

SAINT LUCIA

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SAINT LUCIA

STATUTORY INSTRUMENT, 20[], No.

[DATE]

In exercise of the power conferred under **section 331** of the Bankruptcy and Insolvency Act, Cap [], the Minister responsible for finance makes these Regulations:

PRELIMINARY**Citation and Commencement**

1. (1) These Regulations may be cited as the Bankruptcy and Insolvency Regulations, 20[].

(2) These Regulations shall come into force on the same date that the Bankruptcy and Insolvency Act, Cap [] comes into force.

Interpretation

2. In these Regulations, “Act” means the Bankruptcy and Insolvency Act, 20[] No. [] of [20]/Cap. [];

“applicant” means a person who has applied for a trustee licence under **regulation**

8.

Commented [A1]: TGF Comment: Added missing letter

PART I*General***Delivery of documents including notices**

3. (1) Unless the context otherwise requires, if a document is required to be given, delivered, sent, filed, **lodged** to or with the Supervisor, a trustee, an inspector, a creditor, a receiver, the debtor, insolvent person, bankrupt or another person, under the Act and these Regulations, the document must be —

Commented [A2]: TGF Comment: Per AG Comments, this word might not be used in Act. If so, remove.

- (a) sent by post, personal delivery or courier to —
 - (i) the office of the Supervisor,
 - (ii) the registered office of the trustee; or
 - (iii) the last known place of business or residence of the inspector, creditor, debtor, insolvent person, bankrupt or another relevant person;
- (b) sent by facsimile transmission to a facility maintained by the person to whom it is sent for receipt of facsimile transmission; or
- (c) sent by electronic mail to an electronic mail address —
 - (i) maintained by the office of the Supervisor or the trustee for the receipt of electronic mail; or
 - (ii) provided by the inspector, creditor, debtor, insolvent person, bankrupt or another relevant person.
- (2) A document is deemed to be received —
 - (a) in the case of a document sent by post, twenty-one days after the document is posted;
 - (b) in the case of a personal delivery, the day of the delivery;
 - (c) in the case of a courier delivery, three days after the date indicated on the courier receipt;
 - (d) in the case of a facsimile transmission, if transmitted on the business day before 4:00 p.m., the day of transmission or if in another case, the business day after the day of transmission;
 - (e) in the case of an electronic mail, if transmitted on the business day before 4:00 p.m., the day of transmission or if in another case, the business day after the transmission of the electronic mail.

Notice of appointment of trustee

4. (1) A person who is appointed trustee, receiver or interim receiver under the Act, shall notify the Supervisor of that appointment, in the form set out as **Form 1** in the First Schedule.

(2) A notice under subregulation (1) shall be sent ten days after the appointment of a person to a category referred to under subregulation (1), and the copy of the order or instrument of appointment, must be attached to the notice.

(3) A person referred to under subregulation (1) may give notice of notify his or her appointment by advertisement in a jurisdiction outside of Saint Lucia, if he or she has grounds to believe that the debtor conducts business, may have conducted business or have assets or creditors in that jurisdiction.

Commented [A3]: TGF Comment: Changed to “may give notice of” for clarity.

Commented [A4]: TGF Comment: Minor edit

Statement of receipts and disbursements

5. If a trustee, receiver or interim receiver files or is required to file a statement of receipts and disbursements, the statement of receipts and disbursements must be in the form set out as **Form 2** in the First Schedule.

Statement of affairs

6. The debtor's statement of affairs required in connection with a proceeding under the Act, must be in the form set out as **Form 3** in the First Schedule.

Commented [A5]: TGF Comment: Edit for clarity

Posting of security

7. (1) For the purposes of **section 5(2)(c)** of the Act —

“professional indemnity insurance” means insurance taken out by the trustee in respect of potential liabilities to the bankrupt and third parties arising out of acting as a trustee in the administration of the estate of the bankrupt.

(2) Under **section 5(2)(c)** of the Act a notice to prescribe the rate for security for the due accounting of all property received by the trustee includes —

- (a) depositor hypothecate cash in the prescribed sum in the Second Schedule, in favour of the Supervisor, in an account in a financial institution;
- (b) giving a performance bond in the prescribed sum in the Second Schedule, in favour of the Supervisor, from a financial institution;
- (c) a pledge of the proceeds of a professional indemnity insurance to the Supervisor in the prescribed sum in the Second Schedule; or

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- (d) evidence of the due accounting of the property received by the trustee and for the proper performance of the duties of the trustee in the administration of the estate, to which the trustee is appointed.
- (3) The notice shall include the following documents as evidence of the compliance of the trustee to give security —
 - (a) a certificate or letter of proof of the hypothecated amount;
 - (b) the performance bond or a certified copy of the performance bond; and
 - (c) the professional indemnity insurance or a certified copy of that insurance.

PART II

Licensing of Trustees

Application for trustee licence

8. A person (herein referred to as the applicant) who intends to be licensed as a trustee, must make an application to the Supervisor in the form set out as **Form 4** in the First Schedule and if the person is a corporation the application must be in the form set out as **Form 4 A**, in the First Schedule.

Qualifications of trustee

- 9.** (1) A person is qualified to be licensed as a trustee —
- (a) if the person is —
 - (i) an attorney-at-law with at least five years' experience [in bankruptcy and insolvency matters,] and admitted to practice under the *Legal Profession Act, Cap. 2.04*, or
 - (ii) an auditor or chartered accountant qualified to practice in Saint Lucia with at least five years' experience [in bankruptcy or insolvency matters]; and
 - (iii) at least twenty-one years of age,
 - (iv) not an alien as defined in the *Constitution Cap. 1.01*,

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- (v) of good character and reputation and that issuance of a licence will not impair the public confidence in the bankruptcy and insolvency system, having regard to whether the person —
 - (A) is solvent and in good financial standing,
 - (B) is in good standing with his or her professional body,
 - (C) has adequate office facilities, staff and systems in place to enable the person to perform the functions of a licensed trustee to a high standard,
 - (D) has been the subject of a previous disciplinary finding or pending investigation by a professional body, regulator or similar body; and
 - (E) has a conviction, decision, sentence or judgment (including criminal and civil court decisions) involving the applicant; and

- (b) if the person has successfully completed the requisite bankruptcy and insolvency course or bankruptcy and insolvency qualification programme [at a reputable institution in Saint Lucia].

— (2) — An applicant shall satisfy the Supervisor that an offence or misconduct is not of a nature that would impair the capacity of the applicant to perform the fiduciary duties of a trustee nor impair public confidence in the bankruptcy and insolvency system, if the applicant —

- (a) has been convicted of a summary offence for which a pardon has not been granted; or
- (b) has been found guilty of professional misconduct by a professional body of which the applicant is or was a member.

Corporate licence to act as trustee

10. (1) The following are the prerequisite requirements for an applicant, that is a corporation, to be licensed to act as trustee, the applicant must —

- (a) be a corporation incorporated under the *Companies Act Cap. 13.01*;
- (b) be solvent; and
- (c) satisfy the Supervisor that a majority of its directors and officers hold a licence as a trustee, under **section 15** of the Act.

Commented [A6]: TGF Comment: Draft bill s 15(1) requires a majority of **directors and officers** hold trustee licences

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(2) The Supervisor may conduct an investigation concerning an applicant as the Supervisor considers necessary to be satisfied that the applicant meets the requirements of the Act. ~~†The investigation may include,~~ but is not limited to, a bankruptcy and insolvency search and a criminal background check.

Commented [A7]: TGF Comment: Minor edits

(3) The applicant shall provide the information or documentation ~~requested~~ and shall sign an authorization for information or documentation as the Supervisor considers necessary for the purpose of an investigation conducted under subregulation (2).

Commented [A8]: TGF Comment: Edit for clarity

(4) A corporation that holds a licence as a trustee shall for each professional engagement it has accepted or for which it has been appointed, designate a ~~director or~~ officer of the corporation who holds a licence as a trustee under **section 28** of the Act, to administer the professional engagement.

