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GRENADA

**ACT NO. 15 OF 2016**

**I assent,**



*27th April, 2016.*

CÉCILE E. F. LA GRENADE  
*Governor-General.*

AN ACT to provide for the modernisation of the law relating to bankruptcy and insolvency of individuals and corporations; to provide for the repeal of the Bankruptcy Act; to create the office of Supervisor of Insolvency; and to provide for related matters.

*[ By Notice ].*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the authority of the same as follows—

**PART I**

**PRELIMINARY**

**1.** This Act may be cited as the

Short title.

**BANKRUPTCY AND INSOLVENCY ACT, 2016.**

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Commencement. 2.—(1) This Act shall come into operation on a date to be fixed by the Minister by Notice in the *Gazette*.

(2) Different dates may be fixed for the coming into operation of different Parts of this Act.

Interpretation. 3.—(1) In this Act—

“act of bankruptcy” means an act of bankruptcy referred to in section 54(1);

“affidavit” includes statutory declaration and solemn affirmation;

“assignment” means an assignment filed with the Supervisor, and includes a deemed assignment under this Act;

“bank” means a bank within the meaning of section 2(1) of the Banking Act No. 20 of 2015 and includes a financial institution referred to in the First Schedule of the Grenada Authority for the Regulation of Financial Institutions Act Cap. 125A;

“bankrupt” means a person who has made an assignment or against whom a bankruptcy order has been made;

“bankruptcy order” means an order of the Court made under section 56(1);

“claim provable in bankruptcy”, “provable claim” or “claim provable” includes any claim or liability provable in proceedings under this Act by a creditor;

“corporation” means any incorporated company, wherever or however incorporated, that is authorised to carry on business in Grenada or that has an office or property in Grenada, but does not include a bank;

“Court” means the High Court and includes a judge sitting in chambers;

“creditor” means a person having a claim provable as a claim under this Act;

“Crown” means Her Majesty in right of Grenada;

“date of the bankruptcy”, in respect of a person, means the date of—

- (a) the granting of a bankruptcy order against the person; or
- (b) the filing of an assignment by or in respect of the person;

“date of the initial bankruptcy event”, in respect of a person, means the earliest of the day on which any of the following is made, filed or commenced, as the case may be—

- (a) an assignment by or in respect of the person;
- (b) a proposal by or in respect of the person;
- (c) a notice of intention by the person; and

- (d) an application for a bankruptcy order against the person;

“debtor” includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Grenada and, where the context requires, includes a bankrupt;

“eligible financial contract” means an agreement of a prescribed kind;

“financial collateral” means any of the following that is subject to an interest that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement—

- (a) cash or cash equivalents, including negotiable instruments and demand deposits;
- (b) securities, a securities account, a securities entitlement or a right to acquire securities; or
- (c) a futures agreement or a futures account;

“inspector” means an inspector appointed under section 80 or 144;

“insolvent person” means a person who is not a bankrupt and who resides, or carries on business or has property, in Grenada, and—

- (a) whose liabilities to creditors provable as claims under this Act amount to five thousand dollars or more;
- (b) who is for any reason unable to meet his obligations as they generally become due;
- (c) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or
- (d) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

“interim receiver” means a person who is appointed by the Court under sections 59, 60 or 61 as an interim receiver;

“Minister” means the Minister responsible for Finance;

“net termination value” means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

“notice of intention” means a notice of intention filed under section 72(1);

“person” includes a partnership, an unincorporated association, a corporation, a co-operative society

or organisation and the successors, heirs, executors, liquidators, administrators or other legal representative of a person;

“property” means any type of property, whether situated in Grenada or elsewhere, and includes money, goods, choses in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent in, arising out of or incidental to property;

“proposal” means a proposal made under Part IV;

“receiver” means a receiver within the meaning of section 210(3);

“Registrar” means the Registrar of the Supreme Court;

“regulations” means regulations made under section 263;

“resolution” or “ordinary resolution” means a resolution carried in the manner provided for by section 143;

“secured creditor” means a person—

- (a) who holds a mortgage, pledge, charge or lien on or against the property of the debtor or any part thereof as security for a debt due or accruing due to that person by the debtor; or

- (b) whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable;

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

“Supervisor” means the Supervisor of Insolvency appointed under section 5(1);

“title transfer credit support agreement” means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract;

“transfer at undervalue” means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor;

“trustee” or “licensed trustee” means a person who is licensed or appointed as a trustee under this Act.

(2) For the purposes of this Act, a change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property.

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Related persons.

4.—(1) For the purposes of this Act, persons are related to each other and are “related persons” if they are—

- (a) individuals connected by blood relationship, marriage or adoption;
- (b) an entity and—
  - (i) a person who controls the entity, if it is controlled by one person;
  - (ii) a person who is a member of a related group that controls the entity; or
  - (iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or
- (c) two entities—
  - (i) both controlled by the same person or group of persons;
  - (ii) each of which is controlled by one person and the person who controls one of the entities is related to the person who controls the other entity;
  - (iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other entity;
  - (iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other entity;

- (v) one of which is controlled by a related group, a member of which is related to each member of an unrelated group that controls the other entity; or
- (vi) one of which is controlled by an unrelated group, each member of which is related to at least one member of an unrelated group that controls the other entity.

(2) For the purposes of this section—

- (a) if two entities are related to the same entity within the meaning of subsection (1), they are deemed to be related to each other;
- (b) if a related group is in a position to control an entity, it is deemed to be a related group that controls the entity whether or not it is part of a larger group by whom the entity is in fact controlled;
- (c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, or to acquire, ownership interests, however designated, in an entity, or to control the voting rights in an entity, is, except when the contract provides that the right is not exercisable until the death of an individual designated in the contract, deemed to have the same position in relation to the control of the entity as if the person owned the ownership interests;
- (d) if a person has ownership interests in two or more entities, the person is, as holder of any ownership interest in one of the entities, deemed to be related to himself or herself as holder of any ownership interest in each of the other entities;

- (e) persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;
- (f) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship or adoption to the other; and
- (g) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected by blood relationship, otherwise than as a brother or sister, to the other.

(3) It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length.

(4) Persons who are related to each other are deemed not to deal with each other at arm's length while so related. For the purpose of section 122(1)(b) or 123(1)(b), persons are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length.

(5) In this section—

“entity” means a person other than an individual;

“related group” means a group of persons each member of which is related to every other member of the group;

“unrelated group” means a group of persons that is not a related group.

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**PART II****ADMINISTRATIVE OFFICIALS****SUPERVISOR OF INSOLVENCY**

Appointment  
and functions.

**5.—**(1) For the purposes of this Act, there shall be appointed a Supervisor of Insolvency who shall be a public officer and who shall be responsible to the Minister for the general administration of this Act.

(2) The Supervisor shall supervise the administration of all estates and matters to which this Act applies.

(3) The Supervisor shall, without limiting the authority conferred by subsection (2)—

- (a) receive applications for licences to act as trustees under this Act and issue licences to persons whose applications have been approved;
- (b) where not otherwise provided for, require the deposit of one or more continuing guaranty bonds as security for the due accounting of all property received by trustees and for the due and faithful performance by them of their duties in the administration of estates to which they are appointed, in such amount as the Supervisor may determine, which amount may be increased or decreased as he may deem expedient, and the security shall be in a form satisfactory to the Supervisor and may be enforced by the Supervisor for the benefit of the creditors;

- (c) from time to time make or cause to be made such inspection or investigation of estates or other matters to which this Act applies, including the conduct of a trustee or a trustee acting as a receiver or interim receiver, as the Supervisor may deem expedient, and for the purpose of the inspection or investigation the Supervisor or any person appointed by the Supervisor for the purpose shall have access to and the right to examine and make copies of all books and records pertaining or relating to any estate or other matter to which this Act applies;
- (d) receive and keep a record of all complaints from any creditor or other person interested in any estate and make such specific investigations with regard to such complaints as the Supervisor may determine; and
- (e) examine trustee's accounts of receipts and disbursements and final statements.

(4) The Supervisor may intervene in any matter or proceeding in Court, if the Supervisor considers it expedient to do so, as if the Supervisor were a party to the matter or proceedings.

(5) The Supervisor may—

- (a) issue to trustees and persons who provide counselling under this Act guidelines with respect to the administration of this Act and, without restricting the generality of the foregoing, guidelines regarding the

keeping of records and provisions of information under this Act or the regulations;

- (b) issue guidelines to facilitate giving effect to any decision made by the Supervisor under this Act or to facilitate the carrying out of the purposes and provisions of this Act and the regulations, including, without limiting the generality of the foregoing, guidelines relating to the powers, duties and functions of trustees and receivers; and
- (c) issue guidelines regarding the criteria to be applied by the Supervisor in determining whether a trustee licence is to be issued to a person and governing the qualifications and activities of trustees.

(6) Guidelines issued by the Supervisor under this section shall be deemed not to be subsidiary legislation within the meaning and for the purposes of the Interpretation and General Provisions Act Cap. 153A.

Notices to  
Supervisor.

**6.** Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provided to the Supervisor shall be given, forwarded, mailed, sent or otherwise provided to the Supervisor as prescribed in regulations or as specified in guidelines issued by the Supervisor.

Examination of  
books and  
accounts.

**7.—(1)** The Supervisor, or anyone duly authorised by him in writing on his behalf, is entitled to have access to and to examine and make copies of the banking accounts of a trustee in which estate funds may have been deposited, and, when required, all deposit slips, cancelled cheques or other documents relating to the banking accounts in the custody of the bank or the trustee shall be produced for examination.

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(2) The Supervisor, or anyone duly authorised in writing by or on behalf of the Supervisor, may with the leave of the Court granted on an *ex parte* application examine the books, records and deposit accounts of a trustee or any other person designated in the order granting that leave for the purpose of tracing or discovering the property or funds of an estate if there are reasonable grounds to believe that the property or funds of an estate have not been properly disclosed or dealt with and for that purpose may under a warrant from the Court enter on and search any premises.

(3) If the Supervisor, on *ex parte* application, satisfies the Court that it is necessary and in the public interest to do so, the Court may issue an order directing a bank or a deposit-taking institution which holds a deposit account of a trustee or such other person as is designated in the order not to make payments out of the account until such time as the Court otherwise directs.

Investigation or inquiries by Supervisor.

**8.—**(1) If, on information supplied by a trustee or other person, the Supervisor suspects on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this Act or any other law, the Supervisor may, if it appears to the Supervisor that the alleged offence might not otherwise be investigated, make or cause to be made such inquiries or investigations as the Supervisor considers appropriate.

(2) If, on the application of the Supervisor or the Supervisor's authorised representative, an order has been issued by the Court, the Supervisor may, for the purpose of an investigation or inquiry under subsection (1), examine or cause to be examined under oath before the Registrar or other authorised person—

- (a) the trustee or any employee, officer, director or agent of the trustee;
- (b) the debtor or any employee, officer, director or agent of the debtor;
- (c) any person whom the Supervisor suspects, on reasonable grounds, has knowledge of the affairs of the debtor,

with respect to—

- (a) the conduct, dealings and transactions of the debtor;
- (b) the causes of the bankruptcy or insolvency of the debtor; and
- (c) the disposition of the property of the debtor or the administration of the bankruptcy estate,

and the Supervisor may order any person liable to be so examined to produce any books and records in the person's possession or under the person's control.

(3) A person being examined under this section shall answer all questions relating to the conduct, dealings and transactions of the debtor, the causes of the debtor's bankruptcy or insolvency and the disposition of the debtor's property.

(4) Where a person being examined under this section objects to answering any question on the ground that his answer may tend to incriminate him or may tend to establish

his liability to a civil proceeding and if, but for this section, he would have been excused from answering that question, the answer so given shall not be used or admitted in evidence against him in any proceeding, civil or criminal, thereafter taking place other than a prosecution for perjury in the giving of that evidence.

(5) No person shall hinder, molest or interfere with any person doing anything that he is authorised by or under this section to do, or prevent or attempt to prevent any person doing any such thing, and, notwithstanding any other law, a person shall, unless he is unable to do so, do everything he is required by or under this section to do.

(6) If any book or record is examined or produced in accordance with this section, the person by whom it is examined or to whom it is produced or the Supervisor may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Supervisor or a person authorised by the Supervisor to be a copy made under this section is admissible in evidence and has the same probative force as the original document would have if it were proven in accordance with the Evidence Act Cap. 92.

(7) Notwithstanding section 164, a recovery made as the result of any inquiries or investigation made or caused to be made under this section shall be applied to the reimbursement of any costs and expenses incurred by the Supervisor on the recovery, not being ordinary costs or expenses of the office of the Supervisor, and the balance remaining in respect of the recovery shall be made available for the benefit of the creditors of the debtor.

9.—(1) The Supervisor shall keep, or cause to be kept, in such form as the Supervisor deems appropriate and for the prescribed period, a public record of—

Supervisor  
to keep  
public  
records.

- (a) proposals;
- (b) bankruptcies;
- (c) licences issued to trustees by the Supervisor;  
and
- (d) notices sent to the Supervisor by receivers  
under section 212,

and, on request for a public record and on payment of such fee as may be prescribed, shall provide or cause to be provided any information contained in that public record.

(2) The Supervisor shall keep, or cause to be kept, in such form as the Supervisor deems appropriate and for the prescribed period, such other records relating to the administration of this Act as the Supervisor considers necessary.

## TRUSTEES

### LICENSING OF TRUSTEES

10.—(1) A person who wishes to obtain a licence to act as a trustee shall file with the Supervisor an application for a licence in the prescribed form.

Application  
for licence.

(2) The Supervisor, after such investigation concerning an applicant for a licence as the Supervisor considers necessary, may issue a licence if the Supervisor, having regard to qualifications that may be prescribed, is satisfied that the applicant is qualified to obtain the licence.

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(3) The Supervisor may refuse to issue a licence to an applicant who is insolvent or has been found guilty of an indictable offence that, in the Supervisor's opinion, is of a character that would impair the trustee's capacity to perform his or her fiduciary duties.

Form of licence. **11.** A licence shall be in the prescribed form and shall be subject to such conditions and limitations as the Supervisor considers appropriate and may specify in the licence.

Payment of fees. **12.—(1)** Prior to the issue of a licence, the applicant shall pay such fees as may be prescribed and thereafter on the thirty-first day of December following the day on which a licence is issued, and on the thirty-first day of December in each year, the trustee shall pay such fees as may be prescribed.

(2) A licence ceases to be valid on the failure of the trustee to pay a fee in accordance with subsection (1), or if the trustee becomes bankrupt.

(3) If a licence has ceased to be valid by reason of—

- (a) failure to pay fees, the Supervisor may reinstate the licence if the trustee pays the outstanding fees together with any prescribed penalty amount and provides a reasonable written explanation of the failure to pay the fees in accordance with subsection (1); or
- (b) the trustee becoming bankrupt, the Supervisor may, on written representations made

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by the trustee, reinstate the licence subject to such conditions and limitations as the Supervisor considers appropriate and may specify in the licence.

**13.—(1)** A licence may be suspended or cancelled by the Supervisor if—

Suspension  
or cancel-  
lation of  
licence.

- (a) the trustee is convicted of an indictable offence;
- (b) the trustee has failed to comply with any of the conditions or limitations to which the licence is subject;
- (c) the trustee has ceased to act as a trustee; or
- (d) the trustee so requests.

(2) Notice of an intended decision under subsection (1) shall be in writing setting out the reasons of the Supervisor for the decision and shall be sent to the trustee at least ten days before the decision takes effect.

(3) If a licence ceases to be valid by virtue of section 12(2) or is suspended or cancelled under subsection (1), the Supervisor may impose on the trustee any requirements that the Supervisor considers appropriate, including a requirement that the trustee deposit security for the protection of an estate.

(4) For greater certainty, section 20 does not apply in respect of a suspension or cancellation of a licence under this section.

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CONDUCT OF TRUSTEE

Trustee prohibited from acting in certain circumstances.

**14.—(1)** Except with the permission of the Court and on such conditions as the Court may impose, no trustee shall act as trustee in relation to the estate of a debtor—

- (a) if the trustee is, or at any time during the two preceding years was—
  - (i) a director or officer of the debtor;
  - (ii) an employer or employee of the debtor or of a director or officer of the debtor;
  - (iii) related to the debtor or to any director or officer of the debtor; or
  - (iv) the auditor, accountant or legal counsel of the debtor, or a partner or employee of the auditor, accountant or legal counsel of the debtor; or
- (b) if the trustee is—
  - (i) the trustee under a trust indenture issued by the debtor or any person related to the debtor; or
  - (ii) related to the trustee under a trust indenture referred to in subparagraph (i).

(2) A trustee who applies for the permission of the Court for the purposes of subsection (1) shall immediately send a copy of the application to the Supervisor.

(3) No trustee shall act as a trustee in relation to the estate of a debtor if the trustee is already—

- (a) the trustee in the bankruptcy of, or in a proposal concerning, any person related to the debtor; or
- (b) a receiver or liquidator of the property of any person related to the debtor,

without making, at the time of being appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

**15.—(1)** No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realise or otherwise deal with a security that the secured creditor holds, unless the trustee has obtained a written opinion of independent legal counsel that the security is valid and enforceable as against the estate.

Trustee to obtain legal opinion before acting for secured creditor.

(2) Immediately on commencing to act for or assist a secured creditor of the estate in the manner set out in subsection (1), a trustee shall notify the Supervisor and the creditors or the inspectors in respect of the estate—

- (a) that the trustee is acting for the secured creditor;
- (b) of the basis of any remuneration payable to the trustee by the secured creditor; and
- (c) of the opinion referred to in subsection (1).

(3) Within two days after receiving a request for a copy of the opinion referred to in subsection (1), a trustee shall provide the Supervisor with a copy of the opinion and shall also provide a copy to each creditor who has requested a copy.

Code of ethics.

**16.** A trustee shall comply with any code of ethics respecting the conduct of trustees that may be prescribed.

Persons disqualified from working for trustee.

**17.** A trustee shall not engage the services of another trustee whose licence has been cancelled under section 13(1)(a) or 19(1).

#### APPOINTMENT AND SUBSTITUTION OF TRUSTEE

Appointment or substitution of trustee by creditors.

**18.** Creditors may, at any meeting, by special resolution, appoint or substitute another licensed trustee for the trustee named in an assignment, bankruptcy order or proposal, or otherwise appointed or substituted.

Supervisor's powers regarding trustee.

**19.—(1)** If, after making an investigation or inquiry into the conduct of a trustee, it appears to the Supervisor that—

- (a) a trustee has not properly performed the duties of a trustee or has been guilty of any improper management of an estate;
- (b) a trustee has not fully complied with this Act and the regulations or any law with regard to the proper administration of any estate; or
- (c) it is in the public interest to do so,

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the Supervisor may do one or more of the following—

- (a) cancel or suspend the licence of the trustee;
- (b) place such conditions or limitations on the licence as the Supervisor considers appropriate including a requirement that the trustee successfully take an exam or enrol in a relevant course; and
- (c) require the trustee to make restitution to the estate of such amount of money as the estate has been deprived of as a result of the trustee's conduct.

(2) This section and section 20 apply, in so far as they are applicable, in respect of former trustees, with such modifications as the circumstances require.

**20.**—(1) If the Supervisor intends to exercise any of the powers referred to in section 19(1), the Supervisor shall send the trustee written notice of the powers that the Supervisor intends to exercise and the reasons therefor and afford the trustee a reasonable opportunity for a hearing.

Notice by  
Supervisor  
to trustee.

(2) At a hearing referred to in subsection (1), the Supervisor—

- (a) has power to administer oaths;
- (b) is not bound by any legal or technical rules of evidence in conducting the hearing;
- (c) shall deal with the matters set out in the notice of the hearing as informally and as expeditiously as the circumstances and a consideration of fairness permit; and

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- (d) shall cause a summary of any oral evidence to be made in writing.

(3) The notice referred to in subsection (1) and, where applicable, the summary of oral evidence referred to in subsection (2)(d), together with such documentary evidence as the Supervisor receives in evidence shall form the record of the hearing.

(4) The hearing referred to in subsection (1), and the record of the hearing referred to in subsection (3), are public, unless the Supervisor is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public interest, outweighs the desirability of the access by the public to information about those matters.

(5) The decision of the Supervisor after a hearing referred to in subsection (1), together with the reasons given for the decision shall be given in writing to the trustee not later than three months after the conclusion of the hearing, and the decision shall be made public.

(6) A decision referred to in subsection (5) is subject to judicial review.

Protection of  
estate by  
Supervisor.

**21.—(1)** In the circumstances referred to in subsection (2), the Supervisor may for the protection of an estate or the rights of a debtor or creditor—

- (a) direct a person to deal with property of the estate described in the direction in such

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manner as may be indicated in the direction, including the continuation of the administration of the estate;

- (b) direct any person to take such steps as the Supervisor considers necessary to preserve the books and records of the estate;
- (c) direct a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction; and
- (d) if action in respect of a trustee is being taken under section 13 or 19, refuse to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

(2) The circumstances in which the Supervisor is authorised to exercise the powers set out in subsection (1) are where—

- (a) an estate is left without a trustee by the death, removal or incapacity of the trustee;
- (b) the Supervisor makes or causes to be made any investigation or inquiry under this Act;
- (c) the Supervisor exercises any of the powers set out in section 19(1);
- (d) the fees referred to in section 12 have not been paid in respect of the trustee's licence;
- (e) a trustee becomes insolvent;

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- (f) a trustee is convicted of an indictable offence or has failed to comply with any of the conditions or limitations to which the trustee's licence is subject; or
  - (g) a circumstance referred to in section 13(1)(c) or (d) exists and the Supervisor is considering cancelling the licence.

(3) A direction given under subsection (1)–

- (a) shall state the statutory authority under which the direction is given;
- (b) is binding on the person to whom it is given; and
- (c) is, in respect of the person to whom it is given, conclusive proof of the facts set out in the direction.

(4) A person who complies with a direction given under subsection (1) is not liable for any act done by the person only to comply with that direction.

Court may  
remove trustee  
and appoint a  
replacement.

**22.** The Court on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee's place.

Appointment by  
Supervisor of  
non-licensed  
trustee.

**23.** If no licensed trustee can be found who is willing to act as trustee, the Court or the Supervisor may appoint a responsible person to administer the estate of the debtor, and that person, for that purpose, has all the powers of a licensed

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trustee under this Act, and the provisions of this Act apply to that person as if a licence had been issued to that person under section 5(3)(a).

**24.**—(1) No trustee is bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in place of the trustee, perform the duties required of a trustee under this Act. Performance of duties by trustee upon appointment.

