

A BILL

i n t i t u l e d

An Act to amend the Insolvency 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 Insolvency (Amendment) Act 2023.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Insolvency Act 1967 [*Act 360*], which is referred to as the “principal Act” in this Act, is amended in section 2 by inserting after the definition of “Registrar” the following definition:

““remote communication technology” has the meaning assigned to it in the Courts of Judicature Act 1964 [*Act 91*];”.

Amendment of section 15**3.** Section 15 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**First and other meetings of creditors**” the words “**Meeting of creditors**”;
- (b) in subsection (1)—
 - (i) by substituting for the words “a general meeting of his creditors, in this Act referred to as the first meeting of creditors, shall” the words “, a meeting of creditors may”; and
 - (ii) by inserting after the words “bankrupt’s property” the words “, and for any other purpose as may be prescribed”; and
- (c) in subsection (2), by substituting for the words “first and other meetings of creditors” the words “meeting of creditors”.

Amendment of section 17**4.** Subsection 17(2) of the principal Act is amended by deleting the word “first”.**Amendment of section 18****5.** Section 18 of the principal Act is amended—

- (a) in subsection (2), by substituting for the words “meeting of the creditors” the words “meeting of creditors”;
- (b) in subsection (3), by inserting after the words “subsequent meeting” the words “of creditors”; and
- (c) in subsection (4), by inserting after the words “subsequent meeting” the words “of creditors”.

Amendment of section 25

6. Subsection 25(1) of the principal Act is amended by substituting for the words “their first meeting or any adjournment thereof” the words “any meeting of creditors”.

Amendment of section 27

7. Subsection 27(1) of the principal Act is amended by substituting for the words “the first meeting of his creditors and any subsequent meeting of his creditors” the words “a meeting of creditors”.

Amendment of section 33B

8. Section 33B of the principal Act is amended—

(a) in subsection (2A)—

- (i) in paragraph (c), by deleting the word “and” at the end of the paragraph;
- (ii) in paragraph (d), by substituting for the full stop at the end of the paragraph a semicolon; and
- (iii) by inserting after paragraph (d) the following paragraphs:
 - “(e) a bankrupt who is incapable of managing himself and his affairs due to any mental disorder, as certified by a psychiatrist from any government hospital; and
 - (f) a bankrupt aged seventy years and above and in the opinion of the Director General of Insolvency, is incapable of contributing to the administration of his estate.”; and

(b) by inserting after subsection (6) the following subsection:

“(7) For the purposes of paragraph (2A)(e), “mental disorder” and “psychiatrist” have the meaning assigned to them in the Mental Health Act 2001 [Act 615].”.

Amendment of section 33c**9. Section 33c of the principal Act is amended—**

(a) in the shoulder note, by inserting after the words “**Automatic discharge**” the words “**and suspension of automatic discharge**”;

(b) by substituting for subsection (1) the following subsection:

“(1) A bankrupt shall be—

(a) discharged automatically from bankruptcy on the expiration of three years from the date of the submission of the statement of affairs under subsection 16(1)—

(i) if the bankrupt has paid the sum of money determined by the Director General of Insolvency, for the purposes of the administration of the bankrupt’s estate, having regard to the financial ability of the bankrupt; and

(ii) 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); or

(b) suspended from the automatic discharge on the expiration of three years from the date of the submission of the statement of affairs under subsection 16(1) for a period not exceeding two years if the bankrupt has failed to comply with his duties and obligations under the Act.”;

(c) in subsection (2)—

(i) by substituting for the words “Contribution of the bankrupt’s provable debt referred to in paragraph (1)(a) shall be determined by the Director General of Insolvency and” the words

“For the purposes of subparagraph (1)(a)(i), in determining the sum of money to be paid by the bankrupt,”;

(ii) by deleting paragraph (a);

(iii) in paragraph (e), by deleting the word “and” at the end of the paragraph;

(iv) in paragraph (f), by substituting for the full stop at the end of the paragraph the words “; and”; and

(v) by inserting after paragraph (f) the following paragraph:

“(g) the debt provable in bankruptcy.”;

(d) by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2) and the administration of the bankrupt’s estate, the Director General of Insolvency may request the bankrupt to provide such further information as may be determined by the Director General of Insolvency including information in respect of the income, expected income and properties of the bankrupt.”;

(e) in subsection (3)—

(i) by substituting for the words “a discharge under this section” the words “an automatic discharge under paragraph (1)(a)”;

