

SAINT LUCIA

No. 17 of 2024

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I Assent

[L.S.]

ERROL CHARLES,
Acting Governor-General.

September 30, 2024.

SAINT LUCIA

No. 17 of 2024

ANACT to provide for the appointment of a Supervisor of Bankruptcy and Insolvency and a Government Trustee; licensing of trustees; bankruptcy orders; assignments; administration of estates; international insolvencies; the regulation of corporate and individual insolvencies; the rehabilitation of an insolvent debtor and for related matters.

[8th October, 2024]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Insolvency Act, 2024.

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2.—(1) In this Act —

“act of bankruptcy” in relation to a debtor, means that the debtor —

- (a) inside or outside Saint Lucia, makes an assignment, in the prescribed form, of his or her property to a trustee for the benefit of creditors;
- (b) makes a disposition of property, or incurs an obligation, creates a charge on the property or takes or suffers judicial proceedings in favour of a creditor or of a person in trust for a creditor, which qualifies as a preference or enters into another transaction under section 200 or 201;
- (c) with intent to defraud, defeat or delay his or her creditors —
 - (i) conveys, donates, delivers, transfers, assigns, removes, secretes or disposes of or attempts to convey, donate, deliver, transfer, assign, remove, secrete or dispose of his or her property or of a part of that property, inside or outside Saint Lucia,
 - (ii) departs from Saint Lucia,
 - (iii) being outside of Saint Lucia remains outside of Saint Lucia, or
 - (iv) departs from his or her dwelling house or absents himself or herself;

- (d) permits an execution or other process issued against the debtor, under which the property of the debtor is seized, levied on or taken in execution, to remain unsatisfied for thirty days, or if —
 - (i) the property of the debtor is sold by the Bailiff, or
 - (ii) the execution or other process is returned endorsed to the effect that the Bailiff can find no property on which to levy, seize or take;
 - (e) exhibits at a meeting of creditors a statement of assets and liabilities that indicates insolvency, or presents or causes to be presented to that meeting a written admission of his or her inability to pay debts;
 - (f) gives notice in writing to his or her creditors that he or she has suspended or is about to suspend payment of his or her debts;
 - (g) defaults in the performance of a proposal made under this Act;
 - (h) ceases to meet his or her liabilities, as his or her liabilities become due; or
 - (i) fails to respond to the written request of a creditor or the Court to deal with a judgement debt;
- “adequate valuable consideration” means consideration of fair and reasonable 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 under the Statutory Declarations Act, Cap. 2.14;
- “applicant” in relation to an application for a bankruptcy order, means one or more creditors;
- “aquatic plants and animals” means flora and fauna that, at most stages of their development or life cycle, live in a marine environment;

“assignment” means an assignment approved under Part III;

“Bailiff” includes a Sheriff and an officer of a Court charged with the execution of a writ or other process under this Act or another enactment or proceedings with respect to the property of a debtor;

“bankrupt” means a person —

- (a) who makes an assignment;
- (b) against whom a bankruptcy order is made under Part III; or
- (c) who is deemed to have made an assignment on the failure of a proposal or other default in respect of a proposal proceedings under Part IV;

“bankruptcy” means the process under this Act where an insolvent person becomes bankrupt and a trustee is appointed to administer the assets of the bankrupt;

“bankruptcy event” means —

- (a) an assignment by or in respect of a person;
- (b) a proposal by or in respect of a person;
- (c) a notice of intention to make a proposal by a person;
- (d) an application for a bankruptcy order against a person; and
- (e) the appointment of a receiver;

“bankruptcy order” means an order of the Court made under section 43;

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

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

“building society” has the meaning assigned under the Building Societies Act, Cap. 12.04;

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

“cash flow statement” means a report on the projected cash inflows and outflows of a debtor prepared under section 61(1)(a) or 69(1)(a);

“Chairperson” —

- (a) in relation to a first meeting of creditors, means a person appointed under section 213; or
- (b) in relation to a meeting of creditors, other than the first meeting of creditors, means a person appointed under section 214;

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

“clearing agent” means a person authorized to act as an intermediary in transferring funds between financial institutions to effect clearing and settlement or make entries in the Eastern Caribbean Automated Clearing House;

“collateral” includes —

- (a) cash;
- (b) property;
- (c) securities of any kind, such as —
 - (i) debt and equity securities,
 - (ii) securities account,
 - (iii) securities entitlement and rights to acquire securities by subscription, purchase or exchange, or
 - (iv) other securities entitlement and rights to acquire securities not under subparagraph (iii);
- (d) any future agreement or future account;
- (e) an asset or third-party commitment that is provided by the collateral taker and accepted by the collateral taker to secure an obligation of the collateral provider;

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

“composition” means an agreement between a debtor and all or some of his or her creditors by which the 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 the creditors in full satisfaction of the whole of their claims;

“consumer debtor” means an individual who is a bankrupt or an insolvent person —

(a) whose aggregate debts, excluding debts secured by the principal residence of the individual, are not more than two hundred and fifty thousand dollars or other prescribed amount;

(b) whose debt is secured by the principal residence of the individual where the total costs to the individual to acquire the principal residence does not exceed the prescribed amount;

“consumer proposal” means a consumer proposal under Division 6 of Part IV;

“corporation” means —

(a) a company formed or registered under the laws of Saint Lucia; or

(b) an incorporated entity, wherever incorporated, that is authorized to carry on business in Saint Lucia or has property in Saint Lucia;

“Court” means the High Court;

“cousin-german” has the meaning assigned under the Civil Code of Saint Lucia, Cap. 4.01;

“creditor” means a person who has a claim which is provable as a claim under this Act;

“credit union” means a body registered under the Co-operative Societies Act, Cap. 12.06;

“date of bankruptcy” means the date —

- (a) on which a bankruptcy order is made;
- (b) of issuing a certificate of assignment; or
- (c) an assignment is deemed to be occurring;

“date of the initial bankruptcy event” means the date on which the first bankruptcy event occurred;

“debtor” —

- (a) means a person who owes a debt; and
- (b) includes —
 - (i) an insolvent person,
 - (ii) a person who, at the time an act of bankruptcy was committed by him or her, resided or carried on business in Saint Lucia,
 - (iii) a bankrupt, and
 - (iv) a person facing imminent insolvency;

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

“Eastern Caribbean Securities Regulatory Commission” means the Eastern Caribbean Securities Regulatory Commission established under the Eastern Caribbean Securities Regulatory Commission Agreement made on the 24th day of November, 2000 the text of which is set out in Schedule 1 to the Securities Act, Cap. 12.18;

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

under any agreements or transactions under paragraphs (a) to (o) and paragraphs (p), (r) and (s);

(r) an agreement similar to an agreement or contract under this definition;

(s) a prescribed agreement;

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

(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) a contribution or an indemnity in respect of a claim under paragraphs (a) to (d);

“equity interest” means —

(a) a share in a corporation;

(b) a warrant or option or another right to acquire a share in a corporation, or other similar interest; or

(c) a right in a trust or partnership;

“farm” —

(a) means land in Saint Lucia used for the purpose of farming;

(b) includes livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

“farmer” includes the owner, occupier, lessor and lessee of a farm who is registered with the Ministry responsible for agriculture;

“financial collateral”

(a) means —

(i) cash or cash equivalents including negotiable instruments and demand deposits,

(ii) securities, a securities account, a securities entitlement or a right to acquire securities, or

(iii) 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,

(b) includes a virtual asset;

“financial institution” —

(a) means a financial institution licensed under the Banking Act, Cap. 12.01;

(b) includes —

(i) a credit union,

(ii) a building society; and

(iii) the Saint Lucia Development Bank established under section 3 of the Saint Lucia Development Bank, Cap. 12.02;

“fish” includes shellfish, crustaceans and marine animals;

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

“fishing” means catching fish by any method;

“floor transaction” means an agreement providing the right to benefit from changes in interest or currency rate up to a maximum 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;

“fraudulent preference” has the meaning assigned under section 240;

“goods” —

(a) means tangible personal property, crops and the unborn young of animals;

(b) does not include a document of title, a financial instrument or money;

“Government Trustee” means the Government Trustee appointed under section 10;

“group clearer” means a member of the Eastern Caribbean Automated Clearing House that, on its own behalf or on the behalf of an entitled group, exchanges transactions or makes entries into the Eastern Caribbean Automated Clearing House;

“insolvency” means a financial state of an insolvent person;

“insolvent person” —

(a) means a person who resides, carries on business or has property in Saint Lucia, whose liabilities to creditors, provable as claims under this Act, amount to not less than the threshold specified under section 40(2)(a), 43(8)(a), 62(3)(c), 80(2)(c), and who —

(i) for any reason is unable to meet his or her obligations as the obligations generally become due,

(ii) has ceased paying his or her 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 or her obligations due and accruing due; and

(b) does not include a bankrupt;

“inspector” means a person appointed as inspector under section 230;

“interim receiver” means a person appointed by the Court under section 362(1), 363(1) or 364(1) to deal with the property and affairs of a person until a bankruptcy order is made;

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

“Minister” means the Minister responsible for finance;

“net termination value” —

- (a) 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;
- (b) includes the application of the proceeds of sale of any collateral or the setting off or application of the value of collateral against the obligations;

“ordinary resolution” means a resolution carried by the majority of votes;

“person” includes —

- (a) a partnership, an unincorporated association, a corporation, a co-operative society, a building society or an organization;
- (b) the successors of a partnership, an unincorporated association, a corporation, a building society or an organization; and
- (c) the heirs, executors, administrators of the succession or other legal personal representative of a person or an individual;

“person facing imminent insolvency” means a person who —

- (a) resides, carries on business or has property in Saint Lucia, whose liabilities to creditors provable as claims under this Act, amount to not less than the threshold specified under section 40(2)(a), 43(8)(a), 62(3)(c) or 80(2)(c); and
- (b) reasonably anticipates that for any reason within the period of twelve months, will be unable to meet his or her obligations as the obligations generally become due;

“principal residence” means property for the year prior that is —

- (a) used as the principal residence of and is occupied by the owner;
- (b) a housing unit, a leasehold interest in a housing unit, or a share of the capital stock of a co-operative housing corporation the consumer debtor acquired only to get the right to inhabit a housing unit owned by that corporation;
- (c) owned by the consumer debtor alone or jointly with another person;
- (d) the property the current or former spouse, or children of the consumer debtor lived in at some time during the year;
- (e) designated as the primary residence of the consumer debtor;

“products of agriculture” includes —

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

“products of the sea” includes —

- (a) fish;
- (b) marine organic and inorganic life; and
- (c) a substance extracted or derived from the sea;

“property” —

- (a) means money, goods, chose in action, accounts receivable, inventory, equipment, intellectual property, land and a description of property, whether movable or immovable, legal or equitable, in or outside of Saint Lucia; and
- (b) includes an obligation, servitude and a description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incidental to property;

“proposal” includes an arrangement for a composition, an extension of time or a scheme of arrangement made under section 76, or modified in accordance with section 85, to creditors, whether secured or unsecured, grouped as a single class or separated into different classes;

“public utility” includes —

- (a) a telecommunications service;
- (b) a water service or sewerage service;
- (c) an electricity service;
- (d) a service specified under section 63 similar to a service under paragraphs (a) to (c); or
- (e) any other service, function or activity specified under section 63;

“receiver” —

- (a) 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 is appointed to take, or has taken, possession or control of the whole or any part of the property of an insolvent person or a bankrupt;
- (b) includes a receiver and manager who is authorized to carry on the business of a debtor;

“receivership” means the legal status of a person or property in respect of which a receiver is appointed;

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

“Registrar” means the Registrar of the High Court;

“Registrar of Companies” means the Registrar of Companies and Intellectual Property under the Companies Act, Cap. 13.01;

“Registrar of Lands” means the Registrar of Lands under the Land Registration Act, Cap. 5.01;

“Regulator” means —

- (a) in the case of a person or an incorporated entity licensed to conduct banking business under the Banking Act, Cap. 12.01, the Eastern Caribbean Central Bank;
- (b) in the case of an international banking business, the Director of International Financial Services;
- (c) in the case of an entity regulated, licensed or registered by the Financial Services Regulatory Authority under the Financial Services Regulatory Authority Act, Cap. 12.23, the Financial Services Regulatory Authority;
- (d) in the case of a co-operative society, the Registrar of Co-operatives;
- (e) in the case of a building society, the Registrar of Building Societies;
- (f) in the case of insurance, the Registrar of Insurance; or
- (g) in the case of a person or incorporated entity licensed to conduct securities business under the Securities Act, Cap. 12.18, the Eastern Caribbean Securities Regulatory Commission under the Eastern Caribbean Securities Regulatory Commission Agreement Act, No. 16 of 2022;
- (h) a prescribed person;

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

“relevant Act” —

- (a) means —
 - (i) the Banking Act, Cap. 12.01,
 - (ii) the Building Societies Act, Cap. 12.04,
 - (iii) the Co-operative Societies Act, Cap. 12.06,
 - (iv) the Insurance Act, Cap. 12.08,
 - (v) the International Banks Act, Cap. 12.17,

(vi) the International Business Companies Act, Cap. 12.14,

(vii) the International Mutual Funds Act, Cap. 12.16,

(viii) the Money Services Business Act, Cap. 12.22,

(ix) the Saint Lucia Development Bank Act, Cap. 12.02,

(x) the Securities Act, Cap. 12.18;

(b) includes any other prescribed enactment;

“repurchase agreement” means a financial agreement in which a dealer of securities transfers the eligible securities or an interest 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 Eastern Caribbean Securities Regulatory Commission treats as such under its guidelines,

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

“secondarily liable” means that one person assumes legal responsibility for the liabilities of another person;

“secured creditor” means a person —

(a) who holds —

(i) an interest that is enforceable under the Land Registration Act, Cap. 5.01, Consumer Credit Act, Cap. 13.15, Civil Code of Saint Lucia, Cap. 4.01 or security interest in movable property laws,

(ii) a hypothec, pledge, charge or lien,

on or against the property of a debtor or part of the property as security for a debt due or accruing, due to that person from the debtor; or

- (b) whose claim is based on, or secured by a bill of exchange, promissory note or other negotiable instrument held as collateral security and on which the debtor is secondarily liable;

“securities” has the meaning assigned under the Securities Act, Cap. 12.18;

“security” —

- (a) means a hypothec, pledge, charge or lien; and
- (b) includes an instrument creating or acknowledging indebtedness which is issued by a person;

“security agreement” means —

- (a) an agreement, regardless of whether the parties have described it as a security agreement, between a grantor and a secured creditor that provides for the creation of a security interest;
- (b) an agreement that provides for the transfer of a receivable;

“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 less than adequate valuable 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 person licensed to carry on banking business under the Banking Act, Cap. 12.01;
- (b) a body corporate registered under the Co-operatives Societies Act, Cap. 12.06;

- (c) a building society established under the Building Societies Act, Cap. 12.04; or
 - (d) a company under the Insurance Act, Cap. 12.08 that —
 - (i) carries on insurance business, or
 - (ii) performs services as an insurance broker or insurance agent;
 - (e) a person licensed under the Money Services Business Act, Cap. 12.22;
 - (f) the Saint Lucia Development Bank under the Saint Lucia Development Bank Act, Cap. 12.03;
- “spot agreement” means an arrangement for expected and immediate delivery of a currency or commodity at a stated rate of exchange or price;
- “spouse” has the meaning assigned under the Civil Code of Saint Lucia, Cap. 4.01;
- “Supervisor” means the Supervisor of Bankruptcy and Insolvency appointed under section 6;
- “trust corporation” means a corporation that acts as an executor, administrator or official guardian or a guardian, tutor, curator, judicial adviser or committee of a mentally incompetent person or acts as a trustee for a trust;
- “trustee” —
- (a) means a person to whom a licence is issued under section 22;
 - (b) includes the Government Trustee appointed under section 10;
 - (c) does not include a trustee registered under any other enactment;
- “undischarged bankrupt” means a bankrupt who has not been discharged from bankruptcy;
- “unrelated group” means a group of persons that is not a related group;

“unsecured creditor” means a creditor that is not a secured creditor;

“Virtual asset” —

(a) means a digital representation of value that may be digitally traded, or transferred, and may be used for payment or investment purposes;

(b) does not include digital representation at fiat currency or security.

(2) For the purposes of paragraph (d) of the definition of acts of bankruptcy, if 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, must not be taken into account in calculating the period of thirty days.

(3) In this Act, references to an application for a bankruptcy order are references to an application for a bankruptcy order filed under section 40.

(4) In this Act, persons are related to each other and are related persons or a “related group” if the persons are —

(a) individuals connected by blood relationships, marriage, cohabitation or adoption;

(b) a corporation and a person who controls the corporation, if it is controlled by one person;

(c) a corporation and a person who is a member of a related group that controls the corporation;

(d) a corporation and an individual connected under paragraph (a) to a person under paragraph (b) or (c); or

(e) two corporations —

(i) controlled by the same person or group of persons,

(ii) 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) In this Act —

- (a) if a related group is in a position to control a corporation, it is 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 —
 - (i) in equity or otherwise,
 - (ii) immediately or in the future, and
 - (iii) absolutely or contingently,to acquire shares in a corporation or to control the voting rights in shares of a corporation, shall, except if the contract provides that the right is not exercisable until the death of an individual designated under the contract, be deemed to have the same position in relation to the control of the corporation as if that person owned the shares;
- (c) if a person owns shares in two or more corporations, that person, shall, as a shareholder of one of the corporations, be deemed to be related to himself or herself as shareholder of each of the other corporations;

(d) persons are connected by —

- (i) blood relationship, if one is the child, mother, father, grandmother, grandfather, brother, sister, aunt, uncle or cousin of the other and in accordance with article 560 of the Civil Code, Cap. 4.01,
- (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 is adopted, 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, is deemed to have entered into a reviewable transaction under value.

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

(8) Persons related to each other within the meaning of subsection (2), are deemed not to deal with each other at arm's length while so related.

(9) A reference to a majority of votes in relation to an ordinary resolution is construed as a reference to the votes of a creditor is calculated by counting one vote for each dollar of every claim of the creditor that is not disallowed.

Application and non-application of this Act

3.—(1) This Act applies to a limited partnership in the like manner as if a limited partnership is an ordinary partnership.

(2) Except as provided under sections 275 and 276 this Act applies with modifications as the circumstances require to summary administration.

(3) This Act does not —

- (a) apply to a financial institution, except, under the authority of the Regulator or otherwise with the written consent of that Regulator;

- (b) affect or preclude the powers of a Regulator or the Minister under an enactment and a restriction under an enactment continues to apply;
- (c) does not abrogate or supersede another enactment that is not in conflict with this Act;
- (d) in the case of a trustee, affect the rights and remedies provided under an enactment that is not in conflict with this Act.

Conflict of laws

4. Where a conflict exists between this Act and the Civil Code of Saint Lucia, Cap. 4.01 and any other enactment, this Act prevails.

Act binds the Crown

5. This Act binds the Crown.

**PART I
ADMINISTRATION**

*Division 1
Supervisor of Bankruptcy and Insolvency*

Appointment of Supervisor of Bankruptcy and Insolvency

6. —(1) The Public Service Commission shall appoint a Supervisor of Bankruptcy and Insolvency within the Ministry responsible for finance.

(2) A person appointed under subsection (1) as the Supervisor shall possess —

- (a) a degree in law, finance, accounting or a related field from an accredited university;
- (b) at least five years of experience in bankruptcy law, insolvency management or a related field;
- (c) demonstrated knowledge of the legal and regulatory framework governing insolvency in Saint Lucia; and
- (d) strong leadership and management skills, with experience in overseeing financial or legal institutions.

Functions of the Supervisor

7.—(1) The Supervisor is responsible for administering this Act.

(2) Without limiting the generality of subsection (1), the Supervisor is responsible for —

- (a) receiving an application for a licence;
- (b) issuing a licence to a person whose application for a licence is approved under section 20;
- (c) monitoring compliance with the conditions of a licence;
- (d) supervising the administration of an estate, including an estate administered by the Government Trustee;
- (e) in the case of a trustee, other than the Government Trustee, requiring a security in the prescribed manner under section 311 for —
 - (i) accounting of all property received by a trustee, and
 - (ii) performing his or her duties in the administration of estates to which he or she is appointed at a rate specified by the Minister under section 310;
- (f) receiving and keeping a record of a complaint from a creditor or other person interested in an estate;
- (g) investigating a complaint under paragraph (f);
- (h) maintaining, or causing to be maintained, in the form the Supervisor considers appropriate and for a period of seven years or a longer prescribed period, a public record of —
 - (i) proposals,
 - (ii) bankruptcy orders,
 - (iii) licenses issued to a trustee,
 - (iv) notices sent by receivers to the Supervisor, and
 - (v) approvals by the Supervisor of a discharge of a trustee,
 - (vi) examining a trustee account of receipts disbursements and final statements;

- (i) on the request of a person and on payment of the prescribed fee, providing or causing to be provided the information contained in a public record specified under paragraph (h);
 - (j) recovering as a result of an investigation;
 - (k) carrying out a prescribed function;
 - (l) any other function under this Act.
- (3) Subsection (2)(h) —
- (a) does not apply to a prescribed record or part of a prescribed record;
 - (b) does not affect the requirements under any other enactment for archiving or keeping any other public record.

Powers of the Supervisor

8.—(1) The Supervisor may —

- (a) make an application, to intervene in a matter or proceedings in Court, as if the Supervisor were a party to the matter or proceedings;
- (b) make or cause to be made an inspection or investigation of an estate or other matter to which this Act applies, including, the conduct of a trustee, bankrupt or trustee acting as a receiver or an interim receiver;
- (c) when there is reasonable grounds to believe or suspect that the property or funds of an estate have not been properly disclosed or handled, make an application to the Court without notice for an order, for tracing or discovering the property or funds of an estate —
 - (i) to examine the books, records and a document relating to the bank account of a trustee, in which funds of the estate have been deposited, or another person,
 - (ii) to direct a financial institution that holds a deposit account of a trustee or another person not to make payments out of the bank account until a time the Court directs,

- (iii) to enter and search the premises of the trustee or another person;
 - (d) take appropriate action where the conditions of a licence no longer exist;
 - (e) issue a directive in writing to a trustee, and a person who provides counselling under this Act, with respect to the administration of this Act, including, directives —
 - (i) to require the trustee and the person —
 - (A) to keep records; and
 - (B) to provide the Supervisor with information,
 - (ii) to give effect to a decision of the Supervisor,
 - (iii) facilitate the carrying out of this Act, including, directives relating to the powers, duties and functions of a trustee, interim receiver and receiver,
 - (iv) for the criteria to be applied by the Supervisor in determining whether a licence is to be issued to a person and the qualifications and activities of a trustee;
 - (f) specify a record that must be maintained for the administration of this Act;
 - (g) make an order for a person to be examined and to produce books, records or other documents in the possession of the person or under his or her control relating to the debtor and the conduct, dealings and transactions of the debtor or the disposition of the property of the debtor.
- (2) In conducting an inspection or investigation into an estate under subsection (1)(b), the Supervisor or a person with the written authorization of the Supervisor may —
- (a) have access to books and records,
 - (b) examine and make copies of all books and records,
 - (c) have access to, examine and make a copy of a document relating to the bank account of the trustee in which funds of the estate is deposited into.

(3) In subsection (1)(c)(i), “document relating to a bank account of the trustee” includes a deposit slip, cancelled cheque or other document relating to the bank account of a trustee.

(4) Without prejudice to subsection (1)(e)(iv), the Supervisor or a person with the written authorization of the Supervisor shall issue a directive for the criteria to be applied by the Supervisor in determining whether a licence is to be issued to a person and the qualifications specified in Schedule 1.

(5) A person shall comply with a directive issued under subsection (1)(e) in the manner and within the time specified in the directive.

Division 2
Authorized Officers

Authorized officers

9. The Public Service Commission may appoint persons to be authorized officers to assist the Supervisor in carrying out his or her functions under this Act.

Division 3
Government Trustee

Appointment of Government Trustee

10.—(1) The Public Service Commission shall appoint a fit and proper person within the Ministry responsible for finance to be the Government Trustee.

(2) A person appointed under subsection (1) as the Government Trustee shall possess —

- (a) a degree in law, finance, accounting or a related field from an accredited university;
- (b) at least five years of experience in trustee services, financial management or a related field;
- (c) extensive knowledge of the laws and regulations related to trusteeship and insolvency;
- (d) strong ethical standards and experience in managing fiduciary responsibilities.

Functions of Government Trustee

11. The functions of the Government Trustee are subject to this Act and any other enactment relating to bankruptcy, to administer the estate of a debtor or any other person.

Government trustee to act in absence of trustee

12. In the absence of a trustee who is willing to act, the Court or the Supervisor may appoint the Government Trustee to administer the property of a debtor.

Powers of Government Trustee

13. The Government Trustee has the powers exercisable by a trustee under this Act.

Prescribed fees, commissions and other fees paid to the Government Trustee

14.—(1) The Government Trustee shall be paid by the estate the prescribed fees, commissions and other fees.

(2) The prescribed fees, commissions and other fees payable to the Government Trustee under subsection (1) must be paid into the Consolidated Fund.

Reimbursement of expenses of Government Trustee

15. The Minister may reimburse the Government Trustee from the Consolidated Fund —

- (a) on approval of Cabinet;
- (b) on being satisfied that the Government Trustee has, in the performance of his or her duties —
 - (i) incurred expenses, or
 - (ii) made himself or herself liable to a claim or demand for which there is no Fund from which the Government Trustee may reimburse himself or herself.

PART II
LICENSING OF TRUSTEE

Interpretation: Part II

16. In this Part —

“alien” has the meaning assigned under the Constitution of Saint Lucia, Cap.1.01;

“officer”, in relation to a corporation —

- (a) means a person who is employed or engaged by the corporation in a managerial capacity;
- (b) does not include a person whose functions are similar to the functions of a non-executive director of a company or other corporation;

“ordinarily resident” has the meaning assigned under the Income Tax Act, Cap.15.02.

Restriction on acting as a trustee without a licence

17.—(1) A person shall not act as a trustee or use the title or designation Licensed Insolvency Trustee without a valid licence under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

Application by persons practicing as a trustee, receiver, receiver-manager or liquidator prior to commencement of this Act

18.—(1) Subject to subsection (2), a person who is practicing as a trustee, receiver, receiver-manager or liquidator immediately prior to the commencement of this Act may continue to practice as a trustee, receiver, receiver-manager or liquidator after the commencement of this Act if an application is made under section 19 and in accordance with this Part.

(2) During the period of one year after the commencement of this Act, an action for an offence under section 17 shall not be taken against a person who is practicing as a trustee, receiver, receiver-manager or liquidator immediately prior to the commencement of this Act.

Application for a licence to act as a trustee

19.—(1) Subject to subsection (2), a person may make an application for a licence to act as a trustee to the Supervisor.

(2) A person making an application for a licence to act as a trustee under subsection (1) shall —

- (a) be twenty-one years of age;
- (b) be ordinarily resident in Saint Lucia;
- (c) be of good character;
- (d) not be an alien;
- (e) have the prescribed qualifications.

(3) An application for a licence under subsection (1), must be —

- (a) in the prescribed form; and
- (b) accompanied by —
 - (i) the prescribed application fee,
 - (ii) proof of —
 - (A) being solvent and in good financial standing;
 - (B) being in good standing with his or her professional body;
 - (C) adequate office facilities, staff and systems in place to enable the person to perform the functions of a trustee to a high standard;
 - (D) subject to subsection (4), having a valid insurance policy or a bond with an insurance company approved by the Ministry;
 - (E) not being the subject of a previous disciplinary finding or pending investigation by a professional body, Regulator or similar body;
 - (F) not being the subject of a conviction, decision, sentence or judgment, including, a civil or criminal Court decision.

(4) A valid insurance policy or bond under subsection (3)(b) (ii)(D) must be of an amount specified by the Supervisor, against —

- (a) losses arising out of claims of negligence or breach of duty by the licensee or an employee of the licensee;
- (b) dishonesty of the licensee or an employee of the licensee;
- (c) loss and destruction of documents; and
- (d) any other prescribed risks.

(5) A person who, immediately before the commencement of this Act, was entitled to and was practicing as a trustee, shall, within six months after the commencement of this Act, make an application under this section to the Supervisor for a licence to act as a trustee.

(6) Where an application is made by a person under subsection (5), the person may continue to act as a trustee until the application of that person is determined.

(7) Where an application is not made by a person under subsection (5), the ability of the person to act as a trustee ceases at the end of the period under subsection (5).

Approval of an application for a licence

20. The Supervisor may approve an application for a licence if the person satisfies the requirements under section 19(2).

Refusal of an application for a licence

21. The Supervisor may refuse an application for a licence if the person does not satisfy the requirements under section 19(2).

Issue of a licence

22. Where the Supervisor approves an application for a licence under section 20, the Supervisor shall issue the licence —

- (a) in the prescribed form; and
- (b) on payment of the prescribed licence fee.

Conditions of a licence

23.—(1) The Supervisor may issue a licence under section 22 with or without conditions.

(2) Where a licence is issued with conditions under subsection (1), the conditions must include the prescribed conditions relating to anti-money laundering and financing of terrorism.

Trustee acting outside authority

24.—(1) A trustee shall exercise a power of a trustee other than the power that the trustee is authorized to exercise if the Supervisor has placed a condition or limitation on the licence of the trustee.

(2) A trustee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding seventy-five thousand dollars, or to imprisonment for a term not exceeding eighteen months, or to both.

Payment of annual fee

25. An applicant shall pay on the 31st day of December in each subsequent year after the issue of the licence, the prescribed annual fee.

Validity and invalidity of a licence

26. A licence issued under section 22 remains valid unless —

- (a) the trustee fails to make a payment of the fee under section 25;
- (b) the trustee becomes bankrupt; or
- (c) the licence is suspended or cancelled under section 27.

Suspension or cancellation of a licence

27.—(1) Subject to subsection (4), the Supervisor may suspend or cancel a licence if the trustee —

- (a) is convicted of an indictable offence;
- (b) has failed to comply with a condition of the licence;
- (c) has ceased to carry out the functions of or act as a trustee; or

(d) acts as or exercises any of the powers of the trustee having —

- (i) not provided the security under section 311, or
- (ii) provided the security under section 311 knowing the security is not enforceable by the Supervisor, fails to take steps within a reasonable time to put in place new security.

(2) Where the Supervisor proposes to suspend or cancel a licence under subsection (1), he or she shall give written notice to the trustee.

(3) A notice under subsection (2) must —

- (a) set out the reasons for suspension or cancellation of the licence;
- (b) be given to the trustee at least twenty-one days before the date the suspension or cancellation takes effect.

(4) Where a licence is suspended or cancelled under subsection (1) or ceases to be valid under section 26, the Supervisor may impose requirements on the trustee, including, a requirement that the trustee deposits a security for the protection of an estate.

Trustee acting under invalid licence

28. —(1) A trustee shall not exercise a power or perform a duty of a trustee —

- (a) while the licence of the trustee has ceased to be valid for failure to pay the licence fees;
- (b) after the licence of the trustee is suspended or cancelled under section 27; or
- (c) after having been informed under section 27 of the suspension or cancellation of the licence of the trustee.