(2) In subsections (3) to (9), reference to a trustee means a trustee in a bankruptcy or a proposal and includes—

- (a) an interim receiver;
- (b) a receiver; and
- (c) any other person who has been lawfully appointed to take, or has lawfully taken, possession or control of any property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

(3) Notwithstanding anything in any law, if a trustee in that position carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer—

- (a) that is in respect of the employees or former employees of the debtor or a pre-

decessor of the debtor or in respect of a pension plan for the benefit of those employees; and

- (b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

(4) A liability referred to in subsection (3) shall not rank as costs of administration.

(5) Subsection (3) does not affect the liability of a successor employer other than the trustee.

(6) Notwithstanding anything in any law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred—

- (a) before the trustee's appointment; or
- (b) after the trustee's appointment, unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct.

(7) Nothing in subsection (6) exempts a trustee from any duty to report or make disclosure imposed by any law.

(8) Any claim by the Crown against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property of the debtor is secured by a charge on the real property and on any other real property of the debtor that is contiguous thereto and that is related to the activity that

caused the environmental condition or environmental damage, and the charge—

- (a) is enforceable in the same way as a mortgage or other security on real property; and
- (b) ranks above any other claim, right or security against the property, notwithstanding any other provision of this Act or any other law.

(9) Notwithstanding section 149, a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

**25.** No defect or irregularity in the appointment of a trustee vitiates any act done by the trustee in good faith. Defect or irregularity in appointment of trustee.

**26.—(1)** A body corporate may hold a licence as trustee only if a majority of its directors and a majority of its officers hold licences as trustees. Corporation as trustee.

(2) A body corporate that holds a licence as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the body corporate who holds a licence as a trustee.

(3) A body corporate that is incorporated by or under an Act of Parliament and that holds a licence as a trustee may carry on the business of a trustee and shall not, in respect of its operations as a trustee, be construed to be carrying on the business of a trust company.

Official name.

**27.** The official name of a trustee acting in bankruptcy proceedings is “The Trustee of the Estate of (insert the name of the bankrupt), a Bankrupt”, and the official name of a trustee acting with respect to a proposal by an insolvent person is “The Trustee acting with respect to the proposal of (insert the name of the debtor)”.

#### DUTIES AND POWERS OF TRUSTEE

Trustee to give security and take possession of property.

**28.—**(1) A trustee duly appointed shall, as soon as he is appointed, give security in cash or by bond of a guarantee company satisfactory to the Supervisor for the due accounting for the payment and the transfer of all property received by him as trustee and for the due and faithful performance of the trustee’s duties.

(2) The security required to be given under subsection (1) shall be given to the Supervisor in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of the Court, and may be increased or reduced by the Supervisor.

(3) The trustee shall, as soon as possible, take possession of the deeds, books and records, and all property of the bankrupt and make an inventory and for the purpose of making an inventory the trustee is entitled to enter, subject to subsection (4), on any premises on which the books and records or property of the bankrupt may be, even if they are in the possession of a bailiff, a secured creditor or other claimant to them.

(4) If the premises referred to in subsection (3) are occupied by a person other than the bankrupt, the trustee may not enter the premises without the consent of that other person except under the authority of a warrant issued under section 242.

(5) 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.

(6) No person is, as against the trustee, entitled to withhold possession of the books and records belonging to the bankrupt or to set up any lien or right of retention on those books and records.

**29.** If a person has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee, that person shall deliver the property to the trustee. Property to be delivered to trustee.

**30.** The trustee may when necessary in the interest of the estate of the bankrupt— Protective measures.

- (a) take protective measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value; and
- (b) carry on the business of the bankrupt until the date fixed for the first meeting of creditors.

**31.—(1)** The trustee may prior to the first meeting of creditors obtain such legal advice and take such Court proceedings as he may consider necessary for the recovery or protection of the property of the bankrupt. Legal action to recover or protect property of bankrupt.

(2) In the case of an emergency where the necessary authority cannot be obtained from the inspectors in time to take appropriate action, the trustee may obtain such legal

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advice and institute such legal proceedings and take such action as he may consider necessary in the interests of the estate of the bankrupt.

Divesting of real property.

**32.**—(1) The trustee may, with the permission of the inspectors, divest all or any part of the trustee's right, title or interest in any real property of the bankrupt by notice or disclaimer by the trustee, and the Registrar of the Deeds and Land Registry shall accept and register the notice in the Deeds and Land Registry when it is tendered for registration.

(2) Registration of a notice under subsection (1) operates as a discharge or release of any document previously registered in the Deeds and Land Registry by or on behalf of the trustee with respect to the property referred to in the notice.

Verification of bankrupt's statement of affairs.

**33.** The trustee shall verify the bankrupt's statement of affairs referred to in section 185(e).

Returns by trustee.

**34.** The trustee is not liable to make any return that the bankrupt was required to make more than one year prior to the commencement of the calendar year, or the fiscal year of the bankrupt where that is different from the calendar year, in which he became bankrupt.

Trustee to permit inspection of bankrupt's books and records.

**35.** The trustee shall at all reasonable times permit any authorised person to inspect the books and records of the bankrupt in order to prepare or verify returns that the bankrupt is by statute required to file.

Insurance of property.

**36.**—(1) The trustee shall without delay temporarily insure and keep insured in his official name all the insurable

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property of the bankrupt, for such amount and against such hazards as he may deem advisable, until the inspectors are appointed; and the inspectors shall determine the amount for which and the hazards against which the bankrupt's property shall be insured by the trustee.

(2) All insurance covering property of the bankrupt in force at the date of the bankruptcy shall in the event of loss suffered, without any notice to the insurer or other action on the part of the trustee and notwithstanding any enactment or rule of law or contract or provision to a contrary effect, become payable immediately to the trustee as if the name of the trustee were written in the policy or contract of insurance as that of the insured or as if no change of title or ownership had come about and the trustee were the insured.

**37.—**(1) A trustee shall immediately deposit all funds received for an estate in a bank, in a separate trust account for each estate. Deposits in trust account.

(2) If funds referred to in subsection (1) are situated in a country other than Grenada, the trustee may, if authorised by the Supervisor, deposit the funds in a financial institution in that country that is similar to a bank.

(3) The trustee shall not withdraw any funds from the trust account of an estate without the permission in writing of the inspectors, or the permission of the Court, except for the payment of dividends and charges incidental to the administration of the estate.

(4) All payments made by a trustee under subsection (1) shall be made by cheque drawn on the estate account or in such manner as may be specified in guidelines issued by the Supervisor.

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(5) The trustee shall not deposit any funds received by the trustee when acting under the authority of this Act in any banking account kept by the trustee for the trustee's personal use.

Books and records to be kept.

**38.**—(1) The trustee shall keep proper books and records of the administration of each estate to which he is appointed, in which shall be entered—

- (a) a record of all moneys received or disbursed by him;
- (b) a list of all creditors filing claims;
- (c) the amount and disposition of those claims;
- (d) a copy of all notices sent out;
- (e) the original signed copy of all minutes, proceedings had, and resolutions passed, at any meeting of creditors or inspectors;
- (f) copies of Court orders; and
- (g) all such other matters or proceedings as may be necessary to give a complete account of his administration of the estate.

(2) The estate books and records relating to the administration of an estate are deemed to be the property of the estate, and, in the event of any change of trustee, shall be delivered to the substituted trustee immediately.

(3) The trustee shall permit the books and records referred to in subsection (2) to be inspected, and copies of them made, by the Supervisor, the bankrupt, or any creditor or their representatives at any reasonable time.

**39.**—(1) The trustee shall from time to time report— Reporting by trustee.

- (a) when required by the inspectors, to every creditor;
- (b) when required by any specific creditor, to the creditor; and
- (c) when required by the Supervisor, to the Supervisor or the creditors,

showing the condition of the bankrupt's estate, the moneys on hand, if any, and particulars of any property remaining unsold.

(2) The trustee is entitled to charge against the estate of the bankrupt, for the preparation and delivery of any report referred to in subsection (1), only his actual disbursements.

**40.**—(1) The trustee shall, without delay after their receipt or preparation, send to the Supervisor, in the prescribed manner, true copies of the documents referred to in section 191 and a true copy of— Documents to be sent to Supervisor.

- (a) the notice referred to in section 130;
- (b) the statement referred to in section 185(e);
- (c) the trustee's final statement of receipts and disbursements and the dividend sheet; and

- (d) every order made by the Court on the application for discharge of a bankrupt or for annulling any bankruptcy, and

file a copy of the documents referred to in paragraphs (b) and (c) in the Court.

(2) The trustee shall forward promptly to the Supervisor copies of all notices, reports and statements sent by the trustee to the creditors and, when required, copies of such other documents as the Supervisor may specify.

Report to Supervisor when trustee's appointment ends.

**41.—(1) If—**

- (a) the licence of a trustee has been cancelled or suspended, or has ceased to be valid by reason of failure to pay fees;
- (b) a trustee has been removed from continuing the administration of an estate; or
- (c) a trustee dies or becomes incapacitated,

the trustee or the legal representative of the trustee shall, within such time as is fixed by the Supervisor—

- (a) prepare and forward to the Supervisor a detailed financial statement of the receipts and disbursements together with a list of and report on the un-administered property of every estate under the administration of the trustee for which the trustee has not been discharged; and

- (b) forward to such other trustee as may be appointed in place of the trustee or, pending the appointment of the other trustee, to the Supervisor, all the remaining property of every estate under the administration together with all the books and records relating thereto.

(2) A trustee before proceeding to his discharge shall, unless he has already done so, prepare and file the report referred to in section 199 and forward a copy to the Supervisor.

**42.—**(1) The trustee may, with the permission of the inspectors, do all or any of the following things—

- (a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve of, all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or falling due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole of the property to any person or to sell the same in parcels;
- (b) lease any real property;
- (c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;
- (d) bring, institute or defend any action or other legal proceedings relating to the property of the bankrupt;

Powers of trustee exercisable with permission of inspectors.

- (e) employ legal counsel or any other representative to take any proceedings or do any business that may be sanctioned by the inspectors;
- (f) 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 inspectors think fit;
- (g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, charge, assignment, pledge or otherwise, and the obligations and money borrowed shall be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;
- (h) compromise and settle any debt owing to the bankrupt;
- (i) compromise any claim made by or against the estate;
- (j) divide in its existing form among the creditors, according to its estimated value, any property that from its particular nature or other special circumstances cannot be readily or advantageously sold;
- (k) disclaim any property which binds the possessor of the property to the performance of any onerous act or to the payment of any sum of money;

- (l) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim any lease of, or other temporary interest in, any property of the bankrupt;
- (m) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

(2) The permission given for the purposes of subsection (1) is not a general permission to do all or any of the things referred to in that subsection, but is only a permission to do the particular thing or things or class of thing or things that the permission specifies.

(3) If no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1).

(4) The trustee may sell or otherwise dispose of any of the bankrupt's property to a person who is related to the bankrupt only with the Court's authorisation.

(5) For the purpose of subsection (4), in the case of a bankrupt other than an individual, a person who is related to the bankrupt includes—

- (a) a director or officer of the bankrupt;
- (b) a person who has or has had, directly or indirectly, control in fact of the bankrupt;  
and
- (c) a person who is related to a person described in paragraph (a) or (b).

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(6) In deciding whether to grant the authorisation, the Court is to consider, among other things—

- (a) whether the process leading to the proposed sale or disposition of the property was reasonable in the circumstances;
- (b) the extent to which the creditors were consulted;
- (c) the effects of the proposed sale or disposition on creditors and other interested parties;
- (d) whether the consideration to be received for the property is reasonable and fair, taking into account the market value of the property;
- (e) whether good faith efforts were made to sell or otherwise dispose of the property to persons who are not related to the bankrupt; and
- (f) whether the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition of the property.

Borrowing powers with permission of Court.

**43.**—(1) With the permission of the Court, an interim receiver, a receiver or a trustee, may make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in any amounts, on any terms and on any property that may be authorised by the

Court; and those advances, obligations and money borrowed shall be repaid out of the property of the debtor in priority to the claims of the creditors.

(2) Subject to subsection (1), the creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee, and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

(3) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred, and credit received, by the estate of the bankrupt.

**44.** The trustee is not under any obligation to carry on the business of the bankrupt if—

Trustee not obliged to carry on business of bankrupt.

- (a) in his opinion the realisable value of the property of the bankrupt is insufficient to protect him fully against possible loss occasioned by so doing; and
- (b) the creditors or inspectors, on demand made by the trustee, neglect or refuse to secure him against such possible loss.

**45.—**(1) The Court may make an order providing for the sale of any or all of the assets of the estate of the bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds from the sale shall be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to him or of any moneys that he may have advanced as disbursements for the benefit of the estate.

Order for sale of assets to reimburse advances by trustee.

Application to  
Court for  
directions.

**46.**—(1) A trustee may apply to the Court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the Court shall give in writing such directions, if any, as appears to it to be proper in the circumstances.

(2) If an estate has not been fully administered within three years after the bankruptcy, the trustee shall, if requested to do so by the Supervisor, report that fact to the Court as soon as practicable thereafter, and the Court shall make such order as it considers fit to expedite the administration of the estate.

Redirection of  
mail.

**47.**—(1) Subject to subsection (2), the trustee may, by sending to the Grenada Postal Corporation—

- (a) a notice in the prescribed form; and
- (b) a copy of the trustee's certificate of appointment,

request that any mail addressed to a bankrupt that is directed to any place referred to in the notice be redirected or sent by the Postal Corporation to the trustee or to such other person as the trustee may designate; and when the Postal Corporation receives those documents, it shall so redirect or send that mail.

(2) A notice referred to in subsection (1) may refer to a bankrupt's residence only if the trustee has, on application, obtained permission from the Court.

(3) If a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three-month period

after the date of the bankruptcy unless the Court, on application, extends that period on such terms as the Court considers fit.

**48.**—(1) On the appointment of a substituted trustee, the former trustee shall immediately pass his accounts before the Court and deliver to the substituted trustee all the property of the estate, together with—

Duty of former trustee and substituted trustee.

- (a) all books and records of the bankrupt and of the administration of the estate; and
- (b) a statement of receipts and disbursements that contains a complete account of all moneys received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all moneys disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all the bankrupt's property that has not been sold or realised, setting out the reason why the property has not been sold or realised and the disposition made of the property.

(2) A substituted trustee shall—

- (a) if appointed by the creditors, file with the Court a copy of the minutes of the meeting at which the substituted trustee was appointed, signed by the chairperson of the meeting;
- (b) notify the Supervisor of his appointment;

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- (c) if required by the inspectors, register a notice of the appointment in the Deeds and Land Registry; and
  - (d) as soon as funds are available, pay to the former trustee his remuneration and disbursements as approved by the Court.

Application to Court against act or decision of trustee.

**49.** If the bankrupt or any of the creditors or any other person is aggrieved by any act 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 and make such order as it thinks just.

Proceeding by creditor when trustee refuses to act.

**50.—(1)** If a creditor requests the trustee to take any proceedings that in his opinion would be for the benefit of the estate of a bankrupt and the trustee refuses or neglects to take the proceedings, the creditor may obtain from the Court an order authorising him to take the proceedings in his own name and at his own expense and risk, on notice being given to the other creditors of the contemplated proceeding, and on such other terms and conditions as the Court may direct.

(2) On an order under subsection (1) being made, the trustee shall assign and transfer to the creditor all his right, title and interest in the chose-in-action or subject matter of the proceeding, including any document in support thereof.

(3) Any benefit derived from a proceeding taken under subsection (1), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate.

(4) If, before an order is made under subsection (1), the trustee, with the permission of the inspectors, signifies to the Court his readiness to institute the proceedings for the benefit of the creditors, the order shall fix the time within which he shall do so, and in that case the benefit derived from the proceedings, if instituted within the time so fixed, belongs to the estate.

#### REMUNERATION OF TRUSTEE

**51.**—(1) The remuneration of the trustee shall be determined by ordinary resolution at any meeting of creditors. Determination of fees.

(2) If the remuneration of the trustee has not been determined under subsection (1), the trustee shall apply to the Court for an order determining the amount of the trustee's remuneration.

(3) If the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorise, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor or, in the absence of agreement with the debtor, such amount as may be approved by the Court.

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the Court shall determine the amount payable to each.

(5) On application by the trustee, a creditor or the debtor – and on notice to such parties as the Court may direct – the Court may make an order increasing or reducing the remuneration.

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**DISCHARGE OF TRUSTEE**

Disposal of property incapable of realisation.

**52.**—(1) Any property of a bankrupt that is listed in the statement of affairs referred to in section 185(e) or otherwise disclosed to the trustee before the bankrupt's discharge and that is found incapable of realisation must be returned to the bankrupt before the trustee's application for discharge, but if inspectors have been appointed, the trustee may do so only with their permission.

(2) If a trustee is unable to dispose of any property as provided in this section, the Court may make such order as it may consider necessary.

Trustee to apply for discharge.

**53.**—(1) When a trustee has completed the duties required of him with respect to the administration of the property of a bankrupt, he shall apply to the Court for a discharge.

(2) The Court may discharge a trustee with respect to any estate on full administration thereof or, for sufficient cause, before full administration.

(3) A trustee who is replaced by another trustee is entitled to be discharged if he has accounted to the satisfaction of the inspectors and the Court for all property that came to his hands, and a period of three months has elapsed after the date of the replacement without any un-disposed of claim or objection having been made by the bankrupt or any creditor.

(4) When the accounts of a trustee have been approved by the inspectors and taxed by the Court and all objections, applications and appeals have been settled or disposed of and all dividends have been paid, the estate is deemed to have been fully administered.

(5) Any interested person desiring to object to the discharge of a trustee shall, at least five days prior to the date of the hearing, file notice of objection with the Registrar setting out the reasons for the objection and serve a copy of the notice on the trustee.

(6) The Court shall consider the objection filed under subsection (5) and may grant or withhold a discharge or give such directions as it may deem proper in the circumstances.

(7) Nothing in, or done under the authority of, this section relieves or discharges or shall be deemed to relieve or discharge a trustee from the results of any fraud.

(8) The discharge of a trustee discharges him from all liability—

- (a) in respect of any act done or default made by him in the administration of the property of the bankrupt; and
- (b) in relation to his conduct as trustee,

but any discharge may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(9) Nothing in subsection (8) shall be construed to prevent an investigation, inquiry or proceeding in respect of a trustee under section 19(1).

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(10) The discharge of a trustee under this section operates as a release of the security provided under section 28(1).

(11) Notwithstanding his discharge, the trustee remains the trustee of the estate for the performance of such duties as may be incidental to the full administration of the estate.

(12) The Court, on being satisfied that there are assets that have not been realised or distributed, may, on the application of any interested person, appoint a trustee to complete the administration of the estate of the bankrupt; and that trustee shall be governed by the provisions of this Act, in so far as they are applicable.

### PART III

#### BANKRUPTCY ORDERS AND ASSIGNMENTS

Acts of  
bankruptcy.

**54.—**(1) A debtor commits an act of bankruptcy if the debtor—

- (a) either in Grenada or elsewhere makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorised by this Act or not;
- (b) either in Grenada or elsewhere makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part of that property;
- (c) either in Grenada or elsewhere makes any conveyance or transfer of his property or any

part of the property, or creates any charge on the property, that would under law be void as a fraudulent preference;

- (d) with intent to defeat or delay his creditors, departs out of Grenada, or being out of Grenada remains out of Grenada, or departs from his dwelling house or otherwise absents himself;
- (e) permits any execution or other process against the debtor, under which any of the debtor's property is seized, levied on or taken, to remain unsatisfied, or if—
  - (i) any of the debtor's property has been sold by a bailiff pursuant to the execution or other process; or
  - (ii) the execution or other process is returned endorsed to the effect that no property can be found to seize, take or levy upon;
- (f) exhibits to any meeting of his creditors any statement of his assets and liabilities that shows he is insolvent, or presents or causes to be presented to that meeting a written admission of his inability to pay his debts;
- (g) assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

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- (h) gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts;
  - (i) defaults in any proposal made under this Act; or
  - (j) ceases to meet his liabilities generally as they become due.

(2) An assignment of an insolvent debtor's property, other than an assignment authorised by this Act, made by an insolvent debtor for the general benefit of his creditors is void.

#### BANKRUPTCY ORDER

Application for order.

**55.**—(1) Subject to this section, one or more creditors (hereinafter in this Part called the “applicant”) may file in Court an application for a bankruptcy order against a debtor if it is alleged in the application that—

- (a) the debt owing to the applicant amounts to five thousand dollars or more; and
- (b) the debtor has committed an act of bankruptcy within six months immediately preceding the filing of the application.

(2) If the applicant is a secured creditor, he shall in his application either state that he is willing to give up his security for the benefit of the creditors in the event of a bankruptcy order being made against the debtor or give an estimate of the value of his security.

(3) If the applicant gives an estimate of the value of his security, he may be admitted as a 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.

(4) The application shall be verified by affidavit of the applicant or by someone duly authorised on his behalf having personal knowledge of the facts alleged in the application.

(5) If two or more applications are filed against the same debtor or against joint debtors, the Court may consolidate the proceedings or any of them on any terms that the Court thinks fit.

**56.**—(1) At the hearing of the application, the Court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order. Hearing of application.

(2) If the Court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the evidence of the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

(3) If there is more than one respondent to an application, the Court may dismiss the application with respect to one or more of them, without prejudice to the effect of the application as against the other or others of them.

(4) On a bankruptcy order being made, the Court shall appoint a licensed trustee as trustee of the property of the bankrupt, having regard as far as the Court considers just, to the wishes of the creditors.

(5) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the Court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of his property and for such time as may be required for trial of the issue relating to the disputed facts.

(6) The Court may for other sufficient reason make an order staying the proceedings under an application, either altogether or for a limited time, on any terms and subject to any conditions that the Court may think just.

(7) An applicant who is resident outside of Grenada may be ordered to give security for costs to the debtor, and proceedings under the application may be stayed until the security is provided.

(8) If proceedings on an application have been stayed or have not been prosecuted with due diligence, the Court may, if by reason of the delay or for any other cause it is deemed just, substitute or add as applicant any other creditor to whom the debtor may be indebted in the amount required by this Act.

(9) If another creditor is substituted or added under subsection (8), the Court may also make a bankruptcy order on the application of the other creditor, in which case the Court shall, immediately after making the order, dismiss the application in the stayed or non-prosecuted proceedings on any terms that it may deem just.

(10) Any creditor whose claim against a partnership is sufficient to entitle him to present a bankruptcy application may present an application against any one or more partners of the partnership without including the others.

(11) If an application has been made against one member of a partnership and another application against a member of the same partnership is filed, the Court may give any directions for consolidating the proceedings under the applications that it thinks just.

(12) An application shall not be withdrawn without the leave of the Court.

(13) If a debtor against whom an application has been filed dies, the proceedings shall, unless the Court otherwise orders, be continued.

**57.**—(1) Subject to sections 55 and 56, an application for a bankruptcy order may be filed against the estate of a deceased debtor. Application against estate of deceased.

