

Bankruptcy Act 1967 (Revised 1988)

LAWS OF MALAYSIA

REPRINT

Act 360

BANKRUPTCY ACT 1967

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BANKRUPTCY ACT 1967

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BANKRUPTCY ACT 1967

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LAWS OF MALAYSIA

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BANKRUPTCY ACT 1967

An Act relating to the law of bankruptcy.

[30 September 1967]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Bankruptcy Act 1967. (2) This Act shall apply throughout Malaysia.

Interpretation

Interpretation

2. In this Act, unless the context otherwise requires-- "advocate" means any

person entitled to practise as an advocate or as a solicitor or as an advocate and solicitor under any law in any part of Malaysia;

"affidavit" includes attestation on honour;

"available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

"bankruptcy petition" includes a petition for a receiving order; Laws of Malaysia 12 ACT 360

"Chief Judge" means the Chief Judge of the High Court in Malaya or of the High Court in Sabah and Sarawak, as the case may require;

"consultative committee" means the committee appointed under section 25;

"the court" means the court having jurisdiction in bankruptcy under this Act;

"debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy; "deed of arrangement" includes any of the following instruments, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally: (a) an assignment of property;

(b) a deed or agreement for a composition;

and in cases where creditors of a debtor obtain any control over the property or business--

(c) a deed of inspectorship entered into for the purpose of winding-up or carrying on a business;

(d) a letter of licence authorizing the debtor or any other person to manage, carry on, realize or dispose of a business with a view to the payment of debts; and

(e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing the debtor or any other person to manage, carry on, realize or dispose of the debtor's business with a view to the payment of his debts;

"Director General of Insolvency" includes any officer appointed under section 70 and authorized to exercise the powers of the Director General of Insolvency;

"gazetted" means published in the official Gazette of Malaysia or of any State (as the case may require) including any supplement or Extraordinary Gazette;

"general rules" includes forms;

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"goods" includes all chattels personal;

"liability" includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement or undertaking to pay, or capable or resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated or as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies, or as to mode of valuation capable of being ascertained by fixed rules or as matter of opinion;

"oath" includes attestation on honour;

"ordinary resolution" means a resolution decided by a majority in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution;

"property" includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in Malaysia or elsewhere, also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

"Registrar" means the Registrar of the High Court and includes a Deputy Registrar, a Senior Assistant Registrar or an Assistant Registrar of the High Court;

"resolution" means ordinary resolution;

"secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor but shall not include a plaintiff in any action who has attached the property of the debtor before judgement;

"social guarantor" means a person who provides, not for the purpose of making profit, the following guarantees: (a) a guarantee for a loan, scholarship or grant for educational or research purposes;

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(b) a guarantee for a hire-purchase transaction of a vehicle for personal or non-business use; and

(c) a guarantee for a housing loan transaction solely for personal dwelling;

"special resolution" means a resolution decided by a majority in number and at least three-fourths in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution.

PART I

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Act of Bankruptcy

Acts of bankruptcy

3. (1) A debtor commits an act of bankruptcy in each of the following cases:

(a) if in Malaysia or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;

(b) if in Malaysia or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part thereof;

(c) if in Malaysia or elsewhere he makes any conveyance or transfer of his property or of any part thereof, or creates any charge thereon which would under this or any other written law for the time being in force be void as a fraudulent preference if he were adjudged bankrupt; (d) if with intent to defeat or delay his creditors he does any of the following things:

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

(ii) departs from his dwelling-house or otherwise absents himself, or begins to keep house or closes his place of business; or

(iii) submits collusively or fraudulently to an adverse judgment or order for the payment of money;

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(e) if execution issued against him has been levied by seizure of his property under process in an action or in any civil proceeding in the High Court, Sessions Court or Magistrates Court where the judgment, including costs, is for an amount of *one thousand ringgit or more;

(f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself; (g) if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts;

(h) if he makes to any two or more of his creditors, not being partners, an offer of composition with his creditors or a proposal for a scheme of arrangement of his affairs, and such offer or proposal is not followed by the registration within fourteen days thereafter of a deed of arrangement with his creditors, in accordance with the rules for the time being in force for the registration of deeds of arrangement under this Act;

(i) if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in Malaysia, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order with interest quantified up to the date of issue of the bankruptcy notice, or to secure or compound for it to the satisfaction of the creditor or the court; and he does not within seven days after service of the notice in case the service is effected in Malaysia, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained:

Provided that for the purposes of this paragraph and of section 5 any person who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order;

*NOTE--Previously "five hundred ringgit"?see the Bankruptcy (Amendment) Act 1976 [Act A364]. Laws of Malaysia16 ACT 360

(j) if the officer charged with the execution of a writ of attachment or other

process makes a return that the debtor was possessed of no property liable to seizure; and for the purposes of this paragraph the date when the writ is lodged with the officer shall be deemed to be the date of the act of bankruptcy.

(2) A bankruptcy notice under this Act shall be in the prescribed form and shall state the consequences of non compliance therewith and shall be served in the prescribed manner:

Provided that a bankruptcy notice--

(i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to or done to the satisfaction of the creditor; and

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein. (3) The word "debtor" in this Act shall be deemed to include any person who at the time when the act of bankruptcy was done or suffered by him--

(a) was personally present in Malaysia;

(b) ordinarily resided or had a place of residence in Malaysia; (c) was carrying on business in Malaysia either personally or by means of an agent; or

(d) was a member of a firm or partnership which carried on business in Malaysia.

Receiving Order

Jurisdiction to make receiving order

4. Subject to the conditions hereinafter specified, if a debtor has committed an act of bankruptcy, the Court may on a bankruptcy Bankruptcy 17

petition being presented, either by a creditor or by the debtor make an order for the protection of the estate, which order is in this Act called a receiving order.

Conditions on which creditor may petition

5. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless--

(a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors, amounts to *thirty thousand ringgit;

(b) the debt is a liquidated sum payable either immediately or at some certain future time;

(c) the act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition; and

(d) the debtor is domiciled in Malaysia or in any State or within one year before the date of the presentation of the petition has ordinarily resided or had a dwelling house or place of business in Malaysia or has carried on business in Malaysia personally or by means of an agent or is or has been within the same period a member of a firm or partnership which has carried on business in Malaysia by means of a partner or partners or an agent or manager.

(2) If the petitioning creditor is a secured creditor he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt or give an estimate of the value of his security. In the latter case he may to the extent of the balance of the debt due to him, after deducting the value so estimated, be admitted as a petitioning creditor in the same manner as if he were an unsecured creditor.

(3) A petitioning creditor shall not be entitled to commence any bankruptcy action against a social guarantor unless he proves to the satisfaction of the court that he has exhausted all avenues to recover debts owed to him by the debtor.

*NOTE--Previously "ten thousand ringgit"?see the Bankruptcy (Amendment) Act 2003 [Act A1197]. Laws of Malaysia 18 ACT 360

Proceedings and order on creditor's petition

6. (1) A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served as prescribed.

(2) At the hearing the court shall require proof of-- (a) the debt of the

petitioning creditor;

(b) the act of bankruptcy or, if more than one act of bankruptcy is alleged in the petition, some one of the alleged acts of bankruptcy; and

(c) if the debtor does not appear, the service of the petition, and if satisfied with the proof may make a receiving order in pursuance of the petition.

(3) If the court is not satisfied with the proof of the petitioning creditor's debt or of the act of bankruptcy or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt, the court may if it thinks fit stay or dismiss the petition on the ground that an appeal is pending from the judgment. (5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security, if any, being given as the court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

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(7) A creditor's petition shall not after presentation be withdrawn without the leave of the court.

Debtor's petition and order thereon

7. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2) A debtor's petition shall not after presentation be withdrawn without the

leave of the court.

Effect of receiving order

8. (1) On the making of a receiving order the Director General of Insolvency shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall proceed with or commence any action or other legal proceeding in respect of such debt unless with the leave of the court and on such terms as the court may impose.

(2) This section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed—nor shall it operate to prejudice the right of any person to receive any payment under or by virtue of section 31 of the Employment Act 1955 [Act 265] of the States of *Peninsular Malaysia or any corresponding provisions in Sabah and Sarawak.

(2A) Notwithstanding subsection (2), no secured creditor shall be entitled to any interest in respect of his debt after the making of a receiving order if he does not realize his security within six months from the date of the receiving order.

(3) On a receiving order being made against a debtor he shall, within twenty-four hours after such order has been served upon him file an affidavit in the office of the Director General of Insolvency, containing a true and correct statement of the names and residences *NOTE--All references to "West Malaysia" shall be construed as reference to "Peninsular Malaysia"?see the Interpretation (Amendment) Act 1997 [Act A996], subsection 5 (2). Laws of Malaysia20 ACT 360

of all the partners, if any, in his business and of his principal assets and liabilities. Such statement shall for the purposes of this Act be deemed to be part of the debtor's statement of his affairs referred to in section 16.

(4) On such order as aforesaid being made against a debtor the Director General of Insolvency shall forthwith take possession of all books of account and other papers and documents in the possession, custody or control of the debtor relating to his property or affairs, and may take into his possession all or any deeds, books, documents and other property of the debtor.

Court may detain or order arrest of debtor and commit him to prison unless he

gives security not to leave Malaysia

9. (1) On making a receiving order, the court, on application made by or on behalf of the petitioning creditor or any other person claiming to be a creditor, may detain the debtor if he is present, and if he is not present may order the debtor to be arrested and brought before the court by warrant addressed to any police officer or officer of the court, and unless the debtor, when so detained or brought before the court, gives security to the satisfaction of the court that he will not leave Malaysia without the previous permission in writing of the Director General of Insolvency or of the court, he may be committed to the civil prison and be there kept until the close of his public examination or until the court otherwise orders.

(2) If a receiving order is made against a firm in the firm's name no such warrant to arrest any alleged partner in the firm shall issue, except upon the application of the petitioning or some other creditor and upon evidence on oath as to the persons who at the date of the receiving order are partners in the firm. (3) If any person arrested denies that he is a partner, the court shall order his release unless the petitioning or other creditor gives security, to the satisfaction of the court, to meet the probable damages if such person is found not to be a partner. (4) The cost of maintaining any debtor in prison under this section shall be prepaid by the applicant from time to time to the gaol authority, according to the cost of rations for the time being. Bankruptcy 21

Discretionary powers as to appointment of interim receiver and stay of proceedings

10. (1) The court may, if it thinks it advisable for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the Director General of Insolvency to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof, including all books of account and other papers and documents belonging to the debtor and relating to his business.

(2) The court may at any time after the presentation of a bankruptcy petition stay any action, execution or other legal process against the property or person of the debtor.

Service of order staying proceedings

11. Where an order is made under section 10, staying any action or proceeding or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by prepaid registered post to the

address for service of the plaintiff or other party prosecuting such proceeding.

Power to appoint special manager

12. (1) The Director General of Insolvency may, if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Director General of Insolvency, appoint a manager thereof accordingly to act until the first meeting of creditors, and with such powers, including any of the powers of a receiver, as are entrusted to him by the Director General of Insolvency.

(2) The debtor may be appointed special manager.

(3) The special manager shall give security and account in such manner as the Director General of Insolvency, subject to the control of the court, directs.

(4) The special manager shall receive such remuneration as the Director General of Insolvency, within the prescribed limits and subject to such control as aforesaid, determines. Laws of Malaysia 22 ACT 360

Advertisement of receiving order

13. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order and the date of the petition, shall be gazetted and advertised in a local paper as prescribed.

Power of court to rescind receiving order in certain cases

14. If in any case where a receiving order has been made on a bankruptcy petition it appears to the court, upon an application by the Director General of Insolvency or any creditor or other person interested, that a majority of the creditors in number and value are resident in the Republic of Singapore, and that from the situation of the property of the debtor or for other causes his estate and effects ought to be distributed among the creditors under the bankruptcy or insolvency laws of that country, the court, after such inquiry as it seems fit, may rescind the receiving order and stay all proceedings on or dismiss the petition upon such terms, if any, as it thinks fit.

Proceedings consequent on Receiving Order

First and other meetings of creditors

15. (1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors, in this Act referred to as the first meeting of creditors, shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(1A) Any creditor who has tendered a proof of debts, or his representative duly authorized in writing, may question the debtor concerning his affairs and the causes of his failure. (2) With respect to the summoning of and proceedings at the first and other meetings of creditors the rules in Schedule A shall be observed.

Debtor's statement of affairs

16. (1) Where a receiving order is made against a debtor he shall make out and submit to the Director General of Insolvency a statement of and in relation to his affairs in the prescribed form, Bankruptcy 23

verified by affidavit, showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, the cause of his insolvency, the date when he last balanced his accounts before becoming insolvent, the amount of his capital at the date of such balance, after providing for all his liabilities and making allowances for bad and doubtful debts, and such further and other information as is prescribed or as the Director General of Insolvency requires. (2) The statement shall be so submitted within the following times:

(a) if the order is made on the petition of the debtor, within seven days from the date of the order;

(b) if the order is made on the petition of a creditor, within twenty-one days from the date of the order,

but the Director General of Insolvency may in either case for special reasons extend the time by order made under his hand, to be forthwith filed, recording the reasons therefor. (3) If the debtor fails without reasonable excuse, proof whereof shall lie on him, to comply with the requirements of this section he shall be guilty of a contempt of court and may be punished accordingly, and the court may on the application of the Director General of Insolvency or of any creditor adjudge him bankrupt. (4) Any person stating himself, in writing, to be a creditor of the bankrupt may personally or by agent inspect this statement at all reasonable times and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor

shall be guilty of a contempt of court and shall be punishable accordingly on the application of the Director General of Insolvency. Public Examination of Debtor

Public examination of debtor

17. (1) Where the court makes a receiving order, the Director General of Insolvency may make an application to hold a public sitting on a day to be appointed by the court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealing and property: Laws of Malaysia24 ACT 360

Provided that when the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court renders him unfit to attend his public examination the court may dispense with such examination or direct the debtor to be examined in such manner and place as the court thinks expedient. (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs and after the first meeting of creditors. (3) The court may adjourn the examination from time to time. (4) Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The Director General of Insolvency shall take part in the examination of the debtor, and for the purpose thereof may, if specially authorized by the Attorney General, employ an advocate and solicitor but no advocate and solicitor shall be allowed to take part in the examination on behalf of the debtor.

