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Insolvency, Restructuring and Dissolution (Amendment) Bill

Bill No. 45/2024.

Read the first time on 11 November 2024.

A BILL

i n t i t u l e d

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

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Insolvency, Restructuring and Dissolution (Amendment) Act 2024 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 72A

2. In the Insolvency, Restructuring and Dissolution Act 2018 (called in this Act the principal Act), in section 72A —

(*a*) replace the definition of "company (in simplified debt restructuring)" with —

> " "company (in simplified debt restructuring)" means a company for which the simplified debt restructuring programme has commenced under section 72E(3), and that has not been discharged from the programme;";

(*b*) after the definition of "designated website", insert —

> " "moratorium period", in relation to a company that has commenced the simplified debt restructuring programme under section 72E(3), means the period starting on the date of the commencement, and ending on —
>
> (*a*) the date that is such number of days after the date of entry as may be prescribed by regulations made under section 72V, including any extension of the period under section 72Q; or
>
> (*b*) if the company is discharged from the simplified debt restructuring programme before that date, the date of discharge;";

(*c*) delete the definition of "prescribed period";

(*d*) replace the definition of "Restructuring Advisor" with —

> " "Restructuring Adviser", in relation to a company (in simplified debt restructuring), means a person

appointed under section 72D(1) to be the Restructuring Adviser of the company;";

(*e*) in the definition of "simplified debt restructuring programme", replace the semi-colon at the end with a full-stop; and

(*f*) delete the definition of "specified period".

Deletion of section 72B

3. In the principal Act, delete section 72B.

Amendment of section 72D

4. In the principal Act, in section 72D —

(*a*) replace subsection (1) with —

"(1) A company may appoint any qualified person to be its Restructuring Adviser to advise the company in matters relating to its entry into the simplified debt restructuring programme.";

(*b*) delete subsection (2);

(*c*) replace subsection (4) with —

"(4) When more than one Restructuring Adviser is appointed for a company, any power given to a Restructuring Adviser under this Part may be exercised by any one or more of them as provided by agreement between the company and him, her or them (as the case may be) at the time of the appointment or appointments.";

(*d*) replace subsection (7) with —

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

(*a*) who —

(i) is a public accountant;

(ii) is a chartered accountant within the meaning of section 2(1) of the

Accounting and Corporate Regulatory Authority Act 2004; or

(iii) possesses any other qualification or any relevant experience as the Minister may prescribe by regulations made under section 72V; and

(*b*) who is a licensed insolvency practitioner."; and

(*e*) after subsection (7), insert —

"(8) The following must not be appointed, and must not act, as a Restructuring Adviser of a company:

(*a*) an undischarged bankrupt;

(*b*) the holder of a charge or other security over any property of the company;

(*c*) an auditor of the company;

(*d*) a director, secretary or employee of the company, or of any company that is the holder of a charge or other security over the property of the company.".

Amendment of Division 3 heading of Part 5A

5. In the principal Act, in Part 5A, in Division 3, in the Division heading, replace "*Application for and acceptance*" with "*Entry*".

Replacement of section 72E

6. In the principal Act, replace section 72E with —

"**Commencement of simplified debt restructuring programme**

72E.—(1) A company may, in accordance with this section, enter into the simplified debt restructuring programme.

(2) For a company to enter into the simplified debt restructuring programme, the following conditions must be satisfied:

(*a*) the company passes a special resolution in general meeting authorising its entry into the simplified debt restructuring programme;

(*b*) the Restructuring Adviser of the company assesses that the company meets the requirements under section 72F(1), and lodges with the Registrar of Companies and the Official Receiver using the designated website within 7 days after the special resolution specified in paragraph (*a*) is passed, copies of the special resolution and the notice of its entry into the programme.

(3) The simplified debt restructuring programme for the company is deemed to commence on the date of lodgment with the Registrar of Companies and the Official Receiver of the notice of its entry into the programme or, if the dates of lodgment are different for both of them, whichever is later.

(4) If a company has, in connection with the company's entry into the simplified debt restructuring programme, made any statement, or provided any information or document, to the Restructuring Adviser 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 is 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 provided or being provided, 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.

(5) For the purposes of subsection (4), an officer of a company is a director or secretary of the company or a person employed in an executive capacity by the company.".

Amendment of section 72F

7. In the principal Act, in section 72F —

(*a*) in the section heading, replace "**acceptance**" with "**entry**";

(*b*) in subsection (1), replace "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" with "A company may enter into the simplified debt restructuring programme under section 72E only if both of the following requirements are met";

(*c*) in subsections (1)(*a*) and (*b*), (2)(*d*) and (3)(*a*) to (*f*), delete "applicant";

(*d*) in subsection (1)(*b*), replace "Official Receiver" with "Restructuring Adviser";

(*e*) in subsection (1)(*b*), replace "acceptance" with "entry";

(*f*) in subsection (2), delete paragraphs (*a*), (*b*) and (*c*);

(*g*) in subsection (2)(*d*), after "including contingent and prospective liabilities", insert ", and any liabilities to any related party of the company";

(*h*) in subsection (2), after paragraph (*d*), insert —

"(*da*) within the period of 60 months immediately before the proposed date of

lodgment of the notice of its entry into the simplified debt restructuring programme under section 72E, the company has not —

(i) previously entered the programme under this Part, or been accepted into the programme under this Part as in force immediately before the date of commencement of section 7 of the Insolvency, Restructuring and Dissolution (Amendment) Act 2024; and

(ii) failed to have the debt restructuring proposal approved by its creditors or the compromise or arrangement approved by the court, as the case may be;";

(*i*) in subsection (3), replace "an applicant company unsuitable for acceptance" with "a company unsuitable for entry";

(*j*) in subsection (3), replace paragraph (*g*) with —

"(*g*) the company has passed a special resolution authorising entry into the simplified winding up programme under section 250D;";

(*k*) in subsection (3), replace paragraph (*h*) with —

"(*h*) the company (with the assistance of a Restructuring Adviser) is unlikely to be able to formulate a proposed compromise or arrangement with its creditors, or obtain the agreement of two-thirds majority in value of its creditors to the proposed compromise or arrangement, within the moratorium period after the company's entry into the simplified debt restructuring programme;";

(*l*) in subsection (3), delete paragraphs (*i*), (*j*) and (*k*);

(*m*) replace subsection (4) with —

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

(*n*) delete subsection (5).

Amendment of section 72G

8. In the principal Act, in section 72G —

(*a*) replace the section heading with —

"**Notice of objection, etc.**";

(*b*) replace subsection (1) with —

"(1) Upon the lodgment of the notice of a company's entry into the simplified debt restructuring programme under section 72E, the Restructuring Adviser of the company must —

(*a*) send to every creditor of the company; and

(*b*) publish on the designated website,

a notice of its entry into the simplified debt restructuring programme.";

(*c*) delete subsection (2);

(*d*) in subsection (3), replace "The notice of application" with "The notice of entry";

(*e*) in subsection (3)(*a*) and (*e*), delete "applicant";

(*f*) in subsection (3)(*b*), replace "notice of application" wherever it appears with "notice of entry";

(*g*) in subsection (3), delete paragraph (*c*);

(*h*) in subsection (3)(*e*), replace "Official Receiver" with "Restructuring Adviser";

(*i*) replace subsection (4) with —

"(4) Any creditor, member or officer of the company who believes there is reasonable cause why the company should not have entered into the simplified debt restructuring programme by reason of not meeting any of the requirements under section 72F(1), may object by delivering a notice (called in this section a notice of objection) to the Restructuring Adviser, in the form and manner stated in the notice of entry under subsection (1), within 21 days after the date of the notice of entry.";

(*j*) replace subsection (6) with —

"(6) At the expiry of 21 days after the date of the notice of entry published under subsection (1), if the Restructuring Adviser has received any notice of objection, the Restructuring Adviser must reconsider whether the company meets the requirements under section 72F(1) and if he or she decides that the company does not meet any of those requirements, the company must be discharged from the simplified debt restructuring programme."; and

(*k*) delete subsection (7).

Deletion of section 72H

9. In the principal Act, delete section 72H.

Deletion of section 72I

10. In the principal Act, delete section 72I.

Replacement of section 72J

11. In the principal Act, replace section 72J with —

"**Discharge of company from simplified debt restructuring programme on grounds of unsuitability**

72J.—(1) A company that has entered into the simplified debt restructuring programme under section 72E must, during the moratorium period, continue to satisfy the requirements under section 72F(1) in order to remain on the programme.

