ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER B15

BANKRUPTCY ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 16/2006, in force 31 October 2006
Act 9/2008, in force 1 July 2006

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BANKRUPTCY ACT

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BANKRUPTCY ACT

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1. In this Act—

"affidavit" includes a statutory declaration, affirmation and attestation;

"Authority" includes Court, Government Department, Government Officer, or other persons given authority under or by virtue of this Act;

"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;

"debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy;

"gazetted" means published in the *Gazette*;

"general rules" includes forms;

"goods" includes all chattels personal;

"Government Officer" means any officer in the Government of Anguilla;

"Judge" means a Judge of the Court;

"liability" includes any compensation for work or labour done, 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, and generally it shall include 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 unlimited; as respects time, present or future, certain or dependent on any one contingency or on 2 or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion;

"local bank" means any bank in Anguilla;

"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;

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"person" includes a body of persons corporate or unincorporate;

"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 situated in Anguilla or elsewhere, and 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 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;

"trustee" means the trustee in bankruptcy of a debtor's estate.

Schedules

2. The Schedules to this Act shall be construed and have effect as part of this Act.

Application

3. A receiving order shall not be made against any corporation or against any partnership or association, or company, incorporated, continued or registered under the Companies Act[*].

PART 2

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Act of Bankruptcy

Acts of bankruptcy

4. (1) A debtor commits an act of bankruptcy in each of the following cases—

(a) if in Anguilla 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 Anguilla or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or any part thereof;

(c) if in Anguilla or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt;

[*] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(d) if with intent to defeat or delay his creditors he does any of the following things namely, departs out of Anguilla, or being out of Anguilla remains out of Anguilla, or departs from his dwelling house, or otherwise absents himself, or begins to keep house;

(e) if execution issued against him has been levied by seizure and sale of his goods under process in an action in any court, or in any civil proceeding in the Court;

(f) if any judgment debt has been ordered by the Court to be levied upon any lands other than a plantation in which there are 40 acres under cultivation, or any mortgage, encumbrance or interest in or upon such land;

(g) if he files in the Court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself;

(h) if a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in Anguilla or by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within 7 days after service of the notice, in case the service is effected in Anguilla, 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 counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained;

(i) 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;

(j) if the debtor has in fact suspended payment of his debts and given notice to any of his creditors that he is insolvent.

(2) A bankruptcy notice under this Act shall be in the prescribed form, shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Receiving Order

Jurisdiction to make receiving order

5. 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.

Conditions on which creditor may petition

6. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

(a) the debt is a liquidated sum, payable either immediately or at some certain future time;

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(b) the act of bankruptcy on which the petition is grounded has occurred within 6 months before the presentation of the petition; and

(c) the debtor is domiciled in Anguilla, or within 1 year before the date of the presentation of the petition has ordinarily resided or had a dwelling house or place of business in Anguilla.

(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.

Proceedings and order on creditor's petition

7. (1) A creditor's petition shall be verified by affidavit (of the creditor, or of some person in his behalf, having knowledge of the facts) and served in the prescribed manner.

(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 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, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.

(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.

Debtor's petition and order thereon

8. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof is 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.

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(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Effect of receiving order

9. (1) On the making of a receiving order an 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 realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Discretion of Court to appoint receiver and stay proceedings

10. (1) 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.

(2) The Court may at any time after the presentation of a bankruptcy petition stay any action, execution or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of order staying proceedings

11. Where the Court makes an order staying any action or proceeding or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by prepaid post letter to the address for service of the plaintiff or other party prosecuting such proceeding.

Power to appoint special manager

12. (1) The official receiver of a debtor's estate, may, 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 with the consent of a Judge 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 prescribed authority may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or in default of any such resolution, as may be prescribed.

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Advertisement of receiving order

13. 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 and advertised in the prescribed manner.

Proceedings Consequent on Order

First and other meetings of creditors

14. (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 the proposal for a composition or scheme of arrangement shall be entertained, 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) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in Schedule 1 shall be observed.

Debtor's statement of affairs

15. (1) Where a receiving order is made against a debtor, he shall 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, the names, residences and occupations of his creditors, 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—

(a) if the order is made on the petition of the debtor, within 3 days from the date of the order;

(b) if the order is made on the petition of a creditor, within 7 days from the date of the order;

but the official receiver or 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, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof, or extracts 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.

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Public Examination of Debtor

Public examination of debtor

16. (1) Where the Court makes a receiving order, it shall 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 representative authorized in writing, 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 authorized by the prescribed authority may employ a solicitor.

(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 in writing and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(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.

Composition or Scheme of Arrangement

Power for creditor to accept and Court to approve composition or arrangement

17. (1) The creditors may at the first meeting, or any adjournment thereof, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in number representing three-fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors and is approved by the prescribed authority but, where in the notice convening the first meeting of creditors, notice of the proposed composition has been given in the prescribed manner and such composition has been approved by three-fourths in value of the creditors, the composition if approved by the prescribed authority shall be binding without being confirmed at a subsequent meeting of creditors. Any creditor who has

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proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the official receiver in the prescribed form, and attested by a witness, so as to be received by such official receiver not later than the day preceding such first or subsequent meeting as the case may be, and such creditor shall attend thereat, and shall be examined as to his conduct, dealings and property.

(3) The subsequent meeting shall be summoned by the official receiver by not less than 7 days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal, and shall be accompanied by a report of the official receiver thereon. The debtor or the official receiver may, after the composition or scheme is accepted by the creditors and the public examination of the debtor is concluded, 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.

(4) The prescribed authority shall, before approving a composition or scheme, hear a report of the official receiver as to the terms of the composition or scheme and as to the conduct of the debtor and any objections which may be made by or on behalf of any creditor.

