

THE INSOLVENCY ACT, 2014

(Act of 2014)

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SCHEDULE.

A BILL

ENTITLED

AN ACT to Repeal the Bankruptcy Act and make new provisions for the regulation of insolvency; to make provisions for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor; to create the office of Supervisor of Insolvency; and for connected matters.

[]

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

PART I. *Preliminary*

1. This Act may be cited as the Insolvency Act, 2014, and shall come into operation on a day appointed by the Minister by notice

Short title and
commence-
ment.

published in the *Gazette* (hereinafter referred to as the “appointed day”).

Interpretation
and
application of
Act.

2.—(1) In this Act, unless the context otherwise requires—

“access device” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number and any other means of access that can be used, alone or with another device, to obtain a benefit or other thing of value or that can be used to initiate a transfer of money;

“adequate valuable consideration” means a consideration of fair and reasonable money value in relation to —

- (a) property conveyed, assigned or transferred; or
- (b) the known or reasonably to be anticipated benefits of a contract, dealing or transaction;

“affidavit” includes a statutory declaration;

“assignment” means an assignment approved under Part VI;

“authorized person” means any person designated as such;

“bailiff” includes any officer charged with the execution of a writ or other process under this Act or any other enactment or proceeding with respect to any property of a debtor;

“bank” means a bank licensed under the *Banking Services Act*;

“bankrupt” means a person who has made an assignment under Part VI or against whom a receiving order has been made under Part V;

“books” and “records” include documents as well as data maintained or processed manually, mechanically, photographically or electronically by any form of information-storage device;

“claim provable in bankruptcy” includes any claim or liability provable in proceedings under this Act by a creditor and “provable claim” or “claim provable”, shall be construed accordingly; “company” means—

- (a) a corporation formed or registered under the laws of Jamaica; or
- (b) any other entity so prescribed by the Minister by order published in the *Gazette*, as being analogous to a corporation;

“composition” means an agreement between the compounding debtor and all or some of his creditors by which the compounding creditors agree with the debtor, and, expressly or impliedly, with each other, to accept from the debtor payment of less than the amounts due to them in full satisfaction of the whole of their claims;

“corporation” means any incorporated entity, authorized to carry on business in Jamaica or that has property in Jamaica;

“Court” means the Supreme Court and includes a Judge sitting in chambers in matters of bankruptcy and any other court as the Minister may, by order, prescribe;

“creditor” means a person having a claim, unsecured, preferred by virtue of priority under section 202 or secured, provable as a claim under this Act and includes a surety or guarantor for the debt due to any such person;

“date of bankruptcy” means—

- (a) the date on which a receiving order was made;
- (b) the issuing of a certificate assignment; or
- (c) a deemed assignment occurring;

“date of the initial bankruptcy event” means the earliest of the date of filing—

- (a) an application for an assignment by or in respect of a person;
- (b) a proposal by or in respect of a person;
- (c) a notice of intention by a person;
- (d) the first application for a receiving order against a person;

“debtor” means—

- (a) an insolvent person;
- (b) any person who at the time an act of bankruptcy was committed by him, resided or carried on business in Jamaica;
- (c) a bankrupt; and
- (d) for the purposes of section 5 and Part III, a person facing imminent insolvency;

“deposit-taking institution” means—

- (a) a company licensed under the *Financial Institutions Act*;
- (b) a bank; and
- (c) a building society within the meaning assigned to by the *Banking Services Act*;

“document” means anything in which information of any description is recorded;

“eligible financial contract” means—

- (a) a currency, cross-currency or interest rate swap, option, future, forward or spot agreement;

- (b) a basis swap agreement;
- (c) a spot, future, forward, or other foreign exchange agreement;
- (d) a cap, collar or floor transaction;
- (e) a forward rate agreement;
- (f) a commodity swap or commodity index swap;
- (g) a spot, option, future, forward or other commodity contract, forward or other precious metals agreement;
- (h) an equity or debt security derivative, including a swap, a total return swap, an index swap, an option, an index option, a future, or a forward agreement;
- (i) a credit derivative, including a credit default, credit basket default, credit spread or total return swap, option, future or forward agreement;
- (j) a weather, bandwidth, freight, inflation, energy (including electricity) or carbon emissions swap, derivative or option;
- (k) a securities or commodities repurchase or reverse repurchase agreement or a repurchase agreement;
- (l) an agreement to buy, sell, borrow or lend securities or commodities, to clear or settle securities or commodities transactions or to act as a depository for securities;
- (m) a margin loan;
- (n) any master agreement or general terms and conditions in respect of any agreement or

contract referred to in paragraphs (a) to (m) and (q) to (t);

- (o) any master agreement or general terms and conditions in respect of a master agreement or general terms and conditions referred to in paragraph (n);
- (p) any agreement similar to an agreement or contract referred to in this subsection;
- (q) any agreement of a kind prescribed;
- (r) any swap, contract for differences, forward, cap, collar, floor, or other derivative, or any combination or option in respect of an agreement or contract referred to in this paragraph and paragraphs (a) to (q);
- (s) any collateral arrangement or any other credit enhancement related to any agreements or transactions referred to in paragraphs (a) to (r), including any guarantee, indemnity or reimbursement obligation to the extent that it applies to obligations under any agreements or transactions referred to in paragraphs (a) to (r);

“equity claim” means a claim that is in respect of an equity interest, including a claim for, among others—

- (a) a dividend or similar payment;
- (b) a return of capital;
- (c) a redemption or retraction obligation;
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from

the rescission of a purchase or sale of an equity interest; or

- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);

“equity interest” means a share in the corporation or a warrant or option or another right to acquire a share in the corporation, or other similar interest or right in a trust or partnership;

“financial collateral” means—

- (a) 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 future agreement or a future contract, that is subject to an interest or right, that secures payment or performance of an obligation in respect of an eligible financial contract;

“fraudulent preference” shall be construed in accordance with section 117;

“functions” includes powers and duties;

“goods” means tangible personal property, crops and the unborn young of animals, but does not include a document of title, a financial instrument or money;

“Government Trustee” means the Government Trustee appointed under section 227;

“insolvent person”—

- (a) means a person who resides, carries on business or has property in Jamaica, whose liabilities to creditors provable as claims under

this Act, amount to not less than three hundred thousand dollars or such other amount as the Minister may by order published in the *Gazette* prescribe as the threshold and—

- (i) who for any reason is unable to meet his obligations as they generally become due;
- (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or
- (iii) 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;

(b) does not include a bankrupt;

“inspector” means an inspector appointed under section 175;

“ordinary resolution” means a 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;

“person” includes a partnership, an unincorporated association, a corporation, a co-operative society or an organization, the successors of a partnership, association, corporation, society or organization, and the heirs, executors, liquidators of the succession, administrators or other legal representative of an individual;

“person facing imminent insolvency” means a person who—

- (a) resides, carries on business or has property in Jamaica, whose liabilities to creditors

provable as claims under this Act, amount to not less than three hundred thousand dollars or such other amount as the Minister may prescribe as the threshold; and

- (b) reasonably anticipates that for any reason within the period of twelve months, will be unable to meet his obligation as they generally become due;

“prescribed threshold” means a sum of three hundred thousand dollars or such amount as the Minister may by order prescribe;

“property” includes money, goods, choses in action, land and every description of property, whether real or personal, legal or equitable, and whether situated in Jamaica or elsewhere, and includes 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 an arrangement for a composition, an extension of time or a scheme of arrangement made under section 17, or modified in accordance with section 38, with creditors either as a group or separated into classes or with secured creditors;

“public utility” includes a person who—

- (a) provides telecommunication services;
- (b) provides public passenger transportation by road, rail or ferry;
- (c) provides—
 - (i) water; or
 - (ii) sewerage services;

- (d) generates, transmits, distributes and supplies electricity;
- (e) provides such services similar to those specified in paragraphs (a) to (d), as may be prescribed under any other law; or
- (f) provides such other function or activity as may, for the purposes of this definition, be prescribed by the Minister by order published in the Gazette as a public utility service;

“receiver” means a person who, pursuant to a security agreement or an order of a court made under any law that provides for or authorizes the appointment of a receiver has been appointed to take, or has taken, possession or control of any assets of the insolvent person or bankrupt;

“receiving order” means an order of a Court made under Part V of this Act, that provides for or authorizes the appointment of a receiver;

“Registrar” means the Registrar of the Supreme Court;

“Registrar of Companies” has the same meaning as under the *Companies Act*;

“Regulator” means, where the circumstances apply—

- (a) the Bank of Jamaica;
- (b) the Financial Services Commission; or
- (c) such other person as the Minister may, by order, prescribe;

“relevant Acts” means —

- (a) the *Financial Institutions Act*;
- (b) the *Banking Services Act*;

- (c) the *Building Societies Act*; and
- (d) such other legislation as the Minister may by order prescribe;

“secured creditor” means a person—

- (a) holding a—
 - (i) security interest as defined under the *Security Interests in Personal Property Act*;
 - (ii) mortgage;
 - (iii) pledge;
 - (iv) 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 him from 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;

“security agreement” means an agreement, written or unwritten, under which property, becomes subject to a security for the payment of an obligation;

“settlement” includes a contract, covenant, conveyance, transfer, gift and designation of beneficiary in an insurance contract, to the extent that the contract, covenant, conveyance, transfer, gift, or designation is gratuitous or made for merely nominal consideration;

“special resolution” means a resolution passed by a majority in number and two-thirds in value of the creditors with

proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“specified financial institution” means—

- (a) a company licensed under the *Financial Institutions Act*;
- (b) a company licensed to do banking business under the *Banking Act*;
- (c) a building society licensed under the *Building Societies Act*; or
- (d) a company that—
 - (i) engages in insurance business, within the meaning of the *Insurance Act*; or
 - (ii) performs services as an insurance intermediary within the meaning of the *Insurance Act*;

“spouse” in relation to a person means, where the person is a man, a woman who is married in law to the man and where the person is a woman, a man who is married in law to the woman, and includes—

- (a) where the person is a single man, a single woman who has cohabited with the single man, as if she were in law his wife, for a period of not less than five years;
- (b) where the person is a single woman, a single man who has cohabited with the single woman as if he were in law her husband, for a period of not less than five years,

immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be;

“Supervisor” means the Supervisor of Insolvency designated under section 222;

“trustee” means a person who is licensed and appointed as such under this Act or, where the context otherwise provides, the Government Trustee appointed under section 227;

“unsecured creditor” means any creditor that is not a secured creditor.

(2) For the purposes of this Act—

- (a) where a debtor is a specified financial institution, this Act shall not apply to such financial institution except, under the authority of the applicable Regulator or otherwise with the written consent of the Regulator; and
- (b) nothing contained in this Act shall in any way preclude the powers of the Regulator or the Minister under the relevant Acts and any restrictions under these Acts, shall continue to apply.

(3) For the purposes of this Act—

“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.

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

- (a) as respects any person, individuals connected through a spouse, by blood relationship or adoption;
- (b) as respects a corporation—
 - (i) a person who controls the corporation, if it is controlled by one person;
 - (ii) a person who is a member of a related group that controls the corporation; 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 corporations—

- (i) both of which are controlled by the same person or group of persons;
- (ii) both of which are controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation;
- (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 corporation;
- (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 corporation;
- (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 corporation; 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 corporation.

(5) For the purposes of this Act—

- (a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation, whether or not it is part of a larger group by whom the corporation is in fact controlled;

- (b) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights in shares of a corporation, shall, except where the contract provides that the right is not exercisable until the death of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if he owned the shares;
 - (c) where a person owns shares in two or more corporations, he shall, as a shareholder of one of the corporations, be deemed to be related to himself as shareholder of each of the other corporations;
 - (d) persons are connected by—
 - (i) blood relationship if one is the child, mother, father, grandmother, grand-father, brother, sister, aunt, uncle or cousin of the other;
 - (ii) marriage if one is married to the other or to a person who is connected by blood relationship to the other;
 - (iii) cohabitation if one is a spouse of the other; and
 - (iv) 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.
- (6) A person who has entered into a transaction with another person, otherwise than at arm's length, shall be deemed to have entered into a reviewable transaction.
- (7) It is a question of fact whether persons not related to one another within the meaning of subsection (4), were at a particular time dealing with each other at arm's length.

(8) Persons related to each other within the meaning of subsection (4), shall be deemed not to deal with each other at arm's length while so related.

(9) For the purposes of this Act and any regulations made under this Act, the use of a personal pronoun shall be construed, where the context so permits, as applying not only to an individual person, but also to a body of persons.

Objects of
Act.

3. This Act seeks to create an environment which aids in—

- (a) the rehabilitation of debtors and the preservation of viable companies, having due regard to the protection of the rights of creditors and other stakeholders; and
- (b) fair allocation of the costs of insolvencies with the overriding interest of strengthening and protecting Jamaica's economic and financial system and the availability and flow of credit within the economy.

PART II.—*Stay of Proceedings upon Filing a Notice of Intention, Proposal or Bankruptcy*

Stay of
Proceedings
upon filing of
notice of
intention or
proposal.

4.—(1) Subject to subsection (2) and section 7, where a notice of intention has been filed under section 11(2) in respect of an insolvent person—

- (a) no creditor shall—
 - (i) have any remedy against the insolvent person or insolvent person's property;
 - (ii) 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 has any force or effect that provides, in substance, that 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 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 11(2) in respect of the insolvent person,

until a proposal is lodged or the insolvent person becomes bankrupt.

(2) Subsection (1) shall not apply—

- (a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention from dealing with those assets;
- (b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention to enforce security under section 72, in the form prescribed from enforcing that creditor's security against the insolvent person more than ten days before a notice of intention was filed in respect of the insolvent person; or
- (c) to prevent a secured creditor who gave notice of intention under section 72 to enforce that creditor's security, from enforcing the security, if the insolvent person has under section 72(2), consented to the enforcement action.

5.—(1) Subject to subsections (2), (3) and (4) and section 7, where a proposal has been filed in respect of a debtor—

Stay of proceedings upon filing proposal.

- (a) no creditor to whom the proposal is made shall—
 - (i) have any remedy against the debtor or the debtor's property;
 - (ii) 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 a debtor and the secured creditor to whom the proposal is made has any force or effect that provides, in substance, that the debtor ceases to have such rights to use or deal with assets secured under the agreement as the debtor would otherwise have on—
- (i) the debtor's insolvency;
 - (ii) the default by the debtor of an obligation under the security agreement; or
 - (iii) the filing by the debtor of a proposal,
- until the trustee has been discharged or debtor becomes bankrupt.
- (2) Subsection (1) shall not apply—
- (a) to prevent a secured creditor who took possession of secured assets of such debtor for the purpose of realization before the proposal is filed under section 17 from dealing with those assets;
 - (b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention to enforce security under section 72, from enforcing that creditor's security against such debtor more than ten days before—
 - (i) a notice of intention was filed in respect of such debtor; or
 - (ii) the proposal was filed, if no notice of intention was filed from enforcing that security; or
 - (c) to prevent a secured creditor who gave notice of intention under section 72 from enforcing that creditor's security if such debtor has under section 72(2), consented to the enforcement action.
- (3) Subject to sections 77, 103 and 192 to 201, the filing of a proposal under section 17, shall not prevent a secured creditor to

whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as the secured creditor would have been entitled to realize or deal with it if this section had not been passed.

(4) Where a proposal is made to a class of secured creditors and the secured creditors in that class vote for the refusal of the proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

6.—(1) Subject to subsections (2) and (3) and section 7, on the bankruptcy of any debtor, no creditor shall have any remedy against the bankrupt or the bankrupt'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 in respect of the bankrupt is discharged.

Stay of
proceedings
upon
bankruptcy.

(2) Subject to sections 77, 103 and sections 192 to 201, unless the Court otherwise orders, the bankruptcy of a debtor shall not prevent a secured creditor from realizing or otherwise dealing with the secured creditor's security in the same manner as the secured creditor would have been entitled to realize or deal with it if this section had not been passed.

(3) Where a court makes an order under subsection (2), the Court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows—

- (a) in the case of a security for a debt that is due as at the date of bankruptcy or a security for a debt that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and
- (b) in the case of a security for a debt that does not become due until more than six months after the date of bankruptcy,

that right shall not be postponed for more than six months from that date—

- (i) unless all installments 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
- (ii) only so long as no installment 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.

(4) No order shall be made under this section, if the order has the effect of preventing a secured creditor from realizing or otherwise dealing with a financial collateral.

Aggrieved creditor may apply to Court for removal of stay.

7. A creditor who is affected by the operation of section 4, 5 or 6, 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 ineffectual against certain parties and claims.

8.—(1) Sections 4, 5, or 6, shall not apply in respect of a claim referred to in section 185(4).

(2) Notwithstanding subsection (1), no creditor with a claim referred to in section 185(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.

PART III. *Proposals*

9.—(1) This Part shall apply to a debtor that—

- (a) is experiencing financial difficulties; and
- (b) intends to restructure its financial affairs.

Application of Part III; Application of other provisions of Act not precluded.

(2) The provisions of this Part shall be applied together with, and not in substitution for, sections 203 to 208 of the *Companies Act*, however, any compromise or arrangement between a company and its creditors (from any class) shall be effected in accordance with this Part.

(3) Nothing in this Part precludes the application of other provisions of this Act with such modifications as the circumstances may require to proposals made under this Part.

10. For the purposes of this Part, and subject to section 11(2) unless the context otherwise requires, a person facing imminent insolvency, shall be treated in a similar manner as an insolvent person.

Interpretation of references to "person facing imminent insolvency".

11.—(1) The following persons may make a proposal in accordance with this Part—

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

Who can make a proposal; Filing of notice of intention to make proposal.

(2) Before lodging a copy of a proposal, an insolvent person may file a notice of intention, in the manner prescribed, with the Supervisor—

- (a) stating the debtor's intention to make a proposal within thirty days after the lodging of the notice of intention; and
- (b) including the name and address of the trustee who has consented in writing, to act as the trustee under the proposal.

- (3) The notice of intention to file a proposal, shall be lodged in the prescribed form and in the case where the insolvent person is a company, notice shall be given to the Registrar of Companies of such intention to file a proposal.

Trustee shall send to creditors a copy of intention filed.

12.—(1) Within five days after the filing of a notice of intention under section 11, the trustee named in such notice shall send to every known creditor, in the prescribed manner, a copy of the notice of intention so filed.

(2) The Supervisor may, on application made by the trustee or the insolvent person in the form prescribed, and after considering the prescribed criteria, exempt the trustee from the requirement to send the notice referred in subsection (1).

Insolvent person shall file cash flow statement, report, etc., for notice of intention.

13.—(1) Within fourteen days after a notice of intention is filed by the insolvent person, that person shall file with the Supervisor—

- (a) a cash flow statement in the form prescribed that has been—
- (i) prepared by the insolvent person;
 - (ii) reviewed for its reasonableness by the trustee named in the notice of intention; and
 - (iii) signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash flow statement in the form prescribed, prepared and signed by the trustee;
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash flow statement, in the form prescribed, prepared and signed by the debtor.

(2) The Supervisor may, on written application of the insolvent person made in the form prescribed, extend the time for filing referred to in subsection (1) by up to fourteen days, based on the criteria prescribed.

(3) A creditor shall on request receive from the trustee a copy of the documents filed under subsection (1).

(4) The trustee shall not be liable for any loss or damage to any person resulting from that person's reliance on the cash flow statement filed under this section.

14.—(1) Where a notice of intention has been filed, the insolvent person shall file a proposal within thirty days after the notice of intention was filed or within any extension of that period granted under subsection (6).

Assignment deemed to be made where cash flow statement not filed within prescribed time.

(2) Where the insolvent person has failed to file a proposal within the period specified in subsection (1), the insolvent person shall be deemed to have made an application for an assignment under Part VI, on the expiration of that period.

Part VI.

(3) Where the insolvent person fails to file a cash flow statement as required by section 13, the insolvent person shall be deemed to have made an application for an assignment under Part VI.

(4) Where subsection (2) or (3) applies, the trustee named in the notice of intention shall—

- (a) forthwith file a report thereof in the form prescribed with the Supervisor, who shall issue a certificate of assignment in the form prescribed, and such assignment shall take effect as if it was filed;
- (b) within five days after the day the certificate of assignment is issued under paragraph (a), send notice of the meeting of creditors, which shall be held within twenty-one days from the date of notice.

(5) Notwithstanding section 237, the creditors may by ordinary resolution affirm the appointment of the trustee named in the notice of intention or appoint another trustee in lieu of that trustee so named.

(6) The insolvent person may, before the expiration of the thirty-day period referred to in subsection (1) or any extension thereof granted under this section, apply to the Supervisor in the form and manner prescribed, for further extension of that period.

(7) An extension granted under subsection (6) shall not exceed forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty-day period mentioned in subsection (1).

(8) The Supervisor may grant an extension under subsection (6) only if it is satisfied on each application that—

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the extension is justified in the circumstances; and
- (c) no creditor shall be materially prejudiced if the extension being requested is granted.

Court may on application declare termination before expiration period of a notice of intention.

15. The Court may, on application by a trustee, an interim receiver appointed under section 69 or a creditor, declare terminated, before its expiration date, the period referred to in section 14(1), 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 is not likely be able to make a viable proposal before the expiration of the period in question;
- (c) the insolvent person is not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors.

Trustee to assist in preparation of proposal.

16. The trustee named under a notice of intention may advise on and participate in the preparation of the proposal, and any negotiations in relation thereto.

17.—(1) The proceedings for a proposal shall be commenced by— Commencement
of
proceedings
for proposal.

- (a) in the case of a person facing imminent insolvency, a receiver or a debtor other than a bankrupt, by lodging with a trustee; and
- (b) in the case of a bankrupt, by lodging with the trustee of the bankrupt's estate,

a copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed, signed by the person making the proposal and the proposed sureties, if any.

(2) Where the person in respect of whom the proposal is made under subsection (1) is—

- (a) a bankrupt, the statement of affairs referred to in section 126E; or
- (b) not a bankrupt, a statement in the prescribed form showing the financial position of the person at the date of the proposal shall be verified by declaration as being correct to the belief and knowledge of the person making the proposal; and
- (c) such statements referred to under paragraphs (a) and (b) shall be filed with the proposal.

(3) A security or guarantee tendered with the proposal made under this section—

- (a) shall be held with the proposal; and
- (b) may not be withdrawn;

18.—(1) A proposal under this Part may be made to—

- (a) the creditors either—
 - (i) as a group; or
 - (ii) separated into classes as provided in the proposal; or

A proposal
shall be made
to creditors.

(b) secured creditors in respect of any class of secured claim.

(2) All creditors having equity claims shall be in single class in relation to those claims.

(3) The Court may, on application made by any interested person at any time after a notice of intention or a proposal is filed, determine—

(a) the classes of secured claims appropriate to a proposal;
and

(b) the class into which any particular secured claim falls.

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

(5) Where a proposal is made to a secured creditor in respect of a secured claim the secured claim may be included in the same class where the interests 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 priority 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 other criteria, consistent with those set out in paragraphs (a) to (d), as may be prescribed by the Minister.

(6) Any person adversely affected by a determination under subsection (3) may appeal under section 49, that such determination is oppressive or unfairly prejudicial.

19.—(1) The trustee shall convene a meeting of creditors, to consider a proposal filed under section 17 in the manner provided under subsection (2), no later than twenty-one days after the filing of the proposal.

Trustee shall call meeting of creditors.