(2) A trustee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Reinstatement of a licence as trustee

29. Where a licence has ceased to be valid by reason of —

- (a) failure to make a payment of fees under section 25, the Supervisor may reinstate the licence of the trustee if the trustee —
 - (i) pays the outstanding fees;
 - (ii) pays any prescribed penalty amount; and
 - (iii) provides a reasonable written explanation for the failure to pay the fees under section 25; or
- (b) the trustee becoming bankrupt under section 26(1)(b), the Supervisor may reinstate the licence of the trustee —
 - (i) on the written representation made by the trustee,
 - (ii) subject to conditions that the Supervisor considers appropriate and specifies in that licence.

Trust corporation

30. In the case of a corporation, where a majority of its directors or officers hold licenses to act as a trustee, the corporation may act as trustee.

Corporate trustee not a trust corporation

31. A corporation that is incorporated by or under an enactment and holds a licence to act 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 corporation.

Exercise of duties and powers as corporate trustee

32. A corporation that holds a licence to act as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the corporation who holds a licence to act as a trustee.

Disqualification as a trustee

33. A trustee shall not engage the services of another trustee whose trustee licence is cancelled under section 27(1) or section 354(2) (a).

PART III
ASSIGNMENT AND BANKRUPTCY ORDER

Division 1
Assignment

Application: Division 1

34. This Part applies to the voluntary bankruptcy of an insolvent person, by way of assignment.

Application for an assignment

35.—(1) An insolvent person or, if the insolvent person is deceased, his or her executor or administrator, may make an application, in the prescribed form and manner, to the Supervisor for the assignment of the property of the insolvent person for the benefit of a creditor of an insolvent person.

(2) An insolvent person that is a corporation may make an application for an assignment under subsection (1), if —

- (a) the directors of the corporation have passed a resolution to that effect; or
- (b) the corporation is wound up in accordance with —
 - (i) the constitution of the corporation,
 - (ii) the Companies Act, Cap. 13.01, or
 - (iii) another applicable law.

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

- (a) the property of the insolvent person available for distribution among his or her creditors;
- (b) the name and address of the creditors of the insolvent person;
- (c) the amount of each claim; and
- (d) the nature of each claim, whether secured, preferred or unsecured.

(4) Where a trustee is not named in the application 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 who is willing to act and identified by the Supervisor who has consented to act; or
- (b) if the Supervisor is unable to find a trustee who is willing to consent to act, and act in accordance with, prescribed criteria —
 - (i) appoint the Government Trustee to act; or
 - (ii) refuse the application, and

the creditors may, notwithstanding section 308, by ordinary resolution at any time appoint another trustee instead of a trustee identified.

(5) A notice of an application made under subsection (1), shall, in the case of a corporation, be sent to —

- (a) the Registrar of Companies;
- (b) the Regulator; and
- (c) another person as the Minister may, by Order published in the *Gazette*, prescribe.

(6) Where within the fourteen-day period under subsection (4), the insolvent person notifies the Supervisor of a trustee who is willing to act, that name of the trustee is deemed to be inserted in the application.

Approval of application for an assignment

36. Subject to section 38(1), if the Supervisor approves an application made under section 35(1), the Supervisor shall appoint the trustee named in the application as the trustee of the estate, and the creditors may, notwithstanding section 308, by ordinary resolution at any time appoint another trustee instead of the trustee named in the application.

Refusal of application for an assignment

37.—(1) The Supervisor may refuse an application made under section 35, if the application is not in compliance with the procedure set out under section 35.

(2) Where the Supervisor refuses an application under subsection (1), the Supervisor shall give written reasons for the refusal.

Certificate of Assignment

38.—(1) The Supervisor shall, on approving the application made under section 35, issue a Certificate of Assignment in the prescribed form.

(2) Within five days after the date the Certificate of Assignment is issued, the trustee shall send a notice of the meeting of creditors in the manner specified under Part VI.

(3) On the issue of a certificate of assignment, a debtor becomes a bankrupt and a trustee is appointed to administer the estate of the bankrupt.

Assignment of property void

39. An assignment of property made by an insolvent person for the benefit of his or her creditors, other than an assignment under this Act, is void.

Division 2 *Bankruptcy Order*

Application for bankruptcy order

40.—(1) An applicant may file in Court, an application for a bankruptcy order against a debtor.

(2) An application filed under subsection (1), must specify —

- (a) the debt owing to the applicant, which must amount in the aggregate to not less than the prescribed threshold;
- (b) that the debtor has committed an act of bankruptcy within six months immediately preceding the filing of the application;
- (c) if the applicant is a secured creditor —
 - (i) the nature of the security held by the applicant, and
 - (ii) that the applicant is willing to give up his or her security for the benefit of the creditors, in the event of a bankruptcy order being made against the debtor, or

- (iii) an estimate of the value of his or her security and whether the applicant intends to claim for the balance, if any.

(3) Where the applicant under subsection (2)(c) —

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

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

(5) Where an applicant cannot himself or herself attest to all the statements contained in his or her application, he or she shall file in support of the application an affidavit of some person who can attest to the statements contained in the application.

(6) Where the statements contained in an application are verified under subsection (5) —

- (a) in Saint Lucia, the witness must be a Notary Royal or Justice of the Peace;
- (b) outside Saint Lucia, the witness must be a Consul, Consular Officer, Notary Public or the Commissioner of Oaths.

(7) Where an application made under this section is 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, in addition to stating in the application the description of the debtor and of his or her 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 or she was residing; or

(b) carrying on business where the debt or liability was incurred.

(8) An application for a bankruptcy order under subsection (1) must not be withdrawn without leave of the Court.

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

Security for costs to the debtor

41. An applicant may, on an application for a bankruptcy order, be ordered by the Court to give security for costs to the debtor if —

(a) the applicant resides outside Saint Lucia;

(b) the estate of the applicant is vested in a trustee or an assignee under a law relating to bankruptcy;

(c) an application under this section is pending against the applicant; or

(d) the applicant has made default in payment of any costs ordered by a Court to be paid by him or her to the debtor.

Consolidation of Court proceedings

42.—(1) Where two or more applications for bankruptcy orders are filed against the same debtors, the Court may consolidate the proceedings on such terms as the Court considers just.

(2) Where an application for a bankruptcy order is made against one member of a partnership and any other application for a bankruptcy order is filed against another member of the same partnership, the Court may give directions for consolidating the proceedings under the applications.

Considering an application

43.—(1) The Court requires proof of the facts alleged in an application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

(2) The Court shall dismiss an application if 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 or she is able to pay his or her debts; or
- (c) is satisfied, for other sufficient cause, that a bankruptcy order ought not to be made.

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

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

(5) Notwithstanding subsection (2), the Court may, on terms and subject to conditions as the Court thinks just, make an order —

- (a) to stay the proceedings altogether; or
- (b) to stay the proceedings for a specified time.

(6) Where a debtor denies the truth of the facts alleged in an application for a bankruptcy order, the Court may stay the proceedings on the application —

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

(7) An applicant who is resides outside Saint Lucia may be ordered by the Court to give security for costs to the debtor, and the Court may stay the proceedings under the application until the security for costs is provided.

(8) Where proceedings on an application for a bankruptcy 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 the applicant, of another creditor who meets the prescribed threshold and to whom the debtor is indebted;
- (b) make a bankruptcy order on the application of the substituted or another creditor; or
- (c) dismiss the application on the terms that it considers to be just.

(9) On the making of a bankruptcy order, a debtor becomes a bankrupt and the Court shall, by the prescribed notice of appointment, appoint a trustee to administer the estate of the bankrupt.

Death of debtor against whom application filed

44. Where a debtor against whom an application for a bankruptcy order is filed dies, unless the Court otherwise directs, the proceedings before the Court are not terminated by reason of his or her death.

Application for bankruptcy order against estate of deceased

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

(2) Where an application for a bankruptcy order is served on the executor or administrator of the estate of a deceased debtor, the executor or administrator shall not make payment of monies or transfer any property of the deceased debtor, until the application is disposed of, except as required for payment of reasonable funeral and testamentary expenses.

(3) The executor or administrator is personally liable to restore to the estate in the amount of losses incurred due to payment of monies or transfer of property under subsection (2).

(4) This section does not invalidate —

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

by the executor or administrator, before the service of an application under subsection (2).

Costs of applicant for bankruptcy order payable against estate of deceased

46.—(1) Where the Court grants a bankruptcy order, the legal costs of the applicant are taxed and payable out of the estate, unless the Court otherwise orders.

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

*Division 3**Stay of proceedings on bankruptcy***Stay of proceedings on bankruptcy**

47.—(1) Subject to subsections (2) and (3) and section 390, on the bankruptcy of a debtor, until the trustee is discharged, a creditor shall not —

- (a) have any remedy against the bankrupt or the property of the bankrupt; or
- (b) commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

(2) Notwithstanding this Act, unless the Court otherwise orders, the bankruptcy of a debtor does not prevent a secured creditor from realizing or dealing with the secured creditor's security.

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

- (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 after the date of bankruptcy, that right must 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 must not be postponed for more than six months from that date —
 - (i) unless installments of interest that are more than six months in arrears are paid and the other defaults of more than six months standing are cured, and

- (ii) if no installment of interest remains in arrears or defaults remain uncured for more than six months, and, 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) An order shall not be made under this section, if the order prevents a secured creditor from realizing or dealing with a financial collateral.

Division 4
Assignment and Bankruptcy Order

Registration of assignment and bankruptcy order

48.—(1) A copy of —

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

must be registered by or on behalf of the trustee against the bankrupt in respect of the whole or a part of movable property or immovable property that the bankrupt owns or in which he or she has an interest or estate in the appropriate registry in accordance with the laws relating to the registration of property.

(2) Where a bankrupt is the registered owner of immovable property, charge or another property, the trustee, named in a bankruptcy order or assignment under subsection (1), may, subject to the rights of secured creditors, be registered as owner of the immovable property, charge or another property, free of encumbrances or charges under section 51(1).

(3) The trustee shall file within fifteen days with the Registrar of Lands the notice of his or her appointment.

(4) Where a bankrupt owns immovable property or holds a charge registered under an enactment, or has or is believed to have an interest or estate in that immovable property or charge, and for any reason a copy of the bankruptcy order or assignment has not been registered under subsection (1), a caution may be filed under the Land Registration Act, Cap. 5:01 by the trustee.

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

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

that order, assignment or document must be registered by the person in accordance with the ordinary procedure for registering documents relating to immovable property.

(6) The following instruments are exempt from stamp duty and transfer tax —

- (a) a deed, a conveyance, an assignment, surrender or other assurance relating solely to leasehold or to a hypothec, charge, or another encumbrance on, or an estate, right, or interest in, a movable or an immovable property which is part of the estate of the bankrupt and which after the execution of the deed, conveyance, assignment, surrender or another assurance, either at law or in equity, is or remains the estate of the bankrupt or the trustee; and
- (b) a 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 proceedings under this Act.

Priorities and conveyances of property

49.—(1) An imperfect security interest as of the date of bankruptcy will be treated as an unsecured debt.

(2) A security interest perfected prior to the date of bankruptcy will be treated as a perfected secured claim.

(3) Subject to the rights of a secured creditor, in a conveyance of immovable property purchased from the trustee, it is not necessary to join as a party with the trustee a person holding a hypothec or interest in a hypothec, lease or in whom another legal or equitable interest or security in that property is vested.

(4) Subject to the rights of a secured creditor, the conveyance under subsection (3), when executed by the trustee vests in the purchaser the immovable property purported to be conveyed as if the person having an interest or security, whether the interest or security is in the purchase money or not —

- (a) had been made a party to and executed the conveyance; and
- (b) granted, transferred, surrendered or released the interest or security in the immovable property.

(5) Notwithstanding subsections (3) and (4), on the application of a trustee or a secured creditor, the Court may make an order permitting the vesting, conveyance and sale of property, including movable and immovable property, free and clear of all encumbrances, with the proceeds of sale of such property to stand in lieu of the secured property sold.

Transactions valid unless prior registration

50. Notwithstanding this Act, a Deed, conveyance, transfer, agreement for sale, hypothec or charge —

- (a) made to or in favour of a *bona fide* purchaser or chargee for adequate valuable consideration; and
- (b) covering the immovable property affected by a bankruptcy order or an assignment under this Act,

is valid and effectual as if a bankruptcy order or assignment had not been made under this Act, unless the bankruptcy order, assignment, notice or caution, is registered in accordance with the laws relating to registration, against the property prior to the registration of the Deed, conveyance, transfer, agreement for sale, hypothec or charge.

Precedence of assignment or bankruptcy order

51.—(1) An assignment or a bankruptcy order made under this Act, takes precedence over a judicial process, including, attachment, garnishment, judgment, execution or other process against the property of a bankrupt, except —

- (a) a process that is completely executed by payment to the creditor or his or her agent; and

(b) the rights of a secured creditor.

(2) An execution under subsection (1) levied by seizure and sale of the property of a bankrupt is not invalid by reason 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.

Vesting of property of bankrupt in trustee on assignment of bankruptcy order

52.—(1) On a bankruptcy order being made by the Court or a Certificate of Assignment being issued by the Supervisor, a bankrupt ceases to have the capacity to dispose of or deal with his or her 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 bankruptcy order or assignment; and
- (b) in any case of change of trustee, the property, shall pass from trustee to trustee without a conveyance, assignment or transfer.

(2) Subject to section 329, a trustee under subsection (1)(a) or (b) may exercise the right to transfer the property of a bankrupt to the same extent as the bankrupt exercises that right if he or she had not become bankrupt.

(3) For the purposes of subsection (2), the property of a bankrupt

(a) comprises —

- (i) 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
- (ii) the powers in or over or in respect of the property as might have been exercised by the bankrupt for the benefit of the bankrupt;

(b) that is divisible among his or her creditors, does not comprise —

- (i) property held by the bankrupt in trust for another person, or

- (ii) property that, as against the bankrupt, is prescribed to be exempt from execution or seizure, and
- (iii) properties which are subject of a repurchase agreement if the bankrupt is a broker dealer licensed under the Securities Act, Cap. 12.18.

Delivery of seized property to trustee if assignment or bankruptcy order made

53.—(1) Where a Certificate of Assignment is issued by the Supervisor or a bankruptcy order is made by the Court, the Bailiff or another person having seized property of the bankrupt under attachment, garnishment, judgment, execution or other process shall, on receiving a copy of the Certificate of Assignment or the bankruptcy order, immediately deliver to the trustee the property of the bankrupt.

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

(3) The property of a bankrupt under seizure for rent or taxes shall, on production of a copy of the bankruptcy order or the Certificate of Assignment, be delivered immediately to the trustee, and the costs of distress are a first charge on the property, and, if the property or a part of the property is sold, the money realized from the sale less the costs of distress and sale must be paid to the trustee.

Surrender of lease or dealing with leasehold interests by trustee

54.—(1) Where a Certificate of Assignment is issued by the Supervisor or a bankruptcy order is made by the Court, and a 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.

(2) The tenancy of the leased premises under subsection (1) terminates on the trustee disclaiming the lease, but nothing prevents the trustee from transferring or disposing of a lease, leasehold property, or any interest of the lessee for the unexpired term as could have been done by the lessee had the bankruptcy not occurred.

(3) Where the lease under subsection (1) contains a covenant, condition or agreement that the lessee may not assign or sublet the premises without the leave or consent of the lessor or other person, the covenant, condition or agreement is 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 lessor, 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 for the purposes of the administration by the trustee, shall not —

- (a) be evidence of an intention on the part of the trustee to elect to retain the premises; or
- (b) affect the trustee's right to disclaim the lease.

(5) Where a 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 lessor may prove as an unsecured creditor for —

- (a) the rent that has accrued and become due at the date of bankruptcy; and
- (b) the accelerated rent, not exceeding three months that may be claimed under the lease.

(7) Except as referred to under subsection (6), the lessor may not prove as a creditor for rent for a portion of the unexpired term of the lease, but the trustee must pay to the lessor 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 a payment already made to the lessor as rent in advance in respect of that period, and a payment to be made to the lessor in respect of accelerated rent, must be credited against the amount payable by the trustee for that period.

(8) This section does not make the trustee personally liable beyond the assets of the debtor in possession of the trustee.

Annulment of bankruptcy by Court

55.—(1) Where in the opinion of the Court a bankruptcy order ought not to have been made or an assignment ought not to have been filed, the Court may by order annul the bankruptcy.

(2) Where an order is made under subsection (1), a sale, disposition of property, payment made and an act performed previously by the trustee or another person acting under his or her authority or by the Court, is valid and the property of the bankrupt vests in the person the Court may appoint or, in default of that appointment, without a conveyance or an assignment revert to and revest in the debtor for his or her estate and interest in the property on the terms and subject to the conditions, the Court orders.

**PART IV
PROPOSAL****Application of Part IV**

56.—(1) This Part applies to a person under section 58.

(2) This Part applies together with, and not in substitution for, sections 101, 102, 103, 236 and 237 of the Companies Act, Cap. 13.01.

(3) An arrangement between a corporation and its creditors of any class must be effected under this Part.

(4) This Part does not preclude the application of another provision of this Act, with modifications as the circumstances may require, to a proposal made under this Part.

Treatment of person facing imminent insolvency

57. For the purposes of this Part and subject to section 62 a person facing imminent insolvency must be treated in a similar manner as an insolvent person.

*Division 1
Making a Proposal***Making a proposal and restriction on making the proposal**

58.—(1) Subject to subsection (3), a proposal under this Part may be made by —

- (a) an insolvent person;
- (b) a receiver or liquidator, in relation to an insolvent person;
- (c) a bankrupt; and
- (d) a trustee of the estate of a bankrupt.

(2) A proposal made in respect of a corporation may include in its terms provision for the compromise of a claim against a director of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation if the director is liable in his or her capacity as a director for the payment of the obligations.

(3) A proposal may not be made under this Part with respect to a debtor in relation to whom a consumer proposal has been filed under Division 6 until the administrator under the consumer proposal has been discharged.

Proposal to creditors

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

- (a) the creditors —
 - (i) as a group, or
 - (ii) separated into classes as provided in the proposal; or
- (b) secured creditors in respect of a class of secured claims.

(2) The creditors having equity claims shall be in a single class in relation to the equity claims.

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

(4) 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 if the interests of the creditors holding the secured 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 or rank of the security in respect of the claims;
- (c) the remedies available to the creditors in the absence of the proposal, and the extent to which the creditors would recover their claims by exercising those remedies;
- (d) the treatment of the claims under the proposal, and the extent to which the claims would be paid under the proposal; and
- (e) other prescribed criteria, consistent with paragraphs (a) to (d).

(5) A proposal made in respect of a bankrupt shall be approved by the inspectors before further action is taken with respect to that proposal.

Compromise of claims against a director

60.—(1) A provision for the compromise of a claim against a director may not include a claim that —

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

(2) The Court may declare, on an application by the insolvent person, the trustee or a creditor, that a claim against a director must not be compromised if it is satisfied that the compromise would not be just and equitable in the circumstances.

Filing of cash flow statement by trustee

61.—(1) A trustee shall, when filing the proposal with the Supervisor submit with the proposal being filed —

- (a) a cash flow statement in the prescribed form that is —
 - (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 prescribed form, prepared and signed by the trustee; and
- (c) a report —
 - (i) in the prescribed form 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) Where the trustee acts in good faith and takes reasonable care in reviewing the cash flow statement filed under this section, the trustee is not liable for loss or damage to a person, resulting from the reliance of that person on the cash flow statement.

Division 2

Notice of Intention to make a Proposal by an Insolvent Person

Filing of notice of intention to make a proposal by an insolvent person

62.—(1) Before filing a copy of a proposal, an insolvent person may, in the prescribed form and manner, file a notice of intention with the Supervisor.

(2) In the case where the insolvent person is a corporation, a notice of intention shall be given to the Registrar of Companies.

(3) A notice of intention under subsections (1) and (2) must specify —

- (a) the intention of the insolvent person to make a proposal within thirty days after filing the notice of intention;
- (b) the name and address of the trustee who has given written consent to act as the trustee under the proposal; and
- (c) the names of the creditors with claims amounting to no less than the prescribed threshold and the amounts of their claims as known or shown by the books of the debtor.

(4) Where an insolvent person who is an individual files a notice of intention with the Supervisor under subsection (1), together with a medical certificate or files a medical certificate no later than five days after filing the notice of intention —

- (a) the requirement under section 68(1) must be extended to be within one hundred and ninety-four days;
- (b) the requirement to file a proposal under section 71(1) within thirty days must be extended to one hundred and eighty days;
- (c) the thirty day period granted under section 71(2) must be extended to one hundred and eighty days;
- (d) the court shall not grant a termination under section 73 until the passing of one hundred and eighty days from the filing of the medical certificate but this does not prevent the court from making a determination in relation to the medical certificate.

(5) in this section —

“medical certificate” means a certificate in the prescribed form confirming that an insolvent person is diagnosed with a prescribed medical condition and executed by a medical practitioner;

“medical practitioner” has the meaning assigned under the Health Practitioner’s Act, Cap.11.06.

Agreements not to be terminated or altered, if notice of intention or proposal filed

63.—(1) Where a notice of intention or a proposal is filed under section 62 in respect of a debtor, a person may not terminate or amend an agreement with the debtor, or claim an accelerated payment under an agreement with the debtor by reason that —

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

(2) Where an agreement under subsection (1) is a lease or a licensing agreement, subsection (1) must be read as including the following —

“the debtor has not paid rent or royalties or other payments of a similar nature, in respect of a period preceding the filing of —

(a) the notice of intention, if one is filed; or

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

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

(a) for the circumstances under subsection (1)(a) and (b) exists; or

(b) the debtor has not paid for services rendered, or material provided, before the filing of the proposal.

(4) Subsections (1) to (3), are not construed as —

(a) prohibiting a person from requiring immediate payment for a good, service, use of leased or licensed property or other valuable consideration provided after —

(i) the notice of intention, if filed, or

(ii) the proposal, if a notice of intention is not filed; or

(b) requiring the further advance of money or credit.

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

(6) The Court may, on application by a party to an agreement or by a public utility, declare that subsections (1), (2) and (3), do not apply or apply only to the extent declared by the Court if the applicant satisfies the Court that, the operation of subsections (1), (2) or (3) would likely cause the applicant significant financial hardship.

(7) Subsections (1) and (5) do not apply —

(a) in respect of an eligible financial contract; or

- (b) to prevent a clearing agent or group clearer from ceasing to act as such for a debtor.

(8) Where an eligible financial contract entered into before the earliest of —

- (a) the filing of a notice of intention;
- (b) the filing of a proposal; or
- (c) a certificate of assignment is issued or a deemed assignment has arisen,

is terminated on or after that filing, the setting off of the obligations between the debtor and another party to the eligible financial contract in accordance with its provisions, is 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 is deemed, for the purposes of sections 74 and 79 to be a creditor of the debtor with a claim provable in bankruptcy in respect of the net termination values.

Trustee to have access to property of debtor

64.—(1) A trustee shall have access under section 344, 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.

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

- (a) with the Supervisor, immediately after ascertaining a material adverse change in the debtor's projected cash flow statement or financial circumstances of the debtor; and
- (b) with the Court, at times as the Court may order.

(3) Where a trustee is replaced by an interim receiver the interim receiver shall deliver a report to the trustee containing 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 under section 80.

Sale or disposition of property

65.—(1) A debtor in respect of whom a notice of intention or a proposal is filed under section 62 may not sell or dispose of property outside the ordinary course of business unless authorized to do so by the Court.

(2) In the case of an individual who is carrying on a business, the Court may authorize the sale or disposition of the property only if the property is acquired for or used in relation to the business.

(3) An insolvent person, trustee or receiver who applies to the Court for an authorization shall give written notice of the application to a secured creditor who is likely to be affected by the proposed sale or disposition of the property.

(4) In deciding whether to grant the authorization, the Court shall consider —

- (a) whether the process leading to the proposed sale or disposition of the property was reasonable in the circumstances;
- (b) whether the trustee approves the process leading to the proposed sale or disposition of the property;
- (c) whether the trustee filed with the Court a report stating that the sale or disposition of the property is more beneficial to the creditors than a sale or disposition of the property under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition of the property on a creditor and any other interested party; and
- (f) whether the consideration to be received for the property is reasonable and fair, taking into account the market value.

(5) Where the proposed sale or disposition of the property is to a person who is related to the insolvent person, the Court may, after considering the factors under subsection (4), grant the authorization only if it is satisfied that —

- (a) good faith efforts were made to sell or otherwise dispose of the property to a person who is not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(6) In subsection (5), a person who is related to the insolvent person includes —

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

(7) The Court may authorize a sale or disposition of the property free and clear of a security, charge or other restriction and, if it does, it shall order that other property of the insolvent person or the proceeds of the sale or disposition of the property be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(8) The Court may grant the authorization if the Court is satisfied that the insolvent person is able to make the payments required under section 96 if the Court had approved the proposal.

Determination by the Court

66.—(1) The Court may, on application made by an 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 a particular secured or unsecured claim falls.

(2) A person who is adversely affected by a determination under subsection (1) may appeal under section 387, on the grounds that the determination is oppressive or unfairly prejudicial.

Requirement for trustee to send creditors a copy of notice of intention filed

67. Within five days after the filing of a notice of intention under section 62, the trustee identified in the notice shall send to a known creditor, in the prescribed manner, a copy of the notice of intention filed.

Exemption from requirement to send creditors a copy of notice of intention filed

68.—(1) A trustee or an insolvent person may make an application in the prescribed form to the Supervisor for an exemption from the requirement under section 67.

(2) The Supervisor may, after considering the prescribed criteria, exempt a trustee or an insolvent person.

Filing of cash flow statement, report, and other documents for notice of intention

69.—(1) Within fourteen days after a notice of intention is filed under section 62 by the insolvent person, that person shall file with the Supervisor —

- (a) a cash flow statement in the prescribed form that is —
 - (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 prescribed form, 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 prescribed form, prepared and signed by the debtor.

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

(3) On request of a creditor, the trustee shall provide to the creditor a copy of the documents filed under subsection (1).

(4) A trustee is not liable for loss or damages to a person resulting from that person's reliance on the cash flow statement filed under this section.

Trustee to deliver notice of filing proposal in respect of a debtor corporation with Registrar of Companies

70. Where a proposal is made in relation to a debtor that is a corporation, a trustee shall immediately after receiving for filing a copy of the proposal under section 76, deliver a notice of the filing in the prescribed form, to the Registrar of Companies.

Extension of time by Supervisor

71.—(1) Where a notice of intention under section 62 is filed, an insolvent person shall file a proposal in the prescribed form within thirty days after the notice of intention was filed or within an extension of that period granted under subsection (2).

(2) An insolvent person may, before the expiration of the thirty day period under subsection (1), or an extension of that period granted under this section, make an application, in the prescribed form and manner, to the Supervisor or the Court for a further extension of that period.

(3) An extension granted under subsection (2) must not exceed —

- (a) forty-five days for each extension; and
- (b) in the aggregate, five months,

after the expiration of the thirty day period under subsection (1).

(4) The Supervisor or the Court may grant an extension under subsection (2) if satisfied that —

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person is likely to be able to make a viable proposal if the extension requested is granted; and
- (c) a creditor is not materially prejudiced if the extension requested is granted.

Assignment if proposal or cash flow statement not filed within prescribed time

72.—(1) An insolvent person is deemed to have made an application for an assignment under Part III, on the expiration of the period specified under section 71 if the insolvent person has failed to file —

(a) a proposal within the period specified under section 71;
or

(b) a cash flow statement under section 69(1).

(2) A trustee identified in the notice of intention shall —

(a) immediately file a report in the prescribed form with the Supervisor, and the Supervisor shall issue a certificate of assignment in the prescribed form, and the assignment takes effect as if it was filed;

(b) within five days after the day the certificate of assignment under section 38(1) is issued under paragraph (a), send written notice of the meeting of creditors, which must be held within twenty-one days from the day of the notice.

(3) Notwithstanding section 307, the creditors may by ordinary resolution affirm the appointment of the trustee identified in the notice of intention under section 62 or appoint another trustee instead of the trustee identified in the notice of intention.

Court to declare termination before expiration period of a notice of intention

73. The Court may, on application by a trustee, an interim receiver, if appointed under section 364, or a creditor, declare terminated, before its expiration date, the period under section 71(1), (2) and (3), 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) it is not likely for the proposal will be accepted by the creditors before the expiration of the period in question;

(c) the proposal is not likely to make a proposal, before the expiration date, to be accepted by the creditors; or

(d) the body of creditors, generally, may be materially prejudiced if the application under this section is rejected.

Stay of proceedings on filing of notice of intention

74.—(1) Subject to subsections (2) to (4) and section 390, if a notice of intention is filed under section 62 in respect of an insolvent person, until a proposal is filed or the insolvent person becomes bankrupt —

- (a) a creditor shall not —
 - (i) have any remedy against the insolvent person or the property of the insolvent person,
 - (ii) commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy; and
- (b) a provision of a security agreement between the insolvent person and a secured creditor shall not have any force or effect that provides, in substance, that the insolvent person ceases to have the right to use or deal with property secured under the agreement as the insolvent person would otherwise have on —
 - (i) the insolvency of the insolvent person,
 - (ii) his or her default of an obligation under the security agreement, or
 - (iii) the filing by the insolvent person of a notice of intention under section 62 in respect of the insolvent person.

(2) Subsection (1) does not —

- (a) prevent a secured creditor who has taken possession of a secured property of the insolvent person for the purpose of realization before the notice of intention, from dealing with the properties;
- (b) apply unless the secured creditor otherwise agrees to prevent a secured creditor who gave notice of intention to enforce a security under section 369, in the prescribed form, 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) prevent a secured creditor who has given notice of intention under section 369 to enforce that creditor's security, from enforcing the security, if the insolvent person has, consented to the enforcement of the security, under section 369(2).

Trustee to participate in preparation of proposal

75. A trustee identified in a notice of intention may advise on and participate in the preparation of the proposal and negotiations in relation to the proposal.

Commencement of proceedings for proposal

76.—(1) The proceedings for a proposal is commenced by —

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

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

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

- (a) a bankrupt, the statement of affairs under section 277(e);
or
- (b) not a bankrupt, a statement in the prescribed form with the financial position of the person at the date of the proposal,

must be verified by a statutory declaration as being correct to the belief and knowledge of the person making the proposal.

(3) The statements under subsection (2) must be filed with the proposal.

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

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

(5) A proposal, security, guarantee or suretyship tendered with the proposal may not be withdrawn pending the decision of the creditors and the Court.

Appraisal and investigation by trustee

77.—(1) A trustee with whom a proposal is filed under section 76, 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 financial difficulties of the debtor or insolvency, and the trustee shall report the result of the appraisal and investigation in the prescribed form 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 counselling.

Stay of proceedings in relation to director

78.—(1) Where a notice of intention under section 62 is filed or a proposal is made by an insolvent corporation, a person may not commence or continue an action against a director of the corporation on a claim against a director that arose before the filing of a notice of intention under section 62 or the filing of a proposal.

(2) Subsection (1) applies to obligations of the corporation if a director is under any law liable in his or her capacity as a director for the payment of such obligations, until the proposal, if one is filed, is approved by the Court or the corporation becomes bankrupt.

(3) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the corporation's obligations or an action seeking injunctive relief against a director in relation to the corporation.