(6) The court may put such questions to the debtor as it thinks expedient.

(7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court puts or allows to be put to him.

(8) Such notes of the examination as the court thinks proper shall be taken down in writing by the Registrar and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the court from directing a further examination of the debtor as to his conduct, dealings and property whenever it sees fit to do so. (10) (Deleted by Act A827).

Composition or Scheme of Arrangement

Power for creditors to accept and court to approve composition or arrangement

18. (1) The creditors may, by special resolution at the first meeting or any adjournment thereof, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed at a subsequent meeting of the creditors by a resolution passed by a majority in number, representing at least three-fourths in value of all the creditors who have proved, and is approved by the court.

(3) Any creditor who has proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the Director General of Insolvency in the prescribed form, and attested by a witness, and sent or posted so as to be received by such Director General of Insolvency not later than the day preceding such subsequent meeting, and a creditor so assenting or dissenting shall be taken as being present and voting at such meeting. (4) The subsequent meeting shall be summoned by the Director General of Insolvency by not less than seven days' notice and shall not be held until after the public examination of the debtor is concluded.

(5) The notice shall state generally the terms of the proposal and shall be accompanied by a report of the Director General of Insolvency thereon.

(6) The debtor or the Director General of Insolvency may, after the composition or scheme is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given as prescribed.

(7) (Deleted by Act A827).

(8) The court before approving a composition or scheme shall hear a report of the Director General of Insolvency as to the terms of the composition or scheme and as to the conduct of the debtor, and shall hear any objections which may be made by or on behalf of any creditor.

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(9) If the court is of opinion that the terms of the composition or scheme are

not reasonable or are not calculated to benefit the general body of creditors, and in any case in which the court is required under this Act to refuse a bankrupt his discharge, the court shall, or if any such facts are proved as would under this Act justify the court in refusing, qualifying or suspending the discharge, the court may, in its discretion, refuse to approve the composition or scheme.

(10) If the court approves the composition or scheme the approval may be testified by the seal of the court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the court. (11) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy. (12) A certificate of the Director General of Insolvency that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. (13) A composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(14) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court on satisfactory evidence that the composition or scheme cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme.

(15) Where a debtor is adjudged bankrupt under subsection (14), any debt provable in other respects, which has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

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(16) If under or in pursuance of a composition or scheme a trustee or assignee is appointed to administer the debtor's property or manage his business or distribute a composition, Part IV shall apply to such trustee or assignee as if he were an assignee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor and an order approving the composition or scheme.

(17) Part III shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "assignee," "bankruptcy" and "order of adjudication" as in subsection (16). (18) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(19) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Effect of composition or scheme

19. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under this Act, the debtor would not be discharged by an order of discharge in bankruptcy unless the creditor assents to the composition or scheme.

No deed of arrangement valid except under section 18 or 26 unless registered

20. No deed of arrangement, except a composition or scheme entered into under section 18 or 26, shall be valid unless the same has been registered within fourteen clear days after the first execution thereof by the debtor or any creditor, in accordance with the rules for the time being in force for the registration of deeds of arrangements under this Act.

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Penalty for collusive preference

21. (1) Every person who signs or on whose behalf is signed a deed of arrangement to which section 20 applies, who within two months before or at any period after signing the same, receives any secret or collusive preference, gratuity, security, payment or other consideration, all hereinafter included in the expression "gratuity", for concurring in or signing such deed of arrangement shall be guilty of an offence punishable as hereinafter mentioned. (2) Every gratuity for concurring in or signing, or having concurred in or signed a deed of arrangement, shall be deemed to be secret and collusive unless the same or any promise for the same is disclosed on the face of the deed of arrangement or in a memorandum annexed to the deed at the time when the person who has received or is to receive such gratuity signs the deed of arrangement, which memorandum shall also be signed in

acknowledgment of having seen the same by all the parties to the deed of arrangement before the registration thereof.

(3) Every person committing an offence under this section shall be liable to a fine not exceeding five times the amount or value of the gratuity received by or promised to him, and the court before which such person is tried may award a part of any such fine, not exceeding one-half thereof, to the informer through whom the conviction has been obtained, provided that such informer is not the debtor.

Power of Minister to make rules

22. (1) The Minister may make rules for the registration of deeds of arrangement under this Act.

(2) Such rules shall provide for--

(a) the mode of registration;

(b) the form of the registers to be kept for the purpose of registration of deeds of arrangement under this Act; (c) the inspection of the registers and deeds registered and the taking of copies and extracts of the same, and the custody of the registers and other documents connected with the business of registration;

(d) the fees to be taken in respect of registration of deeds of arrangement and in respect of office copies or extracts and searches.

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(3) Until rules are made under this section, the rules for the registration of deeds of arrangements shall be as set out in Schedule B.

Rectification of registers

23. The court, upon being satisfied that the omission to register a deed of arrangement within the time required by this Act, or that the omission or misstatement of the name, residence or description of any person was accidental or due to inadvertence or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested and on such terms and conditions as are just and expedient, extend the time for such registration or order such omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence or description.

Adjudication of Bankruptcy

Adjudication of bankruptcy

24. (1) At the time of making a receiving order the court shall adjudge the debtor bankrupt unless the debtor can show to the satisfaction of the court that he is in a position to offer a composition or make a scheme of arrangement satisfactory to his creditors; provided that when a receiving order is made against a firm in the firm's name the court shall not adjudge any person bankrupt as a member of the firm unless such person is proved to the satisfaction of the court to be a partner by his own admission or by evidence on oath.

(2) The court may at any time, on the application of the debtor himself, by petition in writing, unstamped, to be forthwith filed, adjudge him bankrupt and at the same time make a receiving order against him, and such application may be made without notice. (3) Where a receiving order is made against a debtor, if the creditors at the first meeting or any adjournment thereof resolve by ordinary resolution that the debtor be adjudged bankrupt or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court allows, the court shall adjudge the debtor bankrupt.

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(4) When a debtor is adjudged bankrupt his property shall become divisible among his creditors and shall vest in the Director General of Insolvency.

(5) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt and the date of the adjudication, shall be published in the Gazette and advertised in a local paper as prescribed, and the date of the order shall for the purposes of this Act be the date of the adjudication. Consultative committee

25. (1) The creditors qualified to vote may, at their first meeting or any adjournment thereof, appoint by resolution from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of one or more persons, not exceeding three, for the purpose of advising the Director General of Insolvency on matters relating to the administration of the property of the bankrupt. (2) The Director General of Insolvency may convene the committee at such times as he thinks necessary, and the Director General of Insolvency shall convene the committee whenever requested in writing to do so by all or a majority of the members of

the committee.

(3) Any member of the committee may resign his office by notice in writing, signed by him and delivered to the Director General of Insolvency.

(4) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent for more than two months from Malaysia his office shall thereupon become vacant. (5) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors, of which seven days' notice has been given stating the object of the meeting. (6) On a vacancy occurring in the office of a member of the committee the Director General of Insolvency shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.

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Power to accept composition or scheme after bankruptcy adjudication

26. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme entertained at the first meeting of creditors.

(2) If the court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court appoints, on such terms and subject to such conditions, if any, as the court declares.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme.

(4) Where a debtor is adjudged bankrupt under subsection (3) all debts provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankruptcy.

Control over Person and Property of Debtor

Duties of debtor as to discovery and realization of property

27. (1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors and any subsequent meeting of his creditors which the Director General of Insolvency requires him to attend, and shall submit to such examination and give such information as the meeting requires.

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(2) He shall give such inventory of his property, such list of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, wait at such times and places on the Director General of Insolvency, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as are reasonably required by the Director General of Insolvency, or are prescribed or directed by the court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the Director General of Insolvency or any creditor or person interested. (3) He shall, if adjudged bankrupt, aid to the utmost of his power in the realization of his property, and the distribution of the proceeds among his creditors, and amongst other things shall, if required by the Director General of Insolvency so to do, answer all such questions and shall submit to such medical examination and do all such other things as are necessary for the purpose of effecting an insurance on his life.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the Director General of Insolvency or to any person authorized by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court and may be punished accordingly. Arrest of debtor under certain circumstances

28. (1) The court may, by warrant addressed to any police officer or officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court orders if--

(a) after a bankruptcy notice has been issued under this Act, or after

presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he is in hiding or has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of Bankruptcy 33

avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him; or

(b) after presentation of a bankruptcy petition by or against him it appears to the court that there is probable cause for believing that he is about to remove his goods, with a view of preventing or delaying possession being taken of them by the Director General of Insolvency, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy; or (c) after service of a bankruptcy petition on him or after a receiving order is made against him he removes any goods in his possession above the value of fifty ringgit without the leave of the Director General of Insolvency; or

(d) without good cause shown he fails to attend any examination ordered by the court; or

(e) after presentation of a bankruptcy petition by or against him the Director General of Insolvency reports to the court, or the court is otherwise satisfied that there is probable reason for believing that the assets will not be sufficient to pay a dividend of fifty ringgit per centum on the debts or that there is probable reason for believing that the debtor has committed any offence punishable under this Act.

(2) No arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest is served with such bankruptcy notice.

(3) No payment or composition made or security given after arrest made under this section shall be exempt from this Act relating to fraudulent preferences.

Release of debtor on security

29. (1) When a debtor is arrested under section 28 he may be released by order of the court, either with or without giving security to the satisfaction of the court that he will not leave Malaysia without the previous permission in writing of the Director General Laws of Malaysia³⁴ ACT 360

of Insolvency or of the court, or that he will not remove any of his goods or conceal or destroy any of his goods or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy.

Proceeds of security to fall into the estate of the debtor (2) The proceeds of the realization of any security given under this section or under section 9 on breach by the debtor of any of the conditions of such security shall be deemed to be the property of the debtor, and when he is adjudged bankrupt shall vest in the Director General of Insolvency.

Redirection of letters and telegrams

30. Where a receiving order is made against a debtor the court, on the application of the Director General of Insolvency, may order that for such time not exceeding three months as the court thinks fit, telegrams and post letters addressed to the debtor at any place or places mentioned in the order for redirection shall be redirected, sent or delivered by the agent of the telegraph company or by the postal authorities, as the case may be, to the Director General of Insolvency or otherwise as the court directs, and the same shall be done accordingly.

Discovery of debtor's property

31. (1) The court may, on the application of the Director General of Insolvency or of any creditor who has proved his debt at any time after a receiving order has been made against a debtor, summon before it the debtor, or any wife of his, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court deems capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. (2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may by warrant cause him to be apprehended and brought up for examination.

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(3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4) If on the examination of any such person it appears to the court that he is indebted to the debtor, the court may, on the application of the Director General of Insolvency, order him to pay to the Director General of Insolvency, at such time and in such manner as to the court seems expedient, the amount in which he is indebted or any part thereof, either in full discharge of the whole amount in question or not as the court thinks fit, with or without costs of the examination.

(5) If on the examination of any such person it appears to the court that he has in his possession any property belonging to the debtor the court may, on the application of the Director General of Insolvency, order him to deliver to the Director General of Insolvency such property or any part thereof at such time and in such manner and on such terms as to the court seems just. (6) The powers given to the court under this section may in all cases be exercised by the Registrar and any order made or act done by the Registrar shall be deemed the order or act of the court. Director General of Insolvency to settle list of debtors to the estate

32. (1) The Director General of Insolvency shall, as soon as may be after a receiving order has been made against a debtor, prepare and file in court a list of persons supposed to be indebted to the debtor, with the amounts in which they are supposed to be so indebted set opposite to their names respectively. (2) Before finally settling the name and amount of the debt of any person on such list the Director General of Insolvency shall give notice in writing to such person, stating that he has placed such person upon the list of debtors to the estate in the amount in the notice specified, and that unless such person on or before a day in such notice specified gives to the Registrar and to the Director General of Insolvency notice in writing of his intention to dispute his indebtedness, he will be deemed to admit that the amount set opposite his name in such list is due and owing by him to the debtor and will be settled on such list accordingly. Laws of Malaysia³⁶ ACT 360

(3) A person included in such list who does not give notice of his intention to dispute his indebtedness within the time limited in that behalf shall be settled upon such list, and execution may issue against him and a bankruptcy notice under this Act may be served upon him for the amount set opposite his name in such list in the same way as if judgment had been entered up against him for such amount in favour of the Director General of Insolvency. (4) A certificate by the Registrar that the person named therein has been settled upon such list as a debtor to the estate in the amount in such certificate specified shall be received as proof of the facts therein stated.

(5) A person settled upon such list in manner aforesaid may apply to the court in a summary way for leave to dispute his indebtedness or the amount thereof,

and the court may if it thinks fit make such order for determining the question as may seem expedient upon the terms of such persons giving security for costs and either paying into court or giving security for the whole or such part of the alleged debt as under the circumstances may seem reasonable, and may stay all further proceedings. Discharge of Bankrupt

Discharge of bankrupt by order of court

33. (1) A bankrupt may at any time after being adjudged bankrupt apply to the court for an order of discharge, and the court shall appoint a day for hearing the application.

