his creditors a voluntary arrangement, unless the firm or a partner of the firm has obtained the consent from all or majority of the partners to enter into a voluntary arrangement.

Interim order

2D. (1) Upon receiving the application referred to in paragraph 2C(2)(b), the court shall make an interim order for voluntary arrangement.

(2) Before the making of an interim order under subsection (1), the court shall satisfy itself that—

- (a) during the period of twelve months immediately preceding the date of the filing of such application, no previous application has been filed by the debtor; and
- (b) the nominee appointed under paragraph 2C(2)(a) is willing to act in relation to the proposal.

(3) An interim order referred to in subsection (1) shall be valid for a period of ninety days from the date the order is made and such period shall not be extended.

(4) The debtor shall notify the nominee the commencement date of the period within seven days from the date of the interim order.

(5) After being notified under subsection (4), the nominee shall, within seven days from such notification, notify all of the debtor's creditors of the fact of the commencement of the interim order.

Effect of interim order

2E. An interim order made under subsection 2D(1) shall have the following effects:

- (a) no bankruptcy petition may be made or proceeded with against the debtor; and
- (b) no other proceedings, execution or other legal process may be commenced or continued against the debtor without leave of the court.

Nominee

2F. (1) No person shall act as a nominee unless he is registered with the Director General of Insolvency.

(2) Notwithstanding subsection (1), an officer of a body corporate established under the Central Bank of Malaysia Act 2009 [*Act 701*] for the purposes of providing financial counselling, debt management services and education on financial management may act as a nominee but is not required to register with the Director General of Insolvency under subsection (1).

(3) The nominee shall have the powers and duties as prescribed.

Registration of nominee

2G. (1) For the purposes of subsection 2F(1), the Director General of Insolvency may approve an application for registration of a nominee subject to the following conditions:

- (a) the applicant is—
 - (i) a registered chartered accountant under the Accountants Act 1967 [*Act 94*];

- (ii) an advocate and solicitor; or
 - (iii) such other person as the Minister may, on the recommendation of the Director General of Insolvency, prescribe by order published in the *Gazette*;
- (b) the applicant is not an undischarged bankrupt;
- (c) the applicant does not assign his estate for the benefit of his creditors or is not under a voluntary arrangement with his creditors;
- (d) the applicant has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a nominee under this Part, and in particular, but not limited to, an offence involving fraud or dishonesty; and
- (e) the applicant is not suffering from any mental disorder under the Mental Health Act 2001 [*Act 615*].
- (2) The Minister may prescribe the procedures and fees for the registration of nominees.
- (3) Any person who acts as a nominee without being registered with the Director General of Insolvency shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding fifteen thousand ringgit or to both.
- (4) Any person who continues to act as a nominee after the expiry of his registration as nominee shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit or to both.

Register of nominees

2H. The Director General of Insolvency shall keep and maintain a register of nominees registered under section 2G.

Meeting of creditors to approve debtor's proposal

21. (1) Where an interim order has been made, the nominee shall, before the expiry of the interim order referred to in subsection 2D(3), summon every of the debtor's creditor to a meeting by giving a prescribed notice to such creditors as to approve the debtor's proposal for a voluntary arrangement.

(2) For the purposes of enabling the nominee to prepare the debtor's proposal, the debtor shall submit to the nominee—

(a) where the debtor is an individual, a statement of his affairs which contains—

(i) the particulars of the debtor's assets, creditors, debts and other liabilities; and

(ii) such other information as may be prescribed; or

(b) where the debtor is a firm, a statement of the firm's affairs which contains—

(i) the particulars of the assets, creditors, debts and other liabilities of the firm and of each partner of the firm; and

(ii) such other information as may be prescribed.

(3) The meeting summoned under subsection (1) or any subsequent meeting may, by special resolution, resolve to approve the proposed voluntary arrangement with or without modification but—

(a) no modification shall be made to alter the proposal to such extent that the proposal ceases to be a proposal for a voluntary arrangement by the debtor;

(b) the meeting shall not approve the proposed voluntary arrangement with any modification unless the debtor has consented to such modification;

(c) the meeting shall not approve any proposal or any modification to the proposal which affects the right

of a secured creditor of the debtor to enforce his security, except with the concurrence of the secured creditor concerned; and

- (d) the meeting shall not, without the concurrence of the preferential creditor concerned, approve any proposal or any modification to the proposal under which—
- (i) any debt of the debtor, not being a preferential debt, is to be paid in priority to any preferential debt of the debtor; or
 - (ii) any preferential debt of the debtor is to be paid in relation to any other preferential debt of the debtor other than in accordance with section 43.

(4) Every meeting shall be conducted in accordance with the prescribed rules.

(5) Any debtor who makes any false representation or commits any other fraud for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both.