Commented [A9]: TGF Comment: Section 28 of the draft bill states **director or officer**

(5) The designation of a ~~director or~~ officer of the corporation, who holds a licence as a trustee, by the corporation, shall not relieve the corporation of its accountability for a professional engagement it has accepted, or for which it has been appointed.

Commented [A10]: TGF Comment: Same as above

Form of trustee licence

11. A licence issued under **regulations 9 and 10** shall be in the form set out as **Form 5**, in the First Schedule.

PART III

Disciplinary Procedures for Trustee

Conduct of Government trustee

12. The Supervisor shall after conducting an investigation in respect of the conduct of the Government Trustee, report its recommendations to the Minister or another appropriate authority for the purposes of **section 21(1)(c)(v)** of the Act no later than thirty days after the determination of the Supervisor.

Prescribed rules in disciplinary hearing for trustee

13. (1) A trustee shall respond in writing within thirty days of receiving the notice referred to under **section 22(1)** of the Act.

(2) If the trustee requests a hearing in responding to the notice received under subregulation (1), the trustee shall indicate whether the trustee prefers that the hearing ~~is to~~ be oral or in writing.

Commented [A11]: TGF Comment: Removed extraneous words

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(3) The trustee may be represented by an attorney-at-law with respect to a hearing referred to under subregulation (2).

(4) If the trustee does not respond to the notice, the Supervisor shall render a decision without further notification to the trustee.

(5) Prior to the hearing, the trustee shall provide the Supervisor with a summary of witness statements.

Commented [A12]: TGF Comment: Consider adding a minimum period of time prior to the hearing that the summary be provided.

(6) The Supervisor may receive, consider and decide on an issue and fact agreed without proof or evidence.

Commented [A13]: TGF Comment: We note that this power does not exist under the BIA and this provision seems broad.

(7) The Supervisor may conduct a hearing under this regulation by way of written submissions or in person.

(8) If the trustee has been given notification of a hearing and fails to attend or fails to make written submissions as directed by the Supervisor, the Supervisor may proceed with the hearing without further notification to and in the absence of the trustee.

(9) The Supervisor may adjourn or postpone the hearing at the request of the trustee.

(10) A request for an adjournment or a postponement under this regulation shall be made orally if the hearing is under way or otherwise in writing and the request shall set out —

- (a) the reasons for seeking the adjournment, postponement;
- (b) a list of alternative dates.

(11) The Supervisor may summon —

- (a) a witness to provide evidence at the hearing; and
- (b) a witness that the trustee requested, in writing.

(12) A witness at the hearing may be —

- (a) required to give evidence under oath or affirmation;
- (b) required to produce a document in the possession of the witness relating to the subject matter of the proceeding;
- (c) cross-examined; and
- (d) ordered to be excluded from the hearing until called to give evidence.

Re-direction of mail

14. For the purposes of **section 52** of the Act, a notice for the redirection of the mail of a bankrupt shall be in the form set out as **Form 6** in the **First Schedule**.

Appointment of Government trustee

15. The Supervisor shall, when making a determination under **section 68(3)** of the Act as to whether to appoint the Government Trustee to act in respect of a bankruptcy if no trustee is named, consider —

- (a) the value of the property of the insolvent person that would be available for distribution to creditors and to pay the costs of a trustee;
- (b) the efforts made by the insolvent person to find a trustee willing to act; and
- (c) any other criteria that the Supervisor considers relevant.

PART IV*Assignment, Interim Receivers, Secured Creditor and Receiver***Application for assignment**

16. (1) If an insolvent person applies for an assignment for the general benefit of his or her creditors, the application shall be in the form set out as **Form 7** in the First Schedule, and shall be accompanied by the statement of affairs in the form set out as **Form 3** in the First Schedule and other applicable attachments referred to in the form set out as **Form 7** in the First Schedule.

(2) If an assignment is made under the Act, it shall be in the form set out as **Form 8** in the First Schedule.

(3) If the trustee certifies the transcript or notes as being true and correct, the transcript or notes together with a document produced on the examination shall be admissible in a proceeding under the Act.

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*Interim Receivers***Preparation of interim receiver accounts**

17. (1) The accounts of an interim receiver shall be in the form of a bill of costs, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred by the interim receiver, and the bill of costs shall be verified by an affidavit sworn by the interim receiver.

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(2) An interim receiver shall apply for taxation of accounts and discharge within six months after the completion of the duties of the interim receiver, by delivering notice of discharge to —

- (a) the debtor, or in the case of a bankruptcy, the trustee;
- (b) every known creditor; and
- (c) the Supervisor.

(3) The notice of discharge shall —

- (a) be in the form set out as **Form 9** in the **First Schedule**; and
- (b) include —
 - (i) a copy of the statement of receipts and disbursements of the interim receiver in the form set out as **Form 2** in the First Schedule,
 - (ii) a report describing the activities of the interim receiver signed by the interim receiver,
 - (iii) a bill of costs verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred by the interim receiver; and
 - (iv) a bill of costs in respect of the legal fees incurred by the interim receiver, verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred.

(4) A person to whom notice is sent under subregulation (2) may object to the accounts of the interim receiver or the discharge of the interim receiver, by delivering a notice of objection with the interim receiver in the form set out as **Form 10**, in the First Schedule.

(5) If a notice of objection is not delivered within thirty days of delivery of the notice referred to under subregulation (3), the accounts of the interim receiver shall be deemed to have been taxed and the interim receiver is deemed to be discharged.

(6) If notice of objection is delivered under subregulation (4), the interim receiver shall apply to the Court seeking to have his or her accounts taxed and discharged.

(7) A discharge relieves the interim receiver from all liability —

- (a) in respect of an act done or default made by the interim receiver in the administration of the property for which the interim receiver was appointed; and
- (b) in relation to the conduct of the interim receiver as interim receiver, but a discharge from liability may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of a material fact.

(8) This Regulation shall not prevent the interim receiver from applying to the Court, from time to time, to have the account of the interim receiver and/or its counsel taxed or to apply for discharge.

Commented [A14]: TGF Comment: Added for clarity

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*Secured Creditor and Receiver***Notice of intention to enforce security**

18. A secured creditor shall provide notice of the intention of the secured creditor to enforce a security under **section 81(1)** of the Act, in the form set out as **Form 11** in the First Schedule.

Notice of appointment of receiver

19. (1) The receiver shall send the notice under **sections 82(2)(a)** and **(b)** of the Act in the form set out as **Form 12** in the **First Schedule**.

(2) If a receiver has not taken possession or control of the property of the debtor prior to the delivery of the notice referred to under subregulation (1), the receiver shall not be required to complete section 3 of the notice. However, once the receiver has taken possession or control of the property of the debtor, the receiver shall, for the purposes of **section 82(2)(b)** of the Act deliver a revised notice of the form referred to under subregulation (1).

Commented [A16]: TGF Comment: Minor edits

Prescribed information - final report and statement of accounts of receiver

20. On completion of the duties of the receiver, as receiver, the receiver shall prepare in accordance with **82(2)(d)** of the Act —

- (a) a final statement of receipts and disbursements in the form set out as **Form 2** in the First Schedule or as near thereto as the circumstances of the case permit;
- (b) a report signed by the receiver describing, in narrative form —
 - (i) details of the assets and liabilities of the bankrupt or debtor as at the date the receiver was appointed and or as identified by the receiver,
 - (ii) the tasks performed and actions taken by the receiver, including with respect to the disposition of the property over which the receiver was appointed and the operation of the business operated by the debtor, and other factors for consideration in the calculation of fees; and
 - (iii) details of the manner of distribution of the proceeds realized from the property over which the receiver was appointed;
- (c) a bill of costs, verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred by the receiver; and
- (d) a bill of costs in respect of the legal fees incurred by the receiver, verified by affidavit, showing the number of hours spent, the tasks performed,

the hourly rates and the expenses incurred.

