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**Notification No. B 36** — The Insolvency, Restructuring and Dissolution (Amendment) Bill is published for general information. It was introduced in Parliament on 5 October 2020.



# **Insolvency, Restructuring and Dissolution (Amendment) Bill**

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**Bill No. /2020.**

*Read the first time on*      2020.

A BILL

*i n t i t u l e d*

An Act to amend the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) to provide for temporary measures in the form of simplified procedures relating to a compromise or an arrangement with creditors and winding up, and related matters, in view of the COVID-19 pandemic, and to provide for the power to exempt persons from certain criteria in relation to insolvency practitioners' licences.

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 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

### 5 Amendment of section 35

2. Section 35(3) of the Insolvency, Restructuring and Dissolution Act 2018 (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the words “section 71”, “, 72E, 72F, 72G, 72M, 72Q”; and

10 (b) by deleting the words “or 241” and substituting the words “, 241, 250D, 250F, 250G, 250O or 250P, or under section 197 or 199 (as modified by section 250L)”.

### Amendment of section 50

3. Section 50 of the principal Act is amended —

15 (a) by inserting, immediately after the words “a qualified person” in subsection (1), the words “or is for the time being exempted under subsection (1A)”;

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

20 “(1A) The Minister may exempt, for such period as the Minister may specify, any individual from the requirement of being a qualified person in order to be granted, or to hold or continue to hold, an insolvency practitioner’s licence.”.

### 25 New Part 5A

4. The principal Act is amended by inserting, immediately after section 72, the following Part:

## “PART 5A

## SIMPLIFIED RESTRUCTURING OF DEBTS

*Division 1 — Preliminary***Interpretation of this Part**

- 72A.** In this Part, unless the context otherwise requires — 5
- “chattels leasing agreement”, “hire-purchase agreement”  
and “retention of title agreement” have the meanings  
given by section 88(1);
  - “company” means any corporation liable to be wound up  
under this Act, but excludes such company or class of 10  
companies as the Minister may by order in the *Gazette*  
prescribe;
  - “company (in simplified debt restructuring)” means a  
company that is accepted by the Official Receiver into  
the simplified debt restructuring programme under 15  
section 72G, and that has not been discharged from  
the simplified debt restructuring programme under  
section 72Q;
  - “designated website” means the Internet website prescribed  
by regulations made under section 72V for the purpose 20  
of publishing notices to creditors and other persons  
under this Part;
  - “prescribed period” means the period prescribed under  
section 72B(2) and as extended or shortened under 25  
section 72B(3);
  - “Restructuring Advisor”, in relation to a company (in  
simplified debt restructuring), means a person appointed  
under section 72D(2) to be the Restructuring Advisor of  
the company;
  - “simplified debt restructuring programme” means the 30  
programme established in section 72C;
  - “specified period”, in relation to a company (in simplified  
debt restructuring), means the period starting on the day

that the notice of acceptance in respect of the company is published under section 72J(b) and ending on the day that the company is discharged from the simplified debt restructuring programme under section 72Q.

5 **Period of application of Part and prescribed period**

**72B.**—(1) This Part continues in force for a period of 3 years beginning on the date of its commencement.

(2) For the purposes of this Part, the Minister may, by order in the *Gazette*, prescribe a period not exceeding 6 months.

10 (3) The Minister may, by order in the *Gazette*, extend or shorten the prescribed period for or by a period determined by the Minister, and the period may be extended or shortened more than once.

*Division 2 — Simplified debt restructuring programme*

15 **Establishment of simplified debt restructuring programme**

**72C.** There is established a programme, known as the simplified debt restructuring programme, for the purpose of providing a simplified process for the restructuring of debts to any eligible company that seeks to enter into a compromise or an arrangement between the company and its creditors or any class of those creditors.

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**Appointment of qualified persons and Restructuring Advisors**

25 **72D.**—(1) The Official Receiver may appoint any qualified person to advise the Official Receiver on whether to grant an application by a company to be accepted into the simplified debt restructuring programme.

30 (2) The Official Receiver may appoint one or more qualified persons to act as the Restructuring Advisor or Restructuring Advisors of a company (in simplified debt restructuring) on any terms and for any duration as the Official Receiver may specify.

(3) A qualified person may not be appointed as a Restructuring Advisor of a company unless he or she consents to be so appointed.

(4) When more than one Restructuring Advisor is appointed to act in relation to a company (in simplified debt restructuring), any power given to the Restructuring Advisor under this Part may be exercised —

(a) by any one or more of them as is determined by the Official Receiver at the time of their appointment; or

(b) in default of such determination by any number not less than 2.

(5) The Official Receiver is to take cognizance of the conduct of a Restructuring Advisor in the performance of the Restructuring Advisor's duties under this Part, and if —

(a) the Restructuring Advisor does not faithfully perform his or her duties or duly observe all the requirements imposed on him or her or by any written law or otherwise with respect to the performance of the Restructuring Advisor's duties under this Part; or

(b) any complaint is made to the Official Receiver by any creditor or contributory in relation to the conduct of the Restructuring Advisor in the performance of the Restructuring Advisor's duties under this Part,

the Official Receiver is to inquire into the matter, and take such action on the matter as the Official Receiver thinks expedient.

(6) No liability shall lie against any qualified person with respect to anything done or omitted to be done in good faith and with reasonable care in the discharge or purported discharge of his or her functions and duties under subsection (1) or as a Restructuring Advisor under section 72L.

(7) In this section, "qualified person" means any person who —

(a) is a public accountant;

- (b) is a chartered accountant within the meaning given by section 2(1) of the Singapore Accountancy Commission Act; or
- (c) possesses any other qualification or any relevant experience as the Minister may prescribe by regulations made under section 72V.

*Division 3 — Application for and acceptance into simplified debt restructuring programme*

**Application by company**

**72E.**—(1) A company may, at any time during the prescribed period, make an application to the Official Receiver in accordance with this section to be accepted into the simplified debt restructuring programme.

(2) An application under subsection (1) must —

- (a) be accompanied by —
- (i) a special resolution of the company in general meeting authorising the making of the application;
  - (ii) a list containing the name and address of each creditor of the company and the amounts owed to each creditor; and
  - (iii) any document or documents as may be prescribed by regulations made under section 72V;
- (b) state that the company seeks to enter into a compromise or an arrangement with its creditors or any class of its creditors, and that it is not aware of any circumstances under section 72F(3) that would make the company unsuitable for acceptance into the simplified debt restructuring programme;
- (c) be in the relevant form specified on the designated website;



(d) contain the prescribed information and be made in the prescribed manner; and

(e) be accompanied by the prescribed fee, if any.

(3) The Official Receiver may, upon the receipt of an application of a company under subsection (1), request the company to submit to the Official Receiver, within the period specified by the Official Receiver (which must be at least 7 days after the date of the request), any additional information or document that the Official Receiver thinks necessary to determine the application.

(4) The Official Receiver may refuse to consider an application if —

(a) the application is incomplete or not made in accordance with subsection (2); or

(b) any additional information or document requested by the Official Receiver under subsection (3) is not received by the Official Receiver within the period specified by the Official Receiver.

(5) If a company has, in connection with the company's application under this section, made any statement, or provided any information or document, to the Official Receiver that is false or misleading in a material particular, any officer of the company who —

(a) consented or connived, or conspired with others, to effect the making of the statement or provision of the information or document;

(b) is in any other way, whether by act or omission, knowingly concerned in, or party to, the making of the statement or the provision of the information or document; or

(c) knew or ought reasonably to have known that the statement to be made or being made, or the information or document to be given or being given, by the company is false or misleading in a

material particular, and failed to take all reasonable steps to prevent or stop the making of the statement or the provision of the information or document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) For the purposes of subsection (5), an officer of a company is a director or secretary of the company or a person employed in an executive capacity by the company.

### **Requirements for acceptance into simplified debt restructuring programme**

**72F.**—(1) The Official Receiver may, on the application of a company (called in this Division the applicant company) under section 72E, accept the applicant company into the simplified debt restructuring programme if, and only if, both the following requirements are met:

- (a) the applicant company meets the eligibility criteria set out in subsection (2);
- (b) there is no circumstance in subsection (3), known to the Official Receiver, that makes the applicant company unsuitable for acceptance into the simplified debt restructuring programme.

(2) For the purposes of subsection (1)(a), the eligibility criteria are as follows:

- (a) the applicant company's annual sales turnover for the relevant period does not exceed \$10 million (or any amount that may be prescribed in substitution by the Minister by order in the *Gazette*);
- (b) the applicant company has not more than 30 employees (or any number that may be prescribed in substitution by the Minister by order in the *Gazette*);

- (c) the applicant company has not more than 50 creditors (or any number that may be prescribed in substitution by the Minister by order in the *Gazette*);
- (d) the liabilities of the applicant company (including contingent and prospective liabilities) do not exceed \$2 million (or any amount that may be prescribed in substitution by the Minister by order in the *Gazette*);
- (e) any other criteria as may be prescribed by the Minister by order in the *Gazette*.