(2) If the Restructuring Adviser of the company finds that —

(*a*) the company no longer satisfies any of the requirements in section 72F(1); or

(*b*) the company has entered into the simplified debt restructuring programme on the basis of information or documents not known to or seen by the Restructuring Adviser, and that the Restructuring Adviser would have decided that the company does not meet the requirements under section 72F(1) at the time of entry had he or she known of or seen the information or document,

the Restructuring Adviser must discharge the company from the simplified debt restructuring programme.

(3) Notice of every discharge under this section must be published by the Restructuring Adviser on the designated website.".

Amendment of Division 4 heading of Part 5A

12. In the principal Act, in Part 5A, in Division 4, in the Division heading, replace "*acceptance*" with "*entry*".

Amendment of section 72K

13. In the principal Act, in section 72K —

(*a*) replace the section heading with —

"**Restraint of proceedings and disposition of property, etc., during moratorium period**";

(*b*) in subsection (1), replace "During the specified period in respect of a company (in simplified debt restructuring)"

with "During the moratorium period in respect of a company that has entered into the simplified debt restructuring programme under section 72E";

(*c*) in subsection (1)(*c*), delete "(other than proceedings under section 72M)"; and

(*d*) in subsection (3), replace "specified period" with "moratorium period".

New section 72KA

14. In the principal Act, after section 72K, insert —

"**Notification of simplified debt restructuring**

72KA.—(1) During the period in which a company is in the simplified debt restructuring programme —

(*a*) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) that is issued by or on behalf of the company, being a document on or in which the name of the company appears; and

(*b*) every Internet website of the company on or in which the name of the company appears,

must state, immediately after the name of the company where it first appears in that document or Internet website, that the company is in simplified debt restructuring.

(2) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 and also to a default penalty:

(*a*) the company;

(*b*) any officer of the company (within the meaning of section 72K(5)) who knowingly and wilfully authorises or permits the default.".

Amendment of section 72L

15. In the principal Act, in section 72L —

(*a*) replace the section heading with —

"**General provisions as to Restructuring Advisers**";

(*b*) replace "The Restructuring Advisor of a company (in simplified debt restructuring) has the following duties during the specified period:" with "The duties of the Restructuring Adviser of a company (in simplified debt restructuring) include the following:";

(*c*) before paragraph (*a*), insert —

"(*aa*) to send to every creditor of the company (whose name and address are provided by the company to the Restructuring Adviser) any notification that must be sent to the creditors under this Part;"; and

(*d*) replace paragraphs (*c*), (*d*) and (*e*) with —

"(*c*) to send to every creditor of the company (whose name and address are provided by the company to the Restructuring Adviser) copies of all documents that are required for obtaining the approval of the creditors of a compromise or an arrangement;

(*d*) to take such steps to supervise the holding of the meeting of the company and its creditors specified in section 72M as may be prescribed by regulations made under section 72V;

(*e*) as soon as practicable after the completion by the company of or the discharge of the company from the simplified debt restructuring programme, submit a report to the Official Receiver in such form, and containing such information, as may be

prescribed by regulations made under section 72V.".

Replacement of section 72M

16. In the principal Act, replace section 72M with —

"**Compromise or arrangement**

72M.—(1) A company (in simplified debt restructuring) may, with the consent of its Restructuring Adviser, make a debt restructuring proposal to its creditors that provides for a compromise or an arrangement in satisfaction of the company's debts.

(2) The Restructuring Adviser must —

(*a*) summon a meeting of the company and its creditors to consider the debt restructuring proposal at such time, date and place as he or she thinks fit, by giving at least 21 days' notice of the meeting; and

(*b*) seek a decision from the company's creditors as to whether they approve the debt restructuring proposal.

(3) The notice to summon the meeting mentioned in subsection (2)(*a*) must contain all of the following:

(*a*) details of the meeting;

(*b*) a list of assets of the company, including those assets that are subject to a security;

(*c*) details of the decision to be made or of any resolution on which a decision is sought, including the terms and conditions of the debt restructuring proposal and the compromise or arrangement that is sought;

(*d*) a statement of the effects of the debt restructuring proposal on creditors' rights;

(*e*) the amount proposed to be paid to the Restructuring Adviser by way of fees and expenses;

(*f*) a comparison of what the creditors would receive in the debt restructuring proposal and in the most likely

scenario if the compromise or arrangement pursuant to the debt restructuring proposal does not become binding on the company and its creditors;

(*g*) such other details of the company's affairs as may be prescribed by regulations made under section 72V.

(4) The compromise or arrangement pursuant to the debt restructuring proposal (or any modification to the proposal) is approved by the company's creditors when two-thirds or more (in value of the debts) of those creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy), vote in favour of a decision approving the debt restructuring proposal, including the compromise or arrangement (or the modification of the proposal).

(5) The notice in subsection (2)(*a*) must be given to every creditor of the company whose claim and address are provided by the company to the Restructuring Adviser.

(6) The company and its creditors may approve the debt restructuring proposal with or without modifications, including the appointment of another qualified person as Restructuring Adviser, except that a modification must not result in a proposal that is significantly different from the debt restructuring proposal mentioned in subsection (3)(*c*), and any modification made in contravention of this subsection is void.

(7) For the purposes of this section and subject to subsections (9) and (10), creditors meant to be bound by the compromise or arrangement pursuant to the debt restructuring proposal are —

(*a*) creditors of unsecured debts of the company; and

(*b*) creditors of preferential debts of the company, if applicable.

(8) Unless specifically excluded by this section, all creditors that are meant to be bound by the compromise or arrangement pursuant to the debt restructuring proposal are entitled to vote at the same meeting held for the purpose of seeking a decision, and

are bound by the debt restructuring proposal (if approved) in accordance with and to the extent provided by this section.

(9) The compromise or arrangement pursuant to the debt restructuring proposal is binding on a secured creditor —

(*a*) if the value of the creditor's security interest is less than the value of the creditor's admissible debts or claims — only to the extent of the difference between the values; and

(*b*) if the value of the creditor's security interest is equal to or more than the value of the creditor's admissible debts or claims — only to the extent that the creditor consents to be bound.

(10) The compromise or arrangement pursuant to the debt restructuring proposal does not prevent a secured creditor from realising or otherwise dealing with the creditor's security interest, unless —

(*a*) the secured creditor has voted in favour of the debt restructuring proposal; and

(*b*) such proposal prevents the secured creditor from realising or otherwise dealing with the security interest.

(11) The following are not entitled to vote at the meeting referred to in subsection (2):

(*a*) a creditor of the company that is —

(i) a holding company, an ultimate holding company or a subsidiary of the company;

(ii) a director or shareholder of the company; or

(iii) a relative or spouse of a director or shareholder of the company;

(*b*) a creditor of the company that is a subsidiary of another company of which the company is also a subsidiary.

(12) For the purpose of subsection (11)(*a*)(iii), a creditor (*A*) is a relative of a director or shareholder of a company (*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

(*b*) an illegitimate child as the legitimate child of the child's mother and reputed father.

(13) A reference in subsection (11) to a spouse includes a former spouse and a reputed husband or wife.

(14) The Restructuring Adviser must, within 7 days after the meeting of the creditors mentioned in subsection (2), publish the outcome of the meeting on the designated website.

(15) Where the debt restructuring proposal is approved by the company's creditors, the Restructuring Adviser must lodge a copy of the approved debt restructuring proposal with the Official Receiver and the Registrar of Companies, and notify every creditor of the company whose claim and address are provided by the company to the Restructuring Adviser and who is to be bound by the debt restructuring proposal, of the lodgment.

(16) When the debt restructuring proposal is approved by the company's creditors, the compromise or arrangement as provided by the proposal —

(*a*) is effective as of the date of lodgment of the copy of the proposal with the Official Receiver and the Registrar of Companies; and

(*b*) binds all the creditors of the company who are to be bound by the compromise or arrangement in accordance with and to the extent provided by this section.".

Replacement of section 72N

17. In the principal Act, replace section 72N with —

"**Application to Court**

72N.—(1) Subject to this section, an application to the Court for an order under subsection (5) may be made by any of the persons specified in subsection (2), on one or more of the grounds specified in subsection (3).

(2) For the purpose of this section, the person who can make the application is a creditor who is bound by the compromise or arrangement pursuant to the debt restructuring proposal approved under section 72M(6) or the Restructuring Adviser.