(ii) by substituting for the words “the discharge to each of his creditors” the words “automatic discharge on each creditor who has filed a proof of debts”; and

(iii) by substituting for the words “subsection (1)” the words “paragraph (1)(a)”;

(f) in subsection (4), by substituting for the words “discharge under this section” wherever appearing the words “automatic discharge under paragraph (1)(a)”;

(g) by inserting after subsection (8) the following subsections:

“(8A) For the purposes of suspension of an automatic discharge under paragraph (1)(b), the Director General of Insolvency shall serve a notice of the suspension of the automatic discharge on the bankrupt and on each creditor who has filed a proof of debts not less than six months before the expiration of the period referred to in paragraph (1)(b), but such notice shall not be served earlier than a year before the expiration of such period.

(8B) The suspension of the automatic discharge shall be effective on the date stated in the notice under subsection (8A).

(8C) Where the Director General of Insolvency suspends the automatic discharge under paragraph (1)(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 period of suspension.”; and

(h) in subsection (9)—

(i) in paragraph (a), by deleting the word “or” at the end of the paragraph;

(ii) in paragraph (b), by substituting for the full stop at the end of the paragraph the words “; or”; and

(iii) by inserting after paragraph (b) the following paragraph:

“(c) on the expiration of the period referred to in paragraph (8C)(b).”.

Amendment of section 48

10. Subparagraph 48(1)(a)(ii) of the principal Act is amended by substituting for the words “not exceeding five thousand ringgit in the whole” the words “as may be prescribed”.

Amendment of section 106

11. Section 106 of the principal Act is amended by substituting for the words “ten thousand ringgit in value” the words “the value as may be prescribed,”.

Amendment of section 107

12. Section 107 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) In this part “wage-earner” means a person who is or has been employed on a salary or wage of an amount as may be prescribed excluding any temporary allowance and whose other income, if any, exclusive of any pension he may receive, does not exceed the amount as may be prescribed and does not arise from any trade or business in the management of which he takes any part.”.

Amendment of section 130

13. Section 130 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) by inserting after the word “therewith” in the renumbered subsection (1) the words “or by electronic communication in accordance with the prescribed rules”; and
- (c) by inserting after the renumbered subsection (1) the following subsection:

“(2) Where a person has given his consent for a notice or other documents to be served on him through electronic communication, the notice or other documents

shall be deemed to have been served at the time when the notice or other documents are transmitted to his account through the electronic communication.”.

Amendment of Schedule A

14. Schedule A to the principal Act is amended—

- (a) by deleting paragraph 1;
- (b) by substituting for paragraph 2 the following paragraph:
 - “2. The Director General of Insolvency shall summon—
 - (a) in the case of a debtor’s petition, the creditors mentioned in the bankrupt’s statement of affairs and the creditors who have filed the proof of debts, and the bankrupt; or
 - (b) in the case of a creditor’s petition, the petitioner, the creditors mentioned in the bankrupt’s statement of affairs and the creditors who have filed the proof of debts, and the bankrupt,to a meeting of creditors by giving not less than seven days’ notice of the time and place thereof in the prescribed manner.”;
- (c) in paragraph 4, by inserting after the words “at such place” the words “or in such manner including the use of remote communication technology”;
- (d) in paragraph 5—
 - (i) by substituting for the words “may at any time” the word “shall”; and
 - (ii) by deleting the words “, and shall do so”;
- (e) in paragraph 6—
 - (i) by substituting for the words “Meetings subsequent to the first meeting shall be summoned” the words “Any meeting of creditors subsequent

to the meeting mentioned in paragraph 2 shall be summoned by the Director General of Insolvency”; and

- (ii) by substituting for the words “the person summoning the meeting” the words “the Director General of Insolvency”; and

(f) in paragraph 7—

- (i) by inserting after the words “every meeting” the words “of creditors”; and
- (ii) by substituting for the words “subsequent meeting” the words “meeting of creditors”.

Application of paragraphs 33B(2A)(e) and (f) to person adjudged bankrupt before the coming into operation of this Act

15. The new paragraphs 33B(2A)(e) and (f) as inserted by section 8 of this Act shall also apply to a person who has been adjudged bankrupt before the coming into operation of this Act.

