

BANKRUPTCY ACT

(CHAPTER 20)

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Amended By	37 of 1999	→	42 of 1999	→	S 380/97	→	S 126/99	→	S 301/99

→	37 of 2001	→	38 of 2002
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An Act relating to the law of bankruptcy and matters connected therewith.

[15th July 1995]

PART I

PRELIMINARY

Short title

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

Interpretation

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

"bankrupt" means —

(a) the individual debtor who has been adjudged bankrupt by a bankruptcy order; or

(b) where a bankruptcy order has been made against a firm, each of the partners in the firm;

"bankruptcy order" means an order adjudging a debtor bankrupt;

"bankruptcy petition" means a petition to the court for a bankruptcy order;

"court" means the court having jurisdiction in bankruptcy under this Act;

"creditor" , in relation to a debtor proposing a voluntary arrangement under Part V, means a creditor to whom the debtor owes a debt provable in bankruptcy;

"creditors' committee" means a committee appointed under section 80;

"creditor's petition" means a bankruptcy petition presented under section 57 by a creditor or by 2 or more creditors jointly;

"debt provable in bankruptcy" or "provable debt" means any debt or liability that is made provable in bankruptcy under this Act;

"debtor" —

(a) in relation to a proposal for a voluntary arrangement under Part V, means the individual or the firm making or intending to make that proposal and includes each of the partners in such firm; and

(b) in relation to a bankruptcy petition, means the individual debtor to whom, or a firm, or each of the partners in the firm, to which, the petition relates;

"debtor's petition" means a bankruptcy petition presented under section 58 by a debtor against himself or by all or a majority of the members of a firm against the firm;

"estate" , in relation to a bankrupt, is to be construed in accordance with section 78;

"family" , in relation to a bankrupt, means the persons (if any) who are living with and dependent on him;

"firm" means an unincorporated body of individuals carrying on business in partnership with a view to profit;

"gazetted" means published in the *Gazette*;

"goods" includes all chattels personal;

"judgment debt" means a debt which is payable by any person by virtue of a judgment or an order of court against him;

"liability" means a liability to pay money or money's worth, irrespective of whether such liability is present or future, certain or contingent or of an amount that is fixed or liquidated or that is capable of being ascertained by fixed rules or as a matter of opinion, and includes any such liability arising —

(a) under any written law;

(b) under contract, tort or bailment;

(c) as a result of a breach of trust by the person liable; or

(d) out of an obligation to make restitution;

"nominee" means the person appointed by virtue of a debtor's proposal for a voluntary arrangement under Part V to act as trustee or otherwise to supervise the implementation of the voluntary arrangement and includes —

(a) any replacement of such person pursuant to an order under section 49 (3) (a) or 55 (5); and

(b) any person upon whom the functions of the nominee have been conferred by a creditors' meeting pursuant to section 51 (3);

"Official Assignee" includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an Assistant Official Assignee;

"ordinary resolution" means a resolution passed by a majority in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution;

"partnership debt" means a debt for which all the partners in a firm are jointly liable;

"preferential debt" means any debt which is to be paid in priority to all other unsecured debts and which is specified in section 90, and any reference to a preferential creditor shall be construed accordingly;

"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to, property;

"records" includes computer records and other documentary records;

"Registrar" means the Registrar of the Supreme Court and includes a Deputy Registrar or an Assistant Registrar of the Supreme Court;

"rules" means rules made under this Act;

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

"Sheriff" includes a bailiff and any officer charged with the execution of a writ or other process of the court;

"special resolution" means a resolution passed by a majority in number and at least three-fourths in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution;

"statutory demand" means a demand in the prescribed form which requires the person to whom it is addressed to pay, secure or compound to the reasonable satisfaction of the creditor making the demand, any debt owed by him to the creditor;

"transaction" includes any gift, agreement or arrangement, and any reference to entering into a transaction shall be construed accordingly;

"trustee" , in relation to a bankruptcy and a bankrupt, means the trustee of the bankrupt's estate.

(2) Any reference in this Act to the person or property of a debtor or bankrupt shall, in relation to a debtor which is a firm or to a firm against which a bankruptcy order has been made, as the case may be, be read as a reference to the person or property of each partner of the firm.

PART II

CONSTITUTION, PROCEDURE AND POWERS OF COURT

Jurisdiction

High Court to be the court having jurisdiction in bankruptcy

3. Subject to any other written law, the High Court shall be the court having jurisdiction in bankruptcy under this Act.

Exercise of jurisdiction in chambers

4. Subject to this Act and the rules, any judge of the court exercising jurisdiction in bankruptcy may exercise the whole or any part of his jurisdiction in chambers.

Jurisdiction in bankruptcy of Registrar

5. Subject to the rules, the Registrar shall have all the powers and jurisdiction of the court, and any order made or act done by him in the exercise of those powers and jurisdiction shall, subject to an appeal to a judge in chambers, be deemed to be the order or act of the court.

General powers of bankruptcy court

6. —(1) Subject to this Act, the court, under its jurisdiction 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, or which the court considers it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where default is made by a debtor or bankrupt or any other person in obeying any order or direction given by the court or the Official Assignee or any other officer of the court under this Act, the court may, on the application of the Official Assignee or any other duly authorised person, or of its own motion, order such defaulting debtor, bankrupt or person to comply with the order or direction so given, and may also, if it thinks fit, make an immediate order for the committal of such defaulting debtor, bankrupt or other person.

(3) The power given by subsection (2) shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Power to review orders

7. The court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

Appeals in bankruptcy

8. —(1) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal in the same way as orders of the High Court in other matters are for the time being appealable.

(2) For the purposes of this section, the Official Assignee shall be deemed to be aggrieved by the refusal of any application made by him to the court.

Power of arrest and seizure

9. —(1) Where the court is satisfied —

(a) on an application of the Official Assignee; or

(b) that there are reasonable grounds for believing,

that any person against whom a bankruptcy petition has been presented or a bankruptcy order made —

(i) has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding,

delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs;

(ii) is about to remove his goods with a view to preventing or delaying possession being taken of them by the Official Assignee;

(iii) has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate;

(iv) has, without the leave of the Official Assignee, removed any goods in his possession which exceed \$200 in value; or

(v) has failed, without reasonable excuse, to attend any examination ordered by the court,

the court may cause a warrant to be issued to a police officer for his arrest or for the seizure of any books, papers, records, money or goods in his possession, and upon his arrest, may authorise him to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

(2) Where a person has been arrested under this section, the court may order his release, either with or without security to the satisfaction of the court that he will abide by such conditions as the court may think fit to impose.

(3) The proceeds of the realisation of any security given on breach by such person of any of the conditions of the security shall be deemed to be his property and shall vest in the Official Assignee where such person is an undischarged bankrupt or, where he is not such, in the event of his bankruptcy.

Criminal jurisdiction of District and Magistrate's Courts

10. A District Court or a Magistrate's Court shall have jurisdiction to hear and determine all offences under this Act or the rules and, notwithstanding anything to the contrary in the Criminal Procedure Code (Cap. 68), shall have power to impose the full penalty or punishment in respect of any offence under this Act or the rules.

Procedure

Where no specific procedure provided

11. —(1) In any matter of practice or procedure for which no specific provision has been made by this Act or the rules, the procedure and practice for the time being in use or in force in the Supreme Court shall, as nearly as may be, be followed and adopted.

(2) Where in respect of any matter of practice or procedure it is not possible to apply subsection (1), the court may make such orders and give such directions as are likely to secure substantial justice between the parties.

Power to adjourn proceedings

12. The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit.

Power to amend written process

13. The court may at any time amend any written process or proceedings upon such terms, if any, as it may think fit.

Power to extend time

14. Where by this Act or the 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 it may think fit.

Manner of taking evidence

15. Subject to the rules, the court may in any matter take the whole or any part of any evidence either viva voce or by interrogatories or upon affidavit or by commission abroad.

Costs to be in court's discretion

16. Subject to this Act and the rules, the costs of and incidental to any proceedings in court shall be in the discretion of the court.

PART III**OFFICIAL ASSIGNEE****Appointment of Official Assignee of bankrupts' estates**

17. —(1) The Minister may appoint such person as he may think fit to be the official Assignee of the estates of bankrupts.

(2) The Official Assignee shall act under the general authority and directions of the Minister, but shall also be an officer of the court.

(3) The Minister may appoint such other officers, either temporary or permanent, as he may think necessary for carrying this Act into effect, and may assign to such officers such duties as he may think fit.

Official name of Official Assignee

18. The Official Assignee shall have the following official names:

(a) where he has been appointed as the interim receiver of a debtor's property under section 73, "The Official Assignee of the Property of (name of debtor), a Debtor";

(b) where he is acting as the receiver and trustee of the estate of a bankrupt under Part VII, "The Official Assignee of the Estate of (name of bankrupt), a Bankrupt"; and

(c) where he is acting as the trustee of the estate of a deceased debtor in bankruptcy under section 148, "The Official Assignee of the Estate of (name of deceased debtor), a Deceased Debtor",

and may, by such official name, sue and be sued, hold property of every description, enter into contracts or 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.

Delegation of powers and functions by Official Assignee

19. —(1) Subject to this Act, the Official Assignee may, in relation to any particular matter or class of matters, by writing under his hand delegate to any person all or any of his powers or functions under this Act or the rules so that such power or function may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) No delegation made under this section shall prevent the Official Assignee from exercising the power or function delegated.

(3) The Official Assignee may at any time revoke any delegation made by him under this section.

Official Assignee deemed to be public servant

20. The Official Assignee and any officer appointed by the Minister under section 17 (3) shall be deemed to be public servants within the meaning of the Penal Code (Cap. 224).

General duties of Official Assignee as regards bankrupt's conduct and affairs

21. —(1) The Official Assignee shall have the following duties as regards a bankrupt:

- (a) to investigate the conduct and affairs of the bankrupt, and report to the court as to whether there is reason to believe that the bankrupt has committed any act which constitutes an offence under this Act or under section 421, 422, 423 or 424 of the Penal Code, or which would otherwise justify the court in refusing, suspending or qualifying an order for his discharge;
- (b) to make such other reports concerning the conduct of the bankrupt as the court may direct or as are prescribed;
- (c) to take such part as may be directed by the court or as is prescribed, in any examination of the bankrupt and other persons; and
- (d) to take such part and give such assistance in relation to the prosecution of any fraudulent bankrupt or any other person charged with an offence under this Act, as the court may direct or as is prescribed.

(2) A report by the Official Assignee under subsection (1) shall in any proceedings be prima facie evidence of the facts stated in it.

(3) In this section, the conduct and affairs of a bankrupt shall include his conduct and affairs before the making of the bankruptcy order against him.

General duties of Official Assignee as regards estate of bankrupt

22. —(1) The Official Assignee shall have the following duties as regards the estate of a bankrupt administered by him:

- (a) to act as the receiver of the bankrupt's estate and where a special manager has not been appointed under section 113, as the manager thereof;
- (b) to raise money or make advances for the purposes of the estate, and to authorise the special manager (if any) to raise money or make advances for the like purposes in any case where in the interests of the creditors it appears necessary to do so;
- (c) to summon and preside at all meetings of creditors held under this Act;
- (d) to issue forms of proxy for use at the meetings of creditors;
- (e) to report to the creditors as to any proposal which he makes with respect to the mode of liquidating the bankrupt's affairs; and
- (f) to advertise the bankruptcy order, the date of any public examination and such other matters as may be necessary to advertise.

(2) For the purpose of carrying out his duties as receiver or manager, the Official Assignee shall have the same powers as if he were a receiver and manager appointed by the court.

(3) The Official Assignee shall, as far as practicable, consult the creditors with respect to the management of the bankrupt's estate, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors.

(4) The Official Assignee shall account to the court and pay over all moneys and deal with all securities in such manner as the court may, subject to this Act, direct.

Discretion of Official Assignee in administration of estate of bankrupt

23. —(1) Subject to this Act, the Official Assignee shall have discretion as to the administration of the property of the bankrupt.

(2) Subject to this Act, the Official Assignee shall, in the administration of the estate of a bankrupt, have regard to any direction that is given by resolution of the creditors at any general meeting and to any advice given by the creditors' committee.

(3) Where any direction given to the Official Assignee by the creditors of a bankrupt at any general meeting is in conflict with any advice given to him by the creditors' committee, the direction given by the general meeting of creditors shall prevail.

Power to administer oaths

24. The Official Assignee may administer oaths for the purposes of any matters or proceedings under this Act or for the purpose of taking affidavits.

Official Assignee's accounts

25. —(1) The Official Assignee shall —

(a) keep in the prescribed form an account of his receipts and payments in respect of his administration of the estate of a bankrupt; and
(b) permit inspection of such account by the bankrupt or by any creditor who has proved his debt or by any other person interested, subject to payment of the prescribed fee.

(2) Every account referred to in subsection (1) shall be audited not less than once in each year by such officer as the Minister may appoint in that behalf.

(3) For the purposes of the audit under subsection (2), the Official Assignee shall produce to the auditing officer such books and shall furnish him with such vouchers and information as he may require.

Books to be kept by Official Assignee

26. —(1) The Official Assignee shall keep as prescribed proper books, in which he shall cause to be made entries or minutes of proceedings at any meeting held under this Act and of such other matters as are prescribed.

(2) Any creditor of the bankrupt may, subject to the control of the court, personally or by his agent inspect any books kept by the Official Assignee under subsection (1).

Bankruptcy Estates Account

27. —(1) The Official Assignee shall keep with such bank as he may think fit an account, to be called the Bankruptcy Estates Account, into which all moneys received by the Official Assignee under this Act shall, subject to the provisions of this Act, be paid.

(2) All payments out of moneys standing to the credit of the Official Assignee in the Bankruptcy Estates Account shall be made by such bank in such manner as the Official Assignee may think fit.