Report of decisions to court

2J. (1) After the conclusion of the meeting of creditors summoned under section 2I, the nominee shall, as soon as may be, report the decision of the meeting to the court and serve a copy of the report containing the terms of the voluntary arrangement under the seal of the court to the debtor and creditors.

(2) Where the meeting of creditors has declined to approve the debtor's proposal, the court may set aside any interim order which is in force in relation to the debtor.

Effect of approval

2K. (1) Where the meeting of creditors summoned under section 2I has approved the proposed voluntary arrangement with or without modifications, the approved voluntary arrangement shall—

- (a) take effect as if made by the debtor at the meeting; and
- (b) bind every person who had notice of and was entitled to vote at the meeting, whether or not he was present or represented at the meeting, as if he were a party to the arrangement.

(2) Subject to section 2L, the interim order in force in relation to the debtor shall cease to have effect at the end of thirty days from the date the report was sealed by the court under section 2J.

(3) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (2), that petition shall be deemed to have been dismissed, unless the court orders otherwise.

(4) During the effective period of a voluntary arrangement, the debtor shall not enter into a credit facility, unless all the creditors in the voluntary arrangement agree and the person giving the credit is informed that the debtor has entered into a voluntary arrangement under this Act.

Review of meeting's decision

2L. (1) Any debtor, nominee or person entitled to vote at a meeting of creditors summoned under section 2I may apply to the court for a review of the decision of the meeting on the ground that—

- (a) the voluntary arrangement approved by the meeting unfairly prejudices the interests of the debtor or any of the debtor's creditors; or

(b) there has been some material irregularity at or in relation to the meeting.

(2) Upon hearing an application under subsection (1), the court may—

(a) revoke or suspend any approval given by the meeting;
or

(b) direct any person to summon further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling under paragraph (1)(b), to reconsider the original proposal of the debtor.

(3) No application under this section shall be made after thirty days the decision of the meeting of creditors is reported to the court under section 2J.

(4) Where at any time after giving the direction under paragraph (2)(b) the court is satisfied that the debtor does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(5) Upon giving a direction under paragraph (2)(b), the court may extend the validity of any interim order in relation to the debtor for such period not exceeding thirty days.

(6) Upon giving a direction or revoking or suspending an approval under this section, the court may give such supplemental directions as the court thinks fit and, in particular, directions with respect to—

(a) things done since the meeting under any voluntary arrangement approved by the meeting; and

(b) things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when the things were done.

(7) Except in pursuance of this section, no approval given at a meeting of creditors summoned under section 2I shall be invalidated by reason only of any irregularity at or in relation to the meeting.

Replacement of nominee before voluntary arrangement concludes

2M. (1) The debtor may, at any time before the voluntary arrangement is concluded, replace the nominee with another nominee.

(2) Where a nominee is replaced under this section, an interim order made under subsection 2D(1) shall continue to have effect and the validity period of the interim order referred to in subsection 2D(3) shall not be extended notwithstanding such replacement.

(3) A nominee who replaces another nominee shall have all the powers of the previous nominee and shall continue to carry out the duties of the previous nominee and the previous nominee shall give such assistance as may be required.

Implementation and supervision of approved voluntary arrangement

2N. (1) Where a voluntary arrangement approved by a meeting of creditors summoned under section 2I has taken effect, the nominee shall supervise the implementation of the voluntary arrangement.

(2) If the debtor or any of his creditors is dissatisfied by any act, omission or decision of the nominee in his supervision of the implementation of the voluntary arrangement, the debtor or creditor may apply to the court to review that act, omission or decision.

(3) Upon hearing of an application under subsection (2), the court may—

- (a) confirm, reverse or modify any act or decision of the nominee; or
- (b) give such directions to the nominee or make such order as the court thinks fit.

(4) The nominee may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) If—

- (a) it is expedient to appoint a person to carry out the functions of the nominee; and
- (b) it is inexpedient, difficult or impracticable for such an appointment to be made without the assistance of the court,

the court may make an order appointing a person who is qualified to act as a nominee, either in substitution for the existing nominee or to fill a vacancy.

Consequence of failure by debtor to comply with voluntary arrangement

2o. (1) Where a debtor fails to comply with any of his obligations under a voluntary arrangement, any creditor bound by the voluntary arrangement may file or proceed with a bankruptcy petition against the debtor.

(2) For the purposes of commencing or proceeding with the bankruptcy petition against the debtor, the amount of debt specified in the petition shall deduct any amount of debts that has been settled during voluntary arrangement.

Cessation of voluntary arrangement

2p. A voluntary arrangement under this Act shall cease upon the death of the debtor.

Fees of nominee

2q. The Minister may prescribe the scale of fees to be charged by nominees in respect of voluntary arrangement.”.