(3) For the purposes of subsection (1), the grounds of application are that —

(*a*) there is a material procedural irregularity at or in relation to the meeting of the company and its creditors pursuant to section 72M, or in relation to the approval of the creditors at the meeting, including a situation where —

(i) any of the contents of the notice to summon the meeting specified in section 72M(3) is materially false or misleading;

(ii) there is a material omission in such contents; or

(iii) there is otherwise a defect in the manner in which the approval has been obtained from the creditors;

(*b*) a substitution or splitting of classification of creditors is necessary in the circumstances for the compromise or arrangement to be fair and equitable to all the creditors who are meant to be bound by the compromise or arrangement; or

(*c*) the proposed compromise or arrangement approved by the meeting of the company and its creditors under section 72M is contrary to the interests of the creditors of the company as a whole.

(4) For the purpose of subsection (3), a failure by the company to send the notice under section 72M(2)(*a*) to a creditor who is bound by the compromise or arrangement because the company does not know and has no reasonable grounds to know of the creditor's name or address, is not regarded as a material procedural irregularity unless, either —

(*a*) the debt restructuring proposal would not have been approved by the requisite majority had the creditor been present at the meeting and objected to the debt restructuring proposal; or

(*b*) the creditor receives an amount under the debt restructuring proposal that is lower than what the creditor is estimated to receive in the most likely scenario if the compromise or arrangement is not binding on the company and its creditors.

(5) If the Court is satisfied that one or more of the grounds in subsection (3) is satisfied, the Court may make any order it thinks fit, including —

(*a*) revoking or suspending the compromise or arrangement; or

(*b*) giving any directions to the Restructuring Adviser, including a direction to put to the creditors for consideration any modifications to the compromise or arrangement, except that no modification may be made to any material commercial terms of the debt restructuring proposal.".

Amendment of section 72O

18. In the principal Act, in section 72O, replace "a company under section 72M(1)" with "a creditor or a Restructuring Adviser under section 72N".

Replacement of section 72P

19. In the principal Act, replace section 72P with —

"**Implementation of compromise or arrangement**

72P.—(1) This section applies after a debt restructuring proposal is approved by the creditors under section 72M, as modified by the Court under section 72N, if applicable.

(2) The Court may, on an application by any of the company's creditors who is dissatisfied with any act, omission or decision of the Restructuring Adviser, that results in a breach of any term of the debt restructuring proposal, confirm, reverse or modify the act, omission or decision, or give such directions or make such other order as the Court thinks fit to rectify the act, omission or decision.

(3) The Court may on an application under subsection (2) clarify any term of the debt restructuring proposal.

(4) No order or clarification made, and no direction given, by the Court under subsection (2) or (3) may alter, or affect any person's rights under, the terms of the compromise or arrangement provided under the debt restructuring proposal.".

Amendment of section 72Q

20. In the principal Act, in section 72Q —

(*a*) replace subsections (1) and (2) with —

"(1) Subject to this section, a company (in simplified debt restructuring) is discharged from the simplified debt restructuring programme at the expiry of its moratorium period.

(2) A company (in simplified debt restructuring) or the Restructuring Adviser may apply to the Official Receiver for an extension of the moratorium period, in the prescribed form and manner, to defer its discharge from the simplified debt restructuring programme, but only if the application is accompanied by evidence of consent of at least two-thirds in total value of the creditors.";

(*b*) in subsections (3) and (4), replace "default period" wherever it appears with "moratorium period";

(*c*) in subsection (3)(*a*)(i), replace "for a period not exceeding 30 days (or any longer period as the Official Receiver may determine)" with "for such number of days as may be prescribed by regulations made under section 72V";

(*d*) after subsection (3), insert —

"(3A) The Official Receiver's decision under subsection (3) is final.";

(*e*) in subsection (4), replace "Subject to subsections (5) and (6), where" with "Where";

(*f*) replace subsections (5) to (8) with —

"(5) Where the compromise or arrangement provided by any debt restructuring proposal becomes effective under section 72M(16) before the expiry of the moratorium period (including any period of extension), the company is discharged from the simplified debt restructuring programme on the day the compromise or arrangement becomes effective."; and

(*g*) in subsection (9), replace "Official Receiver in the *Gazette* and" with "Restructuring Adviser".

New section 72QA

21. In the principal Act, after section 72Q, insert —

"**Application of sections 124 and 125**

72QA.—(1) This section applies where a company enters into the simplified debt restructuring programme and is subsequently discharged pursuant to section 72Q without the approval of the creditors for a compromise or an arrangement in satisfaction of the company's debts.

(2) Where this section applies —

(*a*) section 124 applies as if the following paragraph appears after paragraph (*i*) of subsection (1):

"(*j*) its Restructuring Adviser.";

(*b*) section 125 applies as if the following paragraph appears after paragraph (*n*) of subsection (1):

"(*o*) the company is discharged from the simplified debt restructuring programme pursuant to section 72Q."; and

(*c*) section 125 applies as if the following subsection appears after subsection (4):

"(4A) For the purpose of subsection (1)(*o*), where the Court determines that the company satisfies the requirements of section 250F, the Court may, in lieu of ordering the winding up of the company under section 124, order the company to enter into the simplified winding up programme under Part 10A, whereupon the provisions of Part 10A apply, with such adaptations as are necessary, as if the authorisation of the company has been obtained in general meeting.".".

Deletion of sections 72R, 72S, 72T and 72U

22. In the principal Act, delete sections 72R, 72S, 72T and 72U.

Amendment of section 72V

23. In the principal Act, in section 72V(2) —

(*a*) in paragraph (*c*), replace ", 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" with "to a Restructuring Adviser, in connection with the entry into the simplified debt restructuring programme and remaining on the programme";

(*b*) in paragraph (*d*), replace "by a company or an officer or a contributory of a company to the Official Receiver or a" with "to a";

(*c*) delete paragraph (*e*);

(*d*) in paragraph (*f*), delete "and" at the end; and

(*e*) replace paragraph (*g*) with —

"(*g*) the moratorium period, and the period of extension under section 72Q(3)(*a*); and

(*h*) the form of, and the information to be contained in, reports that must be submitted by a Restructuring Adviser to the Official Receiver after the completion of or discharge of a company from the simplified debt restructuring programme.".

Amendment of section 205

24. In the principal Act, in section 205(2)(*a*), after "section 71", insert "or 72M".

Amendment of section 226

25. In the principal Act, in section 226(6), after paragraph (*c*), insert —

"(*ca*) the period during which a moratorium period under Part 5A is in force in relation to the company;".

Amendment of section 250A

26. In the principal Act, in section 250A, replace the definition of "prescribed period" with —

"" "requirements for entry", in relation to a company, means the following:

(*a*) the company meets all the eligibility criteria in section 250F(2);

(*b*) there is no circumstance in section 250F(3) which makes the company unsuitable for entry into the simplified winding up programme;".

Deletion of section 250B

27. In the principal Act, delete section 250B.

Amendment of section 250C

28. In the principal Act, in section 250C, replace "makes an application to the Official Receiver under section 250D and is accepted into the programme" with "meets the conditions set out in this Part".

Amendment of Division 3 heading of Part 10A

29. In the principal Act, in Part 10A, in Division 3, in the Division heading, replace "*Application for and acceptance*" with "*Entry*".

Replacement of section 250D

30. In the principal Act, replace section 250D with —

"**Entry into simplified winding up programme**

250D.—(1) A company may, in accordance with the provisions of this Part, be wound up voluntarily under the simplified winding up programme if —

(*a*) the company resolves by special resolution in general meeting authorising its entry into the simplified winding up programme on the ground that the company is unable to pay, and will not be able to pay or provide for the payment of, its debts in full;

(*b*) at the general meeting mentioned in paragraph (*a*), the company nominates a liquidator (being a licensed insolvency practitioner) for the simplified winding up programme, and approves his or her proposed remuneration for the administration of the simplified winding up programme; and

(*c*) the nominated liquidator has given his or her written consent to being so nominated and to the proposed remuneration.

(2) A company must within 7 days after the special resolution mentioned in subsection (1)(*a*) is passed, lodge a copy of the resolution with the Registrar of Companies.

(3) No later than one day after the special resolution mentioned in subsection (1)(*a*) is passed, the company must send to every creditor, contributory or officer of the company a notice of its intention to enter into the simplified winding up programme, which must —

(*a*) contain a copy of the resolution passed at the general meeting mentioned in subsection (1)(*a*) together with the name of the company and its Unique Entity Number (UEN);

(*b*) include a notification that the company may proceed to enter the simplified winding up programme unless an objection to either of the following is received within the period of 21 days after the date of the notice of intention:

(i) the company's entry into the simplified winding up programme on the ground that the company does not meet the requirements for entry;

(ii) the nominated liquidator;

(*c*) contain the form of, and set out the manner of giving, a notice of objection to the nominated liquidator;

(*d*) include the name of the nominated liquidator and his or her proposed remuneration; and

(*e*) include a list with the name and address of each creditor of the company and the amounts owed to each creditor.