(2) The trustee shall convene the meeting referred to under subsection (1), by sending to the Supervisor and every creditor known to the trustee, at least ten days before the meeting—

- (a) a notice, electronically or otherwise of the date, time and place of the meeting;
- (b) a statement summarizing the assets and liabilities in the form prescribed;
- (c) a list of the creditors with claims no less than the prescribed threshold and the amounts of their claims as known or shown by the books of the debtor;
- (d) a copy of the proposal filed under section 17;
- (e) the following forms—
 - (i) proof of claim in the form prescribed; and
 - (ii) proxy in the form prescribed, if not already sent; and
- (f) a report on the state of the business and financial affairs of the debtor, including any prescribed information.

20. 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—

Proposal may include terms of supervision.

- (a) the supervision of the affairs of the debtor; or

(b) any other aspect of the proposal, as they may deem advisable, and the creditors may accept or reject a proposal in its original or amended form pursuant to this section.

Trustee or nominee to chair creditors' meeting.

21. The trustee and in his absence his nominee, shall be the chairman of the meeting and shall decide any questions or disputes arising at the meeting.

Filing of proof of claim.

22.—(1) A trustee shall by notice in the form prescribed require the creditors to file proof of claim.

(2) Subject to section 32, a creditor to whom a proposal is made may respond to the proposal made under section 17 by filing with the trustee a proof of claim for secured and unsecured creditors, in accordance with the procedure set out under sections 188 to 191.

Adjournment of meeting.

23. The creditors at the meeting at which a proposal is being considered, may by ordinary resolution adjourn the meeting to such time and place as may be fixed by the chairman.

Questions relating to proposal to be decided by ordinary resolution.

24. Any question relating to a proposal lodged under section 17, except the question of whether to accept or refuse the proposal, shall be decided by ordinary resolution of the creditors to whom the proposal is made.

Trustee shall make or cause to be made an appraisal and investigation.

25.—(1) A trustee with whom a proposal has been lodged under section 17, shall make or cause to be made an appraisal and carry out an 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 the trustee shall report the result of such appraisal and investigation to the meeting of the creditors.

(2) Subject to subsection (1), a trustee may recommend to the creditors that as part of the terms of the proposal, the debtor shall undertake to receive counseling.

26.—(1) The trustee shall, when filing the proposal with the Supervisor submit along with the proposal being filed—

Trustee to file cash flow statement.

- (a) a statement indicating the projected cash-flow in respect of which the proposal is filed for the expected duration of the proposal, in this section referred to as the “cash flow statement”—
 - (i) prepared by the person making the proposal;
 - (ii) reviewed for its reasonableness by the trustee; and
 - (iii) signed by the trustee and the person making the proposal;
- (b) a report on the reasonableness of the cash flow statement, in the form prescribed, prepared and signed by the trustee; and
- (c) a report—
 - (i) in the form prescribed containing prescribed representations by the person making the proposal regarding the preparation of the cash flow statement; and
 - (ii) signed by the person making the proposal.

(2) The trustee shall not be liable for any loss or damage to any person, resulting from that person’s reliance on the cash flow statement filed under this section.

27.—(1) Subject to subsection (2), any creditor may obtain a copy of the cash flow statement filed pursuant to section 13 or 26 where a request is made in writing to the trustee.

Supervisor to decide whether cash flow statement or parts thereof may be released.

(2) Where the trustee fails to provide the cash flow statement required, the creditor may apply to the Supervisor for direction for release of a cash flow statement or any part of that statement.

(3) The Supervisor may direct the release of the cash flow statement or any part of that statement where—

- (a) the release of the cash flow statement will not unduly prejudice the person who made the proposal under section 17; and
- (b) releasing the cash flow statement will not unduly prejudice the creditors in general.

(4) Where the Supervisor directs that a cash flow statement or parts thereof may be released, the statements may be made available at the request of any creditor.

Court may direct trustee to have access to financial documents, books, etc.

28.—(1) Subject to any direction of the Court, the trustee shall for the purpose of monitoring the business and financial affairs of the debtor have access to and examine the property of the debtor, including—

- (a) the premises; or
- (b) the books and records, and any other financial documents,

to the extent necessary to adequately assess the business and financial affairs of the debtor.

(2) The trustee shall have such access referred to under subsection (1), from the date of filing of the notice of intention to make a proposal or the date of filing the proposal until the proposal is approved by the Court or the insolvent person becomes bankrupt.

(3) The trustee shall file a report on the state of the business and financial affairs of the debtor including any prescribed information—

- (a) with the Supervisor forthwith after ascertaining any material adverse change in the debtor projected cash flow or financial circumstances of the debtor; and

(b) with the Court at such times as the Court may order.

(4) Where a trustee is replaced by an interim receiver the interim receiver shall deliver a report to the trustee containing any prescribed information on the state of business and financial affairs of the insolvent person to the trustee, at least three days before the meeting of creditors referred to in section 19.

29.—Where a proposal is made in relation to a debtor that is a company, the trustee shall promptly after receiving for filing a copy of the proposal under section 17, deliver a notice of the filing, whether electronically or otherwise, to the Registrar of Companies.

Trustee to file proposal in respect of a debtor company with Registrar of Companies.

30. Where a proposal is made in respect of an insolvent person or person facing imminent insolvency, the time with respect to which the claims of creditors shall be determined, is the time of the filing of—

Determination of claims where proposals made with respect to insolvent persons.

(a) the notice of intention; or

(b) the proposal, where no notice of intention is filed.

31. Where 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 of bankruptcy.

Determination of claims where proposals made with respect to bankrupt.

32.—(1) Subject to subsections (3), (4) and (5), 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 form prescribed, at or before the meeting referred to in section 19.

Secured creditor may file proof of secured claim in response to proposal.

(2) A secured creditor who files a proof of secured claim in accordance with subsection (1), may, subject to the provision of this Act vote on all questions relating to the proposal in respect of that entire claim, and sections 188 to 191, shall apply in so far as they are applicable with such modifications as the circumstances require, to proofs of secured claim.

(3) Where a proposal made to a secured creditor in respect of a secured claim includes a proposed value of the security in respect of the claim, the secured creditor may—

- (a) file with the trustee a proof of secured claim in the form prescribed; and
- (b) vote as a secured creditor on all questions relating to the proposal in respect of an amount equal to the lesser of the—
 - (i) amount of the claim; and
 - (ii) proposed value of the security.

(4) Where the proposed value referred to in subsection (3)(b) (ii) is less than the amount of the claim of the secured creditor, the secured creditor may file with the trustee a proof of claim in the form prescribed 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 value.

(5) Where a secured creditor is dissatisfied with the proposed value of his security, the secured creditor may apply to the Supervisor, no later than fifteen days after the proposal is received by the secured creditor, to have the proposed value revised.

(6) Supervisor may, acting on independent advice revise the proposed value and such revised value shall apply for the purposes of this Part.

Failure of secured creditor to file a proof of claim.

33. Where 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 to whom a proposal is not made may not file proof of claim.

34. 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.

35. A creditor who has a proven claim, whether secured or unsecured, may vote on the proposal by—

- (a) mail;
- (b) personal delivery; or
- (c) printed electronic transmission, delivered to the trustee prior to the meeting referred to in section 19.

Creditors with proven claims may vote prior to meeting to consider proposal.

36. Any vote of assent to or dissent from the proposal, delivered by any means specified in section 35, received by the trustee at or prior to the meeting referred to in section 19, has effect as if the creditor had been present and had voted at the meeting.

Effect of prior vote by alternative means.

37. 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.

Claims where creditor elects not to participate in proposal.

38.—(1) The creditors may resolve to accept or refuse the proposal filed under section 17, in its original or amended form.

Creditors may resolve to accept or refuse proposal.

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

- (a) the following classes of creditors with proven claims are entitled to vote, that is to say—
 - (i) all unsecured creditors; and
 - (ii) secured creditors in respect of whose secured claims the proposal was made;
- (b) creditors shall vote 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 18; and

(c) the votes of the secured creditors shall not count for the purpose of this section, but are relevant only for the purposes of section 41.

(3) Notwithstanding paragraphs (a) and (b) of subsection (2), creditors having equity claims are to be in a single class of creditors in relation to those claims and may not, as members of that class, vote at any meeting unless the Supervisor determines otherwise.

(4) *A creditor who is a related person of the debtor may vote against the proposal but such creditor shall not vote for the acceptance of the proposal, and in determining the total votes in favour of the proposal, that creditor and the indebtedness owing to him shall not be taken into account.*

(5) Where the trustee is a creditor, the trustee may not vote on the proposal.

(6) The proposal shall be deemed to be accepted by the creditors if, and only if—

- (a) a majority in number of the creditors in all classes of unsecured creditors in attendance at the meeting either in person or by proxy vote for the acceptance of the proposal; and
- (b) creditors in attendance at the meeting either in person or by proxy holding at least two-thirds of the proven claim in all classes of unsecured creditors vote for the acceptance of the proposal.

(7) Where 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.

(8) For the purposes of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in section 202 (1) (b) (i), (ii) or (iii).

39.—(1) Where a proposal is accepted under section 38, the trustee shall file with the Supervisor and notify all creditors with proven claims in such manner as may be prescribed confirming that the proposal—

Deemed approval by Court of proposal accepted by creditors.

- (a) has been accepted as required by this Act; and
- (b) satisfies the requirements of this Act.

(2) The Supervisor or any creditor may in the form prescribed, within fifteen days of the notice referred to in subsection (1), deliver a notice to the trustee and to the debtor objecting to the approval of the proposal and requiring that the debtor apply to the Court for an order approving the proposal.

(3) Upon receipt of the notice referred to in subsection (2), the debtor shall, in the manner and time prescribed, make the application to the Court for an order approving the proposal.

(4) A proposal shall not be approved in respect of an employer unless—

- (a) it provides for payment to the employees and former employees, immediately after the approval by the Court of the proposal of amounts equal to the amounts that they would be qualified to receive under section 202(1)(b) (i), (ii) or (iii) where applicable if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice on intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approves the proposal, together with disbursements properly incurred by the

employees or former employees, as the case may be, in and about the bankrupt's business during the same period; and

- (b) it is satisfied that the employer can and will make the payments as required under paragraph (a).

(5) A proposal that provides for the payment of an equity claim, shall not be approved unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is paid.

(6) Where at the expiration of the fifteenth day after the delivery of the notice required by subsection (1), no notice of objection has been delivered in accordance with subsection (2), the proposal shall be deemed to be approved by the Court.

(7) For the avoidance of doubt, nothing in this section shall prevent the trustee or debtor from obtaining any order necessary or desirable to give effect to the terms of the proposal.

Refusal of
proposal by
creditors.
Part VI.

40.—(1) Subject to subsection (3), where the creditors refuse to accept a proposal, the debtor concerned shall be deemed to have made an application for an assignment under Part VI, at the time of the refusal of the proposal.

(2) Where a proposal is refused under section 38, the trustee shall forthwith—

- (a) file a report in respect of the refusal of the proposal in the form prescribed with the Supervisor, who shall thereupon issue a certificate of assignment in the form prescribed, which has the same effect for the purposes of this Act as an assignment made pursuant to Part VI; and
- (b) in the case where the debtor is a company, files a notice of the assignment with the Registrar of Companies;

(c) call a meeting of creditors—

- (i) present at that time; and
- (ii) if no quorum exists for the purpose of subparagraph (i), send notice, within five days after the day the certificate mentioned in paragraph (a) is issued, of the meeting of creditors and approve the remuneration of the trustee,

and at either meeting the creditors may by ordinary resolution, notwithstanding section 237, approve the appointment of the trustee or appoint another trustee in lieu of that trustee.

(3) Where a person facing imminent insolvency files a proposal and that proposal is not accepted by creditors under section 38, that person shall not be deemed to have made an assignment, where at that meeting the creditors resolve by special resolution, to permit the person to terminate the proceedings under Part VI.

(4) Where the creditors do not pass a special resolution permitting a person facing imminent insolvency to terminate the proceedings under Part III—

- (a) the person facing imminent insolvency shall be deemed to have made an application for an assignment; and
- (b) the trustee shall forthwith file a report in prescribed form with the Supervisor, who shall then issue a certificate of assignment in the prescribed form, and such assignment shall take effect as if it was filed under Part VI.

(5) The creditors may by ordinary resolution, notwithstanding section 237, affirm the appointment of the trustee named in the notice of intention or appoint trustee in lieu of that trustee so named.

(6) Where an assignment is made under this section in relation to a company, a notice of the assignment made under this section shall be filed with the Registrar of Companies.

Effect of acceptance and approval of proposal.

41.—(1) Where a proposal is accepted by the creditors and approved or deemed to be approved by the Court, such proposal shall be 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.

(2) The acceptance or approval of a proposal by a creditor shall not be construed as releasing any person who would not be otherwise released under this Act by the discharge of the debtor.

Approval of proposal by Court; Restrictions on approval of proposal.

42.—(1) On an application to approve the proposal being made to the Court pursuant to section 39, the Court shall—

- (a) consider the report of the trustee in the form prescribed respecting the terms of the proposal and the conduct of the debtor; and
- (b) hear—
 - (i) the trustee;
 - (ii) the person making the proposal;
 - (iii) the Supervisor; or
 - (iv) any opposing, objecting or dissenting creditor; and

(c) consider such further evidence as the Court may require.

(2) The Court shall refuse to approve the proposal where it is of the opinion that the terms of the proposal—

- (a) are not fair and reasonable to the creditors, or are oppressive;

- (b) are not calculated to benefit the general body of creditors;
or
- (c) contravene any of the provisions of this Act or any other relevant law.

43. The creditors may appoint no more than 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.

44. In 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 by the secured creditor, shall cease to be valid or effective, and sections 192 and 199 shall apply in respect of a proof of claim, filed by any secured creditor in the bankruptcy.

Secured claims upon bankruptcy.

45.—(1) All monies payable under the proposal shall be paid to the trustee and shall be distributed by him to the creditors after payment of all proper fees and expenses of the trustee and the debtor, unless that proposal otherwise provides for the payment of such fees and expenses.

Distribution under proposal.

(2) Where 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, when 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 (1).

46. The creditors may by special resolution appoint another trustee, in lieu of the trustee appointed under the notice of intention or proposal that was filed if the creditors are satisfied that it would be in their best interests to do so.

Replacement of trustee by creditors.

47. The approval of a proposal made after bankruptcy operates to annul the bankruptcy and to revert in the debtor, or in such other person as the Supervisor may approve, all the rights, title and where applicable interests of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide.

Approval of a proposal by the Supervisor made after bankruptcy operates to annul bankruptcy.

Sale of
property.

48. A debtor in respect of whom a notice of intention or a proposal is filed may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so in accordance with the terms of a proposal, that has been approved by the Court.

Court may
annul
proposal.

49. Where it appears that the proposal cannot continue without injustice or undue delay or that the approval of the proposal was obtained by fraud, the Court may on application by the trustee or the Supervisor with such notices as the Court may direct to the debtor and if applicable to the trustee and creditors, annul the proposal.

Effect of
annulment of
proposal.

50.—(1) On the annulment of a proposal, the debtor shall be deemed to have made an application for an assignment, and the order annulling the proposal shall refer to such deemed application.

(2) Where an order annulling a proposal has been made, the trustee shall within five days after the order is made, send a notice of the meeting of creditors which shall be held within twenty-one days from the date of the notice, and at which meeting the creditors may by ordinary resolution, notwithstanding section 237, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee.

(3) Where a proposal is annulled under section 49, the trustee shall file a report thereof in the form prescribed with the Supervisor, who shall then issue a certificate of assignment, in the form prescribed, which has the same effect for the purposes of this Act as an assignment made under Part VI.

Part VI.

Default in
performance
of proposal.

51.—(1) Where a default occurs in the performance of any provision in a proposal and—

- (a) the default is not waived by the inspectors, or in the absence of inspectors, by the creditors; and
- (b) the default is not remedied by the debtor within the time prescribed, the trustee shall within such time and in the form prescribed, so inform all the creditors and the Supervisor of such default and call a meeting of creditors.

(2) Where a default is not remedied or waived by creditors, the debtor shall be deemed to have made an application for an assignment, and the trustee shall—

- (a) file a report thereof in the form prescribed with the Supervisor, who shall then issue a certificate of assignment, in the form prescribed, and such assignment shall take effect as if it was filed under Part VI; and
- (b) within five days, send notice of the meeting of creditors, which shall be held within twenty-one days from the date of the notice at which meeting the creditors may by ordinary resolution, notwithstanding section 237, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee.

52. Where an insolvent person in respect of whom a proposal has been filed makes an assignment at any time before the proposal is approved, the date of the bankruptcy is the date of the filing of the assignment.

Date of bankruptcy by insolvent person shall be date of assignment.

53.—(1) Where a notice of intention or a proposal is filed in respect of a debtor, no person may terminate or amend any agreement with the debtor, or claim an accelerated payment under any agreement with the debtor by reason only that—

Agreements shall not be terminated or altered, in certain circumstances, where notice of intention or proposal filed.

- (a) the debtor is or it is believed will likely become insolvent; or
- (b) a notice of intention or a proposal has been filed in respect of the debtor.

(2) Where the agreement referred to in subsection (1) is a lease or a licensing agreement, subsection (1) shall be read as including—

“the debtor 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—

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

(3) Where a notice of intention or a proposal is filed in respect of a debtor, a company who provides a public utility service may not discontinue service to that debtor by reason only that—

- (a) for the circumstances under subsection (1)(a) and (b); or
- (b) the debtor has not paid for services rendered, or material provided, before the filing of the proposal.

(4) Nothing in subsections (1) to (3), shall be construed as—

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after—
 - (i) the notice of intention, where filed; or
 - (ii) the proposal, where a notice of intention was not filed; or
- (b) requiring the further advance of money or credit.

(5) Any provision in an agreement that has the effect of providing for or permitting anything that in substance, is contrary to subsections (1) to (3), shall be void.

(6) The Court may, on application by a party to an agreement or by a public utility, declare that subsections (1) to (3), shall not apply or apply only to the extent declared by the Court where the applicant satisfies the Court that, the operation of those subsections would likely cause the applicant significant financial hardship.

(7) Subsections (1) and (5), shall not apply—

- (a) in respect of an eligible financial contract; or
- (b) to prevent a Jamaican clearing agent or group clearer from ceasing to act as such for a debtor.

(8) For the avoidance of doubt, where an eligible financial contract entered into before—

- (a) the filing in respect of a debtor of a notice of intention or a proposal, where no notice of intention was filed; or
- (b) a certificate of assignment has been issued or a deemed assignment has arisen,

is terminated on or after that filing, the setting off of the obligations between the debtor and the other parties to the eligible financial contract in accordance with its provisions, shall be permitted and if net termination values determined in accordance with the eligible financial contract are owed by the debtor to another party to the eligible financial contract, that other party shall be deemed, for the purposes of sections 4 and 5 to be a creditor of the debtor with a claim provable in bankruptcy in respect of those net termination values.

(9) For the purposes of this section—

“basis swap agreement” means an interest rate swap in which contracting parties exchange obligations to make interest rate payments;

“cash” means money credited to an account in any currency or a similar claim for repayment of money, such as a money market deposit;

“collateral” means—

- (a) cash;
- (b) securities of any kind, including (without limitation) debt and equity securities, any securities account or other securities entitlement, and rights to acquire securities (including by subscription, purchase or exchange); or

(c) any futures agreement or futures account;

“collateral arrangement” means a title transfer collateral arrangement or a security interest collateral arrangement;

“commodity swap” means a lending arrangement in which repayment is in a commodity or is based on a commodity price;

“floor transaction” means an agreement providing the right to benefit from changes in interest or currency rate involving the setting of a maximum or upper limit;

“forward agreement” means a cash contract in which two parties agree to the exchange of an asset to be delivered by the seller to the buyer at a specified future date;

“master agreement” means a standard agreement that covers all transactions between the parties;

“net termination value” means the net amount obtained after setting off the mutual payment or delivery obligations or entitlements between the parties to an eligible financial contract in accordance with its provisions, including the application of the proceeds of sale of any collateral or the setting off or application of the value of collateral against such obligations;

“repurchase agreement” means a financial agreement in which a dealer of securities transfers the eligible securities or any interests in the eligible securities to another person, with or without provisions allowing for—

- (a) the substitution of the underlying securities by the dealer;
- (b) the entitlement of the dealer to the coupon rate on the underlying securities; or
- (c) any contract that the Financial Services Commission treats as such under its guidelines,

in which the parties agree that at an agreed future date the securities shall be returned to the dealer on the terms and conditions specified in the agreement;

“security interest collateral arrangement” means an agreement under which a collateral provider provides collateral by way of security in favour of, or to, a collateral taker, and where the ownership of or an equity of redemption in the collateral remains with the collateral provider when the security right is established, where the collateral has been delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker’s behalf, and any right of substitution or to withdraw excess collateral in favour of the collateral provider shall not prejudice the collateral having been provided to the collateral taker;

“spot agreement” means an arrangement for expected annual immediate delivery of a currency or commodity at a stated rate of exchange or price;

“title transfer collateral arrangement” means an arrangement, under which a collateral provider transfers title to or ownership of collateral to a collateral taker for the purpose of securing or otherwise covering the performance of obligations.

54.—(1) Where a proposal is fully performed, the trustee shall issue a certificate to that effect, in the form prescribed, to the debtor and Supervisor, and the Supervisor shall maintain a record of the proposal in accordance with section 226.

Certificate of performance performed.

(2) The acceptance of a proposal by a creditor shall not be construed as releasing any person who would not be released under this Act by the discharge of the debtor.

Court may
make order for
interim
financing.

55.—(1) Subject to subsection (4), a Court may make an order on application by a debtor in respect of whom a notice of intention or a proposal is filed authorizing the debtor to borrow money and declaring that all or part of the debtor's property is subject to a security or charge in favour of the lender.

(2) An order made under subsection (1), shall be by notice to secured creditors who are likely to be affected by the security or charge.

(3) A security or charge granted under this section shall be—

- (a) in an amount the Court considers appropriate;
- (b) 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 13.

(4) In the case of a debtor who is an individual—

- (a) the debtor may not make an application under subsection (1), unless the debtor is operating a business;
- (b) only property of the debtor acquired for a use in relation to the debtor's business may be subjected to a security or charge.

(5) The Court shall in making an order under this section consider—

- (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 proceeding;
- (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 naturally prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in section 13 or 26, as the case may be.

(6) Subject to subsections (7) and (8), the Court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

(7) The security or charge granted by the Court under this section may not rank in priority over any security or charge arising from a previous order made under this section, unless the person in whose favour the previous order was made consents.

(8) A security or charge granted under this section, may not secure an obligation to the lender that exists before an order under this section is made.

56.—(1) On application by a debtor in respect of whom a notice of intention or a proposal is filed 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 property of the debtor is subject to a security or charge in an amount that the Court considers appropriate in favour of any director or officer of the debtor, to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Security for
directors or
officers;
Security for
certain costs.

(2) The Court may not make the order under subsection (1) if in its opinion the debtor could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

(3) In making an order under subsection (1), the Court shall make an order declaring that the security or charge does not apply in respect of obligations or liabilities incurred as a result of the director's or officer's gross negligence or willful misconduct.

(4) 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 property of a debtor in respect of whom a notice of intention or a proposal is filed is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of—

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the debtor for the purpose of proceedings under this Part; and
- (c) any financial, legal or other experts engaged by any other interested person if the Court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Part.

(5) The Court may order that the security or charge granted under this section rank in priority over the claim of any secured creditor.

(6) In the case of an individual—

- (a) the Court may not make the order under this section unless the individual is 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.