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(3) For the purposes of subsection (1)(b), each of the following is a circumstance that makes an applicant company unsuitable for acceptance into the simplified debt restructuring programme:

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(a) the applicant company is being wound up pursuant to —

(i) an order for the winding up of a company under section 216(2)(f) of the Companies Act;

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(ii) an order for winding up made under section 124 (or any previous written law corresponding to that provision); or

(iii) a resolution passed for the winding up of a company under section 160 (or any previous written law corresponding to that provision);

20

(b) the applicant company is in judicial management —

(i) within the meaning of section 88(2); or

(ii) pursuant to an application made under the repealed section 227B(1) of the Companies Act;

25

(c) an application has been made by or in respect of the applicant company under any of the following provisions and the application is pending:

(i) section 210(1), (4) or (10) of the Companies Act;

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(ii) section 64(1) (or any previous written law corresponding to that provision);

- (iii) section 71 (or any previous written law corresponding to that provision);
- (iv) section 91 (or any previous written law corresponding to that provision);
- 5 (v) section 124 (or any previous written law corresponding to that provision);
- (d) an order under section 210(10) of the Companies Act, one or more orders under section 64(1) (or any previous written law corresponding to that provision) or an automatic moratorium mentioned in  
10 section 64(8) (or any previous written law corresponding to that provision), is in force in relation to the applicant company;
- (e) a provisional liquidator of the applicant company has  
15 been appointed under section 161 (or any previous written law corresponding to that provision);
- (f) an interim judicial manager has been appointed by the Court under section 92 (or any previous written law corresponding to that provision) or by the applicant  
20 company under section 94(3), and the term of the appointment of the interim judicial manager has not ended;
- (g) the applicant company has made an application for acceptance into the simplified winding up programme under section 250D which is pending;  
25
- (h) the affairs of the applicant company are such that —
  - (i) the administration of the simplified debt restructuring programme in relation to the applicant company is likely to require significant resources or specialised knowledge or expertise; or
  - (ii) the applicant company (with the assistance of a Restructuring Advisor) is unlikely to be able to formulate a proposed compromise or

arrangement with its creditors, obtain the agreement of two-thirds majority in value of its creditors to the proposed compromise or arrangement, and make an application to the Court under section 72M(1) for the approval of the proposed compromise or arrangement within 90 days after the applicant company's acceptance into the programme;

(i) there is a trustee appointed for debenture holders in respect of the applicant company;

(j) at least one-third in value of the creditors of the applicant company object to the applicant company's acceptance into the simplified debt restructuring programme;

(k) a person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the applicant company's property under the terms of any debentures of the applicant company secured by a floating charge, or by a floating charge and one or more fixed charges, that would be valid and enforceable in the case of a liquidation of the applicant company, objects to the applicant company's acceptance into the simplified debt restructuring programme;

(l) any other circumstances as may be prescribed by order in the *Gazette*.

(4) Any order made under subsection (2)(a), (b), (c), (d) or (e) or (3)(l) must be presented to Parliament as soon as possible after publication in the *Gazette*.

(5) In this section —

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

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

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

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

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

10 “business commencement period”, in relation to an applicant company, means the period between the date of commencement of the business operations of the applicant company and the date of the application by the applicant company under section 72E (both dates inclusive);

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

20 “employee”, in relation to an applicant company, means an individual who has entered into or works under a contract of service with the applicant company;

“relevant period”, in relation to an applicant company, means —

25 (a) the business year of the applicant company immediately preceding the date of the application by the applicant company under section 72E; or

30 (b) if there is no such business year, the business commencement period of the applicant company;

“sales turnover”, in relation to an applicant company, 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 the applicant company from the sale of products and the provision of services falling within the ordinary activities of the applicant company;
- (b) any other amounts derived from the business operations of the applicant company, but excluding gains from the sale of fixed assets, donations, grants, subsidies, subscriptions, interest, dividends, goods purchased for resale and investment income.

### **Notices of application and objection, etc.**

**72G.**—(1) Where the Official Receiver considers that the eligibility requirement in subsection (2) in respect of an applicant company is met, the Official Receiver must —

- (a) send to the applicant company, and every creditor of the applicant company (whose name and address are provided by the applicant company in its application under section 72E); and
- (b) publish on the designated website,

a notice of the application by the applicant company for acceptance into the simplified debt restructuring programme.

(2) The eligibility requirement for the purposes of subsection (1) is that, on the face of the application of the applicant company under section 72E (including any information or document accompanying the application and any further information or document submitted by the applicant company under that section), both the requirements in section 72F(1)(a) and (b) are met.

(3) The notice of application under subsection (1) must contain the following information:

- (a) the name of the applicant company and its Unique Entity Number (UEN);
- (b) the date of the notice of application;

- 5 (c) a note stating that unless an objection is received within the period of 21 days after the date of the notice of application, the Official Receiver may accept the applicant company into the simplified debt restructuring programme;
- (d) the form of, and manner of delivering, a notice of objection;
- 10 (e) a note providing the address of the designated website and stating that all subsequent notices relating to the applicant company required to be published by the Official Receiver on the designated website under this Part will be published on the designated website;
- (f) any other information as may be prescribed by regulations made under section 72V.

15 (4) Any creditor, member or officer of the applicant company who believes there is reasonable cause why the applicant company should not be accepted into the simplified debt restructuring programme, may object by delivering a notice (called in this section a notice of objection) to the Official Receiver, in the form and manner stated in the notice of application under subsection (1), within 21 days after the date of the notice of application.

(5) A notice of objection under subsection (4) must contain a statement of the grounds of objection.

25 (6) At the expiry of 21 days after the date of the notice of application published under subsection (1) —

- 30 (a) where the Official Receiver has not received any notice of objection — the Official Receiver may accept the applicant company into the simplified debt restructuring programme, subject to the payment by the applicant company of the deposit payable under section 72I; and
- (b) where the Official Receiver has received any notice of objection, the Official Receiver must decide whether to —
- 35



(i) accept the applicant company into the simplified debt restructuring programme, subject to the payment by the applicant company of the deposit payable under section 72I; or

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(ii) reject the applicant company's application,

and, in doing so, the Official Receiver must consider the grounds of the objection.

(7) The Official Receiver's decision under subsection (6) is final.

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### **Direction by Minister**

**72H.**—(1) Despite anything in sections 72F and 72G(1), the Minister may direct the Official Receiver —

(a) to send and publish in accordance with section 72G(1)(a) and (b) the notice of application by an applicant company to be accepted into the simplified debt restructuring programme even though the eligibility requirement mentioned in section 72G(2) in respect of the applicant company is not met; or

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(b) to accept, subject to section 72I(2), any applicant company into the simplified debt restructuring programme even though any of the requirements in section 72F(1)(a) or (b) in respect of the applicant company is not met.

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(2) Where the Minister directs the Official Receiver to accept any applicant company into the simplified debt restructuring programme under subsection (1)(b), the Minister may also waive or remit (in whole or in part) the deposit payable by the applicant company under section 72I.

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(3) In this section, any reference to the Minister includes a reference to any of the following persons designated by the Minister to exercise the power under subsection (1) or (2):

- (a) a Second Minister, Minister of State or Senior Minister of State for the Ministry of Law;
- (b) a Parliamentary Secretary or Senior Parliamentary Secretary to the Ministry of Law.

5       **Deposit payable by applicant company**

10       **72I.**—(1) An applicant company must, upon the request of the Official Receiver and within the period specified by the Official Receiver, pay a deposit of the sum prescribed under section 72V to the Official Receiver, for the purpose of defraying the costs and expenses to be incurred by the Official Receiver in the administration of the simplified debt restructuring programme in relation to the applicant company.

15       (2) Unless the deposit mentioned in subsection (1) is waived or remitted (in whole or in part), the Official Receiver must not accept the applicant company into the simplified debt restructuring programme if the deposit is not paid by the applicant company within the period specified by the Official Receiver.

**Publication of notice of acceptance or rejection, etc.**

20       **72J.** Where the Official Receiver accepts an applicant company into the simplified debt restructuring programme under section 72G or 72H, or rejects an application to be accepted into the simplified debt restructuring programme under section 72G, the Official Receiver must —

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- (a) notify the applicant company of the acceptance or rejection; and
  - (b) publish on the designated website a notice of the acceptance or rejection.

*Division 4 — Effect of acceptance into simplified debt restructuring programme*

**Restraint of proceedings and disposition of property, etc., during specified period**

**72K.**—(1) During the specified period in respect of a company (in simplified debt restructuring) — 5

- (a) no order may be made, and no resolution may be passed, for the winding up of the company;
- (b) no receiver or manager may be appointed over any property or undertaking of the company; 10
- (c) no proceedings (other than proceedings under section 72M) may be commenced or continued against the company, except with the leave of the Court and subject to any terms as the Court may impose; 15
- (d) no execution, distress or other legal process may be commenced, continued or levied against any property of the company, except with the leave of the Court and subject to any terms as the Court may impose;
- (e) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to any terms as the Court may impose; and 20
- (f) despite sections 18 and 18A of the Conveyancing and Law of Property Act, no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the leave of the Court and subject to any terms as the Court may impose. 25 30

(2) Subsection (1) does not affect —

- (a) the exercise of any legal right under any arrangement (including a set-off arrangement or a netting

arrangement) that may be prescribed by regulations made under section 72V; or

(b) the commencement or continuation of any proceedings that may be so prescribed.

5 (3) A company (in simplified debt restructuring) that intentionally or knowingly disposes of the property of the company during the specified period in respect of the company, other than in good faith and in the ordinary course of business of the company, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

10 (4) An officer of a company mentioned in subsection (3) who —

(a) consented or connived, or conspired with others, to effect the disposal of the property of the company;

15 (b) is in any other way, whether by act or omission, knowingly concerned in, or party to, the disposal of the property of the company; or

20 (c) knew or ought reasonably to have known that the property would be or is being disposed of and failed to take all reasonable steps to prevent or stop the disposal of the property of the company,

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, whether or not the company is convicted of an offence under subsection (3).

25 (5) In this section, “officer”, in relation to a company, means a director or secretary of the company or a person employed in an executive capacity by the company.

*Division 5 — Compromise or arrangement with creditors or class of creditors*

**Duties of Restructuring Advisor**

**72L.** The Restructuring Advisor of a company (in simplified debt restructuring) has the following duties during the specified period:

- (a) to assist the company to formulate a proposed compromise or arrangement between the company and its creditors or any class of those creditors;
- (b) if the Restructuring Advisor is of the view that the proposed compromise or arrangement mentioned in paragraph (a) is feasible and merits consideration by the company's creditors — to assist the company in seeking agreement to the proposed compromise or arrangement from the creditors of the company;
- (c) if the Restructuring Advisor is of the view that the proposed compromise or arrangement mentioned in paragraph (a) meets the threshold requirement mentioned in section 72M(3)(d) and the company wishes to make an application to the Court under section 72M(1) for the Court's approval of the proposed compromise or arrangement — to assist the company in the application, such as by drawing documents setting out the details of the proposed compromise or arrangement and other documents supporting the application, and providing his or her opinion to the company if the company is required to respond to any query posed by the Court concerning any detail or the feasibility of the proposed compromise or arrangement;
- (d) if an application is made by the company to the Official Receiver for an extension of the default period under section 72Q(2) — to advise the Official Receiver on whether to grant the application;

(e) if any circumstance under section 72Q(7)(e), (f) or (g) arises —

(i) to inform the Official Receiver as soon as practicable of the circumstance; and

(ii) to advise the Official Receiver on whether and when to discharge the company from the simplified debt restructuring programme as a consequence of the circumstance.