(5) If the prescribed authority is of opinion that the terms of the composition or scheme are not reasonable, or not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the prescribed authority shall, or if any such facts are proved as would under this Act justify the Court in refusing, qualifying, or suspending the debtor's discharge, the prescribed authority may, in its discretion, refuse to approve the composition or scheme.

(6) Where the prescribed authority is not the Court, an appeal shall lie to the Court from the decision of the prescribed authority.

(7) If the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme or by the terms being embodied in an order of the Court. The approval of the prescribed authority may be testified by order in the prescribed manner.

(8) 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.

(9) 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.

(10) 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 is deemed a contempt of Court.

(11) 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 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

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adjudged bankrupt under this subsection, any debt provable in other respects, that has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

(12) If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, Part 6 shall apply to the trustee as if he were a trustee in 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, and shall extend to the distribution of the composition.

(13) Part 4 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 (12).

(14) No composition or scheme shall be approved by the prescribed authority or by the Court that 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.

(15) 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 has been adjudged bankrupt.

Effect of composition or scheme

18. Notwithstanding the acceptance and approval of a composition or scheme, such 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, a debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy

Adjudication of bankruptcy where composition not accepted or approved

19. (1) When 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 accepted or approved in pursuance of this Act within 14 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 Court in which the adjudication is made shall be gazetted and advertised in the prescribed manner and the date of the order shall for the purposes of this Act be the date of the adjudication.

Appointment of trustee

20. (1) Where a debtor is adjudged bankrupt or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or

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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.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the prescribed authority and the prescribed authority, if satisfied with the security, shall certify that his appointment has been duly made, unless it objects to the appointment 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, or that there is other good reason for objecting to the appointment.

(3) Where the prescribed authority (not being the Court itself) makes any such objection it shall, if so requested by a majority in value of the creditors, notify the objection to the Court and thereupon the Court may decide upon its validity.

(4) The appointment of a trustee should take effect as from the date of the certificate.

(5) If a trustee is not appointed by the creditors within 4 weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those 4 weeks, then within 7 days from the close of those negotiations by the refusal of the creditors to accept, or of the prescribed authority or the Court to approve, the composition or scheme, the official receiver shall report the matter to the prescribed authority and thereupon the prescribed authority shall appoint some fit person to be trustee of the bankrupt's property and shall certify the appointment.

(6) The creditors or the committee of inspection (if so authorized by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the prescribed authority aforesaid.

(7) 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 purposes of appointing a trustee.

Committee of inspection

21. (1) The creditors qualified to vote, may at their first or any subsequent meeting, by resolution, appoint from among the creditors qualified to vote or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than 5 nor less than 3 persons.

(2) The committee of inspection shall meet at such times 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.

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

(4) Any member of the committee may resign his office by notice in writing signed by him and delivered to the trustee.

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(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 5 consecutive meetings of the committee, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which 7 days' notice has been given stating the object of the meeting.

(7) 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.

(8) The continuing members of the committee, if there are not less than 2 continuing members, may act notwithstanding any vacancy in their body, and where the number of members of the committee of inspection is for the time being less than 5, the creditors may increase that number so that it does not exceed 5.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the prescribed authority on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication

22. (1) Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after adjudication, by special resolution, resolve to entertain 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 that have been contracted before the date of the adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor

Duties of debtor as to discovery and realization of property

23. (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.

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(2) He 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 prescribed by general rules, 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) He shall, if adjudged bankrupt, aid to the utmost of his power in the realization 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 that is divisible amongst his creditors under this Act and that is for the time being in his possession or under his control, to the official receiver or to the trustee or to any person authorized 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.

Arrest of debtor under certain circumstances

24. (1) The Court may, by warrant addressed to any police officer or prescribed officer of the Court, cause a debtor to be arrested and any books, papers, money and goods in his possession to be seized and cause the debtor and the books, papers, money and goods 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 reason for believing that he is about to abscond with a view to—

(i) avoiding payment of the debt in respect of which the bankruptcy notice was issued,

(ii) avoiding service of a bankruptcy petition or appearance to a petition,

(iii) avoiding examination in respect of his affairs, or

(iv) 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 remove his goods with a view of 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 $24 without the leave of the official receiver or trustee;

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(d) if, without good cause shown, he fails to attend any examination ordered by the Court;

but no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at any time of his arrest shall be served with a 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.

Re-direction of debtor's letters

25. 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 3 months, as the Court thinks fit, post letters 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 Postmaster of Anguilla 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.

Discovery of debtor's property

26. (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 that 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 amount, 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 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 the 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 Anguilla would be liable to be brought before it under this section, shall be examined in any other place out of Anguilla.

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Discharge of Bankrupt

Discharge of bankrupt

27. (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. The application shall be heard in open Court.

(2) On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs and may either grant or refuse an absolute order of discharge, 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 that may afterwards become due to the bankrupt or with respect to his after-acquired property, but the Court shall refuse the discharge—

(a) in all cases where the bankrupt has committed any offence under this Act or under the Debtors Act or any amendment thereof; and

(b) in all cases where it is not proved or shown to the satisfaction of the Court that the estate of the debtor has yielded or might with reasonable care have yielded sufficient to pay a dividend to his creditors of not less than 50¢ in the dollar unless the Court is satisfied on consideration of a report by the official receiver that the debtor's failure has arisen from circumstances for which he cannot justly be held responsible, that he has not been guilty of any of the offences or facts enumerated in this section, and that he has not been at fault in not having suspended payment of his debts at an earlier period.

The Court shall on proof of any of the facts hereinafter mentioned either refuse the order, suspend the operation of the order for a specified time or grant an order of discharge subject such conditions as aforesaid.