PART IV.—*Acts of Bankruptcy*

57.—(1) For the purposes of this Act a debtor commits an act of bankruptcy where the debtor—

- (a) in Jamaica or elsewhere, makes an assignment in the form prescribed of his property to a trustee for the benefit of the creditors generally;
- (b) makes any disposition of property, or incurs any obligation or takes any judicial proceedings in favour of any creditor or of any person in trust for any creditor, which falls to be treated

as a fraudulent preference or enters into any other transactions referred to under section 117;

- (c) makes any conveyance, gift, delivery or transfer of his property as a fraudulent preference, in Jamaica or outside of Jamaica;
- (d) departs from Jamaica, or being outside of Jamaica remains outside of Jamaica, or departs from his dwelling-house or otherwise absents himself, with the intent to defeat or delay his creditors;
- (e) permits any execution or other process issued against the debtor, under which any of the debtor's property is seized, levied on or taken in execution, to remain unsatisfied for thirty days, or if any of the debtor's property has been sold by the bailiff, or if the execution or other process is returned endorsed to the effect that the bailiff can find no property on which to levy or to seize or to take;
- (f) exhibits at any meeting of creditors any statement of assets and liabilities that indicates insolvency, or presents or causes to be presented to that meeting a written admission of the debtor's inability to pay debts;
- (g) with intent to defraud, defeat or delay creditors—
 - (i) assigns;
 - (ii) removes;
 - (iii) secretes or disposes of; or
 - (iv) attempts to do any of the above in relation to, any of his property;
- (h) gives notice in writing to any of the debtor's creditors that he has suspended or is about to suspend payment of his debts;
- (i) defaults in the performance of proposal made under this Act; or
- (j) ceases to meet liabilities generally, as they become due.

(2) Notwithstanding subsection (1)(e), where interpleader proceedings have been instituted in respect of the property seized, the time elapsing between the date at which the proceedings were instituted and the date at which the proceedings are finally disposed of, settled or abandoned, shall not be taken into account in calculating the period of twenty-one days.

PART V.—*Receiving Orders, Interim Receivers and
Receivers Application for Receiving Order*

58.—(1) One or more creditors may file in Court, an application for a receiving order against a debtor.

Filing
application of
a receiving
order, etc.

(2) The application filed under subsection (1), shall state—

- (a) the debt or debts owing to the applicant creditor or creditors, which shall amount in the aggregate to not less than the three hundred thousand dollars;
- (b) that the debtor has committed an act of bankruptcy within six months immediately preceding the filing of the application for a receiving order;
- (c) in the case of a secured creditor shall—
 - (i) describe the nature of the security held by such creditor; and
 - (ii) state that the secured creditor is willing to give up his security for the benefit of the creditors, in the event of a receiving order being made against the debtor; or
 - (iii) state an estimate of the value of his security and state whether the secured creditor intends to claim for the balance, if any.

(3) Where a secured creditor referred to in subsection (1)

(c)—

- (a) states that the secured creditor is willing to give up his security for the benefit of the creditors, in the event of a receiving order being made against the debtor, he may be admitted as an applicant creditor to the extent of the balance of the debt or debts due to him; or
- (b) gives an estimate of the value of his security the secured creditor may be admitted as an applicant creditor to the extent of the balance of the debt or debts due to him after deducting the value so estimated, in the same manner as if the creditor were an unsecured creditor.

(4) Any creditor whose claim against a partnership is sufficient to entitle him to file an application under this section, may file the application against any one or more partners of the firm.

(5) An application under this section shall be verified by affidavit of the applicant or by someone duly authorized on his behalf having personal knowledge of the facts alleged in the application so filed.

(6) Where the application is attested to—

- (a) in Jamaica, the witness shall be an attorney-at-law or a Justice of the Peace;
- (b) outside of Jamaica, the witness shall be a Consul or Consular Officer or Notary Public.

(7) When the applicant creditor cannot himself verify all the statements contained in his application, he shall file in support of the application an affidavit of some person who can depose to the statements contained therein.

(8) Where an application under this section is to be served against a debtor who resides or carries on business at an address other than the address at which the debtor was residing or carrying on business at the time of contracting the debt or liability in respect of which the application is presented, the applicant creditor, in addition to stating in the application the description of the debtor and of his then present address and description, shall in the application describe the debtor as—

- (a) lately residing or carrying on business at the address at which he was residing; or
- (b) carrying on business when the debt or liability was incurred.

(9) A creditor who has filed an application under subsection (1)—

- (a) who is resident abroad;
- (b) whose estate is vested in a trustee or an assignee under any law relating to bankruptcy;
- (c) against whom an application under this section is pending; or
- (d) who has made default in payment of any costs ordered by any court to be paid by him to the debtor,

may be ordered to give security for costs to the debtor.

(10) Notwithstanding subsection (1), a debtor may present against himself an application which states the grounds on which the application is being made.

(11) In sections 59 to 67, references to an application for a receiving order are references to an application for a receiving order filed under this section.

Court
proceedings
of application
for receiving
order.

59.—(1) Where two or more applications for receiving orders are filed against the same debtor, against joint debtors, the Court may consolidate the proceedings on such terms as the Court deems just.

(2) Where a receiving order has been made against one member of a partnership and any other application for a receiving order is filed against a member of the same partnership, the Court may give such directions for consolidating the proceedings under the applications as the Court deems just.

(3) The Court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with such proof, may make a receiving order.

(4) The Court shall dismiss the application where the Court—

- (a) is not satisfied with the proof of the facts alleged in the application or of the service of the application;
- (b) is satisfied by the evidence of the debtor, that he is able to pay his debts; or
- (c) is satisfied for other sufficient cause that no order ought to be made.

(5) Where 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.

60. The Court shall on a receiving order being made, appoint a trustee of the property of the bankrupt, having regard, as far as the Court deems just, to the wishes of the creditors.

Trustee
appointed
where
receiving
order made.

61.—(1) Notwithstanding subsection (2) the Court may, on such terms and subject to such conditions as the Court may think just, make an order staying the proceedings—

Stay of
proceedings
by the Court.

- (a) altogether; or
- (b) for a specified time.

(2) Where the debtor denies the truth of the facts alleged in the application for a receiving order, the Court may stay all proceedings on the application—

- (a) on such terms as it may think just to impose on the applicant as to costs, or on the debtor to prevent alienation of his property; and
- (b) for such time as may be required for trial of the issue relating to the disputed facts.

(3) An applicant who is resident outside of Jamaica may by order give security for costs to the debtor, and the Court shall stay the proceedings until such security is furnished.

Orders by Court where proceedings have been stayed or not prosecuted with due diligence.

62. Where proceedings on an application for a receiving order have been stayed or have not been prosecuted with due diligence and effect, the Court may—

- (a) make an order for the substitution or addition as applicant any other creditor or creditors, who meets the prescribed threshold to whom the debtor may be indebted;
- (b) make a receiving order on the application of the other creditor; or
- (c) dismiss the application on such terms as it deems just.

Withdrawing application.

63. An application for a receiving order, shall not be withdrawn without the leave of the Court.

Debtor against whom application filed, dies.

64. Where a debtor against whom an application for a receiving order has been filed dies, the proceedings shall not be terminated by reason only of his death.

Application for receiving order against estate of deceased.

65.—(1) An application for a receiving order may be filed against the estate of a deceased debtor.

(2) Where an application for a receiving order has been served on the legal personal representative of a deceased debtor,

the legal personal representative shall not make payment of any monies or transfer any property of the deceased debtor, until the application is disposed of except as required for payment of funeral and testamentary expenses.

(3) The legal personal representative shall be personally liable to restore to the estate in the amount of those losses resulting from a diminution in value, to the extent of that diminution in value.

(4) Nothing in this section shall invalidate—

- (a) any payment made or transfer of property done; or
- (b) any act or thing done in good faith,

by the legal personal representative, before the service of an application referred to in subsection (2).

66.—(1) Where the Court grants a receiving order, the applicant shall be taxed and be payable out of the estate, unless the Court otherwise orders.

Costs of applicant for receiving order payable against estate of deceased.

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

Interim Receivers

67.—(1) If it is shown to be necessary for the protection of the estate of a debtor the Court may at any time after the filing of an application for a receiving order and before a receiving order is made—

Appointment of interim receiver for the protection of the estate of a debtor when receiving order filed.

- (a) appoint a trustee as interim receiver of the property of the debtor or any part of that property; and
- (b) direct the 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) Subject to subsection (3), the interim receiver appointed under subsection (1) may, under the direction of the Court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the Court deems advisable.

(3) The interim receiver shall not unduly interfere with the debtor in the carrying out of his business except, as may be necessary for conservatory purposes or to comply with the order of the Court.

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

68.—(1) Where the Court is satisfied that a notice, by a secured creditor in the form prescribed, of an intention to enforce a security is about to be sent or has been sent, the Court may, on application by the secured creditor, 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, for such term as the Court may determine.

(2) The Court may direct the 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 under subsection (1);
- (b) exercise such control over that property, and over the debtor's business, as the Court may determine advisable; and
- (c) take such other action as the Court may determine.

(3) The Court shall appoint an interim receiver 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 is about to send or has sent the notice of intention to enforce security.

69.—(1) Where a notice of intention to make a proposal has been filed or a proposal has been filed, the Court may, at any time thereafter, subject to subsection (3), appoint as interim receiver of all or part of the debtor's property, for such term as the Court may determine—

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

- (a) a 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) Subject to subsection (3), the Court may direct an interim receiver be appointed under subsection (1) to—

- (a) carry out the duties set out in section 28(1), 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; and
- (d) take such other action as the Court may determine.

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

- (a) the debtor's estate; or
- (b) the interests of a creditor.

70.—(1) Where an appointment of an interim receiver is made under section 67, 68 or 69, the Court may make such order respecting the payment of fees and disbursements of the interim receiver as it considers proper, including an order giving the interim receiver a charge, ranking ahead of any or all secured creditors and, over any of the assets of the debtor in respect of his claim for fees or disbursements.

Cost of interim receiver.

(2) The Court shall not make an order under subsection (1), unless it is satisfied that all secured creditors who are materially affected by the order are given reasonable notice and opportunity to make representations to the Court.

(3) Where an interim receiver is appointed under this Part—

- (a) the form and content of the interim receiver accounts; and
- (b) the procedure for the preparation and taxation of those accounts referred to in paragraph (a),

shall be as prescribed.

(4) For the purposes of this section, “disbursements” shall not include payments made in operating a business of the debtor.

Secured Creditors and Receivers

Trustee may
be appointed
receiver
under
security
agreement.

71.—(1) Only a person who is licensed as a trustee under this Act, may be appointed or act as a receiver.

(2) Where a receiver is appointed the receiver shall notify the debtor of the appointment.

(3) In the event of a conflict between sections 71 to 80 of this Act, and; the *Companies Act*, the *Security Interests in Personal Property Act* or any other law with respect to receivers, the provisions of this Act, shall apply notwithstanding section 46(11) of the *Security Interests in Personal Property Act*.

Secured
creditor to
provide
notice.

72.—(1) A secured creditor who intends to enforce a security on all or substantially all of—

- (a) the inventory;
- (b) the accounts receivable; or
- (c) the other property,

of a debtor that was acquired for, or is used in relation to a business carried on by the debtor, shall send to that debtor, a notice of that intention to enforce security the form prescribed.

(2) Where a notice is sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice was sent until the expiry of ten days after sending that notice, unless the debtor 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 shall not apply—

(a) in respect of a secured creditor—

(i) whose right to realize or otherwise deal with his security is protected by sections 4 or 5; or

(ii) in respect of whom a stay under sections 4, 5 or 6 has been lifted pursuant to section 7;

(b) where there is a receiver in respect of the debtor.

73.—(1) A receiver shall when appointed by—

Appointment
of receiver.

(a) instrument, act in accordance with the conditions imposed under that instrument of appointment and any directions by the Court;

(b) a Court order, act in accordance with the directions of the Court;

(2) A receiver—

(a) shall not later than ten days after becoming a receiver, send a notice of that fact, in the manner and form prescribed—

(i) to the Supervisor or in the case of a corporation, to the Registrar, accompanied by the prescribed fee;

(ii) where the debtor is bankrupt, to the trustee;

(iii) where the debtor is not bankrupt, to the debtor;

(iv) where directed to do so by the Supervisor, to all creditors of the debtor that the receiver,

after making reasonable efforts to, has ascertained;

- (b) shall forthwith after taking possession or control, whichever occurs first, of property of a debtor—
 - (i) prepare a statement containing prescribed information relating to the receivership; and
 - (ii) forthwith provide a copy of the statement to the Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor of the debtor who requests a copy at any time up to six months after the end of the receivership;
- (c) shall prepare interim reports relating to the receivership, and shall provide copies of those reports to the Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor of the debtor who requests a copy at any time up to six months after the end of the receivership;
- (d) shall prepare, forthwith after the completion of his duties as receiver, a final report and a statement of accounts, containing the prescribed information relating to the receivership, and forthwith provide a copy of that report and statement of accounts to the Registrar of Company (where if it is a company), Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor of the debtor or the bankrupt who requests a copy at any time up to six months after the end of the receivership; and
- (e) may—
 - (i) subject to the rights of secured creditors, receive the income from the property, pay the liability connected with the property, and realize the security interest of those on behalf of whom he is appointed; and

- (ii) not, unless appointed a receiver-manager or unless the Court orders otherwise, carry on the business of the debtor for more than fourteen days after his appointment.

74. A receiver shall—

Duties of receiver.

- (a) not later than fourteen days after being appointed receiver, publish a notice of his appointment in the form prescribed in one issue of a local daily newspaper in circulation throughout Jamaica;
- (b) take into his custody or control the collateral in accordance with the security agreement or order providing for his appointment;
- (c) deal with any property of the debtor in his possession or control in a commercially reasonable manner;
- (d) open and maintain a bank account in his name as receiver for the deposit of all monies coming under his control as receiver;
- (e) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor;
- (f) prepare monthly summaries of accounts of his administration of the collateral and other property of the debtor;
- (g) indicate on every business letter, invoice, contract, or similar document used or executed in connection with the receivership, that he is acting as a receiver; and
- (h) act honestly and in good faith.

75.—(1) A receiver shall send a notice in the form prescribed to the debtor requesting the information referred to in subsection (2).

Debtor to provide names and addresses of creditors.

(2) A debtor shall, forthwith 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.

Personal liability of receiver.

76. A receiver—

- (a) is liable personally on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and
- (b) is entitled in respect of the liability under paragraph (a) to an indemnity out of the assets of which he was appointed to be receiver.

Court order in respect of non-performance of duties by Supervisor, debtor, receiver, etc.

77. Where the Court, on the application of the Supervisor, the debtor the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the debtor (as the case may be) is failing or has failed to carry out any duty imposed under this Part, the Court may make an order, on such terms as it considers proper—

- (a) directing the secured creditor, receiver or debtor, as the case may be, to carry out that duty; or
- (b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the debtor, until that duty has been carried out, or both.

Court may order statement of accounts to be submitted for review.

78.—(1) The Court may, on the application by the Supervisor, the debtor, the trustee (in the case of a bankrupt), or a creditor, made within six months after the statement of accounts is provided to the Supervisor pursuant to section 73, order the receiver to submit to the Court the statement of accounts for review.

(2) The court may adjust in the manner and the extent as it considers proper, the fees and charges of the receiver, as set out in the statement of accounts.

79.—(1) A receiver or other interested party, may apply to the Court for directions in relation to any provision of this Part.

Receiver may apply to Court for directions.

(2) The Court shall in relation to an application for directions under subsection (1) give such directions, it considers proper in the circumstances including an order—

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) determining the notice to be given to any person, or dispensing with notice to any person;
- (c) declaring the rights of persons before the Court or otherwise; or directing any person to do, or abstain from doing, anything in relation to the receivership;
- (d) fixing the remuneration of the receiver or receiver-manager;
- (e) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed—
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the company;
 - (ii) to relieve any such person from any default on such terms as the court thinks fit; and
 - (iii) to confirm any act of the receiver or receiver-manager; and
- (f) giving directions on any matter relating to the duties of the receiver or receiver-manager.

80. The priorities for distribution of the property of a debtor in a receivership shall be as established in section 202.

Priorities of distribution in a receivership.

PART VI.—*Assignments*

81. This Part shall apply to the voluntary bankruptcy of an insolvent person, by way of assignment.

Application of Part VI.

Procedure for
making
assignment.

82.—(1) An insolvent person or, if the insolvent person is deceased, the insolvent person's legal personal representative, may apply to the Supervisor for the assignment of all the insolvent person's property for the general benefit of his creditors in the form and manner prescribed.

(2) An insolvent person that is a corporation may only apply for such an assignment, where the members thereof have passed a resolution to that effect, or that, in the case of a company, it be wound up, in accordance with the corporation's constitution and the *Companies Act* or any other applicable law.

(3) An application for assignment made under subsection (1), shall be accompanied by a sworn statement in the form prescribed providing information as to—

- (a) the property of the insolvent person available for distribution among his creditors;
- (b) the names and addresses of all the insolvent person's creditors;
- (c) the amounts of each claim; and
- (d) the nature of each claim, whether secured pursuant to a fixed or floating charge, preferred or unsecured.

(4) A notice of an application made under subsection (1), shall, in the case of a company, be sent to the Registrar of Companies, the applicable Regulator if any, and such other person as the Minister may by order prescribe.

(5) Every assignment of property made by an insolvent person for the general benefit of his creditors, other than an assignment pursuant to this Act, is void.

Approval or
refusal of
application
for an
assignment.

83.—(1) A Supervisor may, subject to subsection (3), refuse an application made under section 82(1), only where the application is not in compliance with the procedure set out in section 82.

(2) Subject to subsection (5), where the Supervisor approves an application made under section 82(1), the Supervisor shall appoint the trustee so named in the application as the trustee of the estate, however, the creditors, may notwithstanding section 237, by ordinary resolution at any time appoint another trustee in lieu of that trustee so named.

(3) Where no trustee is named in the application submitted under subsection (1), the Supervisor shall, after giving the insolvent person fourteen days notice in writing to notify the Supervisor of a trustee who has consented to act as a trustee—

- (a) appoint a trustee identified by the Supervisor who has consented to act; or
- (b) where the Supervisor is unable to find a trustee who is willing to consent to act, and act in accordance with, prescribed criteria, either appoint the Government Trustee to act or reject the application,

however, the creditors may notwithstanding section 237, by ordinary resolution at any time appoint another trustee in lieu of any trustee so identified.

(4) If within the fourteen day period referred to in subsection (3), the insolvent person notifies the Supervisor of a trustee, that trustee's name shall be deemed to be inserted in the application.

(5) The Supervisor shall on approving the application made under section 82, issue a certificate of assignment in the form prescribed and shall insert therein the name of the trustee appointed to act as such as under subsection (2) or (3).

(6) Within five days after the day the certificate of assignment issued, the trustee shall send notice of the meeting of creditors in the manner specified in Part X.

Part X.

(7) Where a Supervisor refuses an application under subsection (1), the Supervisor shall give reasons for such refusal.

PART VII.—*Effect of Receiving Order or Assignment*

84.—(1) Every receiving order and assignment made in pursuance of this Act, takes precedence over all judicial and other attachments, garnishments, certificates of judgment, judgments operating as executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or his agent, and except the rights of a secured creditor.

Precedence of bankruptcy over certain creditors unless process completed.

(2) An execution levied by seizure and sale of the property of a bankrupt shall not be invalid by reason only of it being an act

of bankruptcy, and a person who purchases the property in good faith under a sale by the Bailiff, acquires a good title against the trustee.

Property of bankrupt to vest in trustee on receiving order or assignment.

85.—(1) On a receiving order being made or a certificate of assignment being issued by the Supervisor, a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors—

- (a) pass to and vest in the trustee named in the receiving order or assignment; and
- (b) in any case of change of trustee, the property, shall pass from trustee to trustee without any conveyance, assignment or transfer.

(2) Subject to section 263, the trustee may exercise the right to transfer the property of the bankrupt to the same extent as the bankrupt might have exercised that right if he had not become bankrupt.

(3) The trustee shall file within fifteen days under the *Security Interests in Personal Property Act*, a notice of his appointment.

(4) If the trustee does file within fifteen days any imperfect security interest as at the date of bankruptcy such interest will be treated as unsecured debt.

(5) If the trustee does not file in fifteen days any security interest perfected prior to filing will be treated as perfected as at the date of the bankruptcy.

Trustee to avail himself of other rights under other enactments.

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

Delivery of seized property to trustee where assignment or receiving order made.

87.—(1) Where an assignment or a receiving order has been made, the 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 receiving order certified by the trustee as a true copy, forthwith deliver to the trustee all that property.

(2) Where the Bailiff having seized the property of the bankrupt has sold the property of a bankrupt or any part of that property, he shall deliver to the trustee the money so realized.

(3) Any property of a bankrupt under seizure for rent or taxes shall, on production of a copy of the receiving order or the assignment certified by the trustee as a true copy be delivered forthwith to the trustee, but the costs of distress are a first charge on the property, and, if the property or any part thereof has been sold, the money realized from the sale less the costs of distress and sale shall be paid to the trustee.

88.—(1) Where the bankrupt is a lessee of premises, the trustee, notwithstanding a condition, covenant or agreement in the lease, has the right to hold and retain the leased premises, until the expiration of the tenancy on the same terms and conditions as the lessee might have held the premises had no bankruptcy occurred.

Trustee may
surrender
lease or deal
with
leasehold
interests.

(2) The tenancy of the leased premises shall terminate upon the trustee disclaiming the lease, but nothing shall prevent the trustee from transferring or disposing of a lease, leasehold property, or any interest of the lessee for the unexpired term to as full an extent as could have been done by the lessee had the bankruptcy not occurred.

(3) If the lease contains a covenant, condition or agreement that the lessee may not assign or sublet the premises without the leave or consent of the landlord or other person, the covenant, condition or agreement shall be of no effect in case of such a transfer or disposition of the lease or leasehold property if the Court, on the application of the trustee and after notice of the application to the landlord, approves the transfer or disposition proposed to be made of the lease or leasehold property.

(4) The entry of the trustee into possession of the leased premises and the occupation of the premises by the trustee, while required for the purposes of the administration by the trustee, shall

not be evidence of an intention on the part of the trustee to elect to retain the premises, nor affect the trustee's right to disclaim the lease.

(5) If the trustee elects to retain the benefits of the lease and after assigns the lease to a person approved by the Court, the liability of the trustee and of the estate of the debtor is limited to the payment of rent for the period of time during which the trustee remains in possession of the leased premises.

(6) The landlord may prove as a general creditor for all rent accrued and due at the date of bankruptcy plus any accelerated rent, not exceeding three months that may be claimed under the lease.

(7) Except as referred to in subsection (6), the landlord shall not be entitled to prove as a creditor for rent for any portion of the unexpired term of the lease, but the trustee shall pay to the landlord for the period during which the trustee actually occupies and uses the premises from and after the date of bankruptcy a rental calculated on the basis of the lease and payable in accordance with its terms, but any payment already made to the landlord as rent in advance in respect of that period, and any payment to be made to the landlord in respect of accelerated rent, shall be credited against the amount payable by the trustee for that period.

(8) Nothing in this section shall render the trustee personally liable beyond the assets of the debtor in possession of the trustee.

Receiving
order and
assignment
shall be
registered.