(4) A failure to lodge the requisite documents with the Registrar of Companies within the time specified in subsection (2), or a failure to notify each creditor,

contributory or officer of the company in accordance with subsection (3), renders the special resolution void.

(5) If no objection is received within the time specified in subsection (3)(*b*), the company must, within 7 days thereafter, provide to the nominated liquidator —

(*a*) a statement from the board of directors of the company that it reasonably believes that the liabilities of the 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*), and that it is not aware of any circumstances mentioned in section 250F(1)(*b*) that would make the company unsuitable for entry into the simplified winding up programme;

(*b*) the company's statement of affairs under section 250E; and

(*c*) an update as to whether there was any reply to any notice sent under subsection (3).

(6) Sections 443 and 444 (read with sections 441 and 442) apply to a notice under subsection (3) sent by electronic means as if a reference to a "relevant officeholder" in sections 443 and 444 were a reference to the directors of the company.

(7) If a company has made any statement, or provided any information or document, to the nominated liquidator under subsection (5) 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.

(8) For the purposes of subsection (7), an officer of a company is a director or secretary of the company or a person employed in an executive capacity by the company.

(9) In lieu of a special resolution of the company in the general meeting specified in subsection (1), the company's directors may, if (and only if) all the conditions in subsection (10) are satisfied, pass a resolution at the meeting of the directors —

(*a*) authorising the company to be wound up voluntarily under the simplified winding up programme on the ground that the company is unable to pay, and will not be able to pay or provide for the payment of, its debts in full; and

(*b*) nominating a liquidator (being a licensed insolvency practitioner), and proposing the remuneration of the liquidator, for the administration of the simplified winding up programme, subject to the nominated liquidator having given written consent to the nomination and his or her proposed remuneration,

and subsections (2) to (7) apply accordingly as if a reference to the special resolution were a reference to the resolution at the meeting of the directors.

(10) The conditions for the purpose of subsection (9) are —

(*a*) despite exercising reasonable diligence, the company was unable to contact enough members who together hold the majority in value of its shares for a period of

not less than 3 consecutive years prior to the date of the directors' resolution;

(*b*) the company's operations have been dormant for at least 3 consecutive years prior to the date of the directors' resolution; and

(*c*) as a consequence of the circumstance in paragraph (*a*), the company is unable to hold an extraordinary general meeting for the purpose of resolving to wind up the company on the ground that the quorum at the meeting cannot be met.

(11) For the purposes of subsection (10)(*a*), reasonable diligence is deemed to be exercised to contact a member if the company has —

(*a*) made at least 2 attempts in sending correspondence to the last registered address of the member in the period of 3 consecutive years, with a reasonable interval in between the attempts;

(*b*) where the member has a registered address in Singapore, published a notice in at least one English local daily newspaper in Singapore after the last failed attempt to identify the whereabouts of the member; and

(*c*) failed to receive any reply at the expiry of one month after —

(i) in a case where the member has a registered address in Singapore — the date of the notice in the newspaper under paragraph (*b*); or

(ii) in a case where the member only has a registered address outside Singapore — the date of the last correspondence under paragraph (*a*).".

Amendment of section 250E

31. In the principal Act, in section 250E —

(*a*) replace the section heading with —

"**Statement of affairs by company**";

(*b*) in subsection (1), replace "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" with "For the purpose of section 250D(5)(*b*), the statement of affairs of the company is a statement that contains the following information and particulars as at the latest practicable date before the making of the statement"; and

(*c*) in subsection (2)(*a*), replace "date of the application" with "date of making of the statement of affairs".

Amendment of section 250F

32. In the principal Act, in section 250F —

(*a*) in the section heading, replace "**Requirements for acceptance**" with "**Entry**";

(*b*) in subsection (1), replace "The Official Receiver may, on the application of a company (called in this Division the applicant company) under section 250D, accept the applicant company" with "A company may enter";

(*c*) in subsection (1), replace "both" with "all of";

(*d*) in subsections (1)(*a*) and (*b*), (2)(*d*), (3)(*a*) to (*f*) and (*h*) to (*l*) and (5), delete "applicant" wherever it appears;

(*e*) in subsection (1)(*b*), replace ", known to the Official Receiver," with "known to the nominated liquidator";

(*f*) in subsection (1)(*b*), replace "acceptance" with "entry";

(*g*) in subsection (1)(*b*), replace the full-stop at the end with a semi-colon;

(*h*) in subsection (1), after paragraph (*b*), insert —

"(*c*) during the period mentioned in section 250D(3)(*b*), no objection is received or, if an objection is received —

(i) where the objection is that the company does not satisfy any requirement for entry — the liquidator is satisfied on reasonable grounds that the company satisfies that requirement; or

(ii) where the objection is to the nominated liquidator — the conditions in section 250G(3) are met.";

(*i*) in subsection (2), delete paragraphs (*a*), (*b*), (*c*) and (*e*);

(*j*) in subsection (2)(*d*), after "including contingent and prospective liabilities", insert ", and any liabilities to any related party of the company";

(*k*) in subsection (3), replace "an applicant company" with "a company";

(*l*) in subsection (3), replace "acceptance" with "entry";

(*m*) in subsection (3), replace paragraph (*g*) with —

"(*g*) the company has entered into the simplified debt restructuring programme under section 72E;";

(*n*) in subsection (3)(*i*), after "Official Receiver", insert "or a nominated liquidator";

(*o*) in subsection (4), replace "subsection (2)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*)" with "subsection (2)(*d*) or (*f*)";

(*p*) in subsection (6), delete the definitions of "annual sales turnover", "business commencement period", "business year", "relevant period" and "sales turnover";

(*q*) in subsection (6), in the definitions of "employee" and "relevant person", replace "an applicant company" with "a company";

(*r*) in subsection (6), in the definitions of "employee" and "relevant person", replace "the applicant company" with "the company"; and

(*s*) in subsection (6), in the definition of "relevant person", replace the semi-colon at the end with a full-stop.

Replacement of section 250G

33. In the principal Act, replace section 250G with —

"**Notice of objection**

250G.—(1) Where a notice of objection is received within the period specified in section 250D(3)(*b*) objecting to the company's entry into the simplified winding up programme on the ground that the company does not satisfy any requirement for entry, and the liquidator is not satisfied, on reasonable grounds, that the company satisfies that requirement, the simplified winding up process comes to an end.

(2) Where a notice of objection is received within the period specified in section 250D(3)(*b*) objecting to the nominated liquidator only, the company may proceed to hold a meeting of the creditors to pass a resolution, by a majority of the creditors in value, within 14 days after the last day of that period, to nominate a liquidator (being a licensed insolvency practitioner), together with the proposed remuneration.

(3) In the circumstance in subsection (2), the company may only enter the simplified winding up programme when both of the following conditions are satisfied:

(*a*) within 7 days after the passing of the resolution nominating the substitute liquidator, the company

provides to the substitute liquidator the documents specified in section 250D(5);

(*b*) the nominated liquidator is satisfied on reasonable grounds that the company meets the requirements for entry.

(4) If the company fails to pass a resolution mentioned in subsection (2) within the time specified in that subsection, the simplified winding up process comes to an end.

(5) To avoid doubt, a notice of objection to the nominated liquidator under subsection (2) is only to the choice of the nominated liquidator and not to the nominated liquidator's proposed remuneration.".

Deletion of section 250H

34. In the principal Act, delete section 250H.

Deletion of section 250I

35. In the principal Act, delete section 250I.

Deletion of section 250J

36. In the principal Act, delete section 250J.

Replacement of section 250K

37. In the principal Act, replace section 250K with —

"**Commencement of simplified winding up programme and effect**

250K.—(1) When the nominated liquidator (including any substitute liquidator) assesses that the requirements in section 250F(1)(*a*) to (*c*) are met, the nominated liquidator must —

(*a*) publish a notice of the company's entry into the simplified winding up programme on the designated website; and

(*b*) lodge with the Registrar of Companies a notice of the company's entry into the simplified winding up programme.

(2) The simplified winding up programme for the company is deemed to commence on the date of the events mentioned in subsection (1)(*a*) and (*b*) or, if they occur on different dates, the later of those dates.