(3) The facts referred to in subsection (2) are—

(a) 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 3 years immediately preceding the bankruptcy;

(b) that the bankrupt has continued to trade after knowing himself to be insolvent;

(c) 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;

(d) that the bankrupt has brought on his bankruptcy by rash and hazardous speculation or unjustifiable extravagance in living or by recklessness or want of reasonable care and attention to his business and affairs;

(e) 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;

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(f) that the bankrupt has within 3 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;

(g) that the bankrupt has on any previous occasions been adjudged bankrupt or made a composition or arrangement with his creditors; or

(h) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section the report of the official receiver shall be *prima facie* evidence of the statements therein contained.

(5) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent at least 14 days before the day so appointed to each creditor who has proved, and the Court may hear the official receiver, the trustee and any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

(6) The Court may, as one of the conditions referred to in this section, require the bankrupt to consent to judgment being entered against him by the official receiver or trustee for any balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge or any part thereof, but in such case 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 for payment of his debts.

(7) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization 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.

Fraudulent settlements

28. In either of the following cases—

(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 for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his 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.

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Effect of order of discharge

29. (1) An order of discharge shall not release the bankrupt from any debt on a recognizance, 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 the Bailiff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, and he shall not be discharged from such excepted debts unless the prescribed authority certifies in writing its consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party, nor from any claim arising from breach of promise of marriage, seduction, slander, libel, assault, or from a judgment against a co-respondent in a matrimonial cause.

(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 proceeding 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 and may give this Act and the special matter in evidence.

(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.

Undischarged bankrupt obtaining credit to extent of $96 to be guilty of offence

30. Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of $96 or upwards from any person without informing such person that he is an undischarged bankrupt, he is guilty of an offence, and may be dealt with and punished as if he had been guilty of an offence under the Debtors Act and the provisions of that Act shall apply to proceedings under this section.

PART 3

DISQUALIFICATIONS OF BANKRUPT

Disqualifications of bankrupt

31. (1) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified from—

(a) being elected to or sitting as a member of the House of Assembly; or

(b) being appointed or acting as a Justice of the Peace.

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(2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when—

(a) the adjudication of bankruptcy against him is annulled; or

(b) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold a certificate as it thinks fit but any refusal of such certificate is subject to appeal.

Vacating of seat as member of public authority

32. If a person is adjudged bankrupt whilst he is a member of any public authority, his seat as member of the public authority shall thereupon become vacant.

Court may annul adjudication in certain cases

33. (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 theretofore done by the official receiver, trustee or other person acting under his 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 of 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 published locally.

Meaning of payment of debts in full

34. For the purposes of this Part, 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 securities 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 4

ADMINISTRATION OF PROPERTY

Proof of Debts

Description of debts provable in bankruptcy

35. (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.

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(2) A person having notice of any act of bankruptcy available against a 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) Except as provided in subsections (1) and (2), 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, are 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 is for the purposes of this Act, 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 jury, and may give all necessary directions for this purpose, and the amount of the value when assessed is deemed to be a debt provable in bankruptcy.

(8) "Liability" shall for the purposes of this Act include any compensation for work or labour done, 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, and generally it shall include 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 unlimited; as respects time, present or future, certain or dependent on any one contingency or on 2 or more contingencies as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Mutual credit and set off

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

Rules as to proof of debts

37. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in Schedule 2, the rules in that Schedule shall be observed.

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Priority of debts

38. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(a) all local rates due from the bankrupt and all taxes and other debts due from the bankrupt to the Crown at the date of the receiving order;

(b) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during 4 months before the date of the receiving order, not exceeding $240; and

(c) all wages of any labourer or workman, not exceeding $120 whether payable for time or piece work, in respect of services rendered to the bankrupt during 2 months before the date of the receiving order, but where any labourer in husbandry has entered into a contract for a payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or of a part thereof, as the Court may decide to be due under the contract proportionate to the time of service, up to the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject 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.

(4) Subsections (1), (2) and (3) 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.

(5) 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.

(6) The amount realized by a plantation in cultivation shall be applicable in the first instance to the payment of all debts that are due to the Crown or the Government of Anguilla or which have a right of preference on such plantation, or the proceeds realized by the sale thereof, or which are secured by any mortgages on the plantation, or securities against crop duly registered in the order of priority of such debts, and thereafter to the payment rateably of all debts incurred for the maintenance, working, cultivation or carrying on of the plantation.

(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 payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order, at the rate of 4% per annum on all debts proved in the bankruptcy.

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(9) Nothing in this section shall alter the effect of the Partnership Act or shall prejudice the provisions of the Friendly Societies Act.

(10) This section shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made after 1st September, 1893.

Preferential claim in case of apprenticeship

39. (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 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 preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Property Available for Payment of Debts

Relation back to trustee's title

40. The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, is 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 12 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.

Description of bankrupt's property divisible amongst creditors

41. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the "property of the bankrupt"—

(a) shall not comprise the following particulars—

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

(ii) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children to a value, inclusive of tools and apparel and bedding, not exceeding $96 in the whole,

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(iii) the pension payments payable to a bankrupt in the period beginning on the date that a receiving order is made against the bankrupt and ending on the day an order of discharge is made in respect of the bankrupt, whether or not such payments are made;

(Act 9/2008, s.71)

(b) 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 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, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof;

but things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, are not deemed goods within the meaning of this section.

Effect of Bankruptcy on Antecedent Transactions

Restriction of rights of creditors under execution or attachment

42. (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 has completed the execution or attachment before the date of the receiving order, 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, an execution against goods is completed by seizure and sale, an attachment of a debt is completed by receipt of the debt, an execution against land is completed by the granting of an order of the Court for the sale of the land or levying a judgment debt by the appointment of a receiver or in any other way in respect of the land.