Publication of notice of appointment of receiver

21. Pursuant to **section 83(a)** of the Act, a receiver shall, on being appointed as receiver, publish a notice of that appointment in the form set out as **Form 13** in the First Schedule.

Receiver request for list of creditors

22. For the purposes of **section 84(1)** of the Act, the receiver shall send a notice to the debtor in the form set out as **Form 14** in the First Schedule, requesting the debtor to provide the names and addresses of the creditor of the debtor.

PART V

Proposals

Notice of intention to make a proposal

23. (1) A notice of intention to file a proposal under **section 94** of the Act shall be in the form set out as **Form 15** in the First Schedule.

(2) A notice of intention filed under subregulation (1) shall —

- (a) be delivered to the Supervisor by the trustee named in the notice; and
- (b) be accompanied by a consent signed by the trustee who has consented to act as trustee under the proposal, in the form set out as **Form 16** in the First Schedule.

(3) Subject to **regulation 22**, for the purposes of **section 95(1)** of the Act, the trustee shall send to a known creditor a notice in the form set out as **Form 17** in the First Schedule, along with the copy of the notice of intention to make a proposal.

Exemption from requirement to send notice to creditors

24. (1) If a trustee or insolvent person makes an application to the Supervisor for an exemption from the requirement to deliver a copy of a notice of intention to make a proposal to creditors under section 95(2) of the Act, the application shall be in the form set out as **Form 18** in the First Schedule.

(2) An application made under subregulation (1), shall be delivered to the Supervisor simultaneously with the notice of intention to make a proposal.

(3) The Supervisor shall in considering an application made under subregulation (1), have regard to the following —

Commented [A17]: TGF Comment: Added the section the exemption is drawn from.

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- (a) the number of known creditors;
 - (b) the cost of sending the notice;
 - (c) the financial resources of the insolvent person;
 - (d) the means by which the creditors are to be otherwise notified that the debtor has filed a notice of intention to make a proposal; and
 - (e) any other factor the Supervisor may consider to be relevant.
- (4) The Supervisor shall deliver his or her decision in writing to the insolvent person and the trustee within ten days.

Cash flow statement

- 25.** (1) For the purposes of **section 96** of the Act, if an insolvent person files a cash flow statement, the statement shall —
- (a) be in the form set out as **Form 19** in the First Schedule;
 - (b) show weekly income and expenditure; and
 - (c) be for a period of twelve weeks.
- (2) The cash flow statement filed under subregulation (1), may be amended to accurately reflect the cash flow for the business of the debtor.

Extension of time to file a cash flow statement

- 26.** (1) If an insolvent person makes an application to the Supervisor for an extension of time to file a cash flow statement under **section 96(2)** of the Act, the application shall be in the form set out as **Form 20** in the First Schedule.
- (2) An application made under subregulation (1), shall be made no less than ten days before the expiry of the fourteen day period after the notice of intention is filed, as specified in **section 96(1)** of the Act, and the application shall be supported by a report from the trustee named in the notice of intention to make a proposal.
- (3) When considering an application made under subregulation (1), the Supervisor shall have regard to the following —
- (a) the size and complexity of the business of the insolvent person;
 - (b) the accounting and management resources available to the insolvent person;
 - (c) the length of the extension requested; and
 - (d) any other factor the Supervisor considers to be relevant.
- (4) The Supervisor shall deliver his or her decision in writing within five days of considering the application, to the insolvent person and the trustee.

Application for extension of time to file proposal

27. (1) An application by an insolvent person to the Supervisor, under **section 97(2)** of the Act for an extension of the time to file a proposal, shall be —

- (a) in the form set out as **Form 21** in the First Schedule;
- (b) made no less than ten days before the expiry of the thirty-day period after the notice of intention was filed or an extension previously granted; and
- (c) supported by —
 - (i) a report from the trustee named in the notice of intention to make a proposal,
 - (ii) a comparison of the actual cash flow of the insolvent person with the cash flow statement filed; and
 - (iii) an amended cash flow statement (if necessary) in the form set out as **Form 19** of the First Schedule, for a period ending no earlier than the date of the requested extension.

(2) The Supervisor shall deliver his or her decision on the application under subregulation (1), in writing to the insolvent person and the trustee, prior to the expiry of the thirty day period after the notice of intention was filed or an extension previously granted.

First meeting of creditors

28. The first meeting of creditors shall be called under **sections 98(2)(b), 124(1)(b)(ii), 134(2) and 135(2)(b)** of the Act ~~and in the same manner as the first meeting of creditors called~~ by sending a notice in the form set out as **Form 22** in the First Schedule.

Commented [A18]: TGF Comment: Removed extraneous words

Failure of proposal

29. (1) For the purposes of **sections 98(2)(a), 124(1)(b)(i), 124(3)(b), 134(3) and 135(2) (a)** of the Act, the trustee shall file a report with the Supervisor in the form set out as **Form 23** in the First Schedule.

(2) If the Supervisor receives a report from the trustee under subregulation (1), the Supervisor shall deliver a certificate of assignment in the form set out as **Form 24** in the First Schedule.

Statement of affairs in proposal proceedings

30. (1) If a person who is not a bankrupt files a proposal, that person shall, for the purposes of **section 101(2)(b)** of the Act, prepare a statement of affairs in the form set out as **Form 3** in the First Schedule.

(2) The trustee shall include in the information sent to the creditors under **section 104(2)** of the Act, the statement of affairs referred to under subregulation (1).

Notice of meeting and requirement to file proof of claim

31. For the purposes of **sections 104(2)(a) and 106(1)** of the Act, the trustee shall send a notice in the form set out as **Form 25** in the First Schedule and that notice shall be sent in the manner specified under **section 104(2)** of the Act.

Trustee shall send report on state of the business and financial affairs proposal

32. For the purposes of **section 104(2)(f)** of the Act, the trustee shall prepare and send a report in the form set out as **Form 26** in the First Schedule to the Supervisor and every creditor known to the trustee, and the report shall include —

- (a) information on —
 - (i) how the business of the debtor has evolved,
 - (ii) the names of the principal shareholders and directors of a corporate debtor and the percentage of shares owned and the positions occupied,
 - (iii) a related or associated corporation of the debtor,
 - (iv) a third party associated with the proposal,
- (b) a summary of the proposal including the classification and treatment of a creditor;
- (c) the financial position and cause of the financial difficulties of the debtor including —
 - (i) the results of the appraisal and investigations of the affairs and property of the debtor undertaken by the trustee,
 - (ii) if the operations of the business of the debtor are significant to the proposal, the status of these operations,
 - (iii) the most recent financial statements of the debtor including information as to —
 - (A) the general order of the financial statements; and
 - (B) the degree of reliance, placed on the financial statements, by the trustee;
- (d) information on the appointment of an interim receiver and any relevant information provided by the interim receiver;
- (e) information on the identification and evaluation of assets including information as to —
 - (i) in the case that —
 - (A) an evaluation of assets is done, the class and the basis of the evaluation,

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- (B) an evaluation of assets is not done, the reasons for not doing that evaluation, and
- (ii) the identity of an encumbrance against the assets;
- (f) information on the conduct of the debtor including information as to —
 - (i) any preferential payment, settlement or reviewable transaction to which the debtor may have been a party,
 - (ii) the extent of the work performed in identifying transactions referred to under subregulation (i) and if no work is done an explanation as to the reason,
 - (iii) an offence committed by the debtor under the Act;
- (g) information on claims of creditors including information as to —
 - (i) the report on the proofs of claim received and on the material differences with the liabilities indicated on the statement of affairs,
 - (ii) claims in the estate involving parties related to the debtor as well as the nature of the reviews of the trustee to ascertain the validity of a transaction,
 - (iii) whether or not a legal opinion has been obtained on the validity of a security interest;
- (h) information on the previous business dealings with the debtor including information as to —
 - (i) whether the trustee or a firm with whom the trustee is related —
 - (A) has provided previous services to the debtor; and
 - (B) in the case where sub-paragraph (A) applies, may be in a possible conflict of interest situation as a result of having provided these services; of the debtor,
 - (ii) any remuneration received;
- (i) information on an informal meeting with a major creditor including information regarding a meeting with a major creditor in which information may have been provided to another creditor;
- (j) information on remuneration of the trustee including information as to any estimated fees in the proposal, and, if the fees are not fixed, the trustee shall disclose the basis on which the trustee will recover his or her fees and the existence of a deposit, guarantee or private arrangement;
- (k) a statement of estimated realization which sets out —
 - (i) estimated realizations under the proposal and in bankruptcy,