(2) After service of an application for a bankruptcy order on the executor or administrator of the estate of a deceased debtor, the executor or administrator shall not make payment of any moneys or transfer any property of the deceased debtor, except as required for payment of the proper funeral and testamentary expenses, until the application is disposed of; otherwise, the executor or administrator shall be personally liable, in addition to any penalties to which he may be subject.

(3) Nothing in this section invalidates any payment or transfer of property made or any act or thing done by the executor or administrator in good faith before the service of an application referred to in subsection (2).

**58.**—(1) If a bankruptcy order is made, the costs of the applicant shall be taxed and be payable out of the estate unless the Court orders otherwise. Costs of application.

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(2) If the proceeds of the estate are not sufficient for the payment of any costs incurred by the trustee, the Court may order the costs to be paid by the applicant.

#### INTERIM RECEIVER

Appointment of  
interim receiver.

**59.**—(1) The Court may, if it is shown to be necessary for the protection of the estate of a debtor, at any time after the filing of an application for a bankruptcy order and before a bankruptcy order is made, appoint a licensed trustee as interim receiver of the property of the debtor or any part of that property and direct the licensed trustee to take immediate possession of the property on such undertaking being given by the applicant as the Court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the application being dismissed.

(2) An interim receiver appointed under subsection (1) may, under the direction of the Court—

- (a) take measures to conserve property of the debtor;
- (b) summarily dispose of property that is perishable or likely to depreciate rapidly in value; and
- (c) exercise such control over the business of the debtor as the Court deems advisable,

but the interim receiver shall not unduly interfere with the debtor in the carrying out of his business except as may be

necessary for the conserving property or to comply with the order of the Court.

**60.**—(1) If the Court is satisfied that a notice is about to be sent or has been sent under section 211, the Court may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor’s property that is subject to the security to which the notice relates, until the earliest of—

Appointment of interim receiver where notice of intention to enforce security.

- (a) the taking of possession by a receiver of the debtor’s property over which the interim receiver was appointed;
- (b) the taking of possession by a trustee of the debtor’s property over which the interim receiver was appointed; and
- (c) the expiry of thirty days after the day on which the interim receiver was appointed or of any period specified by the Court.

(2) The Court may direct an interim receiver appointed under subsection (1) to do any or all of the following—

- (a) take possession of all or part of the debtor’s property mentioned in the appointment;
- (b) exercise such control over that property, and over the debtor’s business, as the Court considers advisable;
- (c) take measures to conserve property of the debtor;

- (d) summarily dispose of property that is perishable or likely to depreciate rapidly in value.

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the Court to be necessary for the protection of—

- (a) the debtor's estate; or
- (b) the interests of the creditor who sent the notice under section 211.

Appointment of interim receiver where notice of intention or proposal filed.

**61.**—(1) If a notice of intention has been filed under section 72(1) or a proposal has been filed under section 87(1), the Court may at any time thereafter, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property—

- (a) the trustee under the notice of intention or proposal;
- (b) another trustee; or
- (c) the trustee under the notice of intention or proposal and another trustee jointly.

(2) An appointment under subsection (1) expires on the earliest of—

- (a) the taking of possession by a receiver of the debtor's property over which the interim receiver was appointed;

- (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed; and
- (c) Court approval of the proposal.

(3) The Court may direct an interim receiver appointed under subsection (1) to do any or all of the following—

- (a) carry out the duties set out in section 66(6), in substitution for the trustee referred to in that subsection or jointly with that trustee;
- (b) take possession of all or part of the debtor's property mentioned in the order of the Court;
- (c) exercise such control over that property, and over the debtor's business, as the Court considers advisable;
- (d) take measures to conserve property of the debtor;
- (e) summarily dispose of property that is perishable or likely to depreciate rapidly in value.

(4) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the Court to be necessary for the protection of—

- (a) the debtor's estate; or
- (b) the interests of one or more creditors, or of the creditors generally.

Costs of interim receiver.

**62.**—(1) If an appointment of an interim receiver is made under this Part, the Court may make any order respecting the payment of fees and disbursements of the interim receiver that it considers proper, including an order giving the interim receiver a charge, ranking ahead of any or all secured creditors, over any or all of the assets of the debtor in respect of the interim receiver's claim for fees or disbursements; but the Court shall not make such an order unless it is satisfied that all secured creditors who would be materially affected by the order were given reasonable advance notification and an opportunity to make representations to the Court.

(2) With respect to interim receivers appointed under this Part, there shall be prescribed—

- (a) the form and content of their accounts;
- (b) the procedure for the preparation and taxation of those accounts; and
- (c) the procedure for the discharge of the interim receiver.

(3) In subsection (1), “disbursements” do not include payments made in operating a business of the debtor.

#### ASSIGNMENTS

Assignment by insolvent person.

**63.**—(1) An insolvent person or, if deceased, the executor or administrator of his estate, may, with the leave of the Court, make an assignment of all the insolvent person's property for the general benefit of the creditors of the insolvent person.

(2) An assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing—

- (a) the property of the debtor that is divisible among his creditors;
- (b) the names and addresses of all the debtor's creditors; and
- (c) the amounts of their respective claims.

(3) An assignment made under subsection (1) shall be sent to the Supervisor, and it is inoperative until it is filed by the Supervisor; the Supervisor shall refuse to file the assignment if it is not in the prescribed form and accompanied by the sworn statement required by subsection (2).

(4) If the Supervisor files the assignment made under subsection (1), the Supervisor shall appoint as trustee a licensed trustee who shall, as far as possible, be selected by reference to the wishes of the most interested creditors if ascertainable at the time, and the Supervisor shall complete the assignment by inserting therein as grantee the name of the trustee.

(5) If the Supervisor is unable to find a licensed trustee who is willing to act, the Supervisor shall, after giving the bankrupt five days notice, cancel the assignment.

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**PART IV****PROPOSALS**

Persons who  
may make a  
proposal.

**64.**—(1) A proposal may be made by—

- (a) an insolvent person;
- (b) a receiver, but only in relation to an insolvent person;
- (c) a liquidator of an insolvent person's property;
- (d) a bankrupt; or
- (e) a trustee of the estate of a bankrupt.

(2) Subject to subsection (3), a proposal shall be made to the creditors generally, either as a group or separated into classes as provided in the proposal, and may also be made to secured creditors in respect of any class or classes of secured claims.

(3) If a proposal is made to one or more secured creditors in respect of secured claims of a particular class, the proposal shall be made to all secured creditors in respect of the secured claims of that class.

(4) Secured claims may be included in the same class if the interests or rights of the creditors holding those claims are sufficiently similar to give them a commonality of interest, taking into account—

- (a) the nature of the debts giving rise to the claims;

- (b) the nature and rank of the security in respect of the claims;
- (c) the remedies available to the creditors in the absence of the proposal, and the extent to which the creditors would recover their claims by exercising those remedies;
- (d) the treatment of the claims under the proposal, and the extent to which the claims would be paid under the proposal; and
- (e) such further criteria, consistent with those set out in paragraphs (a) to (d), as may be prescribed.

(5) The Court may, on application made at any time after a notice of intention or a proposal is filed, determine in accordance with subsection (4), the classes of secured claims appropriate to a proposal, and the class into which any particular secured claim falls.

(6) Subject to section 69, with regard to included secured creditors, any creditor may respond to the proposal as made to the creditors generally, by filing with the trustee a proof of claim in the manner provided for in—

- (a) sections 152 to 154, in the case of unsecured creditors; and
- (b) sections 152 to 162, in the case of secured creditors.

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(7) In the following sections in this Part, a reference to an unsecured creditor shall be deemed to include a secured creditor who has filed a proof of claim under subsection (6), and a reference to an unsecured claim shall be deemed to include that secured creditor's claim.

(8) All questions relating to a proposal, except the question of accepting or refusing the proposal, shall be decided by ordinary resolution of the creditors to whom the proposal was made.

Documents to be  
filed.

**65.**—(1) Subject to section 72, proceedings for a proposal shall be commenced, in the case of an insolvent person, by filing with a licensed trustee, and in the case of a bankrupt by filing with the trustee of the estate—

- (a) a copy of the proposal in writing setting out the terms of the proposal and the particulars of any security or guarantee proposed, signed by the person making the proposal and the proposed sureties if any; and
- (b) the prescribed statement of affairs.

(2) A proposal made in respect of a bankrupt shall be approved by the inspectors before any further action is taken on the proposal.

(3) No proposal or any security or guarantee tendered with the proposal may be withdrawn pending the decision of the creditors and the Court.

(4) Subsection (3) shall not be construed as preventing an insolvent person in respect of whom a proposal has been made from subsequently making an assignment.

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**66.**—(1) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable the trustee to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor’s financial difficulties or insolvency and report the result of the appraisal and investigation to the meeting of the creditors.

Duties of trustee  
and interim  
receiver.

(2) The trustee shall, when filing a proposal under section 87(1), file with the proposal—

- (a) a statement (in this section referred to as the “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the person making the proposal, reviewed for its reasonableness by the trustee and signed by the trustee and the person making the proposal;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the person making the proposal regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the person making the proposal.

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

(4) The Court may order that a cash-flow statement or any part of that statement not be released to some or all of the creditors under subsection (3) if it is satisfied that—

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

(6) Subject to any direction of the Court under section 61(3)(a), the trustee under a proposal in respect of an insolvent person shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books and records and other financial documents, to the extent necessary to adequately assess the business and financial affairs of the insolvent person, from the filing of the proposal until the proposal is approved by the Court or until the insolvent person becomes bankrupt, and shall—

- (a) file a report on the state of the business and financial affairs of the insolvent person containing any prescribed information with—
  - (i) the Supervisor immediately after ascertaining any material adverse change in the insolvent person's projected cash-flow or financial circumstances; and

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- (ii) the Court at any time that the Court may order;
  - (b) send a report about the material adverse change to the creditors immediately after ascertaining the change; and
  - (c) send a report on the state of the insolvent person's business and financial affairs, containing any prescribed information, to the creditors and the Supervisor, in the prescribed manner, at least ten days before the meeting of creditors referred to in section 75(1) is to be held.

(7) An interim receiver who has been directed under section 61(3)(a) to carry out the duties set out in subsection (6) in substitution for the trustee shall deliver a report on the state of the business and financial affairs of the insolvent person, containing any prescribed information, to the trustee at least fifteen days before the meeting of creditors referred to in section 75(1) and the trustee shall send the report to the creditors at least ten days before the meeting of creditors referred to in that subsection.

**67.—**(1) The Court may, on application by the trustee, the interim receiver, if any, appointed under section 61 or a creditor, at any time before the meeting of creditors, declare that the proposal is deemed to have been refused by the creditors if the Court is satisfied that—

Deemed  
refusal of  
proposal.

- (a) the debtor has not acted, or is not acting, in good faith and with due diligence;

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- (b) the proposal will not likely be accepted by the creditors; or
  - (c) the creditors as a whole would be materially prejudiced if the application under this subsection is rejected.

(2) If the Court declares that the proposal is deemed to have been refused by the creditors, the provisions of section 81(a) to (c) apply.

Proposal in  
respect of  
corporation.

**68.**—(1) A proposal made in respect of a corporation may include in its terms provision for the compromise of claims against directors of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

(2) A provision for the compromise of claims against directors may not include claims that—

- (a) relate to contractual rights of one or more creditors arising from contracts with one or more directors; or
- (b) are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

(3) The Court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be just and equitable in the circumstances.

(4) Sections 87(4) and 150 apply, with such modifications as the circumstances require, in respect of claims against directors compromised under a proposal of a debtor corporation.

(5) The Court, on application made at any time after a proposal is filed, may determine the classes of claims of claimants against directors and the class into which any particular claimant's claim falls.

(6) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this section.

**69.**—(1) Subject to subsections (2) to (4), a secured creditor to whom a proposal has been made in respect of a particular secured claim may respond to the proposal by filing with the trustee a proof of secured claim in the prescribed form, and may vote, on all questions relating to the proposal, in respect of that entire claim, and sections 152 to 154 apply, in so far as they are applicable, with such modifications as the circumstances require, to proof of secured claims.

Filing of  
proof of  
secured  
claim.

(2) If a proposal made to a secured creditor in respect of a secured claim includes a proposed assessed value of the security in respect of the claim, the secured creditor may file with the trustee a proof of secured claim in the prescribed form, and may vote as a secured creditor on all questions relating to the proposal in respect of an amount equal to the lesser of—

- (a) the amount of the claim; and
- (b) the proposed assessed value of the security.

(3) If the proposed assessed value is less than the amount of the secured creditor's claim, the secured creditor may file with the trustee a proof of claim in the prescribed form, and may vote as an unsecured creditor on all questions relating to the proposal in respect of an amount equal to the difference between the amount of the claim and the proposed assessed value.

(4) If a secured creditor is dissatisfied with the proposed assessed value of his security, the secured creditor may apply to the Court, within fifteen days after the proposal is sent to the creditors, to have the proposed assessed value revised, and the Court may revise the proposed assessed value, in which case the revised value applies for the purposes of this Part.

(5) If no secured creditor having a secured claim of a particular class files a proof of secured claim at or before the meeting of creditors, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

Secured creditors  
who may not file  
proof of claim.

**70.** A secured creditor to whom a proposal has not been made in respect of a particular secured claim may not file a proof of secured claim in respect of that claim.

Proof of secured  
claim upon  
bankruptcy.

**71.** On the bankruptcy of an insolvent person who made a proposal to one or more secured creditors in respect of secured claims, any proof of secured claim filed under section 69 ceases to be valid or effective, and sections 140 and 155 to 162 apply in respect of a proof of claim filed by any secured creditor in the bankruptcy.

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72.—(1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the Supervisor stating—

- (a) the insolvent person’s intention to make a proposal;
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal; and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books and records,

and attaching to the proposal a copy of the consent referred to in paragraph (b).

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the Supervisor—

- (a) a statement (in this section referred to as the “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention, and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

(4) The Court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors under subsection (3), if it is satisfied that—

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in subsection (1).

(7) Subject to any direction of the Court under section 61(3)(a), the trustee, under a notice of intention, in respect of an insolvent person shall—

- (a) for the purpose of monitoring the insolvent person's business and financial affairs,

have access to and examine the insolvent person's property, including his premises, books and records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt; and

- (b) file a report on the state of the insolvent person's business and financial affairs, containing any prescribed information with—
  - (i) the Supervisor, immediately after ascertaining any material adverse change in the insolvent person's projected cash-flow or financial circumstances; and
  - (ii) the Court, at or before the hearing by the Court of any application under subsection (9) and at any other times that the Court may order; and
- (c) send a report about the material adverse change to the creditors immediately after ascertaining the change.

(8) If an insolvent person fails to comply with subsection (2), or if the trustee fails to file a proposal with the Supervisor under section 87(1) within a period of thirty days after the day the notice of intention was filed under subsection

(1), or within any extension of that period granted under subsection (9)–

- (a) the insolvent person is, on the expiry of that period or that extension, as the case may be, deemed to have made an assignment;
- (b) the trustee shall immediately file with the Supervisor a report of the deemed assignment in the prescribed form;
- (c) the Supervisor shall issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 63; and
- (d) the trustee shall, within five days after the day the certificate referred to in paragraph (c) is issued, send notice of the meeting of creditors under section 130, at which meeting the creditors may by ordinary resolution, notwithstanding section 18, affirm the appointment of the trustee or appoint another licensed trustee in place of that trustee.

(9) The insolvent person may, before the expiry of the thirty-day period referred to in subsection (8) or any extension thereof granted under this subsection, apply to the Court for an extension, or further extension, as the case may be, of that period, and the Court may grant such extensions, not exceeding forty-five days for any individual extension and not

exceeding in the aggregate five months after the expiry of the thirty-day period referred to in subsection (8), if satisfied on each application that—

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

(10) The Court may, on application by the trustee, the interim receiver, if any, appointed under section 61, or a creditor, declare terminated, before its actual expiry, the thirty-day period referred to in subsection (8) or any extension thereof granted under subsection (9), if the Court is satisfied that—

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence;
- (b) the insolvent person will not likely be able to make a viable proposal before the expiry of the period in question;
- (c) the insolvent person will not likely be able to make a proposal, before the expiry of the period in question, that will be accepted by the creditors, or rejected,

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and if the Court declares the period in question terminated, subsection (8)(a) to (d) thereupon apply as if that period had expired.

Trustee to assist  
in preparation of  
proposal.

**73.** The trustee under a notice of intention shall, between the filing of the notice of intention and the filing of a proposal, advise on and participate in the preparation of the proposal, including negotiations thereon.

Court order for  
interim  
financing.

**74.—(1)** On application by a debtor in respect of whom a notice of intention was filed under section 72(1) or a proposal was filed under section 87(1) and on notice to the secured creditors who are likely to be affected by the security or charge, the Court may make an order declaring that all or part of the debtor's property is subject to a security or charge, in an amount that the Court considers appropriate, in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the Court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in section 66(2)(a) or 72(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

(2) In the case of individuals—

- (a) they may not make an application under subsection (1) unless they are carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

(3) The Court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

(4) The Court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(5) In deciding whether to make an order, the Court is to consider, among other things—

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in section 66(2)(b) or 72(2)(b), as the case may be.

Meeting of  
creditors.

**75.**—(1) The trustee shall call a meeting of creditors, to be held within twenty-one days after the filing of the proposal with the Supervisor under section 87(1), by sending in the prescribed manner to every known creditor and to the Supervisor, at least ten days before the meeting—

- (a) a notice of the date, time and place of the meeting;
- (b) a condensed statement of the assets and liabilities;
- (c) a list of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books and records;
- (d) a copy of the proposal;
- (e) prescribed forms, in blank; of—
  - (i) proof of claim;
  - (ii) in the case of a secured creditor to whom the proposal was made, proof of secured claim; and
  - (iii) proxy; and
- (f) a voting letter as prescribed.

(2) The Supervisor, or the nominee thereof, shall be the chairperson of the meeting referred to in subsection (1) and shall decide any questions or disputes arising at the meeting, and any creditor may appeal any such decision to the Court.

**76.** If the creditors by ordinary resolution at the meeting at which a proposal is being considered so require, the meeting shall be adjourned to such time and place as may be fixed by the chairperson—

Adjournment  
of meeting.

- (a) to enable a further appraisal and investigation of the affairs and property of the debtor to be made; or
- (b) for the examination under oath of the debtor or of such other person as may be believed to have knowledge of the affairs or property of the debtor, and the testimony of the debtor or such other person, if transcribed, shall be placed before the meeting after any adjournment and may be read in court on the application for the approval of the proposal.

**77.** Any creditor who has proved a claim, whether secured or unsecured, may indicate assent to or dissent from the proposal by mail, personal delivery, or printed electronic transmission delivered to the trustee prior to the meeting, and any assent or dissent, if received by the trustee at or prior to the meeting, has effect as if the creditor had been present and had voted at the meeting.

Creditor who  
has proved  
claim may  
vote prior to  
meeting.

**78.—(1)** The creditors may, in accordance with this section, resolve to accept or may refuse the proposal as made or as altered at the meeting or any adjournment of the meeting.

Creditors  
may accept  
or refuse  
proposal.

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

- (a) the following creditors with proven claims are entitled to vote:
  - (i) all unsecured creditors; and

- (ii) those secured creditors in respect of whose secured claims the proposal was made;
- (b) the creditors shall vote by class, according to the class of their respective claims, and for that purpose—
  - (i) all unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claims; and
  - (ii) the classes of secured claims shall be determined as provided by section 64(4);
- (c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purpose of section 87(4); and
- (d) the proposal shall be deemed to be accepted by the creditors only if all classes of unsecured creditors vote for the acceptance of the proposal by a majority in number and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

(3) If there is no quorum of secured creditors in respect of a particular class of secured claims, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

(4) A creditor who is related to the debtor may vote against but not for the acceptance of the proposal.

(5) The trustee, as a creditor, may not vote on the proposal.

**79.** At a meeting to consider a proposal, the creditors, with the consent of the debtor, may include such provisions or terms in the proposal with respect to the supervision of the affairs of the debtor as they may deem advisable.

Proposal may include terms of supervision of debtor's affairs.

**80.** The creditors may appoint up to five inspectors of the estate of the debtor, who shall have the powers of an inspector under this Act, subject to any extension or restriction of those powers by the terms of the proposal.

Creditors may appoint inspectors.

**81.** If the creditors refuse a proposal in respect of an insolvent person—

Effect of refusal of proposal by creditors.

- (a) the insolvent person is deemed to have made an assignment at the time of the refusal;
- (b) the trustee shall immediately file with the Supervisor a report of the deemed assignment in the prescribed form;
- (c) the Supervisor shall issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 63; and
- (d) the trustee shall either—
  - (i) immediately call a meeting of creditors present at the time of the refusal, which

meeting shall be deemed to be a meeting called under section 75; or

- (ii) if no quorum exists for the purpose of subparagraph (i), send a notice, within five days after the day the certificate referred to in paragraph (b) is issued, of the meeting of creditors under section 75,

and at either meeting the creditors may by ordinary resolution, notwithstanding section 18, affirm the appointment of the trustee or appoint another licensed trustee in place of that trustee.

Court may  
appoint new  
trustee.

**82.** If a declaration has been made under section 67(1) or 72(10), the Court may, if it is satisfied that it would be in the best interests of the creditors to do so, appoint a trustee in place of the trustee appointed under the notice of intention or proposal that was filed.

Trustee to apply  
to Court for  
approval of  
proposal.

**83.** On acceptance of a proposal by the creditors, the trustee shall—

- (a) within five days after the acceptance, apply to the Court for an appointment for a hearing of the application for the approval by the Court of the proposal;
- (b) send a notice of the hearing of the application, in the prescribed manner and at least fifteen days before the date of the hearing, to the debtor, to every creditor who has proved a

claim, whether secured or unsecured, to the person making the proposal and to the Supervisor;

- (c) forward a copy of the report referred to in paragraph (d) to the Supervisor at least ten days before the date of the hearing; and
- (d) at least two days before the date of the hearing, file with the Court, in the prescribed form, a report on the proposal.

**84.**—(1) The Court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms of the proposal and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the Court may require.

Report of trustee to Court.

(2) If the Court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(3) If any of the facts mentioned in section 201 are proved against the debtor, the Court shall refuse to approve the proposal unless the proposal provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such other percentage as the Court may direct.

(4) The Court may refuse to approve a proposal whenever it is established that the debtor has committed an offence under this Act.

Priority of  
claims.