Duties of Bailiff as to goods taken in execution

43. (1) Where the goods of a debtor are taken in execution and, before the sale thereof, notice is served on the Bailiff that a receiving order has been made against the debtor, the Bailiff shall, on request, deliver the goods to the official receiver or trustee under the order, but the costs of the execution shall be a charge on the goods so delivered, and the official receiver or trustee may sell the goods or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the goods of a debtor are sold under an execution in respect of a judgment for an amount exceeding $96, the Bailiff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for 14 days, and if within that time notice is served on him of a bankruptcy

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petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon, or on any other petition of which the Bailiff has notice, the Bailiff shall pay the balance to the trustee in the bankruptcy, who shall be entitled to retain the balance as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

(3) An execution levied by seizure and sale on the goods of a 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.

Avoidance of voluntary settlements

44. (1) Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property that has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within 2 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 10 years 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 the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in the right of his wife, shall on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

(3) "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Avoidance of preferences in certain cases

45. (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 any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, whether the giving of such preference is his sole view, or one view among others, is, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within 6 months after the date of making, taking, paying, or suffering the same, 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.

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Protection of *bona fide* transactions without notice

46. Subject to the foregoing 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 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; or

(d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration;

if the following conditions are complied with—

(e) the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

(f) 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.

Realization of Property

Possession of property by trustee

47. (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 of 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 if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things are deemed to have been duly assigned to the trustee.

(5) Any treasurer or other officer, or any banker, attorney or agent of the bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney or agent, that 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.

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Seizure of property of bankrupt

48. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be or any building or receptacle of the bankrupt where any of his property is supposed to be and, where the Court is satisfied that there is reason to believe that property of the bankrupt 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.

Appropriation of portion of pay or salary to creditors

49. (1) Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay, or salary as the Court, on the application of the trustee, with the consent of the Chief Officer of the department under which the pay or salary is enjoyed, or the Governor may direct. Before making any order under this subsection the Court shall communicate with the Chief Officer of the department as to the amount, time and manner of the payment to the trustee, and shall obtain the written consent of the Chief Officer or the Governor to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, pension, or to any compensation granted by the Crown, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, 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 of the Chief Officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

Vesting and transfer of property

50. (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 a 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 is for all purposes deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Disclaimer of onerous property

51. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, or 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 performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding

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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 disclaim the property.

(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, but, where all persons interested are agreed upon the terms on which the disclaimer might be made, the trustee may disclaim the lease upon such terms without the leave of the Court.

(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 28 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 period or extended period disclaim the contract, he is 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) Subject to subsection (7), the Court may, on application by any person either claiming any interest in any disclaimed property, or 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.

(7) 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 mortgagee by demise except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect to the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and, if there shall be 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

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either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, encumbrances, and interests created therein by the bankrupt.

(8) Any person injured by the operation of a disclaimer under this section is 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.

Power of trustee to deal with property

52. Subject to the provisions of this Act, the trustee may do all or any of the following things—

(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 or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(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;

(e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by trustees with permission of committee of inspection

53. 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 solicitor or other agent to take any proceeding 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 thinks 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;

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(f) refer any dispute to arbitration, compromise all 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.

Distribution of Property

Declaration and distribution of dividend

54. (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 the dividends amongst the creditors who have proved their debts.

(2) The first dividend, if any, shall be declared and distributed within 4 months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection 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 6 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 send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable and a statement in the prescribed form as to the particulars of the estate.

(6) No dividend of less amount than 96¢ shall be payable to any creditor, and no notice of or in respect of any such sum shall be given by the trustee under this section to any creditor.

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Joint and separate dividends

55. (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, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together, and the expenses of and incident 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.

Provision for creditors residing at a distance, etc.

56. 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. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

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

57. 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 approved by reason that he has not participated therein.

Final dividend

58. When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized 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. 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.

No action for dividend

59. 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 to pay out of his own money interest thereon for the time that it was withheld and the costs of the application.

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Power to allow bankrupt to manage property

60. (1) 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.

(2) 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 service if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

Right of bankrupt to surplus

61. 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 5

OFFICIAL RECEIVERS AND STAFF

Official receiver appointed by Governor

62. (1) The Governor may appoint such Government Officers and other persons, as he shall think fit to be official receivers of debtors' estates. The official receivers of debtors' estates shall act under the general authority and directions of the Governor, but shall also be officers of the Court.

(2) No salary shall be paid to any official receiver until it shall have been approved by the House of Assembly.

(3) Where more than one official receiver for bankruptcy purposes is attached to the Court, the one appointed for the time being by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall allot the receivership of particular estates to the official receivers in the prescribed manner.

Deputy for official receiver

63. (1) The Governor may on the application of an official receiver at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding 2 months as the order may fix, and under such conditions (if any) as to remuneration and otherwise as may be prescribed.

(2) The Governor may by order direct that any Government Officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office or during the temporary absence or incapacity to act of any official receiver through illness or otherwise.

Status of official receiver

64. (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

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(2) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3) All expressions referring to the trustee under 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.

Duties of official receiver as regards debtor's conduct

65. 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 the Debtors Act or any amendment thereof, or under this Act, or which would justify the Court in refusing, suspending, or qualifying, an order for his discharge;

(b) to make such other reports concerning the conduct of the debtor as the prescribed authority may direct;

(c) to take such part as may be directed by the prescribed authority in the public examination of the debtor; and

(d) to take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the prescribed authority may direct.