Amendment of section 3

9. Section 3 of the principal Act is amended—

- (a) in subsection (1), by deleting paragraph (h);
- (b) in subsection (2), by substituting for the words “in the prescribed manner” the words “personally to a debtor”; and
- (c) by inserting after subsection (2) the following subsections:

“(2A) Notwithstanding subsection (2), the court may make an order for substituted service of a bankruptcy notice as prescribed if the creditor can prove to the satisfaction of the court that the debtor, with intent to defeat, delay or evade personal service—

- (a) departs out of Malaysia or being out of Malaysia remains out of Malaysia; or
- (b) departs from his dwelling house or otherwise absents himself, or secludes himself in his house or closes his place of business.

(2B) An application for an order for substituted service shall state the facts on which the application is founded.

(2C) A substituted service of a bankruptcy notice, in relation to which an order is made under this section, is effected by taking such steps as the court may direct to bring the bankruptcy notice to the person to be served.”.

Amendment of subheading

10. The principal Act is amended by substituting for the subheading of “*Receiving Order*” appearing before section 4 the following subheading:

“*Bankruptcy Order*”.

Substitution of section 4

11. The principal Act is amended by substituting for section 4 the following section:

“Bankruptcy order

4. The court may, on a bankruptcy petition being presented by a creditor under section 6 or by a debtor under section 7, make a bankruptcy order.”.

Amendment of section 5

12. Section 5 of the principal Act is amended—

(a) in paragraph (1)(a), by substituting for the word “thirty” the word “fifty”;

(b) in subsection (3), by substituting for subsection (3) the following subsection:

“(3) A petitioning creditor shall not be entitled to commence any bankruptcy action—

(a) against a social guarantor; and

(b) against a guarantor other than a social guarantor unless the petitioning creditor has obtained leave from the court.”; and

(c) by inserting after subsection (3) the following subsections:

“(4) Before granting leave referred to in paragraph (3)(b), the court shall satisfy itself that the petitioning creditor has exhausted all modes of execution and enforcement to recover debts owed to him by the debtor.

(5) Where the petition is presented against a guarantor pursuant to subsection (4), a petitioning creditor shall state in his petition the particulars of his borrower.

(6) For the purposes of subsection (4), modes of execution and enforcement include seizure and sale, judgment debtor summon, garnishment and bankruptcy or winding up proceedings against the borrower.

(7) If the petitioning creditor fails to comply with the requirements of this section, the court shall dismiss the petition.”.

Amendment of section 6

13. Section 6 of the principal Act is amended—

(a) by substituting for the words “as prescribed” the words “personally to a debtor”;

(b) by inserting after subsection (1) the following subsections:

“(1A) Notwithstanding subsection (2), the court may make an order for substituted service of a creditor’s petition as prescribed if the creditor can prove to the satisfaction of the court that the debtor, with intent to defeat, delay or evade personal service—

(a) departs out of Malaysia or being out of Malaysia remains out of Malaysia; or

(b) departs from his dwelling house or otherwise absents himself, or secludes himself in his house or closes his place of business.

(1B) An application for an order for substituted service shall state the facts on which the application is founded.

(1C) A substituted service of a creditor’s petition, in relation to which an order is made under this section, is effected by taking such steps as the court may direct to bring the creditor’s petition to the person to be served.”; and

- (c) in subsections (2) and (6), by substituting for the word “receiving” the word “bankruptcy”.

Amendment of section 7

14. Section 7 of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “receiving” the word “bankruptcy”; and
- (b) by inserting after subsection (1) the following subsection:

“(1A) Where a debtor’s petition is presented on behalf of a firm in the firm’s name, the court shall not adjudge a person who is a member of the firm bankrupt unless such person is proved to the satisfaction of the court to be a partner by his admission or by evidence on oath.”.

Amendment of section 8

15. Section 8 of the principal Act is amended—

- (a) by substituting for the word “receiving” wherever appearing the word “bankruptcy”;
- (b) by substituting for subsection (1) the following subsection:

“(1) On the making of a bankruptcy order—

- (a) except as provided by this Act, no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the bankrupt in respect of the debt, or shall proceed with or commence any action or other legal proceeding in respect of such debt unless with the leave of the court and on such terms as the court may impose; and

- (b) all the property of the bankrupt shall become divisible among his creditors and shall vest in the Director General of Insolvency and the Director General of Insolvency shall be the receiver, manager, administrator and trustee of all properties of the bankrupt.”; and
- (c) in subsection (2A), by substituting for the word “six” the word “twelve”.

Deletion of section 9

16. The principal Act is amended by deleting section 9.

Amendment of section 12

17. Section 12 of the principal Act is amended—
- (a) in subsection (1), by substituting for the words “thereof accordingly to act until the first meeting of creditors,” the words “to act accordingly”; and
 - (b) by deleting subsection (2).

Deletion of section 14

18. The principal Act is amended by deleting section 14.

Substitution of subheading

19. The principal Act is amended by substituting for the subheading of “*Proceedings consequent on Receiving Order*” appearing before section 15 the following subheading:

“*Proceedings Consequent on Bankruptcy Order*”.