89.—(1) Every copy of —

- (a) a receiving order certified by the Registrar or other officer of the Court; and
- (b) an assignment certified by the Supervisor,

shall be registered by or on behalf of the trustee against the bankrupt or the whole or any part of real property or personal property that the bankrupt owns or in which he has any interest or estate in the appropriate registry in accordance with laws regarding same.

(2) Where the bankrupt is the registered owner of any land or charge or other property, the trustee, named in a receiving order or assignment referred to in subsection (1), shall be entitled to be registered as owner of the land, charge or other property free of all encumbrances or charges mentioned in section 84(1).

(3) Where a bankrupt owns any land or charge registered under any Act, or has or is believed to have any interest or estate in that land or charge, and for any reason a copy of the receiving order or assignment has not been registered under subsection (1), a caveat or caution (as the case may be) may be lodged with the official in charge of the appropriate registry by the trustee, and any registration thereafter made in respect of the land or charge is subject to the caveat or caution, unless it has been removed or cancelled under the provisions of the relevant law.

(4) Where a trustee tenders or causes to be tendered for registration—

- (a) a receiving order;
- (b) an assignment; or
- (c) other document,

such order, assignment or document shall be registered in accordance with the ordinary procedure for registering documents relating to real property.

(5) In the conveyance of real estate purchased from the trustee, it shall not be necessary to join as parties with the trustee persons in whom the legal estate in any mortgage in fee or the legal interest in any mortgage term of years or any other legal or equitable lien or security is vested, but such conveyance when executed by the trustee shall be effectual to vest in the purchaser the real estate purported to be conveyed as if the person having any lien or security, whether the same come within the purchase money or not, had been made parties to and had executed the said conveyance and had thereby granted, transferred, surrendered or released the same.

(6) Every deed, conveyance, assignment, surrender or other assurance relating solely to freehold or leasehold or to any mortgage, charge, or other encumbrance on, or any estate, right, or

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

PART VIII.—*Effect of Bankruptcy on the Property of the Bankrupt*

Application of Part VIII.

90. This Part shall apply to a person in respect of whom—

- (a) an assignment or a receiving order has been made; or
- (b) a proposal failed or was annulled.

Application of sections 93 to 97.

91. Sections 93 to 97, shall apply in respect of individual bankrupts.

Property of bankrupt.

92.—(1) For the purposes of section 85, 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 prescribed to be exempt from execution or seizure;
- (c) assets which are subject of a repurchase agreement where the bankrupt is a securities dealer licensed under the Securities Act.

(2) For the purposes of section 85, the property of a bankrupt 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.

93.—(1) The Minister may, by notice published in the *Gazette*, prescribe the standards for determining the portion of the total income of a bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living.

Excess income of individual bankrupts to be as prescribed.

(2) In this section “total income” notwithstanding section 92(1)(b), includes all revenues of a bankrupt of whatever the nature or source.

94.—(1) The trustee shall—

- (a) having regard to the prescribed standards referred to in section 93, and the personal and family situation of the bankrupt, fix the amount that the bankrupt is required to pay to the estate of the bankrupt from his total income;
- (b) inform the Supervisor, creditors and the bankrupt in writing the form prescribed of the amount fixed under paragraph (a); and
- (c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay that amount fixed under paragraph (a).

Trustees shall fix the amount to be paid by bankrupt.

(2) The trustee shall carry out such investigations as soon as is reasonably practical after the commencement of bankruptcy, in order to determine the amount to be fixed under subsection (1).

(3) In determining the bankrupt’s total income the trustee may fix an amount that is fair and reasonable—

- (a) as the salary, wages or other remuneration for the services being performed by a bankrupt for a related person employing the bankrupt; or
- (b) as the payment for or commission in respect of any services being performed by a bankrupt for a related person,

and the trustee may determine the part of the salary, wages or other remuneration, or the part of the payment or commissions, that shall be paid to the bankrupt estate on the basis of the amount so fixed by the trustee, unless it appears to the trustee 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.

(4) The trustee may, at any time, amend an amount fixed under subsection (1), having regard to material changes that have occurred in the personal or family situation of the bankrupt.

(5) The trustee shall notify the creditors promptly of the decision or any variation of the decision made by the trustee under subsection (4).

(6) The amount fixed by the trustee under subsection (1) or (3) shall be binding on the bankrupt and a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all property of the bankrupt, other than property referred to in section 92(1).

Supervisor shall determine amount to be paid by bankrupt.

95.—(1) If the bankrupt is of the opinion that an amount fixed by the trustee under section 94, is not fair or just or does not meet the prescribed standards under section 93, the bankrupt may apply to the Supervisor in the form prescribed for a variation of the amount fixed by the trustee.

(2) Any creditor aggrieved by a decision made by the trustee under section 94, may apply to the Supervisor in the form prescribed for a variation in the amount fixed by the trustee, if the creditor is of the opinion that the trustee's decision is not consistent with the prescribed standard under section 93.

(3) In response to an application made under subsection (1) or (2), the Supervisor may determine the matter or refer the determination of the matter to mediation, to be conducted in the prescribed manner, provided that the Supervisor is not bound by any decision made by the mediation and may substitute its own determination for that of any decision made at the mediation.

(4) Any decision made by the trustee under this section shall form part of the records of the Supervisor under section 226(2).

Application to amend order to fix amount.

96.—(1) Where the trustee or the Supervisor issues a direction in the form prescribed, to pay an amount determined under section 94 or 95, such direction—

(a) may be served on a person from whom the bankrupt is entitled to receive money; and

(b) shall bind the person to pay to the estate of the bankrupt, the amount fixed by the direction.

(2) A third party shall comply with the direction served under subsection (1).

(3) Where a third party fails to comply with a direction under this section, the trustee may apply to the Court for an order of enforcement.

(4) Where a person fails to comply with the terms of a direction served under subsection (1), the Court may on application by the trustee, order the person to pay to the trustee, the sum of money that the estate of the bankrupt would receive had the person complied with the order.

97.—(1) An assignment of existing or future wages made by a debtor before the debtor became bankrupt, is of no effect in respect of wages earned after the bankruptcy.

Assignment of existing or future wages of no effect after bankruptcy.

(2) An assignment made by a debtor of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered by a debtor who is a natural person before the debtor became bankrupt, is of no effect in respect of such amounts earned after the date of the initial bankruptcy.

Conveyance

98. Where any interest of the bankrupt in any property at the date of bankruptcy was held in joint tenancy, the bankruptcy shall operate as a severance of the joint tenancy and a reversion to tenancy in common.

Effect of bankruptcy on interest in property.

99.—(1) Where a debtor who is married is, at the date of bankruptcy, the sole registered owner of the matrimonial home and any immediately related real property not exceeding one acre, the spouse of the debtor shall be entered, within ten days following the bankruptcy, to claim a one-half interest in any net proceeds from a sale or disposition by the trustee of the property after satisfaction of any valid and enforceable charges registered in the appropriate registry.

Effect of bankruptcy on matrimonial interest.

(2) A claim made under subsection (1), shall be in the form prescribed.

Transactions
valid unless
prior
registration.

100. 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 receiving order or an assignment under this Act, is valid and effectual according to the tenor thereof as fully and effectually and for all intents and purposes as if no receiving order or assignment had been made under this Act, unless the receiving order, assignment, notice or caution, has been registered against the property in the appropriate registry prior to the registration of the deed, conveyance, transfer, agreement for sale, mortgage, or charge in accordance with the laws in relation thereto.

Corporations and Financial Institutions

Contributions
to be made to
bankrupt
corporation.

101.—(1) Every 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, under the Act, charter, or instrument of incorporation of the company or otherwise.

(2) The amount to be contributed under subsection (1), shall be deemed an asset of the corporation and a debt payable to the trustee forthwith on the bankruptcy of the corporation.

Banks and
other deposit
taking
institutions
shall advise
trustee
existence of
account.

102.—(1) Where a financial institution has ascertained an account holder is an undischarged bankrupt, the financial institution shall inform the trustee of the existence of the undischarged bankrupt's account.

(2) Subject to the rights of any person other than a debtor to be paid proceeds under an insurance policy in an account in accordance with its terms and rights of any third party to whom the debtor has granted security in an account, the financial institution shall not make any payments out of the account referred to in subsection (1), except under an order of the Court or in accordance with instructions from the trustee, unless on the expiration of one month from the date of giving the information, no instructions have been received from the trustee.

(3) Notwithstanding anything contained in any other law, a financial institution shall on request in writing by the trustee, disclose what sums of money or other financial assets, if any, of the

bankrupt are held to the bankrupt's credit, and the financial institution shall, upon written request of the trustee, deliver the same to the trustee.

Trustee and Property of Bankrupt

103. Where the 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 shall not thereafter be entitled to realize the security, until the person has given the trustee a reasonable opportunity of inspecting the property and of exercising the right of redemption of the trustee.

Trustee may inspect property.

104. Where the 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 is not at the date of the bankruptcy, the property of the bankrupt or is subject to an unregistered lien, a right of retention, a pledge or a charge, the trustee shall not be personally liable—

Liability of trustee where property is disposed of.

- (a) 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
- (b) for the costs of proceedings taken to establish a claim to the property,

unless the Court is of the opinion that the trustee is been guilty of negligence with respect to the duties of the trustee, in relation to the property.

105.—(1) Where 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—

Persons claiming interest in property of the bankrupt.

- (a) a proof of claim in the form prescribed verified by affidavit giving the grounds on which the claim is based; and
- (b) sufficient particulars to enable the property to be identified.

(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 the later, either—

- (a) admit the claim and deliver possession of the property to the claimant; or
- (b) give notice in writing to the claimant that the claim is disputed with his reasons.

(3) Subject to subsection (4), where the claimant fails to appeal to the Court within fifteen days after the mailing of the notice of dispute under paragraph (2) (b), the claimant shall be deemed to have abandoned or relinquished all his right to or interest in the property to the trustee, and the trustee may sell or dispose of the property free of any lien, right, title or interest of the claimant.

(4) The trustee may before selling or disposing of property under subsection (3), give notice in writing 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 claim in the form prescribed within fifteen days after the mailing of the notice, the trustee may with the leave of the Court sell or dispose of the property free of any lien, 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) Under this section, the onus of establishing a claim to or interest in property is on the claimant.

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

Intellectual Property

106.—(1) Where 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 shall not be bound by the restrictions or limitations but may sell and dispose of the patented articles free of the restrictions or limitations.

Sale of
patented
articles by
trustee.

(2) Where the manufacturer or vendor of the patented articles referred to in subsection (1) objects to the disposition of patented articles 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.

107.—(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—

Copyright
works dealt
with by
bankrupt.

- (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 that 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 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 bankruptcy, the trustee may carry out the original contract;
- (c) the trustee at the expiration of six months from the date of the bankruptcy decides not to carry out the contract, revert without expense to the author, and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void,

(2) Where at the time of the bankruptcy, the work (referred to in to in subsection (1)) was published and put on the market, the trustee is entitled to sell, or authorize the sale or reproduction of any copies of the published work or to perform or authorize 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;
- (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 shall 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.

108. All sales of intellectual property made by a trustee vest in the purchaser all the legal and equitable estate of the bankrupt, therein.

Bankrupt's
intellectual
property vests
in purchaser
upon sale by
trustee.

Partnership Property

109. This Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners or a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

Limited
partnerships.

110.—(1) Where a member of a partnership becomes bankrupt, the Court may authorize 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. Proceedings against bankrupt partner.

(2) Notice of the application for authority to commence an action under subsection (1), shall be given to the bankrupt's partner.

(3) A bankrupt's partner served a notice under subsection (2), may show cause against the action and on his application the Court may, if it thinks fit, direct that the bankrupt's partner shall receive his proper share of the proceeds of the action.

(4) Where the bankrupt's partner under subsection (3), does not claim any benefit from his share, the partner shall be indemnified against costs in respect of the action as the Court directs.

Crown Interests

111.—(1) Notwithstanding any other law in relation to a bankruptcy or proposal made in respect of a bankrupt, all provable claims including secured claims of the Crown, rank as unsecured claims. Crown claims are unsecured.

(2) Subsection (1) shall not apply to claims that are secured by a security or privilege of a kind that can be obtained by persons other than the Crown, pursuant to any law.

112.—(1) A security provided for in legislation for the sole purpose of securing a claim of the Crown is valid in relation to a bankruptcy or insolvency or proposal made in respect of a bankrupt, only if the security is registered before the earliest date of— Crown's security to be registered to be enforceable.

- (a) the date an application is filed against the debtor;
- (b) the date the debtor makes an assignment; and
- (c) the date the debtor commences proceedings for a proposal, pursuant to a prescribed system of registration.

(2) In relation to a bankruptcy or proposal made in respect of a bankrupt, a security referred to in subsection (1) that is registered in accordance with that subsection, is valid only in re-

spect of amounts owing to the Crown at the time of that registration, in addition to any interest subsequently accruing on those amounts.

Settlements and Preferences

Settlements of property within one year void.

113.—(1) Any settlement of property made—

- (a) within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the settlor; and
- (b) ending on the date that the settlor becomes bankrupt, both dates included, shall be void against the trustee.

(2) Any settlement of property made within the period beginning on the day that is five years before the date of the initial bankruptcy event in respect of the settlor and ending on the date that the settlor became bankrupt, both dates included, is void against the trustee, if the trustee can prove that the settlor was at the time of making the settlement, unable to pay all the settlor's debts without the aid of the property comprised in the settlement or that the interest of the settlor in the property did not pass on the execution thereof.

(3) This section shall not apply to any settlement made—

- (a) before and in consideration of marriage;
- (b) in favour of a purchaser or incumbrancer in good faith and for valuable consideration; or
- (c) on or for the spouse or children of the settlor or property that has accrued to the settlor after the marriage in right of the settlor's spouse or children.

Contracts in consideration of marriage.

114.—(1) Any covenant or contract made by any person, hereinafter called "the settlor", in consideration of the settlor's marriage, either for the future payment of money for the benefit of the settlor's spouse or children, or for the future settlement on or for the settlor's spouse or children, of property wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's spouse is, if the settlor becomes bankrupt and the covenant or contract is not executed at

the date of the initial bankruptcy event in respect of the settlor, void against the trustee.

(2) Notwithstanding subsection (1), as far as it enables the persons entitled under the covenant or contract to claim a dividend in the settlor's bankruptcy proceedings under or in respect of the covenant or contract, but any such claim to a dividend shall be postponed until all claims of the other creditors have been satisfied.

115.—(1) Any payment of money, not being payment of premiums on a policy of life insurance in favour of the spouse, or any child of the settlor, or any transfer of property made by the settlor in pursuance of a covenant or contract mentioned in section 114, shall be void against the trustee, unless the person to whom the payment or transfer was made proves that—

Payments void subject to proof of certain facts.

- (a) the payment or transfer was made more than six months prior to the date of the initial bankruptcy event in respect of the settlor;
- (b) at the date of the payment or transfer, the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or
- (c) the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor.

(2) Where any payment or transfer mentioned in subsection (1) is declared void, the persons to whom such payment or transfer is made are entitled to claim for dividend under or in respect of the covenant or contract in like manner, as if it had not been executed at the date of the initial bankruptcy event.

116.—(1) Where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part thereof and subsequently becomes bankrupt, the

Assignment of book debts by a bankrupt void.

assignment of book debts is void against the trustee with respect to any book debts that is not paid at the date of bankruptcy.

(2) This section shall not apply to an assignment of book debts that is registered pursuant to any law providing for the registration thereof, if the assignment is valid.

(3) Nothing in this section renders void any—

- (a) assignment of book debts due at the date of the assignment from specified debtors;
- (b) debts growing due under specified contracts; or
- (c) assignment of book debts included in a transfer of a business made in good faith and for valuable consideration.

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

Preferences
voidable if
made within
six months.

117.—(1) Every—

- (a) conveyance, gift, delivery or transfer of property or charge made on property;
- (b) payment made;
- (c) obligation incurred;
- (d) judicial proceeding taken or suffered by any insolvent person in favour of any creditor or of any person in trust for any creditor, with a view to giving such creditor or any surety or guarantor for the debt due to such creditor a preference over the other creditors is where it is made, incurred, taken or suffered within the period beginning on the day that is six months prior to the date of the initial bankruptcy event and ending on the date the insolvent person became bankrupt, both dates included, shall be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) Where any conveyance, transfer, charge, payment, obligation, or judicial proceeding referred to in subsection (1), has the effect of giving any creditor a preference over other creditors,

it shall be presumed, in the absence of evidence to the contrary, to have been made, incurred, taken, paid or suffered with a view to giving the creditor a preference over other creditors, whether or not it is made voluntarily or under pressure, and evidence of such pressure shall not be admissible to support the transaction.

(3) Subsection (2) shall not apply in the following circumstances—

- (a) a margin deposit made by a clearing member with 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.

118. Where the conveyance, transfer, charge, payment, obligation or judicial proceeding referred to in section 117(1) is in favour of a person related to the insolvent person, the period referred to in that section shall be one year instead of six months.

Preference to related party voidable if made within twelve months.

119.—(1) No payment, delivery, conveyance, transfer, 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 shall be 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 with respect to settlements, preferences and reviewable transactions—

Transactions between initial bankruptcy event and bankruptcy.

- (a) a payment by the bankrupt to any of the creditors of the bankrupt;
- (b) a payment or delivery to the bankrupt;
- (c) a conveyance or 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) Where there have been mutual credit, mutual debts or other mutual dealings between a bankrupt and any other person proving or claiming to prove a debt in the bankruptcy—

- (a) an account may be taken of what is due from one party to the other in respect of such mutual dealings; and
- (b) the sum due from the one party shall be set off against any sum due from the other party; and
- (c) the balance of the account, and no more, shall be claimed or paid on either side respectively.

(3) A transaction referred to in subsection (1), shall not be entered into at any time when a trustee is appointed without the prior notice and consent of the trustee.

Proceeds from dealing with property obtained in void or voidable transaction.

120.—(1) Where a person has acquired property of a bankrupt under a transaction that is void or under a voidable transaction that is set aside and has sold, disposed of, realized or collected the property or any part thereof, the money or other proceeds, whether further disposed of or not, shall be deemed to be the property of the trustee.

(2) The trustee may recover the property or the value of the property or the money or proceeds from the property from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given in good faith adequate valuable consideration for the property, that person shall be subject to the operation of this section however the trustee's recourse is solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value of the property.

(4) Where the consideration payable for or on any sale or resale of the property or any part of the property remains

unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

121.—(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 in the property that by virtue of this Act, is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to the transaction.

Good faith transactions with bankrupts protected.

(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 the bankrupt for value.

122.—(1) Where a bankrupt sold, purchased, leased, hired, supplied or received property or services in a reviewable transaction 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 whether the bankrupt gave or received, as the case may be, fair market value in consideration for the property or services concerned in the transaction.

Reviewable transactions in year prior to initial bankruptcy event.

(2) Where the Court in proceedings under this section finds that the consideration given or received by the bankrupt in the reviewable transaction was conspicuously greater or less than the fair market value of the property or services concerned in the transaction, the Court may give judgment to the trustee against the other party to the transaction, against any other person being privy to the transaction with the bankrupt or against all those persons, for the difference between the actual consideration given or received by the bankrupt and the fair market value, as determined by the Court, of the property or services concerned in the transaction.

(3) In making an application under this section, the trustee shall state what in his opinion was—

- (a) the fair market value of the property or services concerned in the transaction; and
- (b) the value of the actual consideration given or received by the bankrupt in the transaction,

and the values on which the Court makes any finding pursuant to this section, shall be the values so stated by the trustee unless other values are proven in relation to paragraphs (a) and (b).

Where
dividend paid
by corporation
that is
bankrupt.

123.—(1) Where a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation any 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.

(2) Where 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 dividend, redemption or purchase price, that has not been paid to the corporation where 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 solvent or the transaction would not render the corporation insolvent.

(3) In making a determination 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 pursuant to a contract with the corporation by an attorney, notary public, accountant, engineer, appraiser or other person whose profession gave credibility to the statements made in the report.

(4) Where a transaction referred to in subsection (1) has occurred and the Court makes a finding referred to in 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 on the dividend, redemption or purchase price, that was received by the shareholder and not repaid to the corporation.

(5) A judgment pursuant to 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 Act from any liability.

(6) Nothing in this section shall be construed to affect any right, under any applicable law governing the operation of the corporation, and under the Companies Act 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 of proving—

- (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,

lies on the directors.

(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, with the shareholder.

*Mutatis
mutandis.*

124.—(1) Where a proposal is made under Part III, sections 113 to 123 shall apply to the proposal with such modifications as the circumstances require, except where the proposal otherwise provides.

(2) For the purposes of subsection (1), any reference in sections 113 to 123 to “becomes bankrupt”, shall be construed as reference to “when the proposal is filed in accordance with this Act.

Settlements
and
preferences
void on
annulment of
proposal, etc.

125. Sections 111 to 123 shall apply as though the debtor became bankrupt on the annulment where the proposal is annulled.

PART IX.—*Bankrupts*
Duties of Bankrupts

Duties of
bankrupt.

126. A bankrupt shall—

- (a) make discovery of and deliver all of his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of the property or any part thereof;

- (b) deliver to the trustee, for cancellation—
 - (i) all access devices issued to and in the possession or control of the bankrupt; and
 - (ii) all cheque leaves 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 determined by the Supervisor, attend upon 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 trustee, prepare and submit to the trustee a statement of the bankrupt's affairs in the form prescribed 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 the respective creditors;
 - (iv) the dates when the securities were respectively given; and
 - (v) such further or other information as may be reasonably required by the trustee,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 trustee may, as an expense of the administration of the estate, authorize the employment of a duly 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 may direct, and ending on the date of the bankruptcy; and
 - (ii) as to how, 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 six 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 illness or other sufficient cause and submit to examination;
- (j) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (k) submit to such other examinations under oath with respect to his property or affairs as may be required;
- (l) make his best effort to assist the trustee in the realization of his property and the distribution of the proceeds among his creditors;
- (m) examine the correctness of all proofs of claim filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;
- (o) inform the trustee of any material change in the bankrupt's financial situation;

- (p) 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 and any other address; or
- (q) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be—
 - (i) reasonably required by the trustee;
 - (ii) prescribed.

127. Where a bankrupt is a corporation, the officer executing the assignment, or such officer of the corporation, or such person who has, or has had, directly or indirectly, control in fact of the corporation, as the trustee may specify shall attend before the trustee for examination and shall perform all of the duties imposed on a bankrupt by section 126, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

Responsible officer, bankrupt is a corporation.

128. Where a bankrupt is undergoing a sentence of imprisonment or is otherwise lawfully detained, the Court may—

Imprisoned bankrupt.

- (a) in order to enable the bankrupt to—
 - (i) attend Court in bankruptcy proceedings at which his personal presence is required;
 - (ii) attend the first meeting of creditors; or
 - (iii) perform the duties required of him under this Act, direct that the bankrupt be brought before the Court in the protective custody of a bailiff or other duly authorized officer at such time and place as may be designated; or
- (b) make such other order as it deems proper and requisite in the circumstances.

Examination of Bankrupts and Others

129.—(1) The trustee shall at the commencement of the bankruptcy and before the first meeting of creditors, examine the bankrupt in the case of a corporation, any officer or director of the

Examination of bankrupt by trustee prior to first meeting of creditors.

bankrupt, under oath with respect to the bankruptcy and the bankrupt's dealings or property and any person liable to be examined shall produce any books, documents, correspondence or papers in that person's possession or power relating to all or in part to the bankrupt or the bankrupt's dealings or property.

(2) The trustee may carry out subsequent examinations under subsection (1), if the trustee considers it necessary.