Duties of official receiver as to debtor's estate

66. (1) As regards the estate of a debtor, the official receiver shall—

(a) pending the appointment of a trustee, act as interim receiver of the debtor's estate, and where a special manager is not appointed, as manager thereof;

(b) with the leave of the Court, raise and authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary to do so;

(c) summon and preside at the first meeting of creditors;

(d) issue forms of proxy for use of the meeting of creditors;

(e) report to the creditors as to any proposals that the debtor may have made with respect to the mode of liquidating his affairs;

(f) advertise the receiving order, the date of the creditors' first meeting and the debtor's public examination, and such other matters as it may be necessary to advertise; and

(g) act as trustee during any vacancy in the office of the trustee.

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(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 prescribed authority otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods, but, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the prescribed authority and pay over all money and deal with all securities in such manner as the Court may direct.

Power of Governor to appoint additional officers

67. The Governor may, with the approval of the House of Assembly, appoint such additional officers, including official receivers, clerks and servants (if any) as may be required for the execution of this Act.

PART 6

TRUSTEE IN BANKRUPTCY

Remuneration of Trustee

Remuneration of trustee

68. (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve by the committee of inspection and shall be in the nature of a commission or percentage on which one part shall be payable on the amount realized after deducting any sums paid to secured creditors out of the proceeds of their securities and the other part on the amount distributed on dividend.

(2) If one-fourth in number or value of creditors dissent from the resolution or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the prescribed authority shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover and no liability shall attach to the bankrupt's estate or to the creditors in respect of any expenses which the remuneration is expressed to cover.

(4) Where no remuneration has been voted to a trustee, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the taxing officer or the Judge may allow.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt or any solicitor, auctioneer or other person who may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement

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for giving up or give up any part of his remuneration either as receiver, manager or trustee to the bankrupt or any solicitor or other person who may be employed about a bankruptcy.

Costs

Allowance and taxation of costs

69. (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 statute or rules to be performed by himself.

(2) Where the trustee is a solicitor, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons not being trustees shall be taxed by the prescribed officer and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons in respect of the particular matters out of which such charges arise has been duly sanctioned.

(4) Every such person shall on request by the trustee (which the trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the proper officer for taxation and, if he fails to do so within 7 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, Payment, Accounts, Audit

Payment of money into the Treasury

70. (1) An account called the "Bankruptcy Estates Account" shall be kept by the prescribed authority with the Treasury and all money received by the prescribed authority in respect of proceedings under this Act shall be paid to that account.

(2) Every trustee in bankruptcy shall in such manner and at such times as the prescribed authority with the concurrence of the Accountant General directs, pay the money received by him to the Bankruptcy Estates Account at the Treasury and the government officer in charge of the Treasury shall furnish him with a certificate of the receipt of the money so paid.

(3) Notwithstanding subsections (1) and (2), if it appears to the committee of inspection, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee of inspection shall satisfy the prescribed authority that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the prescribed authority shall, on the application of the committee of inspection, authorize the trustee to make his payments into and out of such local bank as the committee may select. Such account shall be opened and kept by the trustee in the name of the

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debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate. The trustee shall make his payments into and out of such local bank in the prescribed manner.

(4) Subject to any rules relating to Small Bankruptcies under Part 8, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of 7 days from the date appointed for the first meeting of creditors, unless the prescribed authority for the safety of the account or other sufficient cause orders the withdrawal of the account.

(5) If a trustee at any time retains for more than 10 days an amount exceeding $48, or such other amount as the prescribed authority in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the prescribed authority, he shall pay interest on the amount so retained in excess at a rate of 20% per year and shall have no claim for remuneration, and may be removed from his office by the prescribed authority and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of money standing to the credit of the prescribed authority in the Bankruptcy Estates Account shall be made out of the Treasury in the prescribed manner.

Trustee not to pay into private account

71. 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.

Investment of surplus funds

72. (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount that, in the opinion of the prescribed authority, is required for the time being to answer demands in respect of bankrupt estates, the Governor may direct that such sums shall be invested.

(2) The dividends on investments under this section shall be paid to such account as the Governor may direct subject to the approval of the House of Assembly.

Audit of trustees' accounts

73. (1) Every trustee shall at such times as may be prescribed but not less than twice in each year during his tenure of office send to the prescribed authority, or as it directs, 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 statutory declaration in the prescribed form.

(3) The prescribed authority shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the prescribed authority with such vouchers and information as the authority may require, and the authority may at any time require the production of and inspect any books and accounts kept by the trustee.

(4) When any such account has been audited one copy thereof shall be filed and kept by the prescribed authority and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor or of the debtor or of any person interested, on payment of the prescribed fee.

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The trustee to furnish list of creditors

74. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by trustee

75. The trustee shall keep, in the manner prescribed, proper books, in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any such books.

Annual statement of proceedings

76. (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 prescribed authority 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 prescribed authority shall cause the statement so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Release of Trustee

Release of trustee

77. (1) When the trustee has realized all the property of the bankrupt or so much thereof as can in his opinion be realized without needlessly protracting the trusteeship, and has 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, the prescribed authority shall, on his application, cause a report on his accounts to be prepared and, on his complying with all the requirements of the authority shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the Court, if the prescribed authority is not the Court.

(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 prescribed authority 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) 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.

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Official Name

Official name of trustee

78. The trustee may sue and be sued by the official name "the trustee of the property of ....., a bankrupt", inserting the name of the bankrupt, and by that name 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 and Removal

Power to appoint joint or successive trustees

79. (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 authorized 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 not being approved of by the prescribed authority.

Office of trustee vacated by insolvency

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

Removal of trustee

81. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which 7 days' notice has been given, remove a trustee appointed by them and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the prescribed authority is of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the prescribed authority may remove him from his office, but if the creditors by ordinary resolution, disapprove of his removal, he or they may appeal against it to the Court, if the Court is not the prescribed authority.

Proceedings in case of vacancy in office of trustee

82. (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 3 weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver shall report the matter to the prescribed authority and the

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prescribed authority may appoint a trustee, but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

(4) During any vacancy in the office of trustee, the official receiver shall act as trustee.