### **Power of Court to approve compromise or arrangement without meeting of creditors**

**72M.**—(1) Despite section 210 of the Companies Act and section 71 and subject to this section, the Court may, on an application made by a company (in simplified debt restructuring), make an order approving a compromise or an arrangement between the company and its creditors or any class of those creditors.

(2) Subject to subsection (9), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the company (in simplified debt restructuring) and the creditors or class of creditors meant to be bound by the compromise or arrangement.

(3) The Court must not approve a compromise or an arrangement under subsection (1) unless —

(a) the company (in simplified debt restructuring) has provided each creditor meant to be bound by the compromise or arrangement with a statement that —

(i) explains the effect of the compromise or arrangement and, in particular, states —

(A) any material interests of the directors of the company (whether as directors or as members, creditors or holders of units of shares of the company or otherwise); and

- (B) the effect that the compromise or arrangement has on those interests, insofar as that effect is different from the effect that the compromise or arrangement has on the like interests of other persons; and 5
- (ii) contains the following information:
  - (A) information concerning the property, assets, business activities, financial condition and prospects of the company; 10
  - (B) information on the manner in which the terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor;
  - (C) any other information as is necessary to enable the creditor to make an informed decision whether to agree to the compromise or arrangement; 15
- (b) the company (in simplified debt restructuring) has informed each creditor meant to be bound by the compromise or arrangement of the date fixed for the determination of the application under subsection (1), and sent to each such creditor, at least 14 days before that date — 20
  - (i) a notice of the application, including a statement that a creditor who objects to the approval of the compromise or arrangement must file the creditor's objection in court at least 7 days before the date fixed for the determination of the application; and 25
  - (ii) a copy of the application; 30
- (c) the company (in simplified debt restructuring) has published in the *Gazette* and on the designated website, at least 14 days before the date fixed for

the determination of the application under subsection (1) —

(i) a notice of the application; and

(ii) a statement that a creditor who objects to the approval of the compromise or arrangement must file the creditor's objection in court at least 7 days before the date fixed for the determination of the application; and

(d) the Court is satisfied that had a meeting of the creditors or class of creditors been summoned, a majority of at least two-thirds in value of the creditors or class of creditors, present and voting either in person or by proxy at the meeting or any adjourned meeting, would have voted in favour of the compromise or arrangement (called in this section the threshold requirement).

(4) In determining whether the threshold requirement is met, the Court must —

(a) disregard any agreement or disagreement to the compromise or arrangement of any creditor who is a related party of the company (in simplified debt restructuring); and

(b) regard —

(i) all secured creditors as forming one class;

(ii) all unsecured creditors whose debts would, in the event of the winding up of the company (in simplified debt restructuring), be paid in priority to all other unsecured debts under section 203, as forming another class; and

(iii) all other unsecured creditors as forming yet another class.

(5) Despite subsection (4), in determining whether the threshold requirement is met in respect of a proposed



compromise or arrangement for a company (in simplified debt restructuring), the Court may —

- (a) take into account the agreement or disagreement to the proposed compromise or arrangement of any creditor who is a related party of the company; or
- (b) substitute its classification of creditors of the company for the classification of creditors set out in subsection (4)(b),

if the circumstances so require and the result of doing so is fair and equitable to all the creditors meant to be bound by the proposed compromise or arrangement.

(6) The Court may, if it thinks fit, do either of the following without hearing oral arguments:

- (a) grant its approval of a compromise or an arrangement, unless —
  - (i) a creditor meant to be bound by the compromise or arrangement has filed an objection mentioned in subsection (3)(b)(i); and
  - (ii) the Court is of the view that the application under subsection (1) cannot be properly determined without the attendance of parties;
- (b) dismiss the application under subsection (1).

(7) To avoid doubt, subsection (6) does not affect the power of the Court to decide an application under subsection (1) after hearing oral arguments.

(8) The Court may grant its approval of a compromise or an arrangement subject to such alterations or conditions as the Court thinks just.

(9) Unless the Court orders otherwise, an order made under subsection (1) —

- (a) has no effect until a copy of the order is lodged with the Registrar of Companies; and
- (b) takes effect starting on the date of the lodgment.

(10) Where the terms of any compromise or arrangement approved under this section provide for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may after the expiration of 2 years, and must before the expiration of 10 years, starting on the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(11) The Official Receiver must —

(a) deal with any moneys received under subsection (10) as if the moneys were paid to the Official Receiver under section 197; and

(b) sell or dispose of any other consideration received under subsection (10) in any manner as the Official Receiver thinks fit, and deal with the proceeds of the sale or disposal as if those proceeds were moneys paid to the Official Receiver under section 197.

(12) For the purposes of subsections (4)(a) and (5)(a), a creditor is a related party of a company (in simplified debt restructuring) if —

(a) the creditor is —

(i) a holding company, an ultimate holding company or a subsidiary, director or shareholder of the company (in simplified debt restructuring); or

(ii) a relative or spouse of a director or shareholder of the company (in simplified debt restructuring); or

(b) the creditor and the company (in simplified debt restructuring) are subsidiaries of the same holding company.

(13) For the purposes of subsection (12)(a)(ii), a creditor (*A*) is a relative of a director or shareholder of a company (in

simplified debt restructuring) (*B*) if *A* is *B*'s brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating —

- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as that person's child; and 5
- (b) an illegitimate child as the legitimate child of the child's mother and reputed father.

(14) A reference in subsection (12)(a)(ii) to a spouse includes a former spouse and a reputed husband or wife. 10

**Authorised officer may act on behalf of company (in simplified debt restructuring) in application and proceedings under section 72M**

72N.—(1) This section applies —

- (a) when a company (in simplified debt restructuring) makes an application under section 72M(1) for the Court's approval of a compromise or an arrangement; and 15
- (b) despite sections 33 and 34 of the Legal Profession Act (Cap. 161) and any provision of the Rules of Court for the time being in force. 20

(2) A duly authorised officer of the company (in simplified debt restructuring) may act on behalf of the company in the making of the application under section 72M(1) and in any proceedings in court arising from the application and leading to the grant, dismissal or withdrawal of the application (but not an appeal mentioned in section 72O). 25

(3) The company (in simplified debt restructuring) may make an application under section 72M(1) and carry on any proceedings in court arising from the application and leading to the grant, dismissal or withdrawal of the application (but not an appeal mentioned in section 72O) through a duly authorised officer of the company and otherwise than by a solicitor. 30

## Orders pending appeal

5       **72O.** Where an appeal is made against an order of the Court made on an application by a company under section 72M(1) or the dismissal of an application under that provision, the Court may, on the application of the company, make one or more of the following orders, each of which is in force for such period pending the appeal as the Court thinks fit:

      (a) an order restraining the passing of a resolution for the winding up of the company;

10       (b) an order restraining the appointment of a receiver or manager over any property or undertaking of the company;

15       (c) an order restraining the commencement or continuation of any proceedings (other than proceedings arising from the appeal) against the company, except with the leave of the Court and subject to any terms as the Court imposes;

20       (d) an order restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the company, except with the leave of the Court and subject to any terms as the Court imposes;

25       (e) an order restraining the taking of any step to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to any terms as the Court imposes;

30       (f) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act), except with

the leave of the Court and subject to any terms as the Court imposes.

### **Application of section 72**

**72P.**—(1) Subject to the modifications in this section, section 72(2), (3) and (4) applies after a compromise or an arrangement, between a company and its creditors or any class of those creditors, has been approved by the Court under section 72M, or confirmed or modified by the Court on any appeal mentioned in section 72O. 5

(2) The following provision applies in place of subsection (2) of section 72: 10

“(2) Where the Court is satisfied that the company has committed an act or omission, or made a decision, that results in a breach of any term of a compromise or an arrangement, the Court may, on the application of the company or any creditor bound by the compromise or arrangement — 15

(a) reverse or modify the act or decision of the company; or

(b) give such direction or make such order as the Court thinks fit to rectify the act, omission or decision of the company.”. 20

(3) A reference in section 72(3) to the company, the scheme manager or any creditor bound by the scheme of arrangement is to be read as a reference to the company or any creditor bound by the compromise or arrangement. 25

(4) A reference in section 72(4) to the compromise or arrangement as approved by the Court under section 210(4) of the Companies Act or section 71(1) is to be read as a reference to the compromise or arrangement as approved by the Court under section 72M or that compromise or arrangement as confirmed or modified by the Court on an appeal mentioned in section 72O, if any. 30

*Division 6 — Discharge from simplified debt restructuring programme*

**Discharge from simplified debt restructuring programme**

5        **72Q.**—(1) Subject to subsections (4), (5) and (6), a company (in simplified debt restructuring) is discharged from the simplified debt restructuring programme at the expiry of 90 days after the day that the notice of acceptance in respect of the company is published under section 72J(b) (called in this section the default period).

10        (2) A company (in simplified debt restructuring) may make an application to the Official Receiver for an extension of the default period in the prescribed form and manner to defer its discharge from the simplified debt restructuring programme.

15        (3) On an application under subsection (2), the Official Receiver may —

      (a) extend the default period —

          (i) for a period not exceeding 30 days (or any longer period as the Official Receiver may determine) after the expiry of the default period;

20           (ii) only once; and

          (iii) only before the expiry of the default period; or

      (b) decline to extend the default period.

25        (4) Subject to subsections (5) and (6), where an extension is granted by the Official Receiver under subsection (3), the company (in simplified debt restructuring) is discharged from the simplified debt restructuring programme at the expiry of the default period and the period of the extension.

30        (5) Where an application is made by a company (in simplified debt restructuring) under section 72M(1) before the company is discharged from the simplified debt restructuring programme, the company is discharged from the same on the day that the application is granted, dismissed or withdrawn.

(6) Despite subsections (1) to (5), the Official Receiver may, on —

(a) the Official Receiver's own motion (whether on the advice of the Restructuring Advisor of the company (in simplified debt restructuring) in question or otherwise); or 5

(b) an application to the Official Receiver by —

(i) the company (in simplified debt restructuring) in question; or

(ii) a creditor, member or an officer of the company (in simplified debt restructuring) in question, 10

discharge the company from the simplified debt restructuring programme.