**85.**—(1) No proposal shall be approved by the Court that does not provide for the payment, in priority to other claims, of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

(2) Unless the Crown consents, no proposal shall be approved by the Court that does not provide for the payment in full to the Crown, within six months after the Court approves the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention, or of the proposal if no notice of intention was filed, and are of a kind that could be subject to a demand under—

- (a) the Income Tax Act Cap. 149;
- (b) the Value Added Tax Act Cap. 333A;
- (c) the Property Tax Act Cap. 257B
- (d) the Property Transfer Tax Act Cap. 257C;
- (e) the Annual Stamp Tax Act Cap. 16A;
- (f) the Excise Tax Act Cap. 94;
- (g) the Customs Act No. 9 of 2015; or
- (h) the Tax Administration Act, 2016.

(3) No proposal shall be approved by the Court if, at the time the Court hears the application for approval, the Crown satisfies the Court that the debtor is in default on any

remittance of an amount referred to in subsection (2) that became due after the filing of—

- (a) the notice of intention; or
- (b) the proposal, if no notice of intention was filed.

(4) No proposal in respect of an employer shall be approved by the Court unless—

- (a) it provides for payment to the employees and former employees, immediately after the Court approval of the proposal, of amounts equal to the amounts that they would be qualified to receive under section 164(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the proposal; and
- (b) the Court is satisfied that the employer can and will make the payments as required under paragraph (a).

(5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the Court unless—

- (a) the proposal provides for payment of the following amounts that are unpaid to the

fund established for the purpose of the pension plan—

- (i) an amount equal to the sum of all amounts that have been deducted from the employees' remuneration for payment to the fund but have not been paid into the fund at the time of the filing of the proposal; and
  - (ii) an amount equal to the sum of all amounts that were required to be paid by the employer into the fund at the time of filing of the proposal but have not been so paid; and
- (b) the Court is satisfied that the employer can and will make the payments as required under paragraph (a).

(6) All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses referred to in subsection (1), shall be distributed by him to the creditors.

(7) If the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, if the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner set out in subsection (6).

(8) Section 165 applies to all distributions made to the creditors by the trustee under subsection (6) or (7).

(9) Subject to subsections (1) to (5), the Court may either approve or refuse to approve the proposal.

**86.**—(1) The approval by the Court of a proposal made after bankruptcy operates to annul the bankruptcy and to revest in the debtor, or in such other person as the Court may approve, all the right, title and interest of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide.

Annulment of  
bankruptcy  
where proposal  
approved after  
bankruptcy.

(2) If the Court refuses to approve a proposal in respect of an insolvent person, a copy of which has been filed under section 87(1)—

- (a) the insolvent person is deemed to have made an assignment at the time of the refusal;
- (b) the trustee shall immediately file with the Supervisor a report of the deemed assignment in the prescribed form;
- (c) the Supervisor shall issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 63; and
- (d) the trustee shall, within five days after the day the certificate referred to in paragraph (c) is issued, send notice of the meeting of creditors under section 75, at which meeting the creditors may by ordinary

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resolution, notwithstanding section 18, affirm the appointment of the trustee or appoint another licensed trustee in place of that trustee.

(3) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the trustee, shall be allowed out of the estate of the debtor if the Court refuses to approve the proposal.

Trustee to file proposal with Supervisor.

**87.**—(1) If a proposal is made in respect of an insolvent person, the trustee shall file with the Supervisor a copy of the proposal and the prescribed statement of affairs.

(2) Except in respect of claims referred to in section 24(9), if a proposal is made in respect of an insolvent person, the time with respect to which the claims of creditors shall be determined is the time of the filing of—

- (a) the notice of intention; or
- (b) the proposal, if no notice of intention was filed.

(3) Except in respect of claims referred to in section 24(9), if a proposal is made in respect of a bankrupt, the time with respect to which the claims of creditors shall be determined is the date on which the debtor became bankrupt.

(4) Subject to subsection (5), a proposal accepted by the creditors and approved by the Court is binding on the creditors in respect of—

- (a) all unsecured claims; and

- (b) the secured claims in respect of which the proposal was made and that were in classes in which the secured creditors voted for the acceptance of the proposal by a majority in number and two-thirds in value of the secured creditors present, personally or by proxy, at the meeting and voting on the resolution to accept the proposal.

(5) A proposal accepted by the creditors and approved by the Court does not release the insolvent person from any particular debt or liability referred to in section 205(1) unless the proposal explicitly provides for the compromise of that debt or liability and the creditor in relation to that debt or liability voted for the acceptance of the proposal.

(6) The acceptance of a proposal by a creditor does not release any person who would not be released under this Act by the discharge of the debtor.

**88. If—**

Default in  
performance  
of proposal.

- (a) default is made in the performance of any provision in a proposal;
- (b) the default is not waived by the inspectors or, if there are no inspectors, by the creditors; and
- (c) the default is not remedied by the insolvent person within the prescribed time,

the trustee shall, within such time and in such form and manner as are prescribed, so inform all the creditors and the Supervisor.

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Court may annul  
proposal where  
default.

**89.**—(1) If default is made in the performance of any provision in a proposal, or if it appears to the Court that the proposal cannot continue without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, on application with such notice as the Court may direct to the debtor and, if applicable, to the trustee and to the creditors, annul the proposal.

(2) An order made under subsection (1) shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything done under or in pursuance of the proposal and, notwithstanding the annulment of the proposal, a guarantee given pursuant to the proposal remains in full force and effect in accordance with its terms.

(3) A proposal, although accepted or approved, may be annulled by order of the Court at the request of the trustee or of any creditor whenever the debtor is afterwards convicted of any offence under this Act.

(4) On the annulment of a proposal, the debtor shall be deemed to have made an assignment and the order annulling the proposal shall so state.

(5) If an order annulling a proposal has been made, the trustee shall, within five days after the order is made, send notice of the meeting of creditors under section 75, at which meeting the creditors may by ordinary resolution, notwithstanding section 18, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

(6) If an order annulling the proposal described in subsection (5) has been made, the trustee shall file a report thereof in the prescribed form with the Supervisor, who shall then issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 63.

**90.** A proposal made conditional on the purchase of shares or securities or on any other payment or contribution by the creditors shall provide that the claim of any creditor who elects not to participate in the proposal shall be valued by the Court and shall be paid in cash on approval of the proposal.

Court to value claims of creditor who do not participate in proposal.

**91.—**(1) If a notice of intention or a proposal has been filed in respect of an insolvent person, no person may terminate or amend, or claim an accelerated payment or a forfeiture of the term, under any agreement, including a security agreement, with the insolvent person by reason only that—

Agreement not to be terminated or altered.

- (a) the insolvent person is insolvent;
- (b) a notice of intention or a proposal has been filed in respect of the insolvent person; or
- (c) in the case of a lease or a licensing agreement, the insolvent person has not paid rent or royalties, as the case may be, or other payments of a similar nature, in respect of a period preceding the filing of—
  - (i) the notice of intention, if one was filed; or
  - (ii) the proposal, if no notice of intention was filed.

(2) If a notice of intention or a proposal has been filed in respect of an insolvent person, no public utility may discontinue service to that insolvent person by reason only that—

- (a) the insolvent person is insolvent;
- (b) a notice of intention or a proposal has been filed in respect of the insolvent person; or

- (c) the insolvent person has not paid for services rendered, or material provided, before the filing of—
  - (i) the notice of intention, if one was filed; or
  - (ii) the proposal, if no notice of intention was filed.

(3) Nothing in subsections (1) or (2) shall be construed—

- (a) as prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided after the filing of—
  - (i) the notice of intention, if one was filed; or
  - (ii) the proposal, if no notice of intention was filed; or
- (b) as requiring the further advance of money or credit.

(4) Any provision in an agreement that has the effect of providing for or permitting anything that in substance is contrary to subsections (1) or (2) is of no force.

(5) The Court may, on application by a party to an agreement or by a public utility, declare that subsections (1) and (2) do not apply or apply only to the extent declared by the Court, if the party making the application satisfies the Court that the operation of those subsections would be likely to cause significant financial hardship.

(6) Subsection (1) does not apply in respect of an eligible financial contract.

(7) Where an eligible financial contract is entered into before the filing of a notice of intention or, if no notice of intention was filed, before the filing of a proposal in respect of an insolvent person, and the contract is terminated on or after that filing, the following actions are permitted but only in accordance with the provisions of the contract—

- (a) the netting or setting off or compensation of obligations between the insolvent person and the other parties to the eligible financial contract; and
- (b) any dealing with financial collateral including—
  - (i) the sale or foreclosure of financial collateral; and
  - (ii) the setting off or compensation of financial collateral or the application of the proceeds or value of financial collateral.

(8) If net termination values determined in accordance with an eligible financial contract referred to in subsection (7) are owed by the insolvent person to another party to the eligible financial contract, that other party is deemed, for the purposes of section 96(1)(a), to be a creditor of the insolvent person with a claim provable in bankruptcy in respect of those net termination values.

(9) In this section, “public utility” means any person who, or entity that, supplies the public with fuel, water, electricity, telecommunications or other such service as may be prescribed.

Trustee's  
certificate where  
proposal  
performed.

**92.** If a proposal is fully performed, the trustee shall give a certificate to that effect, in the prescribed form, to the debtor and to the Supervisor.

## PART V

### PROPERTY OF THE BANKRUPT

Property of  
bankrupt.

**93.** The property of a bankrupt divisible among his creditors shall not comprise—

- (a) property held by the bankrupt in trust for any other person; or
- (b) property that as against the bankrupt is exempt from execution or seizure under any law,

but it shall comprise—

- (a) all property, wherever situated, of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before the discharge of the bankrupt; and
- (b) such powers in or over or in respect of the property as might have been exercised by the bankrupt for the benefit of the bankrupt.

Determination  
of surplus  
income in case  
of individual  
bankrupts.

**94.—(1)** The following definitions apply in this section—

“surplus income”, in relation to an individual bankrupt, means the portion of the total income of the individual bankrupt that exceeds an amount that is necessary to enable the bankrupt to maintain a reasonable standard of living, having regard to prescribed standards;

“total income”, in relation to an individual bankrupt—

- (a) includes, notwithstanding section 93(b), a bankrupt’s revenues of whatever nature or from whatever source that are earned or received by the bankrupt between the date of the bankruptcy and the date of the bankrupt’s discharge, including those received as damages for wrongful dismissal, received as a pay equity settlement or received under any law that relates to workers’ compensation; but
- (b) does not include any amounts received by the bankrupt between the date of the bankruptcy and the date of the bankrupt’s discharge, as a gift, a legacy or an inheritance or as any other windfall.

(2) In the case of an individual bankrupt, the trustee shall immediately, having regard to the prescribed standards and to the personal and family situation of an individual bankrupt, determine whether the bankrupt has surplus income. The determination must also be made—

- (a) whenever the trustee becomes aware of a material change in the bankrupt’s financial situation; and
- (b) whenever the trustee is required to prepare a report referred to in section 199(1).

(3) If the trustee determines that a bankrupt has surplus income, the trustee shall—

- (a) having regard to the prescribed standards, fix the amount that the bankrupt is required to pay to the estate of the bankrupt;
- (b) inform the Supervisor, and every creditor who requests such information, of the amount fixed under paragraph (a); and
- (c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

(4) If the trustee determines that a bankrupt has no surplus income, the trustee shall inform the Supervisor, and every creditor who requests such information, of that determination.

(5) If the Supervisor determines that the amount required to be paid by the bankrupt under subsection (2) is substantially not in accordance with the prescribed standards, the Supervisor shall recommend to the trustee and to the bankrupt an amount required to be paid that the Supervisor determines is in accordance with the prescribed standards.

(6) On receipt of the Supervisor's recommendation, the trustee may fix, having regard to the prescribed standards, another amount as the amount that the bankrupt is required to pay to the estate of the bankrupt, and if the trustee does so, the trustee shall—

- (a) inform the Supervisor and every creditor who requests such information of the amount fixed under this subsection; and
- (b) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

(7) If the trustee and the bankrupt are not in agreement with the amount that the bankrupt is required to pay under subsection (2) or (5), the trustee shall, immediately, in the prescribed form, send to the Supervisor a request that the matter be determined by mediation and send a copy of the request to the bankrupt.

(8) On the request of a creditor made within thirty days after the day on which the trustee informed the creditor of the amount fixed under subsection (2) or (5), the trustee shall, within five days following the end of the thirty-day period, send to the Supervisor a request in the prescribed form that the matter of the amount the bankrupt is required to pay be determined by mediation and send a copy of the request to the bankrupt and the creditor.

(9) A mediation shall be in accordance with prescribed procedures.

(10) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in section 9(2).

(11) The trustee may, in any of the following circumstances – and shall if requested to do so by the Supervisor in the circumstances referred to in paragraph (a) – apply to the Court to fix, by order, in accordance with the prescribed standards, and having regard to the personal and family situation of the bankrupt, the amount that the bankrupt is required to pay to the estate of the bankrupt–

- (a) the trustee has not implemented a recommendation made by the Supervisor under subsection (5);

- (b) the matter submitted to mediation has not been resolved; or
- (c) the bankrupt has failed to comply with the requirement to pay as determined under this section.

(12) If the bankrupt performs services for a person who is related to the bankrupt, the Court may fix an amount that is fair and reasonable as salary, wages or other remuneration for the services and the Court may, by order, determine the part of the salary, wages or other remuneration that shall be paid to the trustee on the basis of the amount so fixed by the Court, unless it appears to the Court that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed.

(13) On the application of any interested person, the Court may, at any time, amend an order made under this section to take into account material changes that have occurred in the financial situation of the bankrupt.

(14) An order of the Court made under this section may be served on a person from whom the bankrupt is entitled to receive money and in such case—

- (a) the order binds the person to pay to the estate of the bankrupt the amount fixed by the order; and
- (b) if the person fails to comply with the terms of the order, the Court may, on the application of the trustee, order the person to pay the trustee the amount of money that the estate of the bankrupt would have received had the person complied with the terms of the order.

(15) For the purposes of section 50, an application referred to in subsection (11) is deemed to be a proceeding for the benefit of the estate.

(16) For the purposes of this section, a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all property of the bankrupt.

**95.**—(1) An assignment of existing or future wages made by an individual debtor before the debtor became bankrupt is of no effect in respect of wages earned after the bankruptcy. Assignment of certain amounts after bankruptcy of no effect.

(2) An assignment made by an individual debtor of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered by the debtor before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

#### STAY OF PROCEEDINGS

**96.**—(1) Subject to subsection (2) and section 98, on the filing of a notice of intention under section 72(1) or a proposal under section 87(1) in respect of an insolvent person until the trustee has been discharged or the insolvent person becomes bankrupt— Stay of proceedings upon filing of notice of intention or proposal.

- (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy; and

- (b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance; that on—
  - (i) the insolvent person's insolvency;
  - (ii) the default by the insolvent person of an obligation under the security agreement; or
  - (iii) the filing by the insolvent person of a notice of intention under section 72(1) or of a proposal under section 87(1), as the case may be,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as the insolvent person would otherwise have, has any force or effect.

- (2) A stay provided by subsection (1) does not apply—
  - (a) to prevent a secured creditor from dealing with those assets if the creditor took possession of secured assets of the insolvent person for the purpose of realisation before the filing of the notice of intention under section 72(1) or before the filing of the proposal under section 87(1), as the case may be;
  - (b) to prevent a secured creditor from enforcing the creditor's security if the creditor gave notice under section 211(1), of his intention to enforce the security more than ten days before the notice of intention

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under section 72(1) was filed or before the proposal was filed under section 87(1), as the case may be; or

- (c) to prevent a secured creditor from enforcing the creditor's security if the creditor gave notice under section 211(1) of his intention to enforce the security and the insolvent person has, under section 211(2), consented to the enforcement action.

**97.**—(1) Subject to subsection (2) and section 98, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged. Stay of proceedings upon bankruptcy.

(2) Subject to sections 108, 155 to 162 and 215, the bankruptcy of a debtor does not prevent a secured creditor from realising or otherwise dealing 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, unless the Court otherwise orders, but in so ordering the Court shall not postpone the right of the secured creditor to realise or otherwise deal with his security, except as follows—

- (a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

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- (b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Creditor may apply to Court for removal of stay.

**98.** A creditor who is affected by the operation of section 96 or 97 may apply to the Court for a declaration that those sections no longer operate in respect of that creditor, and the Court may make such a declaration, subject to any qualifications that the Court considers proper, if it is satisfied—

- (a) that the creditor is likely to be materially prejudiced by the continued operation of those sections; or
- (b) that it is equitable on other grounds to make such a declaration.

Stay provisions not to apply in certain circumstances.

**99.—(1)** Sections 96 and 97 do not apply in respect of a claim referred to in section 149(4).

(2) Notwithstanding subsection (1), no creditor with a claim referred to in section 149(4) has any remedy, or shall commence or continue any action, execution or other proceeding, against—

- (a) property of a bankrupt that has vested in the trustee; or
- (b) amounts that are payable to the estate of the bankrupt under section 94.

#### GENERAL PROVISIONS

**100.** A bankruptcy order and an assignment made under this Act takes precedence over all judicial or other attachments, garnishments, judgments, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to a creditor and except for the rights of a secured creditor.

Precedence of  
bankruptcy  
orders and  
assignments.

**101.** On a bankruptcy order being made or an assignment being filed with the Supervisor, a bankrupt ceases to have any capacity to dispose or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer.

Property of  
bankrupt to  
vest in trustee.

**102.** The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by those provisions as supplementary to and in addition to the rights and remedies provided by this Act.

Other rights  
and remedies  
available to  
trustee.

Seizure and sale  
of property.

**103.**—(1) An execution levied by seizure and sale of the property of a bankrupt 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 a bailiff or other officer of any court acquires a good title to the property against the trustee.

(2) If an assignment or a bankruptcy order has been made, a bailiff or other officer of any court or other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the bankruptcy order certified by the trustee as a true copy, immediately deliver all the seized property to the trustee.

(3) If the person who seized property under subsection (2) has sold that property or any part of it, he shall deliver to the trustee the money so realised.

(4) On production of a copy of the bankruptcy order or the assignment certified by the trustee as a true copy, any property of a bankrupt under seizure for rent or taxes shall immediately be delivered to the trustee, and payment of the costs of distress is secured by a charge on the property ranking ahead of any other security on it, and, if the property or any part of it has been sold, the money realised from the sale less the costs of distress and sale shall be paid to the trustee.

Bankruptcy  
order and  
assignment may  
be registered.

**104.**—(1) A true copy of a bankruptcy order certified by the Registrar, and a true copy of an assignment certified by the Supervisor, may be registered by or on behalf of the trustee in respect of the whole or any part of real property that the bankrupt owns or in which he has any interest, estate or right in the Deeds and Land Registry.

(2) If the bankrupt is the registered owner of any real property or the registered holder of any charge, the trustee, on registration of the documents referred to in subsection (1), is entitled to be registered as owner of the real property or holder of the charge free of all encumbrances or charges referred to in section 100.

(3) If a bankrupt owns any real property or holds any charge that is registered in the Deeds and Land Registry, or has or is believed to have any interest, estate or right in that real property or charge, and for any reason a copy of the bankruptcy order or assignment has not been registered under subsection (1), a caveat or caution may be filed with the Registrar of the Deeds and Land Registry by the trustee, and any registration made after the filing of the caveat or caution in respect of the real property or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the Deeds and Land Registry Act Cap. 79.

(4) The person to whom a trustee tenders or causes to be tendered for registration any bankruptcy order, assignment or other document shall register it according to the ordinary procedure for registering documents relating to such registration.

**105.** Notwithstanding anything in this Act, a deed, conveyance, transfer, agreement for sale, mortgage, or charge made to or in favour of a *bona fide* purchaser or mortgagee for adequate valuable consideration and covering any real property affected by a bankruptcy order or an assignment under this Act is valid and effectual according to the tenor thereof as fully and effectually and to all intents and purposes

Transactions valid if registered prior to bankruptcy order or assignment being registered.

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as if no bankruptcy order or assignment had been made under this Act, unless the bankruptcy order or assignment, or notice of the order or assignment, or a caveat or caution has been registered against the property in the Deeds and Land Registry prior to the registration of the deed, conveyance, transfer, agreement for sale, mortgage, or charge in accordance with the provisions of the Deeds and Land Registry Act Cap. 79.

Liability of shareholders to contribute amount unpaid on shares.

**106.**—(1) A shareholder or member of a bankrupt corporation is liable to contribute the amount unpaid on his shares of the capital or on his liability to the corporation, its members or creditors, as the case may be, made under this Act, charter, or instrument of incorporation of the company or otherwise.

(2) The amount that the contributor is liable to contribute under subsection (1) shall be deemed an asset of the corporation and a debt payable to the trustee immediately on the bankruptcy of the corporation.

Bank to notify trustee of bankrupt's accounts.

**107.** If a bank has ascertained that a person having an account with the bank is an undischarged bankrupt, it is the bank's duty to inform the trustee of the existence of the account, and thereafter the bank shall not make any payments out of the account, except under an order of the Court or in accordance with instructions from the trustee, unless on the expiry of one month from the date of giving the information no instructions have been received from the trustee.

Trustee may inspect property.

**108.** If property of a bankrupt is held as a pledge, pawn or other security, the trustee may give notice in writing of the trustee's intention to inspect the property, and the person so notified is not thereafter entitled to realise the security until

the person has given the trustee a reasonable opportunity of inspecting the property and of exercising the trustee's right of redemption.

**109.** If a trustee has seized or disposed of property in the possession or on the premises of a bankrupt without notice of any claim in respect of the property and it is made to appear that the property was not at the date of the bankruptcy the property of the bankrupt or was subject to an unregistered security or charge, the trustee is not personally liable for any loss or damage arising from the seizure or disposal sustained by any person claiming the property or an interest in the property or for the costs of proceedings taken to establish a claim to the property, unless the Court is of the opinion that the trustee has been negligent with respect to the trustee's duties in relation to the property.

Protection of trustee where property not that of bankrupt.

**110.—(1)** If a person claims any property, or interest in property, in the possession of a bankrupt at the time of the bankruptcy, that person shall file with the trustee a proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

Persons claiming property in possession of bankrupt.

(2) The trustee with whom a proof of claim is filed under subsection (1) shall, within fifteen days after the filing of the claim or within fifteen days after the first meeting of creditors, whichever is later, either admit the claim and deliver possession of the property to the claimant or give notice in the prescribed manner to the claimant that the claim is disputed, with the trustee's reasons for disputing it and, unless the claimant appeals to the Court within fifteen days after the notice has been given, the claimant shall be deemed to have abandoned or relinquished all his right to or interest

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in the property to the trustee who may sell or dispose of the property free of any right, title or interest of the claimant.

(3) The onus of establishing a claim to or interest in property under this section is on the claimant.

(4) The trustee may give notice in the prescribed manner to any person to prove his claim to or interest in property under this section, and, unless that person files with the trustee a proof of a claim in the prescribed form within fifteen days after the notice has been given, the trustee may with the leave of the Court sell or dispose of the property free of any right, title or interest of that person.