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

Division 3
Stay of Proceedings on Filing Proposal

Stay of proceedings on filing proposal

79.—(1) Subject to subsections (2), (3) and (4) and section 390, if a proposal is filed in respect of a debtor, until the trustee is discharged or the debtor becomes bankrupt —

- (a) a creditor to whom the proposal is made shall not —
 - (i) have a remedy against the debtor or the property of the debtor,
 - (ii) commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy; and
- (b) a provision of a security agreement between a debtor and the secured creditor to whom the proposal is made shall not have any force or effect that provides, in substance, that the debtor ceases to have a right to use or deal with property secured under the agreement as the debtor would otherwise have on —
 - (i) the insolvency of the debtor,
 - (ii) the default by the debtor of an obligation under the security agreement, or
 - (iii) the filing by the debtor of a proposal.

(2) Subsection (1) does not —

- (a) prevent a secured creditor who has taken possession of a secured property of the debtor for the purpose of realization before the proposal is filed under section 76 from dealing with the properties;
- (b) apply unless the secured creditor otherwise agrees to prevent a secured creditor who gave notice of intention under section 369 to enforce security, from enforcing that creditor's security against the debtor more than ten days before —
 - (i) a notice of intention was filed in respect of the debtor,
 - or

- (ii) a proposal was filed, if no notice of intention to enforce a security was filed from enforcing that security; or
- (c) prevent a secured creditor who has given notice of intention under section 369 from enforcing that creditor's security if the debtor has under section 369(2), consented to the enforcement of the security.

(3) Notwithstanding this section and subject to sections 120, 248, 259 and 376, the filing of a proposal under section 76, does 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.

(4) Notwithstanding this section, if 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 who holds a secured claim of that class may realize or deal with his or her security.

Division 4
Meeting on Proposal

Calling of meeting of creditors by trustee

80.—(1) A trustee shall convene a meeting of creditors, to consider a proposal filed under section 76 in the manner provided under subsection (2), no later than twenty-one days after the filing of the proposal.

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

- (a) a notice of the date, time and place of the meeting;
- (b) a statement summarizing the assets and liabilities in the prescribed form;
- (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 and records of the debtor;
- (d) a copy of the proposal filed under section 76;
- (e) the following prescribed forms —
 - (i) proof of claim, and

- (ii) proxy, if not already sent, and
- (iii) in the case of a secured creditor to whom the proposal was made, proof of secured claim;
- (f) a report on the state of the business and financial affairs of the debtor, including, his or her indication on whether creditors will receive as much under the proposal as they would have received in liquidation and any prescribed information; and
- (g) a voting letter in the prescribed form.

Chairing of meeting of creditors by trustee or nominee

81. Subject to section 214, a trustee and in his or her absence his or her nominee, is the chairperson of the meeting of creditors and shall decide a question or dispute arising at the meeting and a creditor may appeal the decision of the trustee or his or her nominee to the Court.

Filing of proof of claim

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

(2) Subject to section 90, a creditor to whom a proposal is made may respond to the proposal made under section 76 by filing with the trustee a proof of claim for secured and unsecured creditors, in accordance with the procedure set out under sections 243 to 245.

Terms of supervision in proposal

83. At a meeting to consider a proposal, the creditors, with the consent of the debtor, may include provisions or terms in the proposal with respect to —

- (a) the supervision of the affairs of the debtor; or
- (b) any other aspect of the proposal, as the creditors consider advisable; and

the creditors may accept or refuse a proposal in its original or amended form.

Ordinary resolution for determination of questions relating to proposal

84. A question relating to a proposal filed under section 76, 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.

Resolution of creditors to accept or refuse proposal

85.—(1) The creditors may resolve to accept or refuse the proposal filed under section 76, in its original or amended form.

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

- (a) the following classes of creditors with proven claims are entitled to vote —
 - (i) 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) unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claims, and
 - (ii) the classes of secured claims must be determined as provided under section 59; and
- (c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purposes of section 98.

(3) Notwithstanding subsection (2)(a) and (b), 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 a meeting unless the Supervisor determines otherwise.

(4) A creditor who is a related person of the debtor may vote against the proposal but that 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 or her are not taken into account.

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

(6) A proposal is deemed to be accepted by the creditors if —

- (a) a majority 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, are deemed to have voted for the refusal of the proposal.

(8) For the purposes of voting on a question relating to a proposal in respect of an employer, a person has no claim for an amount under Part A (b)(i), (iii) or (iv) of Schedule 2.

Adjournment of meeting

86. The creditors at the meeting at which a proposal is being considered, may by ordinary resolution adjourn the meeting to a time and place fixed by the Chairperson.

Release of cash flow statement by Supervisor

87.—(1) Subject to subsection (2), a creditor may obtain a copy of the cash flow statement filed under section 61 or 69 if a request is made in writing by a creditor to the trustee.

(2) Where a trustee fails to provide the cash flow statement requested, 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 if —

- (a) the release of the cash flow statement will not prejudice the person who made the proposal under section 76; and
- (b) releasing the cash flow statement does not prejudice the body of creditors, generally.

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

Determination of claim if proposal made with respect to insolvent person

88. Where a proposal is made in respect of an insolvent person or person facing imminent insolvency, the time with respect to which the claim of a creditor is determined, is the time of the filing of —

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

Determination of claim if proposal made with respect to bankrupt

89. Where a proposal is made in respect of a bankrupt, the time with respect to which the claims of creditors is determined, is the date of bankruptcy.

Filing of proof of secured claim by secured creditor in response to proposal

90.—(1) Subject to subsections (3), (4) and (5), a secured creditor to whom a proposal is made in respect of a particular secured claim may respond to the proposal, by filing with the trustee a proof of secured claim in the prescribed form, at or before the meeting of creditors.

(2) A secured creditor who files a proof of secured claim under subsection (1), may, subject to this Act, vote on all questions relating to the proposal in respect of that claim, and sections 242 to 245, apply in so far as they are applicable with 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 prescribed form; and
- (b) vote as a secured creditor on 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 under subsection (3)(b)(ii) is less than the amount of the claim of the secured creditor, the secured creditor may —

- (a) file with the trustee a proof of claim in the prescribed form; and
- (b) 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 or her security, the secured creditor may make an application to the Court, no later than fifteen days after the proposal is received by the secured creditor, to have the proposed value revised.

(6) For the purposes of this Part, the Court may, acting on independent advice, revise the proposed value and the revised value applies.

Secured creditor to whom a proposal is not made not to file proof of claim

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

Failure of secured creditor to file proof of claim

92. Where a secured creditor having a secured claim of a particular class does not file a proof of secured claim at or before a meeting of creditors, the secured creditor having a claim of that class, is taken to have voted for the refusal of the proposal.

Voting by creditors with proven claims prior to meeting to consider proposal

93. A creditor who has a proven claim, whether secured or unsecured, may vote on the proposal delivered to the trustee prior to the meeting under section 80 by —

- (a) mail;
- (b) personal delivery; or
- (c) printed electronic transmission.

Effect of vote on proposal prior to meeting

94. A vote of acceptance or refusal of the proposal, delivered by means specified under section 93, received by the trustee at or prior to the meeting under section 80, has effect as if the creditor had been present and had voted at the meeting.

Claims if creditor elects not to participate in proposal

95. A proposal made conditional on the purchase of shares or securities or other payment or contribution by the creditors must provide that the claim of a creditor who elects not to participate in the proposal, on approval of the proposal, shall be —

- (a) valued by the Court; and
- (b) paid in cash.

Approval of Court of proposal accepted by creditors

96.—(1) Where a proposal is accepted under section 85, a trustee shall file with the Supervisor and notify, in the prescribed manner, a creditor with a proven claim, confirming that the proposal —

- (a) is accepted under this Act; and
- (b) satisfies the requirements of this Act.

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

(3) Where a notice is not delivered under subsection (2), the proposal is deemed to be approved by the Court.

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

(5) A proposal shall not be approved by the Court unless it provides for the payment of claims under section 257.

(6) Unless the Crown consents, a proposal shall not be approved by the Court that does not provide for the payment in full to the Crown, within six months after the Court approval of the proposal,

of amounts that were outstanding at the time of the filing of the notice of intention, or of the proposal if no notice of intention was filed, and are of a kind that could be subject to a demand under the —

- (a) Income Tax Act, Cap. 15.02;
- (b) Customs Duties Act, Cap. 15.04;
- (c) Customs (Control and Management) Act, Cap. 15.05;
- (d) Customs (Service Charge) Act, Cap. 15.06;
- (e) Excise Tax Act, Cap. 15.07;
- (f) Land and House Tax, Cap. 15.13;
- (g) Stamp Duty Act, Cap. 15.11; and
- (h) Value Added Tax Act, Cap. 15.42.

(7) A proposal shall not be approved by the Court if, at the time the Court hears the application for approval, the Crown satisfies the Court that the debtor is in default on any remittance of an amount under subsection (6) that became due after the filing of the —

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

(8) A proposal shall not be approved by the Court in respect of an employer unless —

- (a) the proposal provides for payment to an employee and former employee, immediately after the approval by the Court of the proposal of —
 - (i) amounts equal to the amounts that the employee or former employee would be qualified to receive under Part A (b) (i), (iii) or (iv), if applicable, if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed,
 - (ii) wages, salaries, commissions or compensation for services rendered after the date under subparagraph (i) and before the Court approves the proposal, and

(iii) disbursements properly incurred by the employee or former employee, in and about the business of the bankrupt during the same period; and

(b) the Court is satisfied that the employer may make the payments under paragraph (a).

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

(10) Where at the expiration of the fifteenth day after the delivery of the notice under subsection (1), a notice of objection has not been delivered under subsection (2), the proposal is deemed to be approved by the Court.

(11) This section does not prevent the trustee or debtor from obtaining an order that is necessary or desirable to give effect to the terms of the proposal.

Approval of proposal and restrictions on approval of proposal by the Court

97. On an application to approve the proposal being made to the Court under section 96, the Court shall —

- (a) consider the report of the trustee in the prescribed form respecting the terms of the proposal and the conduct of the debtor; and
- (b) hear —
 - (i) the trustee,
 - (ii) in the case of a person who is not the trustee, 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 requires.

Effect of acceptance and approval of proposal

98.—(1) Where a proposal is accepted by the creditors and approved or deemed to be approved by the Court, the proposal is binding on the creditors in respect of —

- (a) unsecured claims; and
- (b) the secured claims —
 - (i) in respect of which the proposal was made; and
 - (ii) 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 a person who would not be otherwise released under this Act by the discharge of the debtor.

Date of bankruptcy by insolvent person is date of assignment

99. Where an insolvent person in respect of whom a proposal is filed makes an assignment before the proposal is approved, the date of the bankruptcy is the date of the filing of the assignment.

Annulment of bankruptcy if proposal approved after bankruptcy

100. Unless the terms of the proposal otherwise provide, the approval by the Court of a proposal made after bankruptcy —

- (a) annuls the bankruptcy; and
- (b) re-vests in the debtor or in a person approved by the Supervisor, the rights, title and if applicable, interests of the trustee in the property of the debtor.

Refusal of proposal by creditors

101.—(1) Subject to subsection (3), if the creditors refuse to accept a proposal at a meeting —

- (a) the debtor concerned is deemed to have made an application for an assignment under Part III, at the time of the refusal of the proposal;

(b) the trustee shall immediately —

- (i) file a report in respect of the refusal of the proposal in the prescribed form with the Supervisor, who shall issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment made under Part III; and
- (ii) call a meeting of creditors —
 - (A) present at the time of the refusal, or
 - (B) if a quorum does not exist for the purpose of sub-subparagraph (A), send a notice, within five days after the day the certificate under subparagraph (i) is issued, of the meeting of creditors and approve the remuneration of the trustee.

(2) Where a person facing imminent insolvency files a proposal and that proposal is not accepted by the creditors, that person is not deemed to have made an application for an assignment, if at that meeting the creditors resolve by special resolution, to permit the person to terminate the proceedings under Part IV.

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

- (a) the person facing imminent insolvency shall be deemed to have made an application for an assignment; and
- (b) the trustee shall immediately file a report in the prescribed form with the Supervisor, who shall issue a Certificate of Assignment in the prescribed form, and that assignment takes effect as if it was filed under Part III.

(4) Notwithstanding section 308 the creditors may by ordinary resolution, affirm the appointment of the trustee named in the notice of intention or appoint a trustee instead of that trustee so named.

(5) Where a certificate of assignment is issued by the Supervisor under this section in relation to a company, a notice of the issue of the certificate of assignment must be filed with the Registrar of Companies.

(6) The Court shall refuse the proposal if it is of the opinion that the terms of the proposal —

- (a) are not fair and reasonable to the creditors or are oppressive to the creditors;
- (b) are not calculated to benefit the body of creditors generally; or
- (c) contravene this Act or another law.

Appointment of inspectors by creditors

102. At a meeting of creditors, the creditors may appoint no more than five inspectors of the property of the debtor, who shall have the powers of an inspector under this Act, subject to an extension or restriction of the powers by the terms of the proposal.

Secured claims on bankruptcy

103. In the bankruptcy of an insolvent person who made a proposal to one or more secured creditors in respect of secured claims —

- (a) proof of a secured claim filed by the secured creditor, ceases to be valid or effective; and
- (b) sections 246 and 253 apply in respect of a proof of claim filed by a secured creditor in the bankruptcy.

Distribution under proposal

104.—(1) Unless a proposal otherwise provides for the payment of the fees and expenses, monies payable under a proposal must be —

- (a) paid to the trustee; and
- (b) distributed by the trustee to the creditors after payment of all fees and expenses of the trustee and the debtor.

(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 must be dealt with in the manner set out in subsection (1).

Division 5
Annulment of Proposal

Annulment of proposal by Court

105.—(1) The Court may on application by the trustee or the Supervisor, with such notice as the Court directs to the debtor and if applicable to the trustee and creditors, annul the proposal, if it is satisfied that —

- (a) the proposal cannot continue without injustice to the body of creditors generally or delay; or
- (b) the approval of the proposal was obtained by fraud.

(2) A proposal although accepted and approved may be annulled by order of the Court at the request of the trustee or of a creditor if the debtor is convicted of an offence.

Effect of annulment of proposal

106.—(1) On the annulment of a proposal, the debtor is deemed to have made an application for an assignment, and the order annulling the proposal must refer to the application.

(2) Where an order annulling a proposal is 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 308, affirm the appointment of the trustee or appoint another trustee instead of that trustee.

(3) Where a proposal is annulled under section 105, the trustee shall file a report of the annulment in the prescribed form with the Supervisor, who shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment made under Part III.

Default in performance of proposal

107.—(1) Where a default occurs in the performance of a provision in a proposal the trustee shall within such time and in the prescribed form, inform all the creditors and the Supervisor of the default and call a meeting of creditors if —

- (a) the default is not waived by the inspectors, or in the absence of an inspector, by the creditors; and
- (b) the default is not remedied by the debtor within the prescribed time.

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

- (a) file a report in the prescribed form with the Supervisor, who shall issue a certificate of assignment, in the prescribed form, and the assignment takes effect as if it was filed under Part III; and
- (b) within five days, send notice of the meeting of creditors, to be held within twenty-one days from the date of the notice at which meeting the creditors may by ordinary resolution, notwithstanding section 308, affirm the appointment of the trustee or appoint another trustee instead of that trustee.

Certificate of proposal performed

108.—(1) Where a proposal is fully performed, the trustee shall issue a certificate to that effect, in the prescribed form, to the debtor and Supervisor, and the Supervisor shall maintain a record of the proposal under section 7(2)(h).

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

Failure of bankrupt or person who has made proposal to keep proper books

109.—(1) A bankrupt or a person who makes a proposal and has within the period beginning on the day that is two years before the date of the initial bankruptcy event or two years before the filing of the proposal and ending on the date of the bankruptcy or the date of the filing of the proposal shall not —

- (a) fail to keep proper books and records; or
- (b) conceal, destroy, mutilate, falsify or dispose of or be privy to the concealment, destruction, mutilation,

falsification or disposition of, a book or record affecting or relating to the property or affairs of the person.

(2) A person who becomes bankrupt or makes a proposal who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both.

Division 6
Consumer Proposal

Consumer proposal

110.—(1) Subject to subsection (2), a consumer proposal may be made by a consumer debtor.

(2) A consumer debtor who has filed a notice of intention or a proposal under this Part may not make a consumer proposal until the trustee appointed in respect of the notice of intention or proposal under this Part has been discharged.

Consumer proposal to creditors

111.—(1) A consumer proposal shall be made to the creditors generally.

(2) On receipt of the consumer proposal, a creditor may respond by filing with the Government Trustee a proof of claim under section 82.

Term of consumer proposal

112. A consumer proposal must provide that its performance is to be completed within five years.

Priority of claims and fees

113. A consumer proposal must provide —

- (a) for the payment in priority to other claims, all claims directed to be so paid, in the distribution of the property of the consumer debtor;
- (b) for the payment of all prescribed fees and expenses —

- (i) of the Government Trustee on and incidental to proceedings arising out of the consumer proposal, and
- (ii) of a person in respect of counselling; and
- (c) for the manner of distributing dividends.

Commencement of proceedings

114. A consumer debtor who makes a consumer proposal shall commence proceedings by —

- (a) obtaining the assistance of the Government Trustee or a trustee in preparing the consumer proposal; and
- (b) providing the Government Trustee or a trustee with the prescribed information on the consumer debtor's current financial situation.

Duties of Government Trustee or a trustee in relation to a consumer proposal

115.—(1) The Government Trustee or a trustee who agrees to assist a consumer debtor shall —

- (a) investigate, or cause to be investigated, the consumer debtor's property and financial affairs so as to be able to assess with reasonable accuracy the consumer debtor's financial situation and the cause of his insolvency;
- (b) provide, or provide for, counselling in accordance with directives issued by the Supervisor;
- (c) prepare a consumer proposal in the prescribed form; and
- (d) subject to section 116 file with the Supervisor a copy of the consumer proposal, signed by the consumer debtor, and the prescribed statement of affairs.

(2) The Government Trustee or a trustee shall, within ten days after filing a consumer proposal with the Supervisor under subsection (1) (d) —

- (a) prepare and file with the Supervisor a report in the prescribed form setting out —

- (i) the results of the investigation made under subsection (1) (a),
 - (ii) the opinion of the Government Trustee or trustee as to whether the consumer proposal is reasonable and fair to the consumer debtor and the creditors, and whether the consumer debtor is able to perform it, and
 - (iii) a list of the creditors whose claims exceed two hundred and fifty dollars; and
- (b) send to each known creditor, in the prescribed form and manner —
- (i) a copy of the consumer proposal and a copy of the statement of affairs,
 - (ii) a copy of the report under paragraph (a),
 - (iii) a proof of claim, and
 - (iv) a statement explaining that a meeting of creditors must be called if required under this Division and that a review of the consumer proposal by a Court or the Supervisor will be made if it is requested in accordance with this Division.

Consumer proposal not to be filed

116. The Government Trustee or a trustee shall not file a consumer proposal under section 115 (1) (d) if he or she has reason to believe that —

- (a) the debtor is restricted from making a consumer proposal under section 110 (2); or
- (b) there has been non-compliance with anything required by this Division.

Consumer proposal wrongly filed

117.—(1) Where the Government Trustee or a trustee determines, after filing a consumer proposal, under section 115 (1) (d) that it should not have been filed because the consumer debtor is restricted from making a consumer proposal under section 110 (2), the Government Trustee or trustee shall immediately inform the creditors and the Supervisor.

(2) A consumer proposal under subsection (1) is not invalid by reason that the consumer debtor is restricted from making the consumer proposal under section 110 (2).

Meeting of creditors on consumer proposal

118.—(1) The Supervisor may within the forty-five day period following the filing of the consumer proposal, direct the Government Trustee or trustee to call a meeting of creditors.

(2) The Government Trustee or trustee shall call a meeting of creditors —

- (a) immediately after being directed by the Supervisor under subsection (1); or
- (b) at the expiration of the forty-five day period following the filing of the consumer proposal, if at that time creditors having in the aggregate at least twenty-five per cent in value of the proven claims requested.

(3) A meeting of creditors must be held within twenty-one days after being called.

Notice of meeting to be sent to creditors

119.—(1) The Government Trustee or trustee shall, at least ten days before a meeting called under section 118, send a notice in the prescribed form and manner to the consumer debtor, a known creditor and the Supervisor.

(2) A notice under subsection (1) must —

- (a) be in the prescribed form;
- (b) contain —
 - (i) the time and place of the meeting,
 - (ii) the prescribed proxy, and
 - (iii) other prescribed information and documentation.

Conduct of meeting

120.—(1) The Supervisor, or the nominee shall —

- (a) preside at a meeting called under section 118; and

(b) decide questions or disputes arising at the meeting.

(2) A creditor may appeal the decision to the Court.

Adjournment of meeting for further investigation and examination

121. Where the creditors by ordinary resolution at the meeting require, the meeting shall be adjourned to such time and place as may be fixed by the Supervisor or nominee presiding —

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

Assent or dissent by creditor

122.—(1) A creditor who has proved a claim may indicate assent to or dissent from the consumer proposal in the prescribed manner to the Government Trustee or trustee prior to or at a meeting of creditors, or prior to the expiration of the forty-five day period following the filing of the consumer proposal.

(2) Unless rescinded, an assent or a dissent received by the Government Trustee or trustee before or at a meeting of creditors has effect as if the creditor has been present and had voted at the meeting.

Consumer proposal deemed accepted

123.—(1) Where, at the expiration of the forty-five day period following the filing of the consumer proposal, no obligation has arisen to call a meeting of creditors, the consumer proposal is deemed to be accepted by the creditors.

(2) Where there is no quorum at a meeting of creditors, the consumer proposal is deemed to be accepted by the creditors.

Voting on consumer proposal

124. At a meeting of creditors, the creditors may by ordinary resolution, voting all as one class, accept or refuse the consumer

proposal as filed or as altered at the meeting or an adjournment, subject to the rights of secured creditors.

Voting by creditor

125. A creditor who is related to the consumer debtor may vote against not for the acceptance of the consumer proposal.

Voting by Government Trustee or trustee

126. The Government Trustee or a trustee, as a creditor, may not vote on the consumer proposal.

Supervision of consumer debtor's affairs

127. The creditors, with the consent of the consumer debtor, may include provisions or terms in the consumer proposal with respect to the supervision of the affairs of the consumer debtor as the creditors consider appropriate.

Appointment and powers of inspectors

128.—(1) The creditors may appoint a maximum of three inspectors of the estate of the consumer debtor.

(2) An inspector appointed under subsection (1) has the powers of an inspector under this Act, subject to an extension or restriction of the powers by the terms of the consumer proposal.

Application to the Court or Supervisor for review of consumer proposal

129. Where a consumer proposal is accepted or deemed accepted by the creditors, the Government Trustee or a trustee shall, if requested by another interested party within fifteen days after the day of acceptance or deemed acceptance, immediately apply to the Court or Supervisor to have the consumer proposal reviewed.

Consumer proposal deemed approved by the Court or Supervisor

130. Where, at the expiration of the fifteenth day after the day of acceptance or deemed acceptance of the consumer proposal by the creditors, no obligation has arisen under section 129 to apply to the Court or Supervisor, the consumer proposal is deemed to be approved.

Procedure for application to the Court or Supervisor

131.—(1) Where the Government Trustee or a trustee applies to the Court or Supervisor, the Government Trustee or trustee shall —

- (a) send a notice of the hearing of the application, in the prescribed manner and at least fifteen days before the date of the hearing, to the consumer debtor, to each creditor who has proved a claim and where the application is to the Court to the Supervisor;
- (b) forward a copy of the report under paragraph (c) to the Supervisor at least ten days before the date of the hearing; and
- (c) at least two days before the date of the hearing, file with the Court or Supervisor a prescribed report in the prescribed form on the consumer proposal and the conduct of the consumer debtor.

(2) Before approving the consumer proposal —

- (a) the Court or Supervisor shall hear —
 - (i) the report under subsection (1)(c),
 - (ii) the Government Trustee or trustee,
 - (iii) the consumer debtor, any opposing, objecting or dissenting creditor or other interested party, and
 - (iv) further evidence as the Court or Supervisor requires;
- (b) the Court shall, hear the Supervisor.

Refusal or approval of the consumer proposal

132.—(1) Subject to this section, the Court or Supervisor may approve or refuse to approve the consumer proposal.

(2) The Court or Supervisor shall refuse to approve a consumer proposal —

- (a) if the Court or Supervisor is of the opinion that the terms of the consumer proposal are not reasonable or are not fair to the consumer debtor and the creditor;
- (b) if the consumer proposal does not comply with this Act.

(3) The Court or Supervisor may refuse to approve the consumer proposal if it is established that the consumer debtor —

- (a) has committed an offence under this Act; or
- (b) is restricted from making a consumer proposal under section 110 (2) when the consumer proposal was filed with the Supervisor.

Withdrawal of consumer proposal

133. A consumer debtor may withdraw a consumer proposal —

- (a) at any time before its deemed approved by the Court or Supervisor where no review is requested; or
- (b) where a Court or Supervisor review is requested, at any time before approval or refusal.

Absence of provision on distribution of available money in consumer proposal

134.—(1) Where a consumer proposal is approved or deemed approved by the Court or Supervisor and the terms of the consumer proposal do not provide for the distribution of available moneys at least once every three months, the Government Trustee or trustee shall immediately ascertain any change in the consumer debtor's circumstances that leads the Government Trustee or trustee to conclude, after consultation with the consumer debtor, where practicable, that the change may jeopardize the consumer debtor's ability to meet the terms of the consumer proposal.

(2) The Government Trustee or trustee shall, in writing, notify the Supervisor and each known creditor of the change under subsection (1).

Payments to Government Trustee or trustee

135. Unless otherwise provided for in the consumer proposal, money payable under the consumer proposal shall be paid to the Government Trustee or trustee and, after payment the Government Trustee or trustee shall distribute the available money to the creditors in accordance with the terms of the consumer proposal.

Deposit of moneys in single trust account

136. Subject to the directives of the Supervisor and with the approval of the Supervisor, the Government Trustee or trustee may deposit all moneys relating to the administration of a consumer proposal in a single trust account.

Notifications

137. The Government Trustee or trustee shall, within five days after —

- (a) the refusal of a consumer proposal by the creditors;
- (b) the refusal of a consumer proposal by the Court or Supervisor; and
- (c) the withdrawal of a consumer proposal by the consumer debtor,

notify in the prescribed form and manner the consumer debtor, a known creditor and the Supervisor.

Time for determining claims

138. The time with respect to which the claims of creditors shall be determined is the time of the filing of the consumer proposal.

Acceptance or approval binding on creditors

139. A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the Court or Supervisor is binding on creditors in respect of —

- (a) unsecured claims; and
- (b) secured claims for which proofs of claim have been filed.

Release from debt or liability

140. A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the Court or Supervisor does not release the consumer debtor from a particular debt or liability unless the consumer proposal provides for the compromise of that debt or liability and the creditor in relation to that debt or liability voted for the acceptance of the consumer proposal.

Certain persons not released

141. The acceptance of a consumer proposal by a creditor does not release a person who is not released from debt or liability under this Act by the discharge of the consumer debtor.

Issue of certificate by Government Trustee or trustee

142. Where a consumer proposal is approved or deemed approved by the Court or Supervisor, the Government Trustee or trustee may, if the Government Trustee or trustee believes on reasonable grounds that the consumer debtor owns land or other valuable property, issue a certificate in respect of the consumer proposal, and may cause the certificate to be filed in any place where a certificate of judgment, writ of seizure and sale or other like document may be filed or where a legal hypothec or judicial hypothec or judgment may be registered.

Effect of filing a certificate

143. A certificate under section 142 is a certificate of judgment, writ of execution or legal hypothec or judicial hypothec or judgment until the consumer proposal is fully performed.

Annulment of consumer proposal

144. The Court or Supervisor may, on application, with such notice as the Court or Supervisor directs to the consumer debtor and, if applicable, to the Government Trustee or trustee and to the creditors, annul the consumer proposal —

- (a) where default is made in the performance of a provision in a consumer proposal; or
- (b) where it appears to the Court or Supervisor —
 - (i) that the consumer debtor is restriction making a consumer proposal under section 110 (2) when the consumer proposal is filed,
 - (ii) that the consumer proposal may cause injustice or undue delay, or
 - (iii) that the approval of the Court or Supervisor was obtained by fraud.

Annulment for offence

145. A consumer proposal, accepted or approved, may be annulled by order of the Court or Supervisor at the request of the Government Trustee, trustee or creditor if the consumer debtor is convicted of an offence under this Act.

Validity of things done

146. An order made under section 145 must be made without prejudice to the validity of a sale, disposition of property or payment made, or anything done under or in pursuance of the consumer proposal, and notwithstanding the annulment of the consumer proposal, a guarantee given pursuant to the consumer proposal remains in full force and effect in accordance with the terms of the consumer proposal.

Notification of annulment

147. Where an order annulling the consumer proposal of a consumer debtor who is not a bankrupt has been made under section 146, the Government Trustee or trustee shall immediately inform the creditors and file a report in the prescribed form with the Supervisor.

Effect of annulment

148. Where a consumer proposal made by a bankrupt is annulled —

- (a) the consumer debtor is deemed on the annulment to have made an assignment and the order annulling the consumer proposal must so state;
- (b) the Government Trustee or trustee of the consumer proposal shall, within five days after the order is made, send notice of the meeting of creditors, at which meeting the creditors may by ordinary resolution, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee; and
- (c) the Government Trustee or trustee shall immediately file a report in the prescribed form with the official receiver, who shall issue a certificate of assignment in the prescribed form which has the same effect for the purposes of this Act as an assignment filed under this Part.

Default of payment deemed annulment

149. Unless the Court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, a consumer proposal is deemed to be annulled on —

- (a) in the case where payments under the consumer proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to or more than the amount of three payments; or
- (b) in the case where payments under the consumer proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment.

Amendment withdrawn or refused deemed an annulment

150. Where an amendment to a consumer proposal filed before the deemed annulment of the consumer proposal is withdrawn or refused by the creditors, Court or Supervisor, the consumer proposal is deemed to be annulled at the time that the amendment is withdrawn or refused.

Duties of Government Trustee or trustee on deemed annulment

151. Without delay after a consumer proposal is deemed to be annulled, the Government Trustee or trustee shall —

- (a) file with the Supervisor a report in the prescribed form in relation to the deemed annulment; and
- (b) send a notice to the creditors informing the creditors of the deemed annulment.

Effects of deemed annulment on consumer proposal made by a bankrupt

152. Where consumer proposal made by a bankrupt is deemed to be annulled —

- (a) the consumer debtor is deemed to have made an assignment on the day on which the consumer proposal is deemed to be annulled;
- (b) the Government Trustee or trustee of the consumer proposal shall, within five days after the day on which the

consumer proposal is deemed to be annulled, send notice of the meeting of creditors, at which meeting the creditors may by ordinary resolution, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee; and

- (c) the Government Trustee or trustee shall, immediately file with the Supervisor, a report in the prescribed form of the deemed annulment and the Supervisor shall, immediately, issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under this Act.

Validity of things done before deemed annulment

153. A deemed annulment of a consumer proposal does not prejudice the validity of a sale or disposition of property or payment made, or anything done under or in pursuance of the consumer proposal and, notwithstanding the deemed annulment, a guarantee given under the consumer proposal remains in full force and effect in accordance with the terms of the consumer proposal.