(7) The Official Receiver may discharge the company (in simplified debt restructuring) from the simplified debt restructuring programme under subsection (6) if the Official Receiver is satisfied — 15

(a) on the basis of any information or document that is not known to or in the possession of the Official Receiver at the time of the acceptance of the company into the simplified debt restructuring programme but that is made known to or available to the Official Receiver after the acceptance, that — 20

(i) the company did not meet all the eligibility criteria mentioned in section 72F(2) at the time of the acceptance; or 25

(ii) any circumstance mentioned in section 72F(3) existed in relation to the company at the time of the acceptance;

(b) that the company ceases to fulfil all of the eligibility criteria mentioned in section 72F(2); 30

(c) that any circumstance mentioned in section 72F(3) has arisen after the acceptance of the company into the simplified debt restructuring programme;

- (d) that the acceptance of the company into the simplified debt restructuring programme has been obtained on the basis of any false or misleading particulars, information or document submitted by the company to the Official Receiver;
- (e) that the company has or its officers have failed to cooperate with the Restructuring Advisor of the company in the formulation of a proposed compromise or arrangement between the company and its creditors or any class of those creditors;
- (f) that there is insufficient support from the creditors of the company for the intended compromise or arrangement such that the threshold requirement mentioned in section 72M(3)(d) will not be met; or
- (g) that the company is not suitable for the simplified debt restructuring programme for any other reason.

(8) The Official Receiver's decision under subsection (3) or (6) is final.

(9) Notice of every discharge under this section must be published by the Official Receiver in the *Gazette* and on the designated website.

### *Division 7 — Miscellaneous*

#### **Modification of section 205**

**72R.** Where a company accepted into the simplified debt restructuring programme is subsequently wound up under Part 8, section 205 applies to that company as if the reference in subsection (2)(a) of that section to a transfer or an assignment of a company's property pursuant to the terms of a compromise or an arrangement mentioned in that paragraph includes a transfer or an assignment of the company's property pursuant to the terms of a compromise or an arrangement approved by the Court under section 72M or that compromise or arrangement as confirmed or modified by the Court on an appeal mentioned in section 72O, if any.



### **Modification of section 226**

**72S.**—(1) This section applies where a company accepted into the simplified debt restructuring programme —

(a) subsequently enters judicial management within the meaning of section 88(2); or 5

(b) is subsequently wound up under Part 8.

(2) Where this section applies, section 226(6) applies as if the following paragraph were inserted immediately after paragraph (c) of that provision:

“(ca) the specified period in respect of the company;”. 10

### **Application of section 440**

**72T.**—(1) Subject to the modifications in this section, section 440 applies after a company is accepted into the simplified debt restructuring programme.

(2) The following provision applies in place of subsection (1) of section 440: 15

“(1) No person may, during the specified period in respect of a company (in simplified debt restructuring) —

(a) terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement (including a security agreement) with the company; or 20

(b) terminate or modify any right or obligation under any agreement (including a security agreement) with the company, 25

by reason only that the company intends to enter, or has entered into, any compromise or arrangement with its creditors or any class of those creditors or that the company is insolvent.”.

(3) A reference in section 440(2)(a) to the commencement of proceedings is to be read as a reference to the day that the notice 30

of acceptance in respect of the company (in simplified debt restructuring) is published under section 72J(b).

**Power to prescribe further modifications and amendments**

- 5        **72U.**—(1) The Minister may, by order in the *Gazette* —
- (a) make further modifications to any provision of this Act for its application to or in relation to a company accepted into the simplified debt restructuring programme; or
  - 10        (b) make modifications or amendments to any provision of any specified Act for its application to or in relation to a company accepted into the simplified debt restructuring programme,
- that are consequential on the enactment of this Part.
- 15        (2) An order under subsection (1) —
- (a) may be made at any time within the period of 2 years after the commencement of this Part; and
  - (b) must be presented to Parliament as soon as possible after publication in the *Gazette*.
- 20        (3) In this section, “specified Act” means any of the following:
- (a) the Bus Services Industry Act 2015 (Act 30 of 2015);
  - (b) the Civil Aviation Authority of Singapore Act (Cap. 41);
  - (c) the Companies Act (Cap. 50);
  - 25        (d) the Consumer Protection (Fair Trading) Act (Cap. 52A);
  - (e) the Cross-Border Railways Act 2018 (Act 21 of 2018);
  - (f) the District Cooling Act (Cap. 84A);
  - 30        (g) the Electricity Act (Cap. 89A);
  - (h) the Environmental Public Health Act (Cap. 95);

- (i) the Gas Act (Cap. 116A);
- (j) the International Interests in Aircraft Equipment Act (Cap. 144B);
- (k) the Maritime and Port Authority of Singapore Act (Cap. 170A); 5
- (l) the Monetary Authority of Singapore Act (Cap. 186);
- (m) the Pawnbrokers Act 2015 (Act 2 of 2015);
- (n) the Public Utilities Act (Cap. 261);
- (o) the Rapid Transit Systems Act (Cap. 263A);
- (p) the Securities and Futures Act (Cap. 289); 10
- (q) the Telecommunications Act (Cap. 323).

### **Regulations for this Part**

**72V.**—(1) The Minister may make regulations for the purposes of carrying into effect the objects of this Part.

(2) Without limiting subsection (1), the Minister may make regulations with respect to — 15

- (a) the qualifications, relevant experience, requirements, functions and duties applicable to a Restructuring Advisor;
- (b) the Internet website to be prescribed as the designated website; 20
- (c) the procedure and the information and documents to be submitted, for making an application to the Official Receiver to be accepted into the simplified debt restructuring programme, or for making an objection to such an application; 25
- (d) the information and documents to be submitted by a company or an officer or a contributory of a company to the Official Receiver or a Restructuring Advisor relating to the company's property, debts and other financial affairs; 30

- (e) the waiver, refund or remission (whether in whole or in part) of the deposit payable by an applicant company before the company may be accepted into the simplified debt restructuring programme;
- 5 (f) all matters or things which by this Part are required or permitted to be prescribed otherwise than by Rules or which are necessary or expedient to be prescribed for giving effect to this Part; and
- 10 (g) any saving and transitional provisions that may be necessary or expedient for any variation or expiry of the prescribed period or the expiry of this Part.”.

### **New Part 10A**

5. The principal Act is amended by inserting, immediately after section 250, the following Part:

15 “PART 10A

SIMPLIFIED WINDING UP

*Division 1 — Preliminary*

#### **Interpretation of this Part**

**250A.** In this Part, unless the context otherwise requires —

20 “company” means any corporation liable to be wound up under Parts 8 and 9, but excludes such company or class of companies as the Minister may by order in the *Gazette* prescribe;

25 “designated website” means the Internet website prescribed by regulations made under section 250R for the purpose of publishing notices to creditors and other persons under this Part;

30 “prescribed period” means the period prescribed under section 250B(2) and as extended or shortened under section 250B(3);

“simplified winding up programme” means the programme established under section 250C.

## **Period of application of Part and prescribed period**

**250B.**—(1) This Part continues in force for a period of 3 years beginning on the date of its commencement.

(2) The Minister may, by order in the *Gazette*, prescribe a period not exceeding 6 months for the purposes of this Part. 5

(3) The Minister may, by order in the *Gazette*, extend or shorten the prescribed period for or by a period determined by the Minister, and the period may be extended or shortened more than once.

### *Division 2 — Simplified winding up programme*

 10

## **Establishment of simplified winding up programme**

**250C.** There is established a programme, known as the simplified winding up programme, for the voluntary winding up of any eligible company that makes an application to the Official Receiver under section 250D and is accepted into the programme. 15

### *Division 3 — Application for and acceptance into simplified winding up programme*

## **Application by company**

**250D.**—(1) A company may, at any time during the prescribed period, make an application to the Official Receiver in accordance with this section to be accepted into the simplified winding up programme. 20

(2) An application under subsection (1) must —

(a) be accompanied by — 25

(i) a special resolution of the company in general meeting authorising the making of the application, and resolving that the company be wound up voluntarily upon being accepted into the simplified winding up programme; 30

(ii) the statement of affairs of the company made in accordance with section 250E showing that the company will not be able to pay or provide for the payment of its debts in full; and

5 (iii) any document or documents as may be prescribed;

(b) state that the company is not aware of any circumstances under section 250F(3) that would make the company unsuitable for acceptance into the simplified winding up programme;

10 (c) be in the relevant form specified on the designated website;

(d) contain the prescribed information and be made in the prescribed manner; and

15 (e) be accompanied by the prescribed fee, if any.

(3) The Official Receiver may, upon receipt of an application of a company under subsection (1), request the company to submit to the Official Receiver, within the period specified by the Official Receiver (which must be at least 7 days after the date of the request), any additional information or document that the Official Receiver thinks necessary to determine the application.

(4) The Official Receiver may refuse to consider an application if —

25 (a) the application is incomplete or not made in accordance with subsection (2); or

(b) any additional information or document requested by the Official Receiver under subsection (3) is not received by the Official Receiver within the period specified by the Official Receiver.

30 (5) If a company has, in connection with the company's application under this section, made any statement, or provided any information or document, to the Official Receiver that is false or misleading in a material particular, any officer of the company who —

- (a) consented or connived, or conspired with others, to effect the making of the statement or provision of the information or document;
- (b) is in any other way, whether by act or omission, knowingly concerned in, or party to, the making of the statement or the provision of the information or document; or
- (c) knew or ought reasonably to have known that the statement to be made or being made, or the information or document to be given or being given, by the company is false or misleading in a material particular, and failed to take all reasonable steps to prevent or stop the making of the statement or the provision of the information or document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) For the purposes of subsection (5), an officer of a company is a director or secretary of the company or a person employed in an executive capacity by the company.

### **Statement of affairs by company making application**

**250E.**—(1) The statement as to the affairs of the company that must accompany a company's application under section 250D must be made in the relevant form specified on the designated website and must contain the following information and particulars as at the latest practicable date before the making of the application:

- (a) the particulars of the assets, debts and liabilities of the company;
- (b) the name and address of each creditor of the company;
- (c) the securities (if any) held by each creditor of the company;
- (d) the dates when the securities mentioned in paragraph (c) were respectively given;

(e) any further information as may be prescribed.

(2) The statement must be made by —

(a) one or more of the persons who are, at the date of the application under section 250D, directors of the company; and

(b) the secretary of the company.