(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

(6) Nothing in this section shall be construed as extending the rights of any person other than the trustee.

Right of unpaid  
supplier to  
repossess goods.

**111.**—(1) Subject to this section, if a person (in this section referred to as the “supplier”) has sold and delivered goods to another person (in this section referred to as the “purchaser”) for use in relation to the purchaser’s business, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the expense of the supplier, and the purchaser, trustee or receiver of the purchaser shall release the goods, if—

- (a) the supplier presents a written demand for repossession to the purchaser, trustee or receiver, in the prescribed form and containing

- the details of the transaction, within a period of fifteen days after the day on which the purchaser became bankrupt or became a person who is subject to receivership;
- (b) the goods were delivered within thirty days before the day on which the purchaser became bankrupt or became a person who is subject to a receivership;
  - (c) at the time when the demand referred to in paragraph (a) is presented, the goods—
    - (i) are in the possession of the purchaser, trustee or receiver;
    - (ii) are identifiable as the goods delivered by the supplier and not fully paid for;
    - (iii) are in the same state as they were on delivery;
    - (iv) have not been resold at arm's length; and
    - (v) are not subject to any agreement for sale at arm's length; and
  - (d) the purchaser, trustee or receiver does not, immediately after the demand referred to in paragraph (a) is presented, pay to the supplier the entire balance owing in respect of the sale of the goods.

(2) If, at the time when the demand referred to in subsection (1)(a) is presented, the goods have been partly paid for, the right of the supplier to repossess under subsection (1) shall be read as a right—

- (a) to repossess a portion of the goods proportional to the unpaid amount; or
- (b) to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.

(3) If a notice of intention was filed under section 72(1), or a proposal was filed under section 87(1), in respect of a purchaser after the delivery of the goods to the purchaser and before the purchaser became bankrupt or became a person who is subject to receivership, the thirty-day period referred to in subsection (1)(b) is the thirty-day period before the filing of the notice of intention or, if there was no notice of intention, the filing of the proposal.

(4) A supplier's right to repossess goods under this section expires if not exercised within the fifteen day period referred to in subsection (1)(a), unless that period is extended before its expiry by the trustee or receiver, or by the Court.

(5) Notwithstanding any other Act or law, a supplier's right under this section to repossess goods ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a *bona fide* subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

(6) The purchaser, trustee or receiver may apply to the Court for directions in relation to any matter relating to this section, and the Court shall give such directions, if any, as it considers proper in the circumstances.

(7) If a supplier is aggrieved by an act, omission or decision of the purchaser, trustee or receiver, the supplier may apply to the Court and the Court may make such order as it considers proper in the circumstances.

(8) A supplier who repossesses goods under this section is not entitled to be paid for those goods.

**112.—(1) If—**

Prior claim  
of farmer or  
fisherman.

- (a) a farmer has sold and delivered products of agriculture, or a fisherman has sold and delivered products of the sea, to another person (in this section referred to as the “purchaser”) for use in relation to the business of the purchaser;
- (b) the products were delivered to the purchaser within the fifteen-day period preceding—
  - (i) the day on which the purchaser became bankrupt; or
  - (ii) the first day on which there was a receiver in relation to the purchaser;
- (c) as of the day referred to in paragraph (b)(i) or (ii), the farmer or fisherman has not been fully paid for the products; and

- (d) the farmer or fisherman files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, as the case may be, within thirty days after the day referred to in paragraph (b)(i) or (ii),

the claim of the farmer or fisherman for the unpaid amount in respect of the products is secured by a charge on all the inventory of or held by the purchaser as of the day referred to in paragraph (b)(i) or (ii).

(2) The charge referred to in subsection (1) ranks above every other claim, right, charge or security against the inventory covered by the charge referred to in that subsection, regardless of when the other claim, right, charge or security arose, except for a supplier's right to repossess goods under section 111.

(3) If the trustee or receiver, as the case may be, takes possession of or in any way disposes of an inventory covered by the charge referred to in subsection (1), the trustee or receiver is liable for the claim of the farmer or fisherman to the extent of the net amount realised on the disposition of that inventory, after deducting the cost of realisation; and the trustee or receiver is subrogated in and to all rights of the farmer or fisherman to the extent of the amounts paid to them by the trustee or receiver.

(4) In this section—

“aquatic plants and animals” means plants and animals that, at most stages of their development or life cycle, live in an aquatic environment;

“farm” means land in Grenada used for the purpose of farming, including livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

“farmer” includes the owner, occupier, lessor and lessee of a farm;

“fish” includes shellfish, crustaceans and marine animals;

“fisherman” means a person whose business consists in whole or in part of fishing;

“fishing” means fishing for or catching fish by any method;

“products of agriculture” includes—

- (a) vegetables, fruits, root crops and all other direct products of the soil; and
- (b) honey, livestock (whether alive or dead), dairy products, eggs and all other indirect products of the soil;

“products of the sea” includes fish of all kinds, marine organic and inorganic life and any substances extracted or derived from the sea.

(5) For the purposes of this section, each thing included in the following terms as defined in subsection (4), namely—

- (a) “products of agriculture”; and
- (b) “products of the sea”,

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comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

(6) For greater certainty, “goods” in section 111 includes products of agriculture and products of the sea.

(7) Nothing in this section precludes a farmer or fisherman from exercising the right that that person may have under section 111 to repossess products of agriculture or products of the sea.

Sale of patented articles by trustee.

**113.**—(1) If any property of a bankrupt vesting in a trustee consists of patented articles that were sold to the bankrupt subject to any restrictions or limitations, the trustee is not bound by the restrictions or limitations but may sell and dispose of the patented articles free of the restrictions or limitations.

(2) If the manufacturer or vendor of the patented articles referred to in subsection (1) objects to the disposition of them by the trustee as provided by this section and gives the trustee notice in writing of the objection before the sale or disposition of the patented articles, that manufacturer or vendor has the right to purchase the patented articles at the invoice prices of those articles, subject to any reasonable deduction for depreciation or deterioration.

Copyright and manuscripts to revert to author.

**114.**—(1) Notwithstanding anything in this Act or in any other enactment, the author’s manuscripts and any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt shall—

- (a) if the work covered by the copyright has not been published and put on the market at the time of the bankruptcy and no expense has been incurred in connection with the work,

revert and be delivered to the author or his heirs, and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void;

- (b) if the work covered by the copyright has in whole or in part been put into type and expenses have been incurred by the bankrupt, revert and be delivered to the author on payment of the expenses so incurred and the product of those expenses shall also be delivered to the author or his heirs and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void, but if the author does not exercise his rights under this paragraph within six months of the date of the bankruptcy, the trustee may carry out the original contract or agreement; or
- (c) if the trustee at the end of the six-month period from the date of the bankruptcy decides not to carry out the contract, revert without expenses to the author and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void.

(2) If, at the time of the bankruptcy referred to in subsection (1), the work was published and put on the market, the trustee is entitled to sell, or authorise the sale or reproduction of, any copies of the published work, or to perform or authorise the performance of the work, but—

- (a) there shall be paid to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the bankrupt;

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- (b) the trustee is not, without the written consent of the author or his heirs, entitled to assign the copyright or transfer the interest or to grant any interest in the copyright by licence or otherwise, except on terms that will guarantee to the author or his heirs payment by way of royalties or share of the profits at a rate not less than the rate the bankrupt was liable to pay; and
  - (c) any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void, except with respect to the disposal, under this subsection, of copies of the work published and put on the market before the bankruptcy.

(3) The trustee shall offer in writing to the author or his heirs the right to purchase the manufactured or marketable copies of the copyright work comprised in the estate of the bankrupt at such price and on such terms and conditions as the trustee may deem fair and proper before disposing of the manufactured and marketable copies in the manner set out in this section.

Effect of sales by trustee.

**115.** A sale of property made by a trustee vests in the purchaser of the property all the legal and equitable estate of the bankrupt in the property.

Assignment of agreements.

**116.—(1)** On application by a trustee and on notice to every party to an agreement, the Court may make an order assigning the rights and obligations of a bankrupt under the agreement to any person who is specified by the Court and agrees to the assignment.

(2) In the case of individuals—

- (a) they may not make an application under subsection (1) unless they are carrying on a business; and
- (b) only rights and obligations in relation to the business may be assigned.

(3) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under—

- (a) an agreement entered into on or after the date of the bankruptcy;
- (b) an eligible financial contract; or
- (c) a collective agreement as defined in section 2 of the Labour Relations Act Cap. 157A.

(4) In deciding whether to make an order under this section, the Court shall consider, among other things—

- (a) whether the person to whom the rights and obligations are to be assigned is able to perform the obligations; and
- (b) whether it is appropriate to assign the rights and obligations to that person.

(5) The Court may not make an order unless it is satisfied that all monetary defaults in relation to the agreement, other than those arising by reason only of the person's bankruptcy, insolvency or failure to perform a non-monetary obligation, will be remedied on or before the day fixed by the Court.

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(6) The applicant is to send a copy of the order to every party to the agreement.

Certain rights limited.

**117.**—(1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a bankrupt individual by reason only of the individual's bankruptcy or insolvency.

(2) No public utility may discontinue service to a bankrupt individual by reason only of the individual's bankruptcy or insolvency or of the fact that the individual has not paid for services rendered or material provided before the time of the bankruptcy.

(3) The provisions of section 91(3) to (9) apply with respect to this section with such modifications as the circumstances require.

Limited partnerships.

**118.**—(1) 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 becoming bankrupt, the property of the limited partnership vests in the trustee.

(2) If a member of a partnership becomes bankrupt, the Court may, on application by a trustee, 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 the partner of the debt or demand to which the action relates is void.

(3) Notice of an application under subsection (2) shall be given to the bankrupt's partner, who 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 from his share,

he shall be indemnified against costs in respect of the action the Court directs.

**119.**—(1) Subject to subsection (2), in relation to a bankruptcy or proposal, all provable claims, including secured claims, of the Crown, rank as unsecured claims. Crown's claims are unsecured.

(2) Subsection (1) does not apply—

- (a) to claims that are secured by a security or privilege of a kind that can be obtained by persons other than the Crown under any law; or
- (b) to the extent provided in subsection 120(2), to claims that are secured by a security referred to in subsection 120(1), if the security is registered in accordance with subsection 120(1).

**120.**—(1) A security provided for in any enactment for the sole or principal purpose of securing a claim of the Crown is valid in relation to a bankruptcy or proposal only if the security is registered, before the earliest date of the initial bankruptcy event. Crown's security to be registered to be valid.

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection is valid only in respect of amounts owing to the Crown at the time of that registration, plus any interest subsequently accruing on those amounts.

**121.** In relation to a bankruptcy or proposal, no order may be made under this Act if the order would have the effect of subordinating financial collateral. Priority for financial collateral.

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PREFERENCES AND TRANSFERS AT UNDERVALUE

Preferential transactions within three months before bankruptcy void.

**122.**—(1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person—

- (a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and
- (b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is twelve months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in subsection (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference (even if it was made, incurred, taken or

suffered, as the case may be, under pressure) and evidence of pressure is not admissible to support the transaction.

(3) Subsection (2) does not apply, and the parties are deemed to be dealing with each other at arm's length, in respect of the following—

- (a) a margin deposit made by a clearing member with a clearing house; or
- (b) a transfer, charge or payment made in connection with financial collateral and in accordance with the provisions of an eligible financial contract.

(4) In this section—

“clearing house” means a body that acts as an intermediary for its clearing members in effecting securities transactions;

“clearing member” means a person engaged in the business of effecting securities transactions who uses a clearing house as an intermediary;

“creditor” includes a surety or guarantor for the debt due to the creditor;

“margin deposit” means a payment, deposit or transfer to a clearing house under the rules of the clearing house to assure the performance of the obligations of a clearing member in connection with security transactions, including, without limiting the generality of the foregoing, transactions respecting futures, options or

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other derivatives or to fulfil any of those obligations.

Transfer at undervalue.

**123.** —(1) On application by the trustee, the Court may declare that a transfer at undervalue is void as against the trustee if—

- (a) the party was dealing at arm's length with the debtor; and—
  - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy;
  - (ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it; and
  - (iii) the debtor intended to defraud, defeat or delay a creditor; or
- (b) the party was not dealing at arm's length with the debtor; and—
  - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy; or
  - (ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on

the day before the day on which the period referred to in subparagraph (i) begins and—

- (A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it; or
- (B) the debtor intended to defraud, defeat or delay a creditor.

(2) Alternatively if the conditions in subsection (1) apply, the Court may order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor.

(3) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the Court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

(4) In this section, a "person who is privy" means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

Protected  
transactions.

**124.**—(1) No payment, contract, dealing or transaction to, by or with a bankrupt made between the date of the initial bankruptcy event and the date of the bankruptcy is valid, except the following, which are valid if made in good faith, subject to the provisions of this Act with respect to the effect of bankruptcy on an execution, attachment or other process against property, and subject to the provisions of this Act respecting preferences and transfers at undervalue—

- (a) a payment by the bankrupt to any of the bankrupt's creditors;
- (b) a payment or delivery to the bankrupt;
- (c) a transfer by the bankrupt for adequate valuable consideration; and
- (d) a contract, dealing or transaction, including any giving of security, by or with the bankrupt for adequate valuable consideration.

(2) The expression “adequate valuable consideration” in subsection (1)(c) means a consideration of fair and reasonable money value in relation to the value of the property assigned or transferred, and in subsection (1)(d) means a consideration of fair and reasonable money value in relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction.

(3) The law of set-off or compensation applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be, except in so far as any claim for set-off or compensation is affected by the provisions of this Act respecting frauds or fraudulent preferences.

**125.**—(1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside and has sold, disposed of, realised or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee. Recovering proceeds if transferred.

(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom—

- (a) from the person who acquired the property from the bankrupt; and
- (b) from any other person to whom the person referred to in paragraph (a) may have sold or transferred the property or to whom the person referred to in paragraph (a) may have paid the proceeds from the property.

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, that person is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value thereof.

(4) Where the consideration payable for or on any sale or resale of the property or any part thereof remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

**126.**—(1) If a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part of those debts and subsequently becomes bankrupt, the assignment of book debts is void against the trustee with respect to any book debts that have not been paid at the date of the bankruptcy. Assignment of book debts void.

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(2) This section does not apply to an assignment of book debts that is registered under any enactment for the registration of assignments of book debts if the assignment is valid in accordance with the provisions of that enactment.

(3) Nothing in this section renders 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 in good faith and for adequate valuable consideration.

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

Dealings with  
undischarged  
bankrupt.

**127.**—(1) All transactions by a bankrupt with any person dealing with the bankrupt in good faith and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate, or interest or right, in the property that by virtue of this Act is vested in the trustee shall determine and pass in any manner and to any extent that may be required for giving effect to any such transaction.

(2) For the purposes of this section, 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 his banker dealing with him for value.

**128.**—(1) If a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation any of the shares of the capital stock of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, the Court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent. Inquiry into dividends and redemption of shares.

(2) If a transaction referred to in subsection (1) has occurred, the Court may give judgment to the trustee against the directors of the corporation, jointly and severally, in the amount of the dividend or redemption or purchase price, with interest on the amount, that has not been paid to the corporation if the Court finds that—

- (a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent; and
- (b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent.

(3) In making a finding under subsection (2)(b), the Court shall consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on—

- (a) financial or other statements of the corporation represented to them by officers of the corporation or the auditor of the corporation, as the case may be, or by written reports of the auditor to fairly reflect the financial condition of the corporation; or
- (b) a report relating to the corporation's affairs prepared under a contract with the corporation by a lawyer, notary public, accountant, engineer, appraiser or other person whose profession gave credibility to the statements made in the report.

(4) If a transaction referred to in subsection (1) has occurred and the Court makes a finding under subsection (2)(a), the Court may give judgment to the trustee against a shareholder who is related to one or more directors or to the corporation or who is a director not liable by reason of subsection (2)(b) or (5), in the amount of the dividend or redemption or purchase price referred to in subsection (1), and the interest thereon, that was received by the shareholder and not repaid to the corporation.

(5) A judgment under subsection (2) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had thereby exonerated himself under that law from any liability therefor.

(6) Nothing in this section shall be construed to affect any right, under any applicable law governing the operation of the corporation, of the directors to recover from a shareholder the whole or any part of any dividend, or any redemption or purchase price, made or paid to the shareholder when the corporation was insolvent or that rendered the corporation insolvent.

(7) For the purposes of subsection (2), the onus lies on the directors to prove—

- (a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent; or
- (b) that the directors had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent.

(8) For the purposes of subsection (4), the onus of proving that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent lies on the shareholder.

**129.**—(1) Sections 122 to 128 apply, with any modifications that the circumstances require, to a proposal made under Part IV unless the proposal provides otherwise.

Application of sections 122 to 128 to proposals.

(2) For the purposes of subsection (1), a reference in sections 122 to 128—

- (a) to “date of the bankruptcy” is to be read as a reference to “day on which a notice of intention is filed” or, if a notice of intention is not filed, as a reference to “day on which a proposal is filed”; and
- (b) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor in respect of whom the proposal is filed”.

(3) If the proposal is annulled by the Court under section 89(1) or as a result of a bankruptcy order or assignment, sections 122 to 128 apply as though the debtor became bankrupt on the date of the initial bankruptcy event.

## PART VI

### ADMINISTRATION OF ESTATES

#### MEETINGS OF CREDITORS

First meeting of  
creditors.

**130.**—(1) Subject to subsection (2), it is the duty of the trustee—

- (a) to inquire as to the names and addresses of the creditors of a bankrupt; and
- (b) within five days after the date of the trustee’s appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Supervisor a notice in the prescribed form of the bankruptcy and of the first

meeting of creditors, to be held within the twenty-one day period following the day of the trustee's appointment, at the office of the Supervisor; but the Supervisor may, if he deems it expedient, authorise the meeting to be held at such other place as he may fix.

(2) If the Supervisor is satisfied that the extension of the period during which the first meeting of creditors must be held will not be detrimental to the creditors and is in the general interest of the administration of the estate, the Supervisor may extend the period—

- (a) by ten days; or
- (b) if the Supervisor is satisfied that special circumstances exist, by up to thirty days.

(3) The trustee shall include with the notice referred to in subsection (1), a list of the creditors with claims amounting to one hundred dollars or more and the amount of the claims together with a proof of claim and proxy in the prescribed form but no name shall be inserted in the proxy before it is so sent.

(4) In the case of the bankruptcy of an individual, the trustee shall set out in the notice, in the prescribed form, information concerning the financial situation of the bankrupt and any obligation of the bankrupt to make payments required under section 94 to the estate of the bankrupt.

(5) A notice in the prescribed form shall, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published in a local newspaper by the trustee.

(6) The purpose of the first meeting of creditors shall be to—

- (a) consider the affairs of the bankrupt;
- (b) affirm the appointment of the trustee or substitute another in place of the trustee;
- (c) appoint inspectors; and
- (d) give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

Subsequent meetings.

**131.**—(1) The trustee may at any time call a meeting of creditors and he shall do so if directed by the Court and whenever requested in writing by a majority of the inspectors or by twenty-five per cent in number of the creditors holding twenty-five per cent in value of the proved claims.

(2) A meeting of the creditors may be convened by a majority of the inspectors at any time when a trustee is not available to call a meeting or has neglected or failed to do so when so directed by the inspectors.

Notice of subsequent meetings.

**132.**—(1) Meetings of creditors other than the first shall be called by sending a notice of the time and place of the meeting together with an agenda outlining the items for discussion with a reasonable explanation of what is expected to be discussed for each item, not less than five days before the time of each meeting to each creditor at the address given in the creditor's proof of claim.

(2) After the first meeting of creditors, notice of any meeting or of any proceeding need not be given to any creditors other than those who have proved their claims.

#### PROCEDURE AT MEETINGS

**133.**—(1) The Supervisor or his nominee shall be the chairperson of the first meeting of creditors and shall decide any questions or disputes arising at the meeting; and any creditor may appeal to the Court from any such decision. Chairperson of first meeting.

(2) At all meetings of creditors other than the first, the trustee shall be the chairperson unless by resolution at the meeting some other person is appointed.

(3) The chairperson of any meeting of creditors shall, in the case of a tie, have a second or casting vote.

(4) The chairperson of any meeting of creditors shall, within a reasonable time after each meeting, cause minutes of the proceedings at the meeting to be prepared. The minutes shall be signed by the chairperson and shall be retained as part of the books, records and documents referred to in section 38 relating to the administration of the estate.

(5) If a meeting of creditors is called, the proceedings and resolutions passed at the meeting, unless the Court orders otherwise, are valid, notwithstanding that some creditors had not received notice.

**134.**—(1) One creditor entitled to vote, or the representative of such creditor, constitutes a quorum for a meeting of creditors. Quorum.

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(2) If there is no quorum at the first meeting of creditors—

- (a) the appointment of the trustee shall be deemed to be confirmed; and
- (b) the chairperson shall adjourn the meeting—
  - (i) to such time and place as the chairperson fixes; or
  - (ii) without fixing a time or place for a future meeting.

(3) If there is no quorum at a meeting of creditors other than the first meeting, the chairperson shall adjourn the meeting to such time and place as the chairperson fixes.

(4) The chairperson of any meeting of creditors may with the consent of the meeting, adjourn the meeting, from time to time.

Creditors may  
vote by class.

**135.** A class of creditors may express its views and wishes separately from every other class and the effect to be given to those views and wishes shall, in case of any dispute and subject to this Act, be in the discretion of the Court.

Chairperson may  
admit or reject  
proof of claim.

**136.—**(1) The chairperson of any meeting of creditors has power to admit or reject a proof of claim for the purpose of voting but his decision is subject to appeal to the Court.

(2) Notwithstanding anything in this Act, the chairperson may, for the purpose of voting, accept any letter or printed matter transmitted by any form or mode of telecommunication as proof of the claim of a creditor.

(3) If the chairperson is in doubt as to whether a proof of claim should be admitted or rejected, the chairperson shall mark the proof as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

**137.**—(1) A person is not entitled to vote as a creditor at any meeting of creditors unless that person has duly proved a claim provable in bankruptcy and the proof of claim has been duly delivered to the trustee before the time appointed for the meeting. Requirements for entitlement to vote.

(2) A creditor may vote either in person or by proxy.

(3) A proxy is not invalid merely because it is in the form of a letter or printed matter transmitted by any form or mode of telecommunication.

(4) A debtor may not be appointed a proxyholder to vote at any meeting of his creditors.

(5) A corporation may vote by an authorised proxyholder at meetings of creditors.

(6) If the chairperson is of the opinion that the outcome of a vote was determined by the vote of a creditor who did not deal with the debtor at arm's length at any time during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy, the chairperson shall re-determine the outcome by excluding the creditor's vote. The re-determined outcome is the outcome of the vote unless the Court, on application within ten days after the day on which the chairperson re-determined the outcome of the vote, considers it appropriate to include the creditor's vote and determines another outcome.