Amendment of section 15

20. Section 15 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the word “receiving” the word “bankruptcy”;
- (ii) by deleting the words “, or whether it is expedient that the debtor be adjudged bankrupt,”; and
- (iii) by substituting for the word “debtor’s” the word “bankrupt’s”; and

(b) in subsection (1A), by substituting for the word “debtor” the word “bankrupt”.

Amendment of section 16

21. Section 16 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**Debtor’s**” the word “**Bankrupt’s**”;

(b) in subsection (1)—

- (i) by substituting for the word “receiving” the word “bankruptcy”; and
- (ii) by substituting for the words “debtor’s assets” the words “his assets”; and

(c) in subsection (3)—

- (i) by substituting for the word “debtor” the word “bankrupt”; and
- (ii) by deleting the words “, and the court may on the application of the Director General of Insolvency or of any creditor adjudge him bankrupt”.

Amendment of subheading

22. The principal Act is amended by substituting for the subheading of “*Public Examination of Debtor*” appearing before section 17 the following subheading:

“*Public Examination of Bankrupt*”.

Amendment of section 17

23. Section 17 of the principal Act is amended—

- (a) by substituting for the word “debtor” wherever appearing the word “bankrupt”;
- (b) by substituting for the word “receiving” wherever appearing the word “bankruptcy”; and
- (c) in subsection (2), by substituting for the word “debtor’s” the word “bankrupt’s”.

Amendment of section 18

24. The principal Act is amended—

- (a) by substituting for the word “debtor” wherever appearing the word “bankrupt”;
- (b) by substituting for subsection (1) the following subsection:

“(1) Where a debtor is adjudged bankrupt, the creditors may, at any time after the adjudication by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to the creditor under the bankruptcy, or for a scheme of arrangement of the bankrupt’s affairs.”;
- (c) in subsection (2), by substituting for the words “resolution passed by a majority in number, representing at least three-fourths in value of all the creditors who have proved,” the words “special resolution”;

(d) in subsection (4), by deleting the words “and shall not be held until after the public examination of the debtor is concluded”;

(e) by inserting after subsection (10) the following subsection:

“(10A) If the court approves the composition or scheme under this section, the court may make an order annulling the bankruptcy order and vesting the property of the bankrupt in the bankrupt or in such other person as the court appoints, on such terms and subject to such conditions, if any, as the court orders.”; and

(f) by deleting subsections (12), (16), (17) and (19).

Deletion of sections 19, 20, 21, 22 and 23

25. The principal Act is amended by deleting sections 19, 20, 21, 22 and 23.

Substitution of subheading

26. The principal Act is amended by substituting for the subheading “*Adjudication of Bankruptcy*” appearing before section 24 the following subheading:

“*Consultative Committee*”.

Deletion of sections 24 and 26

27. The principal Act is amended by deleting sections 24 and 26.

Amendment of section 27

28. Section 27 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**debtor**” the word “**bankrupt**”;

- (b) in subsection (1), by substituting for the word “receiving” the word “bankruptcy”;
- (c) in subsection (2), by substituting for the word “He” the words “A bankrupt”;
- (d) in subsection (3), by substituting for the words “He shall, if adjudged bankrupt,” the words “A bankrupt shall”;
and
- (e) in subsection (4), by substituting for the word “debtor” the word “bankrupt”.

Amendment of section 28

29. Paragraph 28(1)(c) of the principal Act is amended by deleting the words “or after a receiving order is made against him”.

Amendment of section 29

30. Subsection 29(2) of the principal Act is amended by deleting the words “or under section 9”.

Substitution of section 30

31. The principal Act is amended by substituting for section 30 the following section:

“Redirection of letters

30. Where a debtor has been adjudged bankrupt, the court, on the application of the Director General of Insolvency, may order that for a period not exceeding three months letters posted to the bankrupt at any place mentioned in the order for redirection be redirected, sent or delivered by the postal authorities to the Director General of Insolvency or otherwise as the court directs, and the same shall be done accordingly.”.

Amendment of section 31

32. Section 31 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**debtor’s**” the word “**bankrupt’s**”;
- (b) in subsection (1), by substituting for the words “after a receiving order has been made against a debtor” the words “after a debtor has been adjudged bankrupt”; and
- (c) by substituting for the word “debtor” wherever appearing the word “bankrupt”.

Amendment of section 32

33. Section 32 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by substituting for the words “receiving order has been made against a debtor” the words “debtor has been adjudged bankrupt”; and
 - (ii) by substituting for the word “the debtor” the word “the bankrupt”; and
- (b) in subsection (2), by substituting for the words “the debtor” the words “the bankrupt”.

