

Bankruptcy Act 1989

BERMUDA
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BANKRUPTCY ACT 1989

ARRANGEMENT OF SECTIONS

1 Short title and commencement

2 Interpretation

PART I

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Acts of bankruptcy

3 Acts of bankruptcy

4 Bankruptcy notices

Receiving Order

5 Jurisdiction to make receiving order

6 Conditions on which creditor may petition

7 Proceedings and order on creditor's petition

8 Debtor's petition and order thereon

9 Effect of receiving order

10 Power to appoint interim receiver

11 Power to stay pending proceedings

12 Power to appoint special manager

13 Publishing receiving order

Proceedings consequent on Order

14 First and other meetings of creditors

15 Debtor's statement of affairs

Public Examination of Debtor

16 Public examination of debtor

17 Power to dispense with public examination of debtor

Composition or Scheme of Arrangement

18 Compositions or schemes of arrangement

19 Effect of composition or scheme

Adjudication of Bankruptcy

20 Adjudication of bankruptcy where composition not accepted or approved

21 Vesting in trustee of certain items of excess value

22 Time limit for notice under s. 21

23 Appointment of trustee

24 Committee of inspection

25 Power to accept composition or scheme after bankruptcy adjudication

Control over Person and Property of Debtor

26 Duties of debtor to discovery and realisation of property

27 Arrest of debtor under certain circumstances

28 Re-direction of debtor's letters

29 Enquiry as to debtor's conduct, dealings, and property

30 Discharge of bankrupt

31 Automatic discharge of bankrupt

32 Discharge of bankrupt on application of Official Receiver

33 Fraudulent settlements

34 Effect of order on discharge

35 Power for Court to annul adjudication in certain cases

PART II

ADMINISTRATION OF PROPERTY

Proof of Debts

36 Description of debts provable in bankruptcy

37 Mutual credit and set-off

38 Rules as to proof of debts

39 Priority of debts

40 Debts to spouse

Property available for Payment of Debts

41 Relation back of trustee's title

42 Description of bankrupt's property divisible amongst creditors

Effect of bankruptcy on Antecedent and Other Transactions

43 Restriction of rights of creditor under execution or attachment

44 Duties of Provost Marshal General as to goods taken in execution

45 Avoidance of certain settlements

46 Avoidance of general assignments of book debts

47 Avoidance of preference in certain cases

48 Protection of *bona fide* transactions without notice

49 Validity of certain payments to bankrupt and assignee

50 Recovery of property transferred without knowledge of receiving order

51 Dealings with undischarged bankrupt

PART III

REALISATION OF PROPERTY

52 Possession of property by trustee

53 Seizure of property of bankrupt

54 Appropriation of portion of pay or salary to creditors

55 Vesting and transfer of property

56 Disclaimer of onerous property

57 Powers of trustee to deal with property

58 Powers exercisable by trustee with permission of committee of inspection

59 Power to allow bankrupt to manage property

60 Allowance to bankrupt for maintenance or service

61 Right of trustee to inspect goods pawned, etc

62 Limitation of trustee's powers in relation to copyright

63 Protection of Official Receiver and trustees from personal liability in certain cases

Distribution of Property

64 Declaration and distribution of dividends

65 Joint and separate dividends

66 Provision for creditors residing at a distance, etc

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

68 Interest on debts

69 Final dividend

70 No action for dividend

71 Right of bankrupt to surplus

PART IV
OFFICIAL RECEIVER AND STAFF

72 Official Receiver

73 Persons performing functions of Official Receiver

74 Status of Official Receiver

75 Duties of Official Receiver as regards the debtor's conduct

76 Duties of Official Receiver as to debtor's estate

PART V
TRUSTEES IN BANKRUPTCY

Official Name

77 Official name of trustee

Appointment

78 Power to appoint joint or successive trustee

79 Proceedings in case of vacancy in office of trustee

Control over Trustee

80 Discretionary powers of trustee and control thereof

81 Control of trustee by the Court

82 Liability of trustee

Remuneration and Costs

83 Remuneration of trustee

84 Allowance and taxation of costs

Receipts, Payments, Accounts, Audit

85 Trustee to furnish list of creditors

86 Trustee to furnish statement of accounts

87 Books to be kept by trustee

88 Annual statement of proceedings

89 Trustee not to pay into private account

90 Trustee in bankruptcy to open account

91 Audit of trustee's accounts

Vacation of Office by Trustee

92 Release of trustee

93 Office of trustee vacated by insolvency

94 Removal of trustee

PART VI POWERS OF COURT

Jurisdiction

95 Jurisdiction

96 Exercise in chambers of Supreme Court jurisdiction

97 Official Receiver to make payments in accordance with directions of Court

98 General power of Court

99 Notification of bankruptcy of member of the Legislature

Judgment Debtors

100 Judgment debtor's summons to be bankruptcy business

Review and Appeal

101 Review and appeal

Procedure

102 Discretionary powers of Court

103 Consolidations of petitions

104 Power to change carriage of proceedings

105 Continuance of proceedings on death of debtor

106 Power to stay proceedings

107 Power to present petition against some respondents only

108 Power to dismiss petition against some respondents only

109 Property of partners to be vested in same trustee

110 Actions by trustee and bankrupt's partners

111 Actions on joint contracts

112 Proceedings in partnership name

113 Warrants

PART VII

SUPPLEMENTAL PROVISIONS

Application of Act

114 Exclusion of companies

- 115 Application to limited partnerships
- 116 Privilege of Legislature
- 117 Application of Act in case of small estates
- 118 Administration in bankruptcy of estate of person dying insolvent
- 119 Outstanding bankruptcies under repealed enactment

General rules

- 120 Power to make general rules
- 121 Fees
- 122 Gazette evidence
- 123 Evidence of proceedings at meetings of creditors
- 124 Evidence of proceedings in bankruptcy and swearing of affidavits
- 125 Death of debtor or witness
- 126 Certificate of appointment of trustee
- 127 Formal defect not to invalidate proceedings
- 128 Exemption from stamp duty
- 129 Acting of corporations, partners, etc
- 130 Reference to repealed Act
- 131 Certain provisions to bind Crown

Unclaimed Funds or Dividends

- 132 Unclaimed and undistributed dividends or funds under this and repealed Act

PART VIII

BANKRUPTCY OFFENCES

- 133 Bankrupt absconding with property
- 134 Fraudulent debtors
- 135 Undischarged bankrupt obtaining credit
- 136 Frauds by bankrupts, etc

- 137 Bankrupt guilty of gambling, etc
- 138 Bankrupt failing to keep proper accounts
- 139 False claim, etc
- 140 Order by Court for prosecution on report of trustee
- 141 Criminal liability after discharge or composition
- 142 Trial of offences
- 143 Setting forth substance of offence charged
- 144 Assistance to courts of United Kingdom
- 145 Repeal
- 146 Amendment of laws

FIRST SCHEDULE
MEETINGS OF CREDITORS

SECOND SCHEDULE
PROOF OF DEBTS

THIRD SCHEDULE
AMENDMENT OF LAWS

[19 December 1989]

[preamble and words of enactment omitted]

Short title and commencement

1 This Act may be cited as the Bankruptcy Act 1989 *[commencement provisions omitted]*.

[This Act was brought into operation on 31 January 1990 by BR 6/1990]

Interpretation

2 In this Act, unless the context otherwise requires —

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

"bankrupt" means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order;

"bankruptcy petition" means a petition to the Court for a bankruptcy order;

"business" includes a trade or profession;

"the Court" means the Supreme Court;

"a debtor" includes any person who at the time when any act of bankruptcy was done or suffered by him

(a) was personally present in Bermuda;

(b) ordinarily resided or had a place of residence in Bermuda;

(c) was carrying on business in Bermuda, personally, or by means of an agent or manager; or

(d) was a member of a firm or partnership which carried on business in Bermuda;

"debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy;

"general rules" includes forms;

"goods" includes all chattels personal;

"local bank" means any bank in Bermuda;

"Official Receiver" means the person appointed pursuant to section 72;

"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;

"personal injuries" includes death and any disease or other impairment of a person's physical or mental condition;

"prescribed" means prescribed by Rules of Court made under this Act;

"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"records" includes computer records and other non-documentary records;

"Registrar" means the Registrar of the 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;

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

"trustee" means the trustee in bankruptcy of a debtor's estate.