Voting Powers of Trustee

Limitation of voting powers of trustee

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

Control over Trustee

Discretionary powers of trustees and control thereof

84. (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 are in case of conflict deemed to override any direction given by the committee of inspection.

(2) The trustee may 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, or whenever requested in writing to do so by one-fourth in value of the creditors.

(3) The trustee may apply to the Court in 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 own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against trustee

85. 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.

Control of the prescribed authority over trustees

86. The prescribed authority shall take cognizance 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 statute, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the authority by any creditor in regard thereto, the authority shall enquire into the matter and take such action thereon as may be deemed expedient.

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Investigations by prescribed authority

87. (1) The prescribed authority may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and may, if the prescribed authority thinks fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy.

(2) The prescribed authority may also direct a local investigation to be made of the books and vouchers of the trustee.

PART 7

CONSTITUTION, PROCEDURE AND POWERS OF THE COURT

High Court

Court to have jurisdiction in bankruptcy

88. The Court has bankruptcy jurisdiction throughout Anguilla.

Transactions of bankruptcy business by single Judge

89. Subject to the provisions of this Act and to general rules, all matters in respect of which the Court has jurisdiction under this Act shall be ordinarily transacted and disposed of by or under the direction of any one of the Judges of the Court and all bankruptcy matters shall be entitled "In Bankruptcy.".

Judge may exercise jurisdiction in bankruptcy in Chambers

90. Subject to the provisions of this Act and to general rules, a Judge of the Court exercising jurisdiction in bankruptcy may exercise in Chambers the whole or any part of his jurisdiction.

Appointment of Registrar

91. The Governor may by order under his hand appoint any Government Officer to be Registrar in Bankruptcy, and thereupon such officer shall become an officer of the Court and may at any time revoke such appointment. In default of any such appointment, the Registrar of the Court shall be Registrar in Bankruptcy unless the Governor shall otherwise order.

Jurisdiction in bankruptcy of Registrar

92. (1) The Registrar in Bankruptcy shall, during the absence of a Judge from Anguilla, have the power and jurisdiction in this section mentioned, and any order made or act done by the Registrar in the exercise of the power and jurisdiction are deemed to be the order or act of the Court.

(2) Subject to general rules limiting the powers conferred by this section, the Registrar shall have power—

(a) to hear bankruptcy petitions and to make receiving orders and adjudications thereon;

(b) to hold the public examination of debtors;

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(c) to grant orders of discharge where the application is not opposed;

(d) to approve compositions or schemes of arrangement where they are not opposed;

(e) to make interim orders in any case of urgency;

(f) to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in Chambers;

(g) to hear and determine any unopposed or *ex parte* application;

(h) to summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor; and

(i) to fix the remuneration of a trustee.

(3) The Registrar shall not have power to commit for contempt of Court.

Reference to Judge of question of law

93. Subject to Rules of Court, if any question of law arises in any bankruptcy proceedings during the absence of a Judge from Anguilla, the Registrar shall, at the request of either party, state the facts in the form of a special case for the opinion of a Judge and shall transmit the special case and the proceedings or such of them as may be required to a Registrar of the Court where a Judge is resident.

Payments to be made out of Treasury on order of the Court

94. Where any money or funds have been received by an official receiver or a prescribed authority and the Court makes an order declaring that any person is entitled to such money or funds, the prescribed authority shall make an order for the payment thereof to the person so entitled as aforesaid.

General power of the Court

95. (1) Subject to the provisions of this Act, the Court sitting in bankruptcy 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 cognizance of the Court, in 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 case.

(2) If in any proceeding in bankruptcy there arises any question of fact that either of the parties desire to be tried before a jury instead of by the Court itself or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had with a jury and the trial may be had accordingly in the same manner as if it was the trial of an issue of fact in an action.

(3) Where default is made by a trustee, debtor or other person in obeying any order or direction given by the prescribed authority or an official receiver or any other Government Officer under any power conferred by this Act, the Court may, on the application of the prescribed authority or an official receiver or any other duly authorized person, order such defaulting trustee, debtor or person to comply with the order or direction so given, and the Court may also if it shall think fit upon any such application make an immediate order for the committal of such defaulting trustee, debtor or

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other person. The power given by this subsection is deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Appeal

Appeals in bankruptcy

96. (1) The Court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal to the Court of Appeal.

(3) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure

Discretionary power of the Court

97. (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 but, where any issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown, the Judge before whom such issue is tried shall otherwise order.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(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 by Commission abroad.

(6) 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 one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Consolidation of petitions

98. Where 2 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.

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Power to change carriage of proceedings

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

Continuance of proceedings on death of debtor

100. 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, and if the debtor had died before personal or substituted service has been effected, the proceedings may be continued with the leave of the Court.

Power to stay proceedings

101. 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.

Power to present petition against one partner

102. 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.

Power to dismiss petition against some respondents only

103. 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.

Property of partners to be vested in same trustee

104. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership and there is any other bankruptcy petition against or by a member of the same partnership, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by trustee and bankrupt's partners

105. Where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, and any release by 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.

Actions on joint contracts

106. 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.

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Proceedings in partnership name

107. Any 2 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.

Search warrants

108. A search warrant issued by the Court for the discovery of any property of a debtor may be executed in the manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commitment to prison

109. Where the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient and, if the gaoler of any prison refuses to receive any prisoner so committed, he is liable for every such refusal to a fine of $19,200.