Amendment of section 33

34. Section 33 of the principal Act is amended—

- (a) in subsection (6), by substituting for the word “receiving” wherever appearing the word “bankruptcy”; and

(b) in subsection (12)—

- (i) in paragraph (a), by substituting for the word “adjudication” the words “bankruptcy order”; and
- (ii) in paragraph (d), by substituting for the word “receiving” the word “bankruptcy”.

Amendment of section 33A

35. Subsection 33A(2) of the principal Act is amended by substituting for the words “the receiving order and the order by which he was adjudged bankrupt were made” the words “of the bankruptcy order”.

Amendment of section 33B

36. Section 33B of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Notwithstanding subsection (2), no objection shall be made against—

- (a) a bankrupt who was adjudged bankrupt by reason of him being a social guarantor;
- (b) a bankrupt who is registered as a person with disability under the Persons with Disabilities Act 2008 [*Act 685*];
- (c) a deceased bankrupt; and
- (d) a bankrupt suffering from a serious illness certified by a Government Medical Officer.”.

New section 33c

37. The principal Act is amended by inserting after section 33b the following section:

“Automatic discharge

33c. (1) A bankrupt shall be discharged from bankruptcy under this section on the expiration of three years from the date of the submission of the statement of affairs under subsection 16(1)—

- (a) if the bankrupt has achieved amount of target contribution of his provable debt; and
- (b) if the bankrupt has complied with the requirement to render an account of moneys and property to the Director General of Insolvency under paragraph 38(1)(b).

(2) Contribution of the bankrupt’s provable debt referred to in paragraph (1)(a) shall be determined by the Director General of Insolvency and the Director General of Insolvency shall take into account—

- (a) the provable debt of the bankrupt;
- (b) the current monthly income of the bankrupt;
- (c) the extent to which the current monthly income of the bankrupt’s spouse may contribute to the maintenance of the bankrupt’s family;
- (d) 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;

- (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
 - (vi) the period of time during which the bankrupt is likely to be capable of earning a meaningful income;
- (e) the reasonable expenses for the maintenance of the bankrupt and the bankrupt's family; and
- (f) the property of the bankrupt under paragraph 48(1)(b) which may be realized during the period of three years.

(3) For the purposes of a discharge under this section, the Director General of Insolvency shall serve a notice of the discharge to each of his creditors not less than six months before the expiration of the period referred to in subsection (1), but such notice shall not be served earlier than a year before the expiration of such period.

(4) A creditor who wishes to object to the discharge under this section shall, within twenty-one days from the date the notice in subsection (3) is served on him, make an application as prescribed to the court for an order to suspend the discharge under this section, but no objection shall be made except on the following grounds:

- (a) that the bankrupt has committed any offence under this Act or under section 421, 422, 423 or 424 of the Penal Code;
- (b) that the discharge under this section would prejudice the administration of the bankrupt's estate; or

(c) that the bankrupt has failed to co-operate in the administration of estate.

(5) A creditor who fails to file an application in accordance with subsection (4) is deemed to have no objection to the discharge.

(6) A notice of application under subsection (4) shall be served on the Director General of Insolvency and the bankrupt at least fourteen days before the date of hearing of the application and the court shall hear the Director General of Insolvency and the bankrupt before making an order on the application.

(7) Upon an application made under subsection (4), the court may, if it thinks just and expedient—

(a) dismiss the application and approve the discharge under this section; or

(b) suspend the discharge under this section for a period of two years.

(8) Where the court makes an order under paragraph (7)(b), the bankrupt shall—

(a) continue to fulfil his duties and obligations under this Act during that period; and

(b) be discharged automatically at the end of the two years' period.

(9) The Director General of Insolvency shall, upon the application of any interested person and payment of the prescribed fee, issue a certificate of automatic discharge to the applicant—

(a) upon the making of an order under paragraph (7)(a);
or

(b) where there is no objection under subsection (4), on the expiration of the period referred to in paragraph (1)(a).”.

Amendment of section 36

38. Paragraph 36(2)(a) of the principal Act is amended by substituting for the words “adjudication of bankruptcy” the words “bankruptcy order”.

Amendment of section 38

39. Section 38 of the principal Act is amended by substituting for the shoulder note the following shoulder note:

“Duties and disabilities of bankrupt”.

Amendment of section 45

40. Section 45 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “order of adjudication” the words “bankruptcy order”; and

(b) in subsection (2), by substituting for the words ‘ “order of adjudication” ’ the words ‘ “ bankruptcy order” ’.

Amendment of section 47

41. Section 47 of the principal Act is amended—

(a) in subsection (1), by substituting for the word “receiving” the word “bankruptcy”; and

(b) in subsection (2), by substituting for the words “, receiving order or adjudication” the words “or bankruptcy order”.

Amendment of section 49

42. Section 49 of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “receiving” the word “bankruptcy”;
- (b) in subsection (2)—
 - (i) by substituting for the word “receiving” the word “bankruptcy”; and
 - (ii) by deleting the words “being followed by an order adjudging him bankrupt,”; and
- (c) in subsection (3), by substituting for the words “an order of adjudication” the words “a bankruptcy order”.