PART I

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Acts of Bankruptcy

Acts of bankruptcy

3 A debtor commits an act of bankruptcy in each of the following cases:

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

(c) if in Bermuda or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act 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, namely, departs out of Bermuda, or being out of Bermuda remains out of Bermuda, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;

(e) if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the Court, and the goods have been either sold or held by the Provost Marshal General or other officer for twenty-one days except that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which the summons

is taken out and the date at which the proceedings on the summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

(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 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 Bermuda, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not, within fourteen days after service of the notice, in case the service is effected in Bermuda, 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 counter-claim, 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 the proceedings in which the order was obtained; for the purposes of this paragraph and of section 4, 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;

(h) if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

Bankruptcy notices

4 (1) A bankruptcy notice under this Act —

(a) shall be in the prescribed form;

(b) shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court;

(c) shall state the consequences of non-compliance with the notice; and

(d) shall be served in the prescribed manner.

(2) A bankruptcy notice —

(a) 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;

(b) 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 the misstatement; 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 a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order

Jurisdiction to make receiving order

5 Subject to the conditions specified in this Act, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which creditor may petition

6 (1) A creditor is not 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 five thousand dollars, and

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

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

(d) the debtor is domiciled in Bermuda or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, in Bermuda, has carried on business in Bermuda, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Bermuda by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, is a creditor entitled to present a bankruptcy petition founded on the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

(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, and in the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and order on creditor's petition

7 (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 served in the prescribed manner.

(2) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, 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, or sum ordered to be paid, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(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 him 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.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Debtor's petition and order thereon

8 (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 presentment, be withdrawn without the leave of the Court.

Effect of receiving order

9 (1) On the making of a receiving order the Official Receiver 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 commence any action or other legal proceedings, unless with the leave of the Court and on such terms as the Court may impose.

(2) But this section does not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

Power to appoint interim receiver

10 The Court may, if it is shown to be necessary 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 Official Receiver 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.

Power to stay pending proceedings

11 (1) 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, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the Court makes an order 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 post to the address for service of the plaintiff or other party prosecuting the proceeding.

Power to appoint special manager

12 (1) The Official Receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interest of the creditors generally require the appointment of a special manager of the estate or business other than the Official Receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver.

(2) The special manager shall give security and account in such manner as the creditors at a general meeting may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

Publishing receiving order

13 Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, the Court by which the order is made, and the date of the petition, shall be published in the Gazette in the prescribed manner.

Proceedings consequent on Order

First and other meetings of creditors

14 (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 accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule to this Act shall be observed.

Debtor's statement of affairs

15 (1) Where a receiving order is made against a debtor, he shall make out and submit to the Official Receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and 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, and such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be so submitted within the following times, namely:

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

but the Court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the Official Receiver, 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 the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor is guilty of a contempt of court, and is punishable accordingly on the application of the trustee or Official Receiver.

Public Examination of Debtor

Public examination of debtor

16 (1) Where the Court makes a receiving order, it shall, save as in this Act provided, 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, dealings, and property.

(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.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The Official Receiver shall take part in the examination of the debtor; and for the purpose thereof, may employ a barrister and attorney.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The Court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and he shall answer all such questions as the Court may put or allow to be put to him; such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him; they shall also 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 the order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a person of unsound mind or suffers from any such mental or physical affliction or disability as in the opinion

of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with the examination, or directing that the debtor be examined on such terms, in such manner, and at such places as to the Court seems expedient.

Power to dispense with public examination of debtor

17 (1) The Court may, if it thinks fit, make an order dispensing with the public examination of a debtor under section 16 and in determining whether to make an order the Court shall have regard to all circumstances of the case including, in particular —

- (a) whether the debtor has made a full disclosure of his affairs;
- (b) whether he has been adjudged bankrupt on a previous occasion;
- (c) the number and nature of his debts;
- (d) whether his bankruptcy would for any reason be a matter of public concern; and
- (e) such other matters as may be prescribed for the purposes of this subsection by rules made under this Act.

(2) No order shall be made under subsection (1) except on the application of the Official Receiver but the power of the Court under section 101(1) to review or rescind any such order may be exercised either on the application of the Official Receiver or on the application of the debtor, a creditor or the trustee.

(3) Subsections (1) and (2) are without prejudice to section 16(10).

(4) Where an order is made under this section or section 16(10) dispensing with the public examination of the debtor, section 18(2) and (6), 20(1) and 30(1) shall have effect as if his public examination were concluded on the date on which the order is made.

Composition or Scheme of Arrangement

Compositions or schemes of arrangement

18 (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the Official Receiver may fix, lodge with the Official Receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the Official Receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the Official Receiver, calculated to benefit the general body of creditors.

- (4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent has the effect as if the creditor had been present and had voted at the meeting.
- (5) The debtor or the Official Receiver may, after the proposal 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 to each creditor who has proved.
- (6) The application shall not be heard until after the conclusion of the public examination of the debtor; however, any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.
- (7) 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 Official Receiver that it is expedient to do so, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from Bermuda.
- (8) The Court shall, before approving the proposal, hear a report of the Official Receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.
- (9) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the Court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless he provides reasonable security for the payment of not less than ten cents in the dollar on all unsecured debts provable against the debtor's estate.

(11) In any other case the Court may either approve or refuse to approve the proposal.

(12) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(13) A composition or scheme accepted and approved in pursuance of this section is binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but does not release the debtor from any liability under a judgment against him in an action for an affiliation order or under a judgment against him in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

(14) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of 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.

(16) 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 in justice 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 the Official Receiver or the trustee or 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.

(17) Where a debtor is adjudged bankrupt under subsection (16), any debt provable in other respects, which has been contracted before the adjudication, is provable in the bankruptcy.

(18) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 29 and Part V of this Act apply as if the trustee were a trustee 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.

(19) Part II of this Act, so far as the nature of the case and the terms of the composition or scheme admit, applies thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in subsection (18).

(20) 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.

(21) The acceptance by a creditor of a composition or scheme does 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, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy

Adjudication of bankruptcy where composition not accepted or approved

20 (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve 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 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 may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt becomes divisible among his creditors and vests in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the court by which the adjudication is made, shall be published in the Gazette in the prescribed manner, and the date of the

order shall, for the purposes of this Act, be the date of the adjudication.

Vesting in trustee of certain items of excess value

21 (1) Subject to section 22, where—

(a) property is excluded by virtue of section 42(b) and (c) from the property of the bankrupt, and

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it for the property of the bankrupt.

(2) Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the property of the bankrupt; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the property of the bankrupt to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the property.

(4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by other property.

Time limit for notice under s. 21

22 (1) Except with the leave of the Court, a notice shall not be served under section 21, after the end of the period of forty-two days beginning with the day on which the property in question first came to the knowledge of the trustee.

(2) For the purposes of this section —

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes (otherwise than under paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

Appointment of trustee

23 (1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt and declare what security is to be given and to whom by the person so appointed before he enters on the office of trustee; or they may resolve to leave his appointment to the committee of inspection mentioned in section 24.