(2) (Deleted by Act A827).

(3) On the hearing of the application the court shall take into consideration a report of the Director General of Insolvency as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy, and may either grant or refuse an absolute order of discharge, or suspend the operation order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property.

(4) In all cases where it is proved to the satisfaction of the court that the bankrupt has committed any offence under this Act or under any written law repealed by this Act or under section 421, 422, 423 or 424 of the Penal Code [Act 574] the court shall unless Bankruptcy 37

for special reasons it otherwise determines either refuse the discharge or suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors, and on proof of any of the facts mentioned in subsection (6) the court shall either--

(a) refuse the order; or

(b) suspend the operation of the order for a specified time; or

(c) suspend the operation of the order until a dividend of not less than fifty per centum has been paid to the creditors; or

(d) grant an order of discharge subject to such conditions as aforesaid.

The powers of suspending and attaching conditions to a bankrupt's discharge may be exercised concurrently.

(5) If at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order or any subsequent order in such manner and upon such conditions as it thinks fit. (6) The facts hereinbefore referred to are--

(a) that the bankrupt has omitted to keep such books of account as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy, or within such shorter period immediately preceding that event as the court deems reasonable in the circumstances;

(b) that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent; (c) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable ground of expectation, proof whereof shall lie on him, of being able to pay it;

(d) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

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(e) that the bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculations or

extravagance in living, or by recklessness, or gambling or want of reasonable care and attention to his business and affairs;

(f) that the bankrupt has delayed or put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other legal proceedings properly brought or instituted against him;

(g) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;

(h) that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(i) that the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view to making his assets equal to an amount of fifty ringgit per centum of the amount of his unsecured liabilities; (j) that the bankrupt has in Malaysia or elsewhere on any

previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors;

(k) that the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(l) that the bankrupt has within three months immediately preceding the date of the receiving order sent goods out of Malaysia under circumstances which afford reasonable grounds for believing that the transaction was not a bona fide commercial transaction;

(m) that the bankrupt's assets are not of a value equal to fifty ringgit per centum of the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to fifty ringgit per centum of his unsecured liabilities has arisen from circumstances for or in respect of which he cannot justly be held blameable. (7) For the purposes of this section a bankrupt's assets shall be deemed of a value equal to fifty ringgit per centum of the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realized or is likely to realize or with Bankruptcy 39

due care in realization might have realized an amount equal to fifty ringgit per centum of the amount of his unsecured liabilities and a report by the Director General of Insolvency shall be prima facie evidence of the amount of such liabilities.

(8) For the purposes of this section the report of the Director General of Insolvency shall be prima facie evidence of the statements therein contained.

(9) Notice of the appointment by the court of the day for hearing the application for discharge shall be published as prescribed and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court shall hear the Director General of Insolvency, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it thinks fit.

(10) The court may, as one of the conditions referred to in this section, require the bankrupt to consent to judgment being entered against him by the Director General of Insolvency for any balance, or part of the balance, of the debts provable under the bankruptcy which is not satisfied at the date of his discharge; but in such case execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts.

(11) (Deleted by Act A1035).

(12) For the purposes of this section the following presumptions shall be made--

(a) if at any time after the expiration of six months from the date of the adjudication the Director General of Insolvency reports to the court that the value of the assets which have been realized, together with the estimated value of the assets which are realizable, is insufficient to pay a dividend of fifty ringgit per centum on the debts proved in the bankruptcy, it shall be presumed, until the contrary is proved, that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent; (b) in determining whether a bankrupt was, or knew, or had reason to believe himself to be insolvent at any particular date, every debt owing to him by any person resident out Laws of Malaysia40 ACT 360

of the jurisdiction, which debt had been at such date due for more than twelve months, shall be excluded from the computation of the value of the assets, and for the purpose of such computation shall be deemed not to be an asset; (c) a bankrupt shall be deemed to have continued to trade after knowing or having reason to believe himself to be insolvent if, having continued to trade after he was in fact insolvent, he--

(i) is unable to satisfy the court that he had reasonable ground for believing himself to be solvent; or

(ii) fails without reasonable excuse, proof whereof shall lie on him, to produce a proper balance sheet for each of the three years immediately preceding the bankruptcy, every such balance sheet being

made within a reasonable time after the expiration of the year to which it relates, and showing the

true state of his affairs at the end of such year; (d) any preference given by the bankrupt to any creditor within the three months immediately preceding the date of the receiving order shall, until the contrary is proved, be deemed to be undue.

Discharge of bankrupt by Certificate of Director General of Insolvency

33A. (1) The Director General of Insolvency may, in his discretion but subject to section 33B, issue a certificate discharging a bankrupt from bankruptcy.

(2) The Director General of Insolvency shall not issue a certificate

discharging a bankrupt from bankruptcy under subsection (1) unless a period of five years has lapsed since the date the receiving order and the order by which he was adjudged bankrupt were made. (3) Notice of every discharge under subsection (1) shall be given by the Director General of Insolvency to the Registrar and the Director General of Insolvency shall advertise the notice in a local newspaper as prescribed.

(4) The Director General of Insolvency shall, upon the application of any interested person, issue a copy of the certificate of discharge to the applicant upon payment of the prescribed fee. Bankruptcy 41

Objection by creditor to discharge of bankrupt under section 33A

33B. (1) Before issuing a certificate of discharge under section 33A, the Director General of Insolvency shall serve on each creditor who has filed a proof of debt a notice of his intention to issue the certificate.

(2) A creditor who has been served with a notice under subsection (1) and who wishes to object to the issuance of a certificate discharging the bankrupt shall, within twenty-one days from the date of service of the notice, furnish a notice of the objection stating the grounds of his objection.

(3) A creditor who does not furnish a notice of his objection and the grounds of his objection in accordance with subsection (2) shall be deemed to have no objection to the discharge. (4) A creditor who has furnished a notice of his objection and the grounds of his objection in accordance with subsection (2) may, within twenty-one days of being informed by the Director General of Insolvency that his objection has been rejected, make an application to the court for an order prohibiting the Director General of Insolvency from issuing a certificate of discharge. (5) Every application under subsection (4) shall be served on the Director General of Insolvency and on the bankrupt and the court shall hear the Director General of Insolvency and the bankrupt before making an order on the application.

(6) On an application made under subsection (4), the court may, if it thinks it just and expedient--

(a) dismiss the application;

(b) make an order that for a period not exceeding two years a certificate of discharge shall not be issued by the Director General of Insolvency.

Fraudulent settlements

34. In either of the following cases: (a) in the case of a settlement made

before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

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(b) in the case of any covenant or contract made in consideration of marriage for the future settlement on, or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, not being money or property of or in right of his wife, if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of discharge

35. (1) Subject to this section and any condition imposed by the court under section 33, where a bankrupt is discharged, the discharge shall release him from all his debts provable in the bankruptcy but shall have no effect--

(a) on the functions (so far as they remain to be carried out) of the Director General of Insolvency; or

(b) on the operation, for the purposes of the carrying out those functions, of the provisions of this Act.

(2) A discharge shall not release the bankrupt from-- (a) any debt, due to the Government of Malaysia or of any State;

(b) any debt with which the bankrupt may be chargeable at the suit of--

(i) the Government of Malaysia or of any State or any other person for any offence under any written law relating to any branch of the public revenue; or

(ii) any other public officer on a bail bond entered into for the appearance of any person prosecuted

for any such offence; or

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(c) any provable debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was party; or

(d) any liability in respect of a fine imposed for an offence. (3) A bankrupt may be discharged from any of the debts excepted under subsection (2) by a certificate in writing of the Minister of Finance in the case of a debt due to the Government of Malaysia or the Menteri Besar or Chief Minister of any State in the case of a debt due to the State or of the Attorney General in the case of such bail bond as is referred to in subsection (2). (4) An order of discharge or a certificate of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that are instituted against a bankrupt who has obtained an order of discharge or a certificate of discharge in respect of any debt from which he is released by the order or certificate the bankrupt may plead that the cause of action occurred before his discharge.

(5) A discharge shall not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in nature of such a surety.

Discharged bankrupt to give assistance

35A. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the Director General of Insolvency requires in the realization and distribution of such of his property as is vested in the Director General of Insolvency, and if the discharged bankrupt fails to do so--

(a) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both; and

(b) the court may, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done subsequent to the discharge, but before its revocation.

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PART II

DISQUALIFICATION AND DISABILITIES OF BANKRUPT

Disqualification of bankrupt

36. (1) Where a debtor is adjudged bankrupt he shall subject to this Act, be disqualified for--

- (a) being appointed or acting as a Sessions Court Judge or Magistrate;
- (b) being nominated or elected to or holding or exercising the office of Councillor of a local authority.

(2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when-- (a) the adjudication of bankruptcy against him is annulled; or

(b) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

(3) The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. Vacating offices by bankruptcy

37. If a person is adjudged bankrupt whilst holding the office of a Sessions Court Judge, Magistrate, or a Councillor of a local authority, his office shall thereupon become vacant. Undischarged Bankrupt

Consequences of refusal of discharge

38. (1) Where a bankrupt has not obtained his discharge-- (a) the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Director General of Insolvency;

(b) the bankrupt shall once in every six months render to the Director General of Insolvency an account of all moneys Bankruptcy 45

and property which have come to his hands for his own use during the preceding six months, and shall pay and make over to the Director General of Insolvency so much of the same moneys and property as have not been expended in the necessary expenses of maintenance of himself and his family;

(ba) notwithstanding paragraph (b), the bankrupt shall immediately report to the Director General of Insolvency the receipt of any moneys, property or proceeds in any form from property the value of which exceeds five hundred ringgit and which moneys, property or proceeds do not form part of his usual income and the bankrupt shall, as soon as may be required by the Director

General of Insolvency, pay or make over such moneys, property or proceeds to the Director General of Insolvency;

(bb) the bankrupt shall immediately inform the Director General of Insolvency if there is any change of his home address; (c) the bankrupt shall not leave Malaysia without the previous permission of the Director General of Insolvency or of the court;

(d) the bankrupt shall not, except with the previous permission of the Director General of Insolvency or of the court, enter into or carry on any business either alone or in partnership, or become a director of any company or otherwise directly or indirectly take part in the management of any company;

(e) the bankrupt shall not, except with the previous permission of the Director General of Insolvency or of the court, engage in the management or control of any business carried on by or on behalf of, or be in the employment of, any of the following persons, namely--

(i) his spouse;

(ii) a lineal ancestor or a lineal descendant of his or a spouse of such ancestor or descendant; or

(iii) a sibling of his or a spouse of such sibling. (1A) In granting permission under paragraph (c), (d) or (e) of subsection (1), the Director General of Insolvency or the court may impose such conditions as he or it may think fit. Laws of Malaysia 46 ACT 360

(2) A bankrupt who makes default in performing or observing this section or a condition imposed pursuant to subsection (1A) shall be deemed guilty of a contempt of court, and shall be punished accordingly on the application of the Director General of Insolvency. Power to prevent bankrupt from leaving Malaysia

38A. (1) The Director General of Insolvency may by notice issued to any immigration officer request that a bankrupt be prevented from leaving Malaysia.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, an immigration officer who receives a notice under subsection (1) in respect of any bankrupt shall take or cause to be taken all such measures as may be necessary to give effect to it.

(3) An immigration officer shall be empowered to seize and deliver to the

Director General of Insolvency any passport or travel document belonging to any bankrupt who is attempting to leave Malaysia without the previous permission of the Director General of Insolvency.

(4) For the purposes of this section, "immigration officer" means any person appointed under section 3 of the Immigration Act 1959 [Act 155].

List of undischarged bankrupts to be kept

39. (1) The Director General of Insolvency shall keep and maintain a list of undischarged bankrupts.

(2) The list under subsection (1) shall be available, at all reasonable times, for inspection by any member of the public at any office of the Director General of Insolvency.

(3) The name of a deceased bankrupt shall be removed from the list five years after the end of the administration of his estate in bankruptcy.

(4) The Director General of Insolvency may issue a copy of the list to any person upon request by that person and upon payment of the prescribed fee.

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PART III

ADMINISTRATION OF PROPERTY

Proof of Debts

Description of debts provable in bankruptcy

40. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the receiving order for any debt or liability contracted by the debtor subsequent to the date of his so having notice.

(3) Save as provided in subsections (1) and (2) all debts and liabilities present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the

receiving order shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the Director General of Insolvency of the value of any debt or liability provable under subsection (3) which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any such estimate may appeal to the court.

(6) If in the opinion of the court the value of the debt or liability is incapable of being fairly estimated the court may make an order to that effect, and thereupon the debt or liability shall for the purposes of this Act be deemed to be debt not provable in bankruptcy. (7) If in the opinion of the court the value of the debt or liability is capable of being fairly estimated, the court may assess the same and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

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Mutual credit and set-off

41. (1) Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Act and any other person proving or claiming to prove a debt under such order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side respectively.

(2) A person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debts

42. The rules in Schedule C shall be observed with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and other matters. Priority of debts

43. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts--

(a) all local rates and land tax due from the bankrupt at the date of the

receiving order and having become due and payable within twelve months next before that time; (b) income tax and other assessed taxes assessed on the bankrupt up to the 31st day of December next before the date of the receiving order and not exceeding in the whole one year's assessment;

(c) all wages or salary of any clerk, servant, labourer or workman not exceeding one thousand ringgit for each whether payable for time or piece work or whether or not payable wholly or in part by way of commission in respect of services rendered to the bankrupt during the period of five months next before the date of the receiving order Bankruptcy 49

or the date of the termination of his service if the latter occurs within twelve months of and precedes the date of the receiving order:

Provided that, where any clerk, servant, labourer or workman has entered into a contract for the payment of his wages or any part thereof in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order;

(d) all amounts due in respect of contributions payable during the twelve months before the date of the receiving order by the bankrupt as the employer of any person under any law relating to provident funds; and

(e) all amounts due in respect of workmen's compensation under any law relating to workmen's compensation accrued before the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to this Act all debts proved in the bankruptcy shall be paid *pari passu*.