PART 8

SMALL BANKRUPTCIES

Summary administration in small cases

110. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value $1,440, 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 be subject to the following modifications—

(a) if the debtor is adjudged bankrupt, the official receiver shall be the trustee in bankruptcy;

(b) there shall be no committee of inspection, but the official receiver may do with the permission of the prescribed authority all things which may be done by the trustee with the permission of the committee of inspection;

(c) such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of 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;

(d) notwithstanding paragraph (a), the creditors may at any time by special resolution resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

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Power for Court to make administration order instead of order for payment by instalments

111. (1) Where a judgment is obtained in any court and the debtor is unable to pay the amount forthwith and alleges that his whole indebtedness amounts to a sum not exceeding $480 exclusive of the debt for which the judgment is obtained, the Court may make an order providing for the administration of his estate and for the payment of his debts by instalments or otherwise and either in full or to such extent as to the Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the Court may think just.

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed $480, but in such case the Court may, if it thinks fit, set aside the order.

(3) Where it appears to the Registrar of the Court that the property of the debtor exceeds in value $48, he shall at the request of any creditor and without fee issue execution against the debtor's goods but the household goods, wearing apparel and bedding of the debtor or his family and tools and implements of his trade to the value in the aggregate of $96 shall to that extent be protected from seizure.

(4) Where the order is made, no creditor shall have any remedy against the person or property of the debtor in respect of any debt that the debtor has notified to the Court, except with the leave of the Court and on such terms as the Court may impose, and all proceedings pending against the debtor in respect of any such debt shall be stayed, but the costs already incurred by the creditor, may on any application, be added to the debt notified.

(5) If the debtor makes default in payment of any instalment, payable in pursuance of any order under this section, he is deemed, unless the contrary is proved, to have had since the date of the order the means to pay the amount in respect of which he has made default and to have refused or neglected to pay the same.

(6) The order shall be carried into effect in such manner as may be prescribed by general rules.

(7) Money paid into Court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration and then in liquidation of debts in accordance with the order.

(8) Notice of the order shall be sent to the Registrar and posted in his office, and shall be served in the prescribed manner on every creditor notified by the debtor or who has proved.

(9) Any creditor of the debtor on proof of his debt before the Registrar shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(10) Any creditor may in the prescribed manner object to any debt scheduled or to the manner in which payment is directed to be made by instalments.

(11) Any person who after the date of the order becomes a creditor of the debtor shall on proof of his debt before the Registrar be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

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(12) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided and the costs of the plaintiff and of the administration, the order shall be superseded and the debtor shall be discharged from his debts to the scheduled creditors.

(13) Any of the provisions of this section may be amended, repealed, altered, or added to, by general rules.

PART 9

SUPPLEMENTAL PROVISIONS

Persons Dying Insolvent

Administration in bankruptcy of estate of person dying insolvent

112. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy. An executor or administrator may at any time on filing an affidavit, and proving to the satisfaction of a Judge that the estate of the deceased is not sufficient to pay his debts in full, apply for and obtain an administration order under this section.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, 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 such petition with or without costs.

(3) An order of administration under this section shall not be made until the expiration of 2 months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal personal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within 3 months prior to his decease.

(4) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in the Court for the administration of the deceased debtor's estate, but the Court may in such case on the application of any creditor, and on proof that the estate is insufficient to pay its debts, make an order for the administration 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 under this section.

(5) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the Court, as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(6) With the modifications hereinafter mentioned, all the provisions of Part 4 relating to the administration of the property of a bankrupt shall, so far as the same are applicable, apply in the case of an administration order under this section in like manner as to an order of adjudication under this Act.

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(7) In the administration of the property of the deceased debtor under an order of administration, the official receiver 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 are deemed a preferential debt under the order, and are payable in full, out of the debtor's estate, in priority to all other debts.

(8) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, 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 dealt with in such other manner as may be prescribed.

(9) Sections 26 and 41 and all other provisions of this Act so far as they are capable of application shall apply to the administration under this section of the estate of a person dying insolvent.

(10) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section is, in the event of an order for administration being made thereon, deemed to be equivalent to notice of an act of bankruptcy, and after such notice 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 and 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.

(11) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(12) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules

Power to make general rules

113. (1) The Governor in Council may make general rules for carrying into effect the objects of this Act.

(2) All general rules made under subsection (1) shall be laid before the House of Assembly within 3 weeks after they are made if the House of Assembly is then sitting and, if the House of Assembly is not then sitting, at its next sitting and shall be judicially noticed and shall have effect as if enacted by this Act.

(3) Rules made under subsection (1) are regulations.

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Fees, Expenditure and Returns

Fees and remuneration

114. The Governor in Council may by order prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act and may direct by whom and in what manner they are to be collected and accounted for, and to what account they shall be paid.

Salaries, etc.

115. The Governor with the consent of the House of Assembly shall direct if any and what remuneration is to be allowed to any person (other than a Government Officer) performing any duties under this Act and may with the like consent vary, increase or diminish such remuneration as he may think fit.

Annual accounts of receipt and expenditure in respect of bankruptcy

116. An annual account shall be prepared by the Registrar for the year ending 31st of December showing the receipts and expenditure during that year in respect of bankruptcy proceedings, and the accounts shall be laid before the House of Assembly at the next sitting thereof.

Evidence

Evidence of proceedings at meetings of creditors

117. (1) A minute of proceedings at a meeting of creditors or of the committee of inspection under this Act signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors or the committee of inspection in respect of the proceedings whereof a minute has been so signed is deemed to have been duly convened and held and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy

118. 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 purport to be signed by any Judge thereof or is certified to be a true copy by any Registrar thereof, be receivable in evidence in any proceedings whatever.