- (2) A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.
- (3) The appointment of a trustee shall be reported to the Court and the Court upon being satisfied that the requisite security has been entered into by him may, unless it feels that the person is not fit, by order give a certificate declaring him to be trustee of the bankruptcy named in the certificate and the certificate is conclusive evidence of the appointment of the trustee.
- (4) The appointment of a trustee shall take effect as from the date of the order.
- (5) The Official Receiver shall not, save as in this Act provided, be the trustee of the bankrupt's property.
- (6) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the Official Receiver shall report the matter to the Court, and thereupon the Court shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.
- (7) The creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed becomes trustee in the place of the person appointed by the Court.
- (8) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed before

the adjudication, the Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of inspection

24 (1) The creditors qualified to vote may, at their first or any subsequent meeting by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications:

(a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, except that no creditor and no holder of a general proxy or general power of attorney from a creditor is qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been duly lodged before the time appointed for the meeting; or

(b) that of being a person to whom a creditor intends to give a general proxy or general power of attorney but no such person is qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been duly lodged before the time appointed for the meeting.

(3) A body corporate may be a member of the committee of inspection but it cannot act as such otherwise than by a representative appointed under this rule.

(4) A member of the committee of inspection may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(5) A person acting as a committee-member's representative shall hold a letter of authority entitling him so to act, either generally or specially, and the letter shall be signed by or on behalf of the committee-member.

(6) The chairman at any meeting of the committee of inspection may call on a person claiming to act as a committee-member's representative to produce his letter of authority and may exclude him if it appears that his authority is deficient.

(7) No member may be represented by a body corporate or by a person who is an undischarged bankrupt or is subject to a composition or arrangement with his creditors.

(8) No person shall —

(a) on the same committee of inspection, act at one and the same time as representative of more than one committee-member; or

(b) act both as a member of the committee of inspection and as representative of another member.

(9) Where the representative of a committee-member signs any document on the latter's behalf, the fact that he so signs shall be stated below his signature.

(10) The committee of inspection shall meet at such times as they shall from time to time appoint; and

the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(11) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(12) Any member of the committee may resign by notice in writing signed by him, and delivered to the trustee.

(13) A person's membership of the committee of inspection automatically terminates if the person becomes bankrupt or compounds or arranges with his creditors, or the person ceases to be, or is found never to have been, a creditor, or the person is neither present nor represented at five consecutive meetings of the committee; however, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

(14) 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.

(15) On a vacancy occurring in the office of a member of the committee, the trustee 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 under subsection (2) to fill the vacancy.

(16) The continuing members of the committee, provided there is not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is for the time being less than five, the creditors

may increase that number so that it does not exceed five.

(17) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication

25 (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after adjudication, by a majority in number and three fourths in value of all the creditors who have proved, resolve to accept 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 accepted before adjudication.

(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 may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(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 things 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 the adjudication are provable in bankruptcy.

Control over Person and Property of Debtor

Duties of debtor to discovery and realisation of property

26 (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 shall submit to such examination and give such information as the meeting may require.

(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, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager, or trustee, 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 may be reasonably required by the Official Receiver, special manager, or trustee, or may be prescribed by general rules, or be 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 Official Receiver, special manager, trustee, or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(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 Official Receiver or to the trustee, or to any person authorised by the Court to take possession of it, he is, in addition to any other punishment to which he may be subject, guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor under certain circumstances

27 (1) The Court may, by warrant addressed to any police officer or prescribed 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 may order under the following circumstances:

(a) if, 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 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 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;

(b) if, 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 delay in possession being taken of them by the Official Receiver or trustee, 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;

(c) if, 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 three hundred dollars without the leave of the Official Receiver or trustee;

(d) if, without good cause shown, he fails to attend any examination ordered by the Court;

except that no arrest upon a bankruptcy notice is valid and protected, unless the debtor before or at the time of his arrest is served with the bankruptcy notice.

(2) No payment or composition made or security given after arrest made under this section is exempt from the provisions of this Act relating to fraudulent preferences.

Re-direction of debtor's letters

28 Where a receiving order is made against a debtor, the Court, on the application of the Official Receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters, telegrams, other postal packets and electronic communication or otherwise, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the Official Receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Enquiry as to debtor's conduct, dealings, and property

29 (1) The Court may, on the application of the Official Receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his spouse, 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 may deem 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.

(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 any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the Official Receiver or trustee, order him to pay to the Official Receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, 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 any person on examination before the Court admits that he has in his possession any property

belonging to the debtor, the Court may, on the application of the Official Receiver or trustee, order him to deliver to the Official Receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms, as to the Court may seem just.

Discharge of bankrupt

30 (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, but the application shall not be heard until the public examination of the bankrupt is concluded.

(2) The application shall, except when the Court in accordance with rules under this Act otherwise directs, be heard in open Court.

(3) On the hearing of the application the Court shall take into consideration a report of the Official Receiver 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 of the order for a specified time, or grant an 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 except that where the bankrupt has been convicted of any misdemeanour under this Act, or any enactment repealed by this Act, or any other misdemeanour connected with his bankruptcy, or where in

any case any of the facts mentioned in subsection (5) are proved, the Court shall either—

(a) refuse the discharge; or

(b) suspend the discharge for such period as the Court thinks proper; or

(c) suspend the discharge until a dividend of not less than ten cents in the dollar has been paid to the creditors; or

(d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings of after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but 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 towards payment of his debts.

(4) 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 the order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(5) The facts referred to in subsection (3) are—

(a) that the bankrupt's assets are not of a value equal to ten cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten cents in the dollar on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

(c) that the bankrupt has continued to trade after knowing himself to be insolvent;

(d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof lies on him) of being able to pay it;

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

(f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense

in bringing any frivolous or vexatious action;

(i) 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;

(j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten cents in the dollar on the amount of his unsecured liabilities;

(k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;

(l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(6) With a view to removing any disqualification by law on account of bankruptcy which is removed if the bankrupt obtains from the Court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the Court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate is subject to appeal.

(7) For the purposes of this section, a bankrupt's assets shall

be deemed of a value equal to ten cents in the dollar on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten cents in the dollar on his unsecured liabilities, and a report by the Official Receiver or the trustee shall be *prima facie* evidence of the amount of the liabilities.

(8) For the purposes of this section, the report of the Official Receiver 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 in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the Official Receiver and the trustee, and may also hear any creditor; at the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

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

(11) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he is guilty of a contempt of court; and the Court may also, 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.

Automatic discharge of bankrupt

31 (1) Where the Court makes an order—

(a) declaring that a debtor's examination under section 16 has been concluded; or

(b) dispensing with his examination under section 17,

the Court may, if it thinks fit, make an order directing that subsection (2) has effect if he is or has been adjudged bankrupt in the proceedings; and in determining whether to make such an order the Court shall have regard to all the circumstances of the case, including, in particular, any such facts as are stated in section 30(5) and whether the debtor has been convicted of any offence under this Act or any other offence connected with his bankruptcy.

(2) Where the Court makes an order under subsection (1), then, if the debtor is or has been adjudged bankrupt in the proceedings, then the bankrupt is discharged in any case by the expiration of the period of fifteen years beginning with the commencement of bankruptcy.

(3) This section is without prejudice to any power of the Court under section 101(1) to review, rescind or vary an order.

Discharge of bankrupt on application of Official Receiver

32 (1) This section applies to any adjudication of bankruptcy made after 30 January 1990, or made within five years before 31 January 1990 where—

- (a) the bankrupt has not applied under section 30 for an order of discharge in respect of the adjudication; and
 - (b) the adjudication has not been annulled under section 25(2) or 35; and
 - (c) the Court has not made an order under section 31(1) in relation to the adjudication or any such order has been rescinded; and
 - (d) five years have elapsed since the date of the adjudication.
- (2) Within twelve months after the fifth anniversary of the date of any adjudication to which this section applies, the Official Receiver shall make an application to the Court in respect of the adjudication.
- (3) The Court shall appoint a day for the hearing of the application and notice of the appointment shall be published in the prescribed manner and sent fourteen days at least before the day so appointed to the bankrupt.
- (4) On the hearing of the application the Court shall take into consideration a report of the Official Receiver as to the bankrupt's conduct and affairs, including a report as to the bankrupt's conduct during the proceedings under his bankruptcy; and for the purposes of this section that report shall be *prima facie* evidence of the statements therein contained.
- (5) Except where the Court otherwise directs, the application may be heard in the absence of the bankrupt; and the Court may hear the trustee and any creditor, receive such other evidence as it thinks fit and, if the bankrupt is present, put questions to him or may hear the bankrupt on his own behalf.
- (6) On any application under this section the Court may—

(a) grant or refuse an absolute order of discharge;

(b) suspend the discharge for such period as the Court thinks proper or until a dividend of not less than ten cents in the dollar has been paid to the creditors; or

(c) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct.