Investment of surplus funds in Bankruptcy Estates Account

28. —(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which, in the opinion of the Official Assignee, is required for the time being to meet demands in respect of insolvent estates, the Official Assignee shall —

(a) notify the excess to the Accountant-General; and

(b) pay over the whole or any part of the excess as the Accountant-General may require to such account as the Accountant-General may direct.

(2) The Accountant-General may invest the sums paid over under subsection (1) (b) or any part thereof in trustee securities to be placed to the credit of the account referred to in subsection (1) (b).

(3) Where any part of the money invested under subsection (2) is, in the opinion of the Official Assignee, required to meet any demand in respect of insolvent estates, the Official Assignee shall notify the Accountant-General the amount so required.

(4) The Accountant-General shall repay the Official Assignee such sum as may be required under subsection (3) to the credit of the Bankruptcy Estates Account and for that purpose the Accountant-General may direct the sale of such part of the securities as may be necessary.

(5) The income derived from any investment under subsection (2) shall form part of the Consolidated Fund and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in bankruptcy.

(6) Any profits on the sale of any of the securities placed to the credit of the Bankruptcy Estates Account shall be credited to the Consolidated Fund and that Fund shall be liable to make good any loss arising out of the sale of those securities.

Official Assignee to furnish list of creditors

29. The Official Assignee shall, whenever required by any creditor of a bankrupt to do so, and on payment by the creditor of the prescribed fee, furnish and transmit to the creditor a list of the creditors of the bankrupt, showing in the list the amount of the debt due from the bankrupt to each of the creditors.

Control of court over Official Assignee

30. —(1) The court shall take cognizance of the conduct of the Official Assignee in his administration of the estate of a bankrupt.

(2) If the Official Assignee does not faithfully perform his duties or duly observe all the requirements imposed on him by this Act, the rules or any other written law with respect to the performance of his duties, or if any complaint is made to the court by any creditor in regard thereto, the court shall inquire into the matter and take such action thereon as it may consider expedient.

(3) The court may —

(a) at any time require the Official Assignee to answer any inquiry made by it in relation to his administration of the estate of a bankrupt; and

(b) direct an investigation to be made of the books and vouchers of the Official Assignee or examine him on oath concerning his administration of the estate of a bankrupt.

Review by court of Official Assignee's act, omission or decision

31. —(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of the Official Assignee in relation to the Official Assignee's administration of the bankrupt's estate, he may apply to the court to review such act, omission or decision.

(2) On hearing an application under subsection (1), the court may —

(a) confirm, reverse or modify any act or decision of the Official Assignee; or

(b) give such directions to the Official Assignee or make such other order as it may think fit.

(3) The Official Assignee may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

Liability of Official Assignee to be discharged out of Consolidated Fund

32. —(1) All sums required to discharge any liability which the Official Assignee may be personally liable to discharge shall be charged upon the Consolidated Fund.

(2) Neither the Official Assignee nor any of his officers shall be liable for any act to which he has not in any way contributed or which he could not by the exercise of reasonable diligence have averted.

PART IV

TRUSTEE IN BANKRUPTCY

Appointment of person other than Official Assignee as trustee in bankruptcy

33. —(1) The court may, on making a bankruptcy order and on the application of a petitioning creditor, appoint a person other than the Official Assignee to be the trustee of the bankrupt's estate.

(2) The official name of the trustee shall be —

(a) “the Trustee of the estate of (name of bankrupt), a Bankrupt”; or

(b) “the Trustee in Bankruptcy of (name of bankrupt), a Bankrupt”.

Qualifications for appointment as trustee

34. No person shall be appointed as a trustee in bankruptcy unless he satisfies the court that —

(a) he is —

(i) registered as a public accountant under the Accountants Act (Cap. 2A);

(ii) an advocate and solicitor; or

(iii) such person as the Minister may, by order published in the *Gazette*, prescribe; and

(b) he has not been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more,

and he has consented in writing to being appointed as a trustee.

Person appointed as trustee to furnish security before acting

35. —(1) No person appointed as a trustee under section 33 shall commence acting as such trustee until he has given security in the prescribed manner to the satisfaction of the Official Assignee that he shall faithfully perform his duties and duly observe all the requirements imposed on him by this Act, the rules or any other written law with respect to the performance of his duties.

(2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

General functions, duties and powers of trustee

36. —(1) Subject to subsection (3) and section 39, a trustee shall —

(a) have all the functions and duties of the Official Assignee in relation to the conduct of a bankrupt and the administration of his estate as provided in this Act; and

(b) exercise all the powers of the Official Assignee.

(2) Any reference in this Act or the rules to the Official Assignee shall, unless the context otherwise requires, include a reference to a trustee.

(3) Sections 19, 24, 108, 113, 116, 125 and 165 shall not apply to a trustee and section 112 (a), (c), (f), (h) and (i) shall not apply to a trustee except with the consent of the court, the creditors' committee or, if there is no creditors' committee, the Official Assignee.

Trustee to pay moneys received by him into prescribed bank account

37. —(1) Every trustee shall, in the manner and at the times prescribed by the rules, pay all moneys received by him into such bank account as is prescribed by those rules or as may be specified by the court.

(2) Any trustee who pays any moneys received by him as trustee into any bank account other than the bank account prescribed or specified under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Remuneration of trustee

38. —(1) A trustee shall be entitled to receive such salary or remuneration as is determined in the following manner:

(a) by agreement between the trustee and the creditors' committee, if any;

(b) failing any agreement with the creditors' committee or where there is no such committee, by a special resolution of the creditors whose debts have been admitted for the purpose of voting and who are present in person or by proxy and voting at a meeting to be convened by the trustee by a notice to each creditor in accordance with subsection (2); or

(c) failing a determination in the manner referred to in paragraph (a) or (b), by the court.

(2) The trustee shall attach to every notice under subsection (1) (b) a statement of all receipts and expenditure by the trustee and the amount of remuneration sought by him.

Control of trustee by Official Assignee

39. —(1) The Official Assignee shall take cognizance of the conduct of a trustee in the administration of the estate of a bankrupt.

(2) If the trustee does not faithfully perform his duties or duly observe all the requirements imposed on him by this Act, the rules or any other written law with respect to the performance of his duties, or if any complaint is made to the Official Assignee by any creditor or bankrupt in regard thereto, the Official Assignee shall inquire into the matter and take such action thereon as he may think expedient.

(3) The Official Assignee may —

(a) at any time require a trustee to answer any inquiry in relation to his administration of the estate of a bankrupt; and

(b) also direct an investigation to be made of the books and vouchers of the trustee.

(4) It shall be the duty of the trustee —

(a) to furnish the Official Assignee with such information;

(b) to produce to the Official Assignee, and permit inspection by the Official Assignee of, such books, papers and other records; and

(c) to give the Official Assignee such other assistance, as the Official Assignee may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(5) The Official Assignee may, having regard to the results of any inquiry or investigation made under this section, apply to the court for the removal of the trustee.

Review by court of trustee's act, omission or decision

40. —(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee in relation to the trustee's administration of the bankrupt's estate, he may apply to the court to review such act, omission or decision and on hearing such an application the court may —

(a) confirm, reverse or modify any act or decision of the trustee; or

(b) give such directions to the trustee or make such other order as it may think fit.

(2) A trustee may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

Removal of trustee

41. —(1) A trustee may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned especially for that purpose in accordance with the rules.

(2) A trustee shall vacate his office if he ceases to be qualified to hold office as a trustee under section 34 (a) or (b).

(3) A trustee may resign his office by giving one month's notice of his resignation to the court and the Official Assignee.

(4) A trustee shall vacate his office if the bankruptcy order is annulled.

Vacancy in office of trustee

42. Where the appointment of any person as trustee of a bankrupt's estate fails to take effect or where a vacancy arises in the office of a trustee whose appointment has taken effect, the Official Assignee —

(a) shall act as the trustee of the bankrupt's estate until the vacancy is filled; and

(b) may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy.

Liability of trustee

43. —(1) Where —

(a) the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate; or
(b) the estate of a bankrupt has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the Official Assignee or any creditor of the bankrupt or the bankrupt himself may apply to the court for any order specified in subsection (2).

(2) Upon hearing an application made under subsection (1), the court may, for the benefit of the estate, order the trustee to —

(a) repay, restore or account for any money or other property (together with interest at such rate as the court may think just); or

(b) pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court may think just.

(3) Any order made by the court under subsection (2) shall be without prejudice to any liability on the part of the trustee arising apart from this section.

(4) Where a trustee seizes or disposes of any property which is not comprised in the bankrupt's estate and at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property, the trustee —

(a) shall not be liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the negligence of the trustee; and

(b) shall have a lien on the property or the proceeds of its sale for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

PART V

VOLUNTARY ARRANGEMENTS

Moratorium for insolvent debtor

This Part not applicable to undischarged bankrupts

44. This Part shall not apply —

(a) to any individual debtor who is an undischarged bankrupt; or

(b) to any firm against which a bankruptcy order has been made and from which bankruptcy the partners in the firm have not been discharged.

Interim order of court

45. —(1) Subject to subsection (2), any insolvent debtor who intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (referred to hereinafter as a voluntary arrangement) may apply to the court for an interim order under this Part.

(2) No partner in an insolvent firm shall apply to the court for an interim order in respect of the firm unless all or a majority of the partners in the firm join or intend to join in the making of the proposal for a voluntary arrangement.

(3) An interim order shall have the effect that, during the period for which it is in force —

(a) where the interim order is in respect of an individual debtor —

(i) no bankruptcy petition may be presented or proceeded with against the debtor; and
(ii) no other proceedings, execution or other legal process may be commenced or continued against the person or property of the debtor without the leave of the court;
and

(b) where the interim order is in respect of a firm —

(i) no bankruptcy petition may be presented or proceeded with against the firm or, except with the leave of the court, any partner therein; and

(ii) no other proceedings, execution or other legal process may be commenced or continued against the firm or its property or against the person or property of any partner in the firm, without the leave of the court.

(4) An interim order shall cease to have effect 42 days after the making thereof unless the court otherwise directs.

[37/99]

Nominee

46. —(1) Every debtor making a proposal for the purpose of this Part shall in such proposal appoint a nominee to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.

(2) No person shall be appointed as a nominee unless he is —

(a) registered as a public accountant under the Accountants Act (Cap. 2A);

(b) an advocate and solicitor; or

(c) such other person as the Minister may, by order published in the *Gazette*, prescribe.

(3) The Minister may make rules prescribing the scale of fees to be charged by nominees assisting debtors in respect of voluntary arrangements.

[37/99]

Effect of application

47. —(1) At any time when an application under section 45 for an interim order is pending, the court may stay any action, execution or other legal process against the debtor in respect of whom the application has been made or the property of such debtor.

(2) Any court in which proceedings are pending against a debtor may, on being satisfied that an application under section 45 for an interim order has been made in respect of the debtor, stay the proceedings or allow them to continue on such terms as the court may think fit.

(3) Where the debtor in respect of whom an application under section 45 for an interim order is pending is a firm, the power of the court under subsections (1) and (2) shall apply to any action, execution or other legal process or proceedings against the person or property of any partner in the firm.

Conditions for making of interim order

48. —(1) The court shall not make an interim order on an application under section 45 unless it is satisfied that —

(a) the debtor intends to make a proposal for a voluntary arrangement;

(b) no previous application for an interim order has been made by or in respect of the debtor during the period of 12 months immediately preceding the date of the application; and

(c) the nominee appointed by the debtor's proposal is qualified and willing to act in relation to the proposal.

(2) The court may make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

Nominee's report on debtor's proposal

49. —(1) Where an interim order has been made, the nominee shall, before the order ceases to have effect, submit a report to the court stating —

(a) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(b) if in his opinion such a meeting should be summoned, the date on which, and the time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report, the debtor shall submit to the nominee —

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(b) where the debtor is an individual, a statement of his affairs containing —

(i) such particulars of his assets, creditors, debts and other liabilities as may be prescribed; and

(ii) such other information as may be prescribed; or

(c) where the debtor is a firm, a statement of its affairs containing —

(i) such particulars of the assets, creditors, debts and other liabilities of the firm and of each partner therein, as may be prescribed; and

(ii) such other information as may be prescribed.

(3) Where the nominee has failed to submit the report required by this section within the time given, the court may, on an application made by the debtor, do one or both of the following:

(a) direct that the nominee shall be replaced by another person qualified to act as a nominee;

(b) direct that the interim order shall continue, or if it has ceased to have effect be renewed, for such further period as the court may think fit.

(4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to allow the nominee to have more time to prepare his report.

(5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended for such further period as it may think fit, for the purpose of enabling the debtor's proposal to be considered by the debtor's creditors in accordance with the following provisions of this Part.

(6) The court may discharge the interim order if it is satisfied, on the application of the nominee —

(a) that the debtor has failed to comply with subsection (2); or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Summoning of creditors' meeting

50. —(1) Where a nominee has reported to the court under section 49 that a meeting of the debtor's creditors should be summoned, the nominee shall, unless the court otherwise directs, summon that meeting in accordance with his report.

(2) The nominee shall summon to the meeting every of the debtor's creditors of whose claim and address he is aware.

Consideration and implementation of debtor's proposal

Decision of creditors' meeting

51. —(1) A creditors' meeting summoned under section 50 may, if the meeting thinks fit, by special resolution resolve to approve the proposed voluntary arrangement, whether with or without modification.

(2) The meeting shall not approve the proposed voluntary arrangement with any modification unless the debtor has consented to such modification.

(3) For the purpose of this section, a modification subject to which a proposed voluntary arrangement may be approved by a creditors' meeting may confer the functions proposed to be conferred on the nominee on another person qualified to act as a nominee.

(4) No modification under subsection (3) shall alter the proposal to such an extent that it ceases to be a proposal for a voluntary arrangement by the debtor.

(5) The meeting shall not approve any proposal or any modification thereto which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the secured creditor concerned.

(6) The meeting shall not, without the concurrence of the preferential creditor concerned, approve any proposal or any modification thereto under which —

(a) any debt of the debtor, not being a preferential debt, is to be paid in priority to any preferential debt of the debtor; or

(b) any preferential debt of the debtor is to be paid in relation to any other preferential debt of the debtor other than in accordance with section 90.