Amendment of section 55

43. Subsection 55(1) of the principal Act is amended by substituting for the words “the adjudication” the words “a bankruptcy order has been made”.

Amendment of section 62

44. Subsection 62(2) of the principal Act is amended by substituting for the word “adjudication” the words “bankruptcy order has been made”.

Amendment of section 72

45. Section 72 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**debtor’s**” the word “**bankrupt’s**”; and
- (b) by substituting for the word “debtor” wherever appearing the word “bankrupt”.

Amendment of section 73

46. Section 73 of the principal Act is amended—

- (a) by substituting for the word “debtor’s” wherever appearing the word “bankrupt’s”;
- (b) by substituting for the word “debtor” wherever appearing the word “bankrupt”; and
- (c) in paragraph (1)(f), by substituting for the word “receiving” the word “bankruptcy”.

Amendment of section 77

47. Section 77 of the principal Act is amended by substituting for the word “Consolidated” wherever appearing the words “Insolvency Assistance”.

New section 77A

48. The principal Act is amended by inserting after section 77 the following section:

“Insolvency Assistance Fund

77A. (1) A fund to be known as the “Insolvency Assistance Fund” is established and shall be administered and controlled by the Director General of Insolvency.

(2) The Fund shall consist of—

- (a) the profit of the investment under section 77; and
- (b) all costs, fees, charges and moneys recovered by the Director General of Insolvency in any proceedings taken under this Act in which moneys from the Fund were applied.

(3) Subject to subsection (4), the Fund may be applied by the Director General of Insolvency for all or any of the following purposes:

- (a) for the payment of all costs, fees and allowances to advocates or other persons in any proceedings on behalf of a bankrupt's estate or to recover assets of the estate;
- (b) for the payment of such costs and fees in the administration of a bankrupt's estate as the Director General of Insolvency may determine;
- (c) for the payment of any expenses to provide an efficient and effective administration of a bankrupt's estate that meets an appropriate standard of service; or
- (d) for such other purposes as may be prescribed.

(4) No moneys from the Fund shall be applied for any proceedings where, in the opinion of the Director General of Insolvency, there is no reasonable ground for taking, defending, continuing or being a party to the proceedings or where there are sufficient moneys for such purpose in the bankrupt's estate.”.

Amendment of section 84A

49. Subsection 84A(4) of the principal Act is amended by substituting for the word “debtor’s” the word “bankrupt’s”.

Amendment of section 104

50. The proviso to subsection 104(4) of the principal Act is amended by substituting for the words “the receiving order has been rescinded or the order of adjudication” the words “the bankruptcy order”.

Amendment of section 105

51. Section 105 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**adjudication**” the words “**bankruptcy order**”;
- (b) in subsection (1), by substituting for the word “adjudication” the words “bankruptcy order”;
- (c) in subsections (2) and (3), by substituting for the words “an adjudication” the words “a bankruptcy order”; and
- (d) by deleting subsection (5).

Amendment of section 106

52. Section 106 of the principal Act is amended—

- (a) by substituting for the word “receiving” the word “bankruptcy”;
- (b) by substituting for the word “debtor’s” the word “bankrupt’s”;
- (c) by deleting paragraph (b); and
- (d) in paragraph (d), by substituting for the word “debtor” the word “bankrupt”.

Amendment of section 108

53. Subsection 108(1) of the principal Act is amended—

- (a) by substituting for the word “receiving” the word “bankruptcy”;
- (b) by substituting for the word “debtor” wherever appearing the word “bankrupt”; and

(c) by substituting for the word “debtor’s” the word “bankrupt’s”.

Amendment of section 109

54. Section 109 of the principal Act is amended—

(a) in subsection (1), by deleting the words “or in respect of whose estate a receiving order has been made under this Act”; and

(b) by substituting for the word “receiving” wherever appearing the word “bankruptcy”.

Amendment of section 114

55. Subsection 114(1) of the principal Act is amended by deleting the words “or in respect of whose estate a receiving order has been made”.

Amendment of section 134

56. Section 134 of the principal Act is amended—

(a) by deleting subsections (1) and (2); and

(b) in subsection (3), by substituting for the words “all such” the word “any”.

Substitution of heading

57. The principal Act is amended by substituting for the heading of “*Debtor’s Books*” which appears before section 135 the following heading:

“*Bankrupt’s Books*”.

Amendment of section 135

58. Section 135 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “debtor’s” the word “**bankrupt’s**”; and
- (b) in subsection (1), by substituting for the word “debtor” the word “bankrupt”.

Deletion of Schedule B

59. The principal Act is amended by deleting Schedule B.

Saving

60. (1) This Act shall not apply to a debtor or a bankrupt against whom a receiving order or adjudication has been made before the coming into operation of this Act.