### **Requirements for acceptance into the simplified winding up programme**

**250F.**—(1) The Official Receiver may, on the application of a company (called in this Division the applicant company) under section 250D, accept the applicant company into the simplified winding up programme if, and only if, both the following requirements are met:

(a) the applicant company meets all the eligibility criteria set out in subsection (2);

(b) there is no circumstance in subsection (3), known to the Official Receiver, which makes the applicant company unsuitable for acceptance into the simplified winding up programme.

(2) For the purposes of subsection (1)(a), the eligibility criteria are as follows:

(a) the applicant company's annual sales turnover for the relevant period does not exceed \$10 million (or any amount that may be prescribed in substitution by the Minister by order in the *Gazette*);

(b) the applicant has not more than 30 employees (or any number that may be prescribed in substitution by the Minister by order in the *Gazette*);

(c) the applicant company has not more than 50 creditors (or any number that may be prescribed in substitution by the Minister by order in the *Gazette*);

(d) the liabilities of the applicant company (including contingent and prospective liabilities) do not exceed



\$2 million (or any amount that may be prescribed in substitution by the Minister by order in the *Gazette*);

- (e) the value of realisable assets of the applicant company (not including any asset that is subject to a security) does not exceed \$50,000 (or any amount that may be prescribed in substitution by the Minister by order in the *Gazette*); 5
- (f) any other criteria as may be prescribed by the Minister by order in the *Gazette*.

(3) For the purposes of subsection (1)(b), each of the following is a circumstance that makes an applicant company unsuitable for acceptance into the simplified winding up programme: 10

- (a) the applicant company is being wound up pursuant to —
  - (i) an order for the winding up of a company under section 216(2)(f) of the Companies Act; 15
  - (ii) an order for winding up made under section 124 (or any previous written law corresponding to that provision); or
  - (iii) a resolution passed for the winding up of a company under section 160 (or any previous written law corresponding to that provision); 20
- (b) the applicant company is in judicial management —
  - (i) within the meaning of section 88(2); or
  - (ii) pursuant to an application made under the repealed section 227B(1) of the Companies Act; 25
- (c) an application has been made in respect of the applicant company under any of the following provisions and the application is pending:
  - (i) section 210(1), (4) or (10) of the Companies Act; 30
  - (ii) section 71 (or any previous written law corresponding to that provision);

(iii) section 91 (or any previous written law corresponding to that provision);

(iv) section 124 (or any previous written law corresponding to that provision);

5 (d) an order under section 210(10) of the Companies Act, one or more orders under section 64(1) (or any previous written law corresponding to that provision) or an automatic moratorium mentioned in section 64(8) (or any previous written law  
10 corresponding to that provision), is in force in relation to the applicant company;

(e) a provisional liquidator of the applicant company has been appointed under section 161 (or any previous written law corresponding to that provision);

15 (f) an interim judicial manager has been appointed by the Court under section 92 (or any previous written law corresponding to that provision) or by the applicant company under section 94(3), and the term of the appointment of the interim judicial manager has not  
20 ended;

(g) the applicant company has made an application for acceptance into the simplified debt restructuring programme under section 72E which is pending;

25 (h) there is any dispute or disagreement between 2 or more relevant persons as to the affairs of the applicant company;

(i) there is any allegation made in writing to the Official Receiver by a past judicial manager or liquidator, a creditor or contributory, or an employee or officer  
30 (whether past or present), of the applicant company, that —

(i) any business of the applicant company has been carried on with intent to defraud creditors of the applicant company or creditors of any other person or for any fraudulent purpose within the  
35

- meaning of section 238 (or any previous written law corresponding to that provision);
- (ii) the applicant company has traded wrongfully within the meaning of section 239(12) (or any previous written law corresponding to that provision); or 5
- (iii) any person who has taken part in the formation or promotion of the applicant company, or any past or present officer or past judicial manager or liquidator of the applicant company, has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the applicant company within the meaning of section 240 (or any previous written law corresponding to that provision); 10 15
- (j) the applicant company is a party to any legal proceedings before a court, an arbitral tribunal or other body (whether in Singapore or elsewhere) which are pending; 20
- (k) the winding up of the applicant company is likely to require significant resources or specialised knowledge or expertise;
- (l) the winding up of the applicant company — 25
- (i) requires greater supervision of the Court or participation of the creditors or contributories than is provided for or applicable to a winding up under the simplified winding up programme; or 30
- (ii) is likely to require the exercise of a power by the Court or the liquidator under Part 8 or 9 that is disapplied by section 250L or is otherwise unavailable in a winding up under the simplified winding up programme; 35

(*m*) any other circumstances as may be prescribed by order in the *Gazette*.

(4) Any order made under subsection (2)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) or (3)(*m*) must be presented to Parliament as soon as possible after publication in the *Gazette*.

(5) A reference in subsection (3)(*h*) to the affairs of the applicant company is to the affairs of a company as defined in section 62.

(6) In this section —

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

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

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

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

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

“business commencement period”, in relation to an applicant company, means the period between the date of commencement of the business operations of the applicant company and the date of the application by the applicant company under section 250D (both dates inclusive);

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

“employee”, in relation to an applicant company, means an individual who has entered into or works under a contract of service with the applicant company;

“relevant period”, in relation to an applicant company, means —

5

(a) the business year of the applicant company immediately preceding the date of the application by the applicant company under section 250D; or

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

10

“relevant person”, in relation to an applicant company, means an officer or a member (whether past or present) of the applicant company;

15

“sales turnover”, in relation to an applicant company, 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 the applicant company from the sale of products and the provision of services falling within the ordinary activities of the applicant company;

20

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

25

### **Notices of application and objection, etc.**

30

**250G.**—(1) Where the Official Receiver considers that the eligibility requirement in subsection (2) in respect of an applicant company is met, the Official Receiver must —

(a) send to the applicant company, and every creditor, contributory or officer of the applicant company (whose name and address are provided by the applicant company in its application under section 250D); and

(b) publish on the designated website,

a notice of the application by the applicant company for acceptance into the simplified winding up programme.

(2) The eligibility requirement for the purposes of subsection (1) is that, on the face of the application of the applicant company under section 250D (including any information or document accompanying the application and any further information or document submitted by the applicant company under that section), both the requirements in section 250F(1)(a) and (b) are met.

(3) The notice of application under subsection (1) must contain the following information:

(a) the name of the applicant company and its Unique Entity Number (UEN);

(b) the date of the notice of application;

(c) a note stating that unless an objection is received within the period of 21 days after the date of the notice of application, the Official Receiver may accept the applicant company into the simplified winding up programme;

(d) the form of, and manner of delivering, a notice of objection;

(e) a note providing the address of the designated website and stating that all subsequent notices relating to the applicant company required to be published by the Official Receiver on the designated website under this Part will be published on the designated website;

(f) any other information as may be prescribed by regulations made under section 250R.

(4) Any creditor, contributory or officer of the applicant company or any public sector agency that believes there is reasonable cause why the applicant company should not be accepted into the simplified winding up programme, may object by delivering a notice (called in this section a notice of objection) to the Official Receiver, in the form and manner stated in the notice of application under subsection (1), within 21 days after the date of the notice of application. 5

(5) A notice of objection under subsection (4) must contain a statement of the grounds of objection. 10

(6) At the expiry of 21 days after the date of the notice of application published under subsection (1) —

(a) where the Official Receiver has not received any notice of objection — the Official Receiver may accept the applicant company into the simplified winding up programme, subject to the payment by the applicant company of the deposit payable under section 250I; or 15

(b) where the Official Receiver has received any notice of objection, the Official Receiver must decide whether to — 20

(i) accept the applicant company into the simplified winding up programme, subject to the payment by the applicant company of the deposit payable under section 250I; or 25

(ii) reject the applicant company's application, and, in doing so, the Official Receiver must consider the grounds of the objection.

(7) The Official Receiver's decision under subsection (6) is final. 30

(8) In subsection (4), "public sector agency" means any of the following:

(a) a body corporate established by a public Act for the purposes of a public function;

- (b) a Ministry or department of the Government;
- (c) an Organ of State.

### **Direction by Minister**

5       **250H.**—(1) Despite anything in sections 250F and 250G(1), the Minister may direct the Official Receiver —

- 10           (a) to send and publish in accordance with section 250G(1)(a) and (b) the notice of application of an applicant company for acceptance into the simplified winding up programme even though the eligibility requirement mentioned in section 250G(2) in respect of the applicant company is not met; or
- 15           (b) to accept, subject to section 250I(2), any applicant company into the simplified winding up programme even though any of the requirements in section 250F(1)(a) or (b) in respect of the applicant company are not met.

20       (2) Where the Minister directs the Official Receiver to accept any applicant company into the simplified winding up programme under subsection (1)(b), the Minister may also waive or remit (in whole or in part) the deposit payable by the applicant company under section 250I.

25       (3) In this section, any reference to the Minister includes a reference to any of the following persons designated by the Minister to exercise the power under subsection (1) or (2):

- 30           (a) a Second Minister, Minister of State or Senior Minister of State for the Ministry of Law;
- (b) a Parliamentary Secretary or Senior Parliamentary Secretary to the Ministry of Law.

### **Deposit payable by applicant company**

35       **250I.**—(1) An applicant company must, upon the request of the Official Receiver and within the period specified by the Official Receiver, pay a deposit of the prescribed sum to the Official Receiver, for the purpose of defraying the costs and



expenses to be incurred by the Official Receiver in the administration of the simplified winding up programme in relation to the applicant company.

(2) Unless the deposit mentioned in subsection (1) is waived or remitted (in whole or in part), the Official Receiver must not accept the applicant company into the simplified winding up programme if the deposit is not paid by the applicant company within the period specified by the Official Receiver.

**Publication of notice of acceptance or rejection, etc.**

**250J.** Where the Official Receiver accepts an applicant company into the simplified winding up programme under section 250G or 250H or rejects an application to be accepted into the simplified winding up programme under section 250G, the Official Receiver must —

- (a) notify the applicant company of the acceptance or rejection;
- (b) publish on the designated website a notice of the acceptance or rejection; and
- (c) within 10 days after the publication of the notice of acceptance in paragraph (b), give notice of the acceptance in the *Gazette* and at least one English local newspaper.

*Division 4 — Voluntary winding up of company under simplified winding up programme*

**Effect of acceptance into simplified winding up programme**

**250K.**—(1) Where a company has resolved that the company be wound up voluntarily upon being accepted into the simplified winding up programme, and the company is accepted by the Official Receiver into the simplified winding up programme, for the purposes of section 161(6)(b) and paragraph (e) of the definition of “commencement of winding up” in section 217(1), it is deemed that the time of the passing of the resolution for

voluntary winding up is the time of publication by the Official Receiver under section 250J(c) of the notice of acceptance in respect of the company in the *Gazette*.