(5) If there is any surplus after payment of the foregoing debts, the surplus shall not be applied in any payment of interest after the date of the receiving order to any creditor on any debt proved in the bankruptcy, except for the payment of interest to a secured creditor under subsection 8(2A).

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Interest on debts

(6) Where a debt has been proved upon a debtor's estate and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding six per centum per annum up to the date the receiving order is granted by the court. (7) This section shall have effect subject to any written law relating to partnership in force in any part of Malaysia. (8) Where an interim receiver has been appointed before the making of the receiving order the date of such appointment shall for the purposes of this section be deemed to be the date of the receiving order.

Preferential claim in case of apprenticeship and in respect of passage money

44. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the Director General of Insolvency to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement.

(2) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the Director General of Insolvency may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the Director General of Insolvency, subject to an appeal to the court, thinks reasonable out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy and to the other circumstances of the case.

(3) Where it appears expedient to the Director General of Insolvency he may, on the application of any apprentice or articled clerk to the bankrupt, or of some person on his behalf, instead of acting under subsection (1) or (2) transfer the indenture of apprenticeship or articles of agreement to some other person. Bankruptcy 51

(4) Where at the date of the receiving order any person is in the employment

of the bankrupt who came to Malaysia for the purpose of entering into such employment either--

(a) under any contract to serve the bankrupt for a period of not less than one year, which period has not elapsed three months before the date of such order; or

(b) under a contract either absolutely or conditionally that such person shall be provided with a passage to another country on the determination of his employment,

and such person has not obtained other employment and is desirous of leaving Malaysia, the court may, if it seems just and expedient under all the circumstances of the case, direct the Director General of Insolvency to provide for such person such passage as he is entitled to under the contract, or if he is not so entitled then a suitable passage to the country whence he came for the purpose of entering into such employment, or in either case any other not more costly passage which such person may desire. Power to landlord to distrain for rent

45. (1) Subject to any law relating to the recovery of rent by way of distress, the landlord or other person to whom any rent is due from the bankrupt may, at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt with this limitation, that if such distress for rent is levied after the commencement of the bankruptcy it shall be available only for three months' rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent is due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available. (2) This section shall with the necessary modifications apply in the case of an order for the administration of the estate of a deceased person who died insolvent and for the purposes of this section the term "order of adjudication" shall be deemed to include an order for such administration.

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Postponement of husband's or wife's claims

46. (1) Where a married woman has been adjudged bankrupt her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other property lent or entrusted by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt any money or other property of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise shall be treated as assets of his estate and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other property until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied. Property Available for Payment of Debts

Relation back of Director General of Insolvency's title

47. (1) The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor, shall be deemed to have relation back to and commence at the time of the act of bankruptcy being committed on which a receiving order is made against him, or if the bankrupt is proved to have committed more acts of bankruptcy than one to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition. (2) No bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Description of bankrupt's property divisible amongst creditors

48. (1) The property of the bankrupt divisible among his creditors, and in this Act referred to as the property of the bankrupt-- (a) shall not comprise the following:

(i) property held by the bankrupt on trust for any other person;

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(ii) the tools, if any, of his trade and the necessary wearing apparel and bedding and other like

necessaries of himself, his wife and children to a value inclusive of tools and apparel and the other things aforesaid not exceeding *five thousand ringgit in the whole;

(b) shall comprise the following:

(i) all such property as belongs to or is vested in the bankrupt at the commencement of the bankruptcy

or is acquired by or devolves on him before his

discharge;

(ii) the capacity to exercise and to take proceedings for exercising all such powers in or over or in

respect of property as might have been exercised

by the bankrupt for his own benefit at the

commencement of his bankruptcy or before his

discharge; and

(iii) subject to the law for the time being in force relating to bills of sale, all goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt by the consent and permission of the true owner under such

circumstances that he is the reputed owner thereof. (2) Things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Provisions as to second bankruptcy

49. (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the Director General of Insolvency shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable in the last preceding bankruptcy against the property of the bankrupt in the subsequent bankruptcy.

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administering *NOTE--Previously "five hundred ringgit"?see the Bankruptcy (Amendment) Act 1992 [Act A827]. Laws of Malaysia54 ACT 360

in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the Director General of Insolvency in that bankruptcy, without knowledge of

the presentation of the subsequent petition) vest in the Director General of Insolvency on account of the subsequent bankruptcy or administration in bankruptcy as the case may be.

(3) Where the Director General of Insolvency in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the Director General of Insolvency shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall hold all such property or the proceeds thereof (after deducting his costs and expenses) to the account of the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of Bankruptcy on Antecedent Transactions

Restriction of rights of creditor under execution or attachment

50. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due, or property belonging to him, he shall not be entitled to retain the benefit of the execution or attachment against the Director General of Insolvency unless he has completed the execution or attachment before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. (2) For the purposes of this Act--

(a) an execution against goods or land is completed by seizure and sale, or in the case of an equitable interest in land by the appointment of a receiver;

(b) an attachment of a debt is completed by receipt of the debt;

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(c) an attachment of property is completed by the sale of such property and the satisfaction out of the proceeds of such sale of the judgment in execution of which the attachment was made.

Property taken in execution

51. (1) Where any property of a debtor is taken in execution and before the sale or realization thereof, or the delivery to the execution creditor of any moneys seized or paid in order to avoid sale, notice is served on the Court

that a receiving order has been made against the debtor, the Court shall deliver the property or the possession thereof and any such moneys to the Director General of Insolvency, but the costs of and incidental to the execution shall be a first charge on such property or moneys, and the Director General of Insolvency may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Duty as to money received on seizure or subsequently thereto (2) Where an order of execution has been made in respect of a judgment for a sum exceeding one hundred ringgit the Court shall hold all moneys coming to its hands under such writ of seizure and sale for fourteen days from the receipt thereof, and if within that time notice is served on it of a bankruptcy petition having been presented against or by the debtor and a receiving order is made against the debtor thereon or on any other petition of which the Court has notice, the Court shall deduct the costs of and incidental to the execution and pay the balance to the Director General of Insolvency, who shall be entitled to retain the same as against the execution creditor.

Execution levied by seizure and sale not invalid by reason of seizure being an act of bankruptcy

(3) An execution levied by seizure and sale on property of a debtor is not invalid by reason of the seizure being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the Court out of which such execution has issued shall in all cases acquire a good title to it against the Director General of Insolvency.

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(4) Where the act of bankruptcy upon which a bankruptcy petition is founded is the seizure of any property under a judgment, and the debtor has had a receiving order made against him on such petition, then the costs of the judgment creditor incurred by him in obtaining such judgment during the thirty days next preceding the taking of the property in execution shall be payable out of the assets of the bankrupt in the same manner and in the same order of priority as the costs of the petitioning creditor. (5) For the purposes of this section a notice served on the Registrar or the Magistrate of a Court shall be deemed to have been served on the Court.

Avoidance of voluntary settlement

52. (1) Any settlement of property, not being a settlement made before and in consideration of marriage or a settlement made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has

accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be absolutely void against the Director General of Insolvency, and shall, if the settlor becomes bankrupt at any subsequent time within five years after the date of the settlement, be void against the Director General of Insolvency, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt, before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the Director General of Insolvency.

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(3) For the purposes of this section "settlement" includes any conveyance or transfer of property, bill, bond, note, security for money or covenant for the payment of money and any gift of money.

(4) For the purposes of this section a settlor who dies insolvent shall be deemed to have become bankrupt at the date of his death. Avoidance of preferences in certain cases

53. (1) Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts, as they become due, from his own money in favour of any creditor or any person in trust for any creditor shall be deemed to have given such creditor a preference over other creditors if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within six months after the date of making, taking, paying or suffering the same and every such act shall be deemed fraudulent and void as against the Director General of Insolvency.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(3) For the purposes of this section "creditor" includes a surety or guarantor

for the debt due to that creditor.

Avoidance of assignment of book debts

53A. (1) Where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part thereof and subsequently becomes bankrupt, the assignment shall be void as against the Director General of Insolvency in respect of any book debts that had not been paid at the date of an available act of bankruptcy.

(2) This section shall not apply to an assignment of book debts registered pursuant to any written law if the assignment is valid under that law.

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(3) Nothing in this section shall render void any assignment of book debts due at the date of the assignment from specified debtors or of book debts included in the transfer of a business, such transfer being made bona fide and for valuable consideration. (4) For the purposes of this section "assignment" includes assignment by way of security or other charge on book debts. Property or proceeds therefrom deemed to be property of Director General of Insolvency

53B. (1) Where a person has acquired property of the bankrupt under a transaction that is void or under a voidable transaction (that is subsequently set aside) and sold, disposed of, realized or collected the property or any part of it, the money or other proceeds from any such dealing, whether further disposed of or not, shall be deemed to be the property of the Director General of Insolvency. (2) The Director General of Insolvency may recover the property referred to in subsection (1) or its value or the money or other proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom the person may have sold, resold or transferred the property or paid over the money or other proceeds therefrom as fully and effectually as the Director General of Insolvency could have recovered the property if it had not been so sold, transferred, disposed of, realized or collected. (3)

Notwithstanding subsections (1) and (2), where any person, (not being the person who acquired the property from bankrupt) to whom the property was sold, resold or otherwise disposed of, had paid or given therefor valuable consideration and acted in good faith such person shall not be subject to the operation of this section and the Director General of Insolvency's recourse for recovery of the consideration so paid or given or its value shall be solely against the person who entered into the transaction with the bankrupt.

(4) Where the consideration payable for or upon any sale or resale of such property or any part thereof remains unsatisfied the right of the Director General of Insolvency shall be subrogated for that of the vendor to compel payment or satisfaction. Bankruptcy 59

Fair market value may be fixed on review

53C. (1) Where a person who has sold, purchased, leased, hired, supplied or received property or services, as the case may be becomes bankrupt within twelve months of that transaction, the court may, upon the application of the Director General of Insolvency, review that transaction and inquire whether the bankrupt gave or received fair market value in consideration for the property or services at the time of that transaction.

(2) Where the court finds that the consideration given or received by the bankrupt in the transaction under review was conspicuously in excess of or conspicuously lower than the fair market value of the property or services at the time of the transaction, the court may give judgment in favour of the Director General of Insolvency against the other party to the transaction or against any other person who was privy to the transaction with the bankrupt or against all such persons and such judgment shall be for the difference between the value of the consideration given or received by the bankrupt and the fair market value of the property or services at the time of the transaction as determined by the court in accordance with subsection (3).

(3) In making an application under this section, the Director General of Insolvency shall state what in his opinion was the fair market value of the property or services at the time of the transaction and what in his opinion was the value of the consideration given or received by the bankrupt in the transaction, and the values on which the court makes any finding pursuant to this section shall be the values so stated unless other values are proven.

Protection of bona fide transactions without notice

54. (1) Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate in the case of a bankruptcy-- (a) any payment by the bankrupt to any of his creditors; (b) any payment or delivery to the bankrupt;

(c) any conveyance or assignment by the bankrupt for valuable consideration;

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(d) any contract, dealing or transaction by or with the bankrupt for valuable consideration:

if--

(i) the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

(ii) the person other than the debtor to, by, or with whom the payment, delivery, conveyance,

assignment, contract, dealing or transaction was

made, executed or entered into has not, at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any

available act of bankruptcy committed by the

bankrupt before that time.

(2) For the purpose of this section "valuable consideration" means a consideration of fair and reasonable money value in relation to--

(a) the value of the property conveyed, assigned or transferred; or

(b) the known or reasonably anticipated benefits of the contract, dealing or transaction.

(3) For the purposes of this section "notice" includes knowledge of an act of bankruptcy or of any bankruptcy proceedings or of facts sufficient to indicate to the person dealing with the debtor the commission of an act of bankruptcy.

Realization of Property

Possession of property by assignee

55. (1) The Director General of Insolvency shall after the adjudication take possession of the deeds, books and documents of the bankrupt and all other parts of his property capable of manual delivery.

(2) The Director General of Insolvency shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may on his application enforce such acquisition or retention accordingly. Bankruptcy 61

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any

company, office or person, the Director General of Insolvency may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the Director General of Insolvency.

(5) Any treasurer or other officer or any banker, attorney or agent of a bankrupt shall pay and deliver to the Director General of Insolvency all money and securities in his possession or power as such officer, banker, attorney or agent which he is not by law entitled to retain as against the bankrupt or the Director General of Insolvency. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the Director General of Insolvency.

Seizure of property of bankrupt

56. (1) Any person acting under warrant of the court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be. (2) Where the court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the court may if it thinks fit grant a search warrant to any police officer or officer of the court, who may execute it, according to its tenor, in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law. Appropriation of portion of pay or salary to creditors

57. (1) Where the bankrupt is an officer of the Armed Forces or a public officer or otherwise employed or engaged in the civil service of any government in Malaysia the Director General of Insolvency shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the Director General of Insolvency, directs.

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(2) (Deleted by Act A364).

(3) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension or compensation granted by any Government of Malaysia the court, on the application of the Director

General of Insolvency, shall, subject to any written law for the time being regulating the grant and payment of pensions, from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension or compensation or of any part thereof to the Director General of Insolvency, to be applied by him in such manner as the court directs.