(7) Execution shall not be issued without the leave of the Court on any judgment entered by virtue of subsection (6)(c); and leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

(8) 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 the order, the Court may modify the terms of the order, or of any substituted order, in such manner and on such conditions as it thinks fit.

(9) References to discharge and an order of discharge in section 30(11) and section 34 include references to discharge and an order of discharge under this section.

Fraudulent settlements

33 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

(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 the 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 order on discharge

34 (1) An order of discharge does not release the bankrupt—

(a) from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Provost Marshal General or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he is not discharged from

such excepted debts unless the Official Receiver after consultation with the Minister of Finance certifies in writing his consent to the bankrupt being discharged therefrom; or

(b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained for bearance by any fraud to which he was a party; or

(c) from any bankruptcy debt which —

(i) 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; or

(ii) arises under any financial provision order made under the Matrimonial Causes Act 1974 [*title 27 item 3*] or any affiliation order or any order relating to maintenance made under the Matrimonial Proceedings (Magistrates Courts) Act 1974 [*title 27 item 5*].

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge is conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any

proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Power for Court to annul adjudication in certain cases.

35 (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, the Court may, on the application of any person interested, by order 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 Official Receiver, trustee, or other person acting under their authority, or by the Court, are valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, 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 may declare by order.

(3) Notice of the order annulling an adjudication shall be published by the Official Receiver in the Gazette.

(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, or such other security as the Court may in its discretion approve 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.

PART II ADMINISTRATION OF PROPERTY

Proof of Debts

Description of debts provable in bankruptcy

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

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

(3) Save as mentioned in this section, 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 trustee of the value of any debt or liability provable as mentioned

in this section, 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 estimate made by the trustee under subsection (4) 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 a 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 direct the value to be assessed before the Court itself, 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.

(8) "Liability", for the purposes of this Act, includes—

(a) any compensation for work or labour done;

(b) 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;

(c) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or

dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual credit and set-off

37 Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of the 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; but a person is not 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

38 With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule to this Act, the rules in that Schedule shall be observed.

Priority of debts

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

(a) all taxes (as defined under the Taxes Management Act 1976 [*title 14 item 40*]), municipal rates and land taxes 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) all wages or salary of any employee of the bankrupt in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding five thousand dollars;

(c) all wages of any labourer or workman not exceeding five thousand dollars whether payable for any kind of work, in respect of services, rendered to the bankrupt during two months before the date of the receiving order.

(2) The debts mentioned in subsection (1) 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) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the debts mentioned in subsection (1) shall be discharged forth with so far as the property of the debtor is sufficient to meet them.

(4) This section applies, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

(5) 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 and 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.

(6) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

(7) If there is any surplus after payment of the debts mentioned in this section, it shall be applied in payment of interest from the date of the receiving order at the rate of five dollars per centum per annum on all debts proved in the bankruptcy.

(8) Nothing in this section shall alter the effect of section 3 of the Partnership Act 1902 [*title 17 item 25*] or shall prejudice the provisions of the Friendly Societies Act 1868 [*title 13 item 12*].

Debts to spouse

40 (1) This section applies to debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse at the time the credit was provided) was the bankrupt's spouse at the commencement of the bankruptcy.

(2) Such debts —

(a) rank in priority after the debts and interest required to be paid in pursuance of section 39, and

(b) are payable with interest at the rate specified in section 39(7) in respect of the period during which they have been outstanding with effect from the date of the receiving order;

and the interest payable under paragraph (b) has the same priority as

the debts on which it is payable.

Property available for Payment of Debts

Relation back of trustee's title

41 The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to 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; but 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

42 The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

- (a) property held by the bankrupt in trust for any other person;
- (b) subject to section 21, such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;
- (c) such clothing, bedding, furniture, household equipment and provision as are necessary for satisfying the basic domestic needs of the bankrupt and his family;

but it shall comprise the following particulars:

- (d) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and
- (e) 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
- (f) all goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; except that 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.

Effect of bankruptcy on Antecedent and Other Transactions

Restriction of rights of creditor under execution or attachment

43 (1) Where a creditor has issued execution against the property of a debtor, or has attached any debt due to him, he is not entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, 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, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or by the appointment of a receiver.

(3) An execution levied by seizure and sale on the property of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the Provost Marshal General shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Duties of Provost Marshal General as to goods taken in execution

44 (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Provost Marshal General that a receiving order has been made against the debtor, the Provost Marshal General shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the Official Receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the Official Receiver or the trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding one thousand dollars the goods of a debtor are sold or

money is paid in order to avoid sale, the Provost Marshal General shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the Provost Marshal General has notice, the Provost Marshal General shall pay the balance to the Official Receiver or, as the case may be, to the trustee, who is entitled to retain it as against the execution creditor.

Avoidance of certain settlements

45 (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbent 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 void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within five years after the date of the settlement, be void against the trustee in the bankruptcy, 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 the property passed to the trustee of the settlement on the execution thereof.

(2) Any covenant or contract made by any person (hereafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either —

(a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy;

(b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;

but, in the event of any such payment or transfer being declared void, the persons to whom it was made is entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had

not been executed at the commencement of the bankruptcy.

(4) For the purposes of this section, "settlement" includes any conveyance or transfer of property.

Avoidance of general assignments of book debts

46 (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy except that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section, "assignment" includes assignment by way of security and other charges on book debts.

Avoidance of preference in certain cases

47 (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 of any person in trust for any creditor, with a view of giving the creditor, or any surety or guarantor for the debt due to the creditor, a preference over the other creditors, shall, 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, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section does 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) When a receiving order is made against a judgment debtor in pursuance of section 100, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Protection of *bona fide* transactions without notice

48 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, assignments 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;
- (d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration;

if both the following conditions are complied with, namely—

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

Validity of certain payments to bankrupt and assignee

49 A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise *bona fide*.

Recovery of property transferred without knowledge of receiving order

50 Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice thereof had been published in the Gazette in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions

of this Act void as against the trustee in the bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the Court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

Dealings with undischarged bankrupt

51 (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

(2) For the purposes of subsection (1), the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(3) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, he shall forthwith inform the trustee in the bankruptcy of the existence of the

account, and thereafter he shall not make any payments out of the account, except under an order of the Court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

PART III REALISATION OF PROPERTY

Possession of property by trustee

52 (1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee 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 the acquisition or retention accordingly.

(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 trustee 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 portion of such estate consists of Crown land or glebe land the trustee may deal with the same in the same manner as the bankrupt himself but for his bankruptcy might do.

(5) In subsection (4) —

(a) "Crown land" means land held subject to a quit rent commonly so called; and

(b) "glebe land" means land held under any sale of glebe land under any Act of the Legislature.

(6) 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 trustee.

(7) Subject to this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, barrister and attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, barrister and attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee and if he does not, he is guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

Seizure of property of bankrupt

53 Any person acting under warrant of the Court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to the seizure may break open any house, building, or room of the bankrupt or debtor, where the bankrupt or debtor is supposed to be, or any building or receptacle of the bankrupt or debtor where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, 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.