(3) For the purposes of paragraph (*e*) of the definition of "commencement of the winding up" in section 217(1), the time of commencement of the simplified winding up programme referred to in subsection (2) is deemed to be the time of the passing of the resolution for voluntary winding up.

(4) 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.

(5) The appointment of the nominated liquidator (including any substitute liquidator) as liquidator of the company is deemed to take effect upon the commencement of the simplified winding up programme for the company and is on the terms and the remuneration approved at the meeting mentioned in section 250D(1) or 250G(2), as the case may be.".

Amendment of section 250L

38. In the principal Act, in section 250L —

(*a*) in subsection (1), replace "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" with "a voluntary winding up of a company that enters into the simplified winding up programme is";

(*b*) in subsection (2)(*a*), replace "sections 161 (except for section 161(6)(*b*))" with "sections 160, 161";

(*c*) in subsection (2), replace paragraph (*b*) with —

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

(*d*) in subsection (2)(*c*), replace "173, 174, 175, 177(1)(*e*) and (3), 178, 179, 180(2) to (5) and (9), 182, 184" with "179, 182";

(*e*) in subsection (2)(*d*), replace "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" with "189, 192 (except section 192(3) and (4)), 194(2) and (3), 196, 198, 199";

(*f*) in subsection (2)(*e*), replace "209(3), (4) and (5), 210" with "209";

(*g*) in subsection (2)(*e*), replace the semi-colon at the end with a full-stop;

(*h*) in subsection (2), delete paragraph (*f*);

(*i*) replace subsection (3) with —

"(3) The following subsections are inserted after subsection (4) of section 167:

"(4A) After the simplified winding up programme has commenced for a company, its liquidator may at any time give notice to all the creditors of the company —

(*a*) that the scope of work covered by the remuneration approved at the general meeting of the company under section 250D(1)(*b*), or the meeting of the creditors under section 250G(2) (as the case may be) has changed, and that the amount of the remuneration needs to be revised to account for the additional work;

(*b*) of the amount of the revised remuneration; and

(*c*) that the creditors may object to the amount of the revised remuneration by giving a notice of objection to the liquidator in the form and manner specified in the notice within 14 days after receipt of the notice.

(4B) If no notice of objection is received within the period specified in subsection (4A), the company is liable to pay the liquidator the revised amount of the remuneration.

(4C) If a notice of objection is received within the period specified in subsection (4A), the company is not liable to pay the liquidator the revised amount of the remuneration unless the creditors approve, by a majority in value of its creditors, at a meeting, the remuneration to be paid to the liquidator at the completion of the administration of the simplified winding up programme.”.”;

(*j*) in subsection (4), replace “section 250D(2)(*a*)(ii)” with “section 250E”;

(*k*) replace subsections (7) to (11) with —

“(7) Section 180 applies as if that section was replaced by the following section:

“**Final account and dissolution**

180.—(1) The following paragraphs apply after the affairs of the company are fully wound up:

(*a*) the liquidator must as soon as possible make up an account showing how the winding up has been conducted and the property of the company has been disposed of;

(*b*) after making up the account, the liquidator must send to every creditor and member of

the company a notice specifying the matters set out in subsection (2);

(*c*) the notice must be accompanied by a copy of the account in paragraph (*a*);

(*d*) no later than 7 days after the notice in paragraph (*b*) is sent to every creditor and member of the company, the liquidator must publish on the designated website —

(i) a notice stating that the liquidator —

(A) has made up the account mentioned in paragraph (*a*); and

(B) intends to lodge with the Registrar of Companies a notice to dissolve the company; and

(ii) a copy of the account.

(2) The notice in subsection (1)(*b*) must —

(*a*) state that the liquidator intends to lodge with the Registrar of Companies the documents mentioned in subsection (4) to dissolve the company; and

(*b*) state that every creditor, contributory or officer of the company may make a written request to the liquidator for any information relating to the account mentioned in subsection (1)(*a*) or any matter relating to the proposed dissolution of the company within 14 days after being served the notice in subsection (1)(*b*).

(3) Within 14 days after receiving a request mentioned in subsection (2)(*b*), the liquidator must provide to the maker of the request the information

requested, or decline to provide the information requested or any of it, and the reasons for not doing so.

(4) Upon the expiration of the period of 30 days after the publication of the notice specified in subsection (1)(*d*)(i) on the designated website, the liquidator must lodge with the Registrar of Companies —

(*a*) a declaration (as the case may be) that no request mentioned in subsection (2)(*b*) was received within the period specified in that provision or, if a request was received within that period, that the liquidator has complied with subsection (3) as regards each such request; and

(*b*) a notice in the prescribed form to dissolve the company.

(5) Upon receipt of the notice to dissolve the company mentioned in subsection (4), the company is dissolved.

(6) Despite subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date on which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made must, within 7 days after the making of the order, lodge with the Registrar of Companies and with the Official Receiver a copy of the order, and if the person fails to do so, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(8) A liquidator who —

(*a*) fails to comply with subsection (1), (3) or (4); or

(*b*) lodges a false declaration under subsection (4)(*a*),

commits an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.”.”; and

(*l*) replace subsections (13) to (19) with —

“(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 mentioned in section 250K(1)(*a*) 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;”.

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

“(*a*) a notice of the company’s entry into the simplified winding up programme has been published on the designated website or lodged with the Registrar of Companies, whichever is later,”.

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

“(*b*) if within that time notice is served on the bailiff that a notice of the company’s entry into the simplified winding up

programme has been published on the designated website or filed with the Registrar of Companies, the bailiff must pay the balance to the liquidator who is entitled to retain the balance as against the enforcement creditor.".

(16) Section 210 applies as if subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) of that section were replaced by the following subsections:

"(2) Where this section applies —

(*a*) the liquidator must as soon as possible make up an account showing how the winding up has been conducted and how the property of the company has been disposed of;

(*b*) after the making up of the account, the liquidator must send to all persons specified in paragraph (*c*), a notice specifying the matters set out in subsection (3);

(*c*) the notice mentioned in paragraph (*b*) must be sent to —

(i) all the creditors of the company who have filed proofs of debt, and whose proofs have not been rejected;

(ii) every person who, to the knowledge of the liquidator, claims to be a creditor of the company, and has not filed a proof of debt;

(iii) every person mentioned in the statement of affairs as a creditor, who has not filed a proof of debt;

(iv) any receiver or manager of the company; and

(v) all contributories of the company;

(*d*) the notice mentioned in paragraph (*b*) must be accompanied by a copy of the account mentioned in paragraph (*a*);

(*e*) not more than 7 days after the notice mentioned in paragraph (*b*) is sent to the persons mentioned in paragraph (*c*), the liquidator must publish on the designated website —

(i) a notice stating that the liquidator —

(A) has made up the account mentioned in paragraph (*a*); and

(B) intends to lodge with the Registrar of Companies a notice to strike the name of the company off the register; and

(ii) a copy of the account.

(3) The notice mentioned in subsection (2)(*b*) must —

(*a*) state that the liquidator intends to lodge with the Registrar of Companies the documents mentioned in subsection (5) to strike the name of the company off the register unless —

(i) action is taken in accordance with subsection (6) for the company to be wound up; or

(ii) an order is made by the Court under subsection (6) that the name of the company not be struck off the register and that the company not be dissolved; and

(*b*) state that any recipient of the notice mentioned in subsection (2)(*b*) may make a written request to the liquidator for any information relating to the account mentioned in paragraph (1)(*a*) or any matter relating to the proposed dissolution of the company within 14 days after being served the notice mentioned in subsection (2)(*b*).

(4) Within 14 days after receiving a request mentioned in subsection (3)(*b*), the liquidator must provide to the maker of the request the information requested, or decline to provide the information requested or any of it, and provide the reasons for not doing so.

(5) Upon the expiration of the period of 30 days after the publication of the notice specified in subsection (2)(*e*)(i) on the designated website, the liquidator must lodge with the Registrar of Companies —

(*a*) a declaration (as the case may be) that no request mentioned in subsection (3)(*b*) was received within the period specified in that provision or, if a request was received within that period, that the liquidator has complied with subsection (4) as regards each such request; and

(*b*) a notice in the prescribed form to strike the name of the company off the register and for the company to be dissolved.