5 (2) The voluntary winding up of the company under the simplified winding up programme is to be treated as if it were a creditors' voluntary winding up.

10 (3) Despite anything in section 167, the Official Receiver is the liquidator of a company that is wound up voluntarily pursuant to the acceptance of the company into the simplified winding up programme.

### **Modifications and disapplication of certain provisions of Parts 8 and 9**

15 **250L.**—(1) To avoid doubt, a voluntary winding up of a company that resolved that the company be wound up voluntarily upon being accepted into the simplified winding up programme, is a voluntary winding up within the meaning of sections 119 and 160(1)(b), and Division 1, Subdivisions 1, 3 and 4 of Division 3, and Division 4, of Part 8, and Part 9, apply subject to the modifications set out in this section.

20 (2) The following provisions (which otherwise apply to or in relation to a company that is being wound up under a creditors' voluntary winding up) do not apply to or in relation to a company that is being wound up voluntarily under the simplified winding up programme:

25 (a) sections 161 (except for section 161(6)(b)) and 163 (in Subdivision 1 of Division 3 of Part 8);

(b) sections 166, 167 (except section 167(4)) and 169 (in Subdivision 3 of Division 3 of Part 8);

30 (c) sections 171, 173, 174, 175, 177(1)(e) and (3), 178, 179, 180(2) to (5) and (9), 182, 184 and 185 (in Subdivision 4 of Division 3 of Part 8);

(d) sections 187, 188(3), 189(1), 192, 194(2) and (3), 195(5), 196, 197(3) and (5), 198, 199(1) and (2), 200,

201, 202 and 204 (in Subdivision 1 of Division 4 of Part 8);

(e) sections 209(3), (4) and (5), 210 and 211 (in Subdivision 3 of Division 4 of Part 8);

(f) section 235 (in Division 5 of Part 9).

5

(3) Section 160 applies as if subsections (2) and (3) of that section were replaced by the following subsections:

“(2) The Official Receiver must within 7 days after the publication of the notice of acceptance in respect of an applicant company in the *Gazette* under section 250J, lodge a copy of the notice of acceptance with the Registrar of Companies.

10

(3) Despite subsection (1), a company that has been accepted into the simplified winding up programme and that is being wound up voluntarily under the programme must not pass a resolution mentioned in subsection (1)(a) or (b) before the company is discharged from the programme.”.

15

(4) Section 168 applies as if the words “statement of affairs mentioned in section 166(4)” in subsection (1) of that section were replaced by the words “statement of affairs mentioned in section 250D(2)(a)(ii)”.

20

(5) Section 170 applies as if —

(a) the words “commencement of a creditors’ voluntary winding up” in subsection (1) of that section were replaced by the words “commencement of the winding up of a company that is being wound up voluntarily under the simplified winding up programme”; and

25

(b) the words “action or proceeding” in subsection (2) of that section were replaced by the words “action or proceeding (except an application under section 124)”.

30

(6) Section 177(1) applies as if paragraph (a) of that provision were replaced by the following paragraphs:

“(a) exercise any of the powers in section 144(1)(b), (c), (d) and (f)(i);

5 (aa) exercise the power in section 144(1)(e) or (f)(ii), but only if —

10 (i) any period of limitation prescribed by any rule of law or in any contract for the bringing of an action or other legal proceeding will expire during the voluntary winding up of the company, if the action or legal proceeding is not brought in the name and on behalf of the company; or

15 (ii) the failure to bring or defend an action or a legal proceeding in the name and on behalf of the company at any time during the voluntary winding up will cause prejudice to the company;”.

20 (7) Section 180(1) applies as if paragraphs (a) and (b) of that provision were replaced by the following paragraphs:

“(a) make up an account showing how the winding up has been conducted and the property of the company has been disposed of;

25 (b) lodge a copy of the account with the Registrar of Companies; and

(c) give notice of the making up of the account, and publish the account, on the designated website.”.

30 (8) Section 180 applies as if subsection (6) of that section were replaced by the following subsection:

“(6) On the expiration of 30 days after the giving of the notice and the publication of the account on the designated

website in accordance with subsection (1)(c), the company is dissolved.”.

(9) Section 183 applies as if the words “remuneration of the liquidator” were replaced by the words “costs and expenses of winding up incurred by the Official Receiver as the liquidator of the company”.

5

(10) Section 191 applies as if subsections (1) to (4) of that section were replaced by the following subsections:

“(1) The Official Receiver must —

(a) within 14 days after the Official Receiver’s appointment as liquidator, lodge with the Registrar of Companies notice of the Official Receiver’s appointment and of the address of the Official Receiver’s office; and

10

(b) within 14 days after any change in the address of the Official Receiver’s office, lodge with the Registrar of Companies notice of the change.

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(2) Service of any document by leaving it at, or sending it by post addressed to, the address of the Official Receiver’s office given in the most recent notice lodged by the Official Receiver with the Registrar of Companies under subsection (1)(a) or (b) is deemed to be good service upon the Official Receiver and upon the company.

20

(3) The Official Receiver must, within 14 days after the Official Receiver’s cessation from office as liquidator upon the discharge of the company from the simplified winding up programme, lodge with the Registrar of Companies a notice of the Official Receiver’s cessation from that office.”.

25

(11) Section 197 applies as if subsections (1) and (2) of that section were replaced by the following subsections:

30

“(1) Where the Official Receiver (as the liquidator of a company that is wound up voluntarily under the simplified winding up programme), has in his or her hands or under his or her control —

5                   (a) any unclaimed dividend or other moneys that have remained unclaimed for more than 2 months after the date on which the dividend or other moneys became payable; or

10                   (b) after making final distribution, any unclaimed or undistributed moneys arising from any property of the company,

and the moneys remain unclaimed after the expiration of 14 days after the date the notice mentioned in subsection (2) is given, the Official Receiver must place the moneys to the credit of the Companies Liquidation Account.

15                   (2) Before the Official Receiver places any moneys mentioned in subsection (1) to the credit of the Companies Liquidation Account, the Official Receiver must give notice of the Official Receiver’s intention to do so if those moneys remain unclaimed after the expiration of 14 days after the date the notice is given, to the person entitled to those moneys by —

20                   (a) publishing a notice on the designated website; and

25                   (b) sending a copy of the notice to that person at that person’s last known address.”.

(12) Section 205(2) applies as if paragraph (a) of that provision were replaced by the following paragraph:

30                   “(a) pursuant to the terms of a compromise or an arrangement proposed by the company under section 210 of the Companies Act or section 71 or 72M, that is approved by the creditors; or”.

(13) Section 206(1) applies as if paragraph (a) of that provision were replaced by the following paragraph:

“(a) where any creditor has had notice that a notice of application mentioned in section 250G(1) in respect of the company has been published on the designated website, the date on which the creditor so had notice is for the purposes of this section substituted for the date of the commencement of the winding up;”.

5

(14) Section 207(1) applies as if paragraphs (a), (b) and (c) of that provision were replaced by the following paragraph:

10

“(a) a notice of acceptance in respect of the company has been published in the *Gazette* under section 250J.”.

(15) Section 207(2) applies as if paragraph (b) of that provision were replaced by the following paragraph:

15

“(b) if within that time notice is served on the bailiff that a notice of application mentioned in section 250G(1) in respect of the company has been published on the designated website, and a notice of acceptance is published in the *Gazette*, the bailiff must pay the balance to the Official Receiver as liquidator, who is entitled to retain the balance as against the execution creditor.”.

20

(16) Section 209 applies as if subsection (2) of that section were replaced by the following subsection:

25

“(2) Where this section applies, the Official Receiver may publish on the designated website a notice that at the expiration of 30 days after the date of the notice, the name of the company mentioned in that notice will be struck off the register by the Registrar of Companies, and the company will be dissolved, unless action is taken in

30

accordance with subsection (6) to apply to the Court for the company to be wound up.”.

(17) Section 209 applies as if subsection (6) of that section were replaced by the following subsection:

5 “(6) The Official Receiver must allow any creditor, contributory or receiver or manager of the company to take any necessary action, before the expiry of the period of 30 days after the date of the notice mentioned in  
10 subsection (2), to apply to the Court for the company to be wound up.”.

(18) Section 209(7) applies as if the words “the giving of the notice under subsection (2)” were replaced by the words “the publication of the notice under subsection (2)”.

15 (19) Section 209 applies as if subsection (8) of that section were replaced by the following subsection:

“ (8) At the expiration of the period of 30 days mentioned in subsection (2), the Official Receiver may lodge with the Registrar of Companies a notice to strike the name of the  
20 company off the register, unless action is taken in accordance with subsection (6) to apply to the Court for the company to be wound up.”.

25 (20) A reference in sections 218(1) and (2) and 219(1)(b) to an insolvent company being wound up is to be read as a reference to a company that is being wound up voluntarily under the simplified winding up programme.

(21) A reference in sections 218(3), 222(1) and 223(1) to insolvent winding up is to be read as a reference to the winding up of a company that is being wound up voluntarily under the simplified winding up programme.

30 (22) A reference in section 221(1) to insolvent liquidation is to be read as a reference to the winding up of a company that is



being wound up voluntarily under the simplified winding up programme.

### **Special managers**

**250M.**—(1) The Official Receiver may appoint a qualified person to act as a special manager for the liquidation of a company that is being wound up voluntarily under the simplified winding up programme during such period as the Official Receiver specifies, with such powers (including any of the powers of a receiver or manager) as are entrusted to the special manager by the Official Receiver.

(2) The special manager is to receive such remuneration as the Official Receiver may determine.

(3) In this section, “qualified person” means any person who —

(a) is a public accountant;

(b) is a chartered accountant within the meaning given by section 2(1) of the Singapore Accountancy Commission Act; or

(c) possesses any other qualification or any relevant experience as the Minister may prescribe by regulations made under section 250R.

### *Division 5 — Discharge from simplified winding up programme*

#### **When company is discharged from simplified winding up programme**

**250N.** A company that has been accepted into the simplified winding up programme and that is being wound up voluntarily under the programme is discharged from the programme on the earliest of the following dates:

(a) the date that the company is dissolved under section 180(6) (as modified by section 250L(8)) or section 209(10);

- (b) the date that an order is made by the Court for the winding up of the company;
- (c) the date that an order is made by the Court under section 186 for the stay altogether of the proceedings in relation to the winding up or for the termination of the winding up.