(2) All proceedings, actions or other matters required to be done under the principal Act which are still pending immediately before the coming into operation of this Act shall be continued or concluded under the principal Act as if the principal Act had not been amended by this Act.

(3) Notwithstanding subsection (1), subsection 33B(2A) shall apply to a person who has been adjudged bankrupt before the coming into operation of this Act.

EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to amend the Bankruptcy Act 1967 (“Act 360”). The proposed Act seeks, among others, to strengthen the provisions relating to guarantor and social guarantor, to raise the minimum debt threshold for the filing of a bankruptcy petition, to introduce another type of discharge namely automatic discharge, to strengthen the provisions relating to service of bankruptcy notice and creditors petition, to introduce a pre-bankruptcy rescue mechanism, to introduce a single order for bankruptcy namely “bankruptcy

order” to replace the two-tier order system namely “receiving order and adjudication order”, to establish the Insolvency Assistance Fund and to provide for other miscellaneous and consequential matters.

2. *Clause 1* contains the short title of the proposed Act and seeks to empower the Minister to appoint the date of coming into operation of the proposed Act.

3. *Clause 2* seeks to amend the long title of Act 360 to explain that Act 360 contains provisions relating to insolvency and bankruptcy of individual. The proposed Act seeks to introduce a new rescue mechanism called the voluntary arrangement at the option of the insolvent debtor before a bankruptcy order is made by the court against him. This amendment is also a reflection of the international standard practice among developed countries such as the United Kingdom and Singapore where their laws on bankruptcy contain similar provisions on voluntary arrangement. Further, this clause seeks to harmonize the amendment made in 2003 to change the name of the Official Assignee to the Director General of Insolvency. Consequently, the short title of Act 360 is to be amended by *clause 4*.

4. *Clause 3* seeks to provide for a general amendment to substitute for the word “receiving” the word “bankruptcy” and for the word “debtor” the word “bankrupt” in consequence of the introduction of a single order for bankruptcy into Act 360.

5. *Clause 5* seeks to provide that any reference to the Bankruptcy Act 1967 in any written law or document shall, after the proposed Act comes into operation, be construed as references to the Insolvency Act 1967.

6. *Clause 6* seeks to amend section 2 of Act 360 to introduce new definition and to amend certain existing definition.

7. *Clause 7* seeks to amend the heading of Part I to explain that Part I contains provisions relating to voluntary arrangement and proceeding in bankruptcy.

8. *Clause 8* seeks to introduce new sections 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O, 2P and 2Q into Act 360. The proposed new section 2A seeks to introduce the term “voluntary arrangement” into Act 360. The proposed new section 2B seeks to provide that provisions relating to voluntary arrangement shall not apply to an undischarged bankrupt and a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2012 [Act 743].

The proposed new section 2C seeks to provide that a debtor may, at any time before he is adjudged bankrupt, propose a voluntary arrangement and for the purpose of the proposal debtor shall appoint a nominee and make an application to the court for an interim order for voluntary arrangement.

The proposed new sections 2D and 2E seek to provide for the power of the court to make an interim order and the effect of such interim order.

The proposed new sections 2F, 2G and 2H seek to detail out the persons who may act as a nominee, the registration of a nominee and the duty of the Director General of Insolvency to keep and maintain a register of nominees.

The proposed new sections 2I, 2J, 2K and 2L seek to provide for the duty of a nominee to conduct a meeting of creditors to approve the proposed voluntary arrangement pursuant to the interim order made by the court and to provide for actions required to be taken at the conclusion of the meeting.

The proposed new section 2M seeks to allow the debtor to replace an existing nominee and seeks to provide for the effect of the replacement on the period of interim order and for the carrying out of duties of the previous nominee.

The proposed new section 2N seeks to provide that a nominee shall supervise the implementation of the voluntary arrangement once it is approved by the creditors. Further, the proposed new section empowers parties to the voluntary arrangement to apply for a court review of any act, omission or decision by the nominee during the implementation of the voluntary arrangement.

The proposed new sections 2O and 2P seek to provide for the consequence of failure by the debtor to comply with voluntary arrangement and to provide for cessation of voluntary arrangement.

The proposed new section 2Q seeks to empower the Minister to prescribe the scale of fees to be charged by nominees so that appropriate fees are charged in respect of voluntary arrangement.

9. *Clause 9* seeks to amend section 3 of Act 360 to provide for the manner of service of a bankruptcy notice.

10. *Clause 11* seeks to amend section 4 of Act 360 to empower the court to make a bankruptcy order upon presentation of a bankruptcy petition either by a creditor or by a debtor.

11. *Clause 12* seeks to amend section 5 of Act 360 to increase the minimum debt threshold for the filing of a bankruptcy petition from thirty thousand ringgit to fifty thousand ringgit. This *clause* further provides that a creditor is not entitled to commence bankruptcy proceedings against a social guarantor. In relation to a guarantor other than a social guarantor, a creditor may not commence bankruptcy proceedings unless the creditor has obtained leave from the court.