Application of section 33c to person adjudged bankrupt before the coming into operation of this Act

16. Section 33c as amended by section 9 of this Act shall also apply to a person who has been adjudged bankrupt before the coming into operation of this Act subject to the following:

- (a) a person who has been adjudged bankrupt who has filed his statement of affairs shall be discharged automatically from bankruptcy—
 - (i) if a person who has been adjudged bankrupt has paid the sum of money determined by the Director General of Insolvency, for the purposes of the administration of his estate, having regard to his financial ability; and

- (ii) if a person who has been adjudged 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) of the principal Act;
- (b) a person who has been adjudged bankrupt shall be suspended from the automatic discharge for a period not exceeding two years if the person who has been adjudged bankrupt has failed to comply with his duties and obligations under the principal Act;
- (c) for the purposes of automatic discharge, the Director General of Insolvency shall serve a notice of the automatic discharge on each creditor who has filed a proof of debts within twelve months after the coming into operation of this Act; and
- (d) for the purposes of suspension of the automatic discharge, the Director General of Insolvency shall serve a notice of the suspension of the automatic discharge on the person who has been adjudged bankrupt and on each creditor who has filed a proof of debts within twelve months after the coming into operation of this Act.

Saving

17. Notwithstanding sections 15 and 16, any 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.

EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to amend the Insolvency Act 1967 (“Act 360”). The proposed Act seeks to provide for a more effective administration of the estate of the bankrupts in Malaysia and to discharge the bankrupts within a short period of time for a better contribution to the development of the country’s economy. The proposed Act seeks, amongst others, to strengthen the provisions relating to automatic discharge, to dispense with the mandatory requirement of holding the first meeting of creditors, to introduce the use of

remote communication technology in the bankruptcy administration, to review the value of the properties and income of wage-earner for the purposes of summary administration and to review the value of properties of bankrupts exempted from distribution to the creditors.

2. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 360 to introduce a new definition of “remote communication technology”.

4. *Clause 3* seeks to amend subsection 15(1) of Act 360 to provide that a meeting of creditors may be held as soon as may be after the making of a bankruptcy order against a bankrupt for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, generally as to the mode of dealing with the bankrupt’s property and for any other purpose as may be prescribed. The proposed amendment seeks to save time and costs in the administration of bankruptcy where a meeting of creditors will only be held upon request and if necessary.

5. *Clauses 4, 5, 6, 7 and 14* seek to amend subsection 17(2), section 18, subsections 25(1) and 27(1) and Schedule A respectively as consequential amendments to the proposed amendment of section 15 of Act 360.

6. *Clause 8* seeks to amend subsection 33B(2A) of Act 360 to add two more categories of bankrupt who may be discharged from bankruptcy by certificate of the Director General of Insolvency without objection by the creditors.

7. *Clause 9* seeks to amend section 33C of Act 360 to improve the provisions relating to automatic discharge and to empower the Director General of Insolvency to suspend the automatic discharge of a bankrupt. This *clause* also seeks to specify that a notice of the automatic discharge shall be served on the creditors who have filed a proof of debts and that a notice of the suspension of an automatic discharge shall be served on the bankrupt as well as the creditors who have filed a proof of debts.

8. *Clause 10* seeks to amend subparagraph 48(1)(a)(ii) of Act 360 to empower the Minister to prescribe the value of the tools, if any, of the bankrupt’s trade and the necessary wearing apparel and bedding and other like necessities of the bankrupt, his wife and children that shall not form part of the property of the bankrupt which is divisible among the creditors.

9. *Clause 11* seeks to amend section 106 of Act 360 to empower the Minister to prescribe the value of the bankrupt’s assets after deducting any sums paid to secured creditors in respect of their securities in which the bankruptcy proceedings can be administered in a summary manner.

10. *Clause 12* seeks to amend subsection 107(1) of Act 360 to empower the Minister to prescribe the amount of the salary or wage and other income.

11. *Clause 13* seeks to amend section 130 of Act 360 to introduce the service of notices and other documents by electronic communication in accordance with the prescribed rules.

12. *Clause 15* provides for the application of paragraphs 33B(2A)(e) and (f) as amended by *clause 8* of the proposed Act in relation to person adjudged bankrupt before the coming into operation of the proposed Act.

13. *Clause 16* provides for the application of section 33C as amended by *clause 9* of the proposed Act in relation to person adjudged bankrupt before the coming into operation of the proposed Act.

14. *Clause 17* deals with the saving provision.

15. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

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

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