Commented [A19]: TGF Comment: Added for clarity

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- (ii) any information necessary to estimate the amount that would be available for distribution to an unsecured creditor under the proposal and in bankruptcy;
- (1) other information such as a legal proceeding or contractual arrangement in which the debtor is involved;
- (m) recommendations as to whether, in the opinion of the trustee, the proposal is advantageous to a creditor and in making this recommendation the trustee may take into account —
 - (i) the terms of the proposal; and
 - (ii) the volume of business that the debtor can bring to the creditor in the future,
 and if no recommendation is made in the report, the trustee shall indicate the reasons for not making a recommendation.

Discharge of receiver and taxation of accounts

33. (1) A receiver shall apply for taxation of accounts and discharge no earlier than six months after completion of the duties of the receiver, by delivering notice to —

- (a) the debtor, or in the case of a bankruptcy, the trustee;
- (b) a creditor that has requested, in writing, to be notified of the discharge of the receiver; and
- (c) the Supervisor.

(2) The notice of discharge shall —

- (a) be in the form set out as **Form 9** in the First Schedule; and
- (b) have attached thereto the documents referred to under **section 110** of the Act.

(3) A person to whom a notice of discharge is sent may object to the accounts of the receiver or the discharge of the ~~interim~~ receiver by delivering to the trustee within thirty days of delivery of the notice referred to under subregulation (2), a notice of objection with the receiver in the form set out as **Form 10** in the First Schedule.

(4) If a notice of objection is not delivered within thirty days of delivery of the notice referred to under subregulation (2), the accounts of the receiver are deemed to have been taxed and the interim receiver is deemed to be discharged.

(5) If a notice of objection is filed under subregulation (3), the receiver shall, within ~~ten~~ days after the delivery of the notice referred to under subregulation (1), make an application to the Court with notice to the person that delivered the objection and in accordance with the Rules of the Court, seeking to have the accounts of the receiver taxed and obtain a discharge.

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(6) A discharge of the receiver under this regulation relieves the receiver from liability —

- (a) in respect of an act done or default made by the receiver in the administration of the property over which the receiver was appointed; and
- (b) in relation to the conduct of the receiver as receiver,

but a discharge from liability may be revoked by the Court on proof that the discharge was obtained by fraud, by suppression or concealment of a material fact.

(7) This Regulation shall not prevent the receiver from applying to the Court, from time to time, to have the account of the receiver and/or its counsel taxed or to apply for discharge.

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Commented [A22]: TGF Comment: Added the same language as Reg 17(8) for a receiver.

Trustee shall provide details on material adverse change on state of business and financial affairs

34. A report prepared under **section 112(3)** of the Act, shall provide details of any material adverse change in the projected cash flow or other financial circumstances of the debtor, and other information that the trustee considers to be relevant.

Interim receiver shall deliver report to trustee

35. If a trustee named in a notice of intention to make a proposal is replaced by an interim receiver, the interim receiver shall deliver a report in writing to the trustee with respect to those matters observed by the interim receiver to be relevant to the proposal and the ability of the debtor to perform the proposal.

Approval of proposal

36. (1) The trustee shall, if a proposal has been accepted by the creditors, send a notice in the form set out as **Form 27** in the First Schedule, to the Supervisor and every creditor known to the trustee.

(2) The Supervisor or a creditor may deliver a notice in the form set out as **Form 28** in the First Schedule requiring the debtor to apply to the Court seeking approval of a proposal and the notice referred to in this subregulation shall be sent with the notice referred to in subregulation (1).

(3) If a debtor receives the notice referred to under subregulation (2), the debtor shall apply to the Court no later than ten days after receipt of the notice, for an order approving the proposal.

(4) For the purposes of **section 126(1)(a)** of the Act, the report prepared by the trustee with respect to the terms of the proposal and the conduct of the debtor shall be in the form set out as **Form 29** in the First Schedule.

Default in performance of proposal

37. (1) For the purposes of **section 135(1)** of the Act, if there is a default in the performance of a proposal and that default is not waived by a resolution of the ~~n~~ inspectors, or in the absence of an inspector, by the creditors, the debtor shall remedy the default no later than fourteen days after the date of the default.

Commented [A23]: TGF Comment: Changed to reflect requirements where there are multiple inspectors.

(2) If the default is not remedied by the debtor or waived as provided for under subregulation (1), the trustee shall no later than thirty days of the original default, inform the Supervisor and the creditors of the default in the proposal and call a meeting of creditors by sending a notice in the form set out as **Form 30** in the First Schedule.

Commented [A24]: TGF Comment: Minor typo fix

(3) The report required under **section 135(2)** of the Act shall be filed by the trustee in the form set out as **Form 31** in the First Schedule and the consequential certificate of assignment shall be delivered by the Supervisor in the form set out as **Form 24** in the First Schedule.

Certificate of full performance

38. If a proposal is fully performed, the trustee shall issue to the debtor, a certificate in the form set out as **Form 32** in the First Schedule.

Trustee may apply for discharge from proposal

— 39. (1) — A trustee named in a proposal shall apply for taxation of the accounts of a trustee and a discharge no later than two months after completion of the duties of the trustee under the proposal, by giving notice to —

- (a) the debtor;
 - (b) every creditor; and
 - (c) the Supervisor.
- (2) The notice referred to under subregulation (1) shall —
- (a) be in the form set out as **Form 9** in the First Schedule; and
 - (b) include —
 - (i) a copy of the statement of receipts and disbursements of the trustee in the form set out as **Form 2** in the First Schedule,
 - (ii) a bill of costs, verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred by the trustee named in the proposal; and
 - (iii) a bill of costs in respect of the legal fees incurred by the trustee named in the proposal, verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses incurred.

(3) A person who receives a notice under subregulation (1), may object to the accounts of the trustee or the discharge from the proposal by a trustee by delivering a notice of objection to the trustee in **Form 10** in the First Schedule.

(4) If the notice of objection under subregulation (3) is not delivered within thirty days of delivery of the notice referred to in subregulation (2), the accounts of the trustee shall be deemed to have been taxed and approved as presented and the trustee shall be deemed to be discharged.

(5) If the notice of objection under subregulation (3) is delivered within thirty days of delivery of the notice referred to in subregulation (2), the trustee shall, no later than ten days after delivery of the notice referred to in subregulation (2), make an application to the Court with notice to the person that delivered the objection, seeking to have the accounts of the trustee taxed and obtain a discharge.

(6) A discharge from a proposal relieves the trustee from all liability —

- (a) in respect of an act done or default made by the trustee in the administration of the proposal; and
- (b) for the conduct of the trustee as trustee in relation to the proposal, but a discharge from liability may be revoked by the Court on proof that the discharge was obtained by fraud or by suppression or concealment of a material fact.

(7) This regulation shall not prevent the trustee from applying to the Court, from time to time, to have the accounts of the trustee and/or its counsel taxed or to seek a discharge.

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Commented [A26]: TGF Comment: Same as above

Rights of parties under an eligible financial contract

40. For the purposes of **section 137(7)** and **(8)** of the Act, the right of a party to an eligible financial contract to exercise a right under that eligible financial contract notwithstanding the filing of a notice of intention to make a proposal or a filing of a proposal, includes the right to realize or otherwise deal with financial collateral notwithstanding **sections 142** and **143** of the Act.

