

No. S 78

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

BANKRUPTCY ACT (AMENDMENT) ORDER, 2012

ARRANGEMENT OF SECTIONS

Section

1. Citation.
 2. Amendment of section 6 of Chapter 67.
 3. Insertion of new sections 30A and 30B.
 4. Substitution of section 32.
 5. Amendment of section 43.
 6. Amendment of section 46.
 7. Insertion of new section 61A.
 8. Insertion of new Part IIIA.
 9. Insertion of new section 115A.
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In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation.

1. This Order may be cited as the Bankruptcy Act (Amendment) Order, 2012.

Amendment of section 6 of Chapter 67.

2. Section 6 of the Bankruptcy Act, in this Order referred to as the principal Act, is amended, in subsection (1)(a), by deleting “\$500” from the last line and by substituting “\$10,000” therefor.

Insertion of new sections 30A and 30B.

3. The principal Act is amended by inserting the following two new sections immediately after section 30 —

“Discharge by certificate of trustee.

30A. (1) The trustee may, in his discretion and subject to section 30B, issue a certificate discharging a bankrupt from bankruptcy.

(2) The trustee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless —

(a) a period of 3 years has lapsed since the date of commencement of the bankruptcy; and

(b) the debts which have been proved in bankruptcy do not exceed \$100,000.

(3) Notice of every discharge under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

(4) The trustee shall, upon the application of a bankrupt or his creditor or other interested person, issue to the applicant a copy of the certificate of discharge upon the payment of the prescribed fee.

Objection by creditor to discharge of bankrupt under section 30A.

30B. (1) Before issuing a certificate of discharge under section 30A, the trustee shall serve on each creditor who has filed a proof of debt a notice of his intention to discharge the bankrupt, together with a statement of his reasons for wanting to do so.

(2) A creditor who has been served with a notice under subsection (1) and who wishes to enter an objection to the trustee issuing a certificate discharging the bankrupt may, within 21 days from the date of the trustee's notice, furnish the trustee a statement of the grounds of his objection.

(3) A creditor who does not furnish to the trustee a statement of 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 the trustee with a statement of the grounds of his objection in accordance with subsection (2) may, within 21 days of being informed by the trustee that his objection has been rejected, make an application to the court for an order prohibiting the trustee from issuing a certificate of discharge.

(5) Every application under subsection (4) shall be served on the trustee and on the bankrupt and the Court shall hear the trustee 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 the bankrupt shall not be granted a certificate of discharge by the trustee for a period not exceeding 2 years; or

(c) make an order permitting the trustee to issue a certificate discharging the bankrupt but subject to such conditions as the Court may think fit to impose, including conditions with respect to —

(i) any income which may be subsequently due to the bankrupt after his discharge; or

(ii) any property devolving upon the bankrupt, or acquired by him, after his discharge,

as may be specified in the order.”.

Substitution of section 32.

4. Section 32 of the principal Act is repealed and the following new section substituted therefor —

“Effect of discharge.

32. (1) Subject to this section and any condition imposed by the Court under section 30 or 30B, 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 trustee; or

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

(2) Discharge shall not release the bankrupt from —

(a) any debt due to the Government; or

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

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

(ii) the Sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence.

(3) A bankrupt may be discharged from any debt referred to in subsection (2) only by a certificate in writing of the Minister.

(4) Discharge shall not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(5) Discharge shall not release the bankrupt from —

(a) 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

(b) any liability in respect of a fine imposed for an offence.

(6) Discharge shall not, except to such extent and on such conditions as the Court may direct, release the bankrupt from any debt which has been proved and which —

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person;

(b) arises under any order made in proceedings under the Married Women Act (Chapter 190) and the Islamic Family Law Order, 2000 (S 12/2000) relating to family matters; or

(c) arises under an order involving pecuniary liability made under any written law relating to the confiscation of the proceeds of crime.

(7) 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 the nature of such a surety.

(8) For the purpose of subsection (6), “personal injuries” includes death and any disease or other impairment of a person’s physical or mental condition.”.

Amendment of section 43

5. Section 43 of the principal Act is amended, in paragraph *(b)*, by deleting “\$500” from the fifth line and by substituting “\$5,000” therefor.

Amendment of section 46.

6. Section 46 of the principal Act is amended, in subsection (2), by deleting “\$500” from second line and by substituting “\$10,000” therefor.

Insertion of new section 61A.

7. The principal Act is amended by inserting the following new section immediately after section 61 —

“Power to impound passport etc. of bankrupt.

61A. (1) The trustee may, if he thinks it necessary for the purposes of ensuring that a bankrupt does not leave Brunei Darussalam during the administration of his estate, issue a direction to the Controller of Immigration to request that the bankrupt be prevented from leaving Brunei Darussalam.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, the Controller of Immigration shall pursuant to the direction under subsection (1) take, or cause to be taken by any immigration officer, such measures as may be necessary to prevent the bankrupt named in the direction from leaving Brunei Darussalam, including the detention of the bankrupt's passport, certificate of identity or travel document authorising the bankrupt to leave or enter Brunei Darussalam.