Automatic revival of consumer proposal

154.—(1) In the case of a deemed annulment of a consumer proposal made by a person other than a bankrupt, if the Government Trustee or trustee considers it appropriate to do so in the circumstances, he or she may, with notice to the Supervisor, send to the creditors within thirty days, or within the prescribed time, after the day on which the consumer proposal is deemed to be annulled, a notice in the prescribed form informing the creditors that the consumer proposal is automatically revived for sixty days, or within the prescribed time, after the day on which the consumer proposal is deemed to be annulled unless one of the creditors files with the Government Trustee or trustee, in the prescribed manner, a notice of objection to the revival.

(2) Where a notice is sent by the Government Trustee or trustee under subsection (1) and no notice of objection is filed during the period specified under this section, the consumer proposal is automatically revived on the expiry of that period.

Notice of no automatic revival

155. Where a notice of objection is filed during the period specified under section 154, the Government Trustee or trustee shall immediately send, to the Supervisor and to each creditor a notice in the prescribed form informing the Supervisor and each creditor that the consumer proposal is not automatically revived on the expiry of that period.

Application to the Court to revive consumer proposal

156. The Government Trustee or trustee may apply to the Court, with notice to the Supervisor and the creditors, for an order reviving a consumer proposal of a consumer debtor who is not a bankrupt that is deemed to be annulled, and the Court, if it considers it appropriate to do so in the circumstances, may make an order reviving the consumer proposal, on terms that the Court considers appropriate.

Duty of the Government Trustee or trustee if consumer proposal is revived

157. After a consumer proposal is revived, the Government Trustee or trustee shall immediately —

- (a) file with the Supervisor a report in the prescribed form in relation to the revival; and
- (b) send a notice to the creditors informing the creditors of the revival.

Validity of things done before revival

158. The revival of a consumer proposal does not prejudice the validity of anything done between the day on which the consumer proposal is deemed to be annulled and the day on which it is revived by a creditor in the exercise of the rights revived.

Effect of annulment on making of subsequent consumer proposal and reliefs under this Act

159.—(1) Unless the Court otherwise orders, where a consumer proposal is annulled or deemed annulled, the consumer debtor —

- (a) may not make another consumer proposal for a period of two years but may make a proposal under Division 1 of Part IV; and

(b) is not entitled to relief provided under this Act, until all claims for which proofs of claim were filed and accepted are paid in full or are extinguished under this Act.

(2) Where a consumer proposal is annulled or deemed annulled, the rights of the creditors are revived for the amount of the claims less the dividends received.

Certain rights limited

160.—(1) Where a consumer proposal has been filed in respect of a consumer debtor, a person shall not terminate or amend an agreement, including a security agreement, with the consumer debtor, or claim an accelerated payment, or the forfeiture of the term, under an agreement, including a security agreement, with the consumer debtor, by reason that —

(a) the consumer debtor is insolvent; or

(b) a consumer proposal has been filed in respect of the consumer debtor,

until the consumer proposal has been withdrawn, refused by the creditors or the Court, annulled or deemed annulled.

(2) Where an agreement under subsection (1) is a lease, subsection (1) shall be read as including the following paragraph —

“(c) the consumer debtor has not paid rent in respect of a period preceding the filing of the consumer proposal.”

(3) Where the consumer proposal has been filed in respect of a consumer debtor, a public utility may not discontinue service to that consumer debtor by reason that —

(a) the consumer debtor is insolvent;

(b) a consumer proposal has been filed in respect of the consumer debtor; or

(c) the consumer debtor has not paid for services rendered, or material provided, before the filing of the consumer proposal until the consumer proposal has been withdrawn, refused by the creditors or the Court, annulled or deemed annulled.

(4) The Court may, on application by a party to an agreement or by a public utility, declare that this section does not apply, or applies only to the extent declared by the Court, where the applicant satisfies the Court that the operation of this section may cause significant financial hardship.

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

Certain acts not prevented

161. Nothing in this Division is construed —

- (a) as prohibiting a person from requiring payments to be made in cash for goods, services, use of leased property or other valuable consideration provided after the filing of the consumer proposal; or
- (b) as requiring the further advance of money or credit.

Provisions of this Division override agreement

162. A provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this Division does not have force or effect.

Permitted actions

163.—(1) Notwithstanding this Division and in accordance with the provisions of an eligible financial contract, the following actions are permitted in respect of an eligible financial contract that is entered into before the filing of a consumer proposal and is terminated on or after that filing —

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

(2) Where net termination values determined in accordance with an eligible financial contract under subsection (1) is owed by the consumer debtor to another party to the eligible financial contract, that other party is deemed for the purposes of section 174 to be a creditor of the consumer debtor with a claim provable in bankruptcy in respect of the not termination values.

Assignment

164. —(1) An assignment of existing or future wages by a consumer debtor before the filing of a consumer proposal is of no effect in respect of wages earned after the filing of the consumer proposal.

(2) In order to ensure compliance with the terms of a consumer proposal, the Government Trustee or trustee may, after the consumer proposal is filed, require of, and take from, the consumer debtor an assignment of an amount payable to the consumer debtor, including wages, that may become payable in the future, and an assignment must not, unless the consumer debtor agrees, be for an amount greater than is due and payable pursuant to the terms of the consumer proposal.

(3) An assignment made pursuant to the request of the Government Trustee or trustee is of no effect against a person owing the amount payable until a notice of the assignment is served on that person.

(4) This section does not to apply where the consumer proposal is refused by the creditors, Court or Supervisor or is withdrawn, annulled or deemed annulled.

Restriction on dismissal of consumer debtor by employer

165. An employer shall not dismiss, suspend, lay off or otherwise discipline a consumer debtor on the ground that a consumer proposal has been filed in respect of that consumer debtor.

Amendment to consumer proposal

166. Where the Government Trustee or trustee files an amendment to a consumer proposal before the withdrawal, refusal, approval or deemed approval by the Court or Supervisor of the consumer proposal, or after the approval or deemed approval by the Court or Supervisor of the consumer proposal and before it as been fully performed, annulled or deemed annulled, the provisions of this Division applies

to the consumer proposal and the amended consumer proposal, with any modifications that the circumstances require, and, for that purpose, the definition of consumer debtor is to be read as follows:

“consumer debtor” means an individual who is insolvent.

Certificate if consumer proposal performed

167. Where a consumer proposal is fully performed, the Government Trustee or trustee shall issue a certificate in the prescribed form, to the consumer debtor and to the Supervisor.

Effect if counselling refused

168. A certificate shall not be issued under section 167 noting the consumer proposal has been fully performed where a consumer debtor has refused or neglected to receive counselling provided for under this Act.

Accounts and discharge of the Government Trustee or trustee

169. The Government Trustee or trustee shall adopt the prescribed procedure for the preparation and taxation of the accounts and the prescribed procedure must be followed for the discharge of the Government Trustee or trustee.

Application of this Act to consumer proposal

170. This Act, except Division 1 of this Part, applies with such modification as the circumstances require, to a consumer proposal.

Consumer debtor as bankrupt

171. Where a consumer proposal is made by a consumer debtor who is a bankrupt —

- (a) the consumer proposal shall be approved by the inspectors, if any, before further action is taken;
- (b) the consumer debtor shall obtain assistance of the Government Trustee or trustee who shall act as trustee of the consumer proposal in the preparation and execution of the consumer proposal;

- (c) the time with respect to which the claims of creditors is determined is the time at which the consumer debtor became bankrupt; and
- (d) the approval or deemed approval by the Court or Supervisor of the consumer proposal operates to annul the bankruptcy and to revest in the consumer debtor, or in such other person as the Court approves, the right, title and interest of the trustee in the property of the consumer debtor, unless the terms of the consumer proposal otherwise provide.

Stay of proceedings in relation to consumer proposal

172.—(1) Subject to subsections (2) to (4), on the filing of a consumer proposal, or an amendment to a consumer proposal, under this Division in respect of a consumer debtor, a creditor does not have a remedy against the consumer debtor or the consumer debtor's property, or shall not commence or continue an action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until —

- (a) the consumer proposal or the amended consumer proposal has been withdrawn, refused, annulled or deemed annulled; or
- (b) the Government Trustee or Trustee has been discharged.

(2) Subsection (1) does not apply where —

- (a) the consumer proposal, other than an amendment to a consumer proposal, is filed within six months after the filing of a previous consumer proposal in respect to the same consumer debtor;
- (b) an amendment to a consumer proposal is filed within six months after filing of a previous amendment to the same consumer proposal.

(3) Subject to sections 120, 184 to 191 and 312, the filing of a consumer proposal under this Division does not prevent a secured creditor from realizing or otherwise dealing with the security in the same manner as he or she would have to realize or deal with it if this section had not been passed, unless the Court otherwise orders, but in

so ordering the Court shall not postpone the right of the secured creditor to realize or otherwise deal with the security, except as follows —

- (a) in the case of a security for a debt that is due at the date of the approval or deemed approval of the consumer proposal or that becomes due not later than six months thereafter, that right is not 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 the approval or deemed approved of the consumer proposal, that right is not postponed for more than six months from the date, 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 as long as no installment of interest remains in arrears or defaults remain for more than six months, and, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument enactment or law, creating the security.

(4) An order shall not be made under subsection (3) if the order has the effect of preventing a secured creditor from realizing or otherwise dealing with a financial collateral.

PART V

EFFECT OF BANKRUPTCY ON THE PROPERTY OF THE BANKRUPT

Division 1 *Property of Bankrupt*

Property of bankrupt

173.—(1) The property of a bankrupt divisible among his or her creditors —

- (a) comprise —
 - (i) property of the bankrupt wherever situated at the date of the bankruptcy or that may be required by or devolve on the bankrupt before discharge,

including any refund owing to the bankrupt under the Income Tax Act, Cap. 15.02 in respect of the calendar year or the financial year of the bankrupt if it is different from the calendar year in which the bankrupt became a bankrupt, except the portion that —

(A) is not subject to the operation of this Act; or

(B) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on His Majesty under any law relating to family orders and agreement enforcement assistance, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(ii) the powers in, over or in respect of the property exercised by the bankrupt for his or her benefit;

(b) does not comprise —

(i) property held by the bankrupt in trust for any other person,

(ii) any property that as against the bankrupt is exempt from execution or seizure under any laws,

(iii) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property under subparagraph (i) or (ii),

(iv) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property under subparagraph (i) or (ii), or

(v) without restricting the generality of paragraph (a), property in a registered retirement savings plan, a registered retirement income fund or a registered disability savings plan, or in any prescribed plan other than property contributed to any such plan or fund in the twelve months before the date of bankruptcy,

- (vi) the prescribed amount to be paid out of the proceeds of sale of the principal residence.

(2) Subject to subsection (3), notwithstanding any enactment that has the effect of deeming property to be held in trust for His Majesty, property of a bankrupt is not regarded as held in trust for His Majesty for the purpose of subsection (1)(b)(i) unless it is regarded as held in trust for His Majesty in the absence of that enactment.

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under the Income Tax Act, Cap. 15.02, the National Insurance Corporation Act, Cap. 16.01 or in respect of amounts deemed to be held in trust under an enactment that creates a deemed trust the sole purpose of which is to ensure remittance to His Majesty in right of the amounts deducted or withheld under an enactment where —

- (a) that enactment imposes a tax similar in nature to the tax imposed under the Income Tax Act, Cap. 15.02 and the amounts deducted or withheld under that enactment are of the same nature as the amounts under the Income Tax Act, Cap. 15.02.
- (b) the enactment establishes a pension scheme under the National Insurance Corporation Act, Cap. 16.01 and the amounts deducted or withheld under the pension scheme are of the same nature as amounts under the National Insurance Corporation Act, Cap. 16.01.

Division 2

Effect of Bankruptcy on the Property of the Bankrupt

Excess income of individual bankrupt

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

(2) Notwithstanding section 52(3)(b)(i), in this section, “total income” includes revenue of an individual bankrupt, whatever the nature or source.

Fixing of the amount to be paid by bankrupt by trustee

175.—(1) A trustee shall —

- (a) having regard to the prescribed standards under section 174, 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 or her total income;
- (b) inform, in the prescribed form, the Supervisor, creditors and the bankrupt of the amount fixed under paragraph (a); and
- (c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay the amount fixed under paragraph (a).

(2) A trustee shall carry out an investigation, as soon as is reasonably practical after the commencement of the bankruptcy, to determine the amount to be fixed under subsection (1).

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

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

the trustee may determine the part of the salary, wages or other remuneration, or the part of the payment or commissions, that must be paid to the bankrupt's estate on the basis of the amount fixed by the trustee, unless it appears to the trustee that the service is performed for the benefit of the bankrupt and is not of a substantial benefit to the person for whom it was performed.

(4) A trustee may 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) A 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), (3) or (4) is 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 under section 52(3)(b).

Determination of amount to be paid by bankrupt by Supervisor

176.—(1) Where the Supervisor determines that the amount required to be paid by the bankrupt under section 175 is substantially not in accordance with the prescribed standards, the Supervisor shall recommend to the trustee and to the bankrupt an amount required to be paid that the Supervisor determines is in accordance with the prescribed standards.

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

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

Trustee to refer fixing of amount to be paid by bankrupt to mediation

177.—(1) Where a trustee and a bankrupt are not in agreement with the amount that the bankrupt is required to pay under section 175 and section 176(1), the trustee shall, immediately send to the Supervisor a request, in the prescribed form, that the matter be determined by mediation and send a copy of the request to the bankrupt.

(2) On the request of a creditor made within thirty days after the day on which the trustee informed the creditor of the amount fixed under section 175 or section 176(1), the trustee shall, within five days following the end of the thirty-day period, send to the Supervisor a request in the prescribed form that the matter of the amount the bankrupt is required to pay be determined by mediation and send a copy of the request to the bankrupt and the creditor.

(3) A mediation process must be carried out in accordance with prescribed procedures.

(4) Documents contained in a file on the mediation of a matter under this section form part of the records under section 8(2).

Fixing of amount to be paid by bankrupt by Court

178.—(1) A trustee may make an application to the Court to fix, by order, the amount that the bankrupt is required to pay to the estate of the bankrupt —

- (a) in accordance with the prescribed standards; and
- (b) having regard to the personal and family situation of the bankrupt.

(2) An application under subsection (1) —

- (a) may be made if —
 - (i) the trustee has not implemented a recommendation made by the Supervisor under section 176(1),
 - (ii) the matter submitted to mediation under section 177(1) or (2) has not been resolved, or
 - (iii) the bankrupt has failed to comply with the requirement to pay as determined under this section;
- (b) shall be made on the request of the Supervisor in the circumstances under paragraph (a)(i).

(3) Where a bankrupt performs a service for a person who is related to the bankrupt, the Court may —

- (a) fix an amount that is fair and reasonable as salary, wages or other remuneration for the service; and
- (b) by order, determine the part of the salary, wages or other remuneration that must be paid to the trustee on the basis of the amount fixed by the Court,

unless it appears to the Court that the service is performed for the benefit of the bankrupt and is not of a substantial benefit to the person for whom it was performed.

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

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

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

(6) An application under subsection (1) constitutes proceedings under section 342 for the benefit of the estate.

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

Application to enforce direction to fix amount

179.—(1) Where a trustee or the Supervisor issues a direction, in the prescribed form, to pay an amount determined under section 175 or 176, that direction —

- (a) may be served on a person from whom the bankrupt is entitled to receive money; and
- (b) shall bind the person under paragraph (a) 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 subsection (1), the trustee may make an application 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.

Effect of assignment of existing or future wages after bankruptcy

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

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

Division 3
Conveyance

Effect of bankruptcy on matrimonial property

181.—(1) Where a debtor who is married in community is, at the date of bankruptcy, the sole registered owner of the immovable property on which the matrimonial home is located and the immovable property does not exceed one acre, the spouse of the debtor may within twenty-one days following the bankruptcy, claim an interest in the net proceeds from a sale or disposition by the trustee of the property after satisfaction of all valid and enforceable charges registered in the appropriate registry.

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

Division 4
Corporations and Financial Institutions

Liability of shareholder to contribute amount unpaid on shares

182.—(1) A shareholder or member of a bankrupt corporation is liable to contribute the amount unpaid on his or her shares of the capital or on his or her liability to the corporation, its members or creditors, under the Companies Act, Cap. 13.01 articles of incorporation of the company or otherwise.

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

Financial institution to inform trustee of existence of account

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

(2) Subject to the rights of a person other than a debtor to be paid proceeds under an insurance policy in an account in accordance with its terms and rights of a third party to whom the debtor has granted security in an account, a financial institution shall not make a payment out of the account under subsection (1), except under an order of the Court or in accordance with instructions from the trustee, unless on the expiration of thirty days from the date of giving the information, an instruction has not been received from the trustee.

(3) Notwithstanding any other law, a financial institution shall, on request in writing by the trustee,

- (a) disclose the sums of money or other financial assets of the bankrupt that is held to the credit of the bankrupt; and
- (b) deliver the sums of money or other financial assets to the trustee.

*Division 5**Trustee and Property of Bankrupt***Inspection of property by trustee**

184. Where the property of a bankrupt is held as a pledge, pawn or other security, the trustee may give notice in writing of the intention of the trustee to inspect the property, and the person notified shall not 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.

Liability of trustee if property disposed of not property of bankrupt

185. Where the trustee has seized or disposed of property in the possession or on the premises of a bankrupt, without notice of a claim in respect of the property and it appears that the property is not at the date of the bankruptcy, the property of the bankrupt or is subject to an unregistered lien, security interest, a right of retention, a pledge or a charge, unless the Court is of the opinion that the trustee is negligent

with respect to the duties of the trustee, in relation to the property, the trustee shall not be personally liable —

- (a) for loss or damage arising from the seizure or disposal sustained by a 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.

Removal of property

186.—(1) A person other than the trustee shall not remove or attempt to remove the property or part of the property under section 187 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.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both.

Persons claiming interest in property in possession of the bankrupt

187.—(1) Where a person claims property or interest in property, in the possession of a bankrupt at the time of the bankruptcy, that person shall file with the trustee —

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

(2) A 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 —

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

(3) Subject to subsection (4), if the claimant fails to appeal to the Court within fifteen days after the mailing of the notice of dispute

under subsection (2)(b), the claimant is deemed to have abandoned or relinquished his or her right to or interest in the property to the trustee, and the trustee may sell or dispose of the property free of a lien, right, title or an interest of the claimant.

(4) A trustee may, before selling or disposing of property under subsection (3), give notice in writing to a person to prove his or her claim to or interest in property under this section and, unless that person files with the trustee a proof of claim in the prescribed form 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 a lien, right, title or interest of that person.

(5) Proceedings shall not be instituted to establish a claim to, or to recover a right or an interest in property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

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

(7) This section is not to be construed as extending the rights of a person other than the trustee.

Right of unpaid supplier to repossess goods

188.—(1) Subject to this section, if a supplier has not fully paid for the goods sold or delivered to a purchaser, the supplier may have access to and repossess the goods at the expense of the supplier, and the purchaser, trustee or receiver of the purchaser shall release the goods, if —

- (a) the supplier presents a demand, in the prescribed form, for repossession to the purchaser, trustee or receiver, and containing the details of the transaction, within a period of fifteen days after the day on which the purchaser became bankrupt or became a person who is subject to receivership;
- (b) the goods were delivered within thirty days before the day on which the purchaser became bankrupt or became a person who is subject to a receivership;
- (c) at the time when the demand under paragraph (a) is presented, the goods —

- (i) are in the possession of the purchaser, trustee or receiver,
 - (ii) are identifiable as the goods delivered by the supplier and not fully paid for,
 - (iii) are in the same state as the goods were on delivery,
 - (iv) have not been resold at arm's length,
 - (v) are not subject to an agreement for sale at arm's length; and
- (d) the purchaser, trustee or receiver does not, immediately after the demand under paragraph (a) is presented, pay to the supplier the entire balance owing.
- (2) Where, at the time when the demand under subsection (1) (a) is presented, the goods have been partly paid for, the right of the supplier to repossess under subsection (1) must be read as a right —
- (a) to repossess a portion of the goods proportional to the unpaid amount; or
 - (b) to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.
- (3) Where a notice of intention or a proposal was filed in respect of the purchaser after the delivery of the goods to the purchaser and before the purchaser became bankrupt or became a person who is subject to receivership, the thirty-day period under subsection (1)(b) is the thirty-day period before the filing of the notice of intention or, if there was no notice of intention, the filing of the proposal.
- (4) A supplier's right to repossess goods under this section expires if not exercised within the fifteen day period under subsection (1) (a), unless that period is extended before its expiry by the trustee or receiver, or by the Court.
- (5) Notwithstanding any other enactment or law, the right of a supplier under this section to repossess goods ranks above another claim or right against the purchaser in respect of the repossessed goods, other than the right of a *bona fide* subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

(6) A purchaser, trustee or receiver may make an application to the Court for directions in relation to a matter relating to this section, and the Court shall give directions in writing as it considers proper in the circumstances.

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

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

(9) In this section —

“purchaser” means a person who receives goods for use in relation to his or her business

“supplier” means a person who sells and delivers goods to a purchaser.

Prior claim of farmer or fisher folk

189.—(1) Where —

- (a) a farmer has sold and delivered products of agriculture, or a fisher folk has sold and delivered products of the sea, to a purchaser for use in relation to the business of the purchaser;
- (b) the products were delivered to the purchaser within the fifteen-day period preceding —
 - (i) the day on which the purchaser became bankrupt, or
 - (ii) the first day on which there was a receiver in relation to the purchaser;
- (c) as of the day under paragraph (b)(i) or (ii), the farmer or fisher folk has not been fully paid for the products; and
- (d) the farmer or fisher folk files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, within thirty days after the day under paragraph (b)(i) or (ii),

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

(2) A charge under subsection (1) ranks above every other claim, right, charge or security against the inventory covered by the charge under that subsection, regardless of when the other claim, right, charge or security arose, except for the right of a supplier to repossess goods under section 188.

(3) Where a trustee or receiver takes possession of or disposes of an inventory covered by the charge under subsection (1) —

(a) the trustee or receiver is liable for the claim of the farmer or fisher folk to the extent of the net amount realised on the disposition of that inventory, after deducting the cost of realisation; and

(b) the trustee or receiver is subrogated in and to all rights of the farmer or fisher folk to the extent of the amounts paid to the farmer or fisher folk by the trustee or receiver.

(4) This section does not preclude a farmer or fisher folk from exercising the right that the farmer or fisher folk may have under section 188 to repossess a product of agriculture or a product of the sea.

(5) In this section —

“goods”, in relation to section 188, includes a product of agriculture and product of the sea;

“purchaser” means a person who receives goods for use in relation to his or her business.

Division 6 *Intellectual Property*

Sale of patented article by trustee

190.—(1) Where the property of a bankrupt that is vested in a trustee consist of a patented article that was sold to the bankrupt subject to a restriction or limitation, the trustee is not bound by the restriction or limitation but may sell and dispose of the patented article free of the restriction or limitation.

(2) Where a manufacturer or vendor of the patented article under subsection (1) objects to the disposition of the patented article by the trustee under this section and gives the trustee notice in writing of the objection before the sale or disposition of the patented article, that manufacturer or vendor may purchase the patented article at the invoice prices of the article, subject to a reasonable deduction for depreciation or deterioration.

Manuscript and copyright to revert to author

191.—(1) Notwithstanding anything in this Act or in another enactment the manuscript of an author and a copyright or an interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt must —

- (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 is incurred in connection with that work, revert and be delivered to the author or his or her heirs; and a contract or an agreement between the author or his or her heirs and the bankrupt, terminates and is void;
- (b) if the work covered by the copyright has in whole or in part is typed 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 or her heirs and a contract or an agreement between the author or his or her heirs and the bankrupt terminates and is void, but if the author does not exercise his or her rights under this paragraph within six months of the date of bankruptcy, the trustee may carry out the original contract;
- (c) if 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 a contract or an agreement between the author or his or her heirs and the bankrupt terminates and is void.

(2) Where at the time of the bankruptcy, the work under subsection (1) was published and put on the market, the trustee may

sell or authorize the sale or reproduction of a copy of the published work or perform or authorize the performance of the work, and —

- (a) the author or his or her heirs must be paid sums by way of royalties or share of the profits as would have been payable by the bankrupt;
- (b) the trustee may not, without the written consent of the author or his or her heirs, assign the copyright or transfer the interest or grant an interest in the copyright by licence or otherwise, except on terms that shall guarantee to the author or his or her 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) a contract or an agreement between the author or his or her heirs and the bankrupt, terminates and is void, except with respect to the disposal, under this subsection, of a copy of the work published and put on the market before the bankruptcy.

(3) A trustee shall offer in writing to the author or his or her heirs the right to purchase the manufactured or marketable copy of the copyright work comprised in the estate of the bankrupt, at a price and on the terms and conditions that the trustee considers fair and proper before disposing of the manufactured and marketable copy in the manner set out under this section.

Intellectual property rights of bankrupt vests in purchaser on sale by trustee

192. The sale of intellectual property rights in patent, copyright and trademarks made by a trustee vests in the purchaser the legal and equitable estate of the bankrupt in the intellectual property rights.

Assignment of agreement

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

(2) In the case of an individual —

- (a) he or she may not make an application under subsection (1) unless he or she is carrying on a business; and
- (b) only a right and obligation in relation to the business may be assigned.

(3) Subsection (1) does not apply in respect of a right and obligation that is not assignable by reason of its nature or that arise under —

- (a) an agreement entered into on or after the date of the bankruptcy;
- (b) an eligible financial contract; or
- (c) a collective agreement.

(4) In deciding whether to make the order under subsection (1), the Court shall consider —

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

(5) The Court shall not make the order under subsection (1) unless it is satisfied that all monetary defaults in relation to the agreement, other than those arising by reason only of the bankruptcy, insolvency or failure of the person to perform a nonmonetary obligation, will be remedied on or before the day fixed by the Court.

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

Division 7
Partnership Property

Limited partnerships

194. On the general partners or a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

Proceedings against bankrupt partner

195.—(1) Where a member of a partnership becomes bankrupt, the Court may on the application of the trustee authorize the trustee

to commence and prosecute any action in the names of the trustee and of the partner of the bankrupt, and a release by the partner of the debt or demand to which the action relates, is void.

(2) Notice of the application for authority to commence an action under subsection (1), must be served on the partner of the bankrupt.

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

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

Division 8
Crown Interests

Crown claim

196.—(1) Notwithstanding another law in relation to a bankruptcy or proposal made in respect of a bankrupt, a provable claim including a secured claim of the Crown, ranks as an unsecured claim.

(2) Subsection (1) does not apply to a claim that is secured by a security or privilege of a kind that can be obtained by a person other than the Crown, under a law.

Crown security to be registered

197.—(1) A security provided for in an enactment for the sole purpose of securing a claim of the Crown is enforceable in relation to a bankruptcy, insolvency or proposal made in respect of a bankrupt, if the security is registered before the earliest date of —

- (a) the date an application is filed against the debtor;
- (b) the date the debtor makes an assignment; and
- (c) the date of the initial bankruptcy event in respect of the debtor, under a prescribed system of registration.

(2) In relation to a bankruptcy or proposal made in respect of a bankrupt, a security under subsection (1) that is registered in accordance with that subsection, is valid only in respect of an amount owing to the Crown at the time of that registration, in addition to an interest subsequently accruing on the amount.

Priority of financial collateral

198. In relation to a bankruptcy or proposal, an order shall not be made by the Court under this Act if the order would have the effect of subordinating financial collateral.

Division 9

Preferences and Transfers at Undervalue

Application of sections 200 to 206 to proposal

199.—(1) Where a proposal is made under Part IV, sections 200 to 206 apply to the proposal with modifications as the circumstances require, except if the proposal otherwise provides.

(2) For the purposes of subsection (1) and section 207, a reference under sections 200 to 206 to the term “becomes bankrupt”, is a reference to when the proposal is filed under this Act.

Preference made within three or twelve months before bankruptcy

200.—(1) A conveyance, gift, delivery or transfer of property or charge made on property, payment made, obligation incurred, judicial proceedings taken or suffered, by an insolvent person —

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

a preference over another creditor is void as against the trustee if it is made, incurred, taken or suffered, during the period beginning on the day that is twelve months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

(2) Where the conveyance, gift, delivery, transfer, charge, payment, obligation, or judicial proceedings under subsection (1), has the effect of giving the creditor a preference over another creditor, in the absence of evidence to the contrary, it is presumed, to have been made, incurred, taken, paid or suffered with a view to giving the creditor a preference over the other creditor, whether or not it is made voluntarily or under pressure, and evidence of the pressure is inadmissible to support the transaction.

(3) Subsection (2) does not apply to —

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

(4) In this section —

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

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

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

“margin deposit” means a payment, deposit or transfer to a clearing house under the rules of the clearing house to assure the performance of the obligations of a clearing member in connection with a security transaction, and includes a transaction respecting futures, options or other derivatives or to fulfil any of those obligations.

Transfer at undervalue

201.—(1) A trustee may make an application to the Court for the Court to declare that a transfer at undervalue is void as against the trustee if —

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

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

(3) In making an application under this section, a trustee shall specify, in the opinion of the trustee —

- (a) the fair market value of the property or services; and
- (b) the value of the actual consideration given or received by the debtor.

(4) The values on which the Court makes a finding under this section are, in the absence of evidence to the contrary, the values specified by the trustee.

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

Transaction between date of initial bankruptcy event and bankruptcy

202.—(1) Subject to subsection (2), a 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 is invalid, except —

- (a) a payment by the bankrupt to a creditor 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 a giving of security, by or with the bankrupt for adequate valuable consideration.

(2) Subject to this Act, a payment, delivery, conveyance, transfer, contract, dealing or transaction under subsection (1) is valid if made in good faith, with respect to —

- (a) the effect of bankruptcy on an execution, attachment or other process against property; and
- (b) preferences and transfers at undervalue.

(3) Where there have been mutual credit, mutual debts or other mutual dealings between a bankrupt and another 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 the mutual dealings;

- (b) the sum due from the one party must be set off against a sum due from the other party; and
- (c) the balance of the account, and no more, must be claimed or paid on either side respectively.

(4) A transaction under subsection (1), must not be entered into when a trustee is appointed without the prior notice and consent of the trustee.

(5) A reference to “adequate valuable consideration” —

- (a) in subsection (1)(c), is a reference to consideration of fair and reasonable money value with relation to that of the property assigned or transferred; and
- (b) in subsection (1)(d), is a reference to consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or securities transaction.

(6) The law of set-off or compensation applies to a claim made against the estate of the bankrupt and to an action instituted by the trustee for the recovery of a debt due to the bankrupt in the same manner and to the same extent as if the bankrupt was the claimant or defendant, except in so far as a claim for set-off or compensation is affected by this Act respecting fraud or a fraudulent preference.

Proceeds from dealing with property obtained in void or voidable transaction

203.—(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 of the property, the money or other proceeds, whether further disposed of or not, is deemed to be the property of the trustee.