Prescribed property of the bankrupt exempt from seizure or execution from creditors

41. For the purposes of **section 150(1)(b)** of the Act, the following property of a bankrupt is exempt from seizure or execution from a creditor —

- (a) the personal items and clothing of the bankrupt and of a dependent of the bankrupt to satisfy his or her basic needs;
- (b) household furniture, appliances and food to satisfy the basic domestic needs in the permanent home of the bankrupt;
- (c) tools of trade of the bankrupt;
- (d) maintenance received by the bankrupt, under a Court order for the support of a dependent of the bankrupt to satisfy his or her basic needs.

Commented [A27]: TGF Comment: In Canada, many provinces also enacted certain exemptions for **principal residences** under associated legislation that protect a certain amount of equity. Examples are:

Ontario – up to \$10,000 equity exemption
British Columbia – up to \$9,000 equity exemption
Newfoundland – up to \$10,000 equity exemption
Alberta – up to \$40,000 equity exemption

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Surplus income

42. (1) Pursuant to **section 152(1)(a)** of the Act, the trustee shall by notice in the form set out as **Form 33** in the First Schedule, advise the bankrupt, creditors and the Supervisor of the amount of surplus income the trustee has determined the bankrupt is required to pay the estate.

(2) A notice under subregulation (1) shall be sent only to a creditor who requests a copy in writing.

(3) Pursuant to **section 153** of the Act, a bankrupt or a creditor may apply to vary the amount stated in the notice under subregulation (1) in the form set out as **Form 34** in the First Schedule.

(4) If the amount to be paid to the bankrupt is varied, the trustee shall deliver an amendment to the notice referred to under subregulation (1), showing the revised amount to be paid.

(5) A direction delivered under this regulation pursuant to **section 156** of the Act, shall be in the form set out as **Form 35** in the First Schedule.

Prescribed manner to send notice of bankruptcy and first meeting of creditors

43. (1) The notice of bankruptcy and the first meeting of creditors shall be —

- (a) by way of publication in a daily newspaper circulated in Saint Lucia, in the form set out as **Form 36** in the First Schedule;
- (b) by way of personal service on the bankrupt, in the form set out as **Form 37** in the First Schedule; and

(2) The notice referred to under subregulation (1)(b) shall be filed with the Supervisor.

Notice of meetings of creditors

44. A meeting of creditors, other than the first meeting of creditors, shall be convened by sending to the creditors a notice in the form set out as **Form 38** in the First Schedule.

Preliminary report

45. (1) In order to provide a creditor with sufficient information to be in a position to properly exercise his or her rights, the trustee shall submit a preliminary report at the first meeting of creditors and the report shall include —

- (a) a brief background statement of the cause or the reason for the financial difficulties of the bankrupt;
- (b) the preliminary evaluation of assets by the trustee and details of a security interest;

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- (c) whether the trustee has taken possession of the books and records of the bankrupt and the findings of the trustee with respect to the books and records;
 - (d) any conservatory and protective measures¹ taken by the trustee;
 - (e) relevant information relating to a provable claim and a description of a creditor;
 - (f) information with respect to a legal proceeding, reviewable transaction and preference payment;
 - (g) details of a third-party deposit or guarantee provided to the trustee;
 - (h) disclosure of all details relating to the intention of the trustee to act for or assist a secured creditor to realize on his or her security;
 - (i) projected distribution and comments of the trustee on anticipated asset realization, if possible;
 - (j) in the case of an individual —
 - (i) the amount, if determined, of a payment made or required to be made by the bankrupt under **section 152** of the Act; and
 - (ii) details provided by the bankrupt of any prior bankruptcies; and
 - (k) any other matter regarding the administration of the estate.
- (2) The trustee and the creditors shall review the report submitted under subregulation (1), at the first meeting of creditors and the report shall be tabled for inclusion and appended to the minutes of the meeting.

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PART VI

Mediation

Conduct of a mediation

- 46.** (1) For the purposes of **section 154(3)** of the Act, the Supervisor shall designate as a mediator —
- (a) a person who is certified as such, by the Eastern Caribbean Supreme Court; or
 - (b) another person that the Supervisor determines has the requisite training or experience in mediation.
- (2) The parties to a mediation shall —
- (a) in the case of a dispute under **section 153(1)** of the Act, be the bankrupt and the trustee; or

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- (b) in the case of a dispute under **section 153(2)** of the Act, be the creditor and the trustee.

(3) The mediator shall conduct the mediation with all parties physically present, unless the mediator decides to conduct the mediation by telephone conference call or by means of another communication facility that permit all parties to the mediation to communicate with each other and the mediation shall be held at —

- (a) the office of the Supervisor;
- (b) at a place designated by the mediator; or
- (c) if the mediation is conducted otherwise than with all parties physically present, a combination of places suited for that purpose.

(4) The mediator shall send a copy of the notice of the mediation in writing to the parties and the Supervisor, at least seven days before the date set for the mediation.

(5) The mediator shall reschedule the mediation to a new time or venue, if before the mediation commences, the mediator believes on reasonable grounds that the mediation cannot proceed at the time scheduled.

(6) The mediator shall adjourn the mediation during the mediation if —

- (a) a party requests an adjournment and the mediator believes on reasonable grounds that the mediation would benefit from further negotiations or the receipt of additional information;
- (b) the mediator believes on reasonable grounds that one of the parties, cannot continue the mediation for a certain period of time; or
- (c) one of the parties fails to appear at the mediation and the mediator believes on reasonable grounds with respect to at least one of those creditors, that the non-appearance is neither a delaying tactic nor is intended to bring the mediation into disrepute.

(7) A mediation shall not be rescheduled under subregulation (6) if that adjournment would constitute a second adjournment.

(8) If a mediation is rescheduled or adjourned under this regulation, the mediator shall —

- (a) set the new date for the mediation within ten days after the date on which that rescheduling or adjournment occurs; and
- (b) inform the parties to the mediation by way of notice of the new time and place.

(9) A mediation exercise shall be completed within twenty-one days of the date of referral.

(10) Notwithstanding subregulation (9), the parties may agree to extend the time for completion of the mediation, by a further seven days.

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Commented [A31]: TGF Comment: We recommend this be changed to permit the mediator discretion over the amount of adjournments permitted within the mediation period to add flexibility.

(11) If the parties agree to extend time under subregulation (10), the trustee shall notify the Supervisor in writing before the expiration of twenty-one days from the date of referral.

(12) During the mediation, the mediator shall cancel the mediation if —

- (a) the mediator believes on reasonable grounds that a party is abusing the rescheduling procedures;
- (b) there has already been an adjournment and —
 - (i) there is a request for adjournment under subregulation (6)(a); or
 - (ii) one of the circumstances referred to under subregulation 6(b) to 6(c) occurs;
- (c) the mediator believes on reasonable grounds that one of the parties, cannot continue the mediation; or
- (d) ~~any of the~~ the parties fail to appear at the mediation and the mediator believes on reasonable grounds, that the non-appearance of a party is a delaying tactic or is intended to bring the mediation into disrepute.

Commented [A32]: TGF Comment: Changed to “any of” for consistency with the rest of the subclause.

(13) If the mediation is cancelled, the mediator shall send to the office of the Supervisor and the parties, a notice in writing of the cancellation setting out the grounds for the cancellation.

Parties to a mediation shall keep information confidential

47. A mediator or party to a mediation under **section 154** of the Act shall not disclose confidential information concerning an issue submitted to mediation outside the parties to the mediation, unless the disclosure is —

- (a) required by law; or
- (b) authorized by the person to whom the confidential information relates.