Examination
of bankrupt
by Supervi-
sor.

130.—(1) At any time before the discharge of a bankrupt, 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 may put to the bankrupt such questions as the trustee sees fit.

(2) Where the examination under subsection (1) is held the trustee shall make notes of the examination and—

- (a) before the first meeting of creditors, the notes shall be communicated to the creditors at the meeting; or
- (b) after the first meeting of creditors, the notes shall be made available to any creditor who requests them.

(3) Where a bankrupt fails to present himself for examination by the trustee or otherwise fails to adhere to the requirements under this section, the trustee may apply to the Court for an order for an examination in furtherance of the matter in this section.

(4) Where the trustee holds an examination under subsection (3), the trustee shall file in Court, notes of such examination.

Trustee may
examine
bankrupt and
others.

131.—(1) The trustee, may—

- (a) without an order, examine under oath any person—
 - (i) reasonably thought to have knowledge of the affairs of the bankrupt; or
 - (ii) who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt,

respecting the bankrupt, his dealings or property;

(b) require any person liable to be so examined as specified in paragraph (a) to produce any books, documents, correspondence or papers in his possession or power relating in whole or in part to the bankrupt, his dealings or property.

(2) Where a person fails to supply the information requested under paragraphs (a) (i) and (ii), the trustee may apply to the Court for an order to obtain such information.

132.—(1) Where 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, 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.

Trustee may require delivery of property of bankrupt and production of books and records.

(2) Where 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 of a court, examine the person or other interested person concerning the property, book, document or paper that the person is supposed to possess.

133.—(1) Where a person on examination under this Part 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.

Where person may be ordered by Court to pay trustee.

(2) Where 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 him 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.

134. Where the bankrupt fails to present himself for examination as required by sections 129 and 130 or where he or any other person is served with a summons or an order to attend for any examination by sections 131 and 132, but refuses or neglects to attend as required

Issue of warrant for apprehension and examination of persons.

by the summons or order, the Court may, in addition to any other available remedy on the application of the trustee, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

Examination
by Court.

135.—(1) Any person subject to being examined by a Court under this Part, 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.

(2) The Court may order that any person who, if in Jamaica, would be liable to be brought before the Court for any examination under this Act, be examined in any place outside of Jamaica.

Arrest of Bankrupts

Court order for
arrest of
bankrupt.

136.—(1) The Court may, by warrant, cause a bankrupt to be arrested and detained, and any books, papers, other documents and property in his possession to be seized, and the books, papers, electronic documents and property to be safely kept by the trustee until such time as the Court may order, in any of the following circumstances—

- (a) where, after the filing of an application for a receiving order against the bankrupt, it appears to the Court that there are grounds for believing that he has absconded or is about to abscond from Jamaica with a view to—
 - (i) avoiding payment of the debt in respect of which the an application for a receiving order was filed;
 - (ii) avoiding appearance to any such application;
 - (iii) avoiding examination in respect of his affairs;
or
 - (iv) otherwise avoiding or delaying proceedings in bankruptcy against him;
- (b) where, 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 Jamaica with a view to avoiding payment of his debts or to avoiding examination in respect of his affairs;

- (c) where, after the filing of an application for receiving order or an assignment, it appears to the Court that there are reasonable grounds for believing that the debtor –
 - (i) is about to remove his property with a view to preventing or delaying possession being taken of the property by the trustee; or
 - (ii) has concealed or is about to conceal or destroy any of his property or any books, documents or writings that might be of use to the trustee or to his creditors in the course of the bankruptcy proceedings;
- (d) where the bankrupt removes any property in his possession without leave of the Court or the trustee; or
- (e) where 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 Bankrupts

137.—(1) Where an individual has never before been bankrupt under the laws of Jamaica or any other jurisdiction, then, subject to the provisions of this section, there shall be an automatic discharge of the bankrupt twelve months after—

Automatic discharge procedure of first-time individual bankrupt.

- (a) an assignment or a receiving order is made; or
- (b) where an extension is granted at the end of the period and there is no opposition to the automatic discharge.

(2) The trustee shall in the case of a first-time bankrupt and before the expiration of twelve months, file a report to the Supervisor in the form prescribed, for the automatic discharge of the first-time bankrupt.

(3) The report referred to in subsection (2), shall be completed within or no later than eleven months after the receiving order or an assignment is made against the first-time bankrupt.

(4) The trustee—

- (a) may apply to the Supervisor for an extension to complete the report referred to in subsection (2); and
- (b) shall send the notice of the extension referred to in paragraph (a) to the first-time bankrupt.

(5) Where the Supervisor receives an application for an extension of time, the Supervisor shall determine the reasonableness of the grounds on which the extension under subsection (4) is sought, having regard to whether—

- (a) good reason is provided; and
- (b) granting the extension would not be unfairly prejudicial to the bankrupt.

Opposition
to automatic
discharge of
first-time
bankrupt.

138.—(1) The Supervisor or any creditor may, no later than thirty days from the delivery of the report, oppose the application for the automatic discharge of the bankrupt.

(2) Where the Supervisor intends to oppose the discharge of the bankrupt, the Supervisor shall give notice in writing to the trustee and the bankrupt of the intended opposition in the form prescribed, stating the grounds for opposing the discharge of the bankrupt.

(3) Where a creditor intends to oppose the discharge of the bankrupt the creditor shall give notice of the intended opposition in the form prescribed, to the Supervisor, the trustee and the bankrupt stating the grounds for the opposition.

(4) Where the trustee intends to oppose the discharge of the bankrupt, the trustee shall give notice of the intended opposition, to the bankrupt and the Supervisor, at any time prior to the expiration of the twelve-month period immediately following the bankruptcy.

(5) Where there is an opposition under this section to the discharge of the bankrupt by any person referred to under this section, such person who opposes the discharge, may, promptly apply to the Court for the hearing of the opposition in the manner prescribed.

(6) Where the Supervisor, trustee or creditor does not oppose the discharge of the bankrupt in the twelve-month period immediately following the bankruptcy, then on the expiration of the twelve-month period, the bankrupt is automatically discharged.

139.—(1) Where the bankrupt is discharged without opposition after the expiration of that twelve-month period, the trustee shall issue a certificate to the discharged bankrupt, in the form prescribed, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in section 150(1), and shall send a copy of the certificate to the Supervisor.

Automatic discharge of first-time individual bankrupt.

(2) The trustee shall, in not less than fifteen days before the date of the automatic discharge, give notice in writing of the impending discharge in the form prescribed, to the Supervisor, the bankrupt and every creditor who has proved a claim, at the creditors last known address.

(3) Nothing in subsection (1) precludes an individual bankrupt who is a first time bankrupt from applying to the Court for discharge before the expiration of the twelve-month period immediately following the bankruptcy, and section 137(1), shall cease to apply to an individual bankrupt who makes the application before the expiration of that period.

(4) An automatic discharge under this section shall be deemed, for all intents and purposes, to be an absolute and immediate order of discharge by the Court.

140.—(1) Subject to section 139(3), the making of a receiving order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing to the trustee, waives the application for discharge, before being served by the trustee with the application referred to in subsection (2).

Bankruptcy of an individual operates as an application for discharge.

(2) Unless the bankrupt received a notice of waiver under subsection (1), the trustee shall within such time as may be prescribed apply to the Court to proceed with the application for discharge of the bankrupt.

(3) A bankrupt who gives notice of waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply to the Court for a discharge and the trustee on being served therewith shall proceed as provided in this section.

(4) A bankrupt corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full, and a corporation which is not so prohibited from applying for a discharge may do so in the prescribed manner.

(5) The Court may, before hearing an 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 the fees and disbursements incurred in respect of the application.

(6) The trustee shall, not less than fourteen days before the day appointed for the hearing of an application for discharge—

- (a) send a notice of the application in the form prescribed to the Supervisor and the bankrupt; and
- (b) shall publish such notice in the *Gazette* and in a daily newspaper in islandwide circulation in Jamaica or otherwise publish such notice as the Supervisor may direct.

(7) 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 authorize 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.

(8) An order of discharge of a bankrupt made by the Court shall be published by the trustee in the *Gazette* and a daily newspaper widely circulated in Jamaica, and in the case of a bankrupt company (subject to subsection (4)) served on the Registrar of Companies.

(9) A bankrupt company, subject to subsection (4), shall be deemed to be automatically dissolved upon the discharge of the trustee pursuant to section 275 and such dissolution shall take effect on the expiration of three months from the date of discharge of the

trustee provided that the Court may, on the application of any person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(10) The trustee shall within seven days of being discharged, send to the Registrar of Companies a copy of the trustee's discharge.

141.—(1) The trustee shall prepare a report in the form prescribed with respect to—

- (a) the affairs of the bankrupt;
- (b) the causes of the bankruptcy;
- (c) the manner in which the bankrupt has performed the duties imposed on the bankrupt 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 be relevant to the Court refusing an unconditional order of discharge,

Trustee to prepare report of application of bankrupt for discharge.

including a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the bankrupt's ability to make payments 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 for the disapproval shall be given.

(2) Where an application of a bankrupt for a discharge is pending, the trustee shall —

- (a) file the report prepared under subsection (1) in the Court not less than two days; and
- (b) forward a copy of the report 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, and in all other cases the trustee, before proceeding to the discharge, shall

file the report in the Court and forward a copy of the report 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 an attorney-at-law.

(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) Where a bankrupt intends to dispute any statement contained in the report of the trustee, the bankrupt shall give notice in writing to the trustee specifying the statements in the report that he intends to use at the hearing to dispute.

(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 in the form prescribed, stating the grounds of the opposition to the trustee and to the bankrupt.

Trustee's
report to
provide
recommenda-
tion.

142.—(1) The trustee shall in making the recommendation submitted under section 141(1) consider the following—

- (a) whether the bankrupt has complied with a requirement imposed on the bankrupt under section 93;
- (b) the total amount paid to the estate by the bankrupt, having regard to the bankrupt's indebtedness and financial resources; and
- (c) whether the bankrupt could have made a viable proposal, as the means to resolve the indebtedness but chose to proceed to bankruptcy.

(2) Where the recommendation under section (1) states that the bankrupt is to be discharged subject to conditions, such recommendation shall be deemed to be an opposition to the discharge of the bankrupt.

(3) Where the bankrupt does not agree with the recommendation of the trustee, the bankrupt may, before the expiration of the twelve-month period after the date of the bankruptcy, send the trustee a request in writing to have the matter resolved by the Supervisor.

(4) Where the issues under subsection (3) are not resolved or the bankrupt has failed to comply with conditions that were established by the trustee, the trustee shall forthwith apply to the Supervisor for an appointment for a determination of the matter, which hearing shall be held—

- (a) within thirty days after the day the appointment is made; or
- (b) at such later time as may be fixed by the Supervisor.

(5) Where the Supervisor makes a determination under this section, such a determination shall be binding.

(6) A determination made by the Supervisor may be appealed by the trustee or the creditors.

143.—(1) The trustee shall issue a notice of compliance in the form prescribed to the Supervisor, where the bankrupt has complied with the conditions imposed on the bankrupt, in relation to the bankrupt's discharge.

Supervisor shall issue certificate where bankrupt complies with conditions for discharge.

(2) Where the Supervisor receives a notice of compliance under this section, the Supervisor shall issue to the bankrupt a certificate of discharge in the form prescribed releasing the bankrupt from all debts other than a debt referred to in section 150(1).

144.—(1) On the hearing of an application of a bankrupt for a discharge, the Court may put such questions to such persons and receive such evidence as it thinks fit.

Powers of Court in relation to discharge.

(2) On the hearing of an application of a bankrupt for a discharge, the Court may either—

- (a) grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time; or
- (b) 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 his after-acquired property.

(3) Notwithstanding subsection (2), at the hearing of the application for discharge, the Court shall on proof of any of the facts mentioned in section 145—

- (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 monies, consent to such judgments, or comply with such other terms, as the Court may direct.

(4) Where at any time after the expiration 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 the bankrupt 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.

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

Facts
relevant to
discharges.

145. The facts referred to in section 144(3) are that—

- (a) the assets of the bankrupt are not of a value equal to thirty-three and one-third cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the Court that the fact 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 three years before the date of the initial bankruptcy event;

- (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 thirty-three and one-third 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 enactment in connection with the bankrupt's property, the bankruptcy or the proceedings under the bankruptcy;
- (m) the bankrupt has failed to comply with a requirement to pay imposed under section 94;
- (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.

Value of
bankrupt's
assets.

146. For the purposes of section 145, the assets of a bankrupt shall be deemed to be of a value equal to thirty-three and one-third cents on the dollar on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, is likely to realize or, with due care in realization, might have realized an amount equal to thirty-three and one-third cents on the dollar on the bankrupt's unsecured liabilities.

Cessation of
any statutory
disqualifica-
tion.

147.—(1) A statutory disqualification on account of bankruptcy ceases when the bankrupt is discharged upon application to the Court and obtains from the Court a certificate to the effect that the bankruptcy was not caused by misconduct on the part of the bankrupt.

(2) The Court may, if it thinks fit, grant a certificate mentioned in subsection (1), and a refusal to grant such a certificate is subject to appeal.

(3) This section shall not derogate from the application of the fit and proper criteria as established under—

- (a) section 40(2)(e) of the *Constitution of Jamaica*;
- (b) section 3 of the *Financial Services Commission Act*; or
- (c) section 4(3) of the *Banking Act*.

148.—(1) Where an order of discharge is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until the terms or conditions are met or the judgment is satisfied—

Bankrupt to report to trustee and Court.

- (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) Where 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) Where 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.

149. Where—

- (a) a settlement is made before and in consideration of marriage and the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (b) any covenant or contract is made in consideration of marriage for the future settlement on or for the settlor's spouse or children of any property the settlor had not at the date of marriage any estate or interest, not being property of or in right of his spouse,

Court may consider effects of settlement before marriage.

if the settlor becomes bankrupt and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay his creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions in like manner as in cases where the bankrupt has been guilty of fraud.

Debts not
released by
order of
discharge.

150.—(1) An order of discharge does not release the bankrupt from—

- (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 recognizance 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 sub-paragraph (i);
- (c) any debt or liability under a support, maintenance or affiliation order or any agreement for maintenance and support of a spouse or child living apart from the bankrupt;
- (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;
- (e) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;
- (f) 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;

- (g) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g); or
- (h) any debt or obligation in respect of a loan made under the *Students Loan Fund Act* or any other law which provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred—
 - (i) before the date on which the bankrupt ceased to be a fulltime or part-time student, as the case may be, under the Act or other relevant law; or
 - (ii) within ten years after the date on which the bankrupt ceased to be a full-time or part-time student.

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

(3) At any time after ten years after a bankrupt who has a debt referred to in subsection (1)(i) ceases to be a full-time or part-time student as the case may be under the *Student's Loan Fund Act* or other relevant law, the Court may, on application, order that subsection (1) does not apply to the debt if the Court is satisfied that the bankrupt—

- (a) has acted in good faith in connection with the liabilities under the loan; and
- (b) has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the liabilities under the loan.

151. 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 surety or in the nature of a surety for the bankrupt.

Third parties
not released.

152.—(1) Where a bankrupt after obtaining a discharge fails to perform the duties imposed on him by this Act, the Court may, on application, annul the discharge.

Court may
annul
discharge of
bankrupt.

(2) Where it appears to the Court that the discharge of a bankrupt was obtained by fraud, the Court may, on application, annul the discharge.

(3) An order annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the annulment of the discharge.

Court may annul bankruptcy.

153.—(1) Where in the opinion of the Court a receiving 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) Where an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts done theretofore by the trustee or other person acting under his authority, or by the Court, are valid, but the property of the bankrupt shall vest in such person as the Court may appoint or, in default of that appointment, without any conveyance or assignment whatever revert to and re-vest in the debtor for all his estate and interest in the property upon such terms and subject to such conditions, if any, as the Court may order.

Issuance of orders to be delayed.

154. An order of discharge or annulment of discharge shall be dated on the day on which such discharge or annulment of discharge is made, but it shall not be issued or delivered until the expiration of the time allowed for an appeal, and, if an appeal is filed, not until the appeal has been finally disposed of.

PART X.—*Administration of Estates*

Introduction of Part.

155. In general, this Part provides for administration of the estate of a bankrupt, in particular, provision is made for, among other things—

- (a) the role of creditors, trustees and inspectors in the administration;
- (b) dealing with claims provable in bankruptcy;
- (c) ranking and distribution of claims;
- (d) declaration and distribution of dividends from the estate; and
- (e) summary administration of estates in certain cases.

Trustee to send notice to creditors of first meeting.

156.—(1) Subject to subsection (2), the trustee shall—

- (a) inquire as to the names and addresses of the creditors of a bankrupt; and

- (b) within ten days after the date of the trustee's appointment, send a notice of the bankruptcy and of the first meeting of creditors in the manner and to such persons as may be prescribed.

(2) The meeting under subsection (1) shall be held at the office of the Supervisor, within the twenty-one-day period following the date of the trustee's appointment.

(3) The Supervisor may, when the Supervisor deems it expedient, authorize the meeting to be held at such other place as the Supervisor may fix.

(4) Notwithstanding subsection (3), where the Supervisor is satisfied that an extension of the period during which the first meeting of creditors shall be held is—

- (a) not detrimental to the creditors; and
- (b) in the general interest of the administration of the estate, the Supervisor may, at the request of the trustee, extend the period by ten days or where the Supervisor is satisfied that special circumstances exist, extend the period up to thirty days.

(5) In the case of the bankruptcy of an individual, the trustee shall—

- (a) set out in a notice, in the form prescribed, the required information concerning the financial situation of the bankrupt and the obligation of the bankrupt to make payments required under section 94 to the estate of the bankrupt; and
- (b) forthwith advise the Supervisor, and any creditors who have requested such information of—
 - (i) any material change relating to the financial situation of the bankrupt; and
 - (ii) any amendment made under section 94 to the amount that the bankrupt is required to pay to the estate of the bankrupt.

First meeting of creditors to consider the affairs of bankrupt, appoint trustee, *etc.*

- 157.** The first meeting of creditors shall be to—
- (a) consider the affairs of the bankrupt;
 - (b) affirm the appointment of the trustee named in the assignment, receiving order or proposal, or substitute another in place of the trustee;
 - (c) affirm the remuneration of the trustee;
 - (d) appoint inspectors; and
 - (e) give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

Trustee shall call meeting in certain circumstances.

- 158.—(1)** The trustee shall call a meeting of creditors—
- (a) when directed by the Court or the Supervisor;
 - (b) whenever requested in writing by—
 - (i) a majority of the inspectors appointed under section 175; or
 - (ii) any creditor with the concurrence of one-sixth in value of the unsecured creditors holding one-sixth in number of the proved unsecured claims.
 - (c) whenever the trustee deems appropriate.

Majority of inspectors may convene meeting.

- 159.** A majority of the inspectors appointed under section 175, may convene a meeting of the creditors at any time when a trustee—
- (a) is not available to call a meeting; or
 - (b) has neglected or failed to call a meeting of creditors when so directed by the inspectors.

Notice regarding subsequent meetings.

- 160.—(1)** Meetings of creditors other than the first meeting held under section 158, shall be convened by sending a notice of the time and place of the meeting not less than five days before—
- (a) the scheduled date of each meeting to each creditor; at
 - (b) the address given in the creditor's proof of claim.

(2) No notice of any meeting or of any proceeding subsequent to the first meeting of creditors need to be given, to any creditors other than those who have proved their claims.

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

Procedure at Meetings

161.—(1) The trustee or the nominee of the trustee shall be the chairman of the first meeting of creditors and shall decide any questions or disputes arising at the meeting.

Trustee or nominee shall be chairman of first meeting.

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

(3) A creditor may appeal to the Court from any decision arising from the meeting.

162. The chairman of any meeting of creditors shall cause minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose, and the minutes shall be signed by that chairman or by the chairman of the next ensuing meeting.

Minutes of first meeting of creditors.

163.—(1) One creditor entitled to vote, or the representative of that creditor, constitutes a quorum for a meeting of creditors.

Quorum at meetings.

(2) Where there is no quorum—

(a) at the first meeting of creditors —

(i) the appointment and remuneration of the trustee shall be deemed to be confirmed; and

(ii) the chairman shall adjourn the meeting—

(A) to such time and place as the chairman fixes; or

(B) without fixing a time or place for a future meeting;

- (b) at any meeting of creditors other than the first meeting, the chairman shall adjourn the meeting to such time and place as the chairman fixes.

Adjournment
of meeting.

164. Other than as provided for in section under this part the chairman of any meeting of creditors may with the consent of the meeting, adjourn the meeting.

Creditors
may express
views
according to
class.

165. Every 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 at the discretion of the Court.

Chairman
may admit or
reject proof
of claim.

166.—(1) The trustee may admit or reject a proof of claim for the purposes of voting, but this power of admission or rejection is subject to appeal to the Court.

(2) Notwithstanding anything in this Act, the trustee may, for the purposes of voting, accept any letter or printed matter transmitted by any form or mode of telecommunication, as proof of the claim at or before a meeting of creditors.

(3) Where the trustee is in doubt as to whether a proof of claim shall be admitted or rejected, the trustee 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.

Completed
proof of
claim required
to enable
voting.

167. No person shall be 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 lodged with the trustee before the time appointed for the meeting.

Voting at
meetings.

168.—(1) A creditor may vote either in person or by proxy.

(2) A proxy is not invalid by virtue of it being in the form of a letter or printed matter transmitted by any form or mode of telecommunication.

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

(4) A corporation may vote by an authorized agent at meetings of creditors.

(5) Except as otherwise provided by this Act, a creditor shall not be entitled to vote at any meeting of creditors if the creditor did not, at all times within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the debtor and ending on the date of the bankruptcy, both dates included, deal with the debtor at arm's length.

(6) A creditor who is not entitled to vote at a meeting of creditors by virtue of subsection (5), may with the leave of the Court vote at the meeting of creditors when all the creditors who have dealt with the debtor at arm's length do not together represent at least twenty per cent in value of the claims against the debtor.

(7) The chairman of any meeting of creditors shall have the casting vote, in circumstances where the vote is equal.

169.—(1) No creditor shall be entitled to vote on a claim acquired after the bankruptcy of a debtor, unless the entire claim is acquired.

Voting where claims acquired.

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

170. A creditor shall not vote in respect of any claim on or secured by a current bill of exchange or promissory note held by that creditor, unless the creditor is willing to treat the liability to him by virtue of the bill of exchange or promissory note of every person who is liable on that bill or note antecedently to the debtor, and who 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.

Where non-bankrupt parties jointly liable.

171.—(1) For the purposes of voting, a secured creditor shall, unless that creditor surrenders his security, state in his proof the particulars of his security—

Secured creditor may vote unsecured portion only.

(a) the date when the security was given;

(b) the value at which the creditor assesses the security.

(2) Subject to subsection (1) a creditor is entitled to vote only in respect of the balance if any, due to him, after deducting the value of his security.

Trustee may
vote.

172.—(1) Where the trustee is a proxy for a creditor, the trustee may vote as a creditor at any meeting.

(2) The vote of the trustee or of his partner, clerk, attorney or attorney's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

(3) The following persons shall not be entitled to vote on the appointment of a trustee or inspector—

- (a) related persons of the bankrupt as defined in section 2 (5)(a);
- (b) where the bankrupt is a corporation, any officer, director or employee of the corporation; and
- (c) where the bankrupt is a corporation, any wholly-owned subsidiary corporation or any officer, director or employee of the corporation.

Minutes of
meeting to be
proof of
subsequent
meetings.