(7) Every meeting shall be conducted in accordance with the prescribed rules.

(8) Any debtor who makes any false representation or commits any other fraud for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Report of decisions to court

52. —(1) After the conclusion of the creditors' meeting summoned under section 50, the nominee shall report the result thereof to the court and shall serve a copy of the report on such persons as may be prescribed.

(2) Where the meeting has declined to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

53. —(1) Where the creditors' meeting summoned under section 50 has approved the proposed voluntary arrangement, whether with or without modifications, the approved arrangement shall —

(a) take effect as if made by the debtor at the meeting; and

(b) bind every person who had notice of and was entitled to vote at the meeting, whether or not he was present or represented thereat, as if he were a party to the arrangement.

(2) Subject to section 54, the interim order in force in relation to the debtor shall cease to have effect at the end of 28 days from the date the report was made to the court under section 52.

(3) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (2), that petition shall, unless the court otherwise orders, be deemed to have been dismissed.

Review of meeting's decision

54. —(1) Any debtor, nominee or person entitled to vote at a creditors' meeting summoned under section 50 may apply to the court for a review of the decision of the meeting on the ground that —

- (a) the voluntary arrangement approved by the meeting unfairly prejudices the interests of the debtor or any of the debtor's creditors; or
 - (b) there has been some material irregularity at or in relation to the meeting.
- (2) Upon hearing an application under subsection (1), the court may, if it thinks fit, do one or both of the following:
- (a) revoke or suspend any approval given by the meeting;
 - (b) direct any person to summon a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within subsection (1) (b), to reconsider the original proposal of the debtor.
- (3) No application under this section shall be made after 28 days from the date the report was made to the court under section 52.
- (4) Where at any time after giving a direction under subsection (2) (b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (5) Upon giving a direction under subsection (2) (b), the court may, if it thinks just, extend the validity of any interim order in relation to the debtor for such period as it may think fit.
- (6) Upon giving a direction or revoking or suspending an approval under this section, the court may give such supplemental directions as it may think fit and, in particular, directions with respect to —
- (a) things done since the meeting under any voluntary arrangement approved by the meeting; and
 - (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (7) Except in pursuance of this section, no approval given at a creditors' meeting summoned under section 50 shall be invalidated by reason only of any irregularity at or in relation to the meeting.

Implementation and supervision of approved voluntary arrangement

- 55.** —(1) Where a voluntary arrangement approved by a creditors' meeting summoned under section 50 has taken effect, the nominee shall supervise the implementation of the voluntary arrangement.
- (2) If the debtor or any of his creditors is dissatisfied by any act, omission or decision of the nominee in his supervision of the implementation of the voluntary arrangement, the debtor or creditor may apply to the court to review that act, omission or decision.
- (3) On hearing an application under subsection (2), the court may —
- (a) confirm, reverse or modify any act or decision of the nominee; or
 - (b) give such directions to the nominee or make such order as it thinks fit.
- (4) The nominee may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.
- (5) The court may, whenever —
- (a) it is expedient to appoint a person to carry out the functions of the nominee; and
 - (b) it is inexpedient, difficult or impracticable for such an appointment to be made without the assistance of the court,
- make an order appointing a person who is qualified to act as a nominee, either in substitution for the existing nominee or to fill a vacancy.

Consequence of failure by debtor to comply with voluntary arrangement

- 56.** Where a debtor fails to comply with any of his obligations under a voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement may present a bankruptcy petition against the debtor in accordance with Part VI.

PART VI

PROCEEDINGS IN BANKRUPTCY

Bankruptcy petitions and bankruptcy orders

Persons who may present creditor's petition

57. —(1) Subject to this Part, a creditor's petition may be presented —

(a) against an individual by —

- (i) one of the individual's creditors or jointly by more than one of them; or
- (ii) the nominee supervising the implementation of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part V; or

(b) against a firm by —

- (i) one of the firm's creditors or jointly by more than one of them, if such creditor or creditors are entitled under paragraph (a) (i) to present a creditor's petition against any one of the partners in the firm in respect of a partnership debt; or
- (ii) the nominee supervising the implementation of, or any person (other than the partners in the firm) who is for the time being bound by, a voluntary arrangement proposed by the firm and approved under Part V.

(2) A creditor who is entitled to present a bankruptcy petition against a firm under subsection (1) (b) may present a bankruptcy petition against any of the partners in the firm without including the others.

(3) Every creditor's petition shall be in the prescribed form and shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts.

(4) Every creditor's petition shall be served in the manner prescribed.

Persons who may present debtor's petition

58. —(1) Subject to this Part, a debtor's petition may be presented —

(a) against an individual debtor by the debtor himself; or

(b) against a firm by all the partners in the firm or by a majority of such partners who are residing in Singapore at the time of the presentation of the petition.

(2) A debtor's petition shall be in the prescribed form and shall be accompanied —

(a) where the debtor is an individual, by a statement of his affairs containing such particulars of his assets, creditors, debts and other liabilities as may be prescribed;

(b) where the debtor is a firm, by a statement of —

(i) the firm's affairs containing such particulars of its assets, creditors, debts and other liabilities as may be prescribed; and

(ii) the affairs of each of the partners in the firm by whom the petition is presented containing such particulars of his assets, creditors, debts and other liabilities as may be prescribed; and

(c) by such other information as may be prescribed.

Bankruptcy order

59. Subject to this Part, the court may make a bankruptcy order on a bankruptcy petition presented to it under section 57 or 58.

Conditions to be satisfied in respect of debtor

60. —(1) No bankruptcy petition shall be presented to the court under section 57 (1)

(a) or 58 (1) (a) against an individual debtor unless the debtor —

- (a) is domiciled in Singapore;
- (b) has property in Singapore; or
- (c) has, at any time within the period of one year immediately preceding the date of the presentation of the petition —
 - (i) been ordinarily resident or has had a place of residence in Singapore; or
 - (ii) carried on business in Singapore.
- (2) No bankruptcy petition shall be presented to the court under section 57 (1) (b) or 58 (1) (b) against a firm unless —
 - (a) at least one of the partners in the firm —
 - (i) is domiciled in Singapore;
 - (ii) has property in Singapore; or
 - (iii) has, at any time within the period of one year immediately preceding the date of the presentation of the petition, been ordinarily resident or has had a place of residence in Singapore; or
 - (b) the firm has, at any time within the period of one year immediately preceding the date of the presentation of the petition, carried on business in Singapore.
- (3) The reference in subsection (1) (c) (ii) to an individual carrying on business in Singapore shall include —
 - (a) the carrying on of business in Singapore by a firm in which the individual is a partner; and
 - (b) the carrying on of business in Singapore by an agent or manager for the individual or for such a firm.

Grounds of bankruptcy petition

- 61.** —(1) No bankruptcy petition shall be presented to the court in respect of any debt or debts unless at the time the petition is presented —
- (a) the amount of the debt, or the aggregate amount of the debts, is not less than \$10,000*;
- *see — Bankruptcy (Variation of Minimum Amount of Debt for Petition for Bankruptcy) Order 1999 (S 301/99).
- (b) the debt or each of the debts is for a liquidated sum payable to the petitioning creditor immediately;
 - (c) the debtor is unable to pay the debt or each of the debts; and
 - (d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the petitioning creditor by virtue of a judgment or award which is enforceable by execution in Singapore.
- (2) The Minister may, by order published in the *Gazette*, amend subsection (1) (a) by substituting a different sum for the sum for the time being specified therein.

Presumption of inability to pay debts

- 62.** For the purposes of a creditor's petition, a debtor shall, until he proves to the contrary, be presumed to be unable to pay any debt within the meaning of section 61 (1) (c) if the debt is immediately payable and —
- (a)
 - (i) the petitioning creditor to whom the debt is owed has served on him in the prescribed manner, a statutory demand;
 - (ii) at least 21 days have elapsed since the statutory demand was served; and
 - (iii) the debtor has neither complied with it nor applied to the court to set it aside;
 - (b) execution issued against him in respect of a judgment debt owed to the petitioning creditor has been returned unsatisfied in whole or in part; or
 - (c) he has departed from or remained outside Singapore with the intention of defeating, delaying or obstructing a creditor in the recovery of the debt.

Where petitioner is secured creditor

63. —(1) Where the petitioner is a secured creditor of the debtor, he shall in his petition —

(a) state that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of the other creditors of the bankrupt; or

(b) give an estimate of the value of his security, in which case he may to the extent of the balance of the debt due to him, after deducting the value so estimated, be admitted as a petitioning creditor in the same manner as if he were an unsecured creditor.

(2) Where a petitioner who is a secured creditor of the debtor fails to disclose his security in the petition, he shall be deemed to have given up his security for the benefit of the other creditors of the debtor and upon the making of a bankruptcy order —

(a) he shall not be entitled to enforce his security against the estate of the bankrupt or to retain any proceeds from the realisation of such security; and

(b) he shall execute such document of release as is required by the Official Assignee or account and pay over to the Official Assignee all proceeds from any realisation of his security.

(3) Where any secured creditor fails to execute any document of release as is required by the Official Assignee under subsection (2) (b), the Official Assignee may execute the document on his behalf and the execution of the document by the Official Assignee shall have the same effect as the execution thereof by the secured creditor.

(4) Any secured creditor who fails to account or pay over to the Official Assignee the proceeds from any realisation of his security under subsection (2) (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

(5) Any fine imposed under subsection (4) shall be deemed part of the property of the bankrupt and shall vest in the Official Assignee for the purposes of this Act.

Power of court to stay or dismiss proceedings on bankruptcy petition

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

(2) Without prejudice to subsection (1), where it appears to the court that the person presenting a bankruptcy petition has contravened any of the provisions of this Act or any rules in relation to proceedings on a bankruptcy petition, the court may, in its discretion, dismiss the petition in lieu of staying any proceedings thereon under that subsection.

Proceedings on creditor's petition

65. —(1) The court hearing a creditor's petition shall not make a bankruptcy order thereon unless it is satisfied that —

(a) the debt or any one of the debts in respect of which the petition is presented is a debt which, having been payable at the date of the petition, has neither been paid nor secured or compounded for; and

(b) where the debtor does not appear at the hearing, the petition has been duly served on him.

(2) The court may dismiss the petition if —

(a) it is not satisfied with the proof of the petitioning creditor's debt or debts;

(b) it is not satisfied with the proof of the service of the petition on the debtor;

(c) it is satisfied that the debtor is able to pay all his debts;

(d) it is satisfied that the debtor has made an offer to secure or compound for the petitioning creditor's debt the acceptance of which offer would have required the

dismissal of the petition and the offer has been unreasonably refused by the petitioning creditor; or

(e) it is satisfied that for other sufficient cause no order ought to be made thereon.

(3) In determining for the purposes of subsection (2) (c) whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

(4) When a bankruptcy petition has been presented against a debtor on the ground that the debtor —

(a) has failed to pay a judgment debt, and there is pending an appeal from or an application to set aside, the judgment or order by virtue of which the judgment debt is payable; or

(b) has failed to comply with a statutory demand, and there is pending an application to set aside the statutory demand,
the court may, if it thinks fit, stay or dismiss the petition.

(5) Where the debtor appears at the hearing of the petition and denies that he is —

(a) indebted to the petitioner; or

(b) indebted to such an amount as would justify the petitioner presenting a bankruptcy petition against him,

the court may, on condition that the debtor furnishes such security as the court may order for payment to the petitioner of —

(i) any debt which may be established against the debtor in due course of law; and

(ii) the costs of establishing the debt,

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 bankruptcy order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it may think just, the petition in which proceedings have been stayed.

Proceedings on bankruptcy petition by nominee or creditor bound by voluntary arrangement

66. The court shall not make a bankruptcy order on a bankruptcy petition presented under section 57 (1) (a) (ii) or (b) (ii) by the nominee or any creditor bound by a voluntary arrangement unless it is satisfied —

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement;

(b) that information which was false or misleading in any material particular or which contained material omissions —

(i) was contained in any statement of affairs or other document supplied by the debtor under Part V to any person; or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under Part V; or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the nominee of the arrangement.

Proceedings on debtor's petition

67. —(1) The court hearing a debtor's petition shall not make a bankruptcy order thereon unless it is satisfied that the debtor is unable to pay his debts.

(2) Where a debtor's petition has been presented against a firm by some, but not all, of the partners in the firm, the court shall not make a bankruptcy order thereon unless

it is satisfied that notice of the petition in the prescribed form has been served in the prescribed manner on each of the partners who did not join in the petition.

Consolidation of bankruptcy petitions

68. Where 2 or more bankruptcy petitions are presented against the same debtor, the court may consolidate the proceedings or any of them on such terms as the court thinks fit.

Power to dismiss petition against some respondents only

69. Where there are 2 or more respondents 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.

Power to change conduct of proceedings

70. Where any petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner —

(a) in the case of a creditor's petition, any other creditor to whom the debtor is indebted in the amount required under section 61 (1) (a); or

(b) in any other case, the Official Assignee,
and thereafter the proceedings shall, unless the court otherwise directs, be continued as though no change had been made in the conduct of the proceedings.

Continuance of proceedings on death of debtor

71. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise directs, be continued as if he were alive, and the court may dispense with service of the petition upon him.

Withdrawal of bankruptcy petition

72. A bankruptcy petition shall not be withdrawn without the leave of the court.

Protection of debtor's property

Appointment of interim receiver

73. —(1) The court may, if it thinks it necessary or expedient for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the Official Assignee to be interim receiver of the debtor's property or any part thereof and direct him to take immediate possession of the same, including any books of accounts and other documents relating to the debtor's business.

(2) Where the court has appointed an interim receiver under subsection (1), no person who is a creditor of the debtor in respect of a debt provable in bankruptcy shall —

(a) have any remedy against the person or property of the debtor in respect of that debt; or

(b) while the appointment of the interim receiver is in force, commence or continue any action or other legal proceedings against the debtor, except with the leave of the court and on such terms as the court may impose.