(2) A 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 another person to whom he or she 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), if a person to whom the property is sold or disposed of has paid or given in good faith adequate

valuable consideration for the property, that person shall be subject to this section however the recourse of the trustee 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 a sale or resale of the property or a part of the property remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

Assignment of book debts by a bankrupt

204.—(1) Where a person engaged in a trade or business makes an assignment of his or her existing or future book debts or a class or part of his or her existing or future book debts and subsequently becomes bankrupt, the assignment of the book debts is void against the trustee with respect to the book debts that is not paid at the date of bankruptcy.

(2) This section does not apply to an assignment of book debts that is registered under a law providing for the registration of an assignment, if the assignment is valid.

(3) This section does not make void —

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

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

Protection of good faith transaction with bankrupt

205.—(1) A transaction by a bankrupt with a 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 an intervention by the trustee, is valid against the trustee, and an estate or interest in the property that under this Act, is vested in the trustee determines and passes in a manner and to the extent required for giving effect to the transaction.

(2) For the purposes of this section, the receipt of money, a security or negotiable instrument from or by the order or direction of a bankrupt by his or her banker and a payment and a delivery of money, a security or negotiable instrument made to or by the order or direction of a bankrupt by his or her banker, is deemed to be a transaction by the bankrupt with his or her banker dealing with the bankrupt for value.

Dividend payment by corporation that is bankrupt

206.—(1) Where a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation capital stock of the corporation within the period beginning on the day that is twelve months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, 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 made the corporation insolvent.

(2) Where a transaction under 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 if the Court determines 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 the directors by an officer of the corporation or the auditor of the corporation, or by written a report of the

auditor to fairly reflect the financial condition of the corporation; or

- (b) a report relating to the affairs of the corporation prepared under a contract with the corporation by an attorney-at-law, accountant, engineer, appraiser or another person whose profession gave credibility to the statements made in the report.

(4) Where a transaction under subsection (1) has occurred and the Court makes a finding under subsection (2), the Court may give judgment to the trustee against a shareholder who is related to one or more directors of the corporation or who is related to the corporation, in the amount of the dividend or redemption or purchase price 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 under subsection (2), must not be entered against or be binding on a director who had, in accordance with an applicable law governing the operation of the corporation, voted against or otherwise protested the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had exonerated himself or herself from liability.

(6) This section does not affect a right, under an applicable law governing the operation of the corporation, and under the Companies Act, Cap. 13.01 of a director to recover from a shareholder the whole or a part of a dividend, or any redemption or purchase price, made or paid to the shareholder when the corporation was insolvent or that made the corporation insolvent.

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

- (a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not make 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 make the corporation insolvent.
- (8) In subsection (4), the onus of proving that the corporation was not insolvent at the time the transaction occurred and

that the transaction did not make the corporation insolvent, lies with the shareholder.

Preference and transfer at undervalue void on annulment of proposal

207. Where a proposal is annulled by the Court under section 105 or as a result of a bankruptcy order or an assignment, sections 200 to 206 apply as though the debtor became bankrupt on the annulment if the proposal is annulled.

**PART VI
ADMINISTRATION OF ESTATES**

*Division 1
Meetings of Creditors*

Notice to creditors of first meeting

208.—(1) Subject to subsection (2), a trustee shall —

- (a) inquire as to the names and addresses of the creditors of a bankrupt; and
- (b) within thirty days after the date of the appointment of a trustee, send a notice of the bankruptcy and of the first meeting of creditors in the prescribed manner and to persons as may be prescribed.

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

(3) The Supervisor may, when the Supervisor considers it expedient, authorize the meeting to be held at another place.

(4) Notwithstanding subsection (3), if the Supervisor is satisfied that an extension of the period during which the first meeting of creditors must 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 if the Supervisor is satisfied that special circumstances exist, extend the period up to thirty days.

(5) A trustee shall include with the notice under subsection (1)(a) a list of the creditors with a claim amounting to twenty-five hundred dollars or more and the amounts of their claims together with a proof of claim and proxy in the prescribed form and a name must not be inserted in the proxy before it is sent.

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

- (a) by a notice, in the prescribed form, set out the required information concerning the financial situation of the bankrupt and the obligation of the bankrupt to make payments under section 175 to the estate of the bankrupt; and
- (b) immediately advise the Supervisor, and a creditor who has requested the information of —
 - (i) a material change relating to the financial situation of the bankrupt, and
 - (ii) an amendment made under section 175 to the amount that the bankrupt is required to pay to the estate of the bankrupt.

(7) A notice in the prescribed form must, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published by the trustee in a newspaper of general circulation in Saint Lucia or in the *Gazette* or in both.

First meeting of creditors

209. The first meeting of creditors is to —

- (a) consider the affairs of the bankrupt;
- (b) affirm the appointment of the trustee named in the certificate of assignment, bankruptcy order or proposal, or substitute another trustee in place of that trustee;
- (c) affirm the remuneration of the trustee;
- (d) subject to section 231, appoint an inspector; and
- (e) give directions to the trustee as the creditors see fit with reference to the administration of the estate.

Subsequent meeting of creditors

210. A trustee shall call a meeting of creditors when —

- (a) directed by the Court or the Supervisor;
- (b) requested in writing by —
 - (i) a majority of the inspectors, or
 - (ii) a creditor with the concurrence of one sixth in value of the unsecured creditors holding one sixth in number of the proved unsecured claims;
- (c) the trustee considers appropriate.

Notice of subsequent meeting

211.—(1) Meetings of creditors, other than the first meeting held under section 209, must be convened by the Chairperson of the meetings of creditors, by sending a notice —

- (a) of the time and place of the meeting, not less than five days before the scheduled date of the meeting to a creditor; and
- (b) at the address given in the proof of claim of the creditor.

(2) A notice of a meeting or of proceedings subsequent to the first meeting of creditors held under section 209 may not be given, to a creditor other than to a creditor who has proved his or her claim.

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

Meeting by majority of inspectors

212. A majority of the inspectors appointed under sections 209(d) and 166, may convene a meeting of the creditors when a trustee —

- (a) is unavailable to convene a meeting; or
- (b) has neglected or failed to convene a meeting of creditors when requested by the inspectors.

Division 2
Procedure at Meetings

Chairperson of first meeting

213. A trustee or the nominee of the trustee shall be the Chairperson of the first meeting of creditors and shall decide a question or dispute arising at the meeting.

Chairperson of meeting of creditors other than the first meeting

214. At a meeting of the creditors, other than the first meeting, the trustee or his or her nominee shall be the Chairperson, unless by resolution of the creditors at the meeting another person is elected.

Minutes of meeting of creditors

215.—(1) The Chairperson of a meeting of creditors shall cause minutes of the proceedings at the meeting to be taken and entered in a book maintained for that purpose.

(2) Minutes shall be signed —

- (a) in the case of a first meeting, by the Chairperson of the first meeting of creditors; or
- (b) in the case of a meeting of the creditors, other than the first meeting, by the Chairperson of the meeting of creditors other than the first meeting.

(3) Until the contrary is proved, a meeting of creditors in respect of the proceedings, if minutes have been signed by the Chairperson is deemed to have been properly convened and held and the resolutions passed or proceedings at the meeting to have been properly convened and held and to have been properly passed.

(4) The minutes of proceedings at a meeting of creditors signed at the same or the next ensuing meeting by a person describing himself or herself as the Chairperson of the meeting at which the minutes is signed, is admissible in evidence without further proof.

Quorum at meeting

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

(2) Where there is no quorum —

(a) at the first meeting of creditors —

(i) the appointment and remuneration of the trustee is deemed to be confirmed, and

(ii) the Chairperson shall adjourn the meeting —

(A) to a time and place as the Chairperson specifies;
or

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

(b) at a meeting of creditors, other than the first meeting, the Chairperson shall adjourn the meeting to a time and place as the Chairperson specifies.

(3) An adjournment under subsection (2) may, with the consent of the creditors present in person or by proxy at the meeting, be made by the Chairperson by ordinary resolution, adjourn the meeting.

Creditors may express views according to class

217. A class of creditors may express views and wishes separately from another class at a meeting of creditors and the effect to be given to the views and wishes is, in case of a dispute and subject to this Act, at the discretion of the Court.

Acceptance of proof of claim for voting

218. Notwithstanding this Act, the Chairperson may, for the purposes of voting, accept a letter or printed matter transmitted by a form or mode of telecommunications, as proof of the claim at or before a meeting of creditors.

Admission of proof of claim by Chairperson

219. The Chairperson may admit a proof of claim for the purposes of voting.

Rejection to proof of claim by Chairperson

220.—(1) The Chairperson may reject a proof of claim for the purposes of voting.

(2) A person aggrieved by a decision of the Chairperson under subsection (1) may make an appeal to the Court.

Marking an objection to proof of claim by Chairperson

221.—(1) Where a proof of claim is liable to be admitted or rejected, the Chairperson shall mark the proof of claim as objected to.

(2) Notwithstanding subsection (1), the Chairperson shall allow a creditor to vote.

(3) A vote under subsection (2) may be declared invalid if the objection is sustained.

Lodging a proof of claim for voting

222. A person may not vote as a creditor at a meeting of creditors, unless that person has proved a claim provable in bankruptcy and the proof of claim is lodged with the trustee before the meeting is convened.

Voting at meetings

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

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

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

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

(5) Except as otherwise provided under this Act, a creditor shall not vote at a meeting of creditors if the creditor did not, at all times within the period beginning on the day that is twelve months before the date of the initial bankruptcy event in respect of the debtor and ending on the date of the bankruptcy, deal with the debtor at arm's length.

(6) A creditor may vote at a meeting of creditors under 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 Chairperson of a meeting of creditors has the casting vote, in circumstances where the vote is equal.

Voting if claims acquired after bankruptcy

224.—(1) A creditor shall not vote on a proof of claim acquired after the bankruptcy of a debtor, unless the entire proof of claim is acquired.

(2) Subsection (1) does not apply to a creditor acquiring notes, bills or other securities on which the creditor is liable.

Voting in request of claim secured by bill or note

225. A creditor shall not vote in respect of a proof of claim on or secured by a bill of exchange or promissory note held by that creditor, unless the creditor is willing —

- (a) to treat the liability to him or her, by virtue of the bill of exchange or promissory note, of a person who is liable on that bill of exchange or promissory note antecedently to the debtor, and who is not a bankrupt, as a security in his or her hands; and
- (b) to estimate the value of that bill of exchange or promissory note and for the purposes of voting, and not for the purposes of dividend, to deduct that value from his or her proof of secured claim.

Voting by secured creditor

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

- (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 may vote in respect of the balance, due to him or her, after deducting the value of his or her security.

Voting by trustee

227.—(1) Subject to section 226 if a trustee is a proxy for a creditor, the trustee may vote as a creditor at a meeting.

(2) The vote of a trustee or of his or her partner, clerk, attorney-at-law or clerk of an attorney-at-law, as a creditor or as proxy for a creditor, must not be in the majority required for passing a resolution affecting the remuneration or conduct of the trustee.

(3) On the appointment of a trustee or inspector, the following persons shall not vote —

- (a) related persons of the bankrupt;
- (b) if the bankrupt is a corporation —
 - (i) an officer, director, employee or authorized agent of the corporation, and
 - (ii) a wholly-owned subsidiary corporation or an officer, director, employee or authorized agent of the wholly-owned subsidiary corporation.

Calculation of vote of a creditor and interlocutory measures

228.—(1) Subject to this Act, the questions at a meeting of creditors must be decided by ordinary resolution carried by the majority of votes, and for that purpose the votes of a creditor is calculated by counting one vote for each dollar of each claim of the creditor that is not rejected.

(2) In an application to vary or revoke a decision that affects or could affect the outcome of a vote, the Court may make an order it considers appropriate, including an order that —

- (a) suspends the effect of the vote until the application is determined; and
- (b) re-determines the outcome of the vote.

Appeal by creditor

229. A creditor may make an appeal to the Court against a decision taken at a meeting under sections 209 and 210.

Division 3 *Inspectors*

Appointment of inspectors

230.—(1) At the first or a subsequent meeting of creditors and for the purpose of overseeing the administration of the estate of the bankrupt, the creditors —

- (a) shall, by ordinary resolution, appoint one or more, and not exceeding five persons as inspectors of the estate of the bankrupt; or
- (b) may, by ordinary resolution, agree not to appoint an inspector.

(2) A person shall not be appointed as an inspector under subsection (1), unless the person —

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

(3) A defect or irregularity in the appointment of an inspector does not vitiate an act performed by the inspector in good faith.

(4) Where a vacancy exists in the appointment of inspectors under subsection (1), the inspectors or the creditors by an ordinary resolution at a meeting of creditors may fill the vacancy.

(5) A trustee shall convene a meeting of the creditors, for the purpose of appointing an inspector or substituting another inspector if —

- (a) there is no inspector of the estate of the bankrupt; or
- (b) an inspector fails to exercise the powers conferred on the inspector.

Revocation of appointment of inspectors

231. The appointment of an inspector may be revoked —

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

Direction from Supervisor if there are no inspectors

232. An act, a thing, direction or permission that is required to be performed or given by an inspector, may, on an application of a trustee, be performed or given by the Supervisor, where there is no inspector.

Meeting of inspectors

233.—(1) A trustee shall convene a meeting of inspectors if —

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

(2) An inspector may, if the other inspectors consent, participate in a meeting of inspectors by telephone or other communication medium that permits all persons participating in the meeting to communicate with each other, and an inspector participating in the meeting is deemed to be present at that meeting.

(3) In the event of an equal division of opinion at a meeting of inspectors, the opinion of an absent inspector must 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 personal conduct or interest of the trustee, in which case it must be resolved by the creditors or the Supervisor.

Consideration of directions of inspectors

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

(2) The decision and action of the inspectors is subject to review by the Court at the instance of the trustee or an interested person and the Court may —

- (a) revoke or vary an act or decision of the inspectors and it may give directions, permission or authority as it considers proper in substitution; or
- (b) refer a matter back to the inspectors for reconsideration.

Acquisition of property by inspector

235. An inspector is not directly or indirectly capable of purchasing or acquiring for himself or herself or for another, any of the property of the estate for which he or she is an inspector, except with the prior approval of the Court, on application by the trustee or an inspector or under the prescribed conditions.

Powers and duties of inspector

236.—(1) The powers of the inspector may be exercised by a majority of inspectors.

(2) An inspector shall —

- (a) from time to time verify the bank balance of the estate;
- (b) examine the accounts of the trustee and inquire into the adequacy of the security filed by the trustee; and
- (c) subject to subsection (3), approve the final statement of the trustee of receipts and disbursements, dividend sheet and disposition of unrealized property.

(3) Before approving the final statement of receipts and disbursements of the trustee under subsection (2)(c), an inspector shall —

- (a) be satisfied that all the property is accounted for;
- (b) be satisfied that the administration of the estate of the bankrupt is completed as far as can reasonably be performed; and
- (c) determine whether or not the —
 - (i) disbursements and expenses incurred by the estate of the bankrupt are proper and have been authorized, and
 - (ii) fees and remuneration of the trustee and its counsel are just and reasonable in the circumstances.

Remuneration to inspector

237.—(1) An inspector may be —

- (a) reimbursed the actual and necessary travel expenses incurred in relation to the performance of the duties of the inspector; and
- (b) paid the prescribed fees for attending each meeting.

(2) An inspector authorized by the creditors or by another inspector to perform special services for the estate, may be allowed a special fee for those services, subject to approval of the Court, on application by the trustee or an inspector.

(3) An inspector shall not accept from the bankrupt or from a person, acting on behalf of the bankrupt or from the trustee a fee, commission or emolument other than or in addition to the regular fees provided for by this Act.

(4) An inspector who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding seventy-five thousand dollars, or to imprisonment for a term not exceeding eight years, or to both.

Claims provable

238.—(1) The debts and liabilities to which the bankrupt —

- (a) is subject on the date he or she becomes bankrupt; or
- (b) may become subject before the discharge of the bankrupt by reason of an obligation incurred before the day on which the bankrupt becomes bankrupt,

are 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 that claim must be made in accordance with section 255.

(3) A claim in respect of a debt or liability under section 302(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.

Claims provable in bankruptcy following proposal

239.—(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 the claims pursuant to the proposal.

(2) A provable claim of a creditor arising after the proposal, until the date of bankruptcy, is provable in the bankruptcy.

Interest on debt

240.—(1) A creditor may prove a debt not payable at the date of bankruptcy and may receive dividends equally with the other

creditors, after deducting a rebate of interest at the rate of five per cent per annum or another prescribed rate, 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.

(2) Where interest on a debt or sum certain is provable under this Act and the rate of interest has not been agreed on, a creditor may prove interest at a rate not exceeding five per cent per annum or another 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 evidenced, from the time notice is given to the debtor of the interest claimed.

Proof of claim in respect of distinct contracts

241. 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 corporations or partnerships; or
- (b) as a sole contractor and also as a member of a corporation or partnership, and

the corporations or partnership are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, does not prevent the filing of a proof of claim, in respect of the contracts, against the properties respectively liable on the contracts.

Division 4

Proof of Claims

Proof of claim required to share in distribution

242.—(1) Subject to section 255 a creditor shall prove his or her claim, and a creditor who does not prove his or her claim shall not share in a distribution.

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

(3) A proof of claim under subsection (2) —

- (a) may be made —

- (i) by the creditor himself or herself, or
- (ii) on behalf of the creditor, by a person authorized by the creditor; and
- (b) if made by a person authorized under paragraph (a)(ii), must specify his or her authority and means of knowledge;
- (c) must —
 - (i) contain or refer to a statement of account showing the particulars of the claim,
 - (ii) contain a counterclaim that the bankrupt may have to the knowledge of the creditor,
 - (iii) specify the evidence by which it can be substantiated, and
 - (iv) specify whether the creditor is a secured creditor or preferred creditor.

(4) Where rent or other payment for a certain period falls due at specific 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 became due from day-to-day.

Disallowance of false claims by Court

243. Where a creditor or other person in any proceedings under this Act knowingly files with the trustee, a proof of claim containing a false statement or misrepresentation, the Court may, in addition to another penalty provided in this Act, disallow the claim in whole or in part, as the Court considers fit.

Examination of proofs of claim

244. A creditor who has filed a proof of claim may see and examine the proofs of claim of other creditors.

Proof of claim for wages of workers and others employed by bankrupt

245. A proof of claim for wages of a worker and other employee of 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 a worker and other employees of the bankrupt,

by attaching to the proof, a list setting out the name and address of the worker and other employee and the amounts severally due to the worker and other employee, and that proof does not prevent a worker or other wage-earner from filing a separate proof on his or her own behalf.

Division 5

Proof by Secured Creditors

Proof of the balance due to secured creditor

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

Proof of whole claim of secured creditor

247. Where a secured creditor surrenders his or her security to a trustee for the benefit of the creditors, he or she may prove his or her whole claim.

Proof of claim by secured creditor required by trustee

248.—(1) Where a trustee has knowledge of property that may be subject to a security, the trustee may, by serving the prescribed notice, require a 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.

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

(3) A 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 filed by the secured creditor.

(4) A creditor may receive a dividend in respect of the balance due to him or her, after deducting the assessed value of his or her security.

Sale of security as required by trustee

249.—(1) Where a 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 a time and on the terms and conditions as may be agreed on between the creditor and the trustee or, in default of that agreement, as the Court directs.

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

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

Trustee to elect which power to exercise

250. Notwithstanding sections 247 (3) and 248, a secured creditor may, by notice in writing, require the trustee to elect whether he or she will exercise the power of redeeming the security or requiring it to be realized, and if the trustee does not, within thirty days after receiving the notice, or the extended time as the Court may allow, signify in writing to the secured creditor his or her election to exercise that power —

- (a) the trustee shall not exercise that power;
- (b) the equity of redemption or another interest in the property comprised in the security that is vested in the trustee vests in the secured creditor; and
- (c) the amount of the claim of the secured creditor must be reduced by the amount at which the security is valued.

Amended valuation after security realized

251. Where a creditor realizes a security after having valued his or her security or the security realized under section 252, the net amount realized must be substituted for the amount of a valuation previously made by the creditor and must be treated in all respects as an amended valuation made by the creditor.

Amendment of claim if security not realized

252.—(1) Where a trustee has not elected to acquire the security under this Act, a creditor may amend the valuation and proof on showing to

the satisfaction of the trustee or the Court that the valuation and proof were made in good faith on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation.

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

(3) Where a valuation is amended under this section, the creditor —

- (a) shall, immediately, repay the surplus dividend that he or she may have received in excess of that to which he or she would have been entitled on the amended valuation; or
- (b) may be paid out of the money for the time being available for dividend, a dividend or share of a dividend, that he or she may have failed to receive by reason of the amount of the original valuation before that money is made applicable to the payment of a future dividend; and
- (c) shall not disturb the distribution of a dividend declared before the amendment is filed with the trustee.

Exclusion of secured creditor from dividend

253. Where a secured creditor does not comply with sections 248 to 252, he or she shall be excluded from payment of a dividend.

Creditor to receive no more than one hundred cents on dollar

254. Subject to section 264, a creditor shall in no case receive more than one hundred cents on the dollar and interest as provided under this Act.

Division 6

Admission and Disallowance of Proofs of Claim and Proofs of Security

Examination of proof of claim or security by trustee

255.—(1) A trustee shall examine a 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.

(2) A trustee shall determine whether a 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) A trustee may disallow, in whole or in part —

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

(4) A trustee shall provide, in the prescribed manner to the person —

- (a) whose claim was subject to a determination under subsection (2); or
- (b) 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 under subsection (4) or a further time as the Court may on application made within that period allow, the person to whom the notice was provided appeals from the decision of the trustee 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.

Division 7 *Scheme of Distribution*

Application

256. For the purposes of determining the priority of claims in bankruptcy proceedings section 257 applies.

Priority of claims

257.—(1) Subject to this section and the rights of a secured creditor, 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 business of the debtor must be applied in priority of payment in descending order in the categories specified in Part A of Schedule 2.

(2) Subject to subsection (3), the proceeds realized from another property of the debtor which is comprised in the security held by a secured creditor, must be applied in priority of payment in descending order in Part B of Schedule 2.

(3) Subject to subsections (1), (4) and (5), the proceeds realized from another property not referred to in the preceding subsections must be applied in priority of payment in descending order in Part C of Schedule 2.

(4) The debts within each category specified in Schedule 2 rank equally among themselves and must 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 is approved by the Court, the debtor has not subsequently been adjudged bankrupt, and the trustee has not been required to notify the Supervisor under section 107, the claims under Part A (b)(i) and (iii) of Schedule 2 and the claims as applicable under Part B (a) and Part C (a) of Schedule 2 must be read as including only the amounts due for the periods commencing twelve and six months, respectively before the proposal was filed.

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

(7) A creditor whose right is restricted by this section shall rank as an unsecured creditor for the balance of claim due to him or her.

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

258. A creditor who, before the bankruptcy of a debtor, entered into a transaction with the debtor and who was not at arm's length with the debtor at that time shall not claim a dividend in respect of a claim arising out of that transaction until the claims of the other creditors

have been satisfied, unless the transaction was in the opinion of the trustee or of the Court a proper transaction.

Claim of relative of bankrupt

259. A person related to a bankrupt does not have a claim preferred under section 257, in respect of wages, salary, commission or compensation for work performed or services provided to the bankrupt.

Claim of participating lender

260. 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) a rate of interest varying with the profits; or
- (b) a share of the profits arising from carrying on the trade or business, and

the borrower subsequently becomes bankrupt, the lender of the money shall not recover anything in respect of the interest or the share of profits, and shall recover the principal amount of money advanced to the borrower.

Claim of officer and director

261.—(1) Where a corporation becomes bankrupt, an officer or director of the corporation shall not have his or her claim preferred under section 257, in respect of wages, salary, commission or compensation for work performed or services provided to that corporation in any capacity.

(2) In this section “officer”, in relation to a corporation —

- (a) means a person who is employed or engaged by the corporation in a managerial capacity;
- (b) does not include a person whose functions are akin to the functions of a non-executive director of a company or other corporation.

Claim payable ratably and postponement of equity claim

262.—(1) Subject to this Act, a claim proved in a bankruptcy must be paid ratably.

(2) A creditor shall not be paid a dividend in respect of an equity claim until the claims that are not equity claims have been satisfied.

Property of bankrupt partnership

263.—(1) Where a partnership becomes bankrupt, the joint property is applicable in the first instance in payment of the joint debts and the separate property of each partner is applicable in the first instance in payment of his or her separate debts.

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

(3) Where there is a surplus of the joint property of the partnership, it must 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 rank first on the property of the individual or the partnership or partnerships as were contracted and 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 a bankrupt partnership is insufficient to defray the costs properly incurred, the trustee may pay the costs that cannot be paid out of the joint property out of the separate property of the bankrupts or one or more of them in the proportion that he or she determines with the consent of the inspectors of the estate out of which the payment is intended to be made, or, if the inspectors withhold or refuses their consent, with the approval of the Court.

Surplus after claims paid

264. Where there is a surplus after payment of the claims under sections 257 to 263 it must be applied in payment of interest from the date of the bankruptcy at the rate of six per cent per annum on the claims proved in the bankruptcy and according to their priority.

Final surplus to bankrupt

265. A bankrupt or the executor or administrator of a deceased bankrupt may have the surplus remaining after payment in full to the creditors of the bankrupt with interest as provided under this Act and of the costs, charges and expenses of the bankruptcy proceedings.

*Division 8**Claim Against Bankrupt or Bankrupt
Estate Where There Is Insurance***Claim against bankrupt under an insurance policy**

266.—(1) This Act does not affect the right of a person who has a claim against the bankrupt for damages on account of injury or death of a 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 a liability insurance policy applied in or toward the satisfaction of the claim.

(2) Where a creditor of a bankrupt estate is a person who has suffered personal injury in respect of which the creditor has a valid claim against the estate and the estate has purchased insurance to cover the liability that is owed to that creditor, that creditor has a prior right over other creditors against or in relation to the proceeds of a policy for that insurance to the extent that those proceeds are paid as a result of his or her claim and to settle his or her claim, and the trustee must receive those proceeds and hold it in trust for him or her.

(3) The reasonable costs incurred by the trustee in collecting from the proceeds of a policy of insurance under this section is deductible from the proceeds of the policy.

(4) A person affected by or aggrieved by a decision for the deduction of cost under subsection (3) may apply to the Court for review of the decision.

*Division 9**Dividends***Declaration and distribution of dividends by trustee**

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

(2) Where the validity of a claim filed with a 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) An action for a dividend does not lie against a trustee, and, if the trustee refuses or fails to pay a dividend after having been directed to do so by the inspectors, the Court may, on the application of a creditor, order him or her to pay it, and also to pay personally, interest on the dividend for the time that it is withheld as well as the costs of the application.

Notice to prove claim before declaration of final dividend

268.—(1) A trustee may, after the first meeting of the creditors, give notice in the prescribed form by registered mail to a person with a claim of which the trustee has notice or knowledge and whose claim has not been proved that, if that person does not prove his or her 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 the claim of that person.

(2) Where a person notified under subsection (1) does not prove the claim within the time limit or within an extended 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 shares in a dividend.

(3) The Comptroller of Inland Revenue may notify the trustee within the period under subsection (1) that it proposes to file a claim as soon as the amount is ascertained, and the time for filing the claim shall be extended to three months or a further time as the Court may allow.

(4) Notwithstanding subsections (2) and (3), a claim may be filed for an amount payable under the Income Tax Act, Cap. 15.02 within the time limit under subsection (3) 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.

(5) Unless the trustee retains sufficient funds to provide for the payment of a claim that may be filed under the Income Tax Act, Cap. 15.02 a dividend shall not be declared until the expiration of three months after the trustee has filed the returns that the trustee is required to file.

Claim proven after dividend declared

269.—(1) Subject to subsection (2), a creditor who has not proved his or her claim before the declaration of a dividend may, on proof

of his or her claim, be paid out of money for the time being in the hands of the trustee, a dividend he or she may have failed to receive before that money is applied to the payment of a future dividend.

(2) A creditor shall not disturb the distribution of a dividend declared before his or her claim was proven for the reason that he or she has not participated in that dividend, except on the terms and conditions as may be ordered by the Court.

Preparation of final statement of receipts and disbursements

270.—(1) Subject to this Act, a trustee shall prepare a final statement of receipts and disbursements and dividend sheet and divide the property of the bankrupt among the creditors who have proved their claims, if the trustee —

- (a) 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
- (b) has settled or determined or caused to be settled or determined the claims of the creditors to rank against the estate of the bankrupt.

(2) The statement of receipts and disbursements of the trustee must —

- (a) be in the prescribed form, and together with the dividend sheet and the notice under section 207(c) must be submitted to the inspectors for approval;
- (b) contain —
 - (i) a complete account of all monies received by the trustee out of the property of the bankrupt or otherwise,
 - (ii) the amount of interest received by the trustee,
 - (iii) all monies disbursed and expenses incurred and the remuneration claimed by the trustee,
 - (iv) together with full particulars, the 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 of the property.

(3) A trustee shall forward a copy of the statement and dividend sheet and the notice under section 271(c) to the Supervisor after the statement, dividend sheet and notice have been approved by the creditors and the bankrupt.

(4) The Supervisor shall comment on the taxation of the accounts of the trustee as he or she considers fit.

Forwarding of final statement, dividend and notice by trustee

271. After the Supervisor has commented on the taxation of the accounts of the trustee 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 a creditor whose claim is 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 intention of the trustee 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 estate of the bankrupt on a subsequent date.

Notice of objection by creditor or other interested person

272. 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 under section 271(c), that person files notice of his or her objection with the Supervisor setting out his or her reasons for the objection and serves a copy of the notice on the trustee.

Dividends on joint and separate properties

273. Where joint and separate properties are being administered, the dividends may be declared together, and the expenses of administering the properties must be apportioned by the trustee.

Unclaimed dividends and undistributed funds

274.—(1) Before proceeding to discharge, a trustee must forward to the Supervisor for deposit, according to the directives of the Supervisor or in the prescribed manner, the unclaimed dividends and undistributed

funds that the trustee possesses, and must provide a list of names and the mailing addresses, in so far as known, of the creditors of the unclaimed dividends and funds, showing the amount payable to each creditor.

(2) Subject to subsection (3), the Supervisor shall, after receiving the dividends and funds and the list under subsection (1), pay to a creditor his or her proper dividend and funds as shown on that list, and the payment has effect as if made by the trustee.

(3) Where the dividends and funds 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, by Notice published in the *Gazette* and in a local newspaper in general circulation in Saint Lucia

- (a) give full particulars of the monies unclaimed;
- (b) specify the period during which the monies have remained unclaimed; and
- (c) specify that unless, within twelve months from the date of the first publication of the Notice in the *Gazette* and on the website of the Ministry responsible for matters relating to insolvency, a claim to those monies are established to the satisfaction of the Supervisor, the monies will be dealt with under subsection (4),

and the Notice shall, during that year, be published in the *Gazette* twice or more often if the Minister considers fit.

(4) Subject to this Act, on the expiration of the year under subsection (3), the dividends and funds to which the claim is established shall lapse to and become part of the revenues of the Government.

(5) The Accountant General shall keep a record of the dividends and funds that have remained unclaimed in the possession or under the control of the Supervisor.

Division 10 *Summary Administration*

Summary administration

275.—(1) Where in the opinion of the Supervisor the realizable assets of the bankrupt after the claims of the secured creditors are

deducted, does not exceed the prescribed threshold, subsection (4) applies.