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

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

Creditors
vote by
dollar.

174. Subject to this Act, all questions at meetings of creditors shall be decided by ordinary 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.

Inspectors

175.—(1) At the first or a subsequent meeting of creditors, the creditors shall appoint one or more, but not exceeding five persons as inspectors of the estate of the bankrupt for the purpose of overseeing the administration of the estate of the bankrupt. Appointment of inspectors.

(2) A person shall not be eligible to be appointed as an inspector unless the person—

- (a) satisfies the criteria prescribed; and
- (b) is not a party to any contested action or proceedings by or against the estate of the bankrupt.

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

(4) The creditors or inspectors at any meeting may fill any vacancy among the inspectors.

176. The powers of the inspectors may be exercised by a majority of them. Powers of inspector.

177.—(1) The appointment of an inspector may be revoked by— Revocation of appointment of inspector.

- (a) the creditors at any meeting; or
- (b) the Court, on the application of the trustee or any creditor.

178. Where there is no inspector, any act or thing or any direction or permission by this Act authorized or required to be done or given by inspectors, may be done or given by the Supervisor on the application of the trustee. Where there is no inspector Supervisor may give direction.

179.—(1) The trustee may call a meeting of inspectors, and shall do so when— Trustee may call meeting of inspectors.

- (a) requested in writing by a majority of the inspectors; or
- (b) it is deemed advisable.

(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 as permit all persons participating in the meeting to communicate with each other, and an inspector participating in such a meeting by such means shall be deemed for the purposes 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 the trustee's personal conduct or interest, in which case it shall be resolved by the creditors or the Supervisor.

Trustee may call meeting to appoint inspectors.

180. Where—

- (a) there are no inspectors of the estate of the bankrupt; or
- (b) the inspectors fail to exercise the powers conferred upon them, the trustee shall call a meeting of the creditors, for the purpose of appointing inspectors or substituting other inspectors, as the case may be.

Directions by inspectors, etc.

181.—(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.

(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 or may refer any matter back to the inspectors for reconsideration.

Court approval required by inspector to acquire property.

182. 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.

183.—(1) The inspectors shall—Duties of
inspector.

- (a) from time to time verify the bank balance of the estate;
- (b) examine the trustee's accounts and inquire into the adequacy of the security filed by the trustee; and
- (c) subject to subsection (2), approve the trustee's final statement of receipts and disbursements, dividend sheet and disposition of unrealized property.

(2) Before approving the final statement of receipts and disbursements of the trustee, the inspectors shall—

- (a) satisfy themselves that all the property has been accounted for;
- (b) satisfy themselves that the administration of the estate has been completed as far as can reasonably be done; and
- (c) determine whether or not the—
 - (i) disbursements and expenses incurred are proper and have been duly authorized; and
 - (ii) fees and remuneration are just and reasonable in the circumstances.

184.—(1) Each inspector—Remuneration
to inspectors.

- (a) may be reimbursed the 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.

(2) An inspector duly authorized 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.

(3) The Court may, vary the fees referred to in paragraph (1)(b) as it deems proper having regard to the nature of the services

rendered in relation to the fiduciary obligations of the inspector to the estate.

Claims Provable

Claims
provable.

185.—(1) All debts and liabilities, present or future, to which—

- (a) the bankrupt is subject on the day on which the bankrupt becomes bankrupt; or
- (b) 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.

(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 201.

(3) A creditor may prove a debt not payable at the date of bankruptcy and may receive dividends equally with the other creditors, deducting only therefrom a rebate of interest at the rate of five per cent per annum or such rate as the Minister may, by order subject to affirmative resolution, determine, 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 150(1)(c) 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 or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

Where
bankruptcy
follows
proposal.

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

claims of creditors arising after the proposal until the date of bankruptcy shall be provable in the bankruptcy.

(2) Where 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 or such rate as the Minister may, by order subject to affirmative resolution, determine, to the date of the bankruptcy from the time the debt or sum was payable, if evidenced by a written instrument, or, if not so evidenced, from the time notice has been given to the debtor of the interest claimed.

- 187.** Where a bankrupt was, at the date of the bankruptcy, liable—
- (a) in respect of distinct contracts as a member of two or more distinct firms; or
 - (b) 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 properties respectively liable on the contracts.

Proof in respect of distinct contracts.

Proof of Claims

188.—(1) Subject to section 201 every creditor who proves his claim, shall be entitled to share in any distribution that may be made.

Proof of claim required to share in distribution.

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

- (3) The proof of claim—
- (a) may be made by—
 - (i) the creditor himself; or
 - (ii) a person authorized by him; and

- (b) if made by a person so authorized under paragraph (a), such proof of claim shall state his authority and means of knowledge.

(4) The proof of claim referred to in subsection (3) shall—

- (a) contain a statement of account showing the particulars of the claim;
- (b) contain any counterclaim that the bankrupt may have to the knowledge of the creditor;
- (c) specify the vouchers or other evidence, if any, by which it can be substantiated; and
- (d) state whether the creditor is a secured or preferred creditor.

(5) Where any rent or other payment for certain periods falls due at stated times the person entitled to the rent or payment may prove for a proportionate part of the rent or other payment to the date of bankruptcy, as if the rent or payment grew due from day to day.

Court may disallow false claims.

189. Where a creditor or other person in any proceedings under this Act knowingly files with the trustee, a proof of claim containing any wilfully false statement or 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.

Creditors may examine proofs of claim.

190. Every creditor who has lodged a proof of claim shall be entitled to see and examine the proofs of other creditors.

Proof of claims for wages of workers and others employed by bankrupt.

191. Proofs of claims for wages of workers and others employed by the bankrupt may be made—

- (a) by the bankrupt or a person on behalf of the bankrupt;
- (b) by a representative of the ministry responsible for labour; or
- (c) by a representative of a union representing workers and others employed by the bankrupt,

by attaching to the proof, 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 from filing a separate proof on their own behalf.

Proof by Secured Creditors

192. Where a secured creditor realizes his security, he may prove the balance due to him, after deducting the net amount realized.

Secured creditor may prove for balance due.

193. Where a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove his whole claim.

Secured creditors may prove whole claim.

194.—(1) Where the trustee has knowledge of property that may be subject to a security, the trustee may, by serving the prescribed notice, require any person to file, a proof of the security in the prescribed form 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.

Trustee may require proof of claim by secured creditor.

(2) Where the trustee serves a notice pursuant to subsection (1), and the person on whom the notice is served does not file the 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) 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.

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

Trustee may
require
security to be
sold.

195.—(1) Where 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.

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

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

Secured
creditor may
require trustee
to elect.

196. Notwithstanding sections 194(3) and 195, 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 realized, 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 shall not be 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 trustee shall be reduced by the amount at which the security has been valued.

Amended
claim where
security
realized.

197. Where a creditor realizes a security after having valued his security or it is realized under section 198, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Amendment of
claim where
security not
realized.

198.—(1) Where 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 pursuant to 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) Where a valuation has been amended pursuant to this section, the creditor—

- (a) shall, forthwith, repay any surplus dividend that he may have received in excess of that to which he would have been entitled 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 filed with the trustee.

199. Where a secured creditor does not comply with sections 194 to 198, he shall be excluded from any payment of dividend.

Exclusion of secured creditor from dividend.

200. Subject to section 209, 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 one hundred cents on dollar.

*Admission and Disallowance of Proofs
of Claim and Proofs of Security*

201.—(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, 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.

(4) Where the trustee makes a determination under subsection (2) or, pursuant to subsection (3), disallows, in whole or in part, any claim any right to a priority or any security, the trustee shall 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 written notice in the prescribed form setting out the reasons for the determination or disallowance.

(5) A determination under subsection (2) or a disallowance under subsection (3) is final and conclusive unless, no later than a thirty-day period after the 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 from the trustee's decision to the Court.

(6) The Court may expunge or reduce the proof of claim or the 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

Ranking of
claims.

202.—(1) Subject to the other provisions of this section and the rights of secured creditors, the proceeds realized from the property of a debtor which immediately before the commencement of bankruptcy or being placed in a receivership, the debtor was permitted to deal with and dispose of during the ordinary course of the debtor's business shall be applied in priority of payment in descending order in the following four categories—

- (a) Category 1, namely—
 - (i) the reasonable funeral and testamentary expenses incurred by the legal personal representative of a deceased debtor;

- (ii) the costs of administration, being—
 - (A) the expenses and fees of any person acting under a direction made under section 240(1);
 - (B) the expenses and fees of the trustee or receiver, as applicable; and
 - (C) legal costs;
 - (iii) the prescribed fees payable to the Supervisor; then
- (b) Category 2, namely—
- (i) contributions, payable by the debtor, as an employer, pursuant to—
 - (A) the *National Housing Trust Act*;
 - (B) the *National Insurance Act*; and
 - (C) an approved superannuation fund or approved retirement scheme under the *Pensions (Superannuation Funds and Retirement Schemes) Act*;
 - (ii) claims for wages and salaries, of any employee for services rendered during the six months immediately preceding the bankruptcy or appointment of the receiver, however, the sum to which priority is to be given under this paragraph shall not, in the case of any particular claimant, exceed five hundred thousand dollars or such other amount as the Minister may, by order subject to affirmative resolution, prescribe;
 - (iii) redundancy payments payable under the *Employment (Termination and Redundancy Payments) Act*, whether such payments fall due before or after the appointment of a receiver or a trustee;

- (iv) all taxes (excluding penalties and interests) imposed under the provisions of any law and having become due and payable by the debtor within twelve months before the appointment of the receiver or the bankruptcy, not exceeding in total one year's assessment; then
- (c) Category 3, namely, in payment of obligations owed to any secured creditor whose security includes that property, and if there is more than one secured creditor, the proceeds shall be applied in accordance with the priorities of their respective securities in that property, and thereafter;
- (d) Category 4, namely, all other claims.

(2) Subject to subsections (2) and (3) and the proceeds realized from any other property of the debtor which is comprised in the security held by a secured creditor, shall be applied in priority of payment in descending order in the following three categories—

- (a) Category 1, namely, in payment of the amounts referred to in Category 1 of subsection (1); then
- (b) Category 2, namely, in payment of the amounts referred to in Category 2 of subsection (1); then
- (c) Category 3, namely, in payment of the amounts referred to in Category 3 of subsection (1).

(3) Subject to subsections (1), (3), (4) and (5), the proceeds realized from any other property not referred to in the preceding subsections shall be applied in priority of payment in descending order in the following three categories—

- (a) Category 1, namely in payment of the amounts referred to in Category 1 of subsection (1); then
- (b) Category 2, namely in payment of the amounts referred to in Category 2 of subsection (1); then

(c) Category 3, namely, in payment of the amounts referred to in Category 3 of subsection (1).

(4) The debts within each category specified in subsection (1), (2) or (3) shall rank equally among themselves and be paid in full, unless there are insufficient funds to pay all the claims for debts within the category, in which case the claims shall abate in equal proportions.

(5) Where a proposal made by a debtor has been approved by the Court, the insolvent person has not subsequently been adjudged bankrupt, and the trustee has not been required to notify the Supervisor pursuant to section 51, the claims under subparagraphs (i) and (ii) of subsection (1)(b) and those claims as applicable under subsections (2)(a) and (3)(a) shall be read as including only those amounts due for the periods commencing twelve and six months, respectively, before the proposal was filed.

(6) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1), (2) or (3) and subsections (4) and (5) shall be made as soon as funds are available for the purpose.

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

(8) This section shall apply such that where a creditor has a non-possessory security interest in relation to a category of assets over which the person is able to demonstrate control that would typically be considered to be subject to a floating charge, that would continue to be treated as a fixed charge.

203. A creditor who entered into a reviewable transaction with a debtor at any time prior to the bankruptcy of the debtor shall not be 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.

Reviewable
transaction.

Claim of
relative of
bankrupt.

204. Any person related to a bankrupt shall not be entitled to have a claim preferred as provided by section 202, in respect of wages, salary, commission or compensation for work done or services rendered to the bankrupt.

Claim of
participating
lender.

205. Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender, shall receive a rate of interest varying with the profits or shall 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 interest or the share of profits referred to but that the principal would not be subordinated.

Claim of
officer and
director.

206. Where a corporation becomes bankrupt, no officer or director and director of the corporation is entitled to have his claim preferred as provided by section 202, in respect of wages, salary, commission or compensation for work done or services rendered to that corporation in any capacity.

Dividends
payable *pro*
rata.

207.—(1) Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

(2) A creditor is not entitled to a dividend in respect of an equity claim until all claims that are not equity claims have been satisfied.

Property of
bankrupt
partnership.

208.—(1) Where 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) Where there is a surplus of the separate properties of the partners, it shall be dealt with as part of the joint property.

(3) Where 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) Where a bankrupt owes debts both individually and as a member of one or more partnerships, the claims shall rank first on the property of the individual or such partnership or partnerships as 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) Where 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 he 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.

209. Where there is a surplus after payment of the claims as provided in sections 202 to 208, it shall be applied in payment of interest from the date of the bankruptcy at the rate of six per cent per annum on all claims proved in the bankruptcy and according to their priority.

Where surplus remains after claims paid.

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

Final surplus to bankrupt.

Claim against Bankrupt or Bankrupt Estate where there is Insurance

211.—(1) Nothing in this Act shall affect 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.

Claim against bankrupt or bankrupt estate by motor vehicle accident victim, status of.

(2) Where a creditor of a bankrupt estate is a person who has suffered personal injury in respect of which they have a valid claim against the estate and the estate has purchased insurance to cover the liability that is owed to that creditor, then that creditor

shall have a prior right over other creditors against or in relation to the proceeds of any policy for that insurance to the extent that those proceeds are paid as a result of his claim and to settle his claim, and the trustee shall receive those proceeds and hold it in trust for him.

(3) The reasonable costs incurred by the trustee in collecting from the proceeds of policy of insurance referred to in this section shall be deductible from the proceeds of the policy.

(4) Any person affected by or aggrieved by any decision for the deduction of costs referred to in subsection (3) may apply to the Court for review of the decision.

Dividends

Inspectors to declare dividends to ordinary unsecured creditors.

212.—(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) Where 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.

Thirty-day notice to prove claims.

213.—(1) The trustee may, after the first meeting of the creditors, give notice in the prescribed form by registered mail to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved that, if that person does not prove his claim within a period of thirty days after the mailing of the notice, the trustee shall proceed to declare a dividend or final dividend without regard to that person's claim.

(2) Where 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 the *Income Tax Act* within the time limit referred to in subsection (2) or within three months from the time the return of income or other evidence of the facts on which the claim is based is filed or comes to the attention of the Crown.

(4) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under the *Income Tax Act*, no dividend shall be declared until the expiration of three months after the trustee has filed all returns that the trustee is required to file.

214. 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 the creditor shall not be 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.

Where claim
proven after
dividend
declared.

215. When the trustee has realized all the property of the bankrupt or all of that property that can, in the joint opinion of the trustee and of the inspectors, be realized 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

Final
statement of
receipts and
disbursements
to be prepared.

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.

Final statement
of receipts and
disbursements.

216.—(1) The trustee's final statement of receipts and disbursements shall contain a complete account of all monies received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all monies disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all property of the bankrupt that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made thereof.

(2) The statement referred to in subsection (1), shall be in the prescribed form, and together with the dividend sheet and the notice referred to in subsection (5)(c) shall be submitted to the inspectors for their approval.

(3) The trustee shall forward a copy of the statement and dividend sheet and the notice referred to in subsection (5)(c) to the Supervisor after they have been approved by the creditors and the bankrupt.

(4) The Supervisor shall comment as the Supervisor considers fit.

(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 accounts of the trustee have been taxed, the trustee shall, in the prescribed manner, forward 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 setting out the trustee's intention to pay a final dividend after the expiration of fifteen days from the mailing of the notice, and to apply for discharge with respect to the bankrupt's estate on a subsequent date.

(6) A creditor or other interested person may not object to the final statement and the dividend sheet unless, prior to the expiration of the fifteen days referred to in subsection (5)(c), that person files notice of his objection with the Supervisor setting out his reasons for the objection and serves a copy of the notice on the trustee.

217. Where 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.

218.—(1) Before proceeding to discharge, the trustee shall forward to the Supervisor for deposit, as prescribed, the unclaimed dividends, and shall provide a list of names and the mailing 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) Subject to subsection (3), the Supervisor shall, after receiving the dividends and the list referred to in subsection (1), on the application, pay to any creditor his proper dividend as shown on that list, and such payment has effect as if made by the trustee.

(3) Where the dividends have remained unclaimed in the possession of or under the control of the Supervisor for a period of six or more years, the Minister shall cause a notice to be published in the *Gazette* and in a daily newspaper circulated in Jamaica—

- (a) giving full particulars of the moneys so unclaimed;
- (b) stating the period during which the moneys have remained unclaimed; and
- (c) stating that unless, within one year from the date of the first publication of the notice in the *Gazette* and on the website of the Ministry responsible for matters

of insolvency, a claim to those moneys is established to the satisfaction of the Supervisor, the moneys will be dealt with in accordance with subsection (4),

and the notice shall, during that year, be published twice or more often if the Minister thinks fit.

(4) Subject to such other provisions as may be prescribed for dealing with unclaimed dividends, upon the expiration of the year referred to in subsection (3), any of the dividends to which the claim is established shall lapse to and become part of the revenues of Jamaica; and the Accountant-General shall keep a record of all dividends that have remained unclaimed in the possession or under the control of the Supervisor.

Summary Administration

Summary
administration.

219.—(1) Where in the opinion of the Supervisor the realizable assets of the bankrupt after the claims of secured creditors are deducted, does not exceed the prescribed threshold, subsection (4) and section 220 shall apply.

(2) In the determination of the realizable assets of a bankrupt for the purposes of subsection (1), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt after the date of the initial bankruptcy event.

(3) The Supervisor may direct that this section shall cease to apply in respect of the bankrupt, where the Supervisor determines that the realizable assets of the bankrupt, after the claims of secured creditors are deducted, exceed the prescribed threshold.

(4) The following provisions apply to the summary administration of estates under this Act where the Supervisor has made a determination under this section—

- (a) all proceedings under this section shall be titled “Summary Administration”;
- (b) the security to be deposited by a trustee under section 75(d) shall not be required unless directed by the Supervisor;

- (c) a notice of the bankruptcy in the prescribed form shall be published in a local newspaper in circulation throughout Jamaica, unless the Supervisor determines that such publication is unnecessary in the circumstances of the case, and where the bankrupt is a company, the notice shall also be sent to the Registrar of Companies;
- (d) all notices, statements and other documents shall be sent by ordinary mail;
- (e) a first meeting of the creditors—
 - (i) is required to be called by the trustee only if it is requested within thirty days after the date of the bankruptcy by the Supervisor or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims;
 - (ii) shall be called in the prescribed manner and form; and
 - (iii) shall be held within twenty-one days after being called;
- (f) there shall be no inspectors unless the creditors decide to appoint them and, if they do, 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 monies 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 216, the procedure respecting the accounts of the trustee, including the taxation of those accounts shall be as prescribed; and
- (k) notwithstanding section 275, the procedure for the discharge of the trustee shall be as prescribed;
- (l) the trustee shall receive such fees and disbursements as may be prescribed.

Remuneration
in summary
administration.

220. For the summary administration of estates, the trustee shall receive such fees and disbursements as may be prescribed.

Provisions of
Act applicable
to *mutatis*
mutandis to
summary
administration.

221. Except as provided in sections 219 and 220, all provisions of this Act, in so far as they are applicable, apply with such modifications as the circumstances require to summary administration.

PART XI.—Administration

Supervisor

Appointment
of Supervisor.

222. For the purposes of this Act, there shall be a Supervisor of Insolvency, who shall be a public officer designated by the Minister as such.

Functions of
Supervisor.

223.—(1) The Supervisor shall regulate the licensing of trustees and supervise the administration of all estates and matters to which this Act applies, including estates administered by the Government Trustee.

(2) The Supervisor shall, without limiting the authority conferred by subsection (1)—

- (a) receive applications for licences to act as trustees under this Act and issue licences to persons whose applications have been approved;

- (b) except where the trustee is the Government trustee, require as security in the manner prescribed in section 249 for the due accounting of all property received by trustees and for the due and faithful performance by the trustees of their duties in the administration of estates to which they are appointed at such rate as the Minister may, by order prescribe, and—
 - (i) which amount may be increased or decreased as he may deem expedient;
 - (ii) the security shall be in a form satisfactory to the Supervisor;
 - (iii) 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 bankrupt, 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 trustees' accounts of receipts and disbursements and final statements.

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

Access to
trustee's
accounts.

224.—(1) The Supervisor, or anyone duly authorized by him in writing, is entitled to have access to and to examine and make copies of the documents relating to the bank 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 bank accounts in the custody of the bank or the trustee shall be produced for examination.

(2) The Supervisor, or anyone duly authorized in writing by or on behalf of the Supervisor, may, with the leave of the Court granted on an application without notice 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 when there are reasonable grounds to believe or suspect 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) Where the Supervisor, on application without notice, satisfies the Court that it is necessary and in the public interest to do so, the Court may issue an order directing a deposit-taking institution that 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.

Suspected
offences.

225.—(1) Where, 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 Act, 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 enquiries or investigations as the Supervisor deems expedient with respect to—

- (a) the conduct, dealings and transactions of the debtor concerned;
- (b) the causes of the bankruptcy or insolvency of the debtor;
and

(c) the disposition of the property of the debtor.

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

- (a) the debtor;
- (b) any person the Supervisor suspects, on reasonable grounds, has knowledge of the affairs of the debtor; or
- (c) any person who is or has been an agent, clerk, officer, director, or employee of the debtor,

with respect to—

- (i) the conduct, dealings, and transactions of the debtor;
- (ii) the causes of the bankruptcy or insolvency of the debtor; and
- (iii) the disposition of the property of the debtor, and may order any person liable to be so examined to produce any books,

records or other document in the person's possession or under his control relating to the debtor and the conduct, dealings and transactions of the debtor or the disposition of the debtor's property.

(3) A person being examined pursuant to this section is bound to 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) A statement or admission made by any person in any compulsory examination or deposition before the Court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence under any other law.

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

(6) Where any book, record or other document 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 authorized by the Supervisor to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in the ordinary way.

(7) Notwithstanding section 202, a recovery made as the result of any inquiries or investigation made or caused to be made pursuant to 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.

Public Records

Maintenance
of public
records.

226.—(1) Subject to subsections (3) and (4), the Supervisor shall keep, or shall cause to be kept, in such form as the Supervisor deems appropriate and for a period of seven years or such longer period that may be prescribed, a public record of—

- (a) proposals;
- (b) bankruptcy orders;
- (c) licences issued to trustees by the Supervisor;
- (d) notices sent to the Supervisor by receivers pursuant to section 74; and

(e) approvals by the Supervisor of discharges of trustees, and, on request for any of the records and on payment of such fee as may be prescribed, shall provide, or cause to be provided, any information contained in that 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 deems necessary.

(3) Nothing in this section shall be construed as limiting any other provision of law requiring the archiving or other retention of public records.

(4) Subsection (1) shall not apply to such records or such parts of records as may be prescribed.

Government Trustee

227.—(1) The Governor-General shall appoint—

Government
Trustee.

- (a) a fit and proper person to be Government Trustee who shall administer the estates of debtors subject to the provisions of this Act, and any enactment relating to bankruptcy; and
- (b) other persons as may, from time to time, be necessary to assist with the functions of the office of the Government Trustee.