Mediation settlement agreement

48. (1) If an agreement is reached by all parties at the mediation, the mediator shall send a mediation settlement agreement, in the form as ~~set out as~~ **Form 39 in the First Schedule**, including the terms and conditions of the mediation settlement reached, to be signed by the parties, and the mediator shall send copies of the settlement agreement to the Supervisor and the parties to the mediation.

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(2) If the parties fail to reach agreement at the mediation, the mediator shall issue a notice in writing to the parties and the Supervisor setting out the issues considered at the mediation that were not resolved.

Payments made by bankrupt under mediation settlement agreement

49. The payment made by a bankrupt under a mediation settlement agreement shall be made to the trustee and deposited into the estate account of the bankrupt.

Determination of Claims

50. (1) A claim made under **section 159(2), 164(2) or 249(2)** of the Act, shall be made in the form set out as **Form 40** in the First Schedule.

(2) The trustee shall disallow a claim made under subregulation (1) by delivering a notice in the form set out as **Form 41**, in the First Schedule.

(3) For the purposes of **section 164(4), 255 or 274** of the Act, the trustee shall give notice, requiring a claim to be filed in the form set out as **Form 42**, in the First Schedule.

(4) If a claim made under **section 159** of the Act is disallowed by the trustee, **section 262** of the Act applies, with the modifications as the circumstances may require.

PART VII*Crown Security***Crown's security to be registered pursuant to a prescribed system of registration to be enforceable**

51. For the purposes of **section 174(1)(c)** of the Act, the prescribed system of registration shall include —

- (a) filing of a registration notice in respect of movable property under the Security Interests in Movable Property Registry, as provided under the *Security Interests in Movable Property Act, Cap. []*;
- (b) registration of a lien under the *Land Registration Act, Cap. 5.01*;
- (c) registration of charge over land under the *Companies Act, Cap. 13.01*; and
- (d) registration of a security interest, as required, under any other law.

PART VIII*Summons to Examination***Summons to an examination**

52. (1) The trustee shall, pursuant to **sections 189 and 190** of the Act, summon to be examined by delivering a summons in the form set out as **Form 43** in the First Schedule —

- (a) in the case of a person other than a corporation, the bankrupt; or
 - (b) in the case of a corporation, an officer or director of the bankrupt.
- (2) The trustee shall —
- (a) make notes which shall be certified; or
 - (b) cause a transcription to be produced of an examination conducted, together with a document produced on the examination; and
 - (c) retain the notes or transcripts with the books and records required to be maintained under **section 41** of the Act.

Supervisor shall publish unclaimed dividends

53. The Supervisor shall publish on its website and maintain a list of all unclaimed dividends in the custody of the Supervisor and the list shall contain names and the post office addresses (if known) of the creditors entitled to the unclaimed dividends and information as to —

- (a) the amount payable to each creditor;
- (b) the name of the relevant bankrupt, debtor or deceased person; and
- (c) any other information the Supervisor may direct.

A person may claim unclaimed dividends

54. (1) A person —

- (a) may apply in writing to the Supervisor for the payment of an unclaimed dividend referred to under **regulation 53**; and
 - (b) shall submit the evidence of the claim of the person as the Supervisor may request.
- (2) A Supervisor may disallow in writing an application under subregulation (1).

(3) A person who is aggrieved by the decision of the Supervisor in respect of a claim made under this regulation may apply to the Court seeking a reversal or a variance of the decision of the Supervisor.

Partnership bankruptcies

- 55.** (1) If a partnership or any of its partners is bankrupt, the first meeting of —
- (a) the creditors of the partnership; and
 - (b) each bankrupt partner,

shall be convened for the same time and location as a single meeting.

(2) A partnership that is bankrupt shall submit to the trustee a statement of its partnership affairs in the form set out as **Form 3** in the First Schedule, verified by one of the partners or by the manager in charge of the affairs of the partnership.

(3) Subject to subregulation (2), each bankrupt partner shall submit a statement of his or her own personal affairs in the form set out as **Form 3** of the First Schedule.

PART IX

Counselling

Interpretation under Part IX

56. In this Part, “counselling” means assisting and educating an individual bankrupt or his or her immediate relative on good financial management, including —

- (a) prudent use of consumer credit and budgeting principles;
- (b) development of successful strategies for achieving financial goals and overcoming financial setbacks; and
- (c) if appropriate, making a referral with respect to a non-budgetary cause of insolvency including gambling, addiction and marital and family problems.

Counselling

- 57.** (1) The Supervisor shall approve a counsellor for the purposes of the Act.

(2) **Section 197** of the Act applies to an individual bankrupt, only if that bankrupt receives counselling under these Regulations.

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(3) If an individual bankrupt fails to obtain counselling as required, the trustee shall file a report in the form set out as **Form 44** in the First Schedule and the report has the same effect as an opposition to the automatic discharge under **section 198** of the Act.

(4) Counselling of a bankrupt, insolvent person or person facing imminent insolvency, shall be conducted in two stages —

- (a) the first stage is to provide information and advice relating to —
 - (i) money management and budgeting,
 - (ii) spending habits,
 - (iii) warning signs of financial difficulties; and
 - (iv) obtaining and using credit;
- (b) the second stage of the counselling is to determine the budgetary or non-budgetary cause of insolvency or bankruptcy and requires that the trustee —
 - (i) follow up on the application by the person of the principles presented in the first stage to assist the person to better understand the strengths and weaknesses of the person with regard to money management and budgetary skills,
 - (ii) assist the person to —
 - (A) identify the non-budgetary causes that may have contributed to the financial difficulties of the person,
 - (B) better understand the behavior of the person in financial management and consumption habits,
 - (C) identify the existence of resources that will assist the person to achieve and maintain economic stability; and
 - (D) to develop recommendations and alternatives for a financial plan of action which, if appropriate, may include referral for specialized counselling to deal with a non-budgetary cause of insolvency.

(5) The first stage of counselling shall be conducted between ten and thirty days following the date of the bankruptcy or the date the proposal is filed.

(6) The second stage of counselling shall not be conducted before the end of the thirty-day period after the first stage has concluded.

(7) On completion of a counselling provided under this regulation, the person shall provide to the trustee evidence of attendance and completion of counselling in the form

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set out as **Form 45** in the First Schedule.

(8) If a person receives counselling for the purposes of **section 103(2)**, the counselling shall be in accordance with this regulation.

PART X

Code of Ethics

Interpretation of Part X

58. In this Part, “professional engagement” means a bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity under the Act.

Trustees shall be bound by code of ethics

59. (1) A trustee shall be bound by the code of ethics contained in this Part.

(2) A trustee shall —

- (a) maintain a high standard of ethics that is central to the maintenance of public trust and confidence in the administration of the Act;
- (b) perform the duties of a trustee in a timely manner and carry out the functions of a trustee with competence, honesty, integrity and due care;
- (c) cooperate fully with the Supervisor in all matters arising out of or in a proceeding under the Act;
- (d) not assist, advise or encourage a person to engage in a conduct that the trustee knows, or ought to know, is illegal or dishonest in respect of the bankruptcy and insolvency process;
- (e) be honest and impartial and provide to an interested party full and accurate information as required under the Act with respect to the professional engagement of the trustee;
- (f) not disclose confidential information concerning a professional engagement, unless the disclosure —
 - (i) is required by law,
 - (ii) is authorized by the person about whom the confidential information relates; or

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- (iii) will not allow for the use of the confidential information obtained in the professional capacity of the trustee for the benefit of the trustee or for the benefit of a third party.

(3) Subject to **section 256(2)** of the Act, if a trustee requires security to be sold, the trustee shall not purchase directly or indirectly —

- (a) property of a debtor for whom the trustee is acting with respect to a professional engagement;
- (b) property of an estate in respect of which the Act applies and for which the trustee is not acting in a professional capacity, unless the property is purchased —
 - (i) at the same time that it is offered to the public,
 - (ii) at the same price that it is offered to the public; and
 - (iii) during the normal course of business of the debtor.