(4) Nothing in this section shall take away or abridge any power of any such Government to dismiss a bankrupt or to declare the pension, half-pay or compensation of any bankrupt to be forfeited. Vesting and transfer of property

58. (1) The property of the bankrupt shall pass from Director General of Insolvency to Director General of Insolvency, and shall vest in the Director General of Insolvency for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

(2) All dealings with property which has been, is, or shall be vested under this Act in the Director General of Insolvency for the time being, and all deeds, agreements, instruments, acts and things necessary or expedient for the purposes of such dealings as aforesaid, shall, if the same have been or shall be transacted, made, entered into, signed, perfected or done by an officer appointed for the time being under section 70 to act for or in the place of the Director General of Insolvency, be deemed to have been and shall be of the same force and effect and as valid for all intents and purposes as the same would have been or would be if transacted, made, entered into, signed, perfected or done by the Director General of Insolvency personally.

Disclaimer of onerous property

59. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous Bankruptcy 63

act or to the payment of any sum of money, the Director General of Insolvency, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to this section, may, by writing signed by him, at any time disclaim the property. (2) The disclaimer shall operate to determine as from the date of disclaimer the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the Director General of Insolvency from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the Director General of Insolvency from

liability, affect the rights or liabilities of any other person. (3) The Director General of Insolvency shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed or where all persons interested in the property consent to such disclaimer, and the court may, before or on granting such leave, require such notices to be given to persons interested and impose such terms as a condition of granting leave and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy as the court thinks just. (4) The Director General of Insolvency shall not be entitled to disclaim any property, in pursuance of this section, in any case where an application in writing has been made to him by any person interested in the property, requiring him to decide whether he will disclaim or not, and he has for a period of twenty-eight days after the receipt of the application, or such extended period as is allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract if the Director General of Insolvency, after the application, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the Director General of Insolvency, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as to the court seems equitable; and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

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(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto or to whom it seems just that the same should be delivered by way of compensation for the liability or a trustee for him and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose.

(7) Where the property disclaimed is of a leasehold nature the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the

bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable, either personally or in a representative character, and either alone or jointly with the bankrupt, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of Director General of Insolvency to deal with property

60. Subject to this Act, the Director General of Insolvency may-- (a) sell all or any part of the property of the bankrupt, including the goodwill of his business, if any, and the book-debts due or growing due to him, by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels; Bankruptcy 65

(b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

(d) exercise any powers, the capacity to exercise which is vested in the Director General of Insolvency under this Act, and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect this Act;

(e) deal with any property to which the bankrupt is beneficially entitled sui juris, or other owner of an estate of inheritance less than an estate in perpetuity, in the same manner as the bankrupt might have dealt with it; and any such dealing with any property to which the bankrupt is before his discharge so entitled shall, although the bankrupt is dead at the time of that dealing, be as valid and have the same operation as though the bankrupt were then alive. Powers exercisable by Director General of Insolvency subject to orders of court

61. The Director General of Insolvency, subject to any general or special

orders of the court, may--

(a) carry on the business of the bankrupt so far as is necessary for the beneficial winding up of the same;

(b) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt; (c) employ, with the permission in writing of the Attorney General, a solicitor to take any proceedings or do any business;

(d) accept, as the consideration for the sale of any property of the bankrupt, a sum of money payable at a future time, subject to such stipulations as to security and otherwise as he thinks fit;

(e) mortgage, charge or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

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(f) refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as are agreed on;

(g) make such compromise or other arrangement as is thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy; (h) make such compromise, or other arrangement, as is thought expedient, with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the Director General of Insolvency by any person or by the Director General of Insolvency on any person;

(i) divide in its existing form, amongst the creditors according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Distribution of Property

Declaration and distribution of dividends

62. (1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the Director General of Insolvency shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. (2) The first dividend, if any, shall

be declared and distributed within twelve months after the adjudication, unless the Director General of Insolvency, for reasons to be given to creditors, decides to postpone the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than twelve months.

(4) Before declaring a dividend the Director General of Insolvency shall cause notice of his intention to do so to be gazetted and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt. Bankruptcy 67

(5) When the Director General of Insolvency has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend, and when, and how it is payable.

(6) No dividend shall be paid to any creditor which does not amount to five ringgit.

(7) Where the Director General of Insolvency makes any payment of dividends upon production of a certificate of identity in the form prescribed in the rules, he shall thereupon be discharged from all liability in respect of that payment.

Joint and separate dividends

63. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. (2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that is made by the court on the application of the Director General of Insolvency or any person interested, be declared together.

(3) The expenses of and incident to such dividends shall be fairly apportioned by the Director General of Insolvency between the joint and separate properties, regard being had to the work done for and the benefit received by each property. Provision for creditors residing at a distance, etc.

64. (1) In the calculation and distribution of a dividend the Director General of Insolvency shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the Director General of Insolvency is

acting that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

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(2) The Director General of Insolvency shall also make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Right of creditor who has not proved debt before declaration of a dividend

65. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the Director General of Insolvency, any dividend or dividends he has failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend

66. (1) When the Director General of Insolvency has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in bankruptcy, he shall declare a final dividend. (2) Before so doing he shall give notice as prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice he will proceed to make a final dividend without regard to their claim.

(3) After the expiration of the time so limited, or if the court, on application by any such claimant, grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts without regard to the claims of any other persons.

No action for dividend

67. No action for a dividend shall lie against the Director General of Insolvency, but if he refuses to pay any dividend the court may if it thinks fit order him to pay it.

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Power to allow bankrupt to manage property

68. (1) The Director General of Insolvency may appoint the bankrupt himself to superintend the management of the property of the bankrupt, or of any part thereof, or to carry on the trade, if any, of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Director General of Insolvency directs. Allowance to bankrupt for maintenance or service

(2) The Director General of Insolvency may make such allowance as he thinks just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his service if he is engaged in winding up his estate, but the court may reduce any such allowance and limit the time for which it may be made. (3) Where the bankrupt has died, the Director General of Insolvency may make an allowance to the bankrupt's family for their support.

(4) The Director General of Insolvency may also make an allowance towards the funeral expenses of a bankrupt. Right of bankrupt to surplus

69. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest as by this Act provided, and for the costs, charges and expenses of the proceedings under the bankruptcy petition.

PART IV

DIRECTOR GENERAL OF INSOLVENCY

Appointment

Appointment of Director General of Insolvency and other officers

70. (1) The Minister shall appoint a Director General of Insolvency and a Deputy Director General of Insolvency from amongst the members of the Judicial and Legal Service.

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(2) The Minister may appoint such number of Directors of Insolvency, Deputy Directors of Insolvency, Senior Assistant Directors of Insolvency, Assistant Directors of Insolvency, Insolvency Officers and other officers, as he deems fit, to assist the Director General of Insolvency in carrying out the purposes of this Act. (3) The Deputy Director General of Insolvency, Directors of Insolvency, Deputy Directors of Insolvency, Senior Assistant Directors of

Insolvency, Assistant Directors of Insolvency and Insolvency Officers shall be subject to the general direction, control and supervision of the Director General of Insolvency and shall exercise such powers of the Director General of Insolvency as the Director General of Insolvency may assign except all the powers expressly stated in this Act to be exercisable by the Director General of Insolvency personally.

Duties

Status of Director General of Insolvency

71. (1) The duties of the Director General of Insolvency shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) The Director General of Insolvency, Deputy Director General of Insolvency, Directors of Insolvency, Deputy Directors of Insolvency, Senior Assistant Directors of Insolvency, Assistant Directors of Insolvency, Insolvency Officers and other officers may administer oaths for the purposes of any matters or proceedings under this Act or for the purpose of taking affidavits.

(3) The Director General of Insolvency, Deputy Director General of Insolvency and every Director of Insolvency, Deputy Director of Insolvency, Senior Assistant Director of Insolvency, Assistant Director of Insolvency, Insolvency Officer and other officer shall be deemed to be a public servant within the meaning of the Penal Code.

Duties of Director General of Insolvency as regards the debtor's conduct

72. As regards the debtor, the Director General of Insolvency shall--

(a) investigate the conduct of the debtor, and report to the court stating whether there is reason to believe that the debtor has committed any act which constitutes an offence Bankruptcy 71

under this Act or under section 421, 422, 423 or 424 of the Penal Code or which would justify the court in refusing, suspending or qualifying an order for his discharge; (b) make such other reports concerning the conduct of the debtor as the court directs or as may be prescribed; (c) take such part as may be directed by the court or prescribed in the public examination of the debtor;

(d) take such part and give such assistance in relation to the prosecution of any fraudulent debtor or any other person charged with an offence under this Act, as the Public Prosecutor may direct.

Duties of Director General of Insolvency as to debtor's estate

73. (1) As regards the estate of a debtor, the Director General of Insolvency shall--

- (a) act as the receiver of the debtor's estate, and act as manager thereof where a special manager has not been appointed;
- (b) raise money or make advances for the purposes of the estate, and authorize the special manager to raise money or make advances for the like purposes in any case where in the interests of the creditors it appears necessary so to do;
- (c) summon and preside at all meetings of creditors held under this Act;
- (d) issue forms of proxy for use at the meetings of creditors; (e) report to the creditors as to any proposal which the debtor makes with respect to the mode of liquidating his affairs; (f) advertise the receiving order, the date of the debtor's public examination and such other matters as it is necessary to advertise.

(2) For the purpose of his duties as receiver or manager the Director General of Insolvency shall have the same powers as if he were a receiver and manager appointed by the court, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors.

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(3) The Director General of Insolvency shall account to the court and pay over all moneys and deal with all securities in such manner as, subject to this Act, the court directs. Protection of Director General of Insolvency and person acting under his direction or control

74. The Director General of Insolvency or any person acting under his direction or control shall not be liable personally in any action or proceeding in respect of anything done or intended or omitted to be done under this Act but any person aggrieved by anything so done or intended or omitted to be done may apply to the court for directions in the matter and the court may thereupon give such directions or make such order as it thinks fit. Costs

Allowance and taxation of costs

75. (1) No payment shall be allowed in the accounts of the Director General of

Insolvency, or of any special manager, in respect of the performance by any other person of the ordinary duties which are required by this Act or any rules made thereunder to be performed by himself.

(2) All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the accounts of the Director General of Insolvency without leave of the court, until after such taxation has been made. (3) Every such person shall on request by the Director General of Insolvency, which request the Director General of Insolvency shall make a sufficient time before declaring a dividend, deliver his bill of costs or charges to the prescribed officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the court on application grants, the Director General of Insolvency shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the Director General of Insolvency personally as against the estate.

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Receipts, Payments, Accounts, Audit

Bankruptcy Estates Account

76. (1) An account, to be called the Bankruptcy Estates Account, shall be kept by the Director General of Insolvency with such Bank as the Minister of Finance shall direct and, subject to the other provisions of this Act, all moneys received by the Director General of Insolvency in respect of proceedings under this Act shall be paid to that account.

(2) Before the Minister of Finance makes any direction under subsection (1) the Bankruptcy Estates Account may be kept— (a) with the Treasury in the case of bankruptcy proceedings in *Peninsular Malaysia; and

(b) with the Treasury of Sabah or Sarawak in the case of bankruptcy proceedings in either State.

(3) All payments out of moneys standing to the credit of the Director General of Insolvency in the Bankruptcy Estates Account shall be made in the prescribed manner.

Investment of surplus funds

77. (1) Whenever the cash balance standing to the credit of a Bankruptcy Estates Account is in excess of the amount which, in the opinion of the

Director General of Insolvency, is required for the time being to answer demands in respect of insolvent estates the Director General of Insolvency shall pay over such excess to the Minister who shall invest the same in trustee securities to be placed to the credit of the said account.

(2) When any part of the money so invested is in the opinion of the Director General of Insolvency required to answer any demands in respect of insolvent estates, the Director General of Insolvency shall notify to the Minister the amount so required and the Minister shall thereupon pay to the Director General of Insolvency such sum as may be required to the credit of the Bankruptcy Estates Account and for that purpose the Minister may direct the sale of such part of the said securities as may be necessary. *NOTE--All references to "West Malaysia" shall be construed as reference to "Peninsular Malaysia"? see the Interpretation (Amendment) Act 1997 [Act A996]. Laws of Malaysia74 ACT 360

(3) Any profits on the sale of any of the securities placed to the credit of a Bankruptcy Estates Account shall be credited to the Consolidated Fund and the Consolidated Fund shall be liable to make good any loss arising out of the sale of such securities. (4) The dividends on investments made under this section shall be credited to the Consolidated Fund and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in bankruptcy.

Inspection and audit of Director General of Insolvency's accounts

78. (1) The Director General of Insolvency shall keep in the prescribed form an account of his receipts and payments as Director General of Insolvency, and shall permit inspection thereof by the bankrupt or by any creditor who has proved his debt or by any other person interested, subject to payment of the prescribed fee. (2) All such accounts shall be audited not less than twice in each year by the Auditor General, and for the purposes of such audit the Director General of Insolvency shall produce to the auditing officer such books and shall furnish him with such vouchers and information as he requires.

Director General of Insolvency to furnish list of creditors

79. The Director General of Insolvency shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by Director General of Insolvency

80. The Director General of Insolvency shall keep as prescribed proper books, in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor of the bankrupt may, subject to control of the court, personally or by his agent inspect any such books. Bankruptcy 75

Official examination of Director General of Insolvency's records

81. The Director General of Insolvency shall, on the demand of any officer authorized by the Attorney General in that behalf in writing, produce for the inspection of such officer all records and documents in his possession relating to any bankruptcy, and such officer may examine the same and report thereon to the Attorney General.