Appropriation of portion of pay or salary to creditors

54 (1) Where a bankrupt is an officer of Her Majesty's Forces, or an officer or clerk or otherwise employed or engaged in the public service, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct.

(2) Before making any order under subsection (1), the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of the payment.

(3) Where a bankrupt is in receipt of a salary or income other than as mentioned in subsection (1), or is entitled to any half-pay, or pension, or to any compensation payment by the Accountant General, the Court, on the application of the trustee, shall 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 trustee, to be applied by him in such manner as the Court may direct.

Vesting and transfer of property

55 (1) Until a trustee is appointed, the Official Receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

- (2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.
- (3) The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.
- (4) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the Commonwealth requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Disclaimer of onerous property

56 (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 act, or to the payment of any sum of money, the trustee, 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 within twelve months after the first appointment of a trustee or such extended period as may be allowed by the Court, disclaim the property except that, where any such property has not come to the knowledge of the trustee within one month after the appointment, he may disclaim the property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer operates to determine, as from the date of the disclaimer, the rights, interest, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and also discharges the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but does not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee is not entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, and the Court may, before or on granting the 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 trustee is not entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be 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 trustee, after the application as aforesaid, 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 trustee, 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 may seem equitable, and any damages payable under the order to any such

person may be proved by him as a debt under the bankruptcy.

(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 may seem just that the same should be delivered by way of compensation for such liability as afore said, 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 vests accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose but 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 that person —

(a) 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; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms is

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 has 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 the lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, the Official Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under this section, notwithstanding that the time prescribed by this section for the disclaimer has expired, but the power of disclaimer is exercisable only within twelve months after the Official Receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of the property, whichever period may last expire.

(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 trustee to deal with property

57 Subject to this Act, the trustee may do all or any of the following things:

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), 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;
- (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 trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act;
- (e) deal with any property to which the bankrupt is beneficially entitled in the same manner as the bankrupt might have dealt with it; and the various Acts enabling the holders of lands in Bermuda to alter the tenure of the lands to fee-simple shall extend and apply to proceedings in bankruptcy under this Act as if those Acts were here re-enacted and made applicable in terms to the proceedings.

Powers exercisable by trustee with permission of committee of inspection

58 (1) The trustee may, with the permission of the committee of inspection, do all or any of the following things:

- (a) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;
- (b) bring, institute, or defend any action or other legal proceedings relating to the property of the bankrupt;

(c) employ a barrister and attorney or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(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 the committee think fit;

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

(f) refer any dispute to arbitration, compromise any 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 may be agreed on;

(g) make such compromise or other arrangement as may be 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 may be 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 trustee by any person or by the trustee 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.

(2) The permission given for the purposes of this section shall not be a general permission to do all or any of the things mentioned in subsection (1), but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to allow bankrupt to manage property

59 The trustee, with the permission of the committee of inspection, 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 trustee may direct.

Allowance to bankrupt for maintenance or service

60 The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

Right of trustee to inspect goods pawned, etc.

61 Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn, or other security, it shall be lawful for the Official Receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and, where the notice has been given, such person as aforesaid is not entitled to realise his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of trustee's powers in relation to copyright

62 Where the property of a bankrupt comprises the copyright in any work or any interest in the copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee is not entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor is he, without the consent of the author or of the Court, entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Protection of Official Receiver and trustees from personal liability in certain cases

63 Where the Official Receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the goods, chattels, property, or other effects were not, at the date of the receiving order, the

property of the debtor, the Official Receiver or trustee is not personally liable for any loss or damage arising from the seizure or disposal sustained by any person claiming the property, nor for the costs of any proceedings taken to establish a claim thereto, unless the Court is of opinion that the Official Receiver or trustee has been guilty of negligence in respect of the same.

Distribution of Property

Declaration and distribution of dividends

64 (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee 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 four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing 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 six months.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be published in the Gazette, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the trustee 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, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends

65 (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 may be made by the Court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee 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.

66 (1) In the calculation and distribution of a dividend the trustee 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 trustee 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.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to subsections (1) and (2), he shall distribute as dividend all money in hand.

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

67 Any creditor who has not proved his debt before the declaration of any dividend or dividends is entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend declared before his debt was proved by reason that he has not participated therein.

Interest on debts

68 (1) Where a debt has been proved, and the 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 seven per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher interest to which he may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed:

(a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-

opened and the whole trans action treated as one;

(b) any payment made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;

(c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is as assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

Final dividend

69 (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner 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 claims.

(2) 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

70 No action for a dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus

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

PART IV OFFICIAL RECEIVER AND STAFF

Official Receiver

72 There shall be in the public service an Official Receiver for the purposes of this Act and he shall have such powers and shall perform such duties and functions as are assigned to him by or under the provisions of this Act and the Rules made thereunder.

Persons performing functions of Official Receiver

73 (1) There shall be in the public service such officers as may be required to assist the Official Receiver in performing his duties and functions under this Act and the Rules made thereunder and for the execution of this Act.

(2) During the temporary vacancy in the office or during the temporary absence of the Official Receiver through illness or otherwise there shall be appointed a public officer to discharge the duties and functions of the Official Receiver and the person so appointed shall have the same powers of the Official Receiver as if he were the Official Receiver.

(3) Where in the opinion of the Minister of Finance it is expedient that some person other than the Official Receiver be appointed to discharge the duties and functions or any portion thereof of the Official Receiver, the Minister of Finance may appoint a person to discharge such duties and functions and the person so appointed shall be paid such sum as may be provided by the Legislature.

(4) A person appointed under subsection (3) shall have the same powers of the Official Receiver under this Act and the Rules made thereunder as if he were the Official Receiver.

Status of Official Receiver

74 (1) The duties of the Official Receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) An Official Receiver may, for the purpose of affidavits verifying proofs, petitions or other

proceedings under this Act, administer oaths.

(3) All provisions of this or any other Act referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the Official Receiver when acting as trustee.

(4) The trustee shall supply the Official Receiver with such information and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid as may be requisite for enabling the Official Receiver to perform his duties and functions under this Act and the Rules made thereunder.

Duties of Official Receiver as regards the debtor's conduct

75 As regards the debtor, it shall be the duty of the Official Receiver—

(a) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under this Act or any enactment repealed by this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

(b) to make such other reports concerning the conduct of the debtor as the Court may direct;

(c) to take such part in the public examination of the debtor;

(d) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor.

Duties of Official Receiver as to debtor's estate

76 (1) As regards the estate of a debtor, it shall be the duty of the Official Receiver —

(a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to summon and preside at the first meeting of creditors;

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(g) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the Official Receiver 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, and shall not, unless the Court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods except that, when the debtor cannot himself prepare a proper statement of affairs, the Official Receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) The Official Receiver or a person appointed under section 73(3) to discharge such duties and functions of the Official Receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court directs.

PART V TRUSTEES IN BANKRUPTCY

Official Name

Official name of trustee

77 The official name of a trustee in bankruptcy shall be "The Trustee of the property of a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may, in any part of Bermuda or else where, 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.

Appointment

Power to appoint joint or successive trustee

78 (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and

when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee", and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security.

Proceedings in case of vacancy in office of trustee

79 (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The Official Receiver shall, on the requisition of any creditors, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the creditors shall inform the Official Receiver and thereupon the Official Receiver shall report the matter to the Court which may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the Court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the Official Receiver shall act as trustee.

Control over Trustee

Discretionary powers of trustee and control thereof

80 (1) Subject to this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time 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 creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or the Official Receiver to call a meeting of the creditors, and the trustee or the Official Receiver shall call such meeting accordingly within fourteen days but the person at whose instance the meeting is summoned shall deposit with the trustee or the Official Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

(3) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Control of trustee by the Court

81 If the bankrupt or any of the creditors, or any other person, is dissatisfied by any act, omission or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, may give such directions or may make such order as it thinks just.