Voting where  
claim acquired  
after bank-  
ruptcy.

**138.**—(1) No person is entitled to vote on a claim acquired after the bankruptcy of a debtor unless the entire claim is acquired.

(2) Subsection (1) does not apply to persons acquiring notes, bills or other securities on which they are liable.

Voting in respect  
of claim secured  
by bill or note.

**139.** A creditor shall not vote in respect of any claim 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 on that bill or note of every person who—

- (a) is liable on that bill or note antecedently to the debtor; and
- (b) is not a bankrupt,

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 claim.

Voting by  
secured creditor.

**140.** 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 he is entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security.

Voting by  
trustee.

**141.**—(1) If the trustee is a proxyholder for a creditor, the trustee may vote as a creditor at any meeting of creditors.

(2) The vote of the trustee, or a person authorised by the trustee, as proxyholder for a creditor, shall not be counted in respect of any resolution affecting the remuneration or conduct of the trustee.

(3) The following persons are not entitled to vote on the appointment of a trustee or, except with the permission of the Court and on any condition that the Court may impose, on the appointment of inspectors—

- (a) the father, mother, child, sister, brother, uncle or aunt, by blood, adoption or marriage, or the spouse of the bankrupt;
- (b) where the bankrupt is a corporation, any officer, director or employee thereof; and
- (c) where the bankrupt is a corporation, any wholly owned subsidiary corporation or any officer, director or employee thereof.

**142.**—(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 chairperson of the meeting at which the minute is signed shall be admitted in evidence without further proof. Minutes to be proof of proceedings at meeting.

(2) Until the contrary is proved, a meeting of creditors in respect of the proceedings where a minute has been signed by the chairperson shall be deemed to have been duly convened and held and all resolutions passed or proceedings at the meeting to have been duly passed or taken.

**143.** Subject to this Act, all questions at meetings of creditors shall be decided by resolution carried by the majority of votes, and for that purpose the votes of a creditor shall be calculated by counting one vote for each dollar of every claim of the creditor that is not disallowed. Creditors vote by dollar.

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**INSPECTORS**

Appointment of  
inspectors.

**144.**—(1) At the first or a subsequent meeting of creditors, the creditors shall, by resolution, appoint up to five inspectors of the estate of the bankrupt or agree not to appoint any inspectors.

(2) No person is eligible to be appointed or to act as an inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt.

(3) The powers of the inspectors may be exercised by a majority of them.

(4) The creditors or inspectors at any meeting may fill any vacancy in their number.

(5) The creditors may at any meeting and the Court may, on the application of the trustee or any creditor, revoke the appointment of any inspector and appoint another in his place.

Meetings.

**145.**—(1) The trustee may call a meeting of inspectors when he deems it advisable and he shall do so when requested in writing by a majority of the inspectors.

(2) An inspector may, if all the other inspectors consent, participate in a meeting of inspectors by means of such telephone or other communication facilities so as to permit all persons participating in the meeting to communicate with each other, and an inspector participating in such a meeting by such means is deemed for the purpose of this Act to be present at that meeting.

(3) In the event of an equal division of opinion at a meeting of inspectors, the opinion of any absent inspector shall be sought in order to resolve the difference, and in the case of a difference that cannot be so resolved, it shall be resolved by the trustee, unless it concerns his personal conduct or interest, in which case it shall be resolved by the creditors or the Court.

**146.** If the inspectors fail to exercise the powers conferred upon them, the trustee shall call a meeting of the creditors for the purpose of substituting other inspectors and for the purpose of taking any action or giving any directions that may be necessary.

Obligation of trustee if inspectors fail to exercise their powers.

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

Creditors may override directions of inspectors.

(2) The decisions and actions of the inspectors are subject to review by the Court at the instance of the trustee or any interested person and the Court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution of any act or decision or may refer any matter back to the inspectors for reconsideration.

**148.—(1)** No inspector is, directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is an inspector, except with the prior approval of the Court.

Obligations and rights of inspectors.

(2) No defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith.

(3) The inspectors shall from time to time—

- (a) verify the bank balance of the estate, examine the trustee's accounts;
- (b) inquire into the adequacy of the security filed by the trustee; and
- (c) subject to subsection (4), approve the trustee's final statement of receipts and disbursements, dividend sheet and disposition of unrealised property.

(4) Before approving the final statement of receipts and disbursements of the trustee, the inspectors shall satisfy themselves that all the property has been accounted for and that the administration of the estate has been completed as far as can reasonably be done and shall determine whether or not the disbursements and expenses incurred are proper and have been duly authorised, and whether or not the fees and remuneration are just and reasonable in the circumstances.

(5) Each inspector—

- (a) may be repaid actual and necessary travel expenses incurred in relation to the performance of the inspector's duties; and
- (b) may be paid such fees per meeting as are prescribed.

(6) An inspector duly authorised by the creditors or by the other inspectors to perform special services for the estate may be allowed a special fee for those services, subject to approval of the Court, which may vary that fee as it deems proper having regard to the nature of the services rendered in relation to the obligations of the inspector to the estate to act in good faith for the general interest of the administration of the estate.

#### CLAIMS PROVABLE

**149.**—(1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act. Claims provable.

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 163.

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only therefrom a rebate of interest at a rate of five per cent per annum, or such other rate as may be prescribed, 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.

(4) A claim in respect of a debt or liability referred to in section 205(1)(c) or (d) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse or child was living apart from the bankrupt, whether the order

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or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

Claims provable  
in bankruptcy  
following  
proposal.

**150.**—(1) The claims of creditors under a proposal are, in the event of the debtor subsequently becoming bankrupt, provable in the bankruptcy for the full amount of the claims less any dividends paid on those claims under the proposal.

(2) If interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum to the date of the bankruptcy from the time the debt or sum was payable, if evidenced by a written document, or, if not so evidenced, from the time notice has been given to the debtor of the interest claimed.

Proof in respect  
of distinct  
contracts.

**151.** If a bankrupt was, at the date of the bankruptcy, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the fact 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 persons respectively liable on the contracts.

#### PROOF OF CLAIMS

Proof of claim  
required to share  
in distribution.

**152.**—(1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

(2) A claim shall be proved by delivering to the trustee a proof of claim in the prescribed form.

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

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counterclaim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated.

**153.** If a creditor or other person in any proceedings under this Act files with the trustee a proof of claim containing any wilfully false statement or wilful misrepresentation, the Court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part as the Court in its discretion may see fit.

Court may disallow false claims.

**154.—**(1) A creditor who has filed a proof of claim is entitled to see and examine the proofs of other creditors.

Creditors may examine each other's proofs of claim.

(2) Proofs of claims for wages of workers and others employed by the bankrupt may be made in one proof by—

- (a) the bankrupt or by someone on the bankrupt's behalf;
- (b) a representative of the Ministry of Labour;
- (c) a representative of a union representing workers and others employed by the bankrupt; or
- (d) a Court-appointed representative.

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(3) There shall be attached to the proof referred to in subsection (2) a schedule setting out the names and addresses of the workers and others and the amounts severally due to them, but that proof does not disentitle any worker or other wage earner to file a separate proof on their own behalf.

#### PROOF BY SECURED CREDITORS

Proof by secured creditor for balance due or for whole claim.

**155.**—(1) If a secured creditor realises his security, he may prove the balance due to him after deducting the net amount realised.

(2) If a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove his whole claim.

Trustee may require proof of claim by secured creditor.

**156.**—(1) If the trustee has knowledge of property that may be subject to a security, the trustee may, by serving notice in the prescribed form, require any person to file, in the prescribed form and manner, a proof of the security that gives full particulars of the security, including the date on which the security was given and the value at which that person assesses it.

(2) If the trustee serves a notice under subsection (1), and the person on whom the notice is served does not file a proof of security within thirty days after the day of service of the notice, the trustee may, with leave of the Court, sell or dispose of any property that was subject to the security, free of that security.

(3) A creditor is entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

(4) The trustee may redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor.

**157.**—(1) If the trustee is dissatisfied with the value at which a security is assessed, the trustee may require that the property the security comprises be offered for sale at such time and on such terms and conditions as may be agreed on between the creditor and the trustee or, in default of such an agreement, as the Court may direct.

Trustee may require security to be sold.

(2) If a sale under subsection (1) is by public auction the creditor or the trustee on behalf of the estate may bid or purchase.

(3) The costs and expenses of a sale made under this section are in the discretion of the Court.

**158.** Notwithstanding sections 156(3) and 157, the creditor may, by notice in writing, require the trustee to elect whether he will exercise the power of redeeming the security or requiring it to be realised, and if the trustee does not, within one month after receiving the notice or such further time or times as the Court may allow, signify in writing to the creditor his election to exercise the power, the trustee is not entitled to exercise that power, and the equity of redemption or any other interest in the property comprised in the security that is vested in the trustee shall vest in the creditor, and the amount of the claim of the creditor shall be reduced by the amount at which the security has been valued.

Secured creditor may require trustee to elect which power to exercise.

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Amendment of valuation of security after it is realised.

**159.** If a creditor after having valued his security subsequently realises it, or it is realised under section 157, 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.

Amendment of valuation of security where it is not realised.

**160.**—(1) If a trustee has not elected to acquire the security as provided in this Act, a creditor 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 in good faith on a mistaken estimate or that the security has diminished or increased in value since its previous valuation.

(2) An amendment under subsection (1) shall be made at the cost of the creditor and on such terms as the Court orders, unless the trustee allows the amendment without application to the Court.

(3) If a valuation has been amended under this section, the creditor—

- (a) shall immediately repay any surplus dividend that he may have received in excess of that which he would have been entitled to based on the amended valuation; or
- (b) is entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend that he may have failed to receive by reason of the amount 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 amendment is sent to the trustee.

**161.** If a secured creditor does not comply with sections 155 to 160, he shall be excluded from any dividend.

Exclusion of secured creditor from dividend for non-compliance.

**162.** Subject to section 158, a creditor shall in no case receive more than one hundred cents on the dollar and interest as provided by this Act.

No creditor to receive more than 100 cents on dollar.

#### ADMISSION AND DISALLOWANCE OF PROOFS OF CLAIM AND PROOFS OF SECURITY

**163.—**(1) The trustee shall examine every proof of claim or proof of security and the grounds for the proof and may require further evidence in support of the claim or security.

Trustee to examine proofs.

(2) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if it is a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

(3) The trustee may disallow in whole or in part—

- (a) any claim;
- (b) any right to a priority under the applicable order of priority set out in this Act; or
- (c) any security.

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(4) If the trustee makes a determination under subsection (2), or under subsection (3) disallows in whole or in part any claim, right to a priority or security, the trustee shall immediately provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (2) or whose claim, right to a priority or security was disallowed under subsection (3), a notice in the prescribed form setting out the reasons for the determination or disallowance.

(5) A determination under subsection (2), or a disallowance referred to in subsection (3) is final and conclusive unless, within a thirty-day period after service of the notice referred to in subsection (4), or such further time as the Court may on application made within that period allow, the person to whom the notice was provided appeals the trustee's decision to the Court in accordance with the regulations.

(6) The Court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

#### SCHEME OF DISTRIBUTION

Priority of  
claims.

**164.**—(1) Subject to the rights of secured creditors, the proceeds realised from the property of a bankrupt shall be applied in priority of payment in the following order—

- (a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative of the deceased bankrupt;

- (b) the costs of administration, in the following order—
  - (i) the expenses and fees of any person acting under a direction made under section 21(1)(a);
  - (ii) the expenses and fees of the trustee; and
  - (iii) legal costs;
- (c) the levy payable under section 173;
- (d) any unpaid amount of wages, salaries or compensation of an employee (including vacation pay but excluding termination or severance pay) for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy and ending on the date of the bankruptcy, to the extent of two thousand dollars or such other amount as may be prescribed;
- (e) claims in respect of debts or liabilities referred to in section 205(1)(c) or (d), if provable by virtue of section 149(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;
- (f) taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim;

- (g) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realisation from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;
- (h) all indebtedness of the bankrupt under—
  - (i) any Act respecting workers' compensation;
  - (ii) any Act respecting unemployment insurance; and
  - (iii) any provision of the Income Tax Act creating an obligation to pay to the Crown amounts that have been deducted or withheld,payable rateably;
- (i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

- (j) claims of the Crown not mentioned in paragraphs (a) to (i), payable rateably notwithstanding any statutory preference to the contrary.

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1) shall be made as soon as funds are available for the purpose.

(3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due to him.

**165.** A creditor who, at any time before the bankruptcy of a debtor, entered into a transaction with the debtor and who was not at arm's length with the debtor at that time is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the trustee or of the Court a proper transaction.

Claim for dividend in case of non-arm's length transaction.

**166.** If a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower whereby the lender is to receive a rate of interest varying with the profits or is to receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied.

Claim of participating lender.

Claim of officer  
or director.

**167.** If a corporation becomes bankrupt, no officer or director of the corporation is entitled to have his claim preferred in respect of wages, salary, commission or compensation for work done or services rendered to that corporation in any capacity.

Dividends pay-  
able rateably.

**168.** Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

Property of  
bankrupt  
partnership.

**169.**—(1) If partners become bankrupt, their joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(2) If there is a surplus of the separate properties of the partners, it shall be dealt with as part of the joint property.

(3) If there is a surplus of the joint property of the partners, it shall be dealt with as part of the respective separate properties in proportion to the right and interest of each partner in the joint property.

(4) If a bankrupt owes or owed debts both individually and as a member of one or more partnerships, the claims shall rank first on the property of the individual or partnership by which the debts they represent were contracted and shall only rank on the other estate or estates after all the creditors of the other estate or estates have been paid in full.

(5) If the joint property of any bankrupt partnership is insufficient to defray any costs properly incurred, the trustee may pay such costs as cannot be paid out of the joint property,

out of the separate property of the bankrupts or one or more of them in such proportion as the trustee may determine with the consent of the inspectors of the estates out of which the payment is intended to be made, or, if the inspectors withhold or refuse their consent, with the approval of the Court.

**170.** If there is a surplus after payment of the claims as provided in sections 164 to 169, it shall be applied in payment of interest from the date of the bankruptcy at the rate of five per cent per annum, or such other rate as may be prescribed, on all claims proved in the bankruptcy and according to their priority.

Payment of interest on claims.

**171.** The bankrupt or the legal personal representative of a deceased bankrupt is entitled to any surplus remaining after payment in full of the bankrupt's creditors, with interest as provided by this Act, and of the costs, charges and expenses of the bankruptcy proceedings.

Right of bankrupt to surplus.

**172.** Nothing in this Act affects the right of any person who has a claim against the bankrupt for damages on account of injury to or death of any person, or injury to property, occasioned by a motor vehicle, or on account of injury to property being carried in or on a motor vehicle, to have the proceeds of any liability insurance policy applied in or toward the satisfaction of the claim.

Motor vehicle insurance.

**173.—(1)** For the purpose of defraying the expenses of the supervision by the Supervisor, there shall be payable to the Supervisor for deposit with the Accountant General a levy on all payments made by the trustee by way of dividend or otherwise on account of the claims of creditors.

Supervisor's levy.

(2) The levy referred to in subsection (1) shall be at a prescribed rate and shall be charged proportionately against all payments and deducted from the payments by the trustee before payment is made.

### DIVIDENDS

Trustee to pay dividends to unsecured creditors as required by inspectors.

**174.**—(1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, from time to time as required by the inspectors, declare and distribute dividends among the unsecured creditors entitled to dividends.

(2) If the validity of any claim filed with the trustee has not yet been determined, the trustee shall retain sufficient funds to provide for payment of the claim in the event that the claim is admitted.

(3) No action for a dividend lies against the trustee, but, if the trustee refuses or fails to pay any dividend after having been directed to do so by the inspectors, the Court may, on the application of any creditor, order him to pay it, and also to pay personally interest on the dividend for the time that it is withheld, as well as the costs of the application.

Notice to persons who have not proved their claim that final dividend to be made.

**175.**—(1) The trustee may, after the first meeting of the creditors, send a notice in the prescribed manner to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved, informing that person that if he does not prove his claim within a period of thirty days after the sending of the notice the trustee will proceed to declare a dividend or final dividend without regard to that person's claim.

(2) If a person notified under subsection (1) does not prove the claim within the time limit or within such further time as the Court, on proof of merits and satisfactory explanation of the delay in making proof, may allow, the claim of that person shall, notwithstanding anything in this Act, be excluded from all share in any dividend, but a taxing authority may notify the trustee within the period referred to in subsection (1) that it proposes to file a claim as soon as the amount has been ascertained, and the time for filing the claim shall thereupon be extended to three months or such further time as the Court may allow.

(3) Notwithstanding subsection (2), a claim may be filed for an amount payable under any of the following Acts within the time limit referred to in subsection (2) or within three months from the time evidence of the facts on which the claim is based comes to the attention of the Crown—

- (a) the Income Tax Act Cap. 149;
- (b) the Value Added Tax Act Cap. 333A;
- (c) the Property Tax Act Cap. 257B
- (d) the Property Transfer Tax Act Cap. 257C;
- (e) the Annual Stamp Tax Act Cap. 16A;
- (f) the Excise Tax Act Cap. 94;
- (g) the Customs Act No. 9 of 2015;
- (h) the Tax Administration Act, 2016.

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(4) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under the enactments referred to in subsection (3), no dividend shall be declared until the expiry of three months after the trustee has filed all returns that the trustee is required to file.

Where claim proved after dividend declared.

**176.** A creditor who has not proved his claim before the declaration of any dividend is entitled on proof of his claim 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, but he is not entitled to disturb the distribution of any dividend declared before his claim was proved for the reason that he has not participated in that dividend, except on such terms and conditions as may be ordered by the Court.

Final statement and division of property by trustee.

**177.—**(1) When the trustee has realised all the property of the bankrupt or all of the property that can, in the joint opinion of the trustee and of the inspectors, be realised without needlessly protracting the administration, and settled or determined or caused to be settled or determined, the claims of all creditors to rank against the estate of the bankrupt, the trustee shall prepare a final statement of receipts and disbursements and dividend sheet and, subject to this Act, divide the property of the bankrupt among the creditors who have proved their claims.

(2) For the purposes of subsection (1), the trustee is to prepare the final statement of receipts and disbursements without delay after—

- (a) the debtor files or is deemed to have filed an assignment;

- (b) the trustee informs the creditors and the official receiver of a default made in the performance of any provision in a proposal; or
- (c) the trustee gives the certificate referred to in section 92 in respect of the proposal.

**178.**—(1) The trustee's final statement of receipts and disbursements shall contain—

Final statement of receipts and disbursements.

- (a) a complete account of—
  - (i) all moneys received by the trustee out of the bankrupt's property or otherwise;
  - (ii) the amount of interest received by the trustee;
  - (iii) all moneys disbursed and expenses incurred by the trustee;
  - (iv) all moneys disbursed by the trustee for services provided by persons related to the trustee; and
  - (v) the remuneration claimed by the trustee; and
- (b) full particulars of, and a description and value of, all the bankrupt's property that has not been sold or realised together with the reason why it has not been sold or realised and the disposition made of that property.

(2) The statement referred to in subsection (1) shall be prepared in the prescribed form or as near thereto as the circumstances of the case will permit and together with the dividend sheet shall be submitted to the inspectors for their approval.

(3) The trustee shall forward a copy of the statement and dividend sheet to the Supervisor after they have been approved by the inspectors.

(4) The Supervisor may comment as he sees fit and his comments shall be placed by the trustee before the taxing officer for his consideration on the taxation of the trustee's accounts.

(5) After the Supervisor has commented on the taxation of the trustee's accounts or advised the trustee that the Supervisor has no comments to make and the trustee's accounts have been taxed, the trustee shall, in the prescribed manner, send to every creditor whose claim has been proved, to the Registrar, to the Supervisor and to the bankrupt—

- (a) a copy of the final statement of receipts and disbursements;
- (b) a copy of the dividend sheet; and
- (c) a notice, in the prescribed form, of his intention to pay a final dividend after the expiry of fifteen days from the sending of the notice, statement and dividend sheet and to apply to the Court for his discharge on a subsequent date not less than thirty days after the payment of the dividend.

(6) No interested person is entitled to object to the final statement and the dividend sheet unless, prior to the expiry of the fifteen days referred to in subsection (5)(c), that person files notice of his objection with the Registrar setting out his reasons for the objection and serves a copy of the notice on the trustee.

**179.** If joint and separate properties are being administered, the dividends may be declared together, and the expenses of administering the properties shall be apportioned by the trustee. Dividends on joint and separate properties.

**180.—(1)** Before proceeding to discharge, the trustee shall forward to the Supervisor for deposit with the Accountant General the unclaimed dividends and undistributed funds that the trustee possesses, other than those exempted by the regulations, and shall provide a list of the names and the post office addresses, in so far as known, of the creditors entitled to the unclaimed dividends, showing the amount payable to each creditor. Unclaimed dividends and undistributed funds.

(2) The Accountant General shall, after receiving the dividends and funds and the list referred to in subsection (1), on application, pay to any creditor his proper dividend as shown on that list, and such payment has effect as if made by the trustee.

#### SUMMARY ADMINISTRATION

**181.—(1)** Sections 181 to 183 apply to the administration of the estate of an individual bankrupt if, in the opinion of the Supervisor, the realisable assets of the bankrupt, after the Provisions applying to summary administration.

claims of secured creditors are deducted, will not exceed fifteen thousand dollars or such other amount as is prescribed.

(2) In the determination of the realisable assets of a bankrupt for the purpose of subsection (1), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt before the bankrupt's discharge.

(3) The Supervisor may direct that subsection (1) shall cease to apply in respect of the bankrupt if the Supervisor determines that—

- (a) the realisable assets of the bankrupt, after the claims of secured creditors are deducted, exceed five thousand dollars or the amount prescribed, as the case may be; or
- (b) the costs of realisation of the assets of the bankrupt are a significant proportion of the realisable value of the assets,

and the Supervisor considers that such a direction is appropriate.