Release

Release of Director General of Insolvency

82. (1) When the Director General of Insolvency has realized all the property of the bankrupt, or so much thereof as can in his opinion be realized without needlessly protracting the proceedings in bankruptcy, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned or has vacated or been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report and any objection which is urged by any creditor or person interested against the release of the Director General of Insolvency, and shall either grant or withhold the release accordingly.

(2) (Deleted by Act A364).

(3) An order of the court releasing the Director General of Insolvency shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as Director General of Insolvency, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Official Name

Official name of Director General of Insolvency

83. The Director General of Insolvency may sue and be sued by the official name of "The Director General of Insolvency of the property of, bankrupt," inserting the name of the bankrupt, or in a case under section 122

by the official name of "The Director Laws of Malaysia76 ACT 360

General of Insolvency of the property of a deceased insolvent", inserting the name of the deceased, and by such name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Vacation of Office on Insolvency

Office of Director General of Insolvency vacated by insolvency

84. If a receiving order is made against the Director General of Insolvency or against a Deputy Director General of Insolvency, Director of Insolvency, Deputy Director of Insolvency, Senior Assistant Director of Insolvency, Assistant Director of Insolvency, Insolvency Officer or other officer he shall thereby vacate his office of Director General of Insolvency, Deputy Director General of Insolvency, Director of Insolvency, Deputy Director of Insolvency, Senior Assistant Director of Insolvency, Assistant Director of Insolvency, Insolvency Officer or other officer, as the case may be.

Additional Powers

Additional powers of Director General of Insolvency 84A. (1) In addition to, and without prejudice to the powers, duties and functions conferred under this Act, the Director General of Insolvency shall, for the purposes of this Act and sections 421, 422, 423 and 424 of the Penal Code, have all the powers of a Commissioner of Police under the Police Act 1967 [Act 344] and the Criminal Procedure Code [Act 593].

(2) The powers exercisable by the Director General of Insolvency in subsection (1) shall be exercisable by the Director General of Insolvency personally.

(3) The Director General of Insolvency may appoint fit and proper persons to be investigation officers who shall, for the purposes of this Act and sections 421, 422, 423 and 424 of the Penal Code, have all the powers of a police officer under the Police Act 1967 and the Criminal Procedure Code.

(4) Notwithstanding any provision in this Act to the contrary, the Director General of Insolvency shall have the power to direct any creditor to render such assistance in the administration of the debtor's estate as he deems necessary.

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Control

Discretionary powers of Director General of Insolvency and control thereof

85. (1) Subject to this Act, the Director General of Insolvency shall, in the administration of the property of the bankrupt, have regard to any directions that are given by resolution of the creditors at any general meeting, and to any advice given by the consultative committee, but so that any directions so given by the creditors at any general meeting shall in case of conflict override any advice given by the consultative committee.

(2) The Director General of Insolvency may summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the court directs, or whenever requested in writing so to do by at least one-fourth in value of the creditors or by the consultative committee.

(3) The Director General of Insolvency may apply to the court as prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to this Act, the Director General of Insolvency shall use his own discretion in the administration of the property of the bankrupt.

Appeal to court against Director General of Insolvency

86. If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the Director General of Insolvency, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

Control of court over Director General of Insolvency

87. (1) The court shall take cognizance of the conduct of the Director General of Insolvency, and in the event of the Director General of Insolvency not faithfully performing his duties and duly observing all the requirements imposed on him by any statute, rules or otherwise with respect to the performance of his duties, Laws of Malaysia 78 ACT 360

or in the event of any complaint being made to the court by any creditor in regard thereto, the court shall inquire into the matter and take such action thereon as is deemed expedient. (2) The court may at any time require the Director General of Insolvency to answer any inquiry made by it in relation to any bankruptcy in which he is engaged, and may examine on oath him or any

other person concerning the bankruptcy.

(3) The court may also direct a local investigation to be made of the books and vouchers of the Director General of Insolvency. (4) All sums required to discharge any liability which the Director General of Insolvency is not entitled to pay out of the estate of the bankrupt shall be charged upon the Consolidated Fund except where the liability is one to which neither the Director General of Insolvency as such nor any of his officers has in any way contributed and which neither he nor any of his officers could by the exercise of reasonable diligence have averted and in that case the Director General of Insolvency shall not, nor shall Malaysia, be subject to any liability.

PART V

CONSTITUTION, PROCEDURE AND POWERS OF COURT

Jurisdiction

High Court to be the court having jurisdiction in bankruptcy

88. The High Court shall be the court having jurisdiction in bankruptcy under this Act.

Exercise in Chambers of jurisdiction

89. Subject to this Act and to any rules made by the Minister any Judge of the court may exercise in chambers the whole or any part of his jurisdiction.

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Jurisdiction in bankruptcy of Registrar

90. (1) The Registrar shall have the powers and jurisdiction in this section mentioned, and any order made or act done by him in the exercise of the said powers and jurisdiction shall, subject to an appeal, be deemed the order or act of the court. (2) Subject to any rules made by the Minister limiting the powers conferred by this section the Registrar shall have power-- (a) to make interim orders in any case of urgency where a Judge cannot be found in the State in which an application for the relief has been duly made;

(b) to hear and determine any application as may be directed by the Chief Justice from time to time.

General power of bankruptcy courts

91. (1) Subject to this Act, the court, under its jurisdiction in bankruptcy, shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. (2) Where default is made by a debtor or other person in obeying any order or direction given by the court, or given by the Director General of Insolvency, or any other officer of the court, under any power conferred by this Act, the court may, on the application of the Director General of Insolvency or other duly authorized person, or of its own motion, order such defaulting debtor or person to comply with the order or direction so given, and may also, if it thinks fit, make an immediate order for the committal of such defaulting debtor or other person.

(3) The power given by subsection (2) shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Appeals

Appeals in bankruptcy

92. (1) The court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

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(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal in the same way as orders of the High Court in other matters are for the time being appealable. (3) For the purposes of this section the Director General of Insolvency shall be deemed to be aggrieved by the refusal of any application made by him to the court.

Procedure

Discretionary powers of the court

93. (1) Subject to this Act and to general rules, the costs of and incidental to any proceeding in court shall be in the discretion of the court.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose. (3) The court may at any time amend any written process or proceeding upon such terms, if any, as it thinks fit to impose. (4) Where by this Act or by general rules the time for doing any act

or thing is limited, the court may extend the time, either before or after the expiration thereof, upon such terms, if any, as to the court seems fit.

(5) Subject to general rules, the court may in any matter take the whole or any part of the evidence, either viva voce or by interrogatories or upon affidavit or by commission abroad. (6) For the purpose of approving a composition or scheme by joint debtors the court may if it thinks fit, and on the report of the Director General of Insolvency that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(7) Where the debtor is proved to be resident in a State other than the State in which a petition under this Act is presented, the court may upon application duly made in that behalf order the transfer of the proceedings to the court of the State in which the debtor resides, at any time before or after the making of a receiving order against the debtor.

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Consolidation of petitions

94. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings or any of them on such terms as to the court seems fit.

Power to change carriage of proceedings

95. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of the petitioning creditor, or may give the carriage of the proceedings to the Director General of Insolvency, and thereafter the proceedings shall, unless the court otherwise orders, be continued as though no change had been made in the conduct of the proceedings. Continuance of proceedings on death of debtor

96. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive, and the court may dispense with service of the petition upon him. Power to stay proceedings

97. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to conditions as the court thinks just.

Power to present petition against one partner

98. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to dismiss petition against some respondents only

99. Where there are more respondents than one to a petition the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

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Consolidation of bankruptcy proceedings by or against partners

100. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the court in which the first mentioned petition is in course of prosecution and the court shall give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by Director General of Insolvency and bankrupt's partners

101. (1) Where a member of a partnership is adjudged bankrupt, the court may authorize the Director General of Insolvency to commence and prosecute any action or other legal proceeding in the names of the Director General of Insolvency and of the bankrupt's partners.

(2) Any release by such partner of the debt or demand to which the action or proceeding relates shall be void; but notice of the application for authority to commence the action or proceeding shall be given to him and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action or proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs. Actions on joint contracts

102. Where a bankrupt is a contractor in respect of any contract jointly with any other person, such person may sue or be sued in respect of the contract without the joinder of the bankrupt. Proceedings in partnership name

103. (1) Any two or more persons being partners or any person carrying on business under a partnership name may take proceedings or be proceeded against under this Act in the name of the firm. (2) In such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner and verified on oath or otherwise as the court directs. Bankruptcy 83

Reciprocal provisions relating to Singapore and designated countries

104. (1) The High Court and the officers thereof shall in all matters of bankruptcy and insolvency act in aid of and be auxiliary to the courts of the Republic of Singapore or any designated country having jurisdiction in bankruptcy and insolvency so long as the law thereof requires its courts to act in aid of and be auxiliary to the courts of Malaysia.

(2) An order of any such court of the Republic of Singapore or any designated country, seeking aid with a request to the High Court, shall be deemed sufficient to enable the High Court to exercise in respect of the matters directed by the order such jurisdiction as either the court which made the request or the High Court could exercise in respect of similar matters within their several jurisdictions. (2A) In exercising its discretion under subsection (2), the High Court shall have regard to the rules of private international law. (3) The Yang di-Pertuan Agong by notification in the Gazette may declare that the Government of Malaysia has entered into an agreement with the Government of the Republic of Singapore for the recognition by the Government of Malaysia of the Official Assignee in Bankruptcy appointed by the Government of Singapore and the recognition by the Government of Singapore of the Director General of Insolvency in Bankruptcy appointed by the Government of Malaysia.

(4) From the date of such notification where any person has been adjudged a bankrupt by a court of the Republic of Singapore, such property of such bankrupt situate in Malaysia as would, if he had been adjudged bankrupt in Malaysia, vest in the Director General of Insolvency of Malaysia, shall vest in the Official Assignee appointed by the Government of the Republic of Singapore, and all courts in Malaysia shall recognize the title of such Official Assignee to such property:

Provided that this subsection shall not apply where a bankruptcy petition has been presented against the bankrupt in Malaysia, until the petition has been dismissed or withdrawn or the receiving order has been rescinded or the order of adjudication has been annulled as the case may be.

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(5) The production of an order of adjudication purporting to be certified under the seal of the court in the Republic of Singapore making the order by the Registrar of that court or of a copy of the official Gazette of the Republic of Singapore containing a notice of an order adjudging such person a bankrupt shall be conclusive proof in all courts in Malaysia of the order having been duly made and of its date.

(6) The Official Assignee of the Republic of Singapore may sue and be sued in any court in Malaysia by the official name of "The Official Assignee of the property of a bankrupt under the law of the Republic of Singapore" inserting the name of the bankrupt.

(7) In this section "designated country" means any country designated for the purposes of this section by the Yang di-Pertuan Agong by notification in the Gazette.

Annulment of Adjudication

Power of court to annul adjudication in certain cases

105. (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the adjudication. (2) Where an adjudication is annulled under this section, all sales and dispositions of property, and payments duly made, and all acts theretofore done by the Director General of Insolvency, or other person acting under his authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court appoints, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court declares by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in at least one local paper. Bankruptcy 85

(4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be

considered as paid in full if paid into court.

(5) When the court annuls an adjudication under this section it shall also rescind the receiving order.

PART VI

SMALL BANKRUPTCIES

Summary administration in small cases

106. In any case where a receiving order has been made and the Director General of Insolvency reports to the court that the assets (after deducting any sums paid to secured creditors in respect of their securities) are unlikely to exceed ten thousand ringgit in value the court may make an order that the debtor's estate be administered in a summary manner, and thereupon this Act shall be subject to the following modifications:

(a) no appeal shall lie from any order of the court except by order of the court;

(b) if during or at the conclusion of the public examination of the debtor it appears to the court that the debtor does not intend to propose a composition or scheme or that for any reason a composition or scheme ought not to be sanctioned the court may, without further process, adjudge the debtor bankrupt;

(c) the estate where practicable shall be distributed in a single dividend;

(d) such other modifications may be made in this Act as may be prescribed by rules made by the Minister with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of this Act relating to the examination or discharge of the debtor.

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Wage-earner

107. (1) In this part "wage-earner" means a person who is or has been employed on a salary or wage of an amount not exceeding five hundred ringgit per mensem excluding any temporary allowance and whose other income, if any, exclusive of any pension he may receive, does not exceed fifty ringgit per mensem and does not arise from any trade or business in the management of which he takes any part.

(2) If on examination of a judgment debtor in the High Court or in a Sessions Court or Magistrates Court it appears to such Court--

(i) that the debtor is a wage-earner; and

(ii) that he is indebted to more than one creditor; and (iii) that none of his debts or other liabilities was contracted in any trade or business in the management of which the debtor took part; and

(iv) that his liabilities exceed the probable amount of his income during the ensuing six months,

such Court shall, unless cause to the contrary be shown, instead of making any order for the payment of the judgment debt or for the committal of the debtor, order the debtor to attend before the Director General of Insolvency and also report the matter to the Director General of Insolvency.

No public examination in small cases

108. (1) In any case where a receiving order has been made and the Director General of Insolvency reports to the court that the debtor is a wage-earner and that none of his debts appears to have been contracted in any trade or business in the management of which the debtor took part, the court may make an order that the debtor's estate be administered in a summary way and paragraphs 106(a), (c) and (d) shall apply in addition to the following modifications:

(a) there shall be no public examination unless the court shall by order direct the debtor to attend for a public examination; and

(b) (Deleted by Act A827);

(c) subsection 43(5) shall not apply.