(3) Upon the appointment of an interim receiver under subsection (1), the debtor shall —

(a) give to the interim receiver such inventory of his property and such other information; and

(b) attend on the interim receiver at such times, as the interim receiver may for the purpose of carrying out his functions under this section reasonably require.

(4) Upon the appointment of an interim receiver under this section, sections 83 and 84 shall apply, with the necessary modifications, and any reference in those sections to —

(a) the making of a bankruptcy order shall be read as a reference to the appointment of an interim receiver under this section;

(b) the Official Assignee shall be read as a reference to the interim receiver; and

(c) the bankrupt or his estate shall be read (respectively) as a reference to the debtor or his property.

(5) The Official Assignee shall cease to be the interim receiver of a debtor's property if —

(a) the bankruptcy petition presented against the debtor is dismissed or withdrawn;

(b) a bankruptcy order is made on the petition; or

(c) the court by order terminates the appointment.

Power to stay proceedings against person or property of debtor

74. —(1) Any court may by order, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the person or property of the debtor.

(2) Where an order is made under subsection (1) staying any action or proceedings or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by prepaid registered post to the address for service of the plaintiff or other party prosecuting such proceedings.

PART VII

ADMINISTRATION IN BANKRUPTCY

Bankruptcy

Commencement and duration of bankruptcy

75. The bankruptcy of any person who has been adjudged bankrupt by a bankruptcy order (whether made against him or against the firm in which he is a partner) shall —

(a) commence on the day when the bankruptcy order is made; and

(b) continue until he is discharged under Part VIII.

Effect of bankruptcy order

76. —(1) On the making of a bankruptcy order —

(a) the property of the bankrupt shall —

(i) vest in the Official Assignee without any further conveyance, assignment or transfer; and

(ii) become divisible among his creditors;

(b) the Official Assignee shall be constituted receiver of the bankrupt's property; and

(c) unless otherwise provided by this Act —

(i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the person or property of the bankrupt in respect of that debt; and

(ii) no action or proceedings shall be proceeded with or commenced against the bankrupt,

except by leave of the court and in accordance with such terms as the court may impose.

(2) Where a bankruptcy order is made against a firm, the order shall operate as if it were a bankruptcy order made against each of the persons who, at the time of the order, is a partner in the firm.

(3) This section shall not affect the right of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been enacted.

(4) Notwithstanding subsection (3) and section 94, no secured creditor shall be entitled to any interest in respect of his debt after the making of a bankruptcy order if he does not realise his security within 6 months from the date of the bankruptcy order or such further period as the Official Assignee may determine.

Restrictions on dispositions of property by bankrupt

77. —(1) Where a person is adjudged bankrupt, any disposition of property made by him during the period beginning with the day of the presentation of the bankruptcy petition and ending with the making of the bankruptcy order shall be void except to the extent that such disposition has been made with the consent of, or been subsequently ratified by, the court.

(2) For the purpose of this section, a disposition of property shall include any payment (whether in cash or otherwise) made to any person by the bankrupt and accordingly, where any payment is void by virtue of this section, the person to whom the payment was made shall hold the sum paid for the bankrupt as part of his estate.

(3) Nothing in this section shall give a remedy against any person in respect of —

(a) any property or payment which he received from the bankrupt before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy petition had been presented; or

(b) any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(4) Where, after the commencement of his bankruptcy, the bankrupt has incurred a debt to a banker or any other person by reason of the making of a payment which is void under this section, that debt shall be deemed for the purposes of this Act to have been incurred before the commencement of the bankruptcy unless —

(a) that banker or person had notice of the bankruptcy before the debt was incurred; or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(5) A disposition of property shall be void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate, but nothing in this section shall affect any disposition made by a person of property held by him on trust for any other person.

Description of bankrupt's property divisible amongst creditors

78. —(1) The property of the bankrupt divisible among his creditors (referred to in this Act as the bankrupt's estate) shall comprise —

(a) all such property as belongs to or is vested in the bankrupt at the commencement of his bankruptcy or is acquired by or devolves on him before his discharge; and

(b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge.

(2) Subsection (1) shall not apply to —

(a) property held by the bankrupt on trust for any other person;

(b) the tools, if any, of his trade;

(c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family; and

(d) property of the bankrupt which is excluded under any other written law.

Inquiry into bankrupt's affairs, dealings and property

Meeting of creditors

79. —(1) The Official Assignee may, at any time after the making of a bankruptcy order, summon a meeting of the bankrupt's creditors.

(2) Notwithstanding subsection (1), the Official Assignee shall summon a meeting of the bankrupt's creditors whenever directed by the court to do so or whenever requested in writing by one-fourth in value of the bankrupt's creditors to do so.

(3) Every meeting summoned under this section shall be conducted in accordance with the prescribed rules.

Creditors' committee

80. —(1) At any meeting convened by the Official Assignee under section 79 (1), the creditors qualified to vote thereat, including the holders of general proxies or general powers of attorney from such creditors, may by ordinary resolution appoint from amongst themselves a committee (known as the "creditors' committee") of not more than 3 persons for the purpose of advising the Official Assignee on matters relating to the administration of the property of the bankrupt.

(2) The Official Assignee may convene the creditors' committee at such times as he may think necessary, but shall convene the committee whenever requested in writing to do so by all or a majority of the members of the committee.

(3) Any member of the creditors' committee may resign his office by notice in writing, signed by him and delivered to the Official Assignee.

(4) If a member of the creditors' committee becomes bankrupt, or compounds or arranges with his creditors, or is absent for more than 2 months from Singapore, his office shall thereupon become vacant.

(5) Any member of the creditors' 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.

(6) On a vacancy occurring in the office of a member of the creditors' committee, the Official Assignee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by ordinary resolution appoint another creditor or eligible person to fill the vacancy.

Bankrupt's statement of affairs

81. —(1) Where a bankruptcy order has been made against an individual otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the Official Assignee within 21 days from the date of the bankruptcy order.

(2) Where a bankruptcy order has been made against a firm —

(a) on a creditors' petition, the bankrupts, being the partners in the firm at the time of the order, shall submit a joint statement of their partnership affairs, and each partner in the firm shall submit a statement of his separate affairs; or

(b) on a debtor's petition, every person who at the time of the order is a partner in the firm but who did not join in the petition shall submit a statement of his separate affairs,

to the Official Assignee within 21 days from the date of the bankruptcy order.

(3) The statement of affairs referred to in subsection (2) shall contain —

(a) such particulars of the bankrupt's assets, creditors, debts and other liabilities as may be prescribed;

(b) in the case of a firm, such particulars of the firm's assets, creditors, debts and other liabilities as may be prescribed; and
(c) such other information as may be prescribed.

(4) The Official Assignee may, if he thinks fit —

(a) release the bankrupt from his duty under subsection (1) or (2), as the case may be; or

(b) extend the period specified in subsection (1) or (2).

(5) Where the Official Assignee has refused to exercise a power conferred by this section, the court, if it thinks fit, may exercise it.

(6) A bankrupt who —

(a) without reasonable excuse, fails to comply with the obligation imposed by this section;

(b) without reasonable excuse, submits a statement of affairs which does not comply with the prescribed requirements;

(c) submits a statement of affairs which is false, and which he either knows or believes to be false or does not believe to be true; or

(d) submits a statement which is misleading in any material particular or contains any material omission,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day during which the offence continues after conviction.

(7) Any person stating himself, in writing, to be a creditor of the bankrupt may personally or by agent inspect the statement of affairs filed by the bankrupt under this section at all reasonable times and upon payment of the prescribed fee take any copy thereof or extract therefrom.

(8) Any person untruthfully stating himself to be a creditor under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

Bankrupt to submit accounts

82. —(1) A bankrupt who has not obtained his discharge shall, unless otherwise directed by the Official Assignee —

(a) submit to the Official Assignee once in every 6 months an account of all moneys and property which have come to his hands for his own use during the preceding 6 months or such other period as the Official Assignee may specify; or

(b) pay and make over to the Official Assignee so much of such moneys and property as have not been expended in the necessary expenses of maintenance of himself and his family.

(2) A bankrupt who fails to comply with subsection (1) (a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day during which the offence continues after conviction.

Examination of bankrupt and others

83. —(1) Where a bankruptcy order has been made, the court may, upon an application made by the Official Assignee or by a creditor who has tendered a proof, at any time before the discharge of the bankrupt —

(a) summon the bankrupt to appear before it on an appointed day and examine him as to his affairs, dealings and property; and

(b) summon to appear before it on the same or another appointed day and examine —

- (i) the bankrupt's spouse or former spouse;
 - (ii) any person known or believed to be indebted to the bankrupt or to have in his possession any property comprised in the bankrupt's estate; and
 - (iii) any other person,
- if it appears to the court that such person would be able to give information concerning the bankrupt or the bankrupt's affairs, dealings or property.
- (2) Every person summoned before the court under this section shall be examined on oath, whether orally or by interrogatories.
- (3) Without prejudice to subsection (2), the court may at any time require any person mentioned in subsection (1) (b) to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's affairs, dealings or property.
- (4) The court may adjourn any examination under this section from time to time.
- (5) Any creditor who has tendered a proof or the representative of such creditor who has been authorised in writing, may question the bankrupt or such other person as may have been summoned by the court under subsection (1) concerning the bankrupt's affairs, dealings or property and the causes of the bankrupt's failure.
- (6) The Official Assignee shall take part in the examination of the bankrupt, and may for the purpose thereof employ a solicitor, but no solicitor shall be allowed to take part in the examination on behalf of the bankrupt.
- (7) The court may put such questions as it thinks expedient to the bankrupt or to such other person summoned by it.
- (8) It shall be the duty of the bankrupt and any other person summoned by the court under this section to answer all such questions as the court puts or allows to be put to him.
- (9) The court shall cause to be taken down in writing such notes of the examination as the court thinks proper and any notes so taken down shall be read over to and signed by the person in the course of whose examination they were taken down, and may thereafter be used in evidence against such person.
- (10) Any notes of examination taken down by the court under subsection (9) shall, at all reasonable times, be open to the inspection of any creditor, upon payment of the prescribed fee.
- (11) Where the court is of the opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, conclude the examination.
- (12) The order under subsection (11) shall not preclude the court from directing a further examination of the bankrupt or any other person as to the bankrupt's affairs, dealings and property whenever it sees fit to do so.
- (13) Where a bankrupt or any other person summoned by the court under this section without reasonable excuse fails at any time to attend before the court or where there are reasonable grounds for believing that the bankrupt or such other person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section, the court may cause a warrant to be issued for his arrest and for the seizure of any books, papers, records, money or goods in his possession.
- (14) The court may authorise —
- (a) any person arrested under subsection (13) to be kept in custody; and
 - (b) anything seized from such person to be held,
- until that person is brought before the court or until such other time as the court may order.

(15) Where a bankrupt or any other person summoned by the court under this section without reasonable excuse fails at any time to attend before the court, he shall be guilty of a contempt of court and shall be liable to be punished accordingly in addition to any other punishment to which he may be subject.

(16) The court may, if it thinks fit, order that any person who if within Singapore would be liable to be summoned to appear before it and examined under this section shall be examined in Singapore or elsewhere.

Power of court following examination of bankrupt and others

84. —(1) If it appears to the court, on consideration of any evidence obtained under section 83 that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the Official Assignee, order that person to deliver the whole or any part of the property to the Official Assignee at such place and time and in such manner and on such terms as the court may think fit.

(2) If it appears to the court, on consideration of any evidence obtained under section 83 that any person is indebted to the bankrupt, the court may, on the application of the Official Assignee, order that person to pay to the Official Assignee, at such place and time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.

Unenforceability of liens on books, etc.

85. —(1) Subject to this section, a lien or other right to retain possession of any of the books, papers or other records relating to the affairs or property of a bankrupt shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the Official Assignee.

(2) Subsection (1) shall not apply to a lien on documents which give a title to property and are held as such.

Official Assignee to settle list of debtors to the estate

86. —(1) The Official Assignee shall, as soon as possible after a bankruptcy order has been made, prepare and file in court a list of persons supposed to be indebted to the bankrupt, with the amounts in which they are supposed to be so indebted set out opposite to their names respectively.

(2) Before finally settling the name and amount of the debt of any person on such list, the Official Assignee shall give notice in writing to that person stating that —

(a) he has placed that person upon the list of debtors to the estate in the amount in the notice specified; and

(b) unless that person on or before a day specified in such notice gives to the Registrar and the Official Assignee notice in writing of his intention to dispute his indebtedness, he shall be deemed to admit that the amount set out opposite his name in the list is due and owing by him to the bankrupt and shall be settled on the list accordingly.

(3) Any person included in the list who does not give notice of his intention to dispute his indebtedness within the time limited in that behalf shall be settled upon that list, and execution may be issued against him for the amount set out opposite his name in the list in the same way as if judgment had been entered against him for such amount in favour of the Official Assignee.

(4) A certificate by the Registrar that the person named therein has been settled upon such list as a debtor to the estate in the amount in the certificate specified shall be received as proof of the facts therein stated.

(5) A person settled upon such list under this section may apply to the court in a summary way for leave to dispute his indebtedness or the amount thereof.

(6) The court may if it thinks fit make such order for determining the question as may seem expedient upon the terms of the person giving security for costs and either

paying into court or giving security for the whole or such part of the alleged debt as under the circumstances may seem reasonable, and may stay all further proceedings.

Proof of debts

Description of debts provable in bankruptcy

87. —(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

(2) A person having notice of the presentation of a bankruptcy petition shall not prove under the bankruptcy order made thereon for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice.

(3) Subject to this section and section 90, any debt or liability to which the bankrupt

—
(a) is subject at the date of the bankruptcy order; or

(b) may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy order,

and any interest on such debt or liability which is payable by the bankrupt in respect of any period before the commencement of his bankruptcy shall be provable in bankruptcy.