(2) The Minister shall provide the Government Trustee with a suitable office and all expenses of that office including the salary of the Trustee and all reasonable expenses incurred by him in the performance of his functions shall be defrayed out of the Consolidated Fund.

(3) The Government Trustee shall have the powers exercisable by the trustees licensed under this Act.

(4) The Government Trustee shall be paid such fees as the Minister may by order, subject to negative resolution prescribe.

Commissions
and fees to be
paid into
Consolidated
Fund.

228. All commissions, and fees payable to, or receivable by the Government Trustee under and in pursuance of the provisions of this Act shall, as the same are received by him, be paid into the Consolidated Fund and shall form part of the Consolidated Fund.

Reimburse-
ment of
expenses of
Government
Trustee.

229. When in the performance of his functions the Government Trustee has incurred any expense or made himself liable to any claim or demand, and there is no fund out of which the Government Trustee may or can lawfully reimburse himself, then on any Judge certifying that such expense was reasonably and properly incurred or that such liability was properly undertaken as aforesaid, the Minister may order that such expenses shall be reimbursed out of, or such liability be provided for from the Consolidated Fund.

Licensing of Trustees

Applications
for licence as
trustee.

230.—(1) A person who wishes to obtain a licence to act as a trustee shall submit to the Supervisor an application in the prescribed form accompanied by the prescribed fees.

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

(3) Subject to section 233, a licence issued under this section shall be valid for five years.

Form of
licence.

231. A licence shall be in the prescribed form and shall be subject to such conditions and limitations as are specified by the Supervisor in the licence.

Payment of
fees.

232. Prior to the issue of a licence, the applicant shall pay such initial licensing fees as may be prescribed and thereafter on the 31st day of December following the day on which a licence is issued, and on the 31st day of December in each year thereafter, the trustee shall pay such licence renewal fees as may be prescribed.

233.—(1) A licence ceases to be valid—

- (a) on the failure of the trustee to pay a fee in accordance with section 232; or
- (b) if the trustee becomes bankrupt.

Validity,
cancellation
and suspension
of trustee
licence.

(2) Where a licence has ceased to be valid by reason of—

- (a) failure to pay fees, the Supervisor may reinstate the trustee where the trustee pays the outstanding fees together with any penalty amount prescribed and provides a reasonable written explanation of the failure to pay the fees in accordance with section 232; or
- (b) the trustee becoming bankrupt, the Supervisor may, on written representations made by the trustee, reinstate the licence subject to such conditions and limitations as the Supervisor considers appropriate and shall specify in that licence.

(3) Subject to subsection (4), the Supervisor may suspend or cancel a licence where—

- (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 carry out the functions of or act as a trustee; or
- (d) the trustee, either before providing the security provided by section 223(2)(b) or after providing the security but at any time knowing the security is not in force, fails to take steps within a reasonable time to put in place a new security acts as or exercises any of the powers of the trustee.

(4) Where the supervisor proposes to act under subsection (3), he shall give to the trustee notice thereof in writing setting out the reasons of the Supervisor for the decision, at least ten days before the date that the decision is intended to take effect.

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

Conduct of Trustees

Trustee
prohibited
from acting in
specified
circumstances.

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

- (a) where 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) an immediate relative of the debtor or of any director or officer of the debtor; or
 - (iv) the auditor, accountant or attorney, or a partner or employee of the auditor, accountant or attorney, of the debtor;
- (b) where the trustee is—
 - (i) the trustee under a trust indenture issued by the debtor or any person related to the debtor; or
 - (ii) an immediate relative of the trustee under a trust indenture referred to in sub-paragraph (i);
- (c) where the trustee is a creditor of the debtor.

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

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

- (b) the receiver or the 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.

235. A trustee shall comply with such code of ethics respecting the conduct of trustees as may be prescribed. Code of ethics.

236. A trustee shall not engage the services of a person whose trustee licence has been cancelled under paragraph (a) of section 233(3) or section 238(1). Cancelled licences.

Appointment and Substitution of Trustees

237. The creditors may, at any meeting by special resolution, appoint or substitute another licensed trustee for the trustee named in an assignment, receiving order or proposal, or otherwise appointed or substituted under this Act. Appointment or substitution of trustee by creditors.

238.—(1) Without limiting the power of the Court under section 241, where, after making an investigation into the conduct of a trustee, it appears to the Supervisor that— Rights of Supervisor where questionable trustee conduct.

- (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, or any law with regard to the proper administration of any estate; or
- (c) it is in the public interest to do so,

the Supervisor may do one or more of the following—

- (i) cancel or suspend the licence of the trustee;
- (ii) place such conditions or limitations on the licence as the Supervisor considers appropriate including a requirement that the trustee successfully take an examination or enroll in a proficiency course;
- (iii) 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;

- (iv) except in the case of the Government Trustee, remove a trustee from acting further in respect of any estate that the trustee is currently administering; and
- (v) in the case of the Government Trustee, make such recommendations to the Public Service Commission or other appropriate authority, which authority shall report its findings and determination to the Supervisor within the prescribed number of days after the determination.

(2) Where the power to remove, cancel or suspend is exercised by the Supervisor, then subject to the creditors' power of appointment under section 175, and any case where the action exercised by the Supervisor is in relation to the Government Trustee, the Government Trustee shall, act in respect of any estate that is affected by that exercise of action by the Supervisor.

(3) This section and section 239 apply, in so far as they are applicable, in respect of former trustees, with such modifications as the circumstances require.

hearing prior
to action under
section 238.

239.—(1) Where the Supervisor intends to exercise any of the powers referred to in section 238, 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.

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

- (a) has power to administer oaths;
- (b) shall be bound by such rules as are prescribed;
- (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

(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, form the record of the hearing.

(4) The record and 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 hearing, shall be given in writing to the trustee not later than thirty days after the conclusion of the hearing; and the decision shall be public.

(6) Any decision of the Supervisor may on application to the Court be varied, set aside or confirmed.

240.—(1) The Supervisor may, for the protection of an estate in the circumstances referred to in subsection (2)—

Protection of
estate by
Supervisor.

- (a) direct a person to deal with property of the estate described in the direction in such 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) where action in respect of a trustee is being taken under section 233(3) or section 238, 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 authorized 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 pursuant to paragraph (c) of subsection (2) of section 223;
- (c) the Supervisor exercises any of the powers set out in section 238;
- (d) the fees referred to in section 232 have not been paid in respect of the licence of a trustee;
- (e) a trustee becomes insolvent;
- (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 paragraph (c) or (d) of subsection (3) of section 233 exists and the Supervisor is considering cancelling the licence under that subsection.

(3) A direction given pursuant to subsection (1)—

- (a) shall state the statutory authority pursuant to which the direction is given;
- (b) is binding on the person to whom it is given; and
- (c) is, in favour 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 pursuant to subsection (1) is not liable for any act done by the person only in compliance with that direction.

Court removal
of trustee.

241. Notwithstanding section 238, the Court on the application of any interested person, may for cause remove a trustee and appoint another trustee in the trustee's place.

242. Where no licensed trustee can be found who is willing to act as trustee, the Court or the Supervisor may appoint the Government Trustee to administer the estate of the debtor.

Government Trustee to act where no licensed trustee to do so.
Acts done in good faith.

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

Corporations as Trustees

244.—(1) A corporation may hold a licence as trustee only if a majority of its officers hold licences as trustees.

Corporate trustee.

(2) In this section and section 245 “officer”, in relation to a corporation, means any person who is employed or engaged by the corporation in a managerial capacity but does not include any person whose functions are akin to those of a non-executive director of a company or other corporation.

245. A corporation that holds a license as a trustee may perform the duties and exercise the powers of a trustee only through officers of the corporation who hold a licence as a trustee.

Acts by corporate trustee.

246. A corporation 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.

Corporate trustee not a trust company.

Official Name

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

Official name.

Duties and Powers of Trustees

248. A trustee is not bound to assume the duties of trustee in matters relating to assignments, receiving orders or proposals, but having accepted an appointment in relation to those matters, the trustee shall, until discharged or another trustee is appointed

Duty to act.

in the place of the trustee, perform the duties required of a trustee under this Act.

Trustee to give security.

249.—(1) Except for the Government Trustee, every trustee shall, upon appointment, forthwith give security required under section 223(2)(b), in cash or by performance bond or professional indemnity insurance.

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

(3) Where the security required to be given under subsection (1) takes the form of professional indemnity insurance and any claim arising from wrongdoing on the part of the trustee in respect of an estate results in proceeds being paid under the policy for that insurance coverage, then those proceeds shall be held in trust for the benefit of the estate of the bankrupt.

(4) 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 deeds, books and records, or property of the bankrupt may be, notwithstanding that they may be in the possession of a bailiff, a secured creditor or other claimant to the deeds, books, records or property of the bankrupt.

(5) Where 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 281.

(6) 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 the trustee were appointed by the Court as a receiver of the property, and the Court may on the application of the trustee, enforce the acquisition or retention accordingly.

(7) 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.

250. Where 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.

Delivery of property to trustee.

251.—(1) The trustee may when necessary in the interests of the estate of the bankrupt—

Protective measures; verification of bankrupt's affairs.

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

(2) The trustee shall take reasonable steps to verify the bankrupt's statement of affairs referred to in section 126 (e).

252.—(1) The trustee may prior to the first meeting of creditors, obtain such legal advice and take such Court proceedings or other action as the trustee may consider necessary for the recovery or protection of the property of the bankrupt.

Legal proceedings to protect estate.

(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 advice and institute such legal proceedings and take such action as the trustee may deem necessary in the interests of the estate of the bankrupt.

253.—(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 an instrument of renunciation in such form as the Registrar of Titles prescribes.

Divesting of real property.

(2) The Registrar of Titles shall accept and register in the Register Book of Titles the instrument given under subsection (1), when tendered for registration.

(3) Registration of an instrument under subsection (2) shall operate as a discharge or release of any right, title or interest previously registered in the Register Book of Titles by or on behalf of the trustee with respect to the property referred to in the instrument.

Initiation of
criminal
proceedings.

254. The trustee may initiate such criminal proceedings as may be authorized by the creditors, the inspectors or the Court against any person believed to have committed an offence under this Act.

Returns.

255. The trustee is not liable to make any statutory 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 the person became bankrupt.

Regulators
empowered to
review records.

256. The trustee shall at all reasonable times permit any duly authorized person or regulatory authority to inspect the books and records of the bankrupt in order to prepare or verify returns that the bankrupt is by law required to file.

Insure property.

257.—(1) The trustee shall forthwith temporarily insure and keep insured in the official name of the trustee all the insurable property of the bankrupt, for such amount and against such hazards as the trustee 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 that is in force at the date of 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, contract or other 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.

Deposits.

258.—(1) Subject to subsections (2) and (3), a trustee shall forthwith deposit all monies received for an estate in a separate trust account for each estate.

(2) The trustee shall deposit monies pursuant to subsection (1) in a deposit-taking institution licensed under the *Financial Institutions Act* or in a bank.

(3) Where monies referred to in subsection (1) are situated in a country other than Jamaica, the trustee may, where authorized by the Supervisor, deposit the monies in a financial institution in that country that is similar to a bank.

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

(5) All payments made by a trustee from a trust account for an estate shall be made by cheque drawn on or by wire transfer from the estate account or in such manner as may be specified by the Supervisor.

(6) The trustee shall not deposit any sums received by the trustee in the trustee's official capacity in any banking account kept by the trustee for personal or private use.

(7) Any interest recoverable in respect of the account shall be part of the assets of the estate.

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

Maintenance
of books and
records.

- (a) a record of all monies received or disbursed by the trustee;
- (b) a list of all creditors filing claims;
- (c) the amount and disposition of those claims;
- (d) a copy of all notices sent out or received;
- (e) the original signed copy of all minutes, proceedings had, and resolutions passed at any meeting of creditors or inspectors;
- (f) court orders; and

- (g) all such other matters or proceedings as may be necessary to give a complete account of the trustee's administration of the estate.

(2) The 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 forthwith be delivered to the substituted trustee.

(3) The trustee shall permit the books and records referred to in subsection (1) to be inspected, and copies of those books and records to be made, at any reasonable time, by the Supervisor, the bankrupt, or any creditor or their agents.

Reporting by trustee.

260.—(1) The trustee shall report in writing—

- (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 monies on hand, if any, and particulars of any property sold or 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 the trustee's actual disbursements and actual costs of other physical resources of the trustee utilized in compiling the report or making copies thereof.

Documents to be provided to Supervisor.

261.—(1) The trustee shall, forthwith after the receipt or preparation of the documents referred to in section 215 or 219—

- (a) send them to the Supervisor along with a true copy of—
 - (i) the notice referred to in section 156;
 - (ii) the statement referred to in paragraph (e) of section 126;

- (iii) the trustee's final statement of receipts and disbursements and the dividend sheet; and
 - (iv) every order made by the Court on the application for discharge of a bankrupt or for annulling any bankruptcy; and
- (b) file a copy of the documents referred to in paragraphs (ii) and (iii) in the Court, to the extent that such documents may be relevant to any proceedings that are before 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.

262.—(1) Where—

- (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) an individual trustee dies or becomes incapacitated,

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

- (i) 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
- (ii) shall forward to such other trustee as may be appointed in the 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.

Report to
Supervisor
where trustee
no longer
acting.

(2) Every trustee before proceeding to the discharge relating to the estate under his administration shall, unless the trustee has already done so, prepare and file the report referred to in section 141 and forward a copy to the Supervisor.

Permission
to take
specified
action.

263.—(1) The trustee may, with the permission of the inspectors, do all or any of the following things in relation to an estate under the trustee's administration—

- (a) for such price or other consideration as the inspectors may approve sell or otherwise dispose 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 proceeding relating to the property of the bankrupt;
- (e) employ an attorney or other agent 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 debts owing to the bankrupt;
- (i) compromise any claim made by or against the estate;
- (j) assign or transfer to a particular creditor, or 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, by its own state or nature is onerous or, binds the bankrupt 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; and
- (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) Permission given for the purposes of subsection (1) is not a general permission to do all or any of the things mentioned 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) Notwithstanding subsection (1), failure to obtain permission from the inspectors shall not, without more, invalidate or affect the enforceability, against or by a third party, of any contract or transaction entered into by the trustee in good faith in respect of any of the matters set out in subsection (1).

264.—(1) With the permission of the Court, an interim-receiver or trustee, may prior to the appointment of inspectors, make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in such amounts, on such terms and on such property as may be authorized by the Court; and those advances, obligations and moneys borrowed shall be repaid out of the property of the debtor in priority to the claims of the creditors.

Power to make
advances,
borrow, etc.

(2) Without affecting any prior transaction entered into pursuant to subsection (1), the creditors or inspectors may by resolution limit—

- (a) the amount of the obligations that may be incurred, or the advances that may be made or moneys that may be borrowed by the trustee; or
- (b) 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.

Trustee not
required to
operate
business.

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

- (a) where, in the trustee's opinion, the realizable value of the property of the bankrupt is insufficient to protect the trustee 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 the trustee against such possible loss.

Reimburse-
ment of costs
and payment of
advances.

266.—(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 the trustee or of any moneys that the trustee may have advanced for the benefit of the estate.

(2) If a sale is not successfully concluded pursuant to subsection (1), the Court may make an order vesting in the trustee personally any or all of the assets of the estate to the extent required for reimbursing the trustee for any costs that may be owing to the trustee or of any moneys that the trustee may have advanced for the benefit of an estate, and on the making of the order the rights to

those assets and the interests of the creditors and of the bankrupt in the assets, shall be determined and ended.

267.—(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 be proper in the circumstances.

Application
for directions
by trustee.

(2) Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall 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.

268.—(1) Subject to subsection (2), the trustee may, by sending to the Postmaster General—

Redirection
of mail.

- (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 Postmaster General to the trustee or to such other person as the trustee may designate; and when the Postmaster General receives those documents, he shall so redirect or send that mail.

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

(3) Where a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three-month period immediately following the date of bankruptcy unless the Court, on application, extends that period on such terms as the Court considers fit.

269.—(1) On the appointment of a substituted trustee, the former trustee shall forthwith pass his accounts before the Supervisor and deliver to the substituted trustee all the property of the estate, together with all books and records of the bankrupt and those relating to the administration of the estate.

Former
trustee to
pass
accounts.

(2) A substituted trustee shall—

- (a) notify the Supervisor of the appointment of the substituted trustee;
- (b) if required by the inspectors, seek to register a notice of the appointment in the Register Book of Titles or other registry office where the assignment or receiving order has been registered; and
- (c) as soon as funds are available, pay to the former trustee such remuneration and disbursements as approved in accordance with this Act.

Application to
Court by
aggrieved
party.

270. Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, the aggrieved person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such other order as it thinks just.

Trustee
refusing to act.

271.—(1) Where 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 authorizing him to take the proceedings in his own name and at his own expense and risk, on notice being given to the trustee and to 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 right, title and interest in the *chose-in-action* or subject matter of the proceeding, including any document in support of the *chose-in-action* or proceedings shall vest in the creditor.

(3) Any other creditor may participate by contributing to the cost of taking the contemplated proceeding.

(4) Any benefit derived from a proceeding taken pursuant to subsection (1), to the extent of his claim against the estate of the bankrupt and the costs, belongs exclusively to the creditor or creditors instituting or participating in the proceedings, who are

thereby entitled to share in the benefits in such manner as they may agree or where they do not so agree, as the Court may direct and the surplus, if any, belongs to the estate.

(5) Where, 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.

272.—(1) In subsections (2) and (3), a reference to a trustee means a trustee in a bankruptcy or proposal and includes an interim receiver or a receiver.

Duties of trustee to remedy environmental conditions or damage.

(2) Notwithstanding anything to the contrary in any other law, if a trustee in performing duties as such 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 legal claim including one as a successor employer—

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

(3) A claim referred to in subsection (2) shall not rank as costs of administration.

Remuneration of Trustee

273.—(1) The remuneration of the trustee shall be such as is determined by ordinary resolution at any meeting of creditors, or if the creditors resolve by ordinary resolution, by the inspectors.

Determination of fees.

(2) Where the remuneration of the trustee has not been fixed under subsection (1), or there is no quorum for a meeting, the trustee shall apply to the Supervisor for a direction fixing the amount of the trustee's remuneration.

(3) Where the business of the debtor has been carried on by the trustee or under the trustee's supervision, the trustee may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorize, 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 creditors or 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.

Discharge of Trustee

Property
incapable of
realization.

274.—(1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.

(2) Where 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.

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

(2) A trustee may be discharged on full administration of the estate or, for sufficient cause, before full administration.

(3) A trustee when replaced by another trustee is entitled to be discharged if the former trustee has accounted for all property that came to the hands of the former trustee and a period of three months has elapsed after the date of the replacement without any undisposed of claim or objection having been made by the Supervisor, the bankrupt or any creditor.

(4) When the accounts of a trustee have been approved by the inspectors or 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, file notice of objection with the Registrar or the Supervisor, as applicable in the form prescribed setting out the reasons for the objection, and serve a copy of the notice on the trustee.

PART XII—*Courts and Procedure*

Jurisdiction of Courts

276.—(1) 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 and any other enactment relating to bankruptcy and insolvency.

Jurisdiction of
Supreme
Court.

(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 any other person authorized by the Court, of—

- (a) 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 may further order any person liable to be so examined to produce any books, documents, correspondence or papers in the person's possession or power relating in whole 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.

General power
of Court.

277. Subject to this Act, the Court shall have full power to decide all questions of priorities in accordance with applicable law and all other questions whatsoever, whether of law or fact, that may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide in furtherance of the objects of this Act.

Proceeding not
invalidated by
defect or
irregularity.

278. 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.

279.—(1) The Court may review, rescind or vary any order made by it under its jurisdiction in insolvency.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

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

Abridgement
of time; Leave
to omit
material or to
send notices in
alternative
manner.

280.—(1) Where under this Act the time for doing any act or thing is limited, the Supervisor or the Court, as applicable, may extend or abridge the time either before or after the expiration thereof, upon such terms, if any, as the Supervisor or the Court may think fit to impose.

(2) Where in the opinion of the Supervisor or the Court, as applicable, the cost of preparing statements, lists of creditors or other materials 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 Supervisor or 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 Supervisor or the Court may direct.

281.—(1) Where on a without notice 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 authorizing 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.

Seizure of
property of
bankrupt.

(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 constable or officer of the Court and the use of force has been specifically authorized in the warrant.

(3) A search warrant issued under subsection (1) may be executed in the manner prescribed, or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

282.—(1) The Court may in any matter take the whole or any part of the evidence either orally or by interrogatories or upon affidavit or, out of Jamaica, by commission or any other means that the Court considers appropriate.

Evidence in
Court.

(2) Any document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act shall, if it appears to be sealed with the seal of the Court having jurisdiction in insolvency, purports to be signed by any judge thereof or is certified as a true copy by the Registrar, be admissible in evidence in all legal proceedings.

(3) The production of an original document relating to any insolvency proceeding or a copy certified by the person making it as a true copy thereof or by a successor in that office of that person as a true copy of a document found among the records in his control or possession is evidence of the contents of those documents.

(4) In case of the death of the bankrupt or the spouse of a bankrupt or of a witness, whose evidence has been received by any court in any proceedings under this Act, the deposition of the deceased person purporting to be sealed under the seal of the Court,

or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposited to.

Orders and decisions subject to appeal.

283.—(1) Orders in insolvency matters shall at the instance of any person aggrieved, be subject to appeal in the same manner as other orders of the Court.

(2) Where by this Act an appeal to the Court is given against any decision of the Supervisor or trustee or meeting of creditors, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made, or such longer period as the Court may consider just and reasonable in the circumstances.

Costs are in the discretion of the Court.

284. Subject to this Act, the costs of and incidental to any proceedings in Court under this Act shall be in the discretion of the Court.

Application to Court where default.

285. In addition to any other right or remedy provided for under this Act, where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Court, the Supervisor or the trustee under any power conferred by this Act, then the Supervisor, trustee, or other interested person may, apply to the Court for an order requiring the person in default to comply with the order or direction so given, and the Court may also, if it thinks fit, upon any such application, make an immediate order for the committal of such person.

Trustee not personally liable.

286. Where an action or proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding on his application or on the application of any other party thereto, he is not personally liable for costs unless the Court otherwise directs.

PART XIII—*International Matters*

International Insolvencies; Foreign dividends and property, foreign currency debts.

287.—(1) The Minister may, by regulations, give effect in Jamaica with or without modifications, to the UNCITRAL Model Law on Cross-border Insolvency, and make provision for the recognition by the Court of an insolvency proceeding commenced in foreign jurisdictions, the effect in Jamaica of the recognition by the Court

of an insolvency proceeding commenced in a foreign jurisdiction, and the obligations of the Court in connection with any such insolvency proceeding.

(2) Where any receiving order, proposal or assignment is made in respect of a debtor under this Act—

- (a) the amount that a creditor receives or is entitled to receive outside Jamaica by way of 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 Jamaica—
 - (i) on account of a provable claim of the creditor; or
 - (ii) that the creditor acquires outside Jamaica by way of a transfer that, if it were subject to this Act, would be set aside or reviewed under sections 113 to 123,

shall be taken into account in the distribution of dividends to creditors of the debtor in Jamaica as if they were a part of that distribution.

(3) The creditor is not entitled to receive a dividend from the distribution in Jamaica referred to in subsection (1) until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend, the amount of which is the same percentage of that other creditor's claim as the aggregate of the amount referred to in subsection (2)(a) and the value referred to in subsection (2)(b) is of that creditor's claim.