Swearing of affidavits

119. Subject to general rules, any affidavit to be used in the Court in bankruptcy matters may be sworn by any person authorized to administer oaths, or before any officer of the Court authorized in writing in that behalf by the Judge of the Court, or in the case of a person that is out of Anguilla before a Magistrate or Justice of the Peace or other person qualified to administer oaths in the country

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where he resides, he being certified to be a Magistrate or Justice of the Peace or qualified as aforesaid, by a British Minister or British Consul or Notary Public if he is so qualified by foreign law.

Death of witness

120. In the case of the death of the debtor or his wife or of a witness whose evidence has been received by any Court in any proceeding 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.

Seal of the Court

121. The seal of the Court shall be the seal of the Court in bankruptcy matters and judicial notice shall be taken of the seal and of the signature of the Judge and Registrar in all legal proceedings.

Certificate of appointment of trustee

122. A certificate that a person has been appointed trustee under this Act given by the prescribed authority for that purpose shall be conclusive evidence of the appointment.

Time in which appeal to the Court to be brought

123. Where by this Act an appeal to the Court is given against the decision of any prescribed authority other than the Court or of the official receiver, the appeal shall be brought within 21 days from the time when the decision appealed against is pronounced or made.

Proceedings of the prescribed authority

124. All documents purporting to be orders or certificates made or issued by any prescribed authority and to be sealed with the seal of, or signed by any such authority, or any 2 or more members of the same, shall be received in evidence and are deemed to be such orders or certificates without further proof unless the contrary is shown.

Time

Computation of time

125. (1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any 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, unless the last day is a Sunday, Christmas Day, Good Friday or a public holiday, or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

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Notices

Service of notices

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

Formal Defects

Formal defect not to invalidate proceedings

127. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of the opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(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.

Stamp Duty

Exception of deeds, etc., from stamp duty

128. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other encumbrance on, or any estate, right or interest in any real or personal property that is part of the estate of any bankrupt and that, after the execution of the deed, conveyance, assignment, surrender, admission or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument, or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

Executions

Sales under executions to be public

129. Where the Bailiff sells the goods of a debtor under an execution for a sum exceeding $96 (including legal incidental expenses), the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the Bailiff on and during 3 days next preceding the day of sale.

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Bankrupt Trustee

When bankrupt is a trustee

130. Where a bankrupt is a trustee within the meaning of the Trusts Act, section 56 of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the bankrupt trustee (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act and of any other Act relative thereto, shall have effect accordingly.

Corporations, etc.

Acting of corporations, partners, etc.

131. For all or any of the purposes of this Act, a corporation may act by any of its officers authorized 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 the person appointed by the Court to take care of his property.

(Act 16/2006, s.53)

Certain provisions to bind the Crown

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

Married women

133. Nothing in this Act shall affect the provisions of the Married Women's Property Act.

Unclaimed Funds or Dividends

Unclaimed and undistributed dividends or funds under this Act

134. (1) Where the trustee, under any bankruptcy composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than 6 months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Treasury. The prescribed authority shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(3) Any person claiming to be entitled to any money paid in to the Bankruptcy Estates Account pursuant to this section may apply to the prescribed authority, for payment to him out of the same, and the prescribed authority, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

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(4) Any person dissatisfied with the decision of the prescribed authority, in respect of his claim may appeal to the Court.

(5) The prescribed authority may at any time after the passing of this Act open the account at the Treasury referred to in this Act as the Bankruptcy Estates Account.

Citation

135. This Act may be cited as the Bankruptcy Act, Revised Statutes of Anguilla, Chapter B15.

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SCHEDULE 1

(Section 14(2))

MEETINGS OF CREDITORS

1. The first meeting of creditors shall be summoned for a day not later than 21 days in the case of a creditor's petition, and not later than 14 days in any other case after the date of the receiving order, unless the Court for any special reason deems it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than 7 days' notice of the time and place thereof in the *Gazette* and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make, but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors and shall do so whenever so directed by the Court or so requested in writing by one-fourth in value of the creditors.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at the subsequent meetings shall be such persons as the meeting by resolution appoints.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he is deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within 28 days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of 20% but, where a creditor has put a value on such security, he may at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of 20% shall not be made if the trustee requires the security to be given up.

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13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purposes of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specific meeting or adjournment thereof, for or against any specified person as trustee, or member of a committee of inspection.

19. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

21. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least 3 creditors, or all the creditors if their number does not exceed 3.

24. If within half-an-hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than 7 or more than 21 days.

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

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor but, where any person holds special proxies to vote for the appointment of himself as trustee, he may use the proxies and vote accordingly.

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SCHEDULE 2

(Section 37)

PROOF OF DEBTS

PROOF IN ORDINARY CASES

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts but he shall not be compelled to deduct any discount, not exceeding 5%, on the net amount of his claim, that he may have agreed to allow for payment in cash.

PROOF BY SECURED CREDITORS

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

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued, the trustee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale is by public auction, the creditor or the trustee on behalf of the estate may bid or purchase.

(3) The creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within 6 months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it and the equity of redemption, or any other interest in the property comprised in the security that is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

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13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the trustee or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate or that the security has diminished or increased in value since its previous valuation, but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with section 13, the creditor shall forthwith repay any surplus dividend that he may have received in excess of that to which he would have been entitled on the amended valuation or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend that he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it or if it is realized under the provisions of section 13, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing sections, he shall be excluded from all share in any dividend.

17. Subject to the provisions of section 13, a creditor shall in no case receive more than 100¢ in the dollar, and interest as provided by this Act.

PROOF IN RESPECT OF DISTINCT CONTRACTS

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

PERIODICAL PAYMENTS

19. Where any rent or other payment falls due at stated periods and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

INTEREST

20. On any debt or sum certain, payable at a certain time, or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding 4% per year to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

DEBTS PAYABLE AT A FUTURE TIME

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of 5% per year, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

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ADMISSION OR REJECTION OF PROOF

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

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