(4) An estimate shall be made by the Official Assignee of the value of any debt or liability provable under this section 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 such estimate may appeal to the court.

(6) If in the opinion of the court the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7) If in the opinion of the court the value of the debt or liability is capable of being fairly estimated, the court may assess the same and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) An amount payable under any order made by a court under any written law relating to the confiscation of the proceeds of crime shall be provable in bankruptcy.

Mutual credit and set-off

88. —(1) Where there have been any mutual credits, mutual debts or other mutual dealings between a bankrupt and any creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings shall be set-off against each other and only the balance shall be a debt provable in bankruptcy.

(2) There shall be excluded from any set-off under subsection (1) any debt or liability of the bankrupt which —

(a) is not a debt provable in bankruptcy; or

(b) arises by reason of an obligation incurred at a time when the creditor had notice that a bankruptcy petition relating to the bankrupt was pending.

Rules as to proof of debts

89. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and any other matters, the prescribed rules shall be observed.

Priority of debts

90. —(1) Subject to this Act, in the distribution of the property of a bankrupt, there shall be paid in priority to all other debts —

- (a) firstly, the costs and expenses of administration or otherwise incurred by the Official Assignee and the costs of the petitioner (whether taxed or agreed) and the costs and expenses properly incurred by a nominee in respect of the administration of any voluntary arrangement under Part V;
- (b) secondly, subject to subsection (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating the conditions of employment of any employee;
- (c) thirdly, subject to subsection (2), the amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or award or agreement that regulates the conditions of employment, whether such amount becomes payable before, on or after the date of the bankruptcy order;
- (d) fourthly, all amounts due in respect of any workmen's compensation under the Workmen's Compensation Act (Cap. 354) accrued before, on or after the date of the bankruptcy order;
- (e) fifthly, all amounts due in respect of contributions payable during the 12 months immediately before, on or after the date of the bankruptcy order by the bankrupt as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under the Income Tax Act (Cap. 134);
- (f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death, to any other person in his right, accrued in respect of any period before, on or after the date of the bankruptcy order; and
- (g) seventhly, the amount of all taxes assessed and any goods and services tax due under any written law before the date of the bankruptcy order or assessed at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under subsection (1) (b) and (c) shall not exceed an amount that is equivalent to 5 months' salary whether for time or piecework in respect of services rendered by any employee to the bankrupt or \$7,500, whichever is the less.

(3) The Minister may, by order published in the *Gazette*, amend subsection (2) by varying the amount specified in that subsection as the maximum amount payable under subsection (1) (b) and (c).

(4) For the purposes of subsection (1) (b) and (c) —

"employee" means a person who has entered into or works under a contract of service with the bankrupt and includes a subcontractor of labour;

"wages or salary" includes —

- (a) all arrears of money due to a subcontractor of labour;
- (b) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the date of the bankruptcy order; and
- (c) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates the conditions of his employment, whether such amount becomes payable before, on or after the date of the bankruptcy order.

(5) For the purposes of subsection (1) (c) —

"ex gratia payment" means the amount payable to an employee on the bankruptcy of his employer or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "the amount payable to an employee" for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be;

"retrenchment benefit" means the amount payable to an employee on the bankruptcy of his employer, on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "the amount payable to an employee" for these purposes means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner for Labour.

(6) The debts in each class specified in subsection (1) shall rank in the order therein specified but debts of the same class 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.

(7) Where any payment has been made to any employee of the bankrupt on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a bankruptcy, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the bankruptcy has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(8) Where any creditor has given any indemnity or made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the court may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks run by him in so doing.

(9) Where an interim receiver has been appointed under section 73 before the making of the bankruptcy order, the date of the appointment shall, for the purposes of this section, be deemed to be the date of the bankruptcy order.

Payment of partnership debts

91. —(1) 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.

(2) If there is surplus of the separate estates, it shall be dealt with as part of the joint estate.

(3) If there is 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.

Right of landlord to distrain for rent

92. —(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of a bankrupt for rent due to him from the bankrupt shall, subject to subsection (5), be available against goods and effects comprised in the bankrupt's estate in respect only of 3 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and

a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which —

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy; or

(b) is in respect of rent for a period or part thereof after the distress was levied, shall be held by the landlord or other person in trust for the bankrupt as part of his estate and the landlord or other person shall, upon being given notice by the Official Assignee to do so, make over to the Official Assignee the amount so held in trust by him for the bankrupt.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held by him in trust for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the Official Assignee, that person shall rank, in respect of the amount of the proceeds of the sale of those goods or effects by the Official Assignee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) A landlord or other person to whom rent is payable shall not be entitled at any time after the discharge of a bankrupt to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Any right to distrain against property comprised in a bankrupt's estate shall be exercisable notwithstanding that the property has vested in the Official Assignee.

(7) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any debt due to him from the bankrupt in respect of rent.

Contracts to which bankrupt is party

93. —(1) This section shall apply where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the court under this section shall be a debt provable in bankruptcy.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Interest on debts

94. —(1) Where a debt which has been proved in a bankruptcy includes interest, that interest shall, for the purposes of distribution of dividend, be calculated at such rate as may be prescribed by the rules, without prejudice to the right of any creditor to receive out of the surplus of the estate after all the debts proved in the bankruptcy have been paid in full any higher rate of interest to which he may be entitled.

(2) Interest on preferential debts shall rank equally with interest on debts other than preferential debts.

(3) For the purpose of this section, “interest” includes any pecuniary consideration in lieu of interest and any penalty or late payment charge by whatever name called.

Composition or scheme of arrangement

Creditors may accept composition or scheme by special resolution

95. —(1) Where a bankruptcy order has been made, the creditors who have proved their debts may, if they think fit —

(a) at a general meeting of creditors; or

(b) in writing,

by special resolution, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt’s affairs.

[37/99]

(2) A meeting under subsection (1) (a) shall be summoned by the Official Assignee by not less than 21 days’ notice.

[37/99]

(3) A special resolution in writing under subsection (1) (b) shall be sought by a notice from the Official Assignee giving the creditors 21 days to reply.

[37/99]

(4) Any notice under this section shall state generally the terms of the proposal and shall be accompanied by a report of the Official Assignee thereon.

[37/99]

(5) Where a special resolution is sought at a general meeting of creditors under subsection (1) (a), any creditor who has proved his debt may assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee in the prescribed form, and attested by a witness, and sent or posted so as to be received by the Official Assignee not later than 3 days preceding the meeting, and a creditor so assenting or dissenting shall be taken as having been present and voting at that meeting.

[37/99]

(6) Where a special resolution is sought in writing under subsection (1) (b), any creditor who has proved his debt shall assent to or dissent from the composition or scheme by a letter addressed to the Official Assignee, and sent or posted so as to be received by the Official Assignee not later than 21 days from the date of the Official Assignee’s notice.

[37/99]

(7) The composition or scheme shall not be binding on the creditors unless the bankruptcy order to which it relates is annulled under section 95A.

[37/99]

(8) For the purposes of this section, “special resolution” means —

(a) in relation to a special resolution sought under subsection (1) (a), a resolution passed at a general meeting of creditors by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who do not attend personally or by proxy at the meeting as having voted in favour of the resolution; and

(b) in relation to a special resolution sought under subsection (1) (b), a resolution approved in writing by a majority in number and at least three-fourths in value of the creditors who have proved their debts, taking those creditors who fail to assent to or

dissent from the composition or scheme in writing as having assented to the resolution.

[37/99]

Annulment of bankruptcy order by certificate of Official Assignee where composition or scheme accepted by creditors

95A.—(1) Where a composition or scheme is accepted by the creditors by a special resolution under section 95, the Official Assignee may annul the bankruptcy order by issuing a certificate of annulment.

[37/99]

(2) Notice of every annulment under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

[37/99]

(3) The Official Assignee shall, upon the application of a bankrupt or his creditor or any other interested person, issue to the applicant a copy of the certificate of annulment upon the payment of the prescribed fee.

[37/99]

(4) A certificate of annulment issued under subsection (1) shall be binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy.

[37/99]

(5) The provisions of a composition or scheme under this section may be enforced by the court on an application by any person interested, and any contravention of or failure to comply with an order of the court made on such an application shall be deemed to be a contempt of court.

[37/99]

(6) If default is made in payment of any instalment due under the composition or scheme, or if the court is satisfied 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 bankrupt, or that the acceptance of the proposal by the creditors was obtained by fraud, the court may, if it thinks fit, on an application by the Official Assignee or any creditor, annul the composition or scheme by revoking the certificate of annulment, 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.

[37/99]

(7) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment duly made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall revert to the bankrupt or, on an application by any person interested, vest in such person as the court may appoint and on such terms as the court may direct.

[37/99]

(8) The court may include in its order such supplemental provisions as may be authorised by the rules.

[37/99]

Effect of composition or scheme

96. A composition or scheme accepted under section 95 shall not be binding on any creditor so far as regards a debt or liability from which, under this Act, the bankrupt would not be discharged by an order of discharge in bankruptcy unless the creditor assents to the composition or scheme.

Effect of bankruptcy on antecedent transactions

Provisions as to second bankruptcy

97. —(1) Where a second or subsequent bankruptcy order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the Official Assignee shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable in the last preceding bankruptcy against the property of the bankrupt in the subsequent bankruptcy.

(2) Where a second or subsequent bankruptcy order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in the last preceding bankruptcy, shall (subject to any disposition thereof made by the Official Assignee in that bankruptcy without knowledge of the presentation of the subsequent petition) vest in the Official Assignee on account of the subsequent bankruptcy or administration in bankruptcy, as the case may be.

(3) Where the Official Assignee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his death of a petition for the administration of his estate in bankruptcy, the Official Assignee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of.

(4) If on a subsequent petition a bankruptcy order or an order for the administration of the estate in bankruptcy is made, the Official Assignee shall hold all the property or the proceeds thereof (after deducting his costs and expenses) to the account of the subsequent bankruptcy, or administration in bankruptcy, as the case may be.

Transactions at an undervalue

98. —(1) Subject to this section and sections 100 and 102, where an individual is adjudged bankrupt and he has at the relevant time (as defined in section 100) entered into a transaction with any person at an undervalue, the Official Assignee may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 100 and 102, an individual enters into a transaction with a person at an undervalue if —

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with that person in consideration of marriage; or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Unfair preferences

99. —(1) Subject to this section and sections 100 and 102, where an individual is adjudged bankrupt and he has, at the relevant time (as defined in section 100), given an unfair preference to any person, the Official Assignee may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that unfair preference.

(3) For the purposes of this section and sections 100 and 102, an individual gives an unfair preference to a person if —

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities; and

(b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of an unfair preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3) (b).

(5) An individual who has given an unfair preference to a person who, at the time the unfair preference was given, was an associate of his (otherwise than by reason only of being his employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

Relevant time under sections 98 and 99

100. —(1) Subject to this section, the time at which an individual enters into a transaction at an undervalue or gives an unfair preference shall be a relevant time if the transaction is entered into or the preference given —

(a) in the case of a transaction at an undervalue, within the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt;

(b) in the case of an unfair preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), within the period of 2 years ending with that day; and

(c) in any other case of an unfair preference which is not a transaction at an undervalue, within the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives an unfair preference at a time mentioned in subsection (1) (a), (b) or (c), that time is not a relevant time for the purposes of sections 98 and 99 unless the individual —

(a) is insolvent at that time; or

(b) becomes insolvent in consequence of the transaction or preference.

(3) Where a transaction is entered into at an undervalue by an individual with a person who is an associate of his (otherwise than by reason only of being his employee), the requirements under subsection (2) shall be presumed to be satisfied unless the contrary is shown.

(4) For the purposes of subsection (2), an individual shall be insolvent if —

(a) he is unable to pay his debts as they fall due; or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

Meaning of "associate"

101. —(1) For the purposes of sections 99 and 100, any question whether a person is an associate of another person shall be determined in accordance with this section.

- (2) A person is an associate of an individual if that person is the individual's spouse, or is a relative, or the spouse of a relative of the individual or his spouse.
- (3) A person is an associate of an individual with whom he is in partnership, and of the spouse or a relative of any individual with whom he is in partnership.
- (4) A person is an associate of an individual whom he employs or by whom he is employed and for this purpose, any director or other officer of a company shall be treated as employed by that company.
- (5) A person in his capacity as trustee of a trust is an associate of an individual if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that individual or an associate of that individual.
- (6) A company is an associate of an individual if that individual has control of it or if that individual and persons who are his associates together have control of it.
- (7) For the purposes of this section, a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating —
- (a) any relationship of the half blood as a relationship of the whole blood and the step-child or adopted child of any person as his child; and
- (b) an illegitimate child as the legitimate child of his mother and reputed father.
- (8) References in this section to a spouse shall include a former spouse.
- (9) For the purposes of this section, an individual shall be taken to have control of a company if —
- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it,
- and where 2 or more persons together satisfy paragraph (a) or (b), they shall be taken to have control of the company.
- (10) In this section, "company" includes any body corporate (whether incorporated in Singapore or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

Orders under sections 98 and 99

102. —(1) Without prejudice to the generality of sections 98 (2) and 99 (2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may, subject to this section —

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the Official Assignee;
- (b) require any property to be so vested if it represents in any person's hands the application of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the individual;
- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the Official Assignee as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference; and

(g) provide for the extent to which any person whose property is vested by the order in the Official Assignee, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the unfair preference.

(2) An order under section 98 or 99 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the unfair preference was given.

(3) An order under section 98 or 99 shall not —

(a) prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction or unfair preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the Official Assignee, except where he was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when he was a creditor of that individual.

(4) Any sums required to be paid to the Official Assignee in accordance with an order under section 98 or 99 shall be comprised in the bankrupt's estate.

(5) For the purposes of this section, the relevant circumstances, in relation to a transaction or unfair preference, shall be —

(a) the circumstances by virtue of which an order under section 98 or 99 could be made in respect of the transaction or preference if the individual in question were adjudged bankrupt within the particular period after the transaction is entered into or the unfair preference given; and

(b) if that period has expired, the fact that that individual has been adjudged bankrupt within that period.