(4) If a trustee is authorized to sell property in connection with a proposal or bankruptcy under the Act, the trustee shall not sell the property, directly or indirectly —

- (a) to the employee, agent or mandatory of the trustee, or person not dealing at arms' length with the trustee;
- (b) to another trustee or knowingly to an employee of another trustee; or
- (c) to a related person of the trustee or, knowingly, to a related person of the persons referred to under paragraph (a) or (b), unless the property is offered for sale —
 - (i) at the same time that it is offered to the public,
 - (ii) at the same price that it is offered to the public; and
 - (iii) during the normal course of business of the debtor.

(5) A trustee who is acting with respect to a professional engagement shall avoid any influence, interest or relationship that impairs, or may appear in the opinion of an informed person, to impair the professional judgment of the trustee.

(6) A trustee shall not sign a document, including a letter, report, statement, representation or financial statement, that the trustee knows, or reasonably ought to know, is false or misleading and the trustee shall not be associated with that document in any way, including by adding a disclaimer of responsibility after the signature of the trustee.

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(7) A trustee may transmit information that the trustee has not verified, respecting the financial affairs of a bankrupt or debtor, if —

- (a) the information is subject to a disclaimer of responsibility or an explanation of the origin of the information; and
- (b) the transmission of the information is not contrary to the Act.

(8) A trustee shall not engage in a business or an occupation that would compromise the ability of the trustee to perform a professional engagement or that would jeopardize the integrity, independence or competence of the trustee.

(9) A trustee who holds money or other property in trust shall —

- (a) hold the money or property in accordance with the laws, regulations and terms applicable to the trust; and
- (b) administer the money or property with due care, subject to the laws, regulations and terms applicable to the trust.

(10) A trustee shall not, directly or indirectly —

- (a) pay to a third party a commission, compensation or other benefit in order to obtain a professional engagement, or
- (b) accept from a third party, a commission, compensation or other benefit for referring work relating to a professional engagement.

(11) A trustee shall not obtain, solicit or conduct any professional engagement that would discredit the profession of the trustee or jeopardize the integrity of the bankruptcy and insolvency process.

(12) A trustee shall not directly or indirectly, advertise in a manner that —

- (a) the trustee knows, or ought reasonably to know, is false, misleading, materially incomplete or likely to induce error; or
- (b) unfavourably reflects on the reputation or competence of another trustee or on the integrity of the bankruptcy and insolvency process.

(13) In the course of the professional engagement of a trustee, the trustee shall apply due care to ensure that the actions carried out by an employee, agent, mandatory of the trustee or a person hired by the trustee on a contractual basis are carried out in accordance with the same professional standards that the trustee is required to follow in relation to the professional engagement.

(14) A complaint that relates to a contravention of this regulation may be submitted to the Supervisor, in writing.

PART XI

Discharge of a Bankrupt

Automatic discharge

60. (1) For the purposes of **sections 197(2) and 199(3)** of the Act, the trustee shall prepare the report of the trustee with respect to the automatic discharge of a bankrupt in the form set out as **Form 46** in the First Schedule.

(2) For the purposes of **section 198(5)** of the Act, a person who opposes the automatic discharge of a bankrupt, shall on notice to the Supervisor, a creditor or the trustee, in the form set out as **Form 47** in the First Schedule, apply to the Court for a hearing in that regard.

Certificate of discharge where there is no opposition

61. If, pursuant to **section 199** of the Act, a person is discharged without opposition, the Trustee shall issue a certificate of automatic discharge to the discharged person in the form set out as **Form 48** in the First Schedule.

Bankrupt may waive an application for discharge of bankrupt

62. If, pursuant to **section 200(1)** of the Act, a bankrupt waives the application for discharge, the waiver shall be in the form set out as **Form 49** in the First Schedule.

Discharge of bankrupt corporation

63. (1) A bankrupt corporation that has satisfied the claims of its creditors in full may apply in writing to the Supervisor for a discharge.

(2) The Supervisor may issue a certificate of discharge in the form set out as **Form 48** in First Schedule, if the Supervisor is satisfied that a bankrupt corporation has satisfied the claims of its creditors in full.

Discharge of individual bankrupts

64. (1) The trustee shall apply to the Court seeking an order discharging the bankrupt no later than twelve months following the date of bankruptcy, if —

- (a) the bankrupt is an individual and is not entitled to be automatically discharged and the bankrupt has not delivered a waiver in accordance with **section 200(1)** of the Act; or
- (b) the automatic discharge of the bankrupt is opposed under in **section 198** of the Act and a creditor has not applied to have the opposition heard.

(2) For the purposes of **sections 201 and 202** of the Act, an application by a person who opposes the automatic discharge of an individual bankrupt and applies under **section 198(5)** of the Act to have that opposition determined, shall be treated as an application for a discharge under subregulation (1).

(3) For the purposes of **section 200(6)(a)**, notice of the hearing of an application for discharge, shall be delivered by the trustee to the Supervisor, in the form set out as **Form 50** in the First Schedule.

(4) The trustee shall pursuant to **section 201** of the Act, prepare the report of the discharge of a bankrupt, in the form set out as **Form 51** in the First Schedule.

(5) For the purposes of **section 201(7)**, the notice to be delivered by a creditor setting forth additional grounds to oppose the discharge of a bankrupt shall be in the form set out as **Form 52** in the First Schedule.

Discharge of the bankrupt on compliance with conditions

65. (1) For the purposes of **section 203**, if the bankrupt has complied with the conditions imposed on the bankrupt, the notice of compliance to be issued by the trustee, shall be in the form set out as **Form 53** in the First Schedule.

(2) If the Supervisor receives a notice under subregulation (1), the Supervisor shall issue the certificate of discharge, in the form set out as **Form 48** in the First Schedule.

*Inspectors***Prescribed criteria for appointment of inspector**

66. (1) A person is eligible for appointment, under **section 235** of the Act, as inspector, if that person —

- (a) is a creditor; or
- (b) is authorized by the creditor, to act for the creditor in relation to the bankruptcy.

(2) For the avoidance of doubt, a creditor or a person authorized by the creditor to act as an inspector is not eligible to act as an inspector, unless —

- (a) in the case of a creditor; or
- (b) in the case of a person authorized by the creditor,

the proof of claim of the creditor **is** admitted.

Commented [A37]: TGF Comment: Missing word added

Publication of summary administration bankruptcy

67. Pursuant to **section 280(4)(c)** of the Act, the trustee shall publish the notice of a bankruptcy in a summary administration in the form set out as **Form 54** in the First Schedule.

PART XII*Discharge of the Trustee***Discharge of trustee**

68. (1) For the purposes of **section 277(5)**, the statement of receipts and disbursement of the trustee, the dividend sheet and the notice referred to in **section 277(5)(c)** shall be deemed to have been approved by the creditors and the bankrupt for the purposes of **section 277(3)**, if the statement of receipts and disbursement, the dividend sheet and the notice are approved by the inspectors.

(2) For the purposes of **section 277(3)**, the trustee shall include with the documents to be sent to the Supervisor —

- (a) a bill of costs verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses; and

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- (b) in respect of the legal fees incurred, verified by affidavit, showing the number of hours spent, the tasks performed, the hourly rates and the expenses, incurred by the proposal trustee.

(3) If within thirty days of receiving the documents referred to under subregulation (1) the Supervisor does not provide written comments on the taxation of the accounts of the trustee, objecting to the accounts of the trustee, the accounts of the trustee is deemed to have been taxed for the purposes of **section 277(4)** of the Act.

(4) A trustee shall apply for taxation of the accounts of the trustee and a discharge within six months of having completed the duties required with respect to the administration of the property of a bankrupt sending notice to —

- (a) the bankrupt;
- (b) every creditor whose claim has been proved;
- (c) the Registrar; and
- (d) the Supervisor.