(2) In the determination of the realizable assets of a bankrupt for the purposes of subsection (1), regard shall not be had to the property that may be acquired by the bankrupt or devolve on the bankrupt after the date of the initial bankruptcy event.

(3) Where the Supervisor determines that the realizable assets of the bankrupt, after the claims of secured creditors are deducted, exceed the prescribed threshold, this section does not apply.

(4) Where the Supervisor has made a determination under this section to the summary administration of an estate under this Act —

- (a) the proceedings under this section must be titled “Summary Administration”;
- (b) the security to be deposited by a trustee under section 7(2) (e) is not required unless directed by the Supervisor;
- (c) a notice of the bankruptcy in the prescribed form must be published in a local newspaper in circulation throughout Saint Lucia, unless the Supervisor determines that the publication is unnecessary in the circumstances of the case, and if the bankrupt is a corporation, the notice must be sent to the Registrar of Companies;
- (d) notices, statements and other documents must be sent by ordinary or registered mail, but may be sent by electronic mail if practicable;
- (e) a first meeting of 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) must be called in the prescribed manner and form, and
 - (iii) must be held within twenty-one days after being called;
- (f) there must not be an inspector unless the creditors decide

to appoint an inspector, and if no inspector is 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 inspector;

- (g) in 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 circumstances, as are specified by the Supervisor or 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 270, the procedure respecting the accounts of the trustee, including the taxation of those accounts is as prescribed; and
- (k) notwithstanding section 348, the discharge of the trustee must follow the prescribed procedure;
- (l) the trustee shall receive the prescribed fees and disbursements.

Remuneration for summary administration of an estate

276. A trustee shall receive the prescribed fees and disbursements for the summary administration of an estate.

PART VII BANKRUPT

Duties of bankrupt

277.—(1) A bankrupt shall —

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

- trustee or to any person authorized by the trustee to take possession of all or part of the property;
- (b) deliver to the trustee, for cancellation any credit card issued to and in the possession or control of the bankrupt;
 - (c) deliver to the trustee the originals and copies of books, records, documents, writings and papers, including, title papers, insurance policies and tax records and returns relating to his or her property or affairs;
 - (d) at a time and place as may be determined by the Supervisor, attend for examination under oath by the Supervisor with respect to his or her conduct, the causes of his or her bankruptcy and the disposition of his or her 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 affairs of the bankrupt in the prescribed form verified by an affidavit and showing —
 - (i) the particulars of the assets and liabilities of the bankrupt,
 - (ii) the names and addresses of the creditors of the bankrupt,
 - (iii) the securities held by the respective creditors,
 - (iv) the dates when the securities were respectively given, and
 - (v) the further or other information as may be reasonably required by the trustee;
 - (f) make or give all the assistance within his or her power to the trustee in making an inventory of his or her assets;
 - (g) make disclosure to the trustee —
 - (i) of all property disposed of within the period beginning on the day that is twelve months before the date of the initial bankruptcy event or beginning

on an earlier date as the Court directs, and ending on the date of the bankruptcy, and

- (ii) as to how, to whom and for what consideration a part of the property was disposed of, except the 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 or her creditors and submit to an examination, unless prevented by illness or other sufficient cause;
- (j) when required, attend other meetings of his or her creditors or of the inspectors, or meet with the trustee;
- (k) submit to examinations under oath with respect to his or her property or affairs as may be required;
- (l) make his or her best effort to assist the trustee in the realization of his or her property and the distribution of the proceeds among his or her creditors;
- (m) examine the correctness of the proofs of claim filed, if required by the trustee;
- (n) in the case that any person has to his or her knowledge filed a false claim, disclose the fact immediately to the trustee;
- (o) inform the trustee of a material change in the financial situation of the bankrupt;
- (p) until his or her application for discharge is disposed of and the administration of the estate is completed, keep the trustee advised of his or her place of residence and any other address;
- (q) execute a power of attorney, transfer, deed and instrument or perform an act that may be required; or

- (r) generally do the acts and things in relation to his or her property and the distribution of the proceeds among his or her creditors as may be —
 - (i) reasonably required by the trustee,
 - (ii) prescribed.

(2) Where the affairs of a bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a statement of affairs under subsection (1)(e), the trustee may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement of affairs.

Unlawful transaction

278.—(1) A bankrupt shall not enter into a transaction with a person for the purpose of obtaining a benefit or advantage to which the bankrupt or the person would not be entitled.

(2) A bankrupt and person who contravenes subsection (1) commits an offence and are each liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding twelve months, or to both.

Responsible officer if bankrupt is a corporation

279. Where a bankrupt is a corporation, the officer executing the certificate of assignment, or an officer of the corporation, or a person who has, or has had, directly or indirectly, control of the corporation, as the trustee specifies, shall attend before the trustee for examination and shall perform all of the duties imposed on a bankrupt under section 277, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

Imprisoned bankrupt

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

- (a) direct that the bankrupt be brought before the Court in the protective custody of a Bailiff or other authorized officer at a time and place as may be designated in order to enable the bankrupt to —

- (i) attend Court in bankruptcy proceedings at which his or her personal presence is required,
 - (ii) attend the first meeting of creditors,
 - (iii) perform the duties required of him or her under this Act; or
- (b) make another order as it considers proper in the circumstances.

*Division 1**Examination of Bankrupt and Others***Examination of bankrupt by trustee prior to first meeting of creditors**

281.—(1) A trustee may, at the commencement of the bankruptcy and before the first meeting of creditors, examine the following persons under oath with respect to the bankruptcy and the dealings or property of the bankrupt —

- (a) the bankrupt; and
- (b) in the case of a corporation, an officer or director of the bankrupt.

(2) A person to be examined under subsection (1) shall produce any books, documents correspondence or papers in his or her possession.

(3) A trustee may carry out subsequent examinations under subsection (1), if the trustee considers the examinations necessary.

Examination of bankrupt by Supervisor

282.—(1) Before the discharge of a bankrupt, the Supervisor may, on the attendance of the bankrupt, examine the bankrupt under oath with respect to —

- (a) the conduct of the bankrupt;
- (b) the causes of the bankruptcy;
- (c) the disposition of the property of the bankrupt; and
- (d) such other matters as the Supervisor sees fit.

(2) Where an examination is made under subsection (1), the Supervisor shall make notes of the examination and —

- (a) before the first meeting of creditors, the notes must be communicated to the creditors at the meeting; or
- (b) after the first meeting of creditors, the notes must, on the request of a creditor, be made available to that creditor.

(3) Where a bankrupt fails to present himself or herself for examination by the Supervisor or fails to adhere to the requirements under this section —

- (a) the Supervisor may make an application to the Court for an order for an examination; and
- (b) the trustee or receiver shall report to the creditors at the first meeting.

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

Examination of bankrupt and others by trustee

283.—(1) A trustee may, with respect to the bankrupt, including the dealings and property of the bankrupt and without an order, examine under oath a person —

- (a) reasonably thought to have knowledge of the affairs of the bankrupt; or
- (b) who is or is an agent, clerk, officer, director or employee of the bankrupt.

(2) A creditor may make an application to the Court and on sufficient cause being shown, the Court may make an order for the examination under oath, before an authorized person, of the trustee, the bankrupt, an inspector, a creditor, or another person named in the order, for the purpose of investigating the administration of the estate of a bankrupt.

(3) A trustee, creditor or another interested person may require a person liable to be examined as specified in subsections (1) and (2),

to produce the books, documents, correspondence or papers in his or her possession relating in whole or in part to the bankrupt, his or her dealings or property.

(4) Where a person fails to supply the information requested under subsection (1) or (2), the trustee or creditor may make an application to the Court for an order to obtain the information.

Delivery of property of bankrupt and production of book, document, paper or record required by trustee

284.—(1) Where a person has, or is believed or suspected to have, in his or her possession or control any of the property of the bankrupt, or a book, document, paper or record relating in whole or in part to the bankrupt, his or her dealings or property, or showing that he or she is indebted to the bankrupt, the person may be required within a specified time period by the trustee to produce the books, document or paper for the information of the trustee, or to deliver to the trustee, the property of the bankrupt in possession of that person.

(2) Where a person fails to produce a book, document, paper or record or to deliver property under subsection (1), after being required to do so, the trustee may, without an order of the Court, examine the person or other interested person concerning the property, book, record, document or paper that the person is supposed to possess.

Court order to pay or deliver property to trustee

285.—(1) Where a person, on examination under this Part, admits that he or she is indebted to the bankrupt, the Court may, on the application of the trustee, order the person to pay to the trustee, at a time and in the manner 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 considers fit, with or without costs of the examination.

(2) Where a person on examination admits that he or she has in his or her possession property belonging to the bankrupt, the Court may, on the application of the trustee, order that person to deliver to the trustee the property or a part of the property at a time, in a manner and on the terms that the Court considers just.

Warrant for apprehension of bankrupt and other persons for examination

286. Where the bankrupt fails to present himself or herself for examination under sections 281 and 282 or if the bankrupt or another person is served with a summons or an order to attend for an examination under sections 283 and 284, but refuses or neglects to attend as required by the summons or order, the Court may in addition to another available remedy on the application of the trustee, by warrant cause the bankrupt or another person who is in default to be apprehended and brought up for examination.

Examination of person by Court

287.—(1) A person subject to being examined by the Court under this Part, shall answer all questions relating to —

- (a) the business or property of the bankrupt;
- (b) the causes of the bankruptcy of the bankrupt; and
- (c) the disposition of the property of the bankrupt.

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

Division 2
Arrest of Bankrupt

Warrant for arrest of bankrupt

288.—(1) The Court may, by warrant, cause a bankrupt to be arrested and detained, and any books, papers, records, other documents and property in the possession of the bankrupt to be seized, and the books, papers, documents and property to be safely kept by the trustee until the Court orders, in any of the following circumstances —

- (a) if, after the filing of an application for a bankruptcy order against the bankrupt, it appears to the Court that there are grounds for believing that he or she has absconded or is about to abscond from Saint Lucia with a view to —
 - (i) avoid payment of the debt in respect of which the application for a bankruptcy order was filed,

- (ii) avoid appearance to the application,
- (iii) otherwise avoid or delay proceedings in bankruptcy against him or her;
- (b) if, after making an application for a certificate of assignment, it appears to the Court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Saint Lucia with a view to avoid payment of his or her debts or to avoid examination in respect of his or her affairs;
- (c) if, after the filing of an application for a bankruptcy order or a certificate of assignment, it appears to the Court that there are reasonable grounds for believing that the debtor or the bankrupt —
 - (i) is about to remove his or her 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 or her property or any books, documents, records or writings that might be of use to the trustee or to his or her creditors in the course of the bankruptcy proceedings;
- (d) if the debtor or the bankrupt, removes property in his or her possession without leave of the Court or authorization of the trustee; or
- (e) if after the commencement of proceedings under this Act, the debtor or the bankrupt, has failed to comply with an order of the Court.

(2) A payment or proposal made or security given after an arrest is made under this section is not exempt from provisions under section 201 relating to fraudulent preferences.

Division 3
Discharge of Bankrupt

Discharge procedure of first-time individual bankrupt

289.—(1) Subject to this section, a first-time individual bankrupt shall be discharged twelve months after an assignment or a bankruptcy order is made.

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

(3) A report under subsection (2), must be completed within or no later than eleven months after a bankruptcy order or an assignment is made against the first-time individual bankrupt.

(4) A trustee —

- (a) may make an application to the Supervisor for an extension to complete the report under subsection (2); and
- (b) shall send a copy of the notice of his or her application for an extension under paragraph (a) to the first-time individual bankrupt.

(5) On receipt of an application under subsection (4)(a), the Supervisor shall have regard to whether —

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

Opposition to discharge of first-time individual bankrupt

290.—(1) The Supervisor, a trustee or a creditor may, no later than thirty days from the delivery of the report, oppose the application for the discharge of the first-time individual bankrupt.

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

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

(4) Where a trustee intends to oppose the discharge of the first-time individual bankrupt, the trustee shall give written notice of the intended opposition, to the first-time individual bankrupt and the

Supervisor, prior to the expiration of the twelve months immediately following the bankruptcy.

(5) Where there is an opposition under this section to the discharge of the first-time individual bankrupt by the Supervisor or a creditor, the person who opposes the discharge, may make an application, in the prescribed manner, to the Court for the hearing of the opposition.

Discharge of first-time individual bankrupt without opposition

291.—(1) Where a Supervisor, a trustee or a creditor does not oppose the discharge of the bankrupt in the twelve months period immediately following the bankruptcy, on the expiration of twelve months, the first-time individual bankrupt is discharged.

(2) Where a first-time individual bankrupt is discharged without opposition after the expiration of twelve months, the trustee shall issue a certificate, in the prescribed form, to the discharged first-time individual bankrupt declaring that the first-time individual bankrupt is discharged and is released from all debts except a matter under section 302(1), and shall send a copy of the certificate to the Supervisor.

(3) A trustee shall, in not less than fifteen days before the date of the discharge, give notice, in the prescribed form, of the impending discharge to the Supervisor, the first-time individual bankrupt and a creditor who has proved a claim, at the last known address of the creditor.

(4) Subsection (1) does not preclude a first-time individual bankrupt from making an application to the Court for a discharge before the expiration of twelve months immediately following the bankruptcy.

(5) Section 290(1) ceases to apply to a first-time individual bankrupt who makes the application before the expiration of that period.

(6) A discharge under this section is an absolute immediate order of discharge by the Court.

Application for discharge

292.—(1) Subject to section 291(3), the making of a bankruptcy order against, or an assignment by, an individual, 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 under subsection (2).

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

(3) A bankrupt who gives notice of waiver under subsection (1) may, at the expense of the bankrupt, make an application to the Court for a discharge and the trustee on being served with the notice of waiver shall proceed under this section.

(4) A corporation that is bankrupt shall not make an application for a discharge.

(5) Notwithstanding subsection (4), corporation that is bankrupt may make an application for a discharge, in the prescribed manner, if it has satisfied the claims of its creditors in full.

(6) The Court may, before hearing an application for discharge, if requested by the trustee require funds to be deposited with, or a guarantee to be given to, the trustee, as it considers proper for the payment of the fees and disbursements incurred in respect of the application.

(7) A 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 prescribed form to the Supervisor and the bankrupt; and
- (b) publish the notice in the *Gazette* and in a newspaper of general circulation in Saint Lucia or publish the notice as the Supervisor directs.

(8) Where a trustee is unavailable to perform his or her duties, on the application of a bankrupt for a discharge, the Court may authorize another person to perform the duties and may give directions as it considers necessary to enable the application of the bankrupt to be brought before the Court.

(9) An order of discharge of a bankrupt made by the Court must be —

- (a) published by the trustee in the *Gazette* and in a newspaper of general circulation in Saint Lucia; and
- (b) in the case of a company that is bankrupt and subject to subsection (4), served on the Registrar of Companies.

(10) A bankrupt company, subject to subsection (4), is deemed to be automatically dissolved on the discharge of the trustee under section 348 and the dissolution takes effect on the expiration of three months from the date of the discharge of the trustee and the Court may, on the application of a 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 a time as the Court thinks fit.

(11) A trustee shall within seven days of a company that is bankrupt being discharged, send to the Registrar of Companies a copy of the certificate of discharge of the bankrupt company.

Trustee to prepare report of application for discharge of bankrupt

293.—(1) A trustee shall prepare a report, in the prescribed form, 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 complied with the orders of the Court;
- (d) the conduct of the bankrupt before and after the date of the initial bankruptcy event;
- (e) whether the bankrupt is convicted of an offence under this Act; and
- (f) any other fact, matter or circumstance that is relevant to the Court's consideration of an unconditional order of discharge,

including a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the ability of the bankrupt to make a payment and the report must 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 must 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) provide a copy of the report to the Supervisor, to the bankrupt and to a 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 a further or other report to the Court as he or she considers expedient or as in his or her opinion ought to be before the Court on the application under subsection (2).

(4) A trustee or a creditor may attend Court and be heard in person or be represented by an attorney-at-law.

(5) The report of the trustee is evidence of the statements contained in the report.

(6) Where a bankrupt intends to dispute a statement contained in the report of a trustee prepared under subsection (1), the bankrupt shall give notice in writing to the trustee specifying the statements in the report that he or she intends to dispute.

(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the report of the trustee shall give notice of the intended opposition in the prescribed form, stating the grounds of the opposition to the trustee and to the bankrupt at or before the time for the hearing of the application for discharge.

Report of the trustee to provide recommendation

294.—(1) A trustee shall in making a recommendation submitted under section 293(1) consider —

- (a) whether the bankrupt has complied with section 300;

- (b) the total amount paid to the estate by the bankrupt, having regard to the indebtedness and financial resources of the bankrupt; 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 subsection (1) states that the bankrupt is to be discharged subject to conditions, that recommendation is deemed to be an opposition to the discharge of the bankrupt.

(3) Where a 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 a matter under subsection (3) is not resolved or the bankrupt has failed to comply with a condition that was established by the trustee, the trustee shall immediately make an application 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 a later time as may be fixed by the Supervisor.

(5) Where the Supervisor makes a determination under this section, that determination is binding.

(6) A trustee or a creditor may appeal a determination made under this section by the Supervisor.

Issue of certificate of discharge by Supervisor

295.—(1) A trustee shall issue a notice of compliance in the prescribed form to the Supervisor, if the bankrupt has complied with the conditions imposed on the bankrupt, in relation to the discharge of the bankrupt.

(2) Where the Supervisor receives a notice of compliance under subsection (1), the Supervisor shall issue to the bankrupt a certificate of discharge of bankrupt in the prescribed form releasing the bankrupt from all debts other than a debt under section 55(1).

Power of Court in relation to application for discharge

296.—(1) On the hearing of an application of a bankrupt for a discharge, the Court may —

- (a) grant or refuse an absolute order of discharge;
- (b) suspend the operation of the order under paragraph (a) for a specified time; or
- (c) grant an order of discharge subject to terms or conditions with respect to earnings and income that may afterwards become due to the bankrupt or with respect to his or her property acquired after the date of the hearing of the application for discharge of the bankrupt.

(2) Notwithstanding subsection (1), at the hearing of the application for discharge, the Court shall on proof of any of the facts under subsection (3) —

- (a) require the bankrupt, as a condition of his or her discharge, to perform certain acts, pay monies, consent to judgments, or comply with other terms, as the Court directs;
- (b) suspend the discharge for a period the Court thinks proper; or
- (c) refuse the discharge of a bankrupt.

(3) For the purposes of subsection (2) the facts 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 unsecured liabilities of the bankrupt, 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 the books of account as are usual and proper in the business carried on by the bankrupt and that 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 liabilities of the bankrupt;
- (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 business affairs of the bankrupt;
- (f) the bankrupt has put a creditor of the bankrupt to unnecessary expense by a frivolous or vexatious defence to an action properly brought against the bankrupt;
- (g) the bankrupt has on a previous occasion been bankrupt or made a proposal to the creditors of the bankrupt;
- (h) the bankrupt is guilty of fraud or fraudulent breach of trust;
- (i) the bankrupt has committed any offence under this Act or any other enactment in connection with the property of the bankrupt, the bankruptcy or the proceedings under the bankruptcy;
- (j) the bankrupt has failed to comply with a requirement to pay under section 175;
- (k) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to the creditors of the bankrupt as the means to resolve the indebtedness;
- (l) 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 —
 - (i) incurred unjustifiable expense by bringing a frivolous or vexatious action,
 - (ii) when unable to pay debts as they became due, given an undue or fraudulent preference to any of the creditors of the bankrupt,

(iii) incurred liabilities in order to make the assets of the bankrupt equal to thirty-three and one-third cents on the dollar on the amount of the unsecured liabilities of the bankrupt; and

(m) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with an order of the Court.

(4) Where after the expiration of twelve months after the date of an 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 a substituted order, in a manner and on the conditions it may determine.

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

Personal income tax debtors

297.—(1) In the case of a bankrupt who has seventy-five thousand dollars or more, or another prescribed amount, of personal income tax debt and whose personal income tax debt represents seventy five per cent or more or another prescribed percentage, of the total unsecured proven claims of the bankrupt, the hearing of an application for a discharge may not be held before the expiry of —

(a) in the case of an individual who is a first-time bankrupt —

(i) nine months after the date of bankruptcy, if the bankrupt has not been required to make payments under section 175 to the estate of the bankrupt during the nine months, or

(ii) twenty-one months after the date of bankruptcy, if the bankrupt is required to make payments under section 175;

(b) in the case of a bankrupt that is a bankrupt one time before under the laws of Saint Lucia or of a prescribed jurisdiction —

(i) twenty-four months after the date of bankruptcy, if the bankrupt has not been required to make a

payment under section 175 to the estate of the bankrupt during the twenty-four months, or

(ii) thirty-six months after the date of bankruptcy, in another case; and

(c) in the case of a bankrupt that is not referred to under paragraph (a) or (b), thirty-six months after the date of the bankruptcy.

(2) Before proceeding to the discharge of a trustee and before the first day that the hearing is held in respect of a bankrupt under subsection (1), a trustee shall, on five days' notice to the bankrupt, make an application to the Court for an appointment for a hearing of the application for the discharge of the bankrupt.

(3) On the hearing of an application for a discharge under subsection (1), the Court may, subject to subsection (4) —

- (a) require the bankrupt, as a condition of his or her discharge, to perform an act, pay money, consent to a judgment or comply with another term that the Court directs;
- (b) suspend the discharge for a period that the Court considers proper; or
- (c) refuse the discharge.

(4) In making a decision in respect of the application, the Court shall take into account —

- (a) the circumstances of the bankrupt at the time the personal income tax debt was incurred;
- (b) the effort made by the bankrupt to pay the personal income tax debt;
- (c) a payment made by the bankrupt in respect of another debt while failing to make reasonable efforts to pay the personal income tax debt; and
- (d) the financial prospects of the bankrupt for the future.

(5) Where the Court makes an order suspending the discharge, the Court shall, in the order, require the bankrupt to file income and expense statements with the trustee each month and to file all returns of income required by law to be filed.

(6) Where after the expiry of one year after the day on which an order is made under this section, the bankrupt satisfies the Court that there is no reasonable probability that he or she will be in a position to comply with the terms of the order, the Court may modify the terms of the order or of a substituted order, in a manner and on conditions that it considers fit.

(7) The powers of suspending and of imposing conditions to the discharge of a bankrupt may be exercised concurrently.

(8) In this section, “personal income tax debt”—

- (a) means the amount payable by an individual, under the Income Tax Act, Cap. 15.02 or under an enactment that imposes a tax similar in nature to the income tax imposed on an individual under the Income Tax Act, Cap. 15. 02;
- (b) includes, the amount of an interest, a penalty or fine imposed under the Income Tax Act, Cap. 15. 02 or any other enactment;
- (c) does not include an amount payable by the individual if the individual is or was a director of a corporation and the amount relates to an obligation of the corporation for which the director is liable in his or her capacity as director.

Value of assets of the bankrupt

298. For the purposes of section 296(3) and in the case of fisher folk and farmers, the assets of a bankrupt are deemed to be of a value equal to thirty-three and one third cents on the dollar on the amount of the unsecured liabilities of the bankrupt if 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 unsecured liabilities of the bankrupt.

Cessation of statutory disqualification

299.—(1) A disqualification of a person under another enactment on account of bankruptcy ceases when the bankrupt is discharged 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—

- (a) grant a certificate under subsection (1), or
- (b) refusal to grant the certificate under subsection (1).

(3) A person may appeal the decision of the Court to refuse the grant of a certificate under subsection (2)(b).

(4) This section does not derogate from the application of the fit and proper criteria established under an enactment and that applies to the discharged bankrupt.

Duties of bankrupt if conditional order granted

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

- (a) give the trustee the information he or she may require with respect to the earnings of the bankrupt and property and income acquired after the date of the hearing of the application for discharge of the bankrupt; and
- (b) not less than once each year, file in the Court and provide to the trustee a statement verified under oath showing the particulars of the property or income the bankrupt acquired subsequent to the hearing for his or her discharge; and
- (c) a trustee or a 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 or her earnings, income, property or dealings acquired after the date of the hearing of the application for discharge of the bankrupt.

(2) The Court may on the application of a trustee, or of a creditor, withdraw the order of discharge if the bankrupt fails to —

- (a) give information or to file a statement under subsection (1);
- (b) attend an examination when required to do so; or

- (c) answer all questions completely and accurately with respect to his or her earnings, income, property or dealings acquired after the date of the hearing of the application for discharge of the bankrupt.

(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.

Effects of settlement before marriage

301. 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 or her debts without the aid of the property comprised in the settlement; or
- (b) a covenant or contract is made in consideration of marriage for the future settlement on or for the spouse or children of the settlor of any property the settlor had not at the date of marriage estate or interest, not being property of or for his or her spouse,

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 or her creditors, or was unjustifiable having regard to the state of the affairs of the settlor at the time when it was made, the Court may grant an order subject to conditions in like manner as in a case if the bankrupt commits fraud, suspend or refuse an order of discharge.

Debts not released by order of discharge

302.—(1) An order of discharge under section 296(1) does not release the bankrupt from —

- (a) a 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) an 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 under subparagraph (i);
- (c) a debt or liability under a support, maintenance or affiliation order or an agreement for maintenance and support of a spouse or child living apart or alimentary pension for a married man or married woman separated from bed and board from the bankrupt;
- (d) a debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;
- (e) a debt or liability for obtaining property by false pretenses or fraudulent misrepresentation;
- (f) liability for the dividend that a creditor would have been entitled to receive on a 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 or her claim;
- (g) a debt for interest owed in relation to an amount under paragraphs (a) to (f); or
- (h) a debt or obligation in respect of a loan or guarantee of a loan to a student, if 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, 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) Ten years after a bankrupt who has a debt or obligation in respect of a loan or guarantee of a loan under subsection (1)(h) (i) ceases to be a full-time or part-time student, the Court may, on application by the bankrupt, 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 or the guarantee of the loan; and
- (b) has and will continue to experience financial difficulty to an extent that the bankrupt will be unable to pay the liabilities under the loan or the guarantee of the loan.

Third-party not released

303. An order of discharge does not release a person who at the date of the bankruptcy —

- (a) was a partner or co-trustee with the bankrupt;
- (b) was jointly bound or had made a joint contract with the bankrupt; or
- (c) was a surety or in the nature of a surety for the bankrupt.

Annulment of discharge of bankrupt by Court

304.—(1) Where a bankrupt after obtaining a discharge fails to observe an order of the Court imposed on him or her by this Act, on application of the trustee or a creditor of the estate, the Court may by order annul the discharge.

(2) Where it appears to the Court that the discharge of a bankrupt was obtained by fraud, the Court may, on application by the trustee, a creditor or any other interested party, 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 done before the annulment of the discharge.

Delay of issuance of orders

305. An order of discharge under section 296(1) or annulment of discharge under sections 55 and 304 must be dated on the day on which the discharge or annulment of discharge is made, and it must 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 is finally determined.

Offences committed by undischarged bankrupt

306.—(1) An undischarged bankrupt shall not —

- (a) engage in a trade or business without disclosing to a person with whom he or she enters into a business transaction valued at more than five thousand dollars that he or she is an undischarged bankrupt;
- (b) obtain credit to a total of fifteen thousand dollars or more from a person without informing the person that he or she is an undischarged bankrupt.

(2) An undischarged bankrupt who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both.

Offences committed by bankrupt

307.—(1) A bankrupt shall not —

- (a) make a fraudulent disposition of the property of the bankrupt before or after the date of the initial bankruptcy event;
- (b) refuse or neglect to answer fully and truthfully all proper questions put to the bankrupt at an examination held under this Act;
- (c) make a false entry or knowingly make a material omission in a statement or accounting;
- (d) within twelve months immediately preceding the date of the initial bankruptcy event or at any time after the twelve months —
 - (i) conceal, destroy, mutilate, falsify, make an omission in or dispose of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the property of the bankrupt or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
 - (ii) obtain a credit or a property by false representations made by the bankrupt or made by another person to the knowledge of the bankrupt,

- (iii) fraudulently conceal a debt due to or from the bankrupt or conceal and remove property of the bankrupt,
 - (iv) hypothecate, pawn, pledge or dispose of 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 an application against him or her, or within six months before the filing of the application, leave Saint Lucia and takes with him or her, or attempts or make preparation to leave Saint Lucia and take with him or her, a part of his or her property that is by law to be divided amongst his or her creditors.
- (2) A bankrupt who contravenes subsection (1) commits an offence and is liable, on conviction on indictment to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for a term not exceeding eleven years, or to both.
- (3) A bankrupt shall not, without reasonable cause, fail to do any of the things required of the bankrupt under section 277.
- (4) A bankrupt who contravenes subsection (3) commits an offence and is liable —
- (a) on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both; or
 - (b) on conviction on indictment, to a fine not exceeding one hundred fifty thousand dollars or to imprisonment for a term not exceeding twelve years, or to both.

**PART VIII
TRUSTEE***Division 1
Appointment of Trustee***Appointment or substitution of trustee by creditors**

308. The creditors may, at a meeting by special resolution, appoint or substitute another trustee for the trustee named in an assignment, bankruptcy order or proposal, or otherwise appointed or substituted under this Act.

Performance of duties on appointment

309. A trustee is not bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters, the trustee shall, until discharged or another trustee is appointed in the place of the trustee, perform the duties required of a trustee under this Act.

Order to specify security

310.—(1) The Minister may, on consultation with the Supervisor and by Order published in the *Gazette*, specify the rate of security.

(2) An Order under subsection (1) must specify —

- (a) the amount of the security;
- (b) that the security must be in a form satisfactory to the Supervisor; and
- (c) the security may be enforced by the Supervisor for the benefit of a creditor.

Trustee to give security

311.—(1) Except for the Government Trustee, a trustee shall, on appointment, immediately give security required under section 7(2) (e) —

- (a) in cash
- (b) by performance bond; or
- (c) by professional indemnity insurance.

(2) The security required to be given under subsection (1) must be deposited with the Supervisor, for the benefit of the creditors and may be enforced by a succeeding trustee or by a creditor on behalf of all creditors by order of the Court, and may be increased or decreased by the Supervisor.

(3) Where the security required to be given under subsection (1) takes the form of professional indemnity insurance and a 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, the proceeds must be held in trust for the benefit of the estate of the bankrupt.

(4) A trustee shall, as soon as possible, take possession of a deed, book and record, and all the property of the bankrupt and make an inventory, and for the purpose of making an inventory the trustee may enter, subject to subsection (5), on premises on which the deed, book and record, or property of the bankrupt may be, notwithstanding that the deed, book or record may be in the possession of a Bailiff, a secured creditor or other claimant to the deed, book, record or property of the bankrupt.

(5) Where the premises under subsection (4) are occupied by a person other than the bankrupt, a trustee may not enter the premises without the consent of that other person except under the authority of a warrant issued under section 385.

(6) A 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) A person may not withhold from the trustee possession of or set up a lien or right of retention against a trustee on a deed, book, record or property belonging to the bankrupt.