Extortionate credit transactions

103. —(1) This section shall apply where a person who is adjudged bankrupt is or has been a party to a transaction for or involving the provision to him of credit.

(2) The court may, on the application of the Official Assignee, make an order with respect to the transaction if the transaction is or was extortionate and was entered into within 3 years before the commencement of the bankruptcy.

(3) For the purposes of this section, a transaction shall be extortionate if, having regard to the risk accepted by the person providing the credit —

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it is harsh and unconscionable or substantially unfair, and it shall be presumed, unless the contrary is proved, that the transaction was extortionate.

(4) An order under this section may contain one or more of the following:

(a) provision setting aside the whole or part of any obligation created by the transaction;

- (b) provision varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
 - (c) provision requiring any person who is or was party to the transaction to pay the Official Assignee any sums paid to that person;
 - (d) provision requiring any person to surrender to the Official Assignee any property held by him as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the Official Assignee in accordance with an order under this section shall be comprised in the bankrupt's estate.

Avoidance of general assignment of book debts

104. —(1) This section shall apply where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment shall be void against the Official Assignee as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale Act (Cap. 24).

(3) For the purposes of this section —

"assignment" includes an assignment by way of security or charge on book debts;

"general assignment" does not include —

(a) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts; or

(b) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Bills of Sale Act (Cap. 24), an assignment of book debts shall be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money.

(5) The provisions of the Bills of Sale Act with respect to the registration of bills of sale shall apply accordingly with such necessary modifications as may be made by rules under that Act.

Restriction of rights of creditor under execution or attachment

105. —(1) Where the creditor of a bankrupt has issued execution against the goods or lands of the bankrupt or has attached any debt due or property belonging to him, the creditor shall not be entitled to retain the benefit of the execution or attachment against the Official Assignee unless he has completed the execution or attachment before the date of the bankruptcy order, except that —

(a) a person who purchases in good faith under a sale by the Sheriff any goods of a bankrupt on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and

(b) the rights conferred by this subsection on the Official Assignee may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this Act —

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land or any interest therein is completed by registering under any written law relating to the registration of land a writ of seizure and sale attaching the interest of the bankrupt in the land described therein.

Duties of Sheriff as to property taken in execution

106. —(1) Where any property of a debtor is taken in execution, then, if before the completion of the execution notice is given to the Sheriff that a bankruptcy order has been made against the debtor, the Sheriff shall deliver the property or the possession thereof and any such moneys to the Official Assignee.

(2) The costs of and incidental to the execution under subsection (1) shall be a first charge on the property or moneys, and the Official Assignee may sell the property or any adequate part thereof for the purpose of satisfying the charge.

(3) Where a writ of seizure and sale has been issued in respect of a judgment for a sum exceeding \$2,000, the Sheriff shall hold all moneys coming to his hands under the writ of seizure and sale for 14 days from the receipt thereof.

(4) If within the time referred to in subsection (3) —

(a) notice is served on the Sheriff of a bankruptcy petition having been presented against or by the debtor; and

(b) a bankruptcy order is made against the debtor thereon or on any other petition of which the Sheriff has notice,

the Sheriff shall deduct the costs of and incidental to the execution and pay the balance to the Official Assignee, who shall be entitled to retain the same as against the execution creditor.

Possession, control and realisation of bankrupt's property

Possession of property by Official Assignee

107. —(1) The Official Assignee shall forthwith after the bankruptcy order take possession of —

(a) the deeds, books and documents which relate to the bankrupt's estate or affairs and which belong to him or are under his control; and

(b) all other parts of his property capable of manual delivery.

(2) The Official Assignee 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 the acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the Official Assignee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, those things shall be deemed to have been duly assigned to the Official Assignee.

(5) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay and deliver to the Official Assignee all moneys and securities in his possession or under his control which he is not by law entitled to retain as against the bankrupt or the Official Assignee.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Seizure of bankrupt's property held by bankrupt or other person

108. —(1) At any time after a bankruptcy order has been made, the Official Assignee or any person authorised by him may take an inventory of and seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of

the bankrupt or any other person who is required to deliver the property, books, papers or records to the Official Assignee.

(2) The Official Assignee or any person authorised by him may, for the purposes of taking an inventory of or seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under subsection (1) is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to the bankrupt, the court may issue a warrant authorising any public officer to search those premises for the property, books, papers or records.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Appropriation of portion of pay or salary to creditors

109. —(1) Where the bankrupt is an officer of the Singapore Armed Forces or a public officer or otherwise employed or engaged in the public service of the Government, the Official Assignee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the Official Assignee, directs.

(2) Where a bankrupt is —

- (a) in receipt of a salary or income other than as mentioned in subsection (1); or
- (b) entitled to any half-pay, pension or compensation granted by the Government or any other employer,

the court shall, on the application of the Official Assignee, subject to any written law relating to pensions, make such order as it may think just for the payment of the salary, income, half-pay, pension or compensation or of any part thereof to the Official Assignee, to be applied by him in such manner as the court directs.

(3) Nothing in this section shall be deemed to abrogate the right of the Government to dismiss a bankrupt or to declare the pension, half-pay or compensation of any bankrupt to be forfeited.

(4) In fixing the amount to be received by the Official Assignee under this section, the court shall, without prejudice to subsection (5), have regard to the scale of appropriation of salary in any general rule made for the purposes of this section by the Minister under section 166.

(5) The court may, in its discretion, fix a larger or smaller amount than the amount provided in the scale.

Disclaimer of onerous property

110. —(1) Where any part of the property of the bankrupt consists of —

- (a) land of any tenure burdened with onerous covenants;
- (b) shares or stock in companies;
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money,

the Official Assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to this section, may, by writing signed by him, at any time disclaim the property.

- (2) The disclaimer shall —
- (a) 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
 - (b) discharge the Official Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him.
- (3) The disclaimer shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the Official Assignee from liability, affect the rights or liabilities of any other person.
- (4) The Official Assignee shall not be entitled to disclaim a lease without the leave of the court, except in any case which may be prescribed or where all persons interested in the property consent to the disclaimer.
- (5) The court may, before or on granting leave —
- (a) require such notices to be given to persons interested and impose such terms as a condition of granting leave; and
 - (b) make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.
- (6) The Official Assignee shall not be entitled to disclaim any property, in pursuance of this section, in any case where —
- (a) an application in writing has been made to him by any person interested in the property, requiring him to decide whether he will disclaim or not; and
 - (b) he has for a period of 21 days after the receipt of the application, or such extended period as is 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 Official Assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.
- (7) The court may, on the application of any person who is, as against the Official Assignee, 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 seems equitable.
- (8) Any damages payable under the order made under subsection (7) to any person may be proved by him as a debt under the bankruptcy.
- (9) The court may —
- (a) 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;
 - (b) on hearing such persons as the court may think fit; and
 - (c) on such terms as the court may think just, make an order for the vesting of the property in or delivery thereof to —
 - (i) any person entitled thereto;
 - (ii) any person to whom it seems just that the same should be delivered by way of compensation for such liability as aforesaid; or
 - (iii) a trustee for any person referred to in sub-paragraph (i) or (ii).
- (10) On the vesting order being made under subsection (9), the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose.

(11) 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 the person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was presented.

(12) Any mortgagee or under-lessee declining to accept a vesting order upon those terms shall be excluded from all interest in and security upon the property.

(13) If there is no person claiming under the bankrupt who is willing to accept an order upon those terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable (either personally or in a representative character, and either alone or jointly with the bankrupt) to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the bankrupt.

(14) Any person sustaining loss or damage by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the loss or damage, and may accordingly prove the same as a debt under the bankruptcy.

Power of Official Assignee to deal with property

111. Subject to this Act, the Official Assignee may —

- (a) sell all or any part of the property of a bankrupt, including the goodwill of his business, if any, and the book debts due or accruing due to him, by tender, public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;
- (b) give receipts for any money received by him, being receipts which 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 power, the capacity to exercise which is vested in the Official Assignee under this Act, and execute any power of attorney, deeds and other instrument for the purpose of carrying into effect the provisions of this Act; and
- (e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail, or other owner of an estate of inheritance less than an estate in fee simple, in the same manner as the bankrupt might have dealt with it; and any such dealing with any property to which the bankrupt is, before his discharge, so entitled shall, although the bankrupt is dead at the time of that dealing, be as valid and have the same operation as though the bankrupt were then alive.

General powers of Official Assignee

112. The Official Assignee may exercise any of the following powers:

- (a) carry on any business of the bankrupt so far as is necessary for winding it up beneficially;
- (b) bring, institute or defend any action or legal proceedings relating to the property of the bankrupt;
- (c) employ an advocate and solicitor to take any proceedings or do any business;
- (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 or otherwise as he 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;
- (f) refer any dispute to arbitration, or 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 are agreed on;
- (g) make such compromise or other arrangement as is 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 is 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 Official Assignee by any person or by the Official Assignee on any person; and
- (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.

Power to appoint special manager

113. —(1) The Official Assignee may, if satisfied that the nature of the bankrupt'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 Assignee, appoint a manager thereof accordingly to act, and with such powers, including any of the powers of a receiver, as are entrusted to him by the Official Assignee.

(2) The bankrupt may be appointed special manager.

(3) A special manager shall give such security and account in such manner as the Official Assignee may direct.

(4) The special manager shall receive such remuneration as the Official Assignee may determine.

Power to allow bankrupt to manage property

114. —(1) The Official Assignee may appoint the bankrupt himself to superintend the management of his property or any part of the property, or to carry on his trade (if any) 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 Official Assignee directs.

(2) The Official Assignee may 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 the court may reduce the allowance and limit the time for which it may be made.

(3) Where the bankrupt has died, the Official Assignee may make an allowance to members of the bankrupt's family for their support.

(4) The Official Assignee may also make an allowance to defray the funeral expenses of the bankrupt.

Re-direction of bankrupt's letters, etc.

115. —(1) Where a bankruptcy order has been made, the Official Assignee may from time to time direct the public postal licensee under the Postal Services Act 1999 (Act 42 of 1999) to re-direct and send or deliver to the Official Assignee or otherwise any postal article which would otherwise be sent or delivered by it to the bankrupt at such place or places as may be specified in the direction.

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(2) A direction under this section shall have effect for such period, not exceeding 3 months, as may be specified in the direction.

Power to impound passport, etc., of bankrupt

116. —(1) The Official Assignee may, if he thinks necessary for the purposes of ensuring that a bankrupt does not leave Singapore during the administration of his estate, issue a direction to the Controller of Immigration to request that the bankrupt be prevented from leaving Singapore.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, the Controller of Immigration shall pursuant to the direction under subsection (1) take, or cause to be taken by any immigration officer, such measures as may be necessary to prevent the bankrupt named in the direction from leaving Singapore, including the detention of the bankrupt's passport, certificate of identity or travel document authorising the bankrupt to leave or enter Singapore.

(3) Where the Controller of Immigration has detained the passport, certificate of identity or other travel documents of a bankrupt under subsection (2), the Controller shall forthwith forward the passport, certificate of identity or travel document to the Official Assignee.

(4) Notwithstanding subsections (1), (2) and (3), the Official Assignee may, if he thinks fit, detain any passport, certificate of identity or other travel document authorising the bankrupt to leave or enter Singapore.

(5) The Official Assignee may, if he thinks fit, retain or return to the bankrupt the passport, certificate of identity or travel document forwarded to him by the Controller of Immigration under subsection (3) or detained by him under subsection (4).

Distribution of property

Distribution by means of dividend

117. —(1) Whenever the Official Assignee has sufficient funds in hand for the purpose, he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the debts which the creditors have respectively proved.

(2) The Official Assignee shall give notice of his intention to declare and distribute a dividend.

(3) Where the Official Assignee has declared a dividend, he shall give notice of the dividend and of how he proposes to distribute it.

(4) The notice given under subsection (3) shall contain the prescribed particulars of the bankrupt's estate.

(5) In the calculation and distribution of a dividend, the Official Assignee shall make provision —

(a) for any provable debt which appears to him to be due to any person who, by reason of the distance of his place of residence, may not have had sufficient time to tender and establish his proof;

(b) for any provable debt which is the subject of any claim which has not yet been determined; and

(c) for disputed proofs and claims.

(6) No dividend shall be paid to any creditor which does not amount to \$20.

Claims by unsatisfied creditors

118. —(1) A creditor who has not proved his debt before the declaration of any dividend shall not be entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved.

(2) When a creditor has proved his debt, he shall be entitled to be paid out of any money for the time available for the payment of any further dividend, any dividend or dividends which he has failed to receive.

(3) Any dividend or dividends payable under subsection (2) shall be paid before that money is applied to the payment of any such further dividend.

Final distribution

119. —(1) When the Official Assignee has realised all the bankrupt's estate or so much of it as can, in the opinion of the Official Assignee, be realised without needlessly protracting the proceedings in bankruptcy, he shall give notice in the prescribed manner of his intention to declare a final dividend.

(2) The notice under subsection (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date (referred to in this section as the final date) specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the Official Assignee shall —

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

Joint and separate dividends

120. —(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 is made by the court on the application of the Official Assignee or any person interested, be declared together.

(3) The expenses of and incidental to the dividends shall be fairly apportioned by the Official Assignee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

No action for dividend

121. —(1) No action for a dividend shall lie against the Official Assignee.

(2) If the Official Assignee refuses to pay any dividend, the court may if it thinks fit order him to pay it, and also to pay out of the Consolidated Fund interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus

122. —(1) 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.

(2) Notwithstanding subsection (1), the court may make an order directing the Official Assignee not to pay the surplus or part thereof to the bankrupt if —

(a) the Attorney-General applies for an order under this section; and

(b) the court is satisfied that —

(i) proceedings under any written law dealing with confiscation of the proceeds of crime are pending; and

(ii) the property of the bankrupt may become subject to a confiscation order or be required to meet some other order made on those proceedings.