(4) The following provisions apply to the summary administration of estates under this Act—

- (a) all proceedings under this section shall be titled "Summary Administration";
- (b) the security to be deposited by a trustee under section 28 shall not be required unless directed by the Supervisor;

- (c) a notice of the bankruptcy shall not be published in a local newspaper unless such publication is deemed expedient by the trustee or ordered by the Court;
- (d) all notices, statements and other documents shall be sent in the prescribed manner;
- (e) if a first meeting of the creditors is requested by the Supervisor or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims, the trustee shall call the meeting, in the prescribed form and manner, and it must be held within twenty-one days after being called;
- (f) there shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed, the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors;
- (g) in such circumstances as may be specified by the Supervisor, the estates of individuals who, because of their relationship, could reasonably be dealt with as one estate may be dealt with as one estate;
- (h) in such circumstances as are specified by the Supervisor and with the approval of the Supervisor, the trustee may deposit all

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moneys relating to the summary administration of estates in a single trust account;

- (i) a notice of bankruptcy and—
  - (i) a notice of impending automatic discharge of the bankrupt; or
  - (ii) an application for discharge of the bankrupt,

may be given in a single notice in the prescribed form;

- (j) notwithstanding section 178, the procedure respecting the trustee's accounts, including the taxation of those accounts shall be as prescribed; and
- (k) notwithstanding section 53(1), (5) and (6), the procedure for the discharge of the trustee shall be as prescribed.

Remuneration in summary administration.

**182.** For the summary administration of estates, the trustee shall receive such fees and disbursements as may be prescribed.

Other provisions of Act to apply.

**183.** Except as provided in section 181, all provisions of this Act, in so far as they are applicable, apply to the summary administration of estates, with such modifications as the circumstances require.

**PART VII****BANKRUPTS****COUNSELLING SERVICES**

- 184.**—(1) The trustee—
- Trustee to  
counsel  
individual  
bankrupts.
- (a) shall provide, or provide for, counselling for an individual bankrupt; and
  - (b) may provide, or provide for, counselling for a person who, as specified in guidelines issued by the Supervisor, is financially associated with an individual bankrupt,

in accordance with guidelines issued by the Supervisor, and the estate of the bankrupt shall pay the costs of the counselling, as costs of administration of the estate, according to the prescribed tariff.

(2) If counselling is provided by a trustee to a debtor who is not bankrupt, that counselling must be provided in accordance with guidelines issued by the Supervisor.

(3) Section 196(1) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided under subsection (1).

**DUTIES OF BANKRUPT**

- 185.** A bankrupt shall—
- Duties of  
bankrupt.
- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorised by the trustee to take possession of it or any part of it;

- (b) in such circumstances as are specified in guidelines issued by the Supervisor, deliver to the trustee, for cancellation, all credit cards issued to, and in the possession or control of, the bankrupt;
- (c) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;
- (d) at such time and place as may be fixed by the Supervisor, attend before the Supervisor for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;
- (e) within five days following the bankruptcy, unless the time is extended by the Supervisor, prepare and submit to the trustee a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing—
  - (i) the particulars of the bankrupt's assets and liabilities;
  - (ii) the names and addresses of the bankrupt's creditors;
  - (iii) the securities held by them respectively;

- (iv) the dates when the securities were respectively given; and
- (v) such further or other information as may be required,

but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the Supervisor may, as an expense of the administration of the estate, authorise the employment of a qualified person to assist in the preparation of the statement;

- (f) make or give all the assistance within his power to the trustee in making an inventory of his assets;
- (g) make disclosure to the trustee—
  - (i) of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the Court direct, and ending on the date of the bankruptcy; and
  - (ii) as to how and to whom and for what consideration any part of the property was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

- (h) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy;
- (i) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and at the meeting submit thereat to examination;
- (j) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (k) submit to such examinations under oath with respect to his property or affairs as may be required;
- (l) aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors;
- (m) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;
- (n) examine the correctness of all proofs of claim filed, if required by the trustee;
- (o) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

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- (p) inform the trustee of any material change in the bankrupt's financial situation;
  - (q) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address; and
  - (r) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or as may be prescribed, or as may be directed by the Court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested.

**186.** Where a bankrupt is a corporation, the officer Bankrupt corporation. executing an assignment, or such—

- (a) officer of the corporation; or
- (b) person who has, or has had, directly or indirectly, control in fact of the corporation,

as the Supervisor may specify, shall attend before the Supervisor for examination and shall perform all of the duties imposed on a bankrupt by section 185, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

**187.** If a bankrupt is undergoing imprisonment, the Court Imprisoned bankrupt. may direct that the bankrupt be brought before the Court in the custody of a bailiff or other duly authorised officer at such

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time and place as may be designated, or the Court may make such other order as it deems proper and requisite in the circumstances, in order to enable the bankrupt—

- (a) to attend in Court in bankruptcy proceedings at which his personal presence is required;
- (b) to attend the first meeting of creditors; or
- (c) to perform the duties required of him under this Act.

#### EXAMINATION OF BANKRUPT AND OTHERS

Examination of  
bankrupt by  
Supervisor.

**188.**—(1) At any time before the bankrupt's discharge, the Supervisor shall, on the attendance of the bankrupt, examine the bankrupt under oath with respect to the conduct of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property and shall put to the bankrupt any prescribed questions or such other like questions as the Supervisor may see fit.

(2) In the case of a person in respect of whom a notice of intention is filed under section 72 or a proposal is filed under section 87(1), the examination under subsection (1) is to be held before the proposal is approved by the court or the person becomes bankrupt.

(3) The Supervisor shall make a record of any examination made under subsection (1) and shall forward a copy of the record to the trustee.

(4) If the examination under subsection (1) is held—

- (a) before the first meeting of creditors, the record of the examination shall be communicated to the creditors at the meeting; or
- (b) after the first meeting of creditors, the record of the examination shall be made available to any creditor who requests it.

(5) If a bankrupt fails to present himself for examination by the Supervisor, the Supervisor shall report the failure to the trustee.

**189.**—(1) The Supervisor may make or cause to be made any inquiry or investigation that may be deemed necessary in respect of the conduct of the bankrupt, the causes of his bankruptcy and the disposition of his property, and the Supervisor shall report the findings on any such inquiry or investigation to the trustee and to the Court.

Investigation  
by Supervisor  
regarding  
bankrupt.

(2) Section 191 applies in respect of an inquiry or investigation under subsection (1).

**190.**—(1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the Registrar or other authorised person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt, respecting the bankrupt, his dealings or property, and may order any person liable to be so examined to produce any books, records, documents, correspondence or papers in his possession or power relating in all or in part to the bankrupt, his dealings or property.

Examination  
of bankrupt,  
trustee and  
others.

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(2) On the application to the Court by the Supervisor, any creditor or other interested person and on sufficient cause being shown, the Court may make an order for the examination under oath, before the Registrar or other authorised person—

- (a) of the trustee;
- (b) the bankrupt;
- (c) an inspector or a creditor; or
- (d) any other person named in the order,

for the purpose of investigating the administration of the estate of any bankrupt, and the Court may further order any person liable to be so examined to produce any books, records, documents, correspondence or papers in the person's possession or power relating in all or in part to the bankrupt, the trustee or any creditor, the costs of the examination and investigation to be in the discretion of the Court.

(3) The evidence of any person examined under this section shall, if transcribed, be filed in the Court and may be read in any proceedings before the Court under this Act and to which the person examined is a party.

Trustee may require books and property of bankrupt to be produced or delivered.

**191.**—(1) If a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, record, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

(2) If a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the Registrar or other authorised person concerning the property, book, document or paper that the person is supposed to possess.

(3) Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.

**192.**—(1) If a person on examination admits that he is indebted to the bankrupt, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted or any part of the amount either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

Court orders where person admits debt to bankrupt.

(2) If any person on examination admits that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the trustee, order that person to deliver to the trustee the property or any part of the property at such time, in such manner and on such terms as to the Court may seem just.

**193.** If the bankrupt fails to present himself for examination before the Supervisor as required by section 185(d), or if the bankrupt or any other person is served with an appointment or a summons to attend for examination and is paid or tendered the proper conduct money and witness fees

Warrant to apprehend bankrupt for examination.

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as fixed by the regulations, but refuses or neglects to attend as required by the appointment or summons, the Court may, on the application of the trustee or the Supervisor, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

Person being  
examined must  
answer  
questions.

**194.** Any person being examined is bound to answer all questions relating to the business or property of the bankrupt, to the causes of his bankruptcy and the disposition of his property.

Warrant for  
arrest of  
bankrupt.

**195.—**(1) The Court may by warrant cause a bankrupt to be arrested and detained, and any books, records, papers and property in his possession to be seized, and the books, records, papers and property to be safely kept as directed until such time as the Court may order, under the following circumstances—

- (a) if, after the filing of a bankruptcy application against the bankrupt, it appears to the Court that there are grounds for believing that he has absconded or is about to abscond from Grenada with a view to—
  - (i) avoiding payment of the debt in respect of which the bankruptcy application was filed;
  - (ii) avoiding appearance to the application;
  - (iii) avoiding examination in respect of his affairs; or

- (iv) otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;
- (b) if, after making an assignment, it appears to the Court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Grenada with a view to avoiding payment of his debts or to avoiding examination in respect of his affairs;
- (c) if, after the filing of a bankruptcy application or an assignment, it appears to the Court there are reasonable grounds for believing that the bankrupt—
  - (i) is about to remove his property with a view to preventing or delaying possession being taken of it by the trustee; or
  - (ii) has concealed or is about to conceal or destroy any of his property or any books, records, documents or writings that might be of use to the trustee or to the bankrupt's creditors in the course of the bankruptcy proceedings;
- (d) if the bankrupt removes any property in his possession above the value of one hundred dollars without leave of the Court after service of a bankruptcy application, or without leave of the trustee after an assignment has been made; or

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- (e) if after the commencement of proceedings under this Act, the bankrupt has failed to obey an order of the Court.

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

#### DISCHARGE OF BANKRUPT

Automatic discharge of first-time individual bankrupt.

**196.**—(1) Subject to subsections (2) and section 184(3), the following provisions apply in respect of an individual bankrupt—

- (a) in the case of a bankrupt who has never before been bankrupt under the laws of Grenada or of any prescribed jurisdiction, the bankrupt is automatically discharged—
  - (i) on the expiry of nine months after the date of bankruptcy unless, in that nine-month period, an opposition to the discharge has been filed or the bankrupt has been required to make payments under section 94 to the estate of the bankrupt; or
  - (ii) on the expiry of twenty months after the date of bankruptcy unless an opposition to the discharge has been filed before the automatic discharge takes effect; and

- (b) in the case of a bankrupt who has been a bankrupt one time before under the laws of Grenada or of any prescribed jurisdiction, the bankrupt is automatically discharged—
  - (i) on the expiry of twenty-four months after the date of bankruptcy unless, in that twenty-four-month period, an opposition to the discharge has been filed or the bankrupt has been required to make payments under section 94 to the estate of the bankrupt; or
  - (ii) on the expiry of thirty-six months after the date of bankruptcy unless an opposition to the discharge has been filed before the automatic discharge takes effect.

(2) Nothing in subsection (1) precludes a bankrupt from applying to the Court for a discharge before the bankrupt would otherwise be automatically discharged, and that subsection ceases to apply to a bankrupt who makes such an application.

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Grenada or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the Court for a discharge referred to in subsection (2).

(4) The trustee shall, not less than fifteen days before the date of a bankrupt's automatic discharge, give notice of

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the impending discharge, in the prescribed form, to the Supervisor, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address.

(5) An automatic discharge is deemed, for all purposes, to be an absolute and immediate order of discharge.

(6) immediately after a bankrupt has been automatically discharged, the trustee shall issue a certificate to the discharged bankrupt, in the prescribed form, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in section 205(1). The trustee shall send a copy of the certificate to the Supervisor.

Opposition to  
automatic  
discharge.

**197.**—(1) The following provisions apply in respect of oppositions to the automatic discharge of an individual bankrupt—

- (a) if the Supervisor opposes the discharge, the Supervisor must give notice of the opposition, together with the grounds for it, to the trustee and to the bankrupt before the automatic discharge would otherwise take effect;
- (b) if a creditor opposes the discharge, the creditor must give notice of the opposition, together with the grounds for it, to the Supervisor, to the trustee and to the bankrupt before the automatic discharge would otherwise take effect; and
- (c) if the trustee opposes the discharge, the trustee must give notice of the opposition in the

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prescribed form and manner, together with the grounds for the opposition, to the bankrupt and the Supervisor before the automatic discharge would otherwise take effect.

(2) If the Supervisor, a creditor or the trustee opposes the automatic discharge of an individual bankrupt, the trustee shall apply immediately to the Court for an appointment for the hearing of the opposition in the manner referred to in sections 198 to 204, and the hearing must be held—

- (a) within thirty days after the day on which the appointment is made; or
- (b) at any later time that may be fixed by the Court at the bankrupt's or trustee's request.

**198.**—(1) In the case of a bankrupt individual, other than an individual in respect of whom section 196(1) applies, the making of a bankruptcy order against, or an assignment by, the bankrupt individual operates as an application for discharge. Application for discharge.

(2) In the case of a bankrupt corporation, it is required to make an application for discharge and may only do so after it has satisfied the claims of its creditors in full.

(3) The trustee, before proceeding to his or her discharge and in any case not earlier than three months and not later than one year after the bankruptcy of a person for whom there is an application for discharge by virtue of subsection (1) or (2) shall, on five days notice to the bankrupt, apply to the Court for an appointment for a hearing of the

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application for the bankrupt's discharge, and the hearing must be held within thirty days after the day on which the appointment is made or at any other time that may be fixed by the Court at the bankrupt's or trustee's request.

(4) The Court may, before issuing an appointment for hearing on application for discharge, if requested by the trustee, require such funds to be deposited with, or such guarantee to be given to, the trustee, as it deems proper, for the payment of his fees and disbursements incurred in respect of the application.

(5) The trustee, on obtaining or being served with an appointment for hearing an application for discharge, shall, not less than fifteen days before the day appointed for the hearing of the application, send a notice of the hearing, in the prescribed form and manner, to the Supervisor, the bankrupt and every known creditor, at the creditor's latest known address.

(6) Where the trustee is not available to perform the duties required of a trustee on the application of a bankrupt for a discharge, the Court may authorise any other person to perform such duties and may give such directions as it deems necessary to enable the application of the bankrupt to be brought before the Court.

Trustee to  
prepare report.

**199.**—(1) The trustee shall prepare a report in the prescribed form with respect to—

- (a) the affairs of the bankrupt;
- (b) the causes of his bankruptcy;

- (c) the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the Court;
- (d) the conduct of the bankrupt both before and after the date of the initial bankruptcy event;
- (e) whether the bankrupt has been convicted of any offence under this Act; and
- (f) any other fact, matter or circumstance that would justify the Court in refusing an unconditional order of discharge,

and the report shall be accompanied by a resolution of the inspectors declaring whether or not they approve or disapprove of the report, and in the latter case, the reasons of the disapproval shall be given.

(2) If an application of a bankrupt for a discharge is pending, the trustee shall file the report prepared under subsection (1) in the Court not less than two days before the day appointed for hearing the application, and send a copy to the Supervisor, to the bankrupt and to each creditor who requested a copy not less than ten days before the day appointed for hearing the application. In all other cases the trustee, before proceeding to the discharge, shall file the report in the Court and send a copy to the Supervisor.

(3) The Supervisor may make such further or other report to the Court as he deems expedient or as in his opinion ought to be before the Court on the application referred to in subsection (2).

(4) The trustee or any creditor may attend the Court and be heard in person or by legal counsel.

(5) For the purposes of the application referred to in subsection (2), the report of the trustee is evidence of the statements contained in the report.

(6) If a bankrupt intends to dispute any statement contained in the trustee's report prepared under subsection (1), the bankrupt shall at or before the time appointed for hearing the application for discharge give notice in writing to the trustee specifying the statements in the report that he proposes to dispute at the hearing.

(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition, stating the grounds of the opposition to the trustee and to the bankrupt at or before the time appointed for the hearing of the application for discharge.

Powers of Court  
regarding  
application for  
discharge.

**200.**—(1) On the hearing of an application of a bankrupt for a discharge, the Court may—

- (a) grant or refuse an absolute order of discharge;
- (b) suspend the operation of an absolute order of discharge for a specified time; or
- (c) grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to the bankrupt's, his after-acquired property.

(2) The Court shall on proof of any of the facts mentioned in section 201, which proof may be given orally, by affidavit or otherwise—

- (a) refuse the discharge of a bankrupt;
- (b) suspend the discharge for such period as the Court thinks proper; or
- (c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments and comply with such other terms as the Court may direct.

(3) If at any time after the expiry of one year after 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 may think fit.

(4) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.

**201.** The facts referred to in section 200(2) are—

- (a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the Court that the fact

Facts referred to in section 200.

that the assets are not of that value has arisen from circumstances for which the bankrupt cannot justly be held responsible;

- (b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy;
- (c) the bankrupt has continued to trade after becoming aware of being insolvent;
- (d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;
- (e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;
- (f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

- (g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, incurred unjustifiable expense by bringing a frivolous or vexatious action;
- (h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;
- (i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities;
- (j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;
- (k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;
- (l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings under the bankruptcy;
- (m) the bankrupt has failed to comply with the requirement to pay imposed under section 94;

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- (n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and
  - (o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the Court.

Deemed value of bankrupt's assets.

**202.** For purposes of section 201, the assets of a bankrupt shall be deemed of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities if the Court is satisfied that the property of the bankrupt has realised, is likely to realise or, with due care in realisation, might have realised an amount equal to that value on his unsecured liabilities.

Cessation of any statutory disqualification.

**203.—**(1) A statutory disqualification on account of bankruptcy ceases when the bankrupt is discharged and obtains from the Court a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part.

(2) The Court may, if it thinks fit, grant a certificate referred to in subsection (1), and a refusal to grant such a certificate is subject to appeal.

Duty of bankrupt where conditional order granted.

**204.—**(1) If an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until the terms, conditions or judgment are satisfied—

- (a) give the trustee such information as he may require with respect to his earnings and after-acquired property and income; and

- (b) not less than once each year, file in the Court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge,

and the trustee or any creditor may require the bankrupt to attend for examination under oath with respect to the facts contained in the statement or with respect to his earnings, income, after-acquired property or dealings.

(2) If the bankrupt fails to give information or to file a statement as required by subsection (1), to attend for examination when required to do so or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the Court may on the application of the trustee or of any creditor revoke the order of discharge.

(3) If a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt, all payments on account in respect of the dividend or sum of money shall be made to the trustee for distribution to the creditors.

**205.—**(1) An order of discharge does not release the bankrupt from—

Debts not released by order of discharge.

- (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a Court in respect of an offence, or any debt arising out of a recognisance or bail;

- (b) any award of damages by a Court in civil proceedings in respect of—
  - (i) bodily harm intentionally inflicted, or sexual assault; or
  - (ii) wrongful death resulting from the bodily harm or sexual assault referred to in subparagraph (i);
- (c) any debt or liability for maintenance of the spouse of the bankrupt;
- (d) any debt or liability under a support, maintenance or affiliation order or under an agreement for maintenance and support of a spouse, former spouse or child living apart from the bankrupt;
- (e) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;
- (f) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;
- (g) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

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- (h) any debt or obligation in respect of a loan made under any law that provides for loans or guarantees of loans to students or trainees where the date of the bankruptcy of the bankrupt occurred—
    - (i) before the date on which the bankrupt ceased to be a full-time or part-time student or trainee; or
    - (ii) within seven years after the date on which the bankrupt ceased to be a full-time or part-time student or trainee; or
  - (i) any debt or interest owed in relation to an amount referred to in paragraphs (a) to (g).

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

**206.** An order of discharge does not release a person who at the date of the bankruptcy was a partner or co-trustee with the bankrupt or was jointly bound or had made a joint contract with the bankrupt, or a person who was a surety or in the nature of a surety for the bankrupt.

Certain persons associated with bankrupt not released by order of discharge.

**207.—(1)** If a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the Court may, on application, annul his discharge.

Court may annul discharge.

(2) If it appears to the Court that the discharge of a bankrupt was obtained by fraud, the Court may, on application, annul his discharge.

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(3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or acts duly done before the annulment of the discharge.

Court may annul  
bankruptcy.

**208.**—(1) If, in the opinion of the Court, a bankruptcy order ought not to have been made or an assignment ought not to have been filed, the Court may by order annul the bankruptcy.

(2) If an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts duly done before the making of the order by the trustee or other person acting under the trustee's authority, or by the Court, are valid, but the property of the bankrupt shall vest in any person that the Court may appoint, or, in default of any appointment, revert to the bankrupt for all the estate, or interest or right of the trustee in the estate, on any terms and subject to any conditions, if any, that the Court may order.

(3) If an order is made under subsection (1), the trustee shall, immediately, prepare the final statements of receipts and disbursements referred to in section 177.

Issuance of  
orders to be  
delayed.

**209.** An order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or served until the expiry of the time allowed for an appeal, and, if an appeal is entered, not until the appeal has been finally disposed of.

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**PART VIII****SECURED CREDITORS AND RECEIVERS**

**210.**—(1) Subject to subsection (2), on application by a secured creditor, the Court may by order appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so—

Court may  
appoint  
receiver.

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the Court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the Court considers advisable.

(2) In the case of an insolvent person in respect of whose property a notice is to be sent under section 211(1), the Court may not appoint a receiver under subsection (1) before the expiry of ten days after the day on which the secured creditor sends the notice unless—

- (a) the insolvent person consents to an earlier enforcement under section 211(2); or
- (b) the Court considers it appropriate to appoint a receiver before then.

(3) Subject to subsections (4) and (5), in this Part, “receiver” means a person who—

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control of all, or substantially all, of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt under—
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”); or
  - (ii) a court order made under another Act that provides for or authorises the appointment of a receiver or receiver-manager.

(4) For the purposes of section 215(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or paragraph (b)(ii).

(5) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in subsection (3)(b).

(6) If a receiver is appointed under subsection (1), the Court may make any order respecting the payment of fees and

disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the Court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.

**211.**—(1) A secured creditor who intends to enforce a security on all or substantially all of— Advance notice.

- (a) the inventory;
- (b) the accounts receivable; or
- (c) the other property,

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

(3) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

(4) This section does not apply, or ceases to apply, in respect of a secured creditor in respect of whom a stay under section 96 or 97 has been lifted under section 98.

(5) This section does not apply where there is a receiver in respect of the insolvent person.

Receiver to give notice.

**212.**—(1) A receiver shall, as soon as possible and not later than ten days after becoming a receiver, by appointment or otherwise, in respect of property of an insolvent person or a bankrupt, send a notice of that fact, in the prescribed form and manner, to the Supervisor, accompanied by the prescribed fee, and—

- (a) in the case of a bankrupt, to the trustee; or
- (b) in the case of an insolvent person, to the insolvent person and to all creditors of the insolvent person that the receiver, after making reasonable efforts, has ascertained.

(2) A receiver in respect of property of an insolvent person shall immediately send notice of his becoming a receiver to any creditor whose name and address he ascertains after sending the notice referred to in subsection (1).

(3) An insolvent person shall, immediately after being notified that there is a receiver in respect of any of his property, provide the receiver with the names and addresses of all creditors.

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**213.**—(1) A receiver shall, immediately after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall immediately provide a copy thereof to the Supervisor and—

Receiver's  
statement.