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(2) The report furnished to the court under subsection (1) shall be prima facie evidence of the statements contained therein. PART VII

FRAUDULENT DEBTORS AND CREDITORS

Punishment of fraudulent debtors

109. (1) Any person who has been adjudged bankrupt or in respect of whose

estate a receiving order has been made under this Act shall in each of the cases following be punished with imprisonment, which may extend to two years, or with fine or with both: (a) if he does not to the best of his knowledge and belief fully and truly discover to the Director General of Insolvency all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade, if any, or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;

(b) if he does not deliver up to the Director General of Insolvency or as he directs all such part of his property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;

(c) if he does not deliver up to the Director General of Insolvency or as he directs all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;

(d) if after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation he conceals any part of his property to the value of one hundred ringgit or upwards or conceals any debt due to or from him, unless he satisfies the court that he had no intent to defraud;

(e) if after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation he fraudulently removes any part of his property of the value of one hundred ringgit or upwards; Laws of Malaysia88 ACT 360

(f) if he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;

(g) if, knowing, or believing, or having reason to believe, that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the Director General of Insolvency thereof;

(h) if after the presentation of a bankruptcy petition by or against him he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law; (i) if after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation or service he conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property

or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(j) if after presentation of a bankruptcy petition by or against him or within twelve months next before such presentation or service he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law; (k) if after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation or service he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs; (l) if after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before the presentation thereof, he attempts to account for any part of his property by fictitious losses or expenses;

(m) if being an undischarged bankrupt--

(i) either alone or jointly with any other person he obtains credit to the extent of *one thousand ringgit or upwards, unless he proves that before obtaining the credit he informed the person giving the credit that he was an undischarged bankrupt; or

*NOTE--Previously "one hundred ringgit"?see the Bankruptcy (Amendment) Act 2003 [Act A1197]. Bankruptcy 89

(ii) either alone or jointly with any other person he engages in any trade or business or enters into any contract in furtherance of any trade or business, unless he proves that before engaging in the trade or business or before entering into the contract he informed the person with whom he engages in the

trade or business or with whom he entered into

the contract that he was an undischarged bankrupt; (n) if within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a receiving order, he by any false representation or other fraud has obtained any property on credit and has not paid for the same;

(o) if within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains, under the false pretence of carrying on business and if a trader or dealing in the ordinary

way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;

(p) if within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a receiving order he pawns, pledges or disposes of or sends out of Malaysia any property which he has obtained on credit and not paid for unless in the case of a trader he proves that such pawning, pledging, disposal of or sending out of Malaysia is in the ordinary way of his trade and that in any case he had no intent to defraud; (q) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy;

(r) if having been engaged in any trade or business, and having outstanding at the date of the receiving order any debt contracted in the course and for the purposes of such trade or business--

(i) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by

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gambling or by rash and hazardous speculation,

and such gambling or speculation is unconnected

with his trade or business;

(ii) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash

and hazardous speculation; or

(iii) on being required by the Director General of Insolvency at any time, or in the course of this

public examination by the court, to account for

the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving

order, he fails to give a satisfactory explanation of the manner in which such

loss was incurred:

Provided that, in determining for the purpose of this paragraph whether any speculation was rash and hazardous, the financial position of the accused person at the time when he entered into the speculation shall be taken into consideration.

(2) A person who has sent out of Malaysia any property which he has obtained on credit and not paid for shall, until the contrary is proved, be deemed to have disposed of the same otherwise than in the ordinary way of his trade, if such property not having been paid or accounted for at the date of the receiving order by the person to whom the same was sent, such last-mentioned person cannot be found, or does not pay or account for the same within a reasonable time after being called upon so to do by the Director General of Insolvency.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1) (p), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances shall be guilty of an offence and shall be liable on conviction to be punished with imprisonment which may extend to two years or with fine or with both. (4) (Deleted by Act A1197).

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Bankrupt failing to keep proper account

110. (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be punished with imprisonment which may extend to two years or with fine or with both if having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section--

(a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors, four thousand ringgit, or in any other case one thousand ringgit; or

(b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) (Deleted by Act A1197).

(3) For the purposes of this section a person shall be deemed not to have kept proper books of account if he does not furnish the Director General of Insolvency with trading and profit and loss accounts for such period not exceeding three years prior to the date of the receiving order and if he has not kept such books of account as are necessary to exhibit or explain his transaction and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stock-takings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient details to enable the goods and the buyers and sellers thereof to be identified.

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Bankrupt incurring debt without reasonable ground of expectation of paying it

111. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be punished with imprisonment which may extend to two years or with fine or with both--

(a) if within twelve months next before the presentation of a bankruptcy petition by or against him he incurs any debt provable in bankruptcy unless he proves to the satisfaction of the court that he had reasonable ground of expectation of being able to pay it;

(b) if having been engaged in carrying on any trade or business, he continues to trade or carry on business, by incurring any debt or indebtedness provable in bankruptcy within twelve months next before the date of a bankruptcy petition by or against him, unless he proves to the satisfaction of the court that he was solvent at the date of incurring such debt or, in the case of indebtedness, at the date of the incurring of the first item of such indebtedness, that he had reasonable ground of expectation of being able to pay it.

Penalty for absconding with property

112. If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four months next before such presentation or service, any person against whom a receiving order is made, quits Malaysia and takes with him or attempts or makes preparation to quit Malaysia and to take with him any part of his property to the amount of fifty ringgit or upwards which ought by law to be divided amongst his creditors, he shall, unless he proves that he had no intent to defraud, be punished with imprisonment, which may extend to two years or with fine or with both.

Penalty for absconding in order to avoid service of bankruptcy process or embarrass bankruptcy proceedings

113. (1) Any person against whom a receiving order is made who quits or before the making of such order has quitted Malaysia, with intent to avoid service of any petition or other process in bankruptcy, or to avoid examination in respect of his affairs, or otherwise to Bankruptcy 93

defeat, embarrass or delay any proceedings against him in bankruptcy, shall be punished with imprisonment, which may extend to one year or with fine not exceeding one thousand ringgit, or with both. (2) Any person who after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within three months next before such presentation or service, quits Malaysia, shall until the contrary is proved be deemed to quit Malaysia with such intent as in this section is mentioned.

Penalty on fraudulently obtaining credit, etc.

114. (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be punished with imprisonment, which may extend to one year, or with fine or with both:

(a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; (b) if he has, with intent to defraud his creditor or any of them, made or caused to be made any gift, delivery or transfer of or any charge on his property or caused or connived at the levying of any execution against his property;

(c) if he has, with intent to defraud his creditors or any of them, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

(2) A person who having an unsatisfied judgment for a sum exceeding two hundred and fifty ringgit entered up against him obtains credit shall, until the contrary is proved, be deemed to have obtained such credit under false pretences or by means of fraud.

Penalty on false claims, etc.

115. (1) Any creditor or person claiming to be a creditor in any bankruptcy, composition or arrangement with creditors who makes any claim, proof, declaration or statement of account which is untrue in any material particular shall, unless he satisfies the court that he had no intent to defraud, be punished with imprisonment which may extend to one year or with fine or with both. Laws of Malaysia⁹⁴ ACT 360

(2) Any creditor who obtains or receives any money or property, or security from any person as an inducement for forbearing to oppose, or for consenting to, the discharge of a bankrupt shall be punished with a fine, which may extend to three times the amount or value of such money, property or security.

(3) Any person who, knowing that a receiving order has been made against a debtor, removes, conceals, receives or otherwise deals with or disposes of any part of the property of such debtor, with intent to defeat the order, shall be punished with a fine, which may extend to double the amount or value of such property, or imprisonment which may extend to three years or with both. (4) Fines imposed and levied under this section shall be deemed part of the property of the debtor and shall vest in the Director General of Insolvency.

Debts incurred by fraud

116. Where a debtor makes any composition or arrangement with his creditors he shall remain liable for the unpaid balance of any debt which he incurred or increased by any fraud, or whereof before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

117. (Deleted by Act A1197). Sessions Court to have full jurisdiction to try offences 117A. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try all offences against this Act or rules made thereunder and to impose the full punishment provided therefor.

Criminal liability after discharge or composition

118. Where a debtor has been guilty of any offence he shall not be exempt from

being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

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Form of charge

119. In a charge for an offence under this Act it shall be sufficient to set forth the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in, or order, warrant or document of any court acting under this Act.

PART VIII

SUPPLEMENTAL PROVISIONS

Application of Act

Application to married women

120. A married woman shall be subject to this Act in all respects as if she was a feme-sole.

Exclusion of corporations and companies

121. A receiving order shall not be made against any corporation or against any partnership, association or company registered under any Act dealing with companies.

Administration in bankruptcy of estate of person dying insolvent

122. (1) Unless the context otherwise requires, "creditor" in this section means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(2) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy. (3) The Director General of Insolvency may present to the court a petition in the prescribed form praying for an order for the administration in bankruptcy of the estate of any deceased debtor. Laws of

(4) Upon the prescribed notice being given to the legal representative, if any, of the deceased debtor the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

(5) An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the court that the debtor committed an act of bankruptcy within three months prior to his decease.

(6) A petition for administration under this section shall not be presented to the court after proceedings have been commenced for the administration of the deceased debtor's estate; but the court may, in that case, on the application of any creditor and on proof that the estate is insufficient to pay its debts in the prescribed manner, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(7) Upon an order being made for the administration of a deceased debtor's estate under this section the property of the debtor shall vest in the Director General of Insolvency as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with this Act.

(8) Section 31 so far as they relate to persons other than the debtor, and, with the modifications hereinafter mentioned, Part III shall, so far as the same are applicable, apply to the case of an administration order under this section. Sections 50, 51 and 52 shall apply in the case of an administration order under this section as if the administration order were a receiving order made under section 4.

(9) In the administration of the property of the deceased debtor under an order of administration, the Director General of Insolvency shall have regard to any claims by the legal representative of the Bankruptcy 97

deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; such claims shall be deemed a preferential debt under the order and be payable in full out of the debtor's estate in priority to all other debts.

(10) If on the administration of a deceased debtor's estate any surplus remains in the hands of the Director General of Insolvency, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, the surplus shall be paid over to the legal representative of the deceased debtor's estate or dealt with in such other manner as is prescribed.

(11) Notice to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after the notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the Director General of Insolvency, but save as aforesaid, nothing in this section shall invalidate any payment made or act or thing done in good faith by the legal representative before the date of the order for administration.

(12) General rules for carrying into effect this section may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules

Power to make rules

123. The Minister may from time to time make rules for carrying into effect the objects of this Act.

Fees

Fees

124. The Minister may make rules prescribing the fees and percentages to be charged for or in respect of proceedings under this Act, and may direct by whom and in what manner, the same are to be collected and accounted for. The fees and percentages charged shall be credited to the Consolidated Fund. Laws of Malaysia 98 ACT 360

Evidence

Gazette to be evidence

125. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act, or the rules made under this Act, shall be evidence of

the facts stated in the notice. (2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive proof in all legal proceedings of the order having been duly made and of its date.

Evidence of proceedings at meetings of creditors

126. (1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy

127. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court in bankruptcy, any instrument, affidavit or document or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act, shall, if it appears to be sealed with the seal of the court or purports to be signed by any judge thereof, or is certified as a true copy by the Registrar thereof, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits

128. Subject to general rules made by the Minister, any affidavit may be used in a bankruptcy court if it is sworn— (a) in Malaysia or in the Republic of Singapore before any person authorized to administer oaths in the High Court or any Magistrate; or

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(b) in England before any person authorized to administer oaths in Her Majesty's High Court of Justice, or in the Court of Chancery of the Country Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court; or

(c) in Scotland or in Northern Ireland before a Judge, Ordinary Magistrate or Justice of the Peace; or

(d) in any other place before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place who is certified to be a Magistrate or Justice of the Peace or qualified as aforesaid by a Consul or person performing consular functions on behalf of the Government of Malaysia or by a notary public.

Death of witness

129. In case of the death of the debtor or of his wife or of a witness whose evidence has been received by any court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Notices

Service of notices

130. All notices and other documents for the service of which no special mode is prescribed may be sent by prepaid registered post letter to the last known address of the person to be served therewith.

Formal Defects

Formal defect not to invalidate proceedings

131. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court. Laws of Malaysia 100 ACT 360

Stamp Duty

Exemption of deeds, etc., from stamp duty

132. (1) For the purposes of this section "bankruptcy" includes any proceeding before or after adjudication and whether any adjudication is made or not; and "bankrupt" includes any debtor proceeded against under this Act.

(2) Every deed, conveyance, assignment or other assurance relating solely to freehold (including land held in perpetuity) or leasehold property or to any mortgage, charge or other incumbrance on, or any estate, right or interest in,

any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the Director General of Insolvency, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt or to any proceeding under any bankruptcy shall be exempt from stamp duty except in respect of fees under this Act.

Corporations, Firms and Mentally Disordered Persons Acts of corporations, firms and mentally disordered persons

133. For all or any of the purposes of this Act-- (a) a corporation may act by any of its officers authorized in that behalf under the seal of the corporation; (b) a firm may act by any of its members;

(c) a mentally disordered person or lunatic may act by his committee or curator bonis.

Unclaimed Funds or Dividends

Unclaimed or undistributed money

134. (1) Where any person other than the Director General of Insolvency has under his control pursuant to or arising out of any composition or scheme of arrangement under this Act any money representing a dividend which has remained unclaimed for more than six months and where such person has under his control after the expiration of six months from the date of declaration of a Bankruptcy 101

dividend any other unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay such money to the Director General of Insolvency whose receipt shall be an effectual discharge in respect thereof.