(3) The court may, on application, vary or revoke an order made under subsection (2).

PART VIII

ANNULMENT AND DISCHARGE

Court's power to annul bankruptcy order

123. —(1) The court may annul a bankruptcy order if it appears to the court that —
(a) on any ground existing at the time the order was made, the order ought not to have been made;

(b) to the extent required by the rules, the debts which have been paid and the expenses of the bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the court;

(c) proceedings are pending in Malaysia for the distribution of the bankrupt's estate and effects amongst the creditors under the bankruptcy law of Malaysia and that the distribution ought to take place there; or

(d) a majority of the creditors in number and value are resident in Malaysia, and that from the situation of the property of the bankrupt or for other causes his estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.

(2) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3) Where a court annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the court may direct.

(4) The court may include in its order such supplemental provisions as may be authorised by the rules.

Annulment of bankruptcy order by certificate of Official Assignee where debts and expenses fully paid

123A. —(1) The Official Assignee may issue a certificate annulling a bankruptcy order if it appears to the Official Assignee that, to the extent required by the rules, the debts which have been proved and the expenses of the bankruptcy have all, since the making of the order, been paid.

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(2) Notice of every certificate of annulment under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

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(3) The Official Assignee shall, upon an application of a bankrupt or his creditor or any other interested person, issue to the applicant a copy of the certificate of annulment upon the payment of the prescribed fee.

[37/99]

(4) A certificate of annulment issued under subsection (1) shall be binding on all the creditors so far as it relates to any debts due to them from the bankrupt and provable in bankruptcy.

[37/99]

(5) Where the Official Assignee annuls a bankruptcy order under this section, any sale or other disposition of property, payment made or other things duly done by or under the authority of the Official Assignee or by the court shall be valid except that the property of the bankrupt shall revert to the bankrupt or, on an application by any person interested, vest in such person as the court may appoint and on such terms as the court may direct.

[37/99]

(6) The court may include in its order such supplemental provisions as may be authorised by the rules.

[37/99]

Discharge by court

124.—(1) The Official Assignee, the bankrupt or any other person having an interest in the matter may, at any time after the making of a bankruptcy order, apply to the court for an order of discharge.

(2) Every such application shall be served on each creditor who has filed a proof of debt and on the Official Assignee if he is not the applicant, and the court shall hear the Official Assignee and any creditor before making an order of discharge.

(3) Subject to subsection (4) on an application under this section, the court may —

- (a) refuse to discharge the bankrupt from bankruptcy;
- (b) make an order discharging him absolutely; or
- (c) make an order discharging him subject to such conditions as it thinks fit to impose, including conditions with respect to —
 - (i) any income which may be subsequently due to him; or
 - (ii) any property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(4) Where the bankrupt has committed an offence under this Act or under section 421, 422, 423 or 424 of the Penal Code (Cap. 224) or upon proof of any of the facts mentioned in subsection (5), the court shall —

- (a) refuse to discharge the bankrupt from bankruptcy;
- (b) make an order discharging him subject to his paying a dividend to his creditors of not less than 25% or to the payment of any income which may be subsequently due to him or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order and to such other conditions as the court may think fit to impose; or
- (c) if it is satisfied that the bankrupt is unable to fulfil any condition specified in paragraph (b) and if it thinks fit, make an order discharging the bankrupt subject to such conditions as the court may think fit to impose.

(5) The facts referred to in subsection (4) are —

- (a) that the bankrupt has omitted to keep such books of accounts as would sufficiently disclose his business transactions and financial position within the 3 years immediately preceding his bankruptcy, or within such shorter period immediately preceding that event as the court may consider reasonable in the circumstances;
- (b) that the bankrupt has continued to trade after knowing or having reason to believe 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 ground of expectation (proof whereof shall lie on him) of being able to pay it;
- (d) that the bankrupt has brought on or contributed to his bankruptcy by rash speculations or extravagance in living, or by recklessness, or want of reasonable care and attention to his business and affairs;
- (e) that the bankrupt has delayed or put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other legal proceedings properly brought or instituted against him;
- (f) that the bankrupt has within 3 months preceding the date of the bankruptcy order, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

- (g) that the bankrupt has, in Singapore or elsewhere on any previous occasion, been adjudged bankrupt or made a composition or arrangement with his creditors;
 - (h) that the bankrupt has been guilty of any fraud or fraudulent breach of trust;
 - (i) that the bankrupt has, within 3 months immediately preceding the date of the bankruptcy order, sent goods out of Singapore under circumstances which afford reasonable grounds for believing that the transaction was not a bona fide commercial transaction;
 - (j) that the bankrupt's assets are not of a value equal to 20% of the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to 20% of his unsecured liabilities has arisen from circumstances for or in respect of which he cannot firstly be held blamable;
 - (k) that the bankrupt has entered into a transaction with any person at an undervalue within the meaning of section 98;
 - (l) that the bankrupt has given an unfair preference to any person within the meaning of section 99; and
 - (m) that the bankrupt has made a general assignment to another person of his book debts within the meaning of section 104.
- (6) The court may, at any time before an order of discharge takes effect, rescind or vary the order.

Discharge by certificate of Official Assignee

125. —(1) The Official Assignee may, in his discretion and subject to section 126, issue a certificate discharging a bankrupt from bankruptcy.

(2) The Official Assignee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless —

- (a) a period of 3 years has lapsed since the date of commencement of the bankruptcy; and
- (b) the debts which have been proved in bankruptcy do not exceed \$500,000*, or such other sum as may be prescribed.

*see — Bankruptcy (Variation of Sum of Debts under section 125 (2) (b)) Rules 1999 (S 126/99).

[37/99]

(3) Notice of every discharge under subsection (1) shall be given to the Registrar and be published in the *Gazette* and advertised in any local newspaper.

(4) The Official Assignee shall, upon the application of a bankrupt or his creditor or other interested person, issue to the applicant a copy of the certificate of discharge upon the payment of the prescribed fee.

Objection by creditor to discharge of bankrupt under section 125

126. —(1) Before issuing a certificate of discharge under section 125, the Official Assignee shall serve on each creditor who has filed a proof of debt a notice of his intention to discharge the bankrupt, together with a statement of his reasons for wanting to do so.

(2) A creditor who has been served with a notice under subsection (1) and who wishes to enter an objection to the Official Assignee issuing a certificate discharging the bankrupt may, within 21 days from the date of the Official Assignee's notice, furnish the Official Assignee a statement of the grounds of his objection.

(3) A creditor who does not furnish to the Official Assignee a statement of the grounds of his objection in accordance with subsection (2) shall be deemed to have no objection to the discharge.

(4) A creditor who has furnished the Official Assignee with a statement of the grounds of his objection in accordance with subsection (2) may, within 21 days of

being informed by the Official Assignee that his objection has been rejected, make an application to the court for an order prohibiting the Official Assignee from issuing a certificate.

(5) Every application under subsection (4) shall be served on the Official Assignee and on the bankrupt and the court shall hear the Official Assignee and the bankrupt before making an order on the application.

(6) On an application made under subsection (4), the court may, if it thinks it just and expedient —

(a) dismiss the application;

(b) make an order that the bankrupt be not granted a certificate of discharge by the Official Assignee for a period not exceeding 2 years; or

(c) make an order permitting the Official Assignee to issue a certificate discharging the bankrupt but subject to such conditions as the court may think fit to impose, including conditions with respect to —

(i) any income which may be subsequently due to the bankrupt after his discharge; or

(ii) any property devolving upon the bankrupt, or acquired by him after his discharge, as may be specified in the order.

Effect of discharge

127. —(1) Subject to this section and any condition imposed by the court under section 124 or 126, where a bankrupt is discharged, the discharge shall release him from all his debts provable in the bankruptcy but shall have no effect —

(a) on the functions (so far as they remain to be carried out) of the Official Assignee; or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Act.

(2) Discharge shall not release the bankrupt from —

(a) any debt due to the Government; or

(b) any debt with which the bankrupt may be chargeable at the suit of —

(i) the Government or any other person for any offence under any written law relating to any branch of the public revenue; or

(ii) the Sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence.

(3) A bankrupt may be discharged from any debt referred to in subsection (2) only by a certificate in writing of the Minister.

(4) Discharge shall not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(5) Discharge shall not release the bankrupt from —

(a) any provable debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was party; or

(b) any liability in respect of a fine imposed for an offence.

(6) Discharge shall not, except to such extent and on such conditions as the court may direct, release the bankrupt from any debt which has been proved and which —

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person;

(b) arises under any order made in proceedings under the Women's Charter (Cap. 353) relating to family matters; or

(c) arises under an order involving pecuniary liability made under any written law relating to the confiscation of the proceeds of crime.

(7) Discharge shall not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) For the purpose of subsection (6), “personal injuries” includes death and any disease or other impairment of a person’s physical or mental condition.

Discharged bankrupt to give assistance

128. —(1) A discharged bankrupt shall, notwithstanding his discharge, give assistance as the Official Assignee requires in the realisation and distribution of such of his property as is vested in the Official Assignee.

(2) If the discharged bankrupt fails to give assistance to the Official Assignee under subsection (1) —

(a) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000; and

(b) the court may, 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.

PART IX

DUTIES, DISQUALIFICATION AND DISABILITIES OF BANKRUPT

Duties of bankrupt

129. A bankrupt shall, in addition to any other duty specified in this Act —

(a) make discovery of and deliver all his property that is under his possession or control to the Official Assignee;

(b) deliver to the Official Assignee all books, records, documents, writings and papers including (without restricting the generality of the foregoing), any documents or deeds of title, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the Official Assignee, attend before the Official Assignee and answer such questions as the Official Assignee may put to him with respect to his affairs, dealings and property and the causes of his failure;

(d) make or give all the assistance within his power to the Official Assignee in making an inventory of his assets;

(e) make disclosure to the Official Assignee of all property disposed of within such time preceding his bankruptcy as the Official Assignee may require, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(f) make disclosure to the Official Assignee of all property disposed of by gift or settlement without adequate valuable consideration within the 5 years immediately preceding his bankruptcy;

(g) attend any meeting of his creditors as may be convened by the Official Assignee under section 79, unless prevented by sickness or other sufficient cause and submit thereat to examination;

(h) when required, attend such other meetings of his creditors;

- (i) aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors;
- (j) execute such powers of attorney, conveyances, deeds and instruments as may be required by the Official Assignee;
- (k) examine the correctness of all proofs of claims filed, if required by the Official Assignee;
- (l) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the Official Assignee;
- (m) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the Official Assignee or prescribed by the rules or directed by the court by any order on any application by the Official Assignee or by any of his creditors; and
- (n) until he has been discharged from bankruptcy, keep the Official Assignee advised at all times of his place of residence or address.

Disqualification of bankrupt

130.—(1) In addition to any disqualification under any other written law, a bankrupt shall be disqualified from being appointed or acting as a trustee or personal representative in respect of any trust, estate or settlement, except with leave of the court.

(2) Any disqualification to which a bankrupt is subject under this section shall cease when —

- (a) the bankruptcy order against him is annulled or rescinded; or
- (b) he is discharged under Part VIII.

(3) Any person who acts as a trustee or personal representative while he is disqualified by virtue of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Disabilities of bankrupt

131.—(1) Where a bankrupt has not obtained his discharge —

- (a) he shall be incompetent to maintain any action, other than an action for damages in respect of an injury to his person, without the previous sanction of the Official Assignee; and
- (b) he shall not leave, remain or reside outside Singapore without the previous permission of the Official Assignee.

(2) A bankrupt who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

PART X

BANKRUPTCY OFFENCES

Interpretation of this Part

132. In this Part —

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the Official Assignee shall include any property mentioned in section 78 (1);
- (b) “initial period” means the period between the presentation of the bankruptcy petition by or against a debtor and the commencement of his bankruptcy;

(c) a reference to a number of months or years before the presentation of a bankruptcy petition shall be read as a reference to that period ending with the presentation of the bankruptcy petition; and

(d) “Official Assignee” includes a trustee in bankruptcy appointed under section 33.

Defence of innocent intention

133. In the case of an offence under any provision of this Part, other than sections 135 (e), 137, 140 (2), 142, 143 and 145, a person shall not be guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

Non-disclosure

134. —(1) A bankrupt shall be guilty of an offence if —

(a) he does not to the best of his knowledge and belief disclose to the Official Assignee all the property comprised in his estate; or

(b) he does not inform the Official Assignee of any disposal of any property which, but for the disposal, would be comprised in his estate, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1) (b) shall not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

Concealment of property

135. A bankrupt shall be guilty of an offence if —

(a) he does not deliver up possession to the Official Assignee, or as the Official Assignee may direct, of such part of the property comprised in his estate as is in his possession or under his control of which he is required by law to deliver up;

(b) he conceals any debt due to or from him or conceals any property the value of which is not less than \$500 and possession of which he is required to deliver up to the Official Assignee;

(c) in the 12 months before the presentation of the bankruptcy petition by or against him, or in the initial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order against him had been made immediately before he did it;

(d) he removes, or in the initial period removed, any property the value of which is or was not less than \$500 and possession of which he is or would have been required to deliver up to the Official Assignee; or

(e) he without reasonable excuse fails, on being required to do so by the Official Assignee or the court —

(i) to account for the loss of any substantial part of his property incurred in the 12 months before the presentation of the bankruptcy petition by or against him or in the initial period; or

(ii) to give a satisfactory explanation of the manner in which such a loss was incurred.

Concealment of books and papers; falsification, etc.

136. A bankrupt shall be guilty of an offence if —

(a) he does not deliver up possession to the Official Assignee, or as the Official Assignee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs;

(b) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;

(c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;

- (d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs;
- (e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs; or
- (f) in the 12 months before the presentation of the bankruptcy petition by or against him, or in the initial period, he did anything which would have been an offence under paragraph (c), (d) or (e) if the bankruptcy order against him had been made before he did it.