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

(2) A receiver shall, in accordance with the regulations, prepare further interim reports relating to the receivership, and shall provide copies thereof to the Supervisor and—

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

(3) A receiver shall, immediately after completion of duties as receiver, prepare a final report and a statement of accounts, in the prescribed form and containing the prescribed information relating to the receivership, and shall immediately provide a copy thereof to the Supervisor and—

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any

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time up to six months after the end of the receivership.

Good faith.

**214.** A receiver shall—

- (a) act honestly and in good faith; and
- (b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

Powers of Court.

**215.**—(1) Where the Court, on the application of the Supervisor, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by sections 211 to 214, the Court may make either or both of the following orders, on such terms as it considers proper—

- (a) an order directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty;
- (b) an order restraining the secured creditor or receiver, as the case may be, from realising or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out.

(2) On the application of the Supervisor, the insolvent person, the trustee (in the case of a bankrupt) or a creditor, made within six months after the statement of accounts was provided to the Supervisor under section 213(3), the Court may order the receiver to submit the statement of accounts to the Court for review, and the Court may adjust, in such manner and to such extent as it considers proper, the fees and charges of the receiver as set out in the statement of accounts.

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**216.** A receiver may apply to the Court for directions in relation to any provision of this Part, and the Court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

Receiver may apply to Court for directions.

**217.—(1)** An application may be made under section 215 or 216 notwithstanding any order of the Court under section 210(1).

Right to apply to Court.

(2) Where there is any inconsistency between an order made under section 215, or a direction given under section 216, and—

- (a) the security agreement or court order under which the receiver acts or was appointed; or
- (b) any other order of the court that appointed the receiver, the order made under section 215 or the direction given under section 216, as the case may be, prevails to the extent of the inconsistency.

**218.** No action lies against a receiver for loss or damage arising from the sending or providing by the receiver of a notice under section 212 or a statement or report under section 213, if done in good faith in compliance or intended compliance with those sections.

Protection of receivers.

**219.** In any proceeding where it is alleged that a secured creditor or a receiver contravened or failed to comply with any provision of this Part, it is a defence if the secured creditor or the receiver, as the case may be, shows that, at the time of the alleged contravention or failure to comply, he had reasonable grounds to believe that the debtor was not insolvent.

Defence available.

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**PART IX****INTERNATIONAL INSOLVENCIES**

Definitions.

220.—(1) The following definitions apply in this Part—

“foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor has the centre of the debtor’s main interests;

“foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding;

“foreign proceeding” means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Grenada dealing with creditor’s collective interests generally under any law relating to bankruptcy or insolvency in which a debtor’s property and affairs are subject to control or supervision by a foreign court for the purpose of reorganisation or liquidation;

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorised, in a foreign proceeding in respect of a debtor; to—

- (a) administer the debtor’s property or affairs for the purpose of reorganisation or liquidation; or
- (b) act as a representative in respect of the foreign proceeding.

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor's registered office and, in the case of a debtor who is an individual, the debtor's ordinary place of residence are deemed to be the centre of the debtor's main interests.

**221.**—(1) A foreign representative may apply to the Court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Application  
for recog-  
nition of a  
foreign  
proceeding.

(2) Subject to subsection (3), the application must be accompanied by—

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorising the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(3) The Court may, without further proof, accept the documents referred to in subsection (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

(4) In the absence of the documents referred to in subsection (2)(a) and (b), the Court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

(5) The Court may require a translation of any document accompanying the application.

Order  
recognising  
foreign  
proceeding.

**222.**—(1) If the Court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the Court shall make an order recognising the foreign proceeding.

(2) The Court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Effects of  
recognition of a  
foreign main  
proceeding.

**223.**—(1) Subject to subsections (2) and (3), on the making of an order recognising a foreign proceeding that is specified to be a foreign main proceeding—

- (a) no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations;
- (b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of the debtor's property in Grenada that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Grenada; and

- (c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Grenada.

(2) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor at the time the order recognising the foreign proceeding is made.

(3) The prohibitions in subsection (1)(a) and (b) are subject to the exceptions specified by the Court in the order recognising the foreign proceeding that would apply in Grenada had the foreign proceeding taken place in Grenada under this Act.

**224.**—(1) If an order recognising a foreign proceeding is made, the Court may, on application by the foreign representative who applied for the order, if the Court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order—

- (a) if the foreign proceeding is a foreign non-main proceeding, imposing the prohibitions referred to in section 223(1)(a) to (c) and specifying the exceptions to those prohibitions, taking section 223(3) into account;
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, debts, liabilities and obligations;

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- (c) entrusting the administration or realisation of all or part of the debtor's property located in Grenada to the foreign representative or to any other person designated by the Court; and
  - (d) appointing a trustee as receiver of all or any part of the debtor's property in Grenada, for any term that the Court considers appropriate and directing the receiver to do all or any of the following, namely—
    - (i) to take possession of all or part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the Court considers appropriate; and
    - (ii) to take any other action that the Court considers appropriate.

(2) If any proceedings under this Act have been commenced in respect of the debtor at the time an order recognising the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Terms and conditions of orders.

**225.** An order under this Part may be made on any terms and conditions that the Court considers appropriate in the circumstances.

Commencement or continuation of proceedings.

**226.** If an order recognising a foreign proceeding is made, the foreign representative may commence or continue any proceedings under sections 55, 59 to 61, 63, 64(1) and 72(1) in respect of a debtor as if the foreign representative were a creditor of the debtor, or the debtor, as the case may be.

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**227.**—(1) If an order recognising a foreign proceeding is made, the Court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding. Cooperation.

(2) If any proceedings under this Act have been commenced in respect of a debtor and an order recognising a foreign proceeding is made in respect of the debtor, every person who exercises any powers or performs duties and functions in any proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including—

- (a) the appointment of a person to act at the direction of the Court;
- (b) the communication of information by any means considered appropriate by the Court;
- (c) the coordination of the administration and supervision of the debtor's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor.

Obligations of  
foreign  
representative.

**228.** If an order recognising a foreign proceeding is made, the foreign representative who applied for the order shall—

- (a) immediately inform the Court of—
  - (i) any substantial change in the status of the recognised foreign proceeding;
  - (ii) any substantial change in the status of the foreign representative's authority to act in that capacity; and
  - (iii) any other foreign proceeding in respect of the same debtor that becomes known to the foreign representative; and
- (b) publish, immediately after the order is made, once a week for two consecutive weeks, or as otherwise directed by the Court, in one or more newspapers in Grenada specified by the Court, a notice containing the prescribed information.

Concurrent  
proceedings.

**229.** If any proceedings under this Act in respect of a debtor are commenced at any time after an order recognising the foreign proceeding is made—

- (a) the Court shall review any order made under section 224 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the Court shall amend or revoke the order; and

- (b) if the foreign proceeding is a foreign main proceeding, the Court shall make an order terminating the application of the prohibitions in section 223(1)(a) to (c) if the Court determines that those prohibitions are inconsistent with any similar prohibitions imposed in the proceedings under this Act.

**230.**—(1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor, an order recognising a foreign main proceeding is made in respect of the debtor, the Court shall review any order made under section 224 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the Court shall amend or revoke the order. Multiple foreign proceedings.

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor, an order recognising another foreign non-main proceeding is made in respect of the debtor, the Court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 224 in respect of the first recognised proceeding and amend or revoke that order if it considers it appropriate.

**231.** The Court may authorise any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognised in a jurisdiction outside Grenada. Authorisation to act as representative of proceeding under this Act.

Foreign  
representative  
status.

**232.** An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the Court for any other purpose except with regard to the costs of the proceedings, but the Court may make any order under this Part conditional on the compliance by the foreign representative with any other Court order.

Foreign  
proceeding  
appeal.

**233.** A foreign representative is not prevented from making an application to the Court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the Court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

Presumption of  
insolvency.

**234.** For the purposes of this Part, if a bankruptcy, an insolvency or a reorganisation or a similar order has been made in respect of a debtor in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

Credit for  
recovery in  
other  
jurisdictions.

**235.—(1)** If a bankruptcy order, a proposal or an assignment is made in respect of a debtor under this Act, the following shall be taken into account in the distribution of dividends to the debtor's creditors in Grenada as if they were a part of that distribution—

- (a) the amount that a creditor receives or is entitled to receive outside Grenada by way of

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a dividend in a foreign proceeding in respect of the debtor; and

- (b) the value of any property of the debtor that the creditor acquires outside Grenada on account of a provable claim of the creditor or that the creditor acquires outside Grenada by way of a transfer that, if the transfer were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

(2) Notwithstanding subsection (1), the creditor is not entitled to receive a dividend from the distribution in Grenada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in subsection (1)(a) and the value referred to in subsection (1)(b) is of that creditor's claim.

**236.**—(1) Nothing in this Part prevents the Court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Court not prevented from applying certain rules.

(2) Nothing in this Part prevents the Court from refusing to do something that would be contrary to public policy.

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**PART X****JURISDICTION OF HIGH COURT**

Jurisdiction of  
High Court.

**237.** The Court shall have and exercise jurisdiction in respect of bankrupts and matters of insolvency, and such jurisdiction shall be exercised under and subject to this Act, the regulations and any other enactment relating to bankruptcy and insolvency.

General power of  
Court.

**238.** Subject to this Act, the Court shall have full power to decide all questions that may arise in any case of bankruptcy or insolvency brought before the Court.

Proceedings not  
invalidated by  
defect or  
irregularity.

**239.** 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 the 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.

Court may  
review, rescind,  
or vary order.

**240.** The Court may review, rescind, or vary any order made by it under its jurisdiction in insolvency.

Court may  
dispense with  
certain  
requirements  
regarding  
notices to  
creditors.

**241.—(1)** If in the opinion of the Court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the Court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the Court may direct.

(2) If by this Act or by the regulations the time for doing any act or thing is limited, the Court may extend the

time either before or after the expiry thereof, upon such terms, if any, as the Court may think fit to impose.

**242.**—(1) If on *ex parte* application by the trustee or interim receiver the Court is satisfied by information on oath that there are reasonable grounds to believe there is in any place or premises any property of the bankrupt, the Court may issue a warrant authorising the trustee or interim receiver to enter and search that place or premises and to seize the property of the bankrupt, subject to such conditions as may be specified in the warrant. Court may issue search warrant.

(2) In executing a warrant under subsection (1), the trustee or interim receiver shall not use force unless the trustee or interim receiver is accompanied by a police officer or bailiff and the use of force has been specifically authorised in the warrant.

**243.** Orders in bankruptcy and insolvency matters are, at the instance of any person aggrieved, subject to appeal in the same manner as other orders of the Court. Orders subject to appeal.

**244.** Subject to this Act and the regulations, the costs of and incidental to any proceedings in the Court under this Act shall be in the discretion of the Court. Costs.

**245.** If an action or any proceedings is brought by or against a trustee, or if a trustee is made a party to any action or proceedings on his application or on the application of any other party thereto, he is not personally liable for costs unless the Court otherwise directs. Trustee not personally liable for costs unless Court directs.

**246.** Except by leave of the Court, no action lies against the Supervisor, a receiver, an interim receiver or a trustee with respect to any report made, or any action taken, under this Act. Leave of the Court to pursue certain actions.

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**PART XI****OFFENCES AND PENALTIES**Offences by  
bankrupt.**247.—(1)** Any bankrupt who—

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event;
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held under this Act;
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting; or
- (d) after or within one year immediately preceding the date of the initial bankruptcy event—
  - (i) conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs;
  - (ii) obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge;

- (iii) fraudulently conceals or removes any property of a value of one hundred dollars or more or any debt due to or from the bankrupt; or
- (iv) pawns, pledges or disposes of any property that the bankrupt 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 trade and unless the bankrupt had no intent to defraud,

commits an offence and is liable on summary conviction, to a fine of five thousand dollars or imprisonment for one year, or to both, and on conviction on indictment, to a fine of ten thousand dollars or imprisonment for two years, or to both.

(2) A bankrupt who, without reasonable cause fails to comply with an order of the Court made under section 94 or to do any of the things required of the bankrupt under section 185 commits an offence and is liable—

- (a) on summary conviction, to a fine of five thousand dollars or imprisonment for one year, or to both; and
- (b) on conviction on indictment, to a fine of ten thousand dollars or imprisonment for a term of three years, or to both.

**248.** An undischarged bankrupt who—

- (a) engages in any trade or business without disclosing to all persons with whom he enters into any business transaction valued at one

Failure to disclose  
fact of being  
undischarged  
bankrupt.

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hundred dollars or more that he is an undischarged bankrupt; or

- (b) obtains credit to a total of two hundred dollars or more from any person or persons without informing such persons that he is an undischarged bankrupt,

commits an offence and is liable on summary conviction, to a fine of five thousand dollars or imprisonment for one year, or to both.

Failure by bankrupt to keep proper books of account.

**249.**—(1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for one year, or to both, if—

- (a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, that person has not kept and preserved proper books and records; or
- (b) within the period referred to in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or record affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day-to-day in sufficient detail of all cash received and cash paid, and, if the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of physical inventory counts.

**250.**—(1) If a creditor, or a person claiming to be a creditor in any proceedings under this Act, wilfully and with intent to defraud makes any false claim or any proof, declaration or statement of account that is untrue in any material particular, the creditor or person commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years, or to both.

False claims,  
unlawful fees  
and unlawful  
transactions.

(2) If an inspector accepts from the bankrupt or from any person, firm or corporation acting on behalf of the bankrupt or from the trustee any fee, commission or emolument other than or in addition to the regular fees provided for by this Act, the inspector commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for one year, or to both.

(3) If the bankrupt enters into any transaction with any person for the purpose of obtaining a benefit or advantage to which either of them would not be entitled, the bankrupt commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year, or to both.

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Other offences.

**251.**—(1) A person who—

- (a) not being a licensed trustee, does any act as a licensed trustee or represents himself to be a licensed trustee;
- (b) being a trustee, either before providing the security required by section 28(1) or after providing the security but at any time while the security is not in force, acts as or exercises any of the powers of trustee;
- (c) having been appointed a trustee, with intent to defraud, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform an act or duty that he may be ordered to do, observe or perform by the Court under this Act;
- (d) having been appointed a trustee, without reasonable exercise, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform any act or duty that he may be ordered to do, observe or perform by the Court under this Act;
- (e) having been appointed a trustee to any estate and another trustee having been appointed in his place, does not deliver to the substituted trustee on demand all unadministered property of the estate, together with the books, records and documents of the estate and of his administration;

- (f) directly or indirectly solicits or canvasses any person to make an assignment or proposal under this Act, or to make an application for a bankruptcy order;
- (g) being a trustee, directly or indirectly, solicits proxies to vote at a meeting of creditors; or
- (h) being a trustee—
  - (i) makes any arrangement under any circumstances with the bankrupt, or any legal counsel, auctioneer or other person employed in connection with a bankruptcy, for any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate; or
  - (ii) accepts any such consideration or benefit from any such person, or makes any arrangement for giving up, or gives up, any part of his remuneration, either as a receiver or trustee, to the bankrupt or any legal counsel, auctioneer or other person employed in connection with the bankruptcy,

commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for a term of five years, or to both.

(2) A person who fails to comply with or contravenes any provision of section 8 commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for one year, or to both.

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(3) A person who contravenes or fails to comply with an order made under section 256—

- (a) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year, or to both; or
- (b) commits an indictable offence and is liable to a fine of ten thousand dollars or imprisonment for two years, or to both.

(4) Nothing in subsection (1)(h) shall be construed to apply to a sharing of trustee's fees among persons who together act as trustee of the estate of a bankrupt or as joint trustee in respect of a proposal.

(5) Subject to this Act, a person who contravenes or fails to comply with any provision of this Act or the regulations, other than those provisions specified in this Part, commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for one year, or to both.

Removal of  
property.

**252.** A person, except the trustee, who—

- (a) within thirty days after delivery to the trustee of the proof of claim referred to in section 110; or
- (b) if no proof has been delivered,

removes or attempts to remove the property or part of the property referred to in that section out of the charge or possession of the bankrupt, the trustee or other custodian of the property, except with the written permission of the trustee,

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commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for a term of two years, or to both.

**253.** Any trustee who exercises any of the powers or perform any of the duties of a trustee while the trustee's licence has ceased to be valid for failure to pay licence fees, after the trustee's licence has been suspended or cancelled under section 13(1) or after having been informed under section 20(5) of the suspension or cancellation of the trustee's licence commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for a term of two years, or to both.

Invalid trustee licence.

**254.** If the Supervisor has placed conditions or limitations on the licence of a trustee and the trustee exercises any of the powers of a trustee other than the powers that the trustee is authorised to exercise, the trustee commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years, or to both.

Trustee acting outside authority.

**255.** If a corporation commits an offence under this Act, any officer, director or agent of the corporation, or any person who has or has had, directly or indirectly, control of the corporation, who directed, authorised, assented to, acquiesced in or participated in the commission of the offence commits an offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Offences committed by corporation.

**256.** If a person has been convicted of an offence under this Act, the Court may, having regard to the nature of the offence and the circumstances surrounding its commission, and in addition to any other punishment that may be imposed

Court may make order for community service.

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under this Act, make an order directing the person to perform community service, subject to such reasonable conditions as may be specified in the order.

Variation of  
order made  
under section  
256.

**257.**—(1) Subject to subsection (2), if a Court has made an order under section 256 in respect of a person, the Court may, on application by the person or the Director of Public Prosecutions require the person to appear before it and, after hearing the person or the Director of Public Prosecutions, the Court may vary the order in one or any combination of the following ways that is applicable and that, in the opinion of the Court, is desirable because of a change in the circumstances of the person since the order was made—

- (a) by making changes in the order or conditions specified therein or extending the period for which the order is to remain in force for such period, not exceeding one year, as the Court considers desirable; or
- (b) by reducing the period for which the order is to remain in force or relieving the person, either absolutely or partially or for such period as the Court considers desirable, from compliance with any condition that is specified in the order.

(2) Before varying an order under subsection (1), the Court may direct that notice be given to such persons as the Court considers to be interested, and may hear any such persons.

(3) If an application made under subsection (1) in respect of a person has been heard by the Court, no other application may be made with respect to the person except with leave of the Court.

**258.**—(1) If a person has been convicted of an offence under this Act and any other person has suffered loss or damage because of the commission of the offence, the Court may, at the time sentence is imposed, order the person who has been convicted to pay to the person who has suffered loss or damage or to the trustee of the bankrupt an amount by way of satisfaction or compensation for loss or damage to property suffered by that person as a result of the commission of the offence.

Court may order compensation for loss or damage.

(2) If an amount that is ordered to be paid under subsection (1) is not paid immediately, the person in favour of whom the order has been made may file the order in Court and that order is enforceable against the person who has been convicted in the same manner as if it were a judgment rendered against the person who has been convicted in that Court in civil proceedings.

**259.**—(1) Whenever a trustee has grounds to believe that—

- (a) an offence under this Act or under any other law has been committed with respect to any bankrupt estate in connection with which he has been acting under this Act; or
- (b) that for any special reason an investigation should be had in connection with that estate,

Reporting of suspected offences to Court.

it is the duty of the trustee to—

- (a) report the matter to the Court, including in the report a statement of all the facts or circumstances of the case within his knowledge, the names of the witnesses who

should in his opinion be examined, and a statement respecting the offence or offences believed to have been committed; and

- (b) forward a copy of the report immediately to the Supervisor.

(2) A creditor, inspector or other interested person who believes on reasonable grounds that a person has committed an offence under this Act or under any other law, in connection with a bankrupt, his property or his transactions, may file a report with the Court of the facts on which that belief is based, or he may make such further representations supplementary to the report of the trustee as he may deem proper.

(3) Whenever the Court is satisfied on the representation of the Supervisor or trustee or of any creditor, inspector or other interested person, that there is ground to believe that any person has committed an offence under this Act or under any other law in connection with the bankrupt, his property or transactions, the Court may authorise the trustee to initiate proceedings for the prosecution of that person for that offence.

(4) If a trustee is authorised or directed by the creditors, the inspectors or the Court to initiate proceedings against any person believed to have committed an offence, the trustee shall initiate the proceedings and shall send or cause to be sent to the Director of Public Prosecutions, a duly certified copy of the resolution or order, together with a copy of all reports or statements of the facts on which the order or resolution was based.

**260.**—(1) If the trustee believes on reasonable grounds that an offence under this Act or any other law relating to the property of the bankrupt was committed either before or after the date of the initial bankruptcy event by the bankrupt or any other person, the trustee shall make a report to the Director of Public Prosecutions.

Reporting of suspected offences to Director of Public Prosecutions.

(2) A copy of a report made under subsection (1) shall be sent by the trustee to the Supervisor.

**261.** In an information, complaint or indictment for an offence under this Act, it is sufficient to set out the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting out any debt, act of bankruptcy, trading, adjudication or any proceedings, in, or order, warrant, or document of, any Court acting under this Act.

Substance of offence sufficient.

**262.** A prosecution by indictment under this Act shall be commenced within five years from the time of the alleged commission of the offence and, in the case of an offence punishable on summary conviction, the complaint shall be made or the information laid within three years from the time of the alleged commission of the offence.

Time for commencement of prosecution of offences.

## PART XII

### MISCELLANEOUS

**263.**—(1) The Minister may make regulations—

Regulations.

(a) generally for giving effect to this Act; and

- 
- (b) for prescribing anything that is authorised or required to be prescribed by this Act.

(2) Regulations made under subsection (1) shall be subject to negative resolution of Parliament.

Consequential amendment.

**264.** Section 66 of the Tax Administration Act, 2016 is amended as follows—

- (a) in paragraph (a) by inserting after the word “individual” the words “or a company”;
- (b) by deleting the words “shall apply the assets of the bankrupt individual or the company” and substituting the words “shall, subject to the provisions of any enactment dealing with bankruptcy or insolvency, apply the assets of the individual or company”; and
- (c) by deleting the words “a privilege debt under the Protection of Wages Act Cap. 260” and substituting the words “a prior debt under any enactment dealing with protection of wages”.

Repeal.

**265.** The Bankruptcy Act Cap. 27 is hereby repealed.

Transitional.

**266.** With effect from the date of the commencement of any Part of this Act, any bankruptcy or insolvency proceedings which have been commenced before the commencement of that Part, shall be continued under the law in force immediately before the commencement of that Part.

Act binds the Crown.

**267.** This Act is binding on the Crown.

2016

*Bankruptcy and Insolvency*

*Act 15 543*

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Passed by the House of Representatives this 19th day of February, 2016.

WILLAN A. THOMPSON  
*Clerk to the House of Representatives.*

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Passed by the Senate this 1st day of March, 2016.

WILLAN A. THOMPSON  
*Clerk to the Senate.*

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GRENADA

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