(6) Despite subsection (5), the Court may, on the application of any creditor, contributory or receiver or manager mentioned in subsection (2)(*c*), make an order —

(*a*) that the name of the company not be struck off the register and the company not be dissolved, and enabling the winding up of the company to proceed as if no notice had been sent under subsection (2)(*b*); or

(*b*) deferring the date on which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order is made under subsection (6) must, within 7 days after the making of the order, deliver to the Official Receiver and the Registrar of Companies for registration, a copy of the order, and if the person fails to do so, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(8) Upon the publication of the notice on the designated website under subsection (2)(*e*), the liquidator (subject to any order made under subsection (6)) ceases to be bound to perform any duty imposed on the liquidator in relation to the company, its creditors or contributories by virtue of any provision of this Act.

(9) Upon receiving the notice mentioned in subsection (5)(*b*), the Registrar of Companies must publish a notice to strike the name of the company off the register unless —

(*a*) an application is taken in accordance with subsection (6) for the company to be wound up; or

(*b*) an order is made by the Court under subsection (6) that the name of the company not be struck off the register and the company not be dissolved, or that the date of its dissolution be deferred.

(10) On the publication of the notice mentioned in subsection (9) —

(*a*) the company is dissolved; but

(*b*) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved.

(11) A liquidator who —

(*a*) fails to comply with subsection (2), (4) or (5); or

(*b*) lodges a false declaration under subsection (5)(*a*),

commits an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

(12) In this section, "receiver or manager" means —

(*a*) a receiver or manager of the whole, or substantially the whole, of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(*b*) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.".".

Replacement of section 250M

39. In the principal Act, replace section 250M with —

"**Qualification and conduct of liquidator**

250M.—(1) The liquidator appointed to administer the simplified winding up programme for a company must be a qualified person.

(2) Without limiting the powers of the Official Receiver, the Official Receiver is to take cognisance of the conduct of a liquidator appointed to administer the simplified winding up programme for a company under this Part, and may inquire into any matter and take such action on the matter as the Official Receiver thinks expedient.

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

(*a*) who —

(i) is a public accountant;

(ii) is a chartered accountant within the meaning of section 2(1) of the Accounting and Corporate Regulatory Authority Act 2004; or

(iii) possesses any other qualification or any relevant experience as the Minister may prescribe by regulations made under section 72V; and

(*b*) who is a licensed insolvency practitioner.".

Amendment of section 250N

40. In the principal Act, in section 250N —

(*a*) replace "has been accepted into" with "has entered into"; and

(*b*) replace paragraph (*a*) with —

"(*a*) the date that the company is dissolved under section 180(5) (as replaced by section 250L(7)) or has its name struck off the register under section 210(9) (as replaced by section 250L(16));".

Amendment of section 250O

41. In the principal Act, in section 250O —

(*a*) in subsection (1), delete "Official Receiver, as the";

(*b*) in subsections (1) and (3), replace "the Official Receiver" wherever it appears with "the liquidator";

(*c*) in subsection (1)(*a*) and (*d*), replace "acceptance of the company into" with "company's entry into";

(*d*) in subsection (1)(*a*), replace "acceptance" wherever it appears with "entry"; and

(*e*) in subsection (1)(*c*), replace "was accepted into" with "entered".

New sections 250OA and 250OB

42. In the principal Act, after section 250O, insert —

"**Modifications to sections 124, 125 and 126**

250OA.—(1) Where the simplified winding up programme has commenced for a company, and the liquidator is subsequently of the view that the company is unsuitable to enter or to remain in the simplified winding up programme in view of the occurrence of any of the circumstances in section 250F(3) in relation to the company, the liquidator may apply under section 124 to the Court for an order that the company be wound up.

(2) For the purpose of subsection (1) —

(*a*) section 124 applies as if the liquidator of the company were entitled to make an application for the winding up of the company under that section; and

(*b*) section 125(1) applies as if the circumstances for the Court to order the winding up of a company included the circumstance mentioned in subsection (1).

(3) Despite section 126, where the Court has made an order to wind up the company, the winding up of the company is deemed to have commenced from the date of commencement of the

simplified winding up programme for the company under section 250K.

(4) The company is deemed to have been discharged from the simplified winding up programme on the date it is wound up pursuant to the order of the Court.

Duty of liquidator to inform creditors of potential claims

250OB.—(1) If the liquidator has reasonable cause to believe that —

(*a*) the company is likely to have a claim against any party; and

(*b*) the realisable assets of the company are insufficient to cover the expenses of an investigation into such claim,

the liquidator must publish a notice to all the creditors, on the designated website, that the liquidator will conduct an investigation with a view to augmenting the assets of the company, but only if the creditors are able to provide the necessary funding to cover the costs and expenses of the investigation within 14 days of the notice, failing which the liquidator will take no further action on the investigation and proceed with the simplified winding up and dissolve the company.

(2) In the event that the liquidator conducts the investigation under subsection (1) and finds that no claim against a third party is warranted, the liquidator must —

(*a*) publish a notice of this to all the creditors and members of the company on the designated website;

(*b*) state in the notice specified in paragraph (*a*) that any creditor or member of the company may make a written request to the liquidator for further information relating to the investigations within 14 days of the publication of the notice; and

(*c*) within 14 days after the receipt of such request, respond to the creditor or member of the company by

providing some or all of the information requested, or declining to provide the information requested or any of it, and provide the reasons for not doing so.

(3) Upon the completion of the actions in subsection (2), the liquidator may proceed to effect the dissolution pursuant to section 210 as modified by section 250L.

(4) If, in the course of an investigation under subsection (1), the liquidator finds that that there is a reasonable basis for the company to make a claim against the party concerned —

(*a*) the liquidator must summon a meeting of the creditors not later than 30 days after the day on which he or she makes the finding and lay before the meeting a statement of assets and liabilities of the company; and

(*b*) subject to paragraph (*a*), section 165(2), (3) and (4) applies to the summoning of the meeting of creditors and the statement of assets and liabilities mentioned in paragraph (*a*).

(5) At the meeting summoned under subsection (4), the creditors may convert the proceedings from a simplified winding up to a creditors' voluntary winding up and may appoint a new liquidator for the purpose of winding up the affairs and distributing the assets of the company in place of the liquidator appointed by the company to administer the simplified winding up programme.

(6) Upon the conversion of the proceedings to a creditors' voluntary winding up, the winding up is to proceed as if it were a creditors' voluntary winding up under this Act, except that any assets realised in the simplified winding up programme are to be transferred to the liquidator who is appointed for the purpose of winding up the affairs and distributing the assets of the company under subsection (5).

(7) Within 7 days after the meeting summoned under subsection (4) converting the proceedings to a creditors' voluntary winding up —

(*a*) the liquidator under the simplified winding up programme; or

(*b*) if some other person has been appointed by the creditors to be the new liquidator under subsection (5), the person so appointed,

must lodge with the Registrar of Companies and with the Official Receiver a notice under section 191, and if default is made in complying with this subsection, the liquidator or the person so appointed (as the case may be) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 and also to a default penalty.

(8) Where at a meeting summoned under subsection (4), the creditors do not pass a resolution to convert the winding up in accordance with subsection (5), the liquidator under the simplified winding up programme must proceed to effect the dissolution pursuant to section 210 as modified by section 250L.

(9) Nothing in this section absolves any liquidator from an obligation to make any report to the Official Receiver or other public authorities pursuant to a provision of this Act, concerning matters giving rise to his or her belief under subsection (1)(*b*) or which he or she discovers during an investigation.".

Amendment of section 250P

43. In the principal Act, in section 250P —

(*a*) in subsection (1), replace "Official Receiver" with "liquidator";

(*b*) in subsection (1)(*a*), delete "in the *Gazette* and"; and

(*c*) in subsection (2)(*b*), after "the date of", insert "and the reason for".

Deletion of section 250Q

44. In the principal Act, delete section 250Q.

Amendment of section 250R

45. In the principal Act, in section 250R(2) —

(*a*) delete paragraph (*a*);

(*b*) in paragraph (*c*), replace "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" with "for entry into the simplified winding up programme, or for making an objection to such entry";

(*c*) delete paragraphs (*d*) and (*e*); and

(*d*) replace paragraph (*g*) with —

"(*g*) the form of, and the information to be contained in, reports that must be submitted by the liquidator of the company to the Official Receiver after the company has been discharged from the simplified winding up programme.".

Amendment of section 440

46. In the principal Act, in section 440 —

(*a*) replace subsection (1) with —

"(1) No person may, at any time after the commencement and before the conclusion of any proceedings by a company, or at any time after the date of commencement of the simplified debt restructuring programme for a company until the time the compromise or arrangement becomes effective in accordance with section 72M(16) or the time the company is discharged from the simplified debt restructuring programme (whichever is earlier) —

(*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

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

by reason only that the proceedings are commenced, the company is insolvent, or the company has entered the simplified debt restructuring programme."; and

(*b*) in subsection (2)(*a*), after "commencement of the proceedings", insert "or the entry of the company into the simplified debt restructuring programme".