12. *Clause 13* seeks to amend section 6 of Act 360 to provide for the manner of service of a creditor's petition.

13. *Clause 14* seeks to amend section 7 of Act 360 to clarify that the court shall not adjudge a member of a firm bankrupt unless that person is proved to be a partner by his admission or evidence on oath.

14. *Clause 15* seeks to amend section 8 of Act 360 to provide for the effect of a bankruptcy order consequential to the deletion of section 24.

15. *Clause 16* seeks to delete section 9 of Act 360 to be consistent with the single order system.

16. *Clause 17* seeks to amend section 12 of Act 360 to prohibit a debtor from being appointed as a special manager.

17. *Clause 18* seeks to delete section 14 of Act 360 to be consistent with the single order system.

18. *Clause 21* seeks to amend section 16 of Act 360 to be consistent with the single order system. The existing section 16 requires submission of the statement of affairs during the receiving order stage, but under this amendment, the statement of affairs is submitted to the Director General of Insolvency after the making of a bankruptcy order against a debtor.

19. *Clause 23* seeks to amend section 17 of Act 360 to be consistent with the single order system, so that the court conducts public examination of a bankrupt after he is adjudged bankrupt. The existing section 17 allows for public examination of a debtor during the receiving order stage.

20. *Clause 24* seeks to amend section 18 of Act 360 in relation to composition or scheme of arrangement of a bankrupt's affairs. The existing section 18 gives power to creditors to accept a proposal for a composition or scheme of arrangement by a debtor during the receiving order stage, while section 26, which is similar to section 18, allows for a composition or scheme of arrangement to be proposed by a bankrupt after his adjudication. However, since the amendment seeks to introduce a single order for bankruptcy, there is no longer composition or scheme under the receiving order stage and therefore, section 18 is amended to cater for proposal of a composition or scheme by a bankrupt after his adjudication. A provision is also inserted in section 18 to confer power to the court to annul a bankruptcy order once the court approves a composition or scheme which has been accepted by the creditors.

21. *Clause 25* seeks to delete sections 19, 20, 21, 22 and 23 of Act 360. Section 19 is deleted since the effect of composition or scheme under this section is no longer applicable at the bankruptcy order stage and as a consequential amendment in relation to the introduction of a single order for bankruptcy. Section 20 on registration of deeds of arrangements is deleted and therefore sections 21 to 23 are deleted as consequential amendments to the deletion of section 20.

22. *Clause 27* seeks to delete section 24 of Act 360 as a result of the introduction of a single order for bankruptcy and to delete section 26 of Act 360 in relation to a composition or scheme of arrangement after the adjudication order as elements of this provision is incorporated in section 18 of Act 360.

23. *Clauses 28, 29, 30, 32, 33, 34, and 35* seek to amend sections 27, 28, 29, 31, 32, 33 and 33A of Act 360 respectively as a consequence of the introduction of a single order for bankruptcy.

24. *Clause 31* seeks to amend section 30 of Act 360 as the mode of redirecting letters by way of telegrams is no longer relevant.
25. *Clause 36* seeks to amend section 33B of Act 360 to list out categories of bankrupt persons against whom no objection shall be made to their discharge under section 33A of Act 360.
26. *Clause 37* seeks to introduce a new section 33C into Act 360 to provide for another type of discharge namely automatic discharge. Pursuant to this new section, a bankrupt shall be discharged from bankruptcy after three years from the date of the submission of his statement of affairs subject to the condition that the bankrupt has achieved the target contribution determined by the Director General of Insolvency, objection by creditors and the bankrupt's compliance with the requirement to render an account of moneys and property.
27. *Clauses 38, 39, 40, 41, 42, 43, 44, 45 and 46* are amendments consequential to the introduction of a single order for bankruptcy.
28. *Clause 47* seeks to amend section 77 of Act 360 to provide that the profit and dividend from the investment of surplus fund shall be credited to the Insolvency Assistance Fund established under the new section 77A.
29. *Clause 48* seeks to introduce a new section 77A into Act 360 to provide for the establishment of the Insolvency Assistance Fund which is to be administered and controlled by the Director General of Insolvency for the purposes of achieving the betterment of the administration and proceedings relating to bankruptcy.
30. *Clauses 49, 50, 51, 52, 53, 54 and 55* seek to amend sections 84A, 104, 105, 106, 108, 109 and 114 of Act 360 respectively as a consequence of the introduction of a single bankruptcy order.
31. *Clause 56* seeks to amend section 134 of Act 360 as a consequential amendment to the amendment of section 18 of Act 360.
32. *Clause 59* seeks to delete Schedule B of Act 360 as a consequential amendment to the deletion of section 20.
33. *Clause 60* contains the saving provision.
34. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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