Defect or irregularity in appointment of trustee

312. A defect or irregularity in the appointment of a trustee does not vitiate an act done by the trustee in good faith.

Division 2
Conduct of Trustees

Prohibition on trustee from acting in specified circumstances

313.—(1) Except with the permission of the Supervisor and on conditions that the Supervisor imposes, a trustee shall not act as trustee in relation to the estate of a debtor —

- (a) if the trustee is, or 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) a cousin-german to 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) if the trustee is —
 - (i) the trustee under a trust indenture issued by the debtor or a person related to the debtor, or
 - (ii) a cousin-german to the trustee under a trust indenture under subparagraph (i);
- (c) if the trustee is a creditor of the debtor.

(2) A trustee shall not act as a trustee in relation to the estate of a debtor if the trustee is —

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

(3) A trustee shall not, while acting as the trustee of an estate, act for or assist a secured creditor to assert a claim against the estate or to realize or otherwise deal with a security that the secured creditor holds,

unless the trustee has obtained a written opinion from an independent attorney-at-law that the security is valid and enforceable against the estate.

Code of ethics

314. A trustee shall comply with the prescribed code of ethics for the conduct of trustees.

Division 3

Counselling for individual bankrupt

Counselling for individual bankrupt

315.—(1) Where directives are issued by the Supervisor, a trustee —

- (a) shall provide or cause to be provided counselling for an individual bankrupt; and
- (b) may provide or cause to be provided counselling for a person who is financially associated with an individual bankrupt.

(2) Where counselling is provided by a trustee to a debtor who is not bankrupt, that counselling must be provided in accordance with directives by the Supervisor.

(3) Section 289(1) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided under subsection (1).

Payment of cost of counselling

316. The estate of the bankrupt shall pay the cost of the counselling under section 315, as a cost of administration of the estate.

Division 4

Duties and Powers of Trustee

Verification of affairs of the bankrupt

317. A trustee shall take reasonable steps to verify the statement of affairs of the bankrupt under section 277(1)(e).

Protective measures

318. A trustee may if necessary in the interest of the estate of a bankrupt —

- (a) take measures to protect the assets of the estate;
- (b) take immediate steps to dispose of property that is perishable or likely to depreciate rapidly in value; and
- (c) carry on the business of the bankrupt until the date fixed under section 208 for the first meeting of creditors.

Legal action to protect property of the bankrupt

319.—(1) A trustee may, prior to the first meeting of creditors, obtain legal advice and institute Court proceedings or other action as the trustee considers necessary for the recovery or protection of the property of the bankrupt.

(2) In the case of an emergency, if the necessary authority cannot be obtained from the inspectors in time to take appropriate action, a trustee may obtain legal advice and institute legal proceedings and take the action that the trustee may consider necessary in the interest of the estate of the bankrupt.

Divesting of immovable property

320.—(1) A trustee may, with the permission of an inspector, divest all or part of the trustee's right, title or interest in immovable property of the bankrupt by notice or disclaimer in the prescribed form.

(2) The Registrar of Lands shall accept and register in the Land Register the notice given under subsection (1), when tendered for registration.

(3) Registration of a notice under subsection (2) operates as a discharge or release of a right, title or interest previously registered in the Land Register by or on behalf of the trustee with respect to the property referred to in the notice.

Returns by trustee

321. A trustee is not liable to make a return under a law that the bankrupt was required to make, more than twelve months prior

to the commencement of the calendar year, or the financial year of the bankrupt if that is different from the calendar year, in which the person became bankrupt.

Trustee to permit inspection of books and records

322. A trustee shall at all reasonable times permit a person authorized by the Court or empowered to act on behalf of a Regulator to inspect the books and records of the bankrupt in order to prepare or verify returns that the bankrupt is required to file by law.

Insurance of property of bankrupt

323.—(1) A trustee shall without delay temporarily insure and keep insured in the official name of the trustee all the insurable property of the bankrupt, for an amount and against the hazards the trustee considers advisable until an inspector is appointed.

(2) An inspector shall determine the amount for which and the hazards against which the property of the bankrupt shall be insured by a trustee.

(3) The insurance covering the property of the bankrupt that is in force at the date of bankruptcy is, in the event of loss suffered, without a notice to the insurer or other action on the part of the trustee and notwithstanding an enactment or rule of law, contract or other provision to a contrary effect, payable immediately to the trustee as if the name of the trustee is 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 in trust account

324.—(1) Subject to subsection (2), a trustee shall deposit all monies received for an estate in a financial institution in a separate trust account for each estate.

(2) Where monies under subsection (1) are situated in a country other than Saint Lucia, the trustee may, where authorized by the Supervisor, deposit the monies in a financial institution in that country that is similar to a bank.

(3) A trustee shall not withdraw 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 to creditors and charges incidental to the administration of the estate.

(4) A payment made by a trustee from a trust account for an estate must be made by cheque drawn on or by wire transfer from the estate account or in the manner specified by the Supervisor.

(5) A trustee shall not deposit the sum received by the trustee in the official capacity of the trustee, in a bank account kept by the trustee for personal or private use.

(6) The interest recoverable in respect of the bank account is part of the assets of the estate.

Maintenance of books and records

325.—(1) A trustee shall keep proper, prescribed books and records of the administration of the estate to which the trustee is appointed, in which the trustee shall enter —

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

(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, must be immediately delivered to the substituted trustee.

(3) A trustee shall permit the Supervisor, the bankrupt, or a creditor or their agents to inspect and make copies of the books and records under subsection (1) at a reasonable time.

Reporting by trustee

326.—(1) A trustee shall report in writing when required by —

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

the condition of the estate of the bankrupt, the monies on hand and particulars of the property sold or remaining unsold.

(2) A trustee may charge against the estate of a bankrupt, for the preparation and delivery of a report under subsection (1), the trustee's actual disbursements and actual costs of other physical resources of the trustee utilized in compiling the report or making a copy of the report.

Documents to be provided to Supervisor

327.—(1) A trustee shall, immediately after the receipt or preparation of the documents under section 270 or 275 —

- (a) send the documents to the Supervisor together with a true copy of —
 - (i) the notice under section 208,
 - (ii) the statement under section 277,
 - (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 under subparagraphs (ii) and (iii) in the Court, to the extent that the documents may be relevant to any proceedings that are before the Court.

(2) A 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 other documents as the Supervisor specifies.

Report to Supervisor if trustee no longer acting**328.—(1) Where —**

- (a) the licence of a trustee is cancelled or suspended, or has ceased to be valid by reason of failure to pay fees;
- (b) a trustee is 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 the time 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 unadministered property of every estate under the administration of the trustee for which the trustee has not been discharged, and
- (ii) 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 to the remaining property.

(2) A trustee shall, before proceeding to the discharge relating to the estate under his or her administration, unless the trustee has already done so, prepare and file the report under section 293 and forward a copy to the Supervisor.

Duties of trustee exercisable with permission of inspectors

329.—(1) A trustee may, with the permission of the inspectors, do, in relation to an estate under the administration of the trustee, the following —

- (a) for a 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 a person or to sell the same in parcels;

- (b) lease immovable property;
- (c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;
- (d) bring, institute or defend any action or other legal proceedings relating to the property of the bankrupt;
- (e) employ an attorney-at-law or other agent to institute legal 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 stipulations as to security and otherwise as the inspectors think fit;
- (g) incur obligations, borrow money and give security on the property of the bankrupt by hypothec, 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 a debt owing to the bankrupt;
- (i) compromise a claim made by or against the estate;
- (j) assign or transfer to a particular creditor for fair value, 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) divide in its existing form among the creditors, according to its estimated value, any property that from its peculiar nature or other special circumstances cannot be readily or advantageously sold;
- (l) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim a lease of, or other temporary interest in, the property of the bankrupt; and
- (m) appoint the bankrupt to aid in administering the estate of the bankrupt in a manner and on terms as the inspectors 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 class of thing 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 a contract or transaction entered into by a trustee in good faith in respect of a matter set out under subsection (1).

Sale of bankrupt's assets to a related person

330.—(1) A trustee may sell or otherwise dispose of the property of a bankrupt to a person who is related to the bankrupt with the authorization of the Court.

(2) For the purposes of subsection (1) and in the case of a bankrupt other than an individual, a person who is related to the bankrupt includes —

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

(3) In deciding whether to grant an authorization under subsection (1), the Court may consider —

- (a) whether the process leading to the proposed sale or disposition of the property was reasonable in the circumstances;
- (b) the extent to which the creditors were consulted;
- (c) the effects of the proposed sale or disposition on creditors and other interested parties;
- (d) whether the consideration to be received for the property is reasonable and fair, taking into account the market value of the property;

- (e) whether good faith efforts were made to sell or dispose of the property to persons who are not related to the bankrupt; and
- (f) whether the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition of the property.

Report to the police by trustee

331.—(1) Where a trustee has reasonable grounds to believe that —

- (a) an offence under this Act or under another enactment is committed with respect to the estate of a bankrupt in connection with which he or she is acting under this Act; or
- (b) for a special reason there should be an investigation in connection with that estate,

the trustee may —

- (i) report the matter to the police, including in the report a statement of all the facts or circumstances of the case within his or her knowledge, the names of the witnesses who should in his or her opinion be examined, and a statement respecting the offence or offences believed to have been committed, and
- (ii) forward a copy of the report immediately to the Supervisor.

(2) A creditor, inspector or another interested person who believes on reasonable grounds that a person has committed an offence under this Act or another enactment in connection with a bankrupt, his or her property or his or her transactions, may file a report with the police of the facts on which that belief is based, he or she may make further representation supplementary to the report of the trustee.

(3) Where the Court is satisfied on the representation of the Supervisor or trustee or of a creditor, inspector another interested person, that there is ground to believe that a person has committed an offence under this or another Act in connection with the bankrupt, his or her property or transactions, the Court may authorize the trustee to initiate proceedings for the prosecution of that person for that offence.

Power to make advance or borrow

332.—(1) With the permission of the Court, a trustee, may make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in such amounts, on terms and on property as authorized by the Court.

(2) An advance, obligation and the money borrowed under subsection (1) must be repaid out of the property of the debtor in priority to the claims of the creditors.

(3) The creditors or inspectors may, by resolution, limit —

- (a) the amount of the obligations that may be incurred;
- (b) the advances that may be made or monies that may be borrowed by the trustee; or
- (c) the period of time during which the business of the bankrupt may be carried on by the trustee.

(4) A debt incurred and credit received in carrying on the business of a bankrupt is a debt incurred and credit received by the estate of the bankrupt.

Liability of trustee when carrying on business of bankrupt

333.—(1) In subsections (2) and (3), a reference to a trustee means a trustee in a bankruptcy or proposal.

(2) Notwithstanding anything to the contrary in any other law, where a trustee in performing duties as such carries on the business of a debtor or continues the employment of the employees of a debtor, 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 under subsection (2) shall not rank as costs of administration.

(4) Subsection (2) does not affect the liability of a successor employer other than the trustee.

Liability of trustee in respect of environmental matters

334. Notwithstanding anything in any other law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred —

- (a) before the appointment of the trustee; or
- (b) after the appointment of the trustee,

unless it is established that the condition arose or the damage occurred as a result of the gross negligence or willful misconduct of the trustee or the gross or intentional fault of the trustee.

Trustee not required to carry on business of bankrupt

335. A trustee is not under an 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;
- (b) the creditors or inspectors, on the demand of the trustee, neglect or refuse to secure the trustee against possible loss.

Court order for sale of assets for reimbursement of costs and payment of advances

336.—(1) The Court may make an order providing for the sale of the assets of the estate of the bankrupt, 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 costs that may be owing to the trustee or of monies that the trustee may have advanced for the benefit of the estate.

(2) Where a sale is not successfully concluded under 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 the costs that may be owing to the trustee or of monies

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.

Application to Court by trustee for directions

337.—(1) A trustee may apply to the Court for a direction in relation to a matter affecting the administration of the estate of a bankrupt and the Court shall give in writing a direction as appear to be proper in the circumstances.

(2) Where an estate has not been fully administered within three years after the bankruptcy, a trustee shall report that fact to the Court as soon as practicable thereafter, and the Court may make such order as it considers fit to expedite the administration of the estate.

Redirection of mail

338.—(1) Subject to subsection (2), a trustee may, by sending to the Postmaster General —

(a) a notice in the prescribed form; and

(b) a copy of the certificate of appointment of the trustee,

request that mail addressed to a bankrupt that is directed to a place referred to in the notice be redirected or sent by the Postmaster General to the trustee or to another person that the trustee designates.

(2) On receipt of the documents by the Postmaster General he or she shall redirect or send that mail to the trustee or to another person.

(3) A notice under subsection (1) may refer to a residence of the bankrupt if the trustee has, on application, obtained permission from the Court.

(4) Where a bankrupt is an individual, a notice under subsection (1) has effect during the three month period immediately following the date of bankruptcy unless the Court, on application, extends that period on terms that the Court considers fit.

Responsibility of former trustee to pass accounts

339.—(1) On the appointment of a substituted trustee, the former trustee shall immediately pass his or her accounts before the Supervisor

and deliver to the substituted trustee the property of the estate, together with the books and records of the bankrupt and those relating to the administration of the estate.

(2) A substituted trustee shall —

- (a) notify the Supervisor of the appointment of the substituted trustee;
- (b) where required by the inspectors, seek to register a notice of the appointment in the Land Registry or other registry office where the assignment or bankruptcy order is registered; and
- (c) as soon as funds are available, pay to the former trustee the remuneration and disbursements approved under this Act.

Initiation of criminal proceedings

340. A trustee may, with the approval of the Director of Public Prosecutions, initiate criminal proceedings as may be authorized by the creditors, the inspectors or the Court against a person believed to have committed an offence under this Act.

Application to Court regarding act or decisions of trustee

341. Where a bankrupt or a creditor or another person is aggrieved by an act or a decision of the trustee, the aggrieved person may make an application to the Court and the Court may confirm, reverse or modify the act or decision complained of and make another order.

Proceedings by creditor if trustee refuses to act

342.—(1) Where a creditor requests a trustee to take proceedings that in his or her 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 or her to take the proceedings in his or her own name and at his or her own expense and risk, on notice being given to the trustee and to other creditors of the contemplated proceeding, and on the terms and conditions as the Court directs.

(2) Where an order under subsection (1) is 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 vests in the creditor.

(3) Another creditor may participate in the proceedings taken under subsection (1) by contributing to the cost of the proceedings in the amount and manner as the creditors agree or if the creditors do not agree, as the Court directs.

(4) A benefit derived from proceedings taken under subsection (1), to the extent of his or her 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 a manner as they may agree or if they do not so agree, as the Court directs and the surplus 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 or her readiness to institute the proceedings for the benefit of the creditors, the Court shall in the order fix the time within which the trustee shall do so, and in that case the benefit derived from the proceedings, if instituted within the time so fixed, belongs to the estate.

Delivery of property to trustee

343. Where a person has in his or her possession or power any property of the bankrupt that he or she is not by law entitled to retain as against the bankrupt or the trustee, that person shall deliver the property to the trustee.

Access to trustee of property of debtor

344. Subject to a direction of the Court, a 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) a book and record, and any other financial document,
and

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

*Division 5**Remuneration of Trustee***Remuneration of trustee**

345.—(1) The remuneration of a trustee is determined —

- (a) by ordinary resolution at a meeting of creditors; or
- (b) if the creditors resolve by ordinary resolution, by inspectors.

(2) A trustee shall make an application to the Supervisor for a direction fixing the amount of the trustee's remuneration, where the remuneration of a trustee has not been determined under subsection (1), or there is no quorum for a meeting of creditors.

(3) Where the business of the debtor is carried on by a trustee or under the supervision of a trustee, the trustee may be allowed —

- (a) special remuneration for the services, as the creditors or inspectors authorize by resolution;
- (b) in the case of a proposal, special remuneration as agreed to by the debtor; or
- (c) in the absence of agreement with the creditors or debtor, an amount approved by the Court.

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

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

*Division 6**Replacement of Trustee by Creditors***Replacement of trustee by creditors**

346. The creditors may by special resolution appoint another trustee, instead of the trustee appointed under the notice of intention or proposal that was filed under section 62, if the creditors are satisfied that it would be in their best interests to do so.

*Division 7**Discharge of Trustee***Property incapable of realization**

347.—(1) With the permission of the inspectors, the property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the application of the trustee for discharge.

(2) Where a trustee is unable to return the property under subsection (1), the Court may make an order.

Application for discharge of trustee

348.—(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 make an application in the prescribed form to the Court 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 who is replaced by another trustee may be discharged on application made by the former trustee if the former trustee has accounted for all the 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 an undisposed claim or objection having been made by the Supervisor, the bankrupt or a creditor.

(4) For the purposes of subsection (2), full administration of the estate is deemed to have occurred 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.

(5) The discharge of a trustee operates as a release of the security provided under section 311(1).

(6) Notwithstanding his or her discharge, the trustee remains the trustee of the estate for the performance of the duties that may be incidental to the full administration of the estate.

Objection for discharge of trustee

349.—(1) An interested person desiring to object to the application for discharge of a trustee under section 348 shall, five business days prior to a hearing for a discharge —

- (a) file a notice of objection in the prescribed form with the Registrar or the Supervisor, including the reasons for the objection; and
- (b) serve a copy of the notice under paragraph (a) on the trustee.

(2) Notwithstanding section 348 and this section, a trustee is not relieved or discharged or deemed to be relieved or discharged from the results of fraud.

Appointment of trustee to complete the administration of an estate after the discharge of a former trustee

350. The Court, on being satisfied that there are assets that have not been realized or distributed, may, on the application of an interested person, appoint a trustee to complete the administration of the estate of the bankrupt, and the trustee shall be governed by this Act.

*Division 8**General***Official name of trustee acting in bankruptcy proceedings or proposal by a debtor**

351. The official name of a trustee acting —

- (a) in bankruptcy proceedings, is “The Trustee of the Estate of [Insert name of the bankrupt], a bankrupt”;
- (b) with respect to a proposal by a debtor, is “The Trustee acting in relation to the proposal of (insert the name of the debtor)”.

Offences by trustee and others

352.—(1) A person shall not —

- (a) act as, or represents himself or herself to be a trustee if he or she is not appointed as a trustee under this Act;

- (b) having been appointed a trustee to an estate and another trustee having been appointed in his or her place, refuse to deliver to the substituted trustee on demand the un-administered property of the estate, together with the books, records and documents of the estate and of his or her administration;
- (c) having been appointed a trustee, with intent to defraud, fail to observe or to comply with this Act;
- (d) having been appointed a trustee, without reasonable excuse, fail to observe or comply with this Act;
- (e) directly or indirectly solicit or canvass a person to make an assignment or proposal under this Act, or to make an application for a bankruptcy order with intent to defraud;
- (f) being a trustee, directly or indirectly, solicit proxies to vote at a meeting of creditors with intent to defraud; or
- (g) being a trustee —
 - (i) make an arrangement under any circumstances with the bankrupt, or an attorney-at-law, auctioneer or other person employed in connection with a bankruptcy, for a gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate, or
 - (ii) accept consideration or a benefit from a person, or make an arrangement for giving up, or give up, a part of his or her remuneration, as a receiver, interim receiver or trustee, to the bankrupt or an attorney-at-law, auctioneer or another person employed in connection with the bankruptcy.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both.

(3) Subsection (1)(g) does not apply to a sharing of the fees of a trustee among persons who together act as a trustee of the estate of a bankrupt or as a joint trustee to a proposal.

PART IX
ENFORCEMENT

Protection of estate by Supervisor

353.—(1) The Supervisor may, for the protection of an estate in the circumstances under subsection (2) —

- (a) give a direction to a person to deal with property of the estate described in the direction in a manner that may be indicated in the direction, including the continuation of the administration of the estate;
- (b) give a direction to a person to take a step that the Supervisor considers necessary to preserve the books and records of the estate;
- (c) give a direction to a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction; and
- (d) if action in respect of a trustee is being taken under section 27 or section 354, refuse to appoint the trustee in respect of a new estate 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, if —

- (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 an investigation under section 8(1)(b);
- (c) the Supervisor exercises any of the powers set out under section 354;
- (d) the fees under sections 22 and 25 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 a condition or limitation to which the licence of the trustee is subject; or

- (g) a circumstance under section 27(1) (c) or (d) exists and the Supervisor is considering cancelling the licence under that section.

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

- (a) must state the statutory authority under which the direction is given;
- (b) is binding on the person to whom it is given; and
- (c) is, in 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 under subsection (1) is not liable for an act done by the person in compliance with that direction.

Powers of Supervisor where conduct of trustee is questionable

354.—(1) Without limiting the power of the Court under section 392, the Supervisor —

- (a) may cause an inquiry or an investigation into the conduct of a trustee, if it appears to the Supervisor that —
 - (i) a trustee has not properly performed the duties of a trustee or has not properly managed an estate,
 - (ii) a trustee has not complied with this Act, or a law relating to the proper administration of an estate, or
 - (iii) it is in the public interest to do so;
- (b) exercise a power under subsection (2).

(2) The Supervisor may —

- (a) cancel or suspend the licence of the trustee;
- (b) impose conditions on the licence, including a condition that the trustee completes an examination or enrolls in a proficiency course;
- (c) require the trustee to make restitution to the estate of an amount of money as the estate is deprived of as a result of the conduct of the trustee;

- (d) in the case of the Government Trustee, make recommendations to the Minister or other appropriate person;
- (e) except in the case of the Government Trustee, remove a trustee from acting further in respect of an estate the trustee is currently administering.

(3) In the case of subsection (2)(d), the appropriate person shall report the recommendations to the Supervisor within the prescribed number of days after making its recommendations.

(4) Where the power to cancel or suspend the licence of the trustee or remove a trustee from acting further is exercised by the Supervisor under subsection (2)(a) or (e), subject to the creditors' power of appointment under section 308, the Government Trustee may act in respect of an estate that is affected by the exercise of that power.

(5) This section and section 355, where applicable, apply in respect of a former trustee, with modifications as the circumstances require.

Hearing by the Supervisor

355.—(1) After an inquiry or investigation under section 354, the Supervisor shall send to the trustee a written notice to —

- (a) indicate to the trustee his or her intention to exercise a power under subsection (3);
- (b) afford the trustee a reasonable opportunity for a hearing —
 - (i) to appear at the time and place specified in the notice,
 - (ii) to testify to all matters within the knowledge of the person relative to the subject matter of the inquiry or investigation into the conduct of the trustee, and
 - (iii) to bring and produce a book, record, data, document or paper, including, a book, record, data, document or paper in electronic form in the possession of the trustee or under his or her control relative to the subject matter of the inquiry or investigation.

(2) At a hearing under subsection (1), the Supervisor —

- (a) may administer oaths;
- (b) shall be bound by the prescribed rules;
- (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 oral evidence to be made in writing.

(3) A notice under subsection (1) and, where applicable, the summary of oral evidence under subsection (2)(d), together with the documentary evidence that the Supervisor receives in evidence, form the record of the hearing.

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

(5) The decision of the Supervisor after a hearing under subsection (1), with the reasons given for the hearing, must be given in writing to the trustee not later than thirty days after the conclusion of the hearing and the decision must be public.

(6) A decision of the Supervisor may on application to the Court be varied, set aside or confirmed.

Investigation

356. Where, on information supplied by a trustee or other person, the Supervisor suspects on reasonable grounds that a person has, in connection with an estate or matter to which this Act applies, committed an offence under this Act or any other enactment, the Supervisor may, if it appears to the Supervisor that the alleged offence may not be investigated, make or cause to be made an investigation as the Supervisor considers necessary for the —

- (a) conduct, dealings and transactions of the debtor concerned;

- (b) cause of the bankruptcy or insolvency of the debtor;
and
- (c) disposition of the property of the debtor.

Examination before the Registrar

357.—(1) Where, on the application of the Supervisor or an authorized representative of the Supervisor, a summons is issued by the Court, the Supervisor may, for the purpose of an investigation under section 356, examine or cause to be examined under oath before the Registrar or another authorized person —

- (a) the debtor or an employee, officer, director or agent of the debtor;
- (b) a person whom the Supervisor suspects, on reasonable grounds, has knowledge of the affairs of the debtor; or
- (c) a person who is or is an agent, clerk, officer, director, or employee of the debtor.

(2) The examination under subsection (1) must be with respect to the —

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

(3) A person being examined under subsection (1) shall answer all questions relating to the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor and the disposition of the property of the debtor;

Inadmissibility of a statement of admission in an examination or deposition

358.—(1) In a hearing of a matter in bankruptcy, a statement or admission made by a person in a compulsory examination or deposition before the Court is inadmissible as evidence against that person in proceedings in respect of an offence under any other law.

(2) Where a person provides an answer to a question that incriminates him or her or establishes his or her liability to civil

proceedings, the answer shall not be used or admitted in evidence against the person in civil or criminal proceedings, except, the prosecution of perjury in the giving of that evidence.

Prohibition against hindering, molesting or interfering with a person

359.—(1) A person shall not hinder, molest or interfere with a person who does anything that he or she is authorized to do in carrying out an investigation.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifteen dollars.

Copies of a book, record or other document

360.—(1) Where a book, record or other document is examined or produced for an investigation, the person by whom it is examined or to whom it is produced or the Supervisor may make or cause to be made a copy of the book, record or other document.

(2) A copy under subsection (1) —

- (a) must be certified by the Supervisor or a person authorized by the Supervisor;
- (b) is admissible as evidence; and
- (c) has the same probative force as the original book, record or document.

Recovery

361.—(1) Notwithstanding section 257, a recovery made as a result of an investigation under section 356 to 360 must be applied to the reimbursement of the costs and expenses incurred by the Supervisor on the recovery.

(2) The costs and expenses under subsection (1) does not include the ordinary costs and expenses of the office of the Supervisor.

(3) The balance remaining in respect of the recovery shall be made available for the benefit of the creditors of the debtor.

PART X**INTERIM RECEIVER****Interim receiver for protection of the estate of a debtor when bankruptcy order filed**

362.—(1) Where it is shown to be necessary for the protection of the estate of a debtor, the Court may, after the filing of an application for a bankruptcy order and before a bankruptcy order is made —

- (a) appoint a trustee as interim receiver of all or part of the property of the debtor; and
- (b) direct the trustee to take immediate possession of the property,

on an undertaking being given by the applicant as the Court imposes, with respect to interference with the legal rights of the debtor and damages in the event the application is dismissed.

(2) Subject to subsection (3), an interim receiver appointed under subsection (1) may, under the direction of the Court —

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

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

Interim receiver where notice of intention to enforce a security pending

363.—(1) Where the Court is satisfied that a secured creditor is about to send or has sent a notice of an intention to enforce a security in the prescribed form under section 369 the Court may, on application by the secured creditor, subject to subsection (3), appoint a trustee as interim receiver of all or part of the property of the debtor, that is subject to the security to which the notice relates, for a term that the Court determines, if it is shown to the Court to be necessary for the protection of —

- (a) the estate of the debtor; or
- (b) the interests of the creditor who is about to send or has sent the notice of intention to enforce a security under section 369.

(2) The Court may direct the interim receiver appointed under subsection (1), to —

- (a) take possession of all or part of the property of the debtor referred to in the appointment under subsection (1);
- (b) exercise control over that property, and over the business of the debtor, as the Court considers advisable; or
- (c) take another action as the Court determines.

Interim receiver where notice of intention or proposal filed

364.—(1) Where a notice of intention to make a proposal is filed under section 62 or a proposal is filed under section 70, the Court may, at any time thereafter, subject to subsection (3), appoint as interim receiver of all or part of the property of the debtor, for a term that the Court determines —

- (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 that an interim receiver be appointed under subsection (1) to —

- (a) carry out the duties under sections 64 and 344, in substitution for the trustee under that subsection or jointly with that trustee;
- (b) take possession of all or part of the property of the debtor mentioned in the order of the Court;
- (c) exercise control over that property, and over the business of the debtor, as the Court considers advisable; and
- (d) take another action that the Court determines.

(3) An appointment of an interim receiver may be made under subsections (1) and (2) if it is demonstrated to the Court to be necessary for the protection of —

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

Disclaimer of agreement

365.—(1) Subject to subsections (3) and (4), a debtor in respect of whom a notice of intention or a proposal was filed may on notice given, in the prescribed form, to the other parties to the agreement and the trustee, disclaim an agreement to which the debtor is a party on the day on which the notice of intention or proposal was filed; but the debtor may not give the notice unless the trustee approves the proposed disclaimer.

(2) Where the debtor is an individual, the debtor —

- (a) may not disclaim an agreement under subsection (1) unless the debtor is carrying on a business; and
- (b) may disclaim only an agreement in relation to the business carried on by the debtor.

(3) Within fifteen days after the day on which the debtor gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the trustee, apply to the Court for an order that the agreement is not to be disclaimed.

(4) Where the trustee does not approve the proposed disclaimer, the debtor may, on notice to the other parties to the agreement and the trustee, apply to the Court for an order that the agreement be disclaimed.

(5) In deciding whether to make the order, the Court is to consider —

- (a) whether the trustee approved the proposed disclaimer;
- (b) whether the disclaimer would enhance the prospects of a viable proposal being made in respect of the debtor; and
- (c) whether the disclaimer would likely cause significant financial hardship to a party to the agreement.

(6) An agreement is disclaimed —

- (a) if no application is made under subsection (3), on the day that is thirty days after the day on which the debtor gives notice under subsection (1);
- (b) if the Court dismisses the application made under subsection (3), on the day that is thirty days after the day on which the debtor gives notice under subsection (1) or any later day fixed by the Court; or
- (c) if the Court orders that the agreement is disclaimed under subsection (4), on the day that is thirty days after the day on which the debtor gives notice or any later day fixed by the Court.

(7) Where the debtor has granted a right to use intellectual property to a party to an agreement, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property, the disclaimer does not affect the party's right, during the term of the agreement or any period for which the party extends the agreement as of right —

- (a) to use the intellectual property; or
- (b) to enforce an exclusive use of the intellectual property.

(8) Where an agreement is disclaimed, a party to the agreement who suffers a loss in relation to the disclaimer, has a provable claim.

(9) A debtor shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer within five days after the day on which the party requests the reasons for the proposed disclaimer.

(10) This section does not apply to —

- (a) an eligible financial contract;
- (b) a lease under section 54;
- (c) a collective agreement, except with prior approval of the Court;
- (d) a financing agreement if the debtor is the borrower; or
- (e) a lease of an immovable property if the debtor is the lessor.

Court order for interim financing

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

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

(3) A security or charge granted under this section must 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 cash flow statement of the debtor under section 61 or 69.

(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 business of the debtor 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 business and financial affairs of the debtor are to be managed during the proceedings;
- (c) whether the management of the debtor has the confidence of its major creditors;
- (d) whether the interim financing would enhance the prospects of a viable proposal being made in respect of the debtor;

- (e) the nature and value of the property of the debtor;
- (f) whether a creditor would be prejudiced as a result of the security or charge; and
- (g) the report of the trustee under section 61 or 69.

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

(7) The security or charge granted by the Court under this section may not rank in priority over a 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 by the Court under this section, may not secure an obligation to the lender that exists before an order is made under this section.

Security or charge to indemnify director or officer on filing of notice of intention or proposal

367.—(1) 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 a director or officer of the debtor, to indemnify the director or officer against obligations and liabilities that he or she may incur as a director or officer after the filing of the notice of intention to make a proposal or the proposal —

- (a) on the application by a debtor in respect of whom a notice of intention or a proposal is filed; and
- (b) on written notice to a secured creditor who is likely to be affected by the security or charge.

(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 gross negligence or willful misconduct of a director or officer.