(5) The notice referred to under subregulation (4) shall —

- (a) be in the form set out as **Form 9** in the First Schedule; and
- (b) have attached to it —
 - (i) a copy of the statement of receipts and disbursements of the trustee in the form set out as **Form 2** in the First Schedule;
 - (ii) a copy of the dividend sheet;
 - (iii) a copy of the written comments, of the Supervisor on the taxation of the accounts of the trustee.

(6) If a person receives a notice under subregulation (4) the person may object to the final statement of receipts and disbursements of the trustee, the dividend sheet, the trustee's accounts or the discharge of the trustee, by a notice of objection to the trustee in the form set out as **Form 10** in the First Schedule.

(7) If a notice of objection is not delivered within fifteen days of delivery of the notice referred to under subregulation (6), and the Supervisor has not delivered written comments objecting to the accounts of the trustee —

- (a) the final statement of receipts and disbursements of the trustee, the dividend sheet shall be deemed to be approved;
- (b) the accounts of the trustee shall be deemed to have been taxed and approved as presented;

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- (c) the trustee shall proceed to pay the final dividend in accordance with the dividend sheet; and
- (d) upon paying the final dividends, the trustee shall be deemed to be discharged.

(8) If a notice of objection is delivered under subregulation (6) or the Supervisor delivers written comments objecting to the accounts of the trustee, the trustee shall apply to the Court seeking —

- (a) approval of the final statement of receipts and disbursements of the trustee and the dividend sheet;
- (b) to have the accounts of the trustee taxed; and
- (c) the discharge of the trustee.

(9) If a trustee is discharged under this regulation the trustee is discharged from all liability —

- (a) in respect of an act done or default made by the trustee in the administration of the proposal; and
- (b) in relation to the conduct of the trustee as trustee.

(10) A Court may revoke a discharge from liability under this regulation, on proof that the discharge was obtained by fraud, by suppression or concealment of a material fact.

(11) These Regulations do not prevent a trustee from applying to the Court, from time to time, to have the accounts of the trustee and/or its counsel taxed or to seek seeking a discharge, prior to the full administration of the property of the bankrupt.

Commented [A38]: TGF Comment: Same as above.

Commented [A39]: TGF Comments: Words added for consistency with similar provisions earlier in draft regulations

Procedure for discharge of trustee in summary administration

69. (1) If a summary administration bankruptcy has been fully administered, the trustee shall send to the Supervisor written notice in the form set out as **Form 11** in the First Schedule including —

- (a) the final statement of receipts and disbursements of the trustee, in **Form 2**; and
- (b) a dividend sheet, showing the dividends paid or to be paid to a creditor of the bankrupt.

(2) If the trustee receives no notice of objection from the Supervisor within thirty days after delivery of the documents referred to under subregulation (1), the trustee shall proceed to pay the final dividend to creditors and on doing so, is deemed to be discharged and the discharge shall have the same effect as a discharge under **regulation 65**.

(3) If the Supervisor delivers a written objection to the discharge of the trustee under this regulation, the trustee shall apply to the Court on notice in writing to the Supervisor seeking a discharge.

Trustee that has been replaced, may apply for taxation of accounts

70. A trustee who has been replaced under these Regulations shall apply for taxation of accounts and discharge, within two months after being replaced in the same manner under regulation 65.

PART XIII

Books and Records

Maintenance of books, records and documents after the date of discharge of trustee

71. (1) Unless the Court otherwise orders, a trustee shall keep for at least seven years after the date of the discharge of the trustee, the books, records and documents, relating to the administration of the estate administered by the trustee.

(2) Unless the Court orders otherwise or the debtor has delivered a written waiver, the trustee shall after being discharged, send to the latest known address of the debtor or in the case of the corporation, a director or an officer of the corporation, a written notice that the debtor may within the thirty days following the delivery of the notice, return any of the books, records and documents of the debtor in the possession of the trustee other than the books, records and documents relating to the administration of the estate.

(3) Notwithstanding subregulation (1), the trustee on authorization of the Supervisor or the Court may destroy or otherwise dispose of a book, paper and other records.

(4) The trustee shall keep separate files for each administration, a record of every material decision in an administration, and the supporting documentation relied on in relation to the decision on the file for the administration.

Supervisor to determine fees to be paid trustees on approval of Minister

72. The Supervisor shall with the approval of the Minister, determine the fee to be paid in the summary administration of the bankruptcy as required under **sections 280(4)(le) and 281** of the Act.

Commented [A40]: TGF Comment: Added directors for consistency across draft bill and regulations.

Commented [A41]: TGF Comment: We note two parts of the equivalent BIA General Rules regulations s. 68 are omitted (parts 3 and 4). (3) allows the trustee to dispose of the records mentioned here in subregulation (2) if they are not collected within 30 days of notice. (4) requires return of documents to legal counsel where counsel has a lien or right of retention once administration of the estate is complete.

Commented [A42]: TGF Comment: Corrected citation

Trust funds and banking

73. (1) All the funds received by a trustee shall be deposited into a trust account in a licensed financial institution.

(2) The trustee shall establish a separate trust account for each professional engagement, unless otherwise provided for under **section 280(4)(b)** of the Act.

(3) ~~The~~ trustee shall ensure that the trust account funds are not be commingled with non-trusts funds or funds held in trust in connection with another engagement and, in the case of consolidated trust accounts, not commingled with estates of administration types other than that type for which the account is authorized.

Commented [A43]: TGF Comment: Minor edit

(4) For each estate trust account under the administration of the trustee, the trustee shall maintain at a minimum, up-to-date books and records, including the control ledger of estate funds showing —

- (a) the receipts and disbursements of the estate trust funds, including the name of the payer or payee, the date, nature of payment and the amount;
- (b) duplicate deposit slips, duplicate receipts for cash deposits, cancelled cheques, bank statements, passbooks and all other documents of deposit; and
- (c) in the case of a consolidated trust account, a calculation of the balance within the consolidated account, the control ledger, produced on the same day as the bank statement.

Trustee may keep banking and accounting records in electronic format

74. (1) A trustee may keep banking and accounting records in electronic media format.

(2) A trustee who maintains banking and accounting records for a trust account in an electronic format shall ensure that the system used to maintain the records —

- (a) is capable of producing on demand a hard copy of the records of original entry at a given date;
- (b) shows at a minimum, details required under subregulation (3);
- (c) provides a complete audit trail of transactions.

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(3) A trustee who keeps trust records in an electronic format shall maintain a backup copy of the electronic records that shall be updated each business day and stored on a weekly basis, in a secure manner at an off-site location.

Trustee to protect trust funds

75. (1) A trustee shall —

- (a) protect estate trust funds from loss, misappropriation or defalcation by establishing adequate security arrangements and internal controls;
- (b) immediately advise the Supervisor, in writing, of a defalcation or misappropriation of estate trust funds;
- (c) deposit estate funds without undue delay in a licensed financial institution, in a trust account, in the name of the estate or that of the trustee in the capacity of the trustee as trustee of the estate;
- (d) not pay any of his or her personal or general office expenses unrelated to the administration of a proceeding under the Act from a trust account;
- (e) not permit an estate trust account to be overdrawn and shall immediately correct a transaction that inadvertently places the account into an overdraft position;

(2) A trustee may invest estate funds in an appropriate investment approved by the Supervisor, if the funds are not immediately needed for distribution of dividends to the creditors or for the day-to-day administration of the estate.

(3) An investment certificate representing the funds invested under subregulation (2), shall be held at the same branch of the licensed financial institution where the related trust account is held.

(4) An investment made under subregulation (2), shall be guaranteed against losses to the trust fund.

Opening of separate trust bank account

76. If an estate is converted from a summary to an ordinary administration and the estate funds therein were previously held in a consolidated trust account, the trustee shall immediately open a separate trust bank account into which the trustee shall transfer all of the estate funds.

Commented [A44]: TGF Comment: Added missing letter

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Made this day of , 20[].

Minister responsible for finance.

DRAFT