### **Winding up by Court of company**

**250O.**—(1) The Official Receiver, as the liquidator of a company that is being wound up voluntarily under the simplified winding up programme, may make an application under section 124(1)(e) for the company to be wound up under an order of the Court if the Official Receiver is satisfied —

- (a) on the basis of any information or document that is not known to or in the possession of the Official Receiver at the time of the acceptance of the company into the simplified winding up programme but that is made known to or available to the Official Receiver after the acceptance, that —

- (i) the company did not meet all the eligibility criteria mentioned in section 250F(2) at the time of the acceptance; or

- (ii) any circumstance mentioned in section 250F(3) existed in relation to the company at the time of the acceptance;

- (b) that the company ceases to fulfil all of the eligibility criteria mentioned in section 250F(2);

- (c) that any circumstance mentioned in section 250F(3) has arisen after the company was accepted into the simplified winding up programme; or

- (d) that the acceptance of the company into the simplified winding up programme has been obtained on the basis of any false or misleading particulars, information or document submitted by the company to the Official Receiver.

(2) To avoid doubt, subsection (1) does not affect the right of any person to make an application under section 124(1) for an order that a company that is being wound up voluntarily under the simplified winding up programme, be wound up under an order of the Court. 5

(3) Section 124(2)(e) does not apply in relation to an application made by the Official Receiver or any other person for an order for the winding up of a company that is being wound up voluntarily under the simplified winding up programme.

**Notification of discharge, etc.** 10

**250P.**—(1) Where a company is discharged from the simplified winding up programme otherwise than when the company is dissolved, the Official Receiver must, within 7 days after the discharge of the company from the simplified winding up programme — 15

- (a) publish in the *Gazette* and on the designated website a notice of the discharge; and
- (b) lodge a copy of the notice of the discharge with the Registrar of Companies.

(2) The notice of discharge mentioned in subsection (1) must contain — 20

- (a) the name of the company that is discharged from the simplified winding up programme and its Unique Entity Number (UEN);
- (b) the date of the discharge; and 25
- (c) any other information as may be prescribed by regulations made under section 250R.

*Division 6 — Miscellaneous***Power to prescribe further disapplications or make further modifications**

**250Q.**—(1) The Minister may, by order in the *Gazette* —

- 5           (a) further disapply any provision of this Act (which would otherwise apply to or in relation to a company that is being wound up voluntarily) to or in relation to a company that is being wound up voluntarily under the simplified winding up programme; or
- 10           (b) prescribe further modifications to any provision of this Act that applies (whether with or without modifications) to or in relation to a company that is being wound up voluntarily under the simplified winding up programme.

15           (2) An order under subsection (1) —

- (a) may be made at any time within the period of 2 years after the commencement of this Part; and
- (b) must be presented to Parliament as soon as possible after publication in the *Gazette*.

20           **Regulations for this Part**

**250R.**—(1) The Minister may make regulations for the purposes of carrying into effect the objects of this Part.

(2) Without limiting subsection (1), the Minister may make regulations with respect to —

- 25           (a) the qualifications, relevant experience, requirements, functions and duties applicable to a special manager;
- (b) the Internet website to be prescribed as the designated website;
- 30           (c) the procedure and the information and documents to be submitted, for making an application to the Official Receiver to be accepted into the simplified winding

- up programme, or for making an objection to such an application;
- (d) the scale of fees to be charged by the Official Receiver in the winding up of a company accepted into the simplified winding up programme; 5
  - (e) the waiver, refund or remission (whether in whole or in part) of the deposit payable by an applicant company before the company may be accepted into the simplified winding up programme;
  - (f) all matters or things which by this Part are required or permitted to be prescribed otherwise than by Rules or which are necessary or expedient to be prescribed for giving effect to this Part; and 10
  - (g) any saving and transitional provisions that may be necessary or expedient for any variation or expiry of the prescribed period or the expiry of this Part.”. 15

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) for the following main purposes:

- (a) to introduce a new Part 5A and a new Part 10A to provide for temporary measures in the form of a simplified debt restructuring procedure and a simplified winding up procedure, respectively, for eligible companies in view of the COVID-19 pandemic;
- (b) to empower the Minister to grant to any individual an exemption from the requirement of being a “qualified person” under section 50.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 35(3) to expand the Official Receiver’s immunity from personal liability to the powers, functions or duties to be exercised, performed or discharged by the Official Receiver under certain provisions of the new Parts 5A and 10A.

Clause 3 amends section 50 —

- (a) to enable an individual to be granted, or to hold or continue to hold, an insolvency practitioner’s licence if the individual is exempted by the

Minister, for the time being, from the requirement of being a qualified person; and

- (b) to empower the Minister to exempt, for such period as the Minister may specify, any individual from the requirement of being a qualified person in order to be granted, or to hold or continue to hold, an insolvency practitioner's licence.

Clause 4 inserts a new Part 5A (comprising new sections 72A to 72V) for the simplified restructuring of debts of companies.

Division 1 of the new Part 5A (comprising new sections 72A and 72B) sets out the preliminary provisions for the purposes of that new Part.

The new section 72A sets out the definitions for the purposes of the new Part 5A. A corporation liable to be wound up under the Act is excluded from the simplified debt restructuring programme established under the new section 72C if the corporation is excluded from the definition of "company" by the Minister by order in the *Gazette*.

The new section 72B(1) provides that the new Part 5A is to expire after a period of 3 years beginning on the date of its commencement. The new section 72B(2) empowers the Minister to prescribe a period not exceeding 6 months within which an application by a company for acceptance into the simplified debt restructuring programme must be made. Under the new section 72B(3), the Minister may extend or shorten, more than once, the period prescribed under the new section 72B(2).

Division 2 of the new Part 5A (comprising new sections 72C and 72D) sets out the provisions relating to the establishment of the simplified debt restructuring programme.

The new section 72C establishes the simplified debt restructuring programme.

The new section 72D provides for the appointment of qualified persons for the following purposes:

- (a) to advise the Official Receiver on whether to grant an application by a company to be accepted into the simplified debt restructuring programme;
- (b) to act as the Restructuring Advisor (or one of the Restructuring Advisors, if more than one is appointed) of a company that is accepted into the simplified debt restructuring programme.

Division 3 of the new Part 5A (comprising new sections 72E to 72J) sets out the provisions relating to the application for, and acceptance into, the simplified debt restructuring programme.

The new section 72E sets out the process for making an application to the Official Receiver for acceptance into the simplified debt restructuring programme, and the information and documents that must be submitted to the Official Receiver by the company making the application. An officer of a company commits an offence if the company has, in connection with the application, made any statement, or provided any information or document, to the Official Receiver that is false or misleading in a material particular, and any of the provisions of the new section 72E(5)(a), (b) or (c) is engaged.

The new section 72F sets out the requirements for acceptance into the simplified debt restructuring programme. The Official Receiver must not accept a company (an applicant company) into the simplified debt restructuring programme if any of the eligibility criteria in the new section 72F(2) is not met by the applicant company or if there is any circumstance under the new section 72F(3) in relation to the applicant company that is known to the Official Receiver.

The new section 72G —

- (a) requires the Official Receiver to send to an applicant company, and every creditor of the applicant company, and to publish on the designated website, a notice of an application by the applicant company if the eligibility requirement mentioned in the new section 72G(2) is met in respect of the applicant company;
- (b) sets out the required contents of the notice of application;
- (c) sets out the procedure for objecting to the acceptance of an applicant company into the simplified debt restructuring programme; and
- (d) requires the Official Receiver to consider the grounds of an objection if any notice of objection is received by the Official Receiver within 21 days after the date of a notice of application.

The new section 72H —

- (a) empowers the Minister to direct the Official Receiver —
  - (i) to send and publish in accordance with the new section 72G(1)(a) and (b) a notice of application by an applicant company even though the eligibility requirement mentioned in the new section 72G(2) in respect of the applicant company is not met; or
  - (ii) to accept, subject to the new section 72I(2), any applicant company into the simplified debt restructuring programme even though any of the requirements in the new section 72F(1)(a) or (b) is not met;

- (b) empowers the Minister to waive or remit (in whole or in part) the deposit payable under the new section 72I if the Minister directs the Official Receiver to accept an applicant company into the simplified debt restructuring programme; and
- (c) provides for an expanded definition of “Minister” to include other senior officeholders for the Ministry of Law who are designated by the Minister to exercise the power under the new section 72H(1) or (2).

The new section 72I requires that a deposit of the prescribed sum be paid to the Official Receiver before the Official Receiver accepts an applicant company into the simplified debt restructuring programme, unless the deposit is waived or remitted, in whole or in part.

The new section 72J requires the Official Receiver to notify an applicant company of the acceptance or rejection of the applicant company’s application for acceptance into the simplified debt restructuring programme, and to publish a notice of the acceptance or rejection on the designated website.

The new section 72K (in Division 4 of the new Part 5A) provides for a statutory moratorium on certain proceedings against a company that is accepted into the simplified debt restructuring programme (a company (in simplified debt restructuring)) during the specified period in respect of the company. During the specified period, the company (in simplified debt restructuring) commits an offence if the company intentionally or knowingly disposes of the property of the company other than in good faith and in the ordinary course of business of the company. An officer of a company (in simplified debt restructuring) commits an offence if the company intentionally or knowingly disposes of the property of the company other than in good faith and in the ordinary course of business of the company, and any of the provisions of the new section 72K(4)(a), (b) or (c) is engaged, whether or not the company is convicted of an offence under the new section 72K(3).

Division 5 of the new Part 5A (comprising new sections 72L to 72P) sets out the provisions relating to a compromise or an arrangement with a company’s creditors or class of creditors that may be proposed and approved under the simplified debt restructuring programme.

The new section 72L sets out the duties of the Restructuring Advisor of a company (in simplified debt restructuring).

The new section 72M provides for the power of the Court to approve a proposed compromise or arrangement between a company (in simplified debt restructuring) and its creditors or any class of those creditors, and the procedure that must be followed by the company before the company makes the application to the Court for the approval.