(4) On written notice to a secured creditor who is 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 a financial, legal or other expert engaged by the trustee in the performance of the duties of the trustee;
- (b) a financial, legal or other expert engaged by the debtor for the purpose of proceedings under this Part; and
- (c) a financial, legal or other expert engaged by another 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 a secured creditor.

(6) In the case of an individual —

- (a) the Court shall 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.

Costs of interim receiver

368.—(1) Subject to subsection (2), if an appointment of an interim receiver is made under section 362, 363 or 364, the Court may make an order for 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 a secured creditor and, over any of the assets of the debtor in respect of his or her claim for fees or disbursements.

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

(3) Where an interim receiver is appointed under this Part, the Minister may prescribe —

- (a) the form and content of the interim receiver accounts; and
- (b) the procedure for the preparation and taxation of the accounts under paragraph (a).

(4) In this section, “disbursements” include payments made in operating a business of the debtor.

PART XI

SECURED CREDITOR

Notice by secured creditor

369.—(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 a security in the prescribed form.

(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 under subsection (1).

(4) This section does not apply —

- (a) in respect of a secured creditor —
 - (i) whose right to realize or otherwise deal with his or her security is protected under section 74 or 79, or
 - (ii) in respect of whom a stay under section 47, 74 or 79 is lifted under section 390;
- (b) if there is a receiver in respect of the debtor.

Appointment of trustee as receiver

370.—(1) Subject to subsection (2), on application by a secured creditor, the Court may appoint a trustee to be or act as a receiver, if the Court considers it to be just and convenient.

(2) In the case of an insolvent person in respect of whose property a notice is to be sent under section 369, the Court may not appoint a receiver under subsection (1) before the expiry of ten days after the day on which the secured creditor sends the notice unless —

- (a) the insolvent person consents to an earlier enforcement under section 369; or
- (b) the Court considers it appropriate to appoint a receiver before the specified period.

(3) A receiver appointed under subsection (1) shall notify the debtor of the appointment.

(4) On application by a secured creditor, a court may, if it considers it to be just or convenient to do so, appoint a receiver to do any or all of the following —

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the Court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the Court considers advisable.

Action on and after appointment of receiver

371.—(1) A receiver shall, when appointed by —

- (a) instrument of appointment, act in accordance with the conditions imposed under that instrument of appointment, subject to any subsequent directions of the Court;
- (b) a Court order, act in accordance with the directions of the Court.

(2) A receiver shall not later than ten days after being appointed a receiver —

- (a) publish a notice of his or her appointment in the prescribed form in one issue of a local daily newspaper in circulation throughout Saint Lucia;
- (b) send a notice, in the prescribed manner and form —
 - (i) to the Supervisor,
 - (ii) in the case of a corporation, to the Registrar of Companies accompanied by the prescribed fee,
 - (iii) if the debtor is bankrupt, to the trustee,
 - (iv) if the debtor is not bankrupt, to the debtor,
 - (v) if directed to do so by the Supervisor, to the creditors of the debtor that the receiver, after making reasonable efforts to, has ascertained.

Action after taking possession or control of the property of the debtor

372. A receiver shall, immediately after taking possession or control of property of a debtor —

- (a) prepare a statement containing prescribed information relating to the receivership, and
- (b) provide a copy of the statement to the Supervisor, in the case of a corporation, to the Registrar of Companies, the debtor, the trustee, in the case of a bankrupt, and to a creditor of the debtor who requests a copy at any time up to six months after the end of the receivership;
- (c) 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) prepare, immediately after the completion of his or her duties as receiver, a final report and a statement of accounts, containing the prescribed information relating to the receivership, and immediately provide a copy of that report and statement of accounts to the

Registrar of Companies, where it is a corporation, the Director of International Financial Services (where it is an international business company, international mutual fund or international bank) the 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 or she is appointed, and
- (ii) not, unless the receiver's appointing instrument mandates the receiver to act as a receiver and manager or unless the Court orders otherwise, carry on the business of the debtor for more than thirty days after his or her appointment.

Duties of receiver

373. A receiver shall —

- (a) take into his or her custody or control the collateral specified in the instrument of appointment or in the Court order pursuant to which the receiver was appointed;
- (b) deal with any property of the debtor in his or her possession or control in a commercially reasonable manner;
- (c) open and maintain a bank account in his or her name as receiver for the deposit of all monies coming under his or her control as receiver;
- (d) keep records, in accordance with international accounting standards, of receipts, expenditures and transactions involving collateral or other property of the debtor;
- (e) prepare monthly summaries of accounts of his or her administration of the collateral and other property of the debtor;

- (f) indicate on a business letter, invoice, contract, or similar document used or executed in connection with the receivership, that he or she is acting as a receiver;
- (g) act honestly and in good faith; and
- (h) undertake any other action that the Court determines.

Provision of names and addresses of creditors by debtor

374.—(1) A receiver shall send a notice in the prescribed form to the debtor indicating that there is a receiver in respect of his or her property and requesting the names and addresses of the creditors.

(2) A debtor shall, immediately after receiving a notice under subsection (1) that there is a receiver in respect of any of his or her property, provide the receiver with the names and addresses of the creditors.

Personal liability of receiver

375.—(1) A receiver —

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

(2) An action must not be taken against a receiver for loss or damage arising from the sending or providing by the receiver of a notice under section 371 or a statement or report under section 372, if provided in good faith in compliance with those sections.

Court order in respect of non-performance of duties by secured creditor, debtor, interim receiver, receiver or trustee

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

(2) An order under subsection (1) may —

- (a) direct the secured creditor, trustee, interim receiver, receiver or debtor, to carry out a duty imposed under this Part; or
- (b) restrain the secured creditor, trustee, interim receiver, or receiver from realizing or dealing with the property of the debtor, until that duty is carried out, or both.

Court order for statement of accounts to be submitted for review

377.—(1) The Court may, on the application by the Supervisor, the debtor, the trustee, in the case of a bankrupt, or a receiver or creditor, made within six months after the statement of accounts is provided to the Supervisor under section 371, 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 under subsection (1).

Receiver or interested party may apply to Court for direction

378.—(1) A receiver or another interested party may make an application to the Court for directions in relation to this Part.

(2) The Court may, in relation to an application for directions under subsection (1) —

- (a) make an order —
 - (i) appointing, replacing or discharging a receiver and approving his or her accounts,
 - (ii) determining the notice to be given to a person, or dispensing with notice to a person;
 - (iii) declaring the rights of a person before the Court;
 - (iv) requiring a person to do, or abstain from doing, anything in relation to the receivership;
 - (v) fixing the remuneration of the receiver;
 - (vi) requiring the receiver or receiver-manager or a person by or on behalf of whom the receiver or receiver-manager is appointed —

- (A) to make good a default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
 - (B) to relieve the person from a default on the terms the Court considers fit;
 - (C) to confirm an act of the receiver or receiver manager; and
- (b) give directions on a matter relating to the duties of the receiver or receiver-manager.

Priorities of distribution in a receivership

379. The priorities for distribution of the property of a debtor in a receivership are as provided under section 257.

PART XI COURT AND PROCEDURE

Jurisdiction of the Court

380.—(1) The Court shall have and exercise jurisdiction in respect of bankrupts and matters of insolvency, and that jurisdiction shall be exercised under and subject to this Act and another enactment relating to bankruptcy and insolvency.

(2) On the application to the Court by the Supervisor, a 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 another person authorized by the Court, of —

- (a) the trustee;
- (b) the bankrupt;
- (c) an inspector or a creditor; or
- (d) another person named in the order,

for the purpose of investigating the administration of the estate of a bankrupt, and may further order a person liable to be so examined to produce a book, document, correspondence or paper in the possession of the person relating to the bankrupt, the trustee or a creditor, the costs of the examination and investigation to be in the discretion of the Court.

(3) The evidence of a person examined under this section shall, if transcribed, be filed in the Court and may be read in proceedings before the Court under this Act and to which the person examined is a party.

General powers of the Court

381.—(1) Subject to this Act, the Court shall decide questions of priorities in accordance with the applicable law and other questions, whether of law or fact, that may arise in a case of insolvency instituted before the Court or which the Court considers expedient or necessary to decide under this Act.

(2) Notwithstanding this Act, in respect of proceedings under Part IV, the Court may, on the application of any person interested in the matter, on notice to any other person or without notice as the Court sees fit, make an order that it considers appropriate in the circumstances.

Proceedings not invalidated by defect or irregularity

382. Proceedings in bankruptcy are not invalidated by a formal defect or by an irregularity, unless the Court before which an objection is made to the proceedings is of the opinion that substantial injustice is caused by the defect or irregularity and that the injustice cannot be remedied by an order of that Court.

Court may review, vary or rescind order

383.—(1) The Court may review, vary or rescind an order made by it under its jurisdiction in insolvency matters.

(2) The Court may adjourn proceedings before it on terms that it considers fit to impose.

(3) The Court may amend a written process or proceedings under this Act, on terms that it considers fit to impose.

Abridgement of time and leave to omit material or to send notice in alternative manner

384.—(1) Where under this Act or the Regulations the time for doing an act or thing is limited, the Supervisor or the Court, may extend or abridge the time either before or after the expiration thereof, on such terms, as the Supervisor or the Court considers 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 notice to a creditor, or the cost of sending the material or notice, 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 notice in a manner as the Supervisor or the Court directs.

Court may issue search warrant

385.—(1) Where, a trustee or interim receiver, without notice makes an application and the Court is satisfied by information on oath that there are reasonable grounds to believe there is in a place or premises a 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 the conditions as specified in the warrant.

(2) In executing a warrant under subsection (1), a trustee or interim receiver shall not use force unless the trustee or interim receiver is accompanied by a police officer or officer of the Court and the use of force is specifically authorized in the warrant.

(3) A search warrant issued under subsection (1) may be executed in the prescribed manner, or in the same manner and subject to the same privileges in and subject to which a search warrant for property alleged to be stolen may be executed according to law.

Evidence in Court

386.—(1) The Court may in a matter take the evidence, orally, by interrogatories, on affidavit or out of Saint Lucia, by commission or another means that the Court considers appropriate.

(2) A document made or used in the course of a bankruptcy proceeding or other proceeding 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 a Judge or Master or is certified as a true copy by the Registrar, be admissible in evidence in legal proceedings.

(3) The production of an original document relating to an insolvency proceeding or a copy certified by the person making it as a true copy of the document or by a successor in that office of that person as a true copy of a document found among the records in his or her 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 is received by a Court in a proceeding under this Act, the deposition of the deceased person purporting to be sealed under the seal of the Court, or a copy of the deposition purporting to be so sealed, is admissible in evidence of the matters therein deposed to.

Orders and decisions subject to appeal

387.—(1) An order made under this Act or another enactment relating to bankruptcy or insolvency is, at the instance of a person aggrieved, subject to appeal in the same manner as another order of the Court.

(2) Where by this Act and the Regulations, an appeal to the Court is given against a decision of the Supervisor or trustee or meeting of creditors, the appeal must be brought within twenty-one days from the time when the decision appealed against is pronounced or made, or a longer period as the Court considers just and reasonable in the circumstances.

Stay of proceedings on filing of appeal

388. Except to the extent that an order or judgment appealed from is subject to provisional execution, notwithstanding an appeal, proceedings under an order or judgment appealed from must be stayed until the appeal is disposed of, and the Court of Appeal may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for another reason as the Court of Appeal considers proper.

No stay of proceedings unless ordered by the Court

389. An appeal to the Court of Appeal does not operate as a stay of proceedings, except to the extent ordered by that Court.

Application to Court by aggrieved creditor for removal of stay

390. A creditor who is affected by the application of section 47, 74 or 79, may apply to the Court for a declaration that those sections no longer apply to that creditor, and the Court may make the declaration, subject to qualifications that the Court considers proper, if it is satisfied —

- (a) that the creditor is likely to be materially prejudiced by the continued application of sections 47, 74 or 79; or

(b) that it is equitable to make the declaration.

Stay ineffectual against certain parties and claims

391.—(1) Sections 47, 74 and 79 do not apply in respect of a claim under section 238(3).

(2) Notwithstanding subsection (1), a creditor with a claim under section 174(3) has no remedy, or shall not commence or continue any action, execution or other proceedings, against —

- (a) property of a bankrupt that has vested in the trustee; or
- (b) an amount that is payable to the estate of the bankrupt under section 175.

Removal of trustee by Court

392. Notwithstanding section 354, the Court on the application of an interested person, may for cause remove a trustee and appoint another trustee in the place of the trustee.

Costs in the discretion of the Court

393. Subject to this Act, the costs of and incidental to proceedings in Court under this Act shall be at the discretion of the Court.

Application to Court if default by interested person

394.—(1) Without prejudice to another right or remedy provided for under this Act, if default is made by a receiver, interim receiver, trustee, debtor, or other person in obeying an order or a direction given by the Court, the Supervisor or the trustee under a power conferred under this Act, on such default, the interested person, the Supervisor, trustee, or other interested person may make an application to the Court for an order requiring the person in default to comply with the order or direction.

(2) The Court may, on an application, make an immediate order for the committal of a person.

Personal liability of trustee, receiver and interim receiver

395. Where an action is or proceedings are brought by or against a trustee, receiver, interim receiver or if a trustee, receiver, interim

receiver is made a party to an action or proceedings on his or her application or on the application of another party the trustee, receiver or interim receiver, is not personally liable for costs unless the Court otherwise directs.

Court order for community service

396.—(1) Where a person is 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 another punishment that may be imposed under this Act, make an order directing the person to perform community service, subject to the reasonable condition as may be specified in the order.

(2) A person who fails to comply with or contravenes an order made under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding six years, or to both.

Court order regarding damages

397.—(1) Where a person is convicted of an offence under this Act and another 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 an amount payable under this section, order the person who is 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 immediately, the person in favour of whom the order is made may file the order in the Court and that order is enforceable against the person who is convicted in the same manner as if it were a judgment made against the person who is convicted in the Court in civil proceedings.

PART XIII
INTERNATIONAL INSOLVENCIES

Interpretation: Part XIII

398.—(1) In this Part —

“foreign Court” means a judicial or other authority competent to control or supervise foreign proceedings;

“foreign insolvency order” means an order made by a foreign Court in foreign proceedings;

“foreign main proceedings” means foreign proceedings in a jurisdiction where the debtor has the center of the main interests of the debtor;

“foreign non-main proceedings” means foreign proceedings, other than foreign main proceedings;

“foreign proceedings” means judicial or an administrative proceedings, including interim proceedings, in a jurisdiction outside Saint Lucia dealing with the collective interests of a creditor generally under a law relating to bankruptcy or insolvency in which the property and affairs of a debtor are subject to control or supervision by a foreign Court for the purpose of reorganization or liquidation;

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorized, in foreign proceedings in respect of a debtor, to —

(a) administer the property or affairs of the debtor for the purpose of reorganization or liquidation; or

(b) act as a representative in respect of the foreign proceedings.

(2) For the purposes of this Part, in the absence of proof to the contrary, a registered office of a debtor and, in the case of a debtor who is an individual, the ordinary place of residence of a debtor are deemed to be the center of the main interests of the debtor.

Application for recognition of foreign proceedings

399.—(1) A foreign representative may make an application to the Court for recognition of foreign proceedings in respect of which he or she is a foreign representative.

(2) Subject to subsection (3), an application under subsection (1) must be accompanied by —

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceedings or a certificate from the foreign Court affirming the existence of the foreign proceedings;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign Court affirming the authority of the foreign representative to act in that capacity; and
- (c) a statement identifying the foreign proceedings in respect of the debtor that are known to the foreign representative.

(3) The Court may, without further proof, accept the documents under subsection (2)(a) and (b) as evidence that the proceedings to which they relate is foreign proceedings and that the applicant is a foreign representative in respect of the foreign proceedings.

(4) In the absence of the documents under subsection (2)(a) and (b), the Court may accept another evidence of the existence of the foreign proceedings and of the authority of the foreign representative that it considers appropriate.

(5) The Court may require a translation of a document accompanying the application.

Order recognizing foreign proceedings

400.—(1) Where the Court is satisfied that the application for the recognition of foreign proceedings relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceedings, the Court shall make an order recognizing the foreign proceedings.

(2) The Court shall specify in the order whether the foreign proceedings is foreign main proceedings or foreign non-main proceedings.

Effects of recognition of foreign main proceedings

401.—(1) Subject to subsections (2), (3) and (4), on the making of an order recognizing a foreign main proceeding —

- (a) a person shall not commence or continue an action, execution or other proceeding concerning the property, debts, liabilities or obligations of the debtor;
- (b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of his or her property in Saint Lucia that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Saint Lucia; and
- (c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Saint Lucia.

(2) Subsection (1) does not apply if proceedings under this Act have commenced in respect of the debtor at the time the order recognizing the foreign proceedings is made.

(3) The prohibitions under subsection (1)(a) and (b) are subject to the exceptions specified by the Court in the order recognizing the foreign proceedings that would apply in Saint Lucia had the foreign proceedings taken place in Saint Lucia under this Act.

Orders

402.—(1) Where an order recognizing foreign proceedings is made, the Court may, on the application by the foreign representative who applied for the order, if the Court is satisfied that it is necessary for the protection of the property of the debtor or the interests of a creditor or creditors, make an order that it considers appropriate, including an order —

- (a) in the case of foreign non-main proceedings, imposing the prohibitions under section 238(1)(a) to (c) and specifying the exceptions to those prohibitions, taking section 337(3) into account;

- (b) with respect to the examination of witnesses, the taking of evidence or the delivery of information concerning the property, affairs, debts, liabilities and obligations of the debtor;
- (c) entrusting the administration or realization of all or part of the property of the debtor located in Saint Lucia to the foreign representative or to another person designated by the Court; and
- (d) appointing a trustee as receiver of all or any part of the property of the debtor in Saint Lucia, for a term that the Court considers appropriate and directing the receiver to do all or any of the following —
 - (i) to take possession of all or part of the property of the debtor specified in the appointment and to exercise the control over the property and over the business of the debtor that the Court considers appropriate, and
 - (ii) to take another action that the Court considers appropriate.

(2) Where proceedings under this Act have commenced in respect of the debtor at the time an order recognizing the foreign proceedings is made, an order made under subsection (1) must be consistent with an order that may be made in proceedings under this Act.

Terms and conditions of orders

403. An order under this Part may be made on the terms and conditions that the Court considers appropriate in the circumstances.

Commencement or continuation of foreign proceedings

404. Where an order recognizing foreign proceedings is made, the foreign representative may commence or continue proceedings under sections 40, 58(1), 62 and 362 to 364 in respect of a debtor as if the foreign representative were a creditor of the debtor, or the debtor.

Cooperation

405.—(1) Where an order recognizing foreign proceedings is made, the Court shall cooperate, to the maximum extent possible, with the

foreign representative and the foreign Court involved in the foreign proceedings.

(2) Where proceedings under this Act has commenced in respect of a debtor and an order recognizing foreign proceedings is made in respect of the debtor, a person who exercises a power, function or performs a duty in proceedings under this Act must cooperate, to the maximum extent possible, with the foreign representative and the foreign Court involved in the foreign proceedings.

(3) In this section, cooperation may be provided by an appropriate means, including —

- (a) the appointment of a person to act at the direction of the Court;
- (b) the communication of information by means considered appropriate by the Court;
- (c) the coordination of the administration and supervision of the assets and affairs of the debtor;
- (d) the approval or implementation by the Courts of an agreement concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor.

Obligations of foreign representative

406. Where an order recognizing foreign proceedings is made, the foreign representative who applied for the order must —

- (a) immediately inform the Court of —
 - (i) a substantial change in the status of the recognized foreign proceedings,
 - (ii) a substantial change in the status of the authority of the foreign representative to act in that capacity, and
 - (iii) another foreign proceeding in respect of the same debtor that becomes known to the foreign representative; and
- (b) publish, immediately after the order is made, once a week for two consecutive weeks, or as otherwise directed by the Court, in one or more newspapers in Saint Lucia

specified by the Court, a notice containing the prescribed information.

Concurrent proceedings

407. Where proceedings under this Act in respect of a debtor is commenced at a time after an order recognizing the foreign proceedings is made —

- (a) the Court shall review an order made under section 402 and, if it determines that the order is inconsistent with an order made in the proceedings under this Act, the Court shall amend or revoke the order; and
- (b) in the case of foreign main proceedings, the Court shall make an order terminating the application of the prohibitions under section 401(1)(a) to (c) if the Court determines that those prohibitions are inconsistent with a similar prohibition imposed in the proceedings under this Act.

Multiple foreign proceedings

408.—(1) Where, at a time after an order is made in respect of foreign non-main proceedings in respect of a debtor, an order recognizing foreign main proceedings is made in respect of the debtor, the Court shall review an order made under section 402 in respect of the foreign non-main proceedings and, if it determines that the order is inconsistent with an order made under that section in respect of the foreign main proceedings, the Court shall amend or revoke the order.

(2) Where, after an order is made in respect of a foreign non-main proceedings in respect of the debtor, an order recognizing another foreign non-main proceedings is made in respect of the debtor, the Court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review an order made under section 362 in respect of the first recognized proceedings and amend or revoke that order if it considers it appropriate.

Authorization to act as representative in proceedings

409. The Court may authorize a person or body to act as a representative in respect of proceedings under this Act for the purpose of having the person or body recognized in a jurisdiction outside Saint Lucia.

Foreign representative status

410. An application by a foreign representative for an order under this Part does not submit the foreign representative to the jurisdiction of the Court for another purpose except with regard to the costs of the proceedings, and the Court may make an order under this Part subject to conditions on the compliance by the foreign representative with another Court order.

Foreign proceedings appeal

411. A foreign representative is not prevented from making an application to the Court under this Part by reason that proceedings by way of appeal or review is taken in foreign proceedings, and the Court may, on an application if the proceedings is taken, grant relief as if the proceedings had not been taken.

Presumption of insolvency

412. In this Part, if a bankruptcy, an insolvency or a reorganization or a similar order is made in respect of a debtor in foreign proceedings, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

Credit for recovery in other jurisdictions

413.—(1) Where a bankruptcy order, a proposal or an assignment is made in respect of a debtor under this Act, the following shall be taken into account in the distribution of dividends to the creditors of the debtor in Saint Lucia as if they were a part of that distribution —

- (a) the amount that a creditor receives or may receive outside Saint Lucia by way of a dividend in foreign proceedings in respect of the debtor; and
- (b) the value of a property of the debtor that the creditor acquires outside Saint Lucia on account of a provable claim of the creditor or that the creditor acquires outside Saint Lucia by way of a transfer that, if the transfer were subject to this Act, would be a preference over another creditor or a transfer at undervalue.

(2) Notwithstanding subsection (1), the creditor is not entitled to receive a dividend from the distribution in Saint Lucia until every

other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount under subsection (1)(a) and the value under subsection (1)(b) is of the claim of that creditor.

Court not prevented from applying certain rules

414. This Part does not prevent the Court —

- (a) on the application of a foreign representative or another interested person, from applying a legal or equitable rule governing the recognition of a foreign insolvency order and assistance to a foreign representative that are not inconsistent with this Act; and
- (b) from refusing to do something that would be contrary to public policy.

PART XIV

MISCELLANEOUS

False claims

415.—(1) A creditor, or a person claiming to be a creditor, in proceedings under this Act shall not willfully and with intent to defraud make a false claim or a proof, declaration or statement of account that is untrue in a material particular.

(2) A creditor or person claiming to be a creditor under subsection (1) commits an offence and is liable on conviction to a fine not exceeding seventy-five thousand dollars, or to imprisonment for a term not exceeding eighteen months, or to both.

Offence committed by corporation

416. Where a corporation commits an offence under this Act, an officer, director or agent of the corporation, or a person who has or has had, directly or indirectly, control of the corporation, who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and commits the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation is prosecuted or convicted.

Substance of offence sufficient

417. 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 to the offence as the circumstances admit, without alleging or setting out a debt, act of bankruptcy, trading, adjudication or proceedings in, or order, warrant, or document of, a Court acting under this Act.

Time for commencement of action

418. A prosecution by indictment under this Act must 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.

Rules of Court

419.—(1) For the purpose of carrying into effect this Act, Rules may be made by the same authority and in the same manner as Rules of Court may be made under the Eastern Caribbean Supreme Court Order, Cap. 2:01.

(2) Rules made under subsection (1) may provide for —

- (a) sittings of the Court, a Judge of the Court in Chambers and a Master;
- (b) the practice and procedure in Court;
- (c) a matter relating to the practice and procedure of the Court;
- (d) the duties of the officers of the Court; and
- (e) the costs of or fees to be charged for or in respect of proceedings.

Evidentiary admissibility of book entries and judicial notice of signature of Supervisor

420.—(1) A copy authenticated by the signature of the Supervisor, receiver, interim receiver or trustee of an entry in a book kept by the Supervisor, receiver, interim receiver or trustee with respect to an estate vested in or administered by the Supervisor or trustee is admissible in evidence in a legal proceeding or for another purpose, and have the same effect in evidence in all respects as the originals from which the copy was made.

(2) In legal proceedings, judicial notice must be taken of the signature of the Supervisor and of the trustee but a Court, Judge, Master or magistrate may require a signature to be proved in the ordinary way if it is doubtful to the Court, Judge, Master or magistrate whether the alleged signature is genuine.

Leave of the Court required to pursue certain actions

421.—(1) Except by leave of the Court, an action does not lie against the Supervisor, a receiver, an interim receiver or a trustee with respect to a report made under, or an action taken under 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 the receivership;
- (b) whether the proceedings appear to be frivolous or vexatious; and
- (c) any other factor that the Court considers relevant in the circumstances.

Supervisor's levy

422.— (1) For the purpose of defraying the expenses of the supervision by the Supervisor, there shall be payable to the Supervisor a levy on all payments made by a trustee or receiver by dividend or otherwise on account of the claims of creditors.

(2) The levy under subsection(1) is at the rate the Minister, by Order published in the *Gazette*, prescribes and must be charged

proportionately against all payments and deducted from the payments by a trustee or receiver before payment is made.

(3) This section does not apply to a liquidator or receiver appointed —

- (a) under the Companies Act, Cap. 13.01;
- (b) under the Eastern Caribbean Supreme Court Act, Cap. 2.01;
- (c) under the International Business Companies Act, Cap. 12.14;
- (d) by a court order; or
- (e) by out of court appointment.

Regulations

423.—(1) The Minister may make Regulations for giving effect to this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations may provide for —

- (a) prescribing anything that is authorized or required to be prescribed by this 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 counselling prior to any automatic discharge;
- (d) prescribing the minimum amount or threshold that a person may be indebted to be deemed to be unable to pay his or her debts for the purposes of bankruptcy.

Review of this Act

424.—(1) This Act shall be reviewed by the Supervisor.

(2) The first review of this Act must be conducted not later than five years after the date of its commencement.

Repeal

425. Title 9 of the Commercial Code, Cap. 22.09 is repealed.

Transitional

426.—(1) Notwithstanding sections 6 and 10, the Minister shall appoint a person as the Supervisor or Government Trustee on a temporary basis until the Public Service Commission makes an appointment under this Act.

(2) The Minister shall, by Order published in the *Gazette*, provide —

(a) the name of the Supervisor or Government Trustee temporarily appointed under subsection (1);

(b) the duration of the temporary appointment.

(3) A temporary appointment made under this section remains valid for a period not exceeding two years from the date of the appointment or until the Public Service Commission makes the appointment under this Act, whichever occurs first.

(4) A person appointed under subsection (1) has the powers, duties and responsibilities of the Supervisor or the Government Trustee as specified under this Act.

(5) The Minister may amend the Order published in the *Gazette* under subsection (2) to extend the duration of the temporary appointment and the extension must not exceed two years.

(6) The Minister shall provide a report to Parliament within one year of making the temporary appointment, outlining the reason for the temporary appointment and the expected timeline for the Public Service Commission to finalize the appointment under this Act.

SCHEDULE 1

(Section 8(1)(e)(iv))

QUALIFICATIONS OF A TRUSTEE

A trustee shall meet the following qualifications as it relates to residency, insurance and other criteria —

1. A trustee shall be at least twenty-one years.
2. A trustee shall not be an alien.
3. A trustee shall be of good character and reputation and ensure that the 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 trustee to perform the functions of a licensed trustee to a high standard;
 - (d) has not been the subject of a previous disciplinary finding or pending investigation by a professional body, regulator or similar body; and
 - (e) has not been the subject of a conviction, decision, sentence or judgment including criminal and civil Court decisions involving the trustee.
4. A trustee shall be a natural person who is ordinarily resident in Saint Lucia.
5. A trustee shall have a valid policy of insurance or a bond with an approved insurance company of an amount specified by the Supervisor, against —
 - (a) losses arising out of claims of negligence or breach or duty by the licensed trustee or by its employees;
 - (b) the dishonesty of the licensed trustee's employees or of the licensed trustee;
 - (c) loss or destruction of documents; and
 - (d) such other prescribed risks.

SCHEDULE 2

(Section 257)

PRIORITY OF PAYMENT**PART A**

(a) Category 1 —

- (i) the reasonable funeral and testamentary expenses incurred by the legal representative of a deceased debtor,
- (ii) the costs of administration in the following order —
 - (A) the expenses and fees of a person acting under a direction made under section 23(1);
 - (B) the expenses and fees of the trustee or receiver, as applicable; and
 - (C) legal costs, and
- (iii) the prescribed fees payable to the Supervisor;

(b) Category 2 —

- (i) contributions, payable by the debtor, from the date of the order, as an employer under —
 - (A) the National Insurance Corporation Act, Cap. 16.01; and
 - (B) an approved pension fund under the Income Tax Act, Cap. 15.02;
- (ii) Pay As You Earn,
- (iii) Value Added Tax,
- (iv) claims for wages and salaries, of an employee for services rendered during the six months immediately preceding the bankruptcy or appointment of the receiver, and the sum to which priority is to be given under this paragraph must not, in the case of a particular claimant, exceed sixty thousand dollars,
- (v) redundancy payments payable under the Labour Act, Cap. 16.04, whether the payments fall due before or after the appointment of a receiver or a trustee,

- (vi) all taxes, excluding penalties and interest, imposed under any law and having become due and payable by the debtor within two years before the appointment of the receiver or the bankruptcy, not exceeding in total two year's assessment;
- (c) Category 3 — in payment of obligations owed to a secured creditor whose security includes that property, and if there is more than one secured creditor, the proceeds must be applied in order of the date of registration;
- (d) Category 4 — legal and judicial hypothecs in order of the date of registration;
- (e) Category 5 — all other claims.

PART B

- (a) Category 1 — in payment of the amounts in Category 1 under subsection (1);
- (b) Category 2 — in payment of the amounts in Category 2 under subsection (1);
- (c) Category 3 — in payment of the amounts in Category 3 under subsection (1).

PART C

- (a) Category 1 — in payment of the amounts in Category 1 under subsection (1);
- (b) Category 2 — in payment of the amounts in Category 2 under subsection (1);
- (c) Category 3 — in payment of the amounts in Category 3 under subsection (1).

Passed in the House of Assembly this 16th day of September, 2024.

CLAUDIUS J. FRANCIS,
Speaker of the House of Assembly.

Passed in the Senate this 17th day of September, 2024.

ALVINA REYNOLDS,
President of the Senate.