Miscellaneous amendments

47. In the principal Act —

(*a*) in section 72D, in the section heading, replace "**Restructuring Advisors**" with "**Restructuring Advisers**";

(*b*) in the following provisions, replace "Restructuring Advisor" wherever it appears with "Restructuring Adviser":

Section 72D(3), (5) and (6)

Section 72L(*b*)

Section 72V(2)(*a*) and (*d*); and

(*c*) in section 72D(5), replace "Restructuring Advisor's" wherever it appears with "Restructuring Adviser's".

Saving and transitional provisions

48.—(1) Despite sections 2 to 25, Part 5A of the principal Act as in force immediately before the date of commencement of sections 2 to 25 continues to apply in relation to a company that has applied to the Official Receiver for acceptance into, or is accepted by the Official Receiver into, the simplified debt restructuring programme before that date and that has not been discharged from the programme, and

section 440 of the principal Act as amended by section 46 does not apply in relation to that company.

(2) Despite sections 26 to 45, Part 10A of the principal Act as in force immediately before the date of commencement of sections 26 to 45 continues to apply in relation to a company that has applied to the Official Receiver for acceptance into, or has been accepted by the Official Receiver into, the simplified winding up programme by the Official Receiver, before that date and that has not been discharged from the programme.

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

EXPLANATORY STATEMENT

This Bill seeks to amend Parts 5A and 10A of the Insolvency, Restructuring and Dissolution Act 2018 for the purpose of making permanent the simplified debt restructuring programme and the simplified winding up programme, which were introduced in 2021 in view of the COVID-19 pandemic. This Bill also makes some modifications to simplify the procedures for eligible companies to enter into the simplified debt restructuring programme and simplified winding up programme.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 72A to replace the definitions of "company (in simplified debt restructuring)" and "Restructuring Advisor" and insert a new definition of "moratorium period". The definitions of "prescribed period" and "specified period" are deleted as they are no longer required.

Clause 3 deletes section 72B which is no longer required as the simplified debt restructuring programme and the simplified winding up programme will be made permanent.

Clause 4 amends section 72D to provide that it is the company (and not the Official Receiver) that appoints a licensed insolvency practitioner to act as the Restructuring Adviser to advise the company in matters relating to its entry into the simplified debt restructuring programme. The amended section also provides for how the powers of the Restructuring Adviser are to be exercised where more

than one Restructuring Adviser is appointed. The clause further provides for the grounds for disqualification of a person to be a Restructuring Adviser.

Clause 5 makes a consequential amendment to the Division 3 heading of Part 5A.

Clause 6 replaces section 72E. The new section 72E provides for how an eligible company may enter into the simplified debt restructuring programme. There is no change to the requirement that the company must pass a special resolution in general meeting to authorise the entry. Subsection (2)(*b*) further provides that the Restructuring Adviser must assess that the company meets the requirements under section 72F(1) to enter into such programme. The prior approval of the Official Receiver for a company to enter into the simplified debt restructuring programme is no longer required.

Clause 7 amends section 72F to specify the requirements for entry into the simplified debt restructuring programme. These requirements are that the company must meet the eligibility criteria under the amended section 72F(2) and there is no circumstance in subsection (3), known to the Restructuring Adviser, that makes the company unsuitable for entry into the programme.

The amended section 72F(2) sets out the eligibility criteria, which are that the total liabilities of the company must not exceed $2 million, and that the company has not, within the period of 60 months before the date of lodgment of the notice of entry into the simplified debt restructuring programme, previously entered into such programme, or its predecessor programme, and failed to obtain an effective compromise or arrangement. Section 72F(3) lists the circumstances that make the company unsuitable for entry into the programme. The new subsection (3)(*h*) provides that a company is unsuitable for such entry if the company (with the assistance of a Restructuring Adviser) is unlikely to be able to formulate a proposed compromise or arrangement or to obtain the requisite approval to it within the moratorium period.

Clause 8 amends section 72G for the following purposes:

(*a*) to require the Restructuring Adviser to send to every creditor of the company, and publish on the designated website, a notice of the company's entry into the simplified debt restructuring programme;

(*b*) to set out the required contents of a notice of entry;

(*c*) to require any notice of objection by a creditor, member or officer of the company to object to the company's entry into the simplified debt restructuring programme, to be sent to the Restructuring Adviser;

(*d*) to set out what the Restructuring Adviser must do when he or she receives a notice of objection.

Clauses 9 and 10 delete sections 72H and 72I, respectively, as they are no longer required.

Clause 11 replaces section 72J. The new section 72J provides that the company must, during the moratorium period, continue to satisfy the requirements of section 72F in order to remain on the simplified debt restructuring programme. If the Restructuring Adviser subsequently finds that the company no longer satisfies the requirements for entry into the programme or subsequently learns of any information or document which would have led him or her to decide that the company does not meet those requirements, he or she must discharge the company from the programme.

Clause 12 makes a consequential amendment to the Division 4 heading of Part 5A.

Clause 13 makes consequential amendments to section 72K.

Clause 14 inserts a new section 72KA which specifies that during the period in which the company is in the simplified debt restructuring programme, every document issued by the company, and every Internet website of the company on or in which the name of the company appears, must state that the company is in simplified debt restructuring.

Clause 15 amends section 72L by imposing additional duties on Restructuring Advisers of companies in simplified debt restructuring, including sending to every creditor of the company copies of documents required for obtaining their approval of a compromise or arrangement, and taking prescribed steps to supervise the holding of the meeting of the company and its creditors.

Clause 16 replaces section 72M. The new section 72M provides for an out-of-court process for the company to make a debt restructuring proposal to its creditors that provides for a compromise or arrangement in satisfaction of the company's debts. The Restructuring Adviser must summon a meeting of the company and its creditors and seek a decision from the creditors of the company as to the debt restructuring proposal.

Subsection (3) sets out the contents of the notice to the creditors.

Subsection (4) provides that the compromise or arrangement is regarded as approved by the company's creditors when two-thirds or more (in value of the debts) of those creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy), vote in favour of the debt restructuring proposal.

Subsection (7) provides that unsecured and preferential creditors are bound by the compromise or arrangement pursuant to the debt restructuring proposal. Subsection (8) stipulates that all creditors that are meant to be bound by the compromise or arrangement pursuant to the debt restructuring proposal are entitled to vote at the same meeting and are bound by the debt restructuring

proposal if approved. Subsection (9) provides that a secured creditor the value of whose security interest is less than the value of the creditors' admissible debts or claims is bound only and to the extent of the difference between those values. If the value of the security interest is equal to or more than the admissible debts or claims, a secured creditor is bound by the plan — but only to the extent that the creditor consents to be so bound.

A secured creditor is not prevented from realising or otherwise dealing with its security interest, unless the secured creditor votes in favour of the debt restructuring proposal, and such proposal prevents the secured creditor from realising or otherwise dealing with the security interest.

Subsection (11) provides that certain "related party" creditors are prohibited from voting at the meeting.

Subsections (14) and (15) provide that the Restructuring Adviser must, within 7 days after the meeting of the creditors, publish the outcome of the meeting and must lodge a copy of the approved debt restructuring proposal with the Official Receiver and the Registrar of Companies, in addition to notifying the creditors.

Under subsection (16), the compromise or arrangement as provided by the proposal is effective as of the date of lodgment of the copy of the proposal with the Official Receiver and the Registrar of Companies.

Clause 17 replaces section 72N. The new section 72N allows a creditor or a Restructuring Adviser to apply to the General Division of the High Court (the Court) to revoke or suspend a compromise or arrangement on one or more grounds. The grounds are —

(*a*) there is a material procedural irregularity at or in relation to the meeting of the company and its creditors pursuant to section 72M, or in relation to the approval of the creditors at the meeting;

(*b*) that a substitution or splitting of classification of creditors is necessary in the circumstances for the compromise or arrangement to be fair and equitable to all the creditors who are meant to be bound by the compromise or arrangement; or

(*c*) that the proposed compromise or arrangement approved by the meeting of the company and its creditors under section 72M is contrary to the interests of the creditors of the company as a whole.

Subsection (4) provides that the mere failure to notify a creditor because the company does not know and has no reasonable grounds to know of the creditor's name or address is not regarded as a material procedural irregularity except in certain circumstances.