Liability of trustee

82(1) Where on an application under this section the Court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate; or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the Court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just; this is without prejudice to any liability arising apart from this section.

(2) An application under this section may be made by the Official Receiver, a creditor of the bankrupt or

(whether or not there is, or is likely to be, a surplus for the purposes of section 71) the bankrupt himself but the leave of the Court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under this Act.

(3) Where —

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

Remuneration and Costs

Remuneration of trustee

83 (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised

by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If one fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Court approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any barrister and attorney, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as Official Receiver, or trustee, to the bankrupt or any barrister and attorney or other person that may be employed about a bankruptcy.

Allowance and taxation of costs

84 (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself without the prior approval of the committee of inspection.

(2) Where the trustee is a barrister and attorney, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of barristers and attorneys, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts unless the approval of the committee of inspection is first obtained and where there is no such approval it shall be taxed by the prescribed officer.

(4) The taxing master shall satisfy himself before passing such bills and charges that the employment of such barristers and attorneys and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned and the sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(5) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper 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, may grant, the trustee 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 trustee personally as against the estate.

Receipts, Payments, Accounts, Audit

Trustee to furnish list of creditors

85 The trustee or the Official Receiver shall, whenever required by any creditor so to do, furnish and transmit to him in the manner prescribed a list of the creditors showing the amount of the debt due to each creditor, and is entitled to charge for such list the sum prescribed by Rules of Court together with the reasonable cost of the transmission thereof.

Trustee to furnish statement of accounts

86 It shall be lawful for any creditor, with the concurrence of one tenth of the creditors (including himself), at any time to call upon the trustee or the Official Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of the notice, and the trustee shall, upon receipt of the notice, furnish and transmit the statement of the accounts if the person at whose instance the accounts are furnished shall deposit with the trustee or the Official Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or as the Court so directs.

Books to be kept by trustee

87 The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent, inspect any such books.

Annual statement of proceedings

88 (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The Court shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission or act, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, omission or act.

Trustee not to pay into private account

89 No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Trustee in bankruptcy to open account

90 (1) Every trustee in bankruptcy shall open an account in a local bank and shall pay the money received by him into it.

(2) Where the trustee opens an account under subsection (1), he shall keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

(3) Subject to any general rules relating to small bankruptcies under section 117, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Court, for the safety of the account, or other sufficient cause, order the withdrawal of the account.

(4) If a trustee at any time retains for more than thirty days a sum exceeding five hundred dollars, or such other amount as the Court in any particular case authorises him to retain, then unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of seven *per centum per annum*, and shall have no claim to remuneration, and may be removed from his office by the Court, and is liable to pay any expenses occasioned by reason of his default.

Audit of trustee's accounts

91 (1) Every trustee shall, at such times as may be prescribed, but not less than once in each year during his tenure of office, send to the Court, or as the Court directs, an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The trustee shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed with the Court, and the other copy shall be filed and kept with the Official Receiver, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Vacation of Office by Trustee

Release of trustee

92 (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, 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 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 may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the Court of Appeal.

(2) Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

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

(4) Subsections (1) to (3) (inclusive) apply to the Official Receiver when he is, or is acting as, trustee, and when the Official Receiver has been released under this section, or any previous similar enactment, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act or omission of his, default made, or liability incurred before his release.

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.

(6) Where, on the release of a trustee, the Official Receiver is, or is acting as trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

Office of trustee vacated by insolvency

93 If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

Removal of trustee

94 (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) On an application of an interested party the Court may, on any or all of the following causes shown:

(a) that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act;

(b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors;

(c) that he is by reason of unsound mind, or continued sickness or absence, incapable of performing his duties; or

(d) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally;

or where in any other matter he has been removed from office on the ground of misconduct, remove him from his office, but if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the Court of Appeal.

PART VI POWERS OF COURT

Jurisdiction

Jurisdiction

95 (1) The Supreme Court has jurisdiction for the purposes of this Act.

(2) Any proceedings in bankruptcy may at any time and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by a judge of the Court having jurisdiction in bankruptcy and in the prescribed manner from one judge to another judge.

Exercise in chambers of Supreme Court jurisdiction

96 Subject to this Act and to general rules, the Judge of the Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

Official Receiver to make payments in accordance with directions of Court

97 Where any moneys or funds have been received by the Official Receiver and the Court makes an order declaring that any person is entitled to such moneys or funds, the Official Receiver shall make the payment thereof to that person.

General power of Court

98 (1) Subject to this Act, the Court has 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 may deem 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 a receiving order has been made in the Court under this Act, the judge by whom such an order was made has power, if he sees fit, with out any further consent, to order the transfer to such judge of any action pending and brought or continued by or against the bankrupt.

(3) Where default is made by a trustee, debtor, or other person, in obeying any order or direction given by the Official Receiver under any power conferred by this Act or any enactment repealed by this Act, the Court may, on the application of the Official Receiver order the defaulting trustee, debtor, or person to comply with the order or direction so given; and the Court may also, if it thinks fit upon any such application, make an immediate order for the committal of the defaulting trustee, debtor, or other person; however, the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of the default.

Notification of bankruptcy of member of the Legislature

99 (1) If any member of the House of Assembly or of the Senate commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he were not a member.

(2) If a member of the House of Assembly or of the Senate is adjudged bankrupt the Court shall as soon as may be reasonable certify the same to the Speaker of the House of Assembly or to the President of the Senate, as the case may be.

Judgment Debtors

Judgment debtor's summons to be bankruptcy business

100 Where under section 3 of the Debtors Act 1973 [*title 8 item 47*] application is made by a judgment creditor to a court having bankruptcy jurisdiction for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor; in such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made and the provisions of this Act shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Review and Appeal

Review and appeal

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

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal and an appeal lies to the Court of Appeal.

(3) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure

Discretionary powers of Court

102 (1) Subject to this Act and to general rules, the costs of and incidental to any proceeding in Court under this Act 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 may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, it may think 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 the Court may think fit to impose.

(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, out of Bermuda, by commission.

Consolidations of petitions

103 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 the Court thinks fit.

Power to change carriage of proceedings

104 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 may be indebted in the amount required by this Act in the case of the petitioning creditor.

Continuance of proceedings on death of debtor

105 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.

Power to stay proceedings

106 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 such conditions as the Court may think just.

Power to present petition against some respondents only

107 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

108 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.

Property of partners to be vested in same trustee

109 Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against 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, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petition as it thinks just.

Actions by trustee and bankrupt's partners

110 Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action 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, 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

111 Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Proceedings in partnership name

112 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, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in the firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

Warrants

113 A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to which a search warrant for property supposed to be stolen may be executed according to law.

PART VII
SUPPLEMENTAL PROVISIONS

Application of Act

Exclusion of companies

114 A receiving order shall not be made against any corporation or any body corporate howsoever incorporated.

Application to limited partnerships

115 Subject to such modifications as may be made by general rules under this Act, this Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the trustee.

Privilege of Legislature

116 If a person having privilege in the House of Assembly or of the Senate commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

Application of Act in case of small estates

117 Where a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the Official Receiver reports to the Court, that the property of the debtor is not likely to exceed in value twenty thousand dollars, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

(a) if the debtor is adjudged bankrupt the Official Receiver shall be the trustee in the bankruptcy;

(b) there shall be no committee of inspection, but the Official Receiver may do with the permission of the Court all things which may be done by the trustee with the permission of the committee of inspection;

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

except that the creditors may at any time, by special resolution, resolve that some person other than the Official Receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

Administration in bankruptcy of estate of person dying insolvent

118 (1) 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.