(2) The Director General of Insolvency may at any time order any such person to submit to him an account verified by affidavit of the sums received and paid by him in respect of any such composition or scheme and may direct and enforce an audit of the account.

(3) The Director General of Insolvency may collect and get in all such unclaimed or undistributed money and at his instance the court may exercise all the powers conferred by this Act with respect to the discovery and realization of the property of a debtor and Part I of this Act with respect thereto shall with any necessary modifications apply to proceedings under this section. (4) This section shall not deprive any claimant or any larger or

other right or remedy to which he may be entitled against any person other than the Director General of Insolvency. (5) All unclaimed dividends, all dividends not paid under subsection 62(6) and all money remaining unclaimed or undistributed after a final dividend has been declared shall stand at the credit of the Bankruptcy Estates Account for seven years and if they remain unclaimed at the expiration of that period shall be credited to the Consolidated Fund.

(6) If any claim is made to any part of the unclaimed dividends or money so transferred to the Consolidated Fund and if such claim is established to the satisfaction of the Director General of Insolvency, the amount certified by the Director General of Insolvency to be due to the claimant shall be paid to him, without interest, from the Consolidated Fund.

(7) Where any money remaining unclaimed is subsequently paid to a claimant and is after that claimed by any other person, such other person shall not be entitled to any payment out of the Bankruptcy Estates Account or the Consolidated Fund and he shall have recourse only against the claimant to whom the money remaining unclaimed was paid.

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Debtor's Books

Access to debtor's books

135. (1) No person shall as against the Director General of Insolvency be entitled to withhold possession of the books of account or other papers or documents belonging to the debtor or to set up any lien thereon.

(2) Any creditor of the bankrupt may, subject to the control of the court, inspect at all reasonable times, personally or by agent, any such books, papers or documents in the possession of the Director General of Insolvency.

Repeals and Special Provisions

136. (Omitted). Transitional provisions for States of Malaya

137. (1) (Omitted). (2) This Act shall apply to proceedings under the Bankruptcy Ordinance of the States of Malaya repealed by this Act pending at the commencement of this Act as if commenced under this Act. (3) Any reference in this Act to a previous bankruptcy or to any order made in or in respect of a previous bankruptcy shall be deemed to include a reference to any previous bankruptcy under the Bankruptcy Ordinance of the States of Malaya repealed by

this Act and to any order made in or in respect of such bankruptcy. (4) All orders, notices, directions and appointments made or given under the Bankruptcy Ordinance of the States of Malaya repealed by this Act and in force and effect immediately before the commencement of this Act shall continue in force and effect as if made under this Act.

Jurisdiction of District Officers, Sarawak and Sabah

138. For the purpose of this Act, every person appointed to be or exercising the powers of a District Officer in Sarawak or Sabah shall be ex officio an Assistant Director of Insolvency within and for his District.

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Transitional provisions for Sarawak and Sabah

139. This Act shall not apply to the winding up of the estate of any person against whom a receiving or adjudication order has been made under the provisions of the Bankruptcy Ordinance of Sarawak [Sarawak Cap. 46] and the Insolvency Ordinance of Sabah [Sabah Cap. 62] repealed by this Act, but every such estate shall be wound up in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up the written laws under which the receiving or adjudication order was made shall be deemed to remain in full force. Laws of Malaysia 104 ACT 360

SCHEDULE A

[Section 15]

MEETING OF CREDITORS

1. The first meeting of creditors shall be summoned for a day not later than two months in the case of a debtor's petition, or three months in the case of a creditor's petition, after the date of the receiving order, unless the court, for any special reason, deems it expedient that the meeting be summoned for a later day.

2. The Director General of Insolvency shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the prescribed manner.

3. The Director General of Insolvency shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the meeting, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure and any observations

thereon which the Director General of Insolvency thinks fit to make; but the proceedings at the meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is, in the opinion of the Director General of Insolvency, convenient for the majority of the creditors.

5. The Director General of Insolvency may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested in writing by at least one-fourth in value of the creditors or by the consultative committee.

6. Meetings subsequent to the first meeting shall be summoned by sending not less than three days' notice of the time and place thereof to each creditor at the address given in his proof of debt or, if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as is known to the person summoning the meeting.

7. The Director General of Insolvency, or in his absence some person nominated by him, shall be the chairman at every meeting; provided that if the court so directs, the chairman at any subsequent meeting shall be such person as the meeting by ordinary resolution appoints.

8. A person shall not be entitled to vote as a creditor at any meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt.

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10. For the purposes of voting a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing

to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor and against whom a receiving order has not been made as a security in his hands and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the Director General of Insolvency, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per centum: Provided that where a creditor has put a value on the security he may, at any time before he has been required to give up the security as aforesaid, correct the valuation by a new proof and deduct the new value from his debt, but in that case the addition of twenty per centum shall not be made if the Director General of Insolvency requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form and shall be issued by the Director General of Insolvency, and every insertion therein shall be in the handwriting of the person giving the proxy, or if such person is unable to write English then in the handwriting of the Director General of Insolvency or of a Commissioner for Oaths.

17. A creditor may give a general proxy to his manager or clerk or any other person in his regular employment. In that case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof for or against any specific resolution. Laws of Malaysia 106 ACT 360

19. A proxy shall not be used unless it is deposited with the Director General of Insolvency before the meeting at which it is to be used.
20. A creditor may appoint the Director General of Insolvency to act in manner prescribed as his general or special proxy.
21. The chairman of a meeting may with the consent of the meeting adjourn the meeting from time to time and from place to place.
22. A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three.
23. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days. If a meeting is adjourned for want of quorum and if at the adjourned meeting a quorum of creditors is not present, the chairman shall proceed with the meeting.
24. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him.
25. No person acting under either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor.

SCHEDULE B

[Section 22]

RULES FOR THE REGISTRATION OF DEEDS OF ARRANGEMENTS The registration of Deeds of Arrangement shall be effected in the following manner:

1. A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be filed with the Registrar within fourteen clear days after the execution of the said deed together with an affidavit verifying the time of execution, and containing a description of the

residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition if any payable thereunder, and the names and addresses of his creditors. Bankruptcy 107

2. No deed shall be registered unless the original of such deed, duly stamped with the proper duty, is produced to the Registrar at the time of such registration.

3. Every copy filed under these rules shall be written in legible characters.
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4. The Registrar shall keep a register in the form prescribed by the appendix to this Schedule wherein shall be entered, after the presentation of a deed for registration, an abstract of the contents of every Deed of Arrangement containing the following particulars:

- (a) The date of the deed;
- (b) The name, address, and description of the debtor, and the place or places where his business is carried on, and the title of the firm or firms under which the debtor carries on business, and the name and address of the trustee, if any, under the deed;
- (c) A short statement of the nature and effect of the deed, and of the composition;
- (d) The date of registration; and
- (e) The amount of property and liabilities included under the deed, as estimated by the debtor.

5. After the registration of any deed of composition or arrangement, a certificate, stating the registered number of the deed and the volume and page of the register where the same is entered, shall be endorsed on the original and the copy thereof, and the same shall be sealed and signed by the Registrar.

6. Any person shall be entitled to have an office copy of or extract from, any deed registered under these rules, upon paying the prescribed fees and any copy or extract purporting to be a certified office copy or extract shall, in all courts and before all arbitrators or other persons be admitted as prima facie evidence thereof, and of the fact and date of registration shown thereon.

7. Any person shall be entitled, at all reasonable times, to search the register, on payment of search fees and shall be entitled at all reasonable times to inspect, examine and make extracts from any registered Deed of Arrangement, without being required to make a written application.

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APPENDIX

REGISTER OF DEEDS OF ARRANGEMENTS

No. Date of Name, etc., Nature and Date of Amount of deed of debtor effect of registration property liabilities deed

Debtor's

name--

Address--

Place of

business--

Name of

firm--

Trustee (if any)--

SCHEDULE C

[Section 42]

PROOF OF DEBTS

Proof in Ordinary Cases

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the Director General of Insolvency an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor or his estate. If made by a person so authorized, it shall state his authority and means of knowledge.
4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated. The Director General of Insolvency may at any time call for the production of the vouchers or books of account.
5. The affidavit shall state whether the creditor is or is not a secured creditor.
6. A creditor shall bear the cost of proving his debt unless the court otherwise specially orders.

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7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.
8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he has agreed to allow for payment in cash.

Proof by Secured Creditors

9. If a secured creditor realizes his security he may prove for the balance due to him after deducting the net amount realized.
10. If a secured creditor surrenders his security to the Director General of Insolvency for the general benefit of the creditors he may prove for his whole debt.
11. If a secured creditor does not either realize or surrender his security he shall state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.
12. (a) Where a security is so valued the Director General of Insolvency may at any time redeem it on payment to the creditor of the assessed value. (b) If the Director General of Insolvency is dissatisfied with the value at which a security is assessed he may require that the property comprised in any

security so valued be offered for sale at such times and on such terms and conditions as are agreed on between the creditor and the Director General of Insolvency, or as in default of agreement the court directs. If the sale is by public auction the creditor or the Director General of Insolvency on behalf of the estate may bid or purchase:

Provided that the creditor may at any time by notice in writing require the Director General of Insolvency to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized and if the Director General of Insolvency does not within six months after receiving the notice signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption or any other interest in the property comprised in the security, which is vested in the Director General of Insolvency, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the Director General of Insolvency or the court that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor and upon such terms as the court orders, unless the Director General of Insolvency allows the amendment without application to the court. Laws of Malaysia 110 ACT 360

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor, after having valued his security, subsequently realizes it, or if it is realized under rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to rule 12, a creditor shall in no case receive more than one hundred sen in the ringgit and interest as provided by this Act. Taking Accounts of Property mortgaged or charged and sale thereof

18. Upon application by summons in Chambers supported by an affidavit by any person claiming to be a mortgagee or chargee of any part of the bankrupt's immovable property, whether the mortgage or charge is of a legal or equitable nature, the court shall proceed to inquire whether the person is such mortgagee or chargee and for what consideration and under what circumstances; and if it is found that the person is such mortgagee or chargee, and if no sufficient objection appears to the title of the person to the sum claimed by him under the mortgage or charge, the court shall direct such accounts and inquiries to be taken as are necessary for ascertaining the principal, interest and costs due upon the mortgage or charge and the rents and profits or dividends, interest or other proceeds received by the person or by any other person by his order or for his use, in case he has been in possession of the property over which the mortgage or charge extends or any part thereof; and the court, if satisfied that there ought to be a sale, shall direct notice to be given, in such manner as it thinks fit, when and where and by whom and in what way the property or the interest therein so mortgaged or charged is to be sold, and that the sale be made accordingly and that the Director General of Insolvency, unless it is otherwise ordered, shall have the conduct of the sale; but it shall not be imperative on any such mortgagee or chargee to make such application. At any such sale the mortgagee or chargee may bid and purchase.

19. All proper parties shall join in the conveyance to the purchaser as the court directs.

20. The moneys arising from the sale shall be applied in the first place in payment of the costs, charges and expenses of the Director General of Insolvency of and occasioned by the application to the court and of and attending the sale, and then in payment and satisfaction, so far as the same will extend, of what is found due to the mortgagee or chargee for principal, interest and costs; and Bankruptcy 111

the surplus of the said moneys, if any, shall then be paid to the Director General of Insolvency. But in case the moneys arising from the sale are insufficient to pay and satisfy what is so found due to the mortgagee or chargee, then he shall be entitled to prove as a creditor for the deficiency and receive dividends thereon rateably with the other creditors, but not so as to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts and making a title to

the purchaser, all parties may be examined by the court upon interrogatories or otherwise as it thinks fit, and shall produce before the court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the bankruptcy as the court directs.

Proof in respect of Distinct Contracts

22. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms or as a sole contractor and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts. Periodical Payments

23. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day. Interest

24. On any debt or sum certain payable at a certain time or otherwise, whereon interest is not reserved or agreed upon and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the receiving order from--

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, the time the debt or sum was payable; or (b) if the debt or sum is payable otherwise than by virtue of a written instrument, the time when demand in writing was made. Debt payable at a future time

25. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

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Admission or Rejection of Proofs

26. The Director General of Insolvency shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it. If he rejects a proof he shall

state in writing to the creditor the grounds of the rejection.

27. If the Director General of Insolvency thinks that a proof has been improperly admitted the court may on his application, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

28. If a creditor is dissatisfied with the decision of the Director General of Insolvency in respect of a proof, the court may on the application of the creditor reverse or vary the decision.

29. The court may also expunge or reduce a proof upon the application of a creditor if the Director General of Insolvency declines to interfere in the matter, or in the case of a composition or scheme upon the application of the debtor.

30. For the purpose of any of his duties in relation to proofs the Director General of Insolvency may administer oaths and take affidavits. Bankruptcy 113

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BANKRUPTCY ACT 1967

LIST OF AMENDMENTS

Amending law Short title In force from

Act 160 Malaysia Currency (Ringgit) 29-08-1975

Act 1975

Act A364 Bankruptcy (Amendment) 29-10-1976

Act 1976

Act A671 Subordinate Courts (Amendment) 22-05-1987 Act 1987

Act A710 Bankruptcy (Amendment) 09-09-1988

Act 1988

Act A827 Bankruptcy (Amendment) 17-07-1992

Act 1992

Act A1035 Bankruptcy (Amendment) 01-01-1999

Act 1998

Act A1197 Bankruptcy (Amendment) 01-10-2003

Act 2003

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LIST OF SECTIONS AMENDED

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Act A827 17-07-1992

Act A1197 01-10-2003

3 Act 160 29-08-1975

Act A364 29-10-1976

Act A827 17-07-1992

5 Act A364 29-10-1976

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DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA



全球法律法规
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