(4) A claim for a debt that is payable in a currency other than Jamaican currency shall be converted to Jamaican currency—

- (a) in the case of a proposal in respect of an insolvent person or a person facing imminent insolvency and unless otherwise provided in the proposal, where a notice of intention was filed, as of the day the notice was filed or,

if no notice was filed, as of the day the proposal was filed;

- (b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or
- (c) in the case of a bankruptcy, as of the date of the bankruptcy.

PART XIV—*Offences*

Offences
committed by
bankrupt.

288.—(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 pursuant to this Act;
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting;
- (d) within one year immediately preceding the date of the initial bankruptcy event or at any time thereafter—
 - (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 any debt due to or from the bankrupt or conceals and removes any property of the bankrupt;
- (iv) hypothecates, 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 hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud; or
- (e) after the filing of a application against him, or within six months before the filing of the application, quits Jamaica and takes with him, or attempts or makes preparation to quit Jamaica and take with him, any part of his property to the amount, which ought by law to be divided amongst his creditors,

is guilty of an offence and is liable, on conviction on indictment in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(2) A bankrupt who, without reasonable cause, fails to do any of the things required of the bankrupt under section 126, is guilty of an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years, or to both.

289. 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 more than fifty thousand dollars that he is an undischarged bankrupt; or

Offences
committed by
undischarged
bankrupt.

- (b) obtains credit to a total of twenty-five thousand dollars or more from any person or persons without informing such persons that he is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction in a Resident Magistrate's Court and is liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both.

Where bankrupt or person who has made proposal not keeping proper books.

290. Any person who, becomes bankrupt or makes a proposal and who 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 or the date of the filing of the proposal, 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 is guilty of an offence and punishable upon summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both.

False claims, unlawful fees and unlawful transactions.

291.—(1) Where 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 is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

(2) Where 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 is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

(3) Where 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 is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

292.—(1) A person who—

Offences by
trustee and
others.

- (a) not being a licensed trustee, does any act as, or represents himself to be, a licensed trustee;
- (b) a person who 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;
- (c) having been appointed a trustee, with intent to defraud, fails to observe or to comply with any of the provisions of this Act;
- (d) having been appointed a trustee, without reasonable excuse, fails to observe or to comply with any of the provisions of this Act;
- (e) directly or indirectly solicits or canvasses any person to make an assignment or proposal under this Act, or to apply for a receiving order with intent to defraud;
- (f) being a trustee, directly or indirectly, solicits proxies to vote at a meeting of creditors with intent to defraud; or
- (g) being a trustee—
 - (i) makes any arrangement under any circumstances with the bankrupt, or any attorney-at-law, 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 solicitor, auctioneer or other person employed in connection with the bankruptcy,

is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

(2) Nothing in paragraph (1)(g) 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 to a proposal.

(3) Any person who fails to comply with or contravenes section 225 is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

Removal of
property.

293. A person, except the trustee, who removes or attempts to remove the property or part thereof referred to in section 105 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 is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both.

Invalid trustee
licence.

294. Any trustee who exercises any of the powers or performs 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 233 or after having been informed pursuant to section 239(5) of the suspension or cancellation of the trustee's licence is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars, or to imprisonment for a term not exceeding two years, or to both.

295. Where 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 authorized to exercise, the trustee is guilty of an offence punishable on summary conviction in a Resident Magistrate's Court and is liable to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

Trustee acting
outside
authority.

296. Where 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 in fact of the corporation, who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Offence
committed by
corporation.

297.—(1) Where 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 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.

Court may
make order for
community
service.

(2) Any person who fails to comply with or contravenes an order made under subsection (1) is guilty of an offence punishable on summary conviction in a Resident Magistrate's Court and is liable to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.

Court may
make an order
regarding
damages.

298.—(1) Where 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 or after holding an enquiry to assess any amount payable under this section, 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 of or damage to property suffered by that person as a result of the commission of the offence.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, 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.

Trustee to
report to the
Police.

299.—(1) Whenever a trustee has reasonable grounds to believe that—

- (a) an offence under this Act or under any other Act of Jamaica has been committed with respect to any bankrupt estate in connection with which he has been acting under this Act; or
- (b) for any special reason there should be an investigation in connection with that estate,

it is the duty of the trustee to—

- (i) report the matter to the Police, 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

(ii) forward a copy of the report forthwith to the Supervisor.

(2) A creditor, inspector or other interested person who believes on reasonable grounds that a person is guilty of an offence under this or any other enactment in connection with a bankrupt, his property or his transactions, may file a report with the Police 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 is guilty of an offence under this or any other Act of Jamaica in connection with the bankrupt, his property or transactions, the Court may authorize the trustee to initiate proceedings for the prosecution of that person for that offence.

300. 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.

301. A prosecution by indictment under this Act shall be commenced within five years from the time of the 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 when the subject-matter of the complaint or information arose.

Time for
commence-
ment of action.

PART XV. *General*

302. For the purpose of carrying into effect the objects of this Act, rules may be made by the same authority and in the same

Rules of Court.

manner as Rules of Court may be made under the *Judicature (Rules of Court) Act* and such rules may provide for the regulation of—

- (a) sittings of the Court and a judge of the Court in chambers;
- (b) the practice and procedure in Court; and
- (c) any matters relating to the practice and procedure of the Court, the duties of the officers of the Court, and the costs of or fees to be charged for or in respect of proceedings:

Provided that no rules so made shall extend the jurisdiction of the Court.

Evidentiary
admissibility of
book entries
and judicial
notice of
Supervisor's
signature.

303.—(1) Copies authenticated by the signature of the Supervisor or trustee of any entries in the books kept by them with respect to any estate vested in or administered by the Supervisor or trustee under this Act shall be admissible in evidence in any legal proceeding or for any other purpose, and shall have the same effect in evidence in all respects as the originals from which copies were made.

(2) In all legal proceedings, judicial notice shall be taken of the signature of the Supervisor and of the trustee but any court, Judge or magistrate may require such signature to be proved in the ordinary way if it is doubtful to the court, Judge or magistrate whether the alleged signature is genuine.

Leave of the
Court required
to pursue
certain actions.

304.—(1) 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 under, or any action taken pursuant to, this Act.

(2) In considering whether to grant leave under subsection (1), the Court shall consider—

- (a) the impact of the proposed proceedings on the efficient and fair administration of the estate of a bankrupt; or
- (b) whether the proceedings appear to be frivolous or vexatious; or

- (c) any other factors that the Court considers relevant in the circumstances.

305.—(1) The Minister may make regulations generally for giving effect to this Act and notwithstanding the generality of the foregoing the regulations may make provision for— Regulations.

- (a) prescribing anything that is authorized or required to be prescribed by the Act;
- (b) the imposition of fees and charges to be paid in respect of any matter required for purposes of this Act;
- (c) requiring that a bankrupt obtains counseling prior to any automatic discharge.

(2) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under subsection (1) may provide in respect of a breach of any of the provisions thereof for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding twelve months or of both such fine and imprisonment, provided that any regulations imposing a custodial sentence shall be subject to affirmative resolution.

306. The Minister may, by order subject to affirmative resolution, amend or vary any monetary penalties or amounts prescribed in this Act. Minister may amend monetary penalties and amounts.

307. For the purpose of giving effect to any regulations made pursuant to section 287(1), or international agreement or other international arrangement relating to insolvencies to which Jamaica is a party, the Minister may, by order subject to affirmative resolution— Power of Minister to make certain consequential amendments to other enactments.

- (a) make such amendment to any provision of any enactment;
- (b) make such regulations,

as appear to him to be necessary.

Review of Act
by Parliamentary
Committee.

308.—(1) This Act shall be reviewed, from time to time, by a committee of both Houses of Parliament appointed for the purpose.

(2) The first review of this Act shall be conducted not later than five years after the appointed day.

Transitional.

309.—(1) Subject to the provisions of this Act, all bankruptcy proceedings or winding up proceedings commenced before the appointed day shall be determined by laws applicable immediately prior to the appointed day.

(2) A person who, immediately before the appointed day, was entitled to and was practising as a trustee, shall, within six months after the appointed day, make an application under section 230 to the Supervisor for a licence to operate as a trustee.

(3) If an application is made by a person pursuant to subsection (2), the person may continue to practice as a trustee until that person's application is determined.

(4) If an application is not made by a person pursuant to subsection (2), the person's ability to practice as a trustee shall cease at the end of the period referred to in subsection (2).

(5) The Court may on the application of any interested person direct that any proceedings referred to in subsection (1) shall continue and be determined pursuant to this Act and any regulations thereunder, subject to such modifications as the Court may deem appropriate.

Repeal.

310. The *Bankruptcy Act* is repealed.

Amendments
to the
Companies Act.
Schedule.

311. The provisions of the *Companies Act* specified in the first column of the Schedule are amended in the manner specified in the second column of the Schedule.

SCHEDULE

(Section 311)

Amendments to the Companies Act

Provision —	Amendment —
General	<p>1. Delete the word “petition” wherever it appears and substitute therefor, in each case, the word “application”.</p> <p>2. Delete the word “petitioner” wherever it appears and substitute therefor, in each case, the word “applicant”.</p> <p>3. Delete the word “liquidator” wherever it appears and substitute therefor, in each case, the word “trustee”.</p>
Section 2	<p>Insert in the appropriate alphabetical sequence the following definitions—</p> <p style="padding-left: 40px;">“Government Trustee” has the meaning assigned to it under section 231;</p> <p style="padding-left: 40px;">“Supervisor” has the meaning assigned to it under section 231;</p> <p style="padding-left: 40px;">“trustee” means a person who is licensed and appointed as such under the Insolvency Act or where the context otherwise provides, the Government Trustee;</p>
New section 205A	<p>section 205A—</p> <p style="padding-left: 40px;">“Application in relation to proposals under Insolvency Act.</p> <p style="padding-left: 40px;">205A. Sections 206 to 211 of this Act may be applied in conjunction or together with Part III of the Insolvency Act, but where a notice of intention to make a proposal or a proposal is filed under the Insolvency Act in respect of a company, any compromise or arrangement between a company and its creditors, or with any class of them, shall be effected only in accordance with the Insolvency Act.”.</p>

Provision	Amendment
New section 213B	<p>Insert next before the heading "Modes of Winding Up" appearing before section 214 the following as section 213B—</p> <p style="margin-left: 40px;">"Non-Application to companies that are insolvent under Insolvency Act.</p> <p style="margin-left: 80px;">213B. Except for sections 214 to 220 and sections 272 and 273, the provisions of this Act with respect to winding-up, including Part IX, shall not apply in respect of a company or unregistered company within the meaning of section 355 that is an insolvent person within the meaning of the Insolvency Act."</p>
Section 219	Delete from paragraph (a) the words "Government Trustee" and substitute therefor the words "trustee of his estate".
Section 220	Delete paragraph (d).
Section 221	Delete.
Section 222	<p>1. In subsection (1)—</p> <p style="margin-left: 40px;">(a) delete the words "by petition,";</p> <p style="margin-left: 40px;">(b) in the proviso—</p> <p style="margin-left: 80px;">(i) delete from paragraph (a) the word "petition" wherever it appears and substitute therefor, in each case, the word "application";</p> <p style="margin-left: 80px;">(ii) delete paragraph (c).</p> <p>2. In subsection (2)—</p> <p style="margin-left: 40px;">(a) delete the word "petition" wherever it appears; and substitute therefor, in each case, the word "application";</p> <p style="margin-left: 40px;">(b) delete the words "Government Trustee" and substitute therefor the word "Supervisor".</p>

Provision	Amendment
Section 231	<p>Delete and substitute therefor the following—</p> <p style="margin-left: 40px;">Meaning of "Government Trustee" and "Supervisor".</p> <p style="margin-left: 80px;">231. For the purposes of this Act—</p> <p style="margin-left: 120px;">"Government Trustee" means the person appointed as such under the Insolvency Act;</p> <p style="margin-left: 120px;">"Supervisor" means the person designated under the Insolvency Act as the Supervisor of Insolvency."</p>
Section 236	<p>Delete paragraph (f) and substitute therefor the following—</p> <p style="margin-left: 40px;">"(f) a trustee shall be described, where a person other than the Government Trustee is trustee, by the style of "the Trustee", and, where the Government Trustee is trustee, by the style of "the Government Trustee and Trustee", of the particular company in respect of which he is appointed, and not by his individual name."</p>
Section 262	<p>Delete and substitute therefor the following—</p> <p style="margin-left: 40px;">"Power to order application by trustee for assignment under Insolvency</p> <p style="margin-left: 80px;">262. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order that the trustee shall, forthwith, apply to the Supervisor for an assignment in accordance with the Insolvency Act and thereafter proceed in accordance with the provisions of the Insolvency Act."</p>
Section 272	Delete paragraph (c).
Section 282	In subsection (1), delete all the words appearing after the word "forthwith" and substitute therefor the words "apply to the Supervisor for an assignment in accordance with the Insolvency Act and thereafter proceed in accordance with the provisions of the Insolvency Act."

<u>Provision</u>	<u>Amendment</u>
Section 285	Delete.
Section 286– 293	Delete.
Section 296	Delete the words “this Act” and substitute therefor the words “the Insolvency Act”.
Section 299	Delete the word “liquidator” wherever it appears and substitute therefor, in each case, the word “trustee”.
Section 300	Delete.
Section 310	Delete.
Section 311	Delete and substitute therefor the following— <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 25%; padding-right: 10px;"> <p>“Ranking of claims for distribution.</p> </div> <div style="width: 70%;"> <p>311. In every winding up of a company, section 202 of the Insolvency Act (which relates to the ranking of claims for payment from the proceeds of a debtor’s property) shall apply.”.</p> </div> </div>
Section 314	Delete.
Section 325	Delete.
Section 340	Delete paragraph (4) and substitute therefor the following— <div style="padding-left: 40px;"> <p>“ (4) Sections 185 to 201 of the Insolvency Act shall, with such modifications as the circumstances require, apply to the administration of every winding up of a company.”.</p> </div>
Sections 341 and 342	Delete.
Section 355	Delete paragraphs (b)(ii) and (c)

Passed in the House of Representatives this 7th day of October,
2014 with one hundred (100) amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 16th day of October 2014 with forty-three (43)
amendments.

FLOYD E. MORRIS
President.

MEMORANDUM OF OBJECTS AND REASONS

Recommendations made in the March, 2012 Final Report of the Insolvency Review Committee ("the Committee), emphasized the need for creating an enabling legal and regulatory environment for the implementation of insolvency laws.

The Report highlighted that the Jamaican law on bankruptcy and insolvency is currently contained in two pieces of legislation: the Bankruptcy Act which covers personal and individual insolvency, and the *Companies Act* which contains provisions which deal with the winding-up of insolvent corporate bodies. After much consultation, it was agreed that the need for reform was clear.

The objects of this Bill are to—

- (a) consolidate the law relating to bankruptcy, insolvency, receiverships, provisional supervision and winding up;
- (b) provide for corporate and individual insolvency;
- (c) provide for the rehabilitation of an insolvent debtor;
- (d) repeal the *Bankruptcy Act*; and
- (e) provide for matters connected with, or incidental to, the foregoing, including the amendment of the *Companies Act*.

G. ANTHONY HYLTON
Minister of Industry, Investment
and Commerce

A BILL

ENTITLED

AN ACT to Repeal the Bankruptcy Act and make new provisions for the regulation of insolvency; to make provisions for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor; to create the office of Supervisor of Insolvency; and for connected matters.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

SECTION 205 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

205.—(1) A company or person referred to in section 201 may apply to the Court for an order approving an indemnity under section 202; and the Court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(3) An application under subsection (1) in the case of a public company, shall give to the Financial Services Commission notice of the application, and the Financial Services Commission may appear and be heard.

(4) Upon an application under subsection (1), the Court may order notice to be given to any interested person; and that person may appear and be heard in person or by an attorney.

HEADING AND SECTION 214 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

PART V—Winding Up

(i) Preliminary

Modes of Winding Up

214.—(1) The winding up of a company may be either—

- (a) by the Court; or
- (b) voluntary; or
- (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

SECTION 219 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

219. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

- (a) the Trustee shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

**SECTION 220 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND**

220. A company may be wound up by the Court if—

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) the company is unable to pay its debts;
- (e) the Court is of opinion that it is just and equitable that the company should be wound up.

**SECTION 221 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND**

221. A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred thousand dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

**SECTION 222 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND**

222.—(1) An application to the Court for the winding up of a company shall be by petition, presented subject to the provisions of this section either

by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors) contributory or contributories, or by all or any of those parties, together or separately;

Provided that—

- (a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) a winding up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until *prima facie* case for winding up has been established to the satisfaction of the Court; and
- (d) in a case falling within subsection (4) of section 165, a winding up petition may be presented by the Minister.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding up petition may be presented by the Trustee as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

**SECTION 231 OF THE COMPANIES ACT
WHICH IT IS PROPOSED REPEAL AND REPLACE**

Trustee in Bankruptcy

231. For the purposes of this Act, the term "Trustee" means the Trustee in Bankruptcy attached to the Court for bankruptcy purposes as provided for in section 14 of the Bankruptcy Act.

**SECTION 236 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND**

236.—(1) The following provisions with respect to liquidators shall have effect on a winding up order being made—

- (a) the Trustee shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) the Trustee shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Trustee;
- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
- (d) in a case where a liquidator is not appointed by the Court, the Trustee shall be the liquidator of the company;
- (e) the Trustee shall by virtue of his office be the liquidator during any vacancy;
- (f) a liquidator shall be described, where a person other than the Trustee is liquidator, by the style of “the liquidator”, and, where the Trustee is liquidator, by the style of “the Trustee and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

**SECTION 262 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO REPEAL AND REPLACE**

262. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

**SECTIONS 272 AND 282 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND**

272.—(1) A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved,

and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

- (b) if the company resolves by special resolution that the company be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1).

282.—(1) If, in the case of a winding up commenced after the appointed day, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 277, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

SECTIONS 285 AND 286 OF THE COMPANIES ACT WHICH IT IS PROPOSED TO REPEAL

285. Where section 282 has effect, sections 293 and 294 shall apply to the winding up to the exclusion of sections 283 and 284, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 293 at the end of the first year from the commencement of the winding up, unless the meeting held under section 282 is held more than three months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up

286. The provisions contained in sections 287 to 294 (inclusive) shall apply in relation to a creditors' voluntary winding up.

SECTION 287 OF THE COMPANIES ACT WHICH IT IS PROPOSED TO REPEAL

287.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in one daily newspaper printed and circulating in the Island.

(3) The directors of the company shall—

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and
- (b) appoint one of their number to preside at that meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

- (a) by the company in complying with subsections (1) and (2);
- (b) by the directors of the company in complying with subsection (3);
- (c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be liable to a fine not exceeding fifty thousand dollars, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

SECTIONS 291 AND 293 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO REPEAL

291. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

SECTIONS 296 AND 299 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

296. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

299.—(1) The liquidator shall, within twenty-one days after his appointment, publish in the *Gazette* and in one daily newspaper printed and circulating in the Island, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

SECTIONS 300 AND 310 OF THE COMPANIES ACT WHICH IT IS PROPOSED TO REPEAL

300.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

310. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

SECTION 311 OF THE COMPANIES ACT WHICH IT IS PROPOSED TO REPEAL AND REPLACE

311.—(1) In a winding up there shall be paid in priority to all other debts—

- (a) all rates, charges, taxes, assessments, or impositions, whether imposed or made by the Government or by any public authority under the provisions of any law, and having become due and payable within twelve months next before the relevant date and not exceeding in the whole one year's assessment;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, and all wages (whether payable for time or for piece work), of any workman or labourer in respect of services so rendered:

Provided that the sum to which priority is to be given under this paragraph shall not, in the case of any one claimant, exceed two hundred thousand dollars;

- (c) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 21 of the Workmen's Compensation Act, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under that Act accrued before the relevant date;
- (d) all amounts by way of contributions for which the company is liable pursuant to sections 4, 5 and 6 of the National Insurance Act and which have become due and payable before the relevant date;
- (e) redundancy payments payable under the Employment (Termination and Redundancy Payments) Act whether such payments fall due before or after the appointment of a liquidator;
- (f) all amounts by way of contributions for which the company is liable pursuant to sections 11 and 12 of the National Housing Trust Act and which have become due and payable before the relevant date.

(2) Where any compensation under the Workmen's Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (c) of subsection (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under that Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) *in the case of a company registered in the Island, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company,*

be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(6) In this section the expression "the relevant date" means—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and
- (b) in any other case, the date of the commencement of the winding up.

SECTIONS 314 AND 325 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO REPEAL

314. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six *per centum* per annum or such other rate as may for the time being be prescribed by order of the Minister.

Supplementary Provisions as to Winding up

325. A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the Court or in a voluntary winding up, and—

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding fifty thousand dollars.

SECTION 340 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

Rules and Fees

340.—(1) The Rules Committee of the Supreme Court established by section 3 of the Judicature (Rules of Court) Act, may, with the concurrence of the Minister, make rules for carrying into effect the objects of this Act so far as they relate to the winding up of companies, and all such rules shall be judicially noticed and shall have effect as if enacted in this Act.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as the Rules Committee may, with the sanction of the Minister responsible for finance, by order direct, and that Minister may direct by whom and in what manner the same are to be collected and accounted for.

(3) All rules made under subsection (1) and all orders made under subsection (2) shall be subject to negative resolution.

(4) Until varied or revoked pursuant to the powers given by subsection (1) or, as the case may be, subsection (2), the Companies (Winding up) Rules, 1949, made under the 11 and 12 Companies Act, 1948, of the United Kingdom and the scale of winding up fees in force under the said Act are declared to be in force in the Island and shall be read with and construed as part of this Act;

Provided that it shall be lawful for any court to make such alterations to those Rules as may be deemed expedient to render the same applicable to any matters before such court, so, however, that any such alteration shall not be inconsistent with the provisions of this Act.

(5) Notwithstanding anything to the contrary, the Judicature (Rules of Court) Act shall not apply in relation to any matter for which provision is made in this section.

SECTIONS 341 AND 342 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO REPEAL

PART VI—*Receivers And Managers*

341.—(1) A body corporate shall not be qualified for appointment as receiver of the property of a company and any body corporate which acts as such a receiver shall be liable to a fine not exceeding fifty thousand dollars.

(2) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to subsection (3), be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

(3) Subsection (2) shall not apply to a receiver or manager where—

- (a) the appointment under which he acts and the bankruptcy were both before the appointed day; or
- (b) he acts under an appointment made by order of a court.

342. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the Trustee may be so appointed.

SECTION 355 OF THE COMPANIES ACT
WHICH IT IS PROPOSED TO AMEND

PART IX—*Winding Up of Unregistered Companies*

355. For the purposes of this Part, the expression “unregistered company” shall not include a friendly society registered and established under the Friendly Societies Act, or a society established under the Building Societies Act, but shall include any partnership whether limited or not, association or company not registered under the law relating to companies before the 1st day of February, 2005 or under this Act, so, however, that any such partnership, association or company which is not a foreign partnership, association or company shall consist of not less than eight members, and all the provisions of this Act with respect to winding up shall apply to such a company, with the following exceptions and additions, that is to say—

- (a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- (b) the circumstances in which an unregistered company may be wound up are as follows, that is to say—
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up;
- (c) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding two hundred thousand dollars then due, has served, on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the

sum or to secure or compound for it to the satisfaction of the creditor;

- (ii) if any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice, paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;
- (iii) if execution or other process issued on a judgment, decree, or order obtained in the Court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (iv) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.