(2) Upon the prescribed notice being given to the legal estate representative 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.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any court for the administration of the deceased debtor's estate, but that court may, when satisfied that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in bankruptcy, and thereupon the last-mentioned Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the Official Receiver, as trustee thereof, and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Act, but the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act, relating to trustees and committees of inspection, shall apply to trustees and committees of inspection appointed under the power so conferred; however, if no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the Court.

(5) With the modifications hereinafter mentioned, all the provisions of Part II of this Act (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (11), the following provisions, namely, section 29 (which relates to inquiries as to the debtor's conduct, dealings, and property); section 84 (which relates to the costs of trustees, managers, and other persons); section 92(4) so far as it relates to the effect of the release of the Official Receiver; section 117 (which relates to the summary administration of small estates), shall, so

far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(6) In the administration of the property of the deceased debtor under an order of administration, the Official Receiver or trustee shall have regard to any claim by the legal estate representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

(7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Official Receiver or trustee, 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, this surplus shall be paid over to the legal estate representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(8) Notice to the legal estate representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order of administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal estate

representative shall operate as a discharge to him as between himself and the Official Receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal estate representative before the date of the order for administration.

(9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal estate representative of the debtor; and, where a petition is so presented by such a representative, this section applies subject to such modifications as may be prescribed by general rules made under subsection (11).

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

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

Outstanding bankruptcies under repealed enactment

119 (1) The Bankruptcy Act 1876 shall apply as respects debtors who have been adjudged bankrupt or whose affairs have been liquidated by arrangement under that Act, and as respects proceedings under that Act outstanding on 31 January 1990.

(2) Save as mentioned in subsection (1), nothing in this Act shall affect such proceedings as aforesaid, but they shall continue, and the provisions of the Bankruptcy Act, 1876, and any rules, orders, and table of fees made thereunder, which were applicable to the case immediately before 31 January 1990, shall continue to apply thereto as if this Act had not been passed.

General Rules

Power to make general rules

120 (1) The Chief Justice may make rules for the purpose of giving effect to this Act and the rules may prescribe a scale of costs and allowances except that the rules so made shall not extend the jurisdiction of the Court.

(2) Rules made under this section shall be subject to the negative resolution procedure.

Fees

121 (1) There shall be paid in respect of—

(a) proceedings under this Act, and

(b) the performance by the Official Receiver of functions under this Act,

such fees as the Chief Justice may, after consultation with the Minister of Finance, by order direct; and the order may prescribe percentages to be charged for or in respect of proceedings under this Act and may direct by whom and in what manner the fees are to be collected and accounted for.

(2) The Chief Justice may, after consultation with the Minister of Finance, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the

order, by way of security for fees payable by virtue of this section.

(3) An order made under this section may contain such incidental, supplemental and transitional provisions as may appear to the Chief Justice necessary or expedient.

(4) An order made under this section shall be subject to the affirmative resolution procedure.

(5) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

Gazette evidence

122 (1) A copy of the Gazette containing any notice inserted therein pursuant to 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 evidence in all legal proceedings of the order having been duly made and of its date.

Evidence of proceedings at meetings of creditors

123 (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 and swearing of affidavits

124 (1) Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the Court, any instrument 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 having jurisdiction in bankruptcy, or purports to be signed by a judge thereof, or is certified as a true copy by the Official Receiver thereof, be receivable in evidence in all legal proceedings whatever.

(2) Subject to Rules made under this Act, any affidavit to be used in bankruptcy may be sworn before any person authorised to administer oaths in the Court or before a magistrate or justice of the peace, notary public, or in the case of a person who is out of Bermuda before a judge, magistrate, justice of the peace, notary public or other person qualified to administer oaths in the country where he resides.

Death of debtor or witness

125 In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceedings 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.

Certificate of appointment of trustee

126 A certificate of the Court that a person has been appointed trustee under this Act shall be conclusive evidence of this appointment.

Formal defect not to invalidate proceedings

127 (1) 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.

(2) No defect or irregularity in the appointment or election of the Official Receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Exemption from stamp duty

128 Stamp duty shall not be charged on —

(a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which is comprised in a bankrupt's estate and which, after the execution of that document, is or remains at law or in equity the property of the bankrupt or of the trustee of that estate;

(b) any power of attorney, proxy paper, writ, order, certificate or other instrument relating solely to the property of a bankrupt or to any bankruptcy proceedings.

Acting of corporations, partners, etc

129 For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a person suffering from mental disorder may act by the person authorised by law.

Reference to repealed Act

130 Where by any Act or instrument reference is made to the Bankruptcy Act 1876, that Act or instrument shall, unless the context otherwise requires, be construed and have effect as if this Act or the corresponding provision (if any) of this Act were therein referred to.

Certain provisions to bind Crown

131 Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Unclaimed Funds or Dividends

Unclaimed and undistributed dividends or funds under this and repealed Act

132 (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Act or any enactment repealed by this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Consolidated Fund.

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act repealed by this Act, or any petition, resolution, deed or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after they became

claimable or distributable, or in any case for two years after the receipt thereof by the trustee or other person, the trustee or other person shall pay them into the Consolidated Fund; however, the Court may upon the application of an interested party order any such trustee or other person to submit to it an account verified by affidavit of the sums received and paid by it under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

(3) The Court may appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section a court having jurisdiction in bankruptcy has and, at the instance of the person so appointed, may exercise, all the powers conferred by this Act with respect to the discovery and realisation of the property of the debtor, and the provisions of Part I with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(4) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(5) Any person claiming to be entitled to any moneys paid into the Consolidated Fund may apply to the Minister of Finance and the Minister if satisfied that the person claiming is entitled, shall make an order for the payment to the person of the sum due.

(6) Any person dissatisfied with the decision of the Minister of Finance in respect of his claim may appeal to the Court.

PART VIII BANKRUPTCY OFFENCES

Bankrupt absconding with property

133 If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before the presentation, quits Bermuda and takes with him, or attempts or makes preparation to quit Bermuda and take with him, any part of his property to the value of five hundred dollars or upwards which ought by law to be divided amongst his creditors, he is (unless he proves that he had no intent to defraud) guilty of felony and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

Fraudulent debtors

134 (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 following cases be guilty of a misdemeanour:

(a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, 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 expense of his family, unless he proves that he had no intent to defraud;

(b) if he does not deliver up to the trustee, or as he directs, all such part of his real and personal 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 trustee, or as he directs, all books, documents, papers, writings, and other records 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 the present ation, he conceals any part of his property to the value of two hundred dollars or upwards, or conceals any debt due to or from him, unless he proves 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 the present ation, he fraudulently removes any part of his property to the value of two hundred dollars or upwards;

(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 that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;

(h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book,

document, paper, writing, or records 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 the presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book, document, writing, paper or other records 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 the presentation of a bankruptcy petition by or against him, or within twelve months next before the presentation, he makes or is privy to the making of any false entry in any book, document or records 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 the presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making of any omission in, any book, document or records affecting or relating to his property or affairs;

(l) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before the presentation, he attempts to account for any part of his property by fictitious losses or expenses;

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;

f, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 100, before the date of the order, 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, of 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 intention to defraud;

(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 pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, the pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;

(p) 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 an agreement with reference to his affairs or to his bankruptcy.

(2) A person guilty of a misdemeanour under subsection (1) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

(3) For the purpose of this section, the expression "trustee" means the Official Receiver of the debtor's estate or trustee administering his estate for the benefit of his creditors.

(4) Where any person pawns, pledges or disposes of any property in circumstances which amount to a

misdemeanour under subsection (1)(o), 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 as aforesaid is guilty of a misdemeanour, and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months or both or on conviction on indictment to imprisonment for seven years.