Subsection (5) sets out the orders that the Court may make if any of the grounds are made out.

Clause 18 makes consequential amendments to section 72O.

Clause 19 replaces section 72P. The new section 72P empowers the Court to review any act, omission or decision of the Restructuring Adviser, that results in a breach of any term of the debt restructuring proposal, on an application by a creditor.

Clause 20 amends section 72Q to provide that a company in simplified debt restructuring is discharged from the programme at the expiry of its moratorium period. The company or its Restructuring Adviser may apply to the Official Receiver for an extension of the moratorium period.

Clause 21 inserts a new section 72QA which provides for a modified application of sections 124 and 125, which enables an application to be made for the winding up of a company where it has entered the simplified debt restructuring programme and is subsequently discharged pursuant to section 72Q without the approval of the creditors for a compromise or an arrangement.

Clause 22 deletes sections 72R, 72S, 72T and 72U as they are no longer required.

Clause 23 makes consequential amendments to the regulation-making power under section 72V.

Clause 24 modifies the application of section 205 to the simplified debt restructuring programme.

Clause 25 amends section 226 to include as a period in subsection (5), the moratorium period under the amended Part 5A.

Clause 26 deletes the definition of "prescribed period" in section 250A as it is no longer needed. It inserts a definition for the term 'requirements for entry' which is a shorthand for the requirements to be satisfied under section 250F for a company to enter the simplified winding up programme.

Clause 27 deletes section 250B as it is no longer needed.

Clause 28 amends section 250C by providing that the applicant company does not need to make an application to the Official Receiver to enter the simplified winding up programme.

Clause 29 makes a consequential amendment to the Division 3 heading of Part 10A.

Clause 30 replaces section 250D. The new section 250D provides that the simplified winding up programme is to be conducted by the nominated liquidator, and not by the Official Receiver. The new section 250D also provides that the company may enter into the programme as follows:

(*a*) the company decides by special resolution to enter the programme on the ground that the company is unable to pay, and will not be able to pay or provide for the payment of its debts in full;

(*b*) the company nominates a licensed insolvency practitioner as the liquidator for the simplified winding up and approves his or her proposed remuneration for the administration of the simplified winding up programme;

(*c*) the nominated liquidator gives his or her written consent to being so nominated and to the proposed remuneration.

Under subsection (2), the company must lodge a copy of the resolution with the Registrar of Companies within 7 days after the resolution is passed. Under subsection (3), the company must send to every creditor, contributor or officer of the company a notice of its intention to enter the simplified winding up programme. A failure to do either of these renders the special resolution void.

The recipient of the notice may object to the company's proposed entry into the simplified winding up programme within 21 days after the receipt of the notice on the ground that the company does not meet the requirements for entry. Additionally, the recipient may object to the nominated liquidator.

Subsection (5) provides that if no objection is received within the 21-day period, the company must, within 7 days thereafter, provide to the nominated liquidator —

(*a*) a statement from the board of directors of the company that it reasonably believes that the liabilities of the company do not exceed $2 million, and that it is not aware of any circumstances under section 250F(3) that would make the company unsuitable for entry into the simplified winding up programme;

(*b*) the company's statement of affairs; and

(*c*) an update as to whether there was any reply to each notice sent under subsection (3).

Under subsection (9), in lieu of a special resolution of the company, the company's directors may pass a resolution at the meeting of directors to authorise the company to enter the simplified winding up programme on the same basis as that applicable for the entry into the programme by special resolution of the company. The conditions for proceeding with directors' resolution are set out in subsection (10) and are as follows:

(*a*) despite exercising reasonable diligence, the company was unable to contact holders of the majority in value of its shares for a period of not less than 3 consecutive years prior to the date of the directors' resolution;

(*b*) the company's operations have been dormant for at least 3 consecutive years prior to the date of the directors' resolution; and

(*c*) because of paragraph (*a*), the company is unable to hold an extraordinary general meeting to wind up the company as the quorum at the meeting cannot be met.

Subsection (11) provides for what constitutes reasonable diligence in contacting a member.

Clause 31 amends section 250E to set out the contents of a statement of affairs of the company.

Clause 32 amends section 250F by deleting all existing eligibility criteria for entry into the simplified winding up programme except the criterion as to the total liabilities of the company and other criteria to be prescribed by regulations. It also provides that a company enters the simplified winding up programme if (apart from the existing requirements that it must meet all eligibility criteria in subsection (2) and that there is no known circumstance making the company unsuitable for such entry) no objection has been received to such entry or, if an objection has been received, prescribed requirements addressing the objection have been satisfied.

Clause 33 replaces section 250G. The new section 250G(1) provides that the simplified winding up for a company comes to an end if the company receives an objection, during the specified period, objecting to the company's entry on the ground that the company does not meet a requirement for entry in section 250F(1) and the liquidator is not satisfied on reasonable grounds that the requirement is satisfied.

The new section 250G(2) provides that where an objection is to the nominated liquidator only, the company may proceed to hold a meeting of the creditors to pass a resolution, by a majority of the creditors in value, to nominate another licensed insolvency practitioner as the proposed liquidator, together with the proposed remuneration. The new section 250G(3) and (4) provides that in such a case, the company may only enter the simplified winding up programme when certain conditions are satisfied; otherwise the process comes to an end.

Clauses 34, 35 and 36 delete sections 250H, 250I and 250J, respectively, as they are no longer required.

Clause 37 replaces section 250K. The new section 250K provides that upon the liquidator's assessment that all requirements in section 250F(1) are satisfied, the liquidator must publish on the Official Receiver's designated website and lodge with the Registrar of Companies a notice of the company's entry into the programme. The programme is then treated as having commenced for the company.

The new section 250K also provides that the appointment of the nominated liquidator (including any substitute liquidator) as liquidator of the company is deemed to become effective upon the commencement of the simplified winding up programme and is on the terms and the remuneration approved at the meeting.

Clause 38 makes consequential amendments to section 250L, which provides for the application of provisions of Part 8 (Winding Up) and Part 9 (Provisions applicable in Judicial Management and Winding Up) to a winding up of a company that entered into the simplified winding up programme.

Clause 39 replaces section 250M to provide that the liquidator to administer the simplified winding up programme for a company must be a "qualified person" as defined in subsection (3).

Clause 40 makes consequential amendments to section 250N.

Clause 41 makes consequential amendments to section 250O.

Clause 42 inserts new sections 250OA and 250OB.

The new section 250OA modifies the operation of sections 124, 125 and 126 to apply to a case where a company that enters a simplified winding up programme is subsequently found to be unsuitable to enter or to remain in the programme and the liquidator seeks to convert to a creditors' voluntary liquidation or a compulsory winding up.

The new section 250OB provides for a case where the liquidator administering a simplified winding up of a company has reasonable cause to believe that the company is likely to have a claim against a third party but the realisable assets of the company are insufficient to cover the expenses to investigate the claim. The liquidator must publish a notice to the creditors that the liquidator will conduct an investigation with a view to augmenting the assets of the company, but only if the creditors are able to provide the necessary funding for the investigation, failing which the liquidator will take no further action on the investigation and proceed with the simplified winding up.

Where, in the course of the investigation, the liquidator finds that there is reasonable basis for such claim, the liquidator must summon a meeting of the creditors and lay before the meeting a statement of assets and liabilities of the company. At this meeting, the creditors may convert the proceedings from simplified winding up to creditors' voluntary winding up and may appoint a new liquidator for the purpose of winding up the affairs and distributing the assets of the company in place of the first liquidator.

Where no such resolution to convert the winding up is passed, the liquidator may then proceed to effect the dissolution. The liquidator is not in any case absolved from making a report to the public authorities concerning matters that give rise to his or her belief as to a possible claim against the third party, or which he or she discovers during an investigation.

Clause 43 makes consequential amendments to section 250P and requires the notice of discharge to contain the reasons for the discharge.

Clause 44 deletes section 250Q as it is no longer required.

Clause 45 amends section 250R by providing for the power of the Minister to make regulations on the form and contents of reports that must be submitted to the Official Receiver by the liquidator of a company which has been discharged from the simplified winding up programme.

Clause 46 amends section 440, so as to (among other things) limit the ability of a person to terminate or amend, or claim an accelerated payment or forfeiture of the term under any agreement with the company, while the company is in the simplified debt restructuring programme.

Clause 47 makes miscellaneous amendments to various provisions to change any reference to “Restructuring Advisor” to “Restructuring Adviser”.

Clause 48 provides for saving and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

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