(3) Where the Controller of Immigration has detained the passport, certificate of identity or other travel document of a bankrupt under subsection (2), the Controller shall forthwith forward the passport, certificate of identity or travel document to the trustee.

(4) Notwithstanding subsections (1), (2) and (3), the trustee may, if he thinks fit, detain any passport, certificate of identity or other travel document authorising the bankrupt to leave or enter Brunei Darussalam.

(5) The trustee may, if he thinks fit, retain or return to the bankrupt the passport, certificate of identity or travel document forwarded to him by the Controller of Immigration under subsection (3) or detained by him under subsection (4).”.

Insertion of new Part IIIA.

8. The principal Act is amended by inserting the following new Part immediately after Part III —

“PART IIIA

DUTIES, DISQUALIFICATION AND DISABILITIES OF BANKRUPT

Duties of bankrupt.

74A. (1) A bankrupt shall, in addition to any other duty specified in this Act —

(a) make discovery of and deliver all his property that is under his possession or control to the trustee;

(b) deliver to the trustee all books, records, documents, writings and papers including (without restricting the generality of the foregoing), any documents or deeds of title, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the trustee, attend before the trustee and answer such questions as the trustee may put to him with respect to his affairs, dealings and property and the causes of his failure;

(d) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(e) make disclosure to the trustee of all property disposed of within such time preceding his bankruptcy as the trustee may require, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(f) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the 5 years immediately preceding his bankruptcy;

(g) attend any meeting of his creditors as may be convened by the trustee under section 17, unless prevented by sickness or other sufficient cause and submit thereat to examination;

(h) when required, attend such other meetings of his creditors;

(i) aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors;

(j) execute such powers of attorney, conveyances, deeds and instruments as may be required by the trustee;

(k) examine the correctness of all proofs of claims filed, if required by the trustee;

(l) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(m) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee or prescribed by the rules

or directed by the Court by any order on any application by the trustee or by any of his creditors; and

(n) until he has been discharged from bankruptcy, keep the trustee advised at all times of his place of residence or address.

(2) Where a bankrupt has changed his residential address and has made a report of the change under regulation 13 of the National Registration Regulations made pursuant to section 6 of the National Registration Act (Chapter 19) —

(a) he shall be deemed to have informed the trustee of the change of his residential address in compliance with subsection (1)(n); and

(b) the new residential address as reported by him under regulation 13 of the National Registration Regulations shall, unless he informs the trustee in writing to the contrary, be deemed to be his last known address for the purpose of subsection (3).

(3) Any notice or process given to or served upon the bankrupt at his last known address shall be deemed to have been duly given or served and shall be conclusive evidence of the fact of service.

Disqualification of bankrupt.

74B. (1) In addition to any disqualification under any other written law, a bankrupt shall be disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement, except with leave of the court.

(2) Any disqualification to which a bankrupt is subject under this section shall cease when —

(a) the bankruptcy order against him is annulled or rescinded; or

(b) he is discharged under section 30 or 30A.

(3) Any person who acts as a trustee or personal representative while he is disqualified by virtue of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 12 months or both.

Disabilities of bankrupt.

74C. (1) Where a bankrupt has not obtained his discharge —

(a) he 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 trustee; and

(b) he shall not leave, remain or reside outside Brunei Darussalam without the previous permission of the trustee.

(2) A bankrupt who fails to comply with this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(3) For the purposes of this section, references to the “trustee” shall include references to the “Official Receiver”, as the case may be.”

Insertion of new section 115A.

9. The principal Act is amended by inserting the following new section immediately after section 115 –

“Reciprocal recognition of Official Assignees.

115A. (1) The Minister may, by notification in the *Gazette*, declare that the Government of Brunei Darussalam has entered into an agreement with the governments of Malaysia and Singapore for the recognition by each government of the Official Assignees in bankruptcy appointed by the other government.

(2) From the date of that notification where any person has been adjudged a bankrupt by a court in Malaysia or Singapore, as the case may be, such property of the bankrupt situate in Brunei Darussalam as would, if he had been adjudged bankrupt in Brunei Darussalam, vest in the Official Assignee of Malaysia or Singapore, as the case may be, shall vest in the Official Assignee appointed by the governments of Malaysia and Singapore, and all courts in Brunei Darussalam shall recognise the title of such Official Assignee to such property.

(3) Subsection (2) shall not apply where a bankruptcy application has been made against the bankrupt in Brunei Darussalam until the application has been dismissed or withdrawn or the bankruptcy order has been rescinded or annulled.

(4) The production of an order of adjudication purporting to be certified, under the seal of the court in Malaysia or Singapore making the order, by the registrar of that court, or of a copy of the official *Gazette* of Malaysia or Singapore containing a notice of an order adjudging that person

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

a bankrupt shall be conclusive proof in all courts in Brunei Darussalam of the order having been duly made and of its date.

(5) The Official Assignee of Malaysia or Singapore may sue and be sued in any court in Brunei Darussalam by the official names of “the Official Assignee of the Property of (name of bankrupt), a Bankrupt under the Law of Malaysia, or “the Official Assignee of the Property of (name of bankrupt) under the Law of Singapore”.”.

Made this 20th. day of Muharram, 1434 Hijriah corresponding to the 4th. day of December, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM