

REPRINT

BANKRUPTCY ACT [CAP. 3]

As in force at: 1 March 1996

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AN ACT TO EMBODY IN THE FORM OF A LOCAL CODE, THE LAW RELATING TO BANKRUPTCY, TO REPEAL THE UNITED KINGDOM BANKRUPTCY ACT 1914 AS AMENDED FROM TIME TO TIME, IN SO FAR AS IT FORMS PART OF THE LAW OF SOLOMON ISLANDS, AND FOR PURPOSES INCIDENTAL OR CONSEQUENTIAL THERETO

BANKRUPTCY ACT (CAP. 3)

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BANKRUPTCY ACT (Cap. 3)

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PART I SHORT TITLE AND INTERPRETATION

1 Short title

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

2 Interpretation

In this Act, unless the context otherwise requires:

“affidavit” includes statutory declaration, affirmation and attestation on honour;

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

“bailiff” includes any officer charged with the execution of a writ or other process;

“court” means the High Court sitting in its bankruptcy jurisdiction;

“debt provable in bankruptcy” or **“provable debt”** includes any debt or liability by this Act made provable in bankruptcy;

“goods” includes all chattels personal;

“oath” includes affirmation, declaration and attestation on honour;

“Official Receiver” means the Official Receiver appointed under section 75;

“ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“prescribed” means prescribed by general rules within the meaning

of this Act;

“property” includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in Solomon Islands or elsewhere, also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

“resolution” means an ordinary resolution;

“secured creditor” means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof, as a security for a debt due to him from the debtor;

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

“Registrar” means the Registrar of the High Court; and

“trustee” means the trustee in bankruptcy of a debtor’s estate.

PART II PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Acts of Bankruptcy

3 Acts of bankruptcy

- (1) A debtor commits an act of bankruptcy in each of the following cases:
- (a) if in Solomon Islands or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
 - (b) if in Solomon Islands or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part thereof;
 - (c) if in Solomon Islands or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any

charge thereon, which would be void as a fraudulent preference if he were adjudged bankrupt;

- (d) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Solomon Islands, or being out of Solomon Islands remains out of Solomon Islands, or departs from his dwelling-house or usual place of business, or otherwise absents himself, or begins to keep house, or removes his property or any part thereof beyond the jurisdiction of the court;
- (e) if execution against him has been levied by seizure of his goods under process in an action, or proceeding in the court, and the goods have been either sold or held by the bailiff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which proceedings on such summons are finally disposed of, settled or abandoned shall not be taken into account in calculating such period of twenty-one days;

- (f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- (g) if a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has served on him in Solomon Islands or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in Solomon Islands, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained or the proceedings in which the order was obtained:

For the purposes of this paragraph and of section 4, any person

who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order;

- (h) if the debtor gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts.
- (2) In this Act, “**a debtor**”, unless the context otherwise requires, includes any person, whether a Solomon Islands citizen or not, who at the time when any act of bankruptcy was done or suffered by him:
- (a) was personally present in Solomon Islands; or
 - (b) ordinarily resided or had a place of residence in Solomon Islands; or
 - (c) was carrying on business in Solomon Islands, personally or by means of an agent or manager; or
 - (d) was a member of a firm or partnership which carried on business in Solomon Islands.

4 Bankruptcy notices

A bankruptcy notice under this Act shall be issued to a judgment creditor, or creditor who has obtained a final order, by the Registrar on the filing of a request for that purpose, and shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice:

- (a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;
- (b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due,

unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order and Official Receiver

5 Jurisdiction to make receiving order

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

6 Conditions on which creditor may petition

- (1) Subject to the provisions of section 7, a creditor shall not be entitled to present a bankruptcy petition against a debtor unless:
 - (a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to more than one thousand dollars;
 - (b) the debt is a liquidated sum, payable either immediately or at some certain future time;
 - (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and
 - (d) the debtor is domiciled in Solomon Islands, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, in Solomon Islands, or has carried on business in Solomon Islands, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Solomon Islands by means of a partner or partners or an agent

or manager.

- (2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same manner as if he were an unsecured creditor.

7 Liability of firm to have receiving order made against it

- (1) The following provisions shall have effect in the case of a firm carrying on business in Solomon Islands:
 - (a) a creditor of the firm shall be entitled to present a bankruptcy petition against the firm, and a receiving order may be made against the firm in respect of an act of bankruptcy committed in reference to the business of the firm by any partner of the firm or by any person having control or management of the business of the firm. An act of bankruptcy shall be deemed to be committed in reference to the business of the firm in all cases in which the act relates to the property or creditors of the firm and would be an act of bankruptcy by such partner or person as aforesaid if it related to his property or creditors;
 - (b) it shall be sufficient that a receiving order against the firm be made in the firm name, without mentioning the names of the partners, and such receiving order shall affect the joint and separate property of all the partners;
 - (c) the right of a creditor to present a bankruptcy petition against the firm, and the jurisdiction of the court to make a receiving order or an adjudication of bankruptcy against the firm, shall not be affected by the fact, if it is so, that all or any of the partners of the firm are not citizens or domiciled in Solomon Islands.
- (2) The provisions of this section shall, so far as the nature of the case will permit, apply to any person carrying on business in Solomon Islands in a name or style other than his own name.

8 Powers of Official Receiver and duties of debtor on petition being filed

- (1) Immediately on the filing of any petition the Official Receiver may, in cases where he has reason to believe that any offence under this Act or any fraud has been or is about to be perpetrated, by notice sent by messenger, or by ordinary post, summon the debtor to attend before him to give such information as he requires, and may, either by himself or his agent authorised by him in writing, enter on any premises occupied by the debtor between the hours of 8 a.m. and 6 p.m. for the purpose of inspecting his property, stock in trade and books of account.
- (2) It shall be the duty of the debtor to furnish the Official Receiver with all such information as it is in the debtor's power to give or to obtain.

9 Creditor's petition and order thereon

- (1) A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served in the same manner as a writ of summons unless some other manner of service be prescribed.
- (2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition and of the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and if satisfied with the proof, may make a receiving order in pursuance of the petition.
- (3) If the court is not satisfied with the proof of the petitioning creditor's debt or of the act of bankruptcy or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or considers that for other sufficient cause no order ought to be made, the court may dismiss the petition.
- (4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

- (5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.
- (6) Where proceedings are stayed the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.
- (7) A creditor's petition shall not after presentment be withdrawn without the leave of the court.

10 Debtor's petition and order thereon

- (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.
- (2) A debtor's petition shall not after presentment be withdrawn without the leave of the court.

11 Appearance of Official Receiver on petition

On the hearing of any creditor's or debtor's petition it shall be lawful for the Official Receiver to appear and call, examine and cross-examine any witness and, if he so thinks fit, to support or oppose the making of a receiving order.

12 Effect of receiving order

- (1) On the making of a receiving order the Official Receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the

debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

- (2) This section shall not affect the power of any secured creditor to realise or otherwise deal with his security.

13 Power to appoint interim receiver

The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the Official Receiver to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

14 Power to stay pending proceedings

- (1) The court may at any time after the presentation of a bankruptcy petition either stay any action, execution or other legal process against the property or person of the debtor or allow it to continue on such terms as it may think just.
- (2) Where the court makes an order staying any action or proceedings or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding or to the address of his solicitor.
- (3) Without prejudice to the provisions of subsection (1), if the court orders the release of any debtor who is under execution for a civil debt, it may impose such conditions as it thinks fit, and in particular it may require as a condition of such release that the debtor find security to attend in the subsequent bankruptcy proceedings and to abide by all orders of the court relating to the said proceedings.

15 Power to appoint special manager

- (1) The court may, on the application of the Official Receiver or of any creditor or creditors, and if satisfied that the nature of the debtor's

estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Official Receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver.

- (2) The special manager shall give security and account in such manner as the court may direct.
- (3) The special manager shall receive such remuneration as may be prescribed.

16 Advertisement of receiving order

Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, and the date of the petition, shall be gazetted by the Official Receiver.

Proceedings Consequent on Order

17 First and other meetings of creditors and rules

- (1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the “first meeting of creditors”) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor’s property.
- (2) The Chief Justice may make rules providing for the summoning of and proceedings at the first and other meetings of creditors.

18 Debtor’s statement of affairs

- (1) Where a receiving order is made against a debtor, he shall, unless the court otherwise orders, make out and submit to the Official Receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor’s assets, debts and liabilities, wherever situate, the names, addresses and occupations of his creditors, whether in Solomon Islands or

elsewhere, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

- (2) The statement shall be so submitted within the following times, namely:
 - (a) if the order is made on the petition of the debtor, within three days from the date of the order;
 - (b) if the order is made on the petition of a creditor, within seven days from the date of the order,

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

- (3) If the debtor fails without reasonable excuse to comply with the requirements of this section, he may be punished for a contempt of court and the court may, on the application of the Official Receiver or of any creditor, adjudge him bankrupt.
- (4) Any person stating himself to be a creditor of the bankrupt may, on payment of the prescribed fee, personally or by agent inspect the statement at all reasonable times and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court and shall be punishable accordingly on the application of the trustee or Official Receiver.

Public Examination of Debtor

19 Public examination of debtor

- (1) Where the court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat and shall be examined as to his conduct, dealings and property.
- (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

- (3) The court may adjourn the examination from time to time.
- (4) Any creditor who has tendered a proof, or his legal representative, may question the debtor concerning his affairs and the causes of his failure.
- (5) The Official Receiver shall take part in the examination of the debtor, and for the purpose thereof, if specially authorised by the court, may employ a legal practitioner.
- (6) If a trustee is appointed before the conclusion of the examination, he may take part therein.
- (7) The court may put such questions to the debtor as it may think expedient.
- (8) The debtor shall be examined upon oath and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down either in shorthand or longhand and they or a transcript thereof shall be read over either to or by the debtor and signed by him and may thereafter, save as in this Act provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times upon payment of the prescribed fee.
- (9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.
- (10) Where the debtor is of unsound mind or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, or is absent from Solomon Islands, the court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner and at such place as to the court seems expedient.

20 Power of court to dispense with public examination of debtor on application of Official Receiver

- (1) Notwithstanding section 19 the court may, on the application of the

Official Receiver, make an order dispensing with the public examination of the debtor.

- (2) Before making an application under subsection (1) the Official Receiver shall:
 - (a) publish notice of his intention to make the application in the *Gazette*; and
 - (b) give notice of his intention to make the application to every creditor who has tendered a proof.
- (3) Any creditor who has tendered a proof and wishes to oppose the making of an order under subsection (1) shall, within twenty-one days after the date of publication of a notice pursuant to subsection (2), give notice in writing to the Official Receiver of his intention to oppose the making of an order and may thereafter appear and oppose the making of an order.
- (4) Before making an order under subsection (1) the court shall consider a report of the Official Receiver made in the manner prescribed.

Composition and Schemes of Arrangement

21 Composition and schemes of arrangement

- (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs or within such time thereafter as the Official Receiver may fix, lodge with the Official Receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors and setting out particulars of any sureties or securities proposed.
- (2) In such case the Official Receiver shall hold a meeting of creditors before the public examination of the debtor is concluded, and send to each creditor before the meeting a copy of the debtor's proposal with a report thereon; and if at the meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the

creditors.

- (3) The debtor may at the meeting amend the terms of his proposal, if the amendment is in the opinion of the Official Receiver calculated to benefit the general body of creditors.
- (4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.
- (5) The debtor or the Official Receiver may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.
- (6) The application shall not be heard until after the public examination of the debtor has been concluded, or dispensed with under section 20. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.
- (7) For the purpose of approving a composition or scheme by joint debtors the court may, if it thinks fit and on the report of the Official Receiver that it is expedient so to do, dispense with the public examination of any of the joint debtors if they are or any one of them is prevented from attending the examination by illness or absence from Solomon Islands.
- (8) The court shall, before approving the proposal, hear a report of the Official Receiver as to the terms thereof and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.
- (9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.
- (10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to

approve the proposal unless it provides reasonable security for the payment of not less than twenty-five per cent on all the unsecured debts provable against the debtor's estate.

- (11) In any other case the court may either approve or refuse to approve the proposal.
- (12) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.
- (13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a correspondent in a matrimonial cause, except to such extent and under such conditions as the court expressly orders in respect of such liability.
- (14) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.
- (15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.
- (16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court on satisfactory evidence that the composition or scheme cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the Official Receiver or the trustee or by any creditor, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been

contracted before the adjudication, shall be provable in the bankruptcy.

- (17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business or to distribute the composition, section 30 and Part V of this Act shall apply as if the trustee were a trustee in a bankruptcy and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor and an order approving the composition or scheme.
- (18) Part III of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt" and "order of adjudication", as in subsection (17).
- (19) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.
- (20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

22 Effect of composition or scheme

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

Adjudication of Bankruptcy

23 Adjudication of bankruptcy where composition not accepted or not approved

- (1) Where a receiving order is made against a debtor, then if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no

resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court may allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

- (2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the date of the adjudication and the name of the trustee, shall be gazetted and shall be advertised in a local newspaper or as may be prescribed, and the date of the order shall for the purposes of this Act be the date of the adjudication.

24 Appointment of trustee

- (1) Where a debtor is adjudged bankrupt or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint the Official Receiver or some other fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.
- (2) The person appointed shall, unless he is the Official Receiver, give such security as the court may direct or as may be prescribed, and the court, if satisfied with the security, shall certify under the hand of the Registrar that his appointment has been duly made, unless the appointment is disapproved by the court on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.
- (3) The appointment of a trustee shall take effect as from the date of the certificate.
- (4) When a debtor is adjudged bankrupt after the first meeting of creditors has been held and a trustee has not been appointed prior

to the adjudication, the Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee. If no trustee is then appointed by the creditors the court shall on the application of the Official Receiver appoint the Official Receiver or some other fit person to be trustee.

25 Committee of inspection

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

(2) The committee of inspection shall consist of two or more persons, possessing one or other of the following qualifications:

(a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor:

Provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(b) that of being a person to whom a creditor intends to give a general proxy or general power of attorney:

Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

(3) The committee of inspection shall meet at such time as they shall from time to time appoint, and failing such appointment, at least once a month, and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

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

(5) Any member of the committee may resign his office by notice in

writing signed by him and delivered to the trustee.

- (6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.
- (7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.
- (8) On a vacancy occurring in the office of a member of the committee the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy:

Provided that if the trustee is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

- (9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.
- (10) If there be no committee of inspection any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the court on the application of the trustee.

26 Power to accept composition or scheme after adjudication

- (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy or for a scheme of arrangement of the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

- (2) If the court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint on such terms and subject to such conditions, if any, as the court may declare.
- (3) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor

27 Duties of debtor as to discovery and realisation of property

- (1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.
- (2) The debtor shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager or trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the Official Receiver, special manager or trustee or may be provided by this Act, or be prescribed or be directed by the court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the Official Receiver, special manager, trustee or any creditor or person interested.

- (3) The debtor shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.
- (4) If a debtor wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, to the Official Receiver or to the trustee or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court and may be punished accordingly.

28 Arrest of debtor under certain circumstances

- (1) The court may, by warrant addressed to a police officer or officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession or under his control or relating to his affairs to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances:
 - (a) if, after a bankruptcy notice has been issued under this Act or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;
 - (b) if, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to dispose of or remove his goods with a view to preventing or delaying possession being taken of them by the Official Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;

- (c) if, after service of a bankruptcy petition on him or after a receiving order is made against him, he removes any goods in his possession above the value of fifty dollars without the leave of the Official Receiver or trustee;
- (d) if without good cause shown he fails to attend any examination ordered by the court;
- (e) if there is probable cause for believing that he has committed an offence punishable under this Act:

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

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

29 Re-direction of debtor's telegrams and letters

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

30 Inquiry as to debtor's conduct, dealings and property

- (1) The court may, on the application of the Official Receiver or trustee, at any time after a receiving order has been made against a debtor summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

- (2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant cause him to be apprehended and brought up for examination.
- (3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.
- (4) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the Official Receiver or trustee, order him to pay to the Official Receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.
- (5) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the Official Receiver or trustee, order him to deliver to the Official Receiver or trustee such property or any part thereof, at such time and in such manner and on such terms as to the court may seem just.
- (6) The court may, if it thinks fit, order that any person who if in Solomon Islands would be liable to be brought before it under this section shall be examined in any place out of Solomon Islands by a Commissioner appointed for the purpose.
- (7) In the case of the death of the debtor or his wife or any other witness whose evidence has been duly taken under this Act, the deposition of the person so deceased purporting to be sealed with the seal of the court, or a copy thereof purporting to be sealed, shall in all legal proceedings be admitted as evidence of the matters therein deposed to, saving all just exceptions.

31 Discharge of bankrupt

- (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day

for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded, or dispensed with under section 20. The application shall, except when the court in accordance with rules under this Act otherwise directs, be heard in open court.

- (2) The trustee or any creditor may at the hearing show cause why the application should be refused, or postponed or made subject to conditions.
- (3) On the hearing of the application, whether any such opposition is made or cause shown or not, the court shall take into consideration a report of the Official Receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy) and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or with respect to his after-acquired property:

Provided that where the bankrupt has committed any misdemeanour under this Act or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, or where in any case any of the facts hereinafter mentioned are proved the court shall:

- (a) refuse the discharge; or
- (b) suspend the discharge for such period as the court thinks proper; or
- (c) suspend the discharge until a dividend of not less than fifty per cent has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such

conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts:

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order or of any substituted order in such manner and upon such conditions as it may think fit.

(4) The facts hereinbefore referred to are:

- (a) that the bankrupt's assets are not of a value equal to fifty per cent of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value of fifty per cent of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;
- (c) that the bankrupt has continued to trade after knowing himself to be insolvent;
- (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
- (f) that the bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by

culpable neglect of his business affairs;

- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
 - (h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense by bringing a frivolous or vexatious action;
 - (i) that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
 - (j) that the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view to making his assets equal to fifty per cent of his unsecured liabilities;
 - (k) that the bankrupt has on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors;
 - (l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.
- (5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to fifty per cent of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised or is likely to realise, an amount equal to fifty per cent of his unsecured liabilities, and a report by the Official Receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.
- (6) For the purposes of this section, the report of the Official Receiver shall be *prima facie* evidence of the statements therein contained.
- (7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published as the court may direct or as may be prescribed and shall be sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the Official Receiver and the trustee and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

- (8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.
- (9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

32 Fraudulent settlements

In either of the following cases, that is to say:

- (a) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (b) in the case of any covenant or contract made in consideration of marriage any estate or interest (not being money or property of or in right of his wife),

if the settlor is adjudged bankrupt or compounds or arranges with his creditors and it appears to the court that such settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

33 Effect of order of discharge

- (1) An order of discharge shall not release the bankrupt:
 - (a) from any debt or a recognisance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of any public officer

on a bail bond entered into for the appearance of any person prosecuted for any such offence, or a debt payable to the National Provident Fund, and he shall not be discharged from such excepted debts unless the Permanent Secretary, Ministry of Finance certifies in writing his consent to his being discharged therefrom; or

- (b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or
 - (c) from any liability under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause except to such an extent and under such conditions as the court expressly orders in respect of such liability.
- (2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.
 - (3) An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.
 - (4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

34 Power for court to annul adjudication in certain cases

- (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.
- (2) Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts thereto

done, by the Official Receiver, trustee or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or in default or any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

- (3) Notice of the order annulling an adjudication shall be forthwith gazetted and shall be published in a local newspaper.
- (4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceedings for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

PART III ADMINISTRATION OF PROPERTY

Proof of Debts

35 Description of debts provable in bankruptcy

- (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.
- (2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.
- (3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.
- (4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not

bear a certain value.

- (5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.
- (6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.
- (7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may direct the value to be assessed before the court itself without the intervention of a valuer and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.
- (8) For the purposes of this Act, ***“liability”*** includes:
 - (a) any compensation for work or labour done;
 - (b) any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;
 - (c) generally, any express or implied engagement, agreement or undertaking to pay or capable of resulting in the payment of money or money’s worth, whether the payment is, as respects amount, fixed or unliquidated, as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies, or, as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

36 Mutual credit and set-off

Where there have been mutual credits, mutual debts or other mutual dealings between a debtor against whom a receiving order is made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings

and the sum due from the one party and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

37 Rules as to proof of debts

The Chief Justice may make rules providing for the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and other matters.

38 Priority of costs and charges

- (1) The assets remaining after payment of the actual expenses incurred in realising any of the assets of the debtor shall, subject to any order of the court, first be liable to the following payments, which shall be made in the following order of priority, namely:
 - (a) the actual expenses incurred by the Official Receiver in protecting or attempting to protect the property or assets of the debtor or any part thereof and any expenses or outlay incurred by him or his authority in carrying on the business of the debtor;
 - (b) the fees, percentages and charges payable to, or costs, charges and expenses incurred or authorised by, the Official Receiver, whether acting as Official Receiver or trustee;
 - (c) the remuneration of the special manager, if any; and
 - (d) the taxed costs of the petitioner, so far as the same may not have been disallowed by the court.
- (2) Whenever the court is satisfied that property of a debtor in respect of whose estate a receiving order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the debtor without notice of any available act of bankruptcy committed by the debtor, the court may in its discretion order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is herein provided in respect of

the taxed costs of the petitioner.

39 Priority of debts

- (1) The debts hereinafter mentioned shall be paid in priority to all other debts and between themselves such debts shall rank equally, and shall be paid in full unless the property for the bankrupt is insufficient to meet them, in which case they shall abate in equal proportion between themselves, that is to say:
 - (a) all public taxes imposed by law due from the debtor at the date of the order not exceeding in whole one year's taxes;
 - (b) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months next before the date of the receiving order, not exceeding one thousand dollars;
 - (c) all wages of any labourer or workman not exceeding five hundred dollars, whether payable for time or for piece work, in respect of services rendered to the bankrupt during four months next before the date of the receiving order;
 - (d) any severance payment payable to an employee under the *Labour Act*;
 - (e) any amount due in respect of compensation or liability for compensation under the *Workmen's Compensation Act* accrued before the date of the receiving order;
 - (f) any wages in lieu of notice payable to an employee under the *Labour Act*, not exceeding in respect of each employee one month's wages;
 - (g) all statutory debts due from the bankrupt to the Crown at the date of the receiving order and which became due and payable within twelve months next before that date; and
 - (h) all contributions due from the bankrupt to the National Provident Fund in respect of each of his employees.
- (2) Subject to the provisions contained in section 38 and to the retention of such sums as may be necessary for the costs of administration or

otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

- (3) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof.
- (4) Any money paid under a charge under subsection (3) shall be a debt due from the estate of the bankrupt to the landlord or other person distraining or having distrained, and such debt shall be discharged so far as the property of the bankrupt is sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the bankruptcy.
- (5) This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt and as if the date of his death were substituted for the date of the receiving order.
- (6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.
- (7) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.
- (8) If there is any surplus after the payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of eight per cent per annum on all debts proved in the bankruptcy.
- (9) In this section, “**statutory debt**” means a debt the liability for which and the amount of which are determined by or under any provision in any Act.

40 Preferential claims in case of apprenticeship

- (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or the apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy and to the other circumstances of the case.
- (2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt or any person acting on behalf of such apprentice or articled clerk, instead of acting under the provisions of subsection (1), transfer the indenture of apprenticeship or articles of agreement to some other person.

41 Landlord's power of distress

The landlord or other person to whom any rent is due from the bankrupt may, at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

42 Postponement of husband's and wife's claims

- (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of

any money or other estate lent or entrusted by him to her until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

- (2) Where a debtor has been adjudged bankrupt, any money or other estate of his wife lent or entrusted by her to him shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of the debtor for valuable consideration in money or money's worth have been satisfied.
- (3) In this section “**married woman**” and “**wife**” includes a woman regarded as married in accordance with custom.

Property Available for Payment of Debts

43 Relation back of trustee's title

The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition, but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

44 Description of bankrupt's property divisible amongst creditors

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

- (a) property held by the bankrupt on trust for any other person;
- (b) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself and his family dependent on and residing with him, to a value, inclusive of tools and apparel and

bedding, not exceeding one thousand dollars in the whole:

But it shall comprise the following particulars:

- (i) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge;
- (ii) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and
- (iii) all goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

45 Provisions as to second bankruptcy

- (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.
- (2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall subject to any

disposition thereof made by the Official Receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 53, vest in the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

- (3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of Bankruptcy on Antecedent and Other Transactions

46 Restriction of rights of creditor under execution or attachment

- (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he had completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or the commission of any available act of bankruptcy by the debtor.
- (2) For the purposes of this Act:
 - (a) an execution against goods is completed by seizure and sale;
 - (b) an attachment of a debt is completed by receipt of the debt;
 - (c) an execution against land is completed by seizure or by the appointment of a receiver; or
 - (d) in the case of an equitable interest, by the appointment of a receiver.

- (3) An execution completed by seizure and sale on the goods of the debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the bailiff shall in all cases acquire a good title to them against the trustee in bankruptcy.
- (4) The rights conferred by this section on the trustee in relation to executions against the property of the debtor and attachment of debts due to the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

47 Duties of bailiff as to goods taken in execution

- (1) Where any movable property or negotiable instruments or money of a debtor are taken in execution, and before the receipt or recovery by the judgment creditor of the full amount of the levy, notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall on request deliver the movable property, negotiable instruments or money, or any money received in satisfaction or part satisfaction of the execution, to the Official Receiver, but the costs of the execution shall be a first charge on the property so delivered and the Official Receiver or trustee may sell the movable property or negotiable instruments, or an adequate part thereof, or apply the money, for the purpose of satisfying the charge.
- (2) Where, under an execution in respect of a judgment for a sum exceeding one hundred dollars, the property of a debtor is sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid and pay the balance into court, and if within fourteen clear days of such sale or payment as aforesaid a bankruptcy petition is presented by or against the debtor, the said balance shall remain in court and if the debtor is adjudged bankrupt the balance shall be paid out to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition had been presented.
- (3) The rights conferred by this section on the Official Receiver or trustee in relation to executions against any movable property or negotiable instruments or money of the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the

court may think fit.

48 Avoidance of certain settlements

- (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten year after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.
- (2) Any covenant or contract made by any person (hereinafter called the “settlor”) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor’s wife or husband or children of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor’s wife or husband, shall if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor’s bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money’s worth have been satisfied.
- (3) Any payment of money (not being payment of premiums on a policy of life assurance), or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid, shall be void against the trustee in the settlor’s bankruptcy unless the persons to whom the payment or transfer was made prove:
 - (a) that the payment or transfer was made more than two years

before the date of the commencement of the bankruptcy; or

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

but in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

- (4) For the purposes of this section, **“settlement”** includes any conveyance or transfer of property.

49 Avoidance of general assignments of book debts unless registered

- (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered with the Registrar-General in a register to be kept by him for that purpose:

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

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

50 Avoidance of preference in certain cases

- (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within six months, in relation to anything made, taken, paid or suffered after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.
- (2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

51 Protection of bona fide transactions without notice and recovery of property transferred without knowledge of receiving order

- (1) Subject to the provisions of this Act with respect to the effect of bankruptcy on an execution or attachment and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy:
 - (a) any payment by the bankrupt to any of his creditors;
 - (b) any payment or delivery to the bankrupt;
 - (c) any conveyance or assignment by the bankrupt for valuable consideration;
 - (d) any contract, dealing or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely:

- (i) that the payment, delivery, conveyance, assignment,

contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

- (ii) that the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction notice of any available act of bankruptcy committed by the bankrupt before that time.
- (2) Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice thereof has been gazetted in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Act void as against the trustee in the bankruptcy, then if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

52 Validity of certain payments to bankrupt and assignee

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

53 Dealings with undischarged bankrupt

- (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee,

and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. For the purposes of this subsection, the receipt of any money, security or negotiable instrument from or by the order or direction of a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to or by the order or direction of a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

- (2) Where any individual, company or firm has ascertained that a person having a deposit, whether a deposit in respect of capital or not, or a credit balance, with such individual, company or firm is an undischarged bankrupt, then it shall be the duty of such individual, company or firm forthwith to inform the Official Receiver and the trustee in the bankruptcy of the existence of the deposit or credit balance, and such individual, company or firm shall not make any payment out of or in respect of the deposit or credit balance except under an order of the court or in accordance with instructions from the Official Receiver or the trustee in the bankruptcy.
- (3) In case of any contravention of the provisions of subsection (2), the individual, or the directors and officers of the company, or the partners and manager of the firm, as the case may be, shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months.

Realisation of Property

54 Possession of property by trustee

- (1) The trustee shall as soon as may be take possession of the deeds, books and documents of the bankrupt and all other parts of his property capable of manual delivery.
- (2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may on his application enforce such acquisition or retention accordingly.

- (3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
- (4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.
- (5) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, clerk, servant, employer or agent, of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court and may be punished accordingly on the application of the trustee.

55 Seizure of property of bankrupt

Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the court may if it thinks fit grant a search warrant to any police officer or officer of the court, who may execute it according to its tenor.

56 Sale of property out of Solomon Islands

Where the bankrupt is possessed of any property out of Solomon Islands, the trustee shall require him to join in selling the same for the benefit of the creditors and to sign all necessary authorities, powers, deeds and documents for the purpose, and if and so often as the bankrupt refuses to do so he may be punished for a contempt

of court.

57 Appropriation of portion of pay, etc., to certain creditors

- (1) Where a bankrupt is an officer of the police or prison force, or an officer or clerk or otherwise employed or engaged in the Public Service of Solomon Islands, or where a bankrupt is in receipt of any pay or pension from the Government or is entitled to any allowance or compensation granted by the Government, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay, salary, pension, allowance or compensation as the court, with the consent of the Minister charged with responsibility for the Public Service, on the application of the trustee, may direct.
- (2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, the court, on the application of the trustee, may from time to time make such order as it thinks just for the payment of the salary or income or of any part thereof to the trustee, to be applied by him in such manner as the court may direct.
- (3) Nothing in this section shall take away or abridge any power to dismiss a bankrupt or to declare the pay, pension, allowance, compensation, salary or income of any bankrupt to be forfeited.

58 Vesting and transfer of property

- (1) Until a trustee is appointed the Official Receiver shall be the trustee for the purposes of this Act, and immediately on a debtor being adjudged bankrupt the property of the bankrupt shall vest in the trustee.
- (2) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.
- (3) The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.
- (4) The certificate of appointment of a trustee shall for all purposes of the law in force in Solomon Islands requiring registration or recording

of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

59 Disclaimer of onerous property

- (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.
- (3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

- (4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee after such application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.
- (5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.
- (6) The court may, on application by any person claiming either to have any interest in disclaimed property or to be under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as a person entitled to a mortgage except upon the terms of making that person:

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
- (b) if the court thinks fit, subject only to the same liabilities and

obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) subject only to the same liabilities and obligations as if the lease had comprised only the property comprised in the vesting order; and any under-lessee or person entitled to a mortgage who declines to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

- (7) Where on the release, removal, resignation or death of a trustee in bankruptcy, the Official Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the Official Receiver has become trustee in the circumstances, aforesaid, or has become aware of the existence of such property, whichever period may last expire.
- (8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

60 Powers of trustee to deal with property

Subject to the provisions of this Act and to any order of the court, the trustee may do all or any of the following rights:

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction, tender or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels, and accept as the consideration for such transfer and sale a sum to be paid

or secured to be paid at such times and in such manner as he thinks fit;

- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers, the capacity to exercise which is vested in the trustee under this Act and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act; and
- (e) deal with any property to which the bankrupt is beneficially entitled in the same manner as the bankrupt might have dealt with it.

61 Powers exercisable by trustee with permission of committee of inspection

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

- (a) carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same;
- (b) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
- (c) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;
- (d) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;
- (e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

- (f) refer any dispute to arbitration, or compromise any debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times and generally on such terms as may be agreed on;
- (g) make such compromise or other arrangement as may be thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy;
- (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

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

62 Power to allow bankrupt to manage property

The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

63 Allowance to bankrupt for maintenance or service

The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt

and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowances may be reduced by the court, and where no allowance has been made, the court may on cause shown, make an allowance.

64 Right of trustee to inspect goods pawned, etc.

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

65 Limitation of trustee's powers in relation to copyright

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

66 Protection of Official Receiver and trustee from personal liability in certain cases

Where the Official Receiver or trustee has seized or disposed of any goods, chattels, property or other effects in the possession or on the premises or under the control of a debtor against whom a receiving order has been made, and it is thereafter made to appear that the said goods, chattels, property or other effects were not at the date of the receiving order the property of the debtor, the Official Receiver or trustee shall not be personally liable for any loss or damage arising

from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the Official Receiver or trustee has been guilty of *mala fides* or of gross negligence in respect of the same.

Distribution of Property

67 Declaration and distribution of dividends

- (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall with all convenient speed declare and distribute dividends amongst the creditors who have proved their debts.
- (2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the court that there is sufficient reason for postponing the declaration to a later date.
- (3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.
- (4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.
- (5) When the trustee has declared a dividend, he shall cause it be gazetted, and shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable.

68 Joint and separate dividends

- (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.
- (2) Where joint and separate properties are being administered,

dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

69 Provision for creditors residing at a distance, etc.

- (1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them, if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.
- (2) The trustee shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.
- (3) Subject to the foregoing provisions, the trustee shall distribute as dividend all money in hand.

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

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

71 Interest on debts

- (1) Where a debt has been proved and the debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per cent *per annum* and be calculated only

up to the date of the receiving order, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

- (2) In dealing with the proof of the debt the following rules shall be observed:
- (a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one;
 - (b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;
 - (c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

72 Final dividend

- (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in the manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend without regard to their claims.

- (2) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

73 No action for dividend

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

74 Right of bankrupt to surplus

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

PART IV OFFICIAL RECEIVER

75 Appointment of Official Receiver

- (1) Subject to the provisions of subsection (2), there may be appointed from time to time a fit and proper person to be Official Receiver and such number of Deputy Official Receivers as may be required, and any such appointment shall, if the person appointed is to be a public officer, be made in accordance with the Constitution, but otherwise shall be made by the Minister.
- (2) No person shall be appointed Official Receiver or Deputy Official Receiver, unless at the date of such appointment, he is a legal practitioner in Solomon Islands.
- (3) The Official Receiver shall act under the general authority and direction of the Minister and shall also be an officer of the court.
- (4) Every Deputy Official Receiver shall have all the powers conferred on the Official Receiver under this Act.

- (5) Every Deputy Official Receiver shall act under the general authority and direction of the Official Receiver for the time being, or if there be no Official Receiver for the time being, under the general authority and direction of the Minister, and shall also be an officer of the court.

76 Status of Official Receiver

- (1) The duties of the Official Receiver shall have relation both to the conduct of the debtor and to the administration of his estate.
- (2) The Official Receiver may, for the purposes of affidavits, verifying proofs, petitions, or proceedings administer oaths and shall for the purposes of this Act be deemed to be a Commissioner for Oaths appointed under the provisions of the *Oaths Act*.
- (3) All provisions in this or any other Act referring to the trustee in a bankruptcy shall, unless the context otherwise requires or the Act otherwise provides, include the Official Receiver when acting as trustee.
- (4) The trustee shall supply the Official Receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the Official Receiver to perform his duties under this Act.

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

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

- (a) to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Act or which would justify the court in refusing, suspending or qualifying an order for his discharge;
- (b) to conduct the public examination of the debtor;
- (c) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Director of Public Prosecutions may direct.

78 Duties of Official Receiver as to debtor's estate

- (1) As regards the estate of a debtor, it shall be the duty of the Official Receiver:
 - (a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and where a special manager is not appointed, as manager thereof;
 - (b) to raise money in any case where in the interests of the creditors it appears necessary so to do;
 - (c) to summon and preside at the first meeting of creditors;
 - (d) to issue forms of proxy for use at the meetings of creditors;
 - (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
 - (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
 - (g) to act as trustee during any vacancy in the office of trustee; and
 - (h) to assist the debtor in preparing his statement of affairs in case the debtor has no legal practitioner acting for him and is unable properly to prepare it himself, and for this purpose he may employ at the expense of the estate any person or persons to assist in its preparation.
- (2) For the purpose of his duties as interim receiver or manager the Official Receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

- (3) The Official Receiver shall account to the court and pay over all moneys and deal with all securities in such manner as the court from time to time directs.

PART V TRUSTEES IN BANKRUPTCY

Official Name

79 Official name of trustee

The official name of a trustee in bankruptcy shall be “the trustee of the property of a bankrupt” (inserting the name of the bankrupt), and by that name the trustee may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment

80 Power to appoint joint or successive trustees

- (1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term “trustee” and shall be joint tenants of the property of the bankrupt.
- (2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee or failing to give security, or of the appointment of any such person not being approved by the court.

81 Proceedings in case of vacancy in office of trustee

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

- (2) The Official Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.
- (3) If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the Official Receiver shall report the matter to the court, and the court may appoint a trustee.
- (4) During any vacancy in the office of trustee the Official Receiver shall act as trustee.

Control over Trustee

82 Discretionary powers of trustee and control thereof

- (1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.
- (2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or Official Receiver to call a meeting of the creditors, and the trustee or Official Receiver shall call such meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall, if so required, deposit with the trustee or the Official Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be re-paid to him out of the estate if the court so directs.

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

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

83 Appeal to court against trustee

If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

84 Control of court over trustee

- (1) The court shall take cognisance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by this Act, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the court by any creditor in regard thereto, by notice duly served on the trustee at least eight clear days before the date of hearing, the court shall inquire into the matter and take such action thereon as may be deemed expedient.
- (2) The court may either of its own motion or on the application of the Official Receiver at any time require any trustee to answer any inquiry made by it or him in relation to any bankruptcy in which the trustee is engaged, and may examine on oath the trustee or any other person concerning the bankruptcy.
- (3) The court may also direct an investigation to be made of the books and vouchers of the trustee.

Remuneration and Costs

85 Remuneration of trustee

- (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part of the amount distributed in dividend. Such percentages shall

be as the court may approve or as may be prescribed.

- (2) The remuneration shall cover all expenses except actual out of pocket expenses properly incurred and no liability shall attach to the bankrupt's estate or to the creditors in respect of any other expenses.
- (3) Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the court may approve.
- (4) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any legal practitioner, auctioneer or any other person who may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond his said remuneration payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, whatever as receiver, manager or trustee, to the bankrupt or any legal practitioner or other person who may be employed about a bankruptcy.

86 Allowance and taxation of costs

- (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Act or rules to be performed by himself.
- (2) Where the trustee is a legal practitioner he may contract that the remuneration for his services as trustee shall include all professional services.
- (3) All bills and charges of legal practitioners, managers, accountants, auctioneers, brokers and other persons, not being trustees, shall be taxed by the Registrar and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The Registrar shall satisfy himself before passing such bills and charges that the employment of such legal practitioners and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

- (4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the Registrar for taxation, and if he fails to do so within seven days after receipt of the request or such further time as the court on application may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit

87 Trustee to furnish list of creditors

The trustee or Official Receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum prescribed.

88 Trustee to furnish statement of accounts

It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or Official Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall upon receipt of such notice, furnish and transmit such statement of the accounts.

89 Annual statement of proceedings

- (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Official Receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars and made out in the prescribed form.
- (2) The Official Receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect or omission, which may appear on the said statements or in his accounts or otherwise, and may apply to the court for an order that the trustee do make good any loss which the estate of the bankrupt may have sustained by the misfeasance,

neglect or omission.

90 Trustee not to pay into private account

No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account or use them otherwise than in the administration of the estate.

91 Payment of moneys into bank

- (1) The Official Receiver shall open in his name as Official Receiver an account at a bank approved by the Minister, and shall pay to the credit thereof, all sums received by him as such Official Receiver or as trustee, and every trustee in a bankruptcy, other than the Official Receiver, receiving money as such trustee shall open an account at such bank in the name of the debtor's estate and shall pay to the credit of such account all sums which may from time to time be received by him as such trustee:

Provided that the Official Receiver may, on the application of the committee of inspection, authorise any other trustee to make his payments into and out of any other bank specified by the committee in such application, and those payments shall be made in the prescribed manner.

- (2) If a trustee at any time retains for more than ten days a sum exceeding one thousand dollars, or such other amount as the court in any particular case may authorize him to retain, then unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess of the rate of twenty per cent per annum, and shall have no claim to remuneration, and may be removed from his office by the court and shall be liable to pay any expenses occasioned by reason of his default.
- (3) Any trustee paying money into his private banking account or using it otherwise than in the administration of the estate may without prejudice to any other liability be dismissed from office without remuneration and may be ordered by the court to make good all losses and expenses which the creditors may suffer in consequence of his conduct.

92 Record and account to be kept by trustee

- (1) The trustee shall keep, in the manner prescribed, proper books, in which he shall make entries or minutes of all proceedings had, and resolutions passed at any meeting of creditors or of the committee of inspection, and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property. Such record shall be produced for inspection to the Official Receiver any time on demand.
- (2) The trustee shall also keep an account, to be called "the estate account," in the form of an ordinary debtor and creditor account, in which he shall enter from day to day all his receipts and payments as trustee.
- (3) The trustee shall produce at every meeting of the committee of inspection, the record and account abovementioned, and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

93 Audit of trustee's accounts

- (1) Every trustee other than the Official Receiver shall, at such times as may be prescribed, but not less than once in each year during his tenure of office, send to the Official Receiver an account of his receipts and payments as such trustee.
- (2) The accounts shall be in the prescribed form, shall be made in duplicate, and shall be verified by an affidavit in the prescribed form.
- (3) The Official Receiver shall cause the accounts so sent to be audited, and for the purposes of the audit, the trustee shall furnish the Official Receiver with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.
- (4) When any such account has been audited, one copy thereof shall be filed and kept by the Official Receiver, and the other copy shall be filed with the court and be open on payment of the prescribed fee to the inspection of any creditor or of the bankrupt, or of any person interested.

- (5) The court may, if it so desires, examine the trustee and, after hearing the explanation, if any, of the trustee, make such order as it may think just for compelling the trustee to make good any loss to the estate which, after such audit or examination, may appear to the court to have been occasioned by any misfeasance, neglect or improper conduct or omission of the trustee.

Vacation of Office by Trustee

94 Release of trustee

- (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned or has been removed from his office, he shall apply to the court for his release, and if all the requirements of the court with respect to accounts and with respect to any order of the court against the trustee have been fulfilled, the court may make an order for release accordingly.
- (2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.
- (3) An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) The provisions of subsections (1), (2) and (3) shall apply to the Official Receiver when he is, or is acting as, trustee, and when the Official Receiver has been released under this section he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made or liability incurred before his release.
- (5) Where the trustee has not previously resigned or been removed, his

release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.

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

95 Office of trustee vacated by insolvency

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

96 Removal of trustee

- (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose of which seven days' notice has been given, remove a trustee, (other than the Official Receiver) appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as provided in case of a vacancy in the office of trustee.
- (2) If the court is of the opinion:
- (a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Act; or
 - (b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or
 - (c) that he is by reason of unsound mind or continued sickness or absence, incapable of performing his duties; or
 - (d) that his connection with or relation to the bankrupt or his estate, or any particular creditor might make it difficult for him to act with impartiality in the interest of the creditors generally; or
 - (e) that the interests of the creditors require it,
- the court may remove him from his office and appoint another person in his place.

PART VI CONSTITUTION, PROCEDURE AND POWERS OF COURT

Jurisdiction

97 General powers of the court

Subject to the provisions of this Act, the High Court shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognisance of the court or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

98 Judge may exercise his powers in Chambers

Subject to the provisions of this Act, and to general rules, a Judge of the court may exercise in Chambers the whole or any part of his powers.

Review and Appeals

99 Review and appeals in bankruptcy

- (1) The court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.
- (2) Every order of the court shall at the instance of the person aggrieved, be subject to appeal to the Court of Appeal, but no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to appeals.

Procedure

100 General rules of procedure

- (1) The rules and practice of the High Court for the time being for regulating the ordinary civil procedure of the court shall, so far as the same may be applicable and not inconsistent with the provisions of this Act, be applied to bankruptcy proceedings, and every order of the court made in connection with bankruptcy proceedings may be

enforced in the same way as a judgment of the court may in respect of any other civil proceedings be enforced.

- (2) The Registrar shall in cases of urgency have power to make interim orders and to hear and determine unopposed or *ex parte* applications and any order so made shall, subject to an appeal to the court, be deemed to be an order of the court.

101 Discretionary powers of court

- (1) Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court.
- (2) The court may at any time adjourn any proceedings before it upon terms, if any, as it may think fit to impose.
- (3) The court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.
- (4) Where by this Act or by general rules the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof upon such terms, if any, as the court may think fit to impose.
- (5) Subject to general rules, the court may in any matter take the whole or any part of the evidence *viva voce* or by interrogatories or upon affidavit or, out of Solomon Islands, by commission.

102 Consolidation of petitions

Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings or any of them on such terms as the court thinks fit.

103 Power to change carriage of proceedings

Where the petitioner does not proceed with due diligence on his petition, the court may either dismiss the petition or substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the place of the petitioning creditor.

104 Continuance of proceedings on death of debtor

If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

105 Power to stay proceedings

The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

106 Power to present petition against one partner

Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

107 Power to dismiss petition against some respondents only

Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

108 Actions by trustee and bankrupt's partners

Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs.

109 Actions on joint contracts

Where a bankrupt is a contractor in respect of any contract jointly

with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

110 Proceedings in partnership name

Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

PART VII SUPPLEMENTAL PROVISIONS

Disobedience to Order of Court

111 Disobedience to order of court

Where default is made by a trustee, debtor or other person in obeying any order or direction made or given by the court under this Act, the court may make an immediate order for the committal of such trustee, debtor or other person for contempt of court:

Provided that the power given by this section shall be deemed to be in addition to and not in substitution for any other right, remedy or liability in respect of such default.

Application of Act

112 Exclusion of corporation, companies and limited partnerships

A receiving order shall not be made against any corporation, or against any association or company registered under the *Companies Act*.

113 Administration in bankruptcy of estate of person dying insolvent

- (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form

praying for an order for the administration in bankruptcy of the estate of the deceased debtor, according to the law of bankruptcy.

- (2) The petition shall be served on the legal personal representative of the deceased debtor or, if there is none in Solomon Islands, on the Official Administrator, and the court may in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate or may upon cause shown dismiss the petition with or without costs.
- (3) A petition for administration in bankruptcy under this section shall not be presented to the court after proceedings have been commenced under the Rules of the High Court for the administration of the deceased debtor's estate but the court may, when satisfied that the estate is insufficient to pay its debt, make an order for the administration in bankruptcy of the estate of the deceased debtor and the like consequences shall ensue as under an administration order made on the petition of a creditor.
- (4) Upon an order being made for the administration in bankruptcy of a deceased debtor's estate the property of the debtor shall vest in the Official Receiver as trustee thereof and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Act:

Provided that the creditors have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred. If no committee of inspection is appointed any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the court.

- (5) With the modifications hereinafter mentioned, all the provisions of Part III (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (10) the following provisions, namely section 30 (which relates to inquiries as to the debtor's conduct, dealings and property) and section 86 (which relates to the costs of trustees,

managers and other persons) shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act, and section 41 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

- (6) In the administration of the property of the deceased debtor under an order of administration the Official Receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order and shall, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full out of the debtor's estate in priority to all other debts.
- (7) If on the administration of a deceased debtor's estate any surplus remains in the hands of the Official Receiver or trustee, after payment in full of all the debts due from the debtor together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or failing such representative, to the Official Administrator.
- (8) Service on the legal personal representative of a deceased debtor or on the Official Administrator of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such service no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the Official Receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.
- (9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor or by the Official Administrator; and where a petition is so presented by such a representative or by the Official Administrator this section shall apply subject to such modifications as may be prescribed by general rules made under

subsection (10).

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

114 Application of Act to small bankruptcies

- (1) Subject to subsection (2), where a petition is presented by or against a debtor and:

- (a) the court receives proof to its satisfaction; or
- (b) the Official Receiver reports to the court,

that the property of the debtor is not likely to exceed in value five thousand dollars, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall apply subject to the following modifications:

- (i) if the debtor is adjudged bankrupt the Official Receiver shall be the trustee in the bankruptcy;
 - (ii) there shall be no committee of inspection, and the Official Receiver may do all things which may be done by a trustee with the permission of a committee of inspection;
 - (iii) such other modifications as may be prescribed with a view to saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.
- (2) The court may, upon the application of the Official Receiver, at any time before the discharge of the debtor rescind an order made under subsection (1) and thereupon the administration shall proceed as if the order had not been made.

General Rules

115 Power to make general rules

The Chief Justice may make rules providing for, generally, the carrying into effect the objects of this Act.

Fees and Remuneration

116 Fees and remuneration

- (1) The Chief Justice may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act.
- (2) The court may remit the payment of any particular fee or fees due from any debtor, or any part thereof, either absolutely or on such terms as it may think fit.

117 Disposal of Official Receiver's fees

All fees and commissions received by or payable to the Official Receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the Official Receiver as an interim receiver or otherwise, shall be paid by such officer forthwith into the Consolidated Fund.

Evidence

118 Evidence of proceedings at meetings of creditors

- (1) A minute of proceedings at a meeting of creditors under this Act, signed by a person describing himself as or appearing to be chairman of the meeting, shall be received in evidence without further proof.
- (2) Until the contrary is proved every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings had thereat to have been duly passed or had.

119 Evidence of proceedings in bankruptcy

Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or

used in the course of any bankruptcy proceedings or other proceedings had under this Act shall, if it appears to be sealed with the seal of the court or purports to be signed by the Registrar, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatsoever.

120 Swearing or affirmation of affidavits

Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn or affirmed before any person authorised to administer oaths or affirmations or in the case of a person who is out of Solomon Islands, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be qualified as aforesaid).

121 Death of debtor or witness

In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by the court in any proceedings under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

122 Statements made to Official Receiver or trustee through an interpreter

Any statement made by a debtor or creditor in any bankruptcy to the Official Receiver or trustee through an interpreter shall be deemed to have been made to the Official Receiver or trustee as the case may be respectively, and evidence thereof shall be receivable from the Official Receiver or trustee, on it being proved either that the interpreter employed was a sworn interpreter or that he held the substantive or acting appointment of interpreter, or of clerk and interpreter, to the Official Receiver.

123 Certificate of appointment of trustee

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

124 Computation of time

- (1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of an act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed.
- (2) Where the limited time so appointed or allowed is less than six days, public holidays declared under the *Public Holidays Act* shall not be reckoned in the computation of such time.
- (3) Where the limited time so appointed or allowed expires on one of the days in this section specified, the act or proceeding shall be considered as done or taken in the due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

125 Service of notices

All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

126 Formal defect not to invalidate proceedings

- (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by an irregularity unless the court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of the court.
- (2) No defect or irregularity in the appointment or election of a receiver, trustee or member of a committee of inspection shall vitiate any act done by him in good faith.

127 Exemption of documents from stamp duty

- (1) Stamp duty shall not be payable in respect of:

- (a) any assurance relating solely to immovable property or personal property which is part of the estate of any bankrupt, and which, after the execution of the assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankrupt; or
 - (b) any other instrument relating solely to the property of any bankrupt.
- (2) In this section “**assurance**” includes deed, conveyance, assignment and surrender, and “**other instrument**” includes every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other writing.

128 Acting of corporations, partners, etc.

For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members and a person of unsound mind may act by his committee or *curator bonis*.

129 Certain provisions to bind Crown

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

Unclaimed Funds or Dividends

130 Unclaimed and undistributed dividends or funds

- (1) Where a trustee, other than the Official Receiver, under any bankruptcy, composition or scheme, pursuant to this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or any money held in trust by the debtor for another person, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Official Receiver who shall carry the same to an account to be termed the “**Bankruptcy Estates Account**”. The Official Receiver’s receipt for the money so paid, shall be a sufficient discharge to the trustee

in respect thereof.

- (2) Where the Official Receiver is the trustee, and under any bankruptcy, composition or scheme, pursuant to this Act has under his control any unclaimed dividend which has remained unclaimed for more than six months or where after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith transfer the same to the Bankruptcy Estates Account.
- (3) The trustee, whether he has obtained his release or not, may be called upon by the court to account for any unclaimed funds or dividends and any failure to comply with the requisitions of the court in this behalf may be dealt with as a contempt of court.
- (4) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account under this Act may, within five years of the date when the same was so paid in, apply to the Official Receiver for payment to him of the same, and the Official Receiver, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Official Receiver may appeal to the court.
- (5) After any money has remained unclaimed in the Bankruptcy Estates Account for a period of five years, the Official Receiver may transfer such money to the Consolidated Fund.
- (6) Before transferring any money under subsection (5), the Official Receiver may give such notice as he thinks necessary to such parties as he may think fit.

131 Deposit of surplus cash balances

- (1) Whenever the cash balance standing to the credit of:
 - (a) the Bankruptcy Estates Account referred to in section 130; or
 - (b) any account operated by the Official Receiver under section 91,is in excess of the amount which, in the opinion of the Official Receiver, is required for the time being to answer demands in respect of debtor's estates, the Official Receiver may deposit the whole or

part of that excess with a bank.

- (2) The Official Receiver shall in each financial year transfer to the Consolidated Fund any interest paid in respect of deposits under subsection (1).

PART VIII BANKRUPTCY OFFENCES

132 Fraudulent debtors

- (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of an offence:
 - (a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;
 - (b) if he does not deliver up to the trustee, or as he directs, all such part of his movable or immovable property as is in his custody or under his control and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
 - (c) if he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
 - (d) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he conceals any part of his property to the value of fifty dollars or upwards or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
 - (e) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of fifty dollars or upwards;

- (f) if he makes any material omission or mis-statement in any statement relating to his affairs, unless he proves that he had no intent to defraud;
- (g) if, knowing or having any reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he removes, conceals, destroys, mutilates or falsifies or is privy to the removal, concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (j) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (k) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;
- (l) if, after the presentation of a bankruptcy petition by or against him or any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
- (m) if, within twelve months next before the presentation of the

petition, he by any false presentation or other fraud has obtained any property on credit, and has not paid for the same;

- (n) if, within twelve months next before the presentation of the petition, he obtained under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless he proves that he had no intention to defraud;
 - (o) if, within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; or
 - (p) if he is guilty of any false representation or other fraud for the purposes of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.
- (2) A person who has sent out of Solomon Islands any property which he has obtained on credit and has not paid for shall until the contrary is proved be deemed to have disposed of the same otherwise than in the ordinary way of his trade if, such property not having been paid or accounted for at the date of the receiving order by the person to whom the same was sent, such last-mentioned person does not pay or account for the same within a reasonable time after being called upon to do so by the trustee or cannot be found within a reasonable time.
- (3) In any prosecution under subsection (1)(i) the absence of any such book or document as is referred to in the said paragraph shall be *prima facie* evidence that such book or document was removed by the debtor contrary to the provisions of the said paragraph or that he was privy to its removal contrary to those provisions, and thereupon the onus shall be upon the debtor to prove that he did not so remove such book or document and that he was not privy to such removal.
- (4) In any prosecution under subsection (1)(i) the mutilation or

falsification of any such book or document as is referred to in the said paragraph shall be *prima facie* evidence that such book or document was mutilated or falsified by the debtor in contravention of the provisions of the said paragraph or that he was privy to its mutilation or falsification contrary to those provisions, and thereupon the onus shall be upon the debtor to prove that he did not so mutilate or falsify the said book or document and that he was not privy to such mutilation or falsification.

- (5) Any person guilty of an offence in the cases mentioned in subsection (1), shall be liable on summary conviction to imprisonment for one year or upon conviction on indictment to imprisonment for three years.
- (6) For the purposes of this section “*trustee*” includes the Official Receiver, whether acting as Official Receiver or as a trustee.

133 Certain offences by persons other than the debtor

- (1) If any manager, accountant or book-keeper in the employment of the debtor does any act which if committed by the debtor would be a contravention of any of the provisions of section 132(1)(i) or (j), or is privy to any such act whether committed by the debtor or by any other person, such manager, accountant or book-keeper shall be deemed to be guilty of an offence.
- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under section 131(1)(o), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid, shall be guilty of an offence and shall be liable on summary conviction to imprisonment for one year or upon conviction on indictment to imprisonment for five years.

134 Undischarged bankrupt obtaining credit

Any undischarged bankrupt shall in each of the cases following be guilty of an offence:

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

undischarged bankrupt; or

- (b) if he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt and in the course of such trade or business obtains credit from any person without first disclosing to such person the name or names under which he was adjudicated bankrupt; or
- (c) if he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt without first publishing, once in the *Gazette*, and in three successive issues of one local newspaper, a notice containing the following particulars:
 - (i) the name or names under which he was adjudicated bankrupt;
 - (ii) the last address at which he carried on any trade or business prior to the adjudication;
 - (iii) the name or names under which he intends to carry on the trade or business;
 - (iv) the nature of the trade or business which he intends to carry on; and
 - (v) the address or addresses at which he intends to carry it on.

135 Frauds by bankrupts, etc.

Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made in each of the cases following shall be guilty of an offence:

- (a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud;
- (b) if with intent to defraud his creditors or any of them he has made or caused to be made any gift or transfer of or charge on his property; or

- (c) if with intent to defraud his creditors he had concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him; or
- (d) if with intent to defraud his creditors or any of them he has caused or connived at the levying of any execution against his property.

136 Bankrupt guilty of gambling, etc.

- (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of an offence if, having been engaged in any trade or business and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business:
 - (a) he has within two years prior to the presentation of the bankruptcy petition materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations and such gambling or speculations are unconnected with his trade or business; or
 - (b) he has between the date of the presentation of the petition and the date of the receiving order lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or
 - (c) on being required by the Official Receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

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

- (2) A prosecution shall not be instituted against any person under this section except by order of the court.

137 Bankrupt failing to keep proper accounts

- (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of an offence if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section:

- (a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion in Solomon Islands or elsewhere been adjudged bankrupt or made a composition or arrangement with his creditors, of five thousand dollars or in any other case one thousand dollars, or
- (b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.
- (2) A prosecution shall not be instituted against any person under this section except by order of the court.
- (3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and where the trade or business has involved dealings in goods, statements of annual stock-takings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

138 Bankrupt absconding with property

If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits Solomon Islands and takes with him, or attempts or makes preparation to quit Solomon Islands and take with him, any part of his property to the amount of five hundred dollars or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

139 Debtor concealing himself to avoid services, etc.

- (1) If any person against whom a receiving order is made conceals himself or absents himself from his usual or last known place of abode or business or quits Solomon Islands, with intent to avoid service of any process in bankruptcy or to avoid examination in respect of his affairs or otherwise to defeat, embarrass or delay any proceedings against him in bankruptcy, he shall be guilty of an offence.
- (2) A person who, after the presentation of a bankruptcy petition by or against him or within three months next before such presentation, conceals or absents himself as aforesaid or quits Solomon Islands shall until the contrary is proved be deemed to have concealed or absented himself or left Solomon Islands with such intent as is mentioned in this section.

140 False claims, etc.

If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account, which is untrue in any material particular, he shall be guilty of an offence, and shall on conviction be liable to imprisonment for twelve months.

141 Order by court for prosecution on report of trustee

Where the Official Receiver or a trustee in bankruptcy reports to the court that in his opinion a debtor who has been adjudged bankrupt or

in respect of whose estate a receiving order has been made has been guilty of an offence under this Act, or where the court is satisfied upon the presentation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence, but no such order shall be a condition antecedent to any prosecution under this Act.

142 Criminal liability after discharge or composition

Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme or arrangement has been accepted or approved.

143 Trial and punishment of offences

- (1) A person guilty of an offence under this Act in respect of which no special penalty is imposed by this Act shall be liable on conviction to imprisonment for a term not exceeding two years.
- (2) Proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the Official Receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.
- (3) In a charge of an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant or document of, the court acting under this Act.

144 Evidence as to frauds by agents

A statement or admission made by any person in any compulsory examination or disposition before the court on the hearing of any

matter in bankruptcy shall not be admissible as evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person in any proceeding in respect of any offence involving theft under the *Penal Code*.

PART IX REPEALS AND SAVINGS

145 Repeals and savings

- (1) Subject to the provisions of subsections (2) and (3), the *Bankruptcy Act 1914* and the *Bankruptcy (Amendment) Act 1926* of the United Kingdom as amended from time to time, (in this section referred to as the “repealed Acts”) in so far as they form part of the law of Solomon Islands are hereby repealed.
- (2) Notwithstanding the repeal of the aforesaid Acts, any rules, orders or instruments made, or scale of fees prescribed under the repealed Acts and in force on the date of commencement of this Act shall continue to apply and shall be read with and considered as part of this Act, until such time as such rules, orders, instruments or prescribed fees are repealed or replaced under the provisions of this Act.
- (3) Unless and until new rules are made under the provisions of this Act, it shall be lawful for the court to construe the rules made under the repealed Acts with such modifications, adaptations and verbal alterations as may be necessary to render the same applicable to any matters before the court; provided such construction is not inconsistent with the provisions of this Act.

ENDNOTES

1 KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 3 of the Revised Edition of the Laws of Solomon Islands.

2 LIST OF LEGISLATION

Bankruptcy Act (Cap. 3)

Constituent legislation: 1 of 1994 (Commenced 27 February 1996)

3 LIST OF AMENDMENTS