Under the new section 72M(4), in determining whether the threshold requirement mentioned in the new section 72M(3)(d) is met (without which a compromise or an arrangement proposed by a company (in simplified debt restructuring) must not be approved by the Court), the Court must —

- (a) disregard any agreement or disagreement to the compromise or arrangement of any creditor who is a related party of the company; and
- (b) regard the creditors of the company meant to be bound by the compromise or arrangement as falling within the 3 classes specified in the new section 72M(4)(b)(i), (ii) or (iii).

However, under the new section 72M(5), the Court may take into account the agreement or disagreement of any related party of the company, or substitute its classification of creditors of the company for that provided for in the new section 72M(4)(b), if the circumstances so require and the result of doing so is fair and equitable to all creditors meant to be bound by the proposed compromise or arrangement.

The new section 72M(6) empowers the Court to grant its approval of a compromise or an arrangement proposed by a company (in simplified debt restructuring) (subject to certain conditions) or to dismiss an application for approval of the same, without hearing oral arguments.

The new section 72M(12), (13) and (14) sets out who a “related party” of a company (in simplified debt restructuring) is, for the purposes of determining whether the threshold requirement mentioned in the new section 72M(3)(d) is met.

The new section 72N enables a duly authorised officer of a company (in simplified debt restructuring) to act on behalf of the company in the making of an application under the new section 72M(1) and in any proceedings in court arising from the application and leading to the grant, dismissal or withdrawal of the application (but not an appeal mentioned in the new section 72O), despite anything in sections 33 and 34 of the Legal Profession Act (Cap. 161) and in the Rules of Court for the time being in force.

The new section 72O empowers the Court to make any order of the kind specified in that section where an order under the new section 72M(1) in respect of a company, or the dismissal of an application in respect of a company under that provision, is appealed against, so as to extend the moratorium on certain proceedings against the company pending the appeal.

The new section 72P provides for the modified application of section 72, so as to empower the Court to review any act, omission or decision of a company after a compromise or an arrangement proposed by the company has been approved by the Court under the new section 72M(1).

Division 6 of the new Part 5A (comprising new section 72Q) sets out the provisions relating to the discharge of a company (in simplified debt restructuring) from the simplified debt restructuring programme.

The new section 72Q provides for —

- (a) the default period after which a company (in simplified debt restructuring) is discharged from the simplified debt restructuring programme;
- (b) the power of the Official Receiver to extend the default period upon an application by the company (in simplified debt restructuring); and
- (c) the grounds for discharging a company (in simplified debt restructuring) from the simplified debt restructuring programme before the end of the default period.

Division 7 of the new Part 5A (comprising new sections 72R to 72V) sets out the miscellaneous provisions of that new Part.

The new sections 72R and 72S modify sections 205 and 226, respectively, for application to a company that is accepted into the simplified debt restructuring programme and is subsequently wound up (in the case of the new section 72R) or subsequently enters judicial management or is subsequently wound up (in the case of the new section 72S). These modifications are consequential on the enactment of the new Part 5A.

The new section 72T applies section 440 with modifications to a company that is accepted into the simplified debt restructuring programme, so that the prohibition against the exercise by a creditor of a right under an ipso facto clause applies during the specified period in respect of the company.

The new section 72U empowers the Minister to make further modifications to any provision of the Act, or make modifications or amendments to any provision of any specified Act, for its application to or in relation to a company accepted into the simplified debt restructuring programme, that are consequential on the enactment of the new Part 5A, within a period of 2 years after the commencement of that new Part.

The new section 72V provides for the power of the Minister to make regulations specifically for carrying into effect the new Part 5A, including any saving and transitional provisions that may be necessary or expedient for any variation or expiry of the prescribed period under the new section 72B or the expiry of the new Part 5A.

Clause 5 inserts a new Part 10A (comprising new sections 250A to 250R) for the simplified winding up of companies.

Division 1 of the new Part 10A (comprising new sections 250A and 250B) sets out the preliminary provisions for the purposes of that new Part.

The new section 250A sets out the definitions for the purposes of the new Part 10A. A corporation liable to be wound up under Parts 8 and 9 is excluded from the simplified winding up programme established under the new section 250C if the corporation is excluded from the definition of “company” by the Minister by order in the *Gazette*.

The new section 250B(1) provides that the new Part 10A is to expire after a period of 3 years beginning on the date of its commencement. The new section 250B(2) empowers the Minister to prescribe a period not exceeding 6 months within which an application by a company for acceptance into the simplified winding up programme must be made. Under the new section 250B(3), the Minister may extend or shorten, more than once, the period prescribed under the new section 250B(2).

The new section 250C (in Division 2 of the new Part 10A) establishes the simplified winding up programme.

Division 3 of the new Part 10A (comprising new sections 250D to 250J) sets out the provisions relating to the application for, and acceptance into, the simplified winding up programme.

The new section 250D sets out the process for making an application to the Official Receiver for acceptance into the simplified winding up programme, and the information and documents that must be submitted to the Official Receiver by the company making the application. In particular, the application must be accompanied by a special resolution of the company in general meeting authorising the making of the application, and resolving that the company be wound up voluntarily upon being accepted into the simplified winding up programme. An officer of a company commits an offence if the company has, in connection with the application, made any statement, or provided any information or document, to the Official Receiver that is false or misleading in a material particular, and any of the provisions of the new section 250D(5)(a), (b) or (c) is engaged.

The new section 250E sets out the contents of the statement as to the affairs of the company that must accompany a company’s application for acceptance into the simplified winding up programme.

The new section 250F sets out the requirements for acceptance into the simplified winding up programme. The Official Receiver must not accept a company (an applicant company) into the simplified winding up programme if any of the eligibility criteria in the new section 250F(2) is not met by the applicant company or if there is any circumstance under the new section 250F(3) in relation to the applicant company that is known to the Official Receiver.

The new section 250G —

- (a) requires the Official Receiver to send to an applicant company, and every creditor, contributory or officer of the applicant company, and to publish on the designated website, a notice of an application by the applicant company if the eligibility requirement mentioned in the new section 250G(2) is met in respect of the applicant company;
- (b) sets out the required contents of the notice of application;
- (c) sets out the procedure for objecting to the acceptance of an applicant company into the simplified winding up programme; and
- (d) requires the Official Receiver to consider the grounds of an objection if any notice of objection is received by the Official Receiver within 21 days after the date of a notice of application.

The new section 250H —

- (a) empowers the Minister to direct the Official Receiver —
  - (i) to send and publish in accordance with the new section 250G(1)(a) and (b) a notice of application by an applicant company even though the eligibility requirement mentioned in the new section 250G(2) in respect of the applicant company is not met; or
  - (ii) to accept, subject to the new section 250I(2), any applicant company into the simplified winding up programme even though any of the requirements in the new section 250F(1)(a) or (b) is not met;
- (b) empowers the Minister to waive or remit (in whole or in part) the deposit payable under the new section 250I if the Minister directs the Official Receiver to accept an applicant company into the simplified winding up programme; and
- (c) provides for an expanded definition of “Minister” to include other senior officeholders for the Ministry of Law who are designated by the Minister to exercise the power under the new section 250H(1) or (2).

The new section 250I requires that a deposit of the prescribed sum be paid to the Official Receiver before the Official Receiver accepts an applicant company into the simplified winding up programme, unless the deposit is waived or remitted, in whole or in part.

The new section 250J requires the Official Receiver to notify an applicant company of the acceptance or rejection of the applicant company’s application for acceptance into the simplified winding up programme, to publish a notice of the acceptance or rejection on the designated website, and to give notice of the

acceptance of an applicant company in the *Gazette* and at least one English local newspaper.

Division 4 of the new Part 10A (comprising new sections 250K, 250L and 250M) sets out the provisions relating to the voluntary winding up of a company that is accepted into the simplified winding up programme.

The new section 250K provides for the following effects of the acceptance of a company into the simplified winding up programme:

- (a) it is deemed, for the purposes of section 161(6)(b) and paragraph (e) of the definition of “commencement of winding up” in section 217(1), that the time of the passing of the resolution by the company for voluntary winding up is the time of publication by the Official Receiver of the notice of acceptance in respect of the company in the *Gazette*;
- (b) the voluntary winding up of the company under the simplified winding up programme is treated as if it were a creditors’ voluntary winding up;
- (c) the Official Receiver is the liquidator of the company in the voluntary winding up of the company under the simplified winding up programme.

The new section 250L —

- (a) provides for the application of Division 1, Subdivisions 1, 3 and 4 of Division 3, and Division 4, of Part 8, and Part 9, subject to the modifications set out in the new section 250L;
- (b) sets out those provisions of the Act (which otherwise apply to or in relation to a company that is being wound up under a creditors’ voluntary winding up) that do not apply to or in relation to a company that is being wound up voluntarily under the simplified winding up programme; and
- (c) sets out the provisions of the Act that apply with modifications to or in relation to a company that is being wound up under the simplified winding up programme, and what those modifications are.

The new section 250M empowers the Official Receiver to appoint a qualified person to act as a special manager for the liquidation of a company that is being wound up voluntarily under the simplified winding up programme.

Division 5 of the new Part 10A (comprising new sections 250N, 250O and 250P) sets out the provisions relating to the discharge of a company from the simplified winding up programme.

The new section 250N sets out the circumstances under which a company is discharged from the simplified winding up programme.

The new section 250O sets out the reasons (which are non-exhaustive) for which the Official Receiver may, as the liquidator of a company that is being wound up voluntarily under the simplified winding up programme, make an application under section 124(1)(e) for the company to be wound up under an order of the Court.

The new section 250P requires the Official Receiver to publish in the *Gazette* and on the designated website a notice of the discharge of a company from the simplified winding up programme, and to lodge a copy of the notice of the discharge with the Registrar of Companies.

Division 6 of the new Part 10A (comprising new sections 250Q and 250R) sets out the miscellaneous provisions of that new Part.

The new section 250Q empowers the Minister to further disapply any provision of the Act, or to prescribe further modifications to any provision of the Act, being a provision which would otherwise apply to or in relation to a company that is being wound up voluntarily, within a period of 2 years after the commencement of the new Part 10A.

The new section 250R provides for the power of the Minister to make regulations specifically for carrying into effect the new Part 10A, including any saving and transitional provisions that may be necessary or expedient for any variation or expiry of the prescribed period under the new section 250B or the expiry of the new Part 10A.

## EXPENDITURE OF PUBLIC MONEY

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

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