Undischarged bankrupt obtaining credit

135 Where an undischarged bankrupt—

(a) either alone or jointly with any other person obtains credit to the extent of one hundred dollars or upwards from any person without informing that person that he is an undischarged bankrupt; or

(b) engages (whether directly or indirectly) in any trade or

business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt,

he is guilty of a misdemeanour and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

Frauds by bankrupts, etc

136 If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made-

(a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud;

(b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property; or

(c) with intent to defraud his creditors, has 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;

he is guilty of a misdemeanour and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

Bankrupt guilty of gambling, etc

137 (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, is guilty of a misdemeanour, if, having been engaged in any business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of the business—

(a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and the gambling or speculations are unconnected with his business;

(b) 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 the gambling or rash and hazardous speculations as mentioned in paragraph (a); or

(c) on being required by the Official Receiver at any time, or in the course of his 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 the loss was incurred.

(2) A person guilty of a misdemeanour under subsection (1) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

(3) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(4) Where a receiving order is made against a person under section 100, this section applies as if for references to the presentation of a petition there were substituted references to the making of a receiving order.

Bankrupt failing to keep proper accounts

138 (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made is guilty of a misdemeanour, if, having been engaged in any business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper accounting records 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 the accounting records so kept; however, a person who has not kept or has not preserved the accounting records 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, ten thousand dollars, or in any other case five thousand dollars; or

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

(2) A person guilty of a misdemeanour under subsection (1) is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

(3) For the purposes of this section, a person shall be deemed not to have kept proper accounting records if he has not kept such records as are necessary to exhibit or explain his transactions and financial position in his business, including records containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the 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 customer) records of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

(4) Paragraphs (i), (j), and (k) of section 134 (which relate to the destruction, mutilation, and falsification and other fraudulent dealing with books, documents and records), shall, in their application to such records as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time mentioned in those paragraphs as the time prior to the presentation within which the acts or omissions specified in those paragraphs constitute an offence.

False claim, etc

139 If any creditor, or any person claiming to be a creditor, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account, which is untrue in any material particular, he is guilty of a misdemeanour, and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both or on conviction on indictment to imprisonment for two years.

Order by Court for prosecution on report of trustee

140 Where a trustee in bankruptcy reports to the Court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Act or of any offence under the repealed Bankruptcy Act 1876, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the Court shall, if it appears to the Court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for the offence.

Criminal liability after discharge or composition

141 Where a debtor has been guilty of any criminal offence, he is not 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.

Trial of offences

142 Summary proceedings in respect of any offence under this Act shall not be instituted after one year from the first discovery thereof by the trustee in bankruptcy or, in the case of proceedings instituted by the creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

Setting forth substance of offence charged

143 In an indictment for an offence under this Act, it is sufficient to set forth the substance of the offence charged in the words specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, any court acting under this Act or the repealed Bankruptcy Act 1876.

Assistance to courts of United Kingdom

144 (1) The Court and the officers of that Court shall assist the courts having bankruptcy jurisdiction in any part of the United Kingdom.

(2) For the purposes of subsection (1), a request for assistance made to the Court by a court having bankruptcy jurisdiction in any part of the United Kingdom is sufficient authority for the Court to which the request is made to exercise in relation to any matters specified in the request such jurisdiction as it or the court making the request could exercise with respect to comparable matters falling within its own jurisdiction; however, in exercising its discretion under this subsection the Court shall have regard in particular to the rules of private international law.

Repeal

145 (1) The Bankruptcy Act 1876 is repealed.

(2) Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Act 1876 which are in force on 31 January 1990 shall continue in force and shall have effect as if made under this Act.

Amendment of laws

146 The laws specified in the first column of the Third Schedule are amended in the manner specified in the second column of that Schedule.

THE FIRST SCHEDULE Section 14(2) MEETINGS OF CREDITORS

- 1 The first meeting of creditors shall be summoned for a day not later than thirty days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.
- 2 The Official Receiver shall summon the meeting by giving not less than seven clear days' notice of the time and place thereof in the Gazette or in a local paper.
- 3 The Official Receiver 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 first meeting of creditors, accompanied by either a summary of the debtor's statement of affairs (including the cause of his failure) or a report of what the circumstances are and any observations thereon which the Official Receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice, summary or report 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 Official Receiver most convenient for the majority of creditors.
- 5 The Official Receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested by a creditor in accordance with the provisions of this Act.
- 6 Meetings subsequent to the first meeting shall be summoned by publishing in a local newspaper the time and place thereof or by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs or report, or at such other address as may be known to the person summoning the meeting.
- 7 The Official Receiver, or some person nominated by him shall be the chairman at the first meeting. The chairman at subsequent meetings shall be the trustee or some person nominated by him and if there is no such nomination then such person as the meeting shall by resolution appoint.
- 8 A person is not entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor at the time specified in the notice, 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, or any debt the value of which is not ascertained.
- 10 For the purpose 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 is 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 trustee or to the Official Receiver, within sixty days after a proof estimating the value of a security as afore said 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 except 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 such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee 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 is entitled to vote thereat.

14 The chairman of a meeting has 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 (1) A creditor may vote either in person or by proxy.

(2) Where a creditor appoints a corporation as proxy such appointment shall be evidenced under the seal of the corporation or by resolution.

16 Every instrument of proxy shall be in the prescribed form, and shall be issued by the Official Receiver of the debtor's estate, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Court.

17 General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the Official Receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18 A creditor may give a general proxy to any person and in such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19 A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:

(a) for or against any specific proposal for a composition or scheme of arrangement;

(b) for or against the appointment of any specified person as trustee at a specified rate of remuneration, or a member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;

(c) on all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20 A proxy shall not be used unless it is deposited with the Official Receiver or trustee not later than the time mentioned for that purpose in the notice convening the meeting.

21 Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring such positions except by the direction of a meeting of creditors, the Court has power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf the solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22 A creditor may appoint the Official Receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

23 The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24 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.

25 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 nor more than sixty days.

26 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 or by the chairman of the next ensuing meeting.

27 No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place him self, his partner or employer, in a position to receive any remuneration out of the estate of the debtor except that where any person hold special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28 The vote of the trustee, or of his partner or his employee either as creditor or as a general proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

SECOND SCHEDULE Section 38 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 Official Receiver or, if a trustee has been appointed, to the trustee —

(a) in any case in which the Official Receiver or trustee so requires, an affidavit verifying the debt;

(b) in any other case, an unsworn claim to the debt.

3 The affidavit or claim may be made by the creditor himself, or by some person authorised by or on behalf of the creditor; if made by a person so authorised it shall state his authority and means of knowledge.

4 The affidavit or claim 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 or such other information substantiating the debt. The Official Receiver or trustee may at any time call for the production of the vouchers or such other information substantiating the debt.

5 The affidavit or claim shall state whether the creditor is or is not a secured creditor and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the Official Receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.

6 A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7 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 may have agreed to allow for payment in cash.

8 If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

9 If a secured creditor surrenders his security to the Official Receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

10 If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and is entitled to receive a dividend only in respect of the balance due to him after deducting the value so entitled.

11 (1) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the trustee 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 may be agreed on between the creditor and the trustee, or as, in default of the agreement, the Court may direct. If the sale is by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase; however the creditor may at any time, by notice in writing, require the trustee to

elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he is not 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 trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

12 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 trustee, 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 shall order, unless the trustee shall allow the amendment without application to the Court.

13 Where a valuation has been amended in accordance with rule 12, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, is entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have 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 is not entitled to disturb the distribution of any dividend declared before the date of the amendment.

14 If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 11, the net amount realised 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.

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

Proof in respect of Distinct Contracts

16 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 circumstances 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

17 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

18 On any debt or sum certain, payable at a certain time or other wise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate in accordance with the Interest and Credit Charges (Regulation) Act 1975 [*title 17 item 22*].

Debt payable at a future time

19 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 seven dollars 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.

Admission or Rejection of Proofs

20 The trustee 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.

21 If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditors who made the proof, expunge the proof or reduce its amount.

22 If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

23 The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

24 For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

25 The Official Receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.