False statements

137. A bankrupt shall be guilty of an offence if —

- (a) he makes any false statement or any material omission in any statement under this Act relating to his affairs;
- (b) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the Official Assignee as soon as practicable;
- (c) he attempts to account for any part of his property by fictitious losses or expenses;
- (d) at any meeting of his creditors in the 12 months before the presentation of the bankruptcy petition by or against him or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under paragraph (c) if the bankruptcy order against him had been made before he did it; or
- (e) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

Fraudulent disposal of property

138. —(1) A bankrupt shall be guilty of an offence if —

- (a) he makes or causes to be made, or has during the period of 5 years prior to the date of the bankruptcy order against him made or caused to be made, any gift or transfer of, or any charge on, his property; or
- (b) he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of his bankruptcy.

(2) In this section, the reference to making a transfer of or a charge on any property includes causing or conniving at, the levying of any execution against that property.

Absconding with property

139. A bankrupt shall be guilty of an offence if —

- (a) he leaves, or attempts or makes preparations to leave, Singapore with any property the value of which is \$500 or more and possession of which he is required to deliver up to the Official Assignee; or
- (b) in the 12 months before the presentation of the bankruptcy petition by or against him, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order against him had been made immediately before he did it.

Fraudulent dealing with property obtained on credit

140. —(1) A bankrupt shall be guilty of an offence if, in the 12 months before the presentation of the bankruptcy petition by or against him, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) A person shall be guilty of an offence if, in the 12 months before the presentation of the bankruptcy petition by or against a bankrupt or in the initial period, he acquired or received property from the bankrupt knowing or believing —

(a) that the bankrupt owed money in respect of the property; and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money so owed.

(3) A person shall not be guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(5) In this section, any reference to disposing of property shall be read as including pawning or pledging of such property, and any reference to acquiring or receiving property shall be read accordingly.

Obtaining credit; engaging in business

141. —(1) A bankrupt shall be guilty of an offence if, being an undischarged bankrupt —

(a) either alone or jointly with any other person, he obtains credit to the extent of \$500 or more from any person without informing that person that he is an undischarged bankrupt; or

(b) he engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt.

(2) In this section, any reference to a bankrupt obtaining credit shall be read as including any case in which —

(a) goods are bailed to him under a hire-purchase agreement; and

(b) he is paid in advance (whether in money or otherwise) for the supply of goods or services.

Failure to keep proper accounts of business

142. —(1) A bankrupt shall be guilty of an offence if, having been engaged in any business within 2 years before the presentation of the bankruptcy petition by or against him, he has not —

(a) kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged; or

(b) preserved all the accounting records which he has kept.

(2) For the purposes of this section, a person shall be deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including —

(a) records containing entries from day to day, in sufficient detail, of all cash paid and received;

(b) where the business involved dealings in goods, statements of annual stock-takings; and

(c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

(3) A bankrupt shall not be guilty of an offence under subsection (1) —

(a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed \$10,000; or

(b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.

Gambling

143. —(1) A bankrupt shall be guilty of an offence if he has —

(a) in the 2 years before the presentation of the bankruptcy petition by or against him, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations; or

(b) in the initial period, lost any part of his property by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this section whether any speculation was rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

Bankrupt incurring debt without reasonable ground of expectation of being able to pay it

144. A bankrupt shall be guilty of an offence if —

(a) within 12 months before the presentation of a bankruptcy petition by or against him or during the initial period, he incurs any debt provable in bankruptcy; or

(b) having been engaged in carrying on any trade or business, he continues to trade or carry on business by incurring any debt provable in bankruptcy within 12 months before the date of the presentation of a bankruptcy petition by or against him or during the initial period, he being insolvent on the date of incurring the debt, without any reasonable ground of expectation of being able to pay it.

Making of false claims, etc.

145. —(1) Any creditor in any bankruptcy, composition or arrangement with creditors shall be guilty of an offence if he makes any claim, proof, declaration or statement of account which is untrue in any material particular unless he satisfies the court that he had no intent to defraud.

(2) A creditor shall be guilty of an offence if he obtains or receives any money, property or security from any person as an inducement for forbearing to oppose, or for consenting to, the discharge of a bankrupt.

(3) A person shall be guilty of an offence if he, knowing that a bankruptcy order has been made against a debtor, removes, conceals, receives or otherwise deals with or disposes of any part of the property of the debtor, with intent to defeat the order.

(4) Fines imposed and levied under this section shall be deemed to be part of the property of the bankrupt and shall vest in the Official Assignee.

Penalty

146. A person guilty of any offence under this Part shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both.

Supplementary provisions

147. —(1) It shall not be a defence in proceedings for an offence under this Act that anything relied on, in whole or in part, as constituting that offence was done outside Singapore.

(2) In a charge for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, demand, petition or any proceedings in, or order, warrant or document of any court acting under this Act.

(3) Where a bankrupt has been guilty of any offence under this Act, he shall not be exempt from being proceeded against therefor by reason that he has obtained his

discharge or that the bankruptcy order made against him has been annulled or rescinded.

PART XI

MISCELLANEOUS PROVISIONS

Administration in bankruptcy of estate of person dying insolvent

148. —(1) In this section, unless the context otherwise requires, “creditor” means one or more creditors qualified to present a bankruptcy petition under this Act.

(2) The Official Assignee or any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor had he been alive, may present to the court a petition for an order for the administration of the estate of the deceased debtor according to this Act.

(3) Every petition under this section shall be in the same form as a creditor’s petition under section 57, with such variations as the case may require, except that in the case of a petition by the Official Assignee, it shall not be necessary to allege or prove that any debt is owing to the petitioner.

(4) Upon the prescribed notice being given to the legal representative, if any, 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 debtor, make an order for the administration in bankruptcy of the deceased debtor’s estate, or may, upon cause being shown, dismiss the petition with or without costs.

(5) An administration order 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 representative of the deceased debtor.

(6) A petition for administration under this section shall not be presented to the court after proceedings have been commenced for the administration of the deceased debtor’s estate except that the court may, in that case, on the application of any creditor and on proof that the estate is insufficient to pay its debts in the prescribed manner, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(7) Upon an administration order being made under this section, the property of the debtor shall vest in the Official Assignee as trustee thereof without any further conveyance, transfer or assignment, and he shall forthwith proceed to realise and distribute the same in accordance with this Act.

(8) Sections 83 and 84 so far as they relate to persons other than the debtor, and, with the modifications under this section, all the provisions of Part VII shall, so far as the same are applicable, apply to the case of an administration order under this section.

(9) Sections 98, 105 and 106 shall apply in the case of an administration order under this section as if the administration order were a bankruptcy order.

(10) In the administration of the property of the deceased debtor under an administration order, the Official Assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor’s estate and such

claims shall be deemed to be preferential debts under the administration order and shall be payable in full out of the debtor's estate in priority to all other debts.

(11) If on the administration of a deceased debtor's estate any surplus remains in the hands of the Official Assignee 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 the case of a bankruptcy, the surplus shall, subject to section 122 (2), be paid over to the legal representative of the deceased debtor's estate or dealt with in such other manner as is prescribed.

(12) Upon notice being given to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section, and in the event of an administration order being made thereon, no payment or transfer of property made thereafter by the legal representative shall operate as a discharge to him as between himself and the Official Assignee.

(13) Subject to this section, nothing in this section shall invalidate any payment made or act or thing done in good faith by the legal representative before the date of the administration order.

Arbitration agreements to which bankrupt is a party

148A. —(1) This section shall apply where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the Official Assignee adopts the contract, the arbitration agreement shall be enforceable by or against the Official Assignee in relation to matters arising from or connected with the contract.

(3) If the Official Assignee does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings —

(a) the Official Assignee; or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this section, "court" means the court which has jurisdiction in the bankruptcy proceedings.

Costs

149. —(1) No payment shall, without the approval of the Official Assignee, be allowed in the accounts of any trustee in bankruptcy or of any special manager in respect of the performance by any other person of the ordinary duties which are required by this Act or the rules to be performed by himself.

(2) Unless agreed to by the Official Assignee, all bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the accounts of the Official Assignee without leave of the court given after such taxation has been made.

(3) Every such person shall, on request by the Official Assignee, which request the Official Assignee shall make a sufficient time before declaring a dividend, deliver his bill of costs or charges to the prescribed 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 grants, the Official Assignee 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 Official Assignee personally as against the estate.

Actions by Official Assignee and bankrupt's partners

150. —(1) Where a partner in a firm is adjudged bankrupt, the court may authorise the Official Assignee to commence and prosecute any action or other legal proceeding in the names of the Official Assignee and of the bankrupt's partner.

(2) Any release by the bankrupt's partner of the debt or demand to which the action or proceeding relates shall be void.

(3) Notice of the application for authority to commence the action or proceeding shall be given to the bankrupt's partner 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 or proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs.

Action in aid of courts of Malaysia and designated countries

151. —(1) The High Court and the officers thereof shall, in all matters of bankruptcy and insolvency, act in aid of and be auxiliary to the courts of Malaysia or any designated country having jurisdiction in bankruptcy and insolvency so long as the law of Malaysia or the designated country requires its courts to act in aid of and be auxiliary to the courts of Singapore.

(2) An order of any such court of Malaysia or any designated country, seeking aid with a request to the High Court, shall be deemed sufficient to enable the High Court to exercise in respect of the matters directed by the order such jurisdiction as either the court which made the request or the High Court could exercise in respect of similar matters within their several jurisdictions.

(3) In this section, "designated country" means any country designated for the purposes of this section by the Minister by notification in the *Gazette*.

Reciprocal recognition of Official Assignees

152. —(1) The Minister may, by notification in the *Gazette*, declare that the Government of Singapore has entered into an agreement with the government of Malaysia for the recognition by each government of the Official Assignees in bankruptcy appointed by the other government.

(2) From the date of that notification where any person has been adjudged a bankrupt by a court in Malaysia, such property of the bankrupt situate in Singapore as would, if he had been adjudged bankrupt in Singapore, vest in the Official Assignee of Singapore, shall vest in the Official Assignee appointed by the government of Malaysia, and all courts in Singapore shall recognise the title of such Official Assignee to such property.

(3) Subsection (2) shall not apply where a bankruptcy petition has been presented against the bankrupt in Singapore until the petition has been dismissed or withdrawn or the bankruptcy order has been rescinded or annulled.

(4) The production of an order of adjudication purporting to be certified, under the seal of the court in Malaysia making the order, by the registrar of that court, or of a copy of the official *Gazette* of Malaysia containing a notice of an order adjudging that person a bankrupt shall be conclusive proof in all courts in Singapore of the order having been duly made and of its date.

(5) The Official Assignee of Malaysia may sue and be sued in any court in Singapore by the official name of "the Official Assignee of the Property of (name of bankrupt), a Bankrupt under the Law of Malaysia".

Evidence of proceedings at meetings of creditors

153. —(1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as or appearing

to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

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

Evidence of proceedings in bankruptcy

154. Any —

- (a) petition or copy of a petition in bankruptcy;
 - (b) order or certificate or copy of an order or certificate made by the court in bankruptcy;
 - (c) instrument, affidavit or document or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act,
- shall, if it appears to be sealed with the seal of the court or purports to be signed by any judge thereof, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits

155. Subject to the rules, any affidavit may be used in a court if it is sworn —

- (a) in Singapore before any person authorised to administer oaths or any Magistrate;
- (b) in Malaysia or other Commonwealth country before a judge, magistrate, justice of the peace or any person authorised to administer oaths under any written law for the time being in force in Malaysia or that Commonwealth country; and
- (c) in any other place before a magistrate or justice of the peace or other person qualified to administer oaths in that place who is certified to be a magistrate or justice of the peace or person qualified as aforesaid by a consul or person performing consular functions on behalf of the government or by a notary public.

Death of witness

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

Service of summons, notice, etc.

157. —(1) Where, by any provision of this Act or any rules made thereunder, any summons, notice or document is required or authorised to be served on any person, it may be served —

- (a) by delivering it to him;
- (b) by delivering it to any adult person residing at his usual or last known place of residence or employed at his last known place of business;
- (c) by leaving it at his usual or last known place of residence or business; or
- (d) by forwarding it by registered post in a cover addressed to him at his usual or last known place of residence or business or at any address furnished by him.

[37/99]

(2) In proving service by registered post, it shall be sufficient to prove that the registered cover containing the summons, notice or document was duly addressed and posted.

[37/99]

Formal defect not to invalidate proceedings or acts

158. —(1) No proceedings in bankruptcy shall be invalidated by any formal defect or

by any irregularity, unless the court before which an objection is made to the proceedings 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) The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee appointed for any bankruptcy, shall be valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

159. Deleted by Act 38/2002, wef 01/01/2003.

Acts of corporations, firms and lunatics

160. For all or any of the purposes of this Act —

(a) a corporation may act by any of its officers authorised in that behalf under the seal of the corporation;

(b) a firm may act by any of its members;

(c) a mentally disordered person or lunatic may act by his committee.

Access to bankrupt's books

161. Any creditor of the bankrupt may, upon payment of the prescribed fee, at all reasonable times inspect personally or by agent, any such books, papers or documents in the possession of the Official Assignee.

Exclusion of liability relating to computerised information service

162. Where the Official Assignee provides a service to the public whereby computerised information of prescribed particulars of a bankrupt is supplied to the public on payment of a prescribed fee, neither the Government nor any of its employees involved in the supply of such information shall be liable for any loss or damage suffered by members of the public by reason of any errors or omissions of whatever nature appearing therein or howsoever caused if made in good faith and in the ordinary course of the discharge of the duties of such employees.

List of undischarged bankrupts to be kept

163. —(1) A list of undischarged bankrupts shall be kept by the Official Assignee and shall be published in the *Gazette* at such times as the Minister may direct, but not less than once in each year.

(2) The Registrar shall keep a list of all bankruptcy orders made; and on that list every such order shall be forthwith entered under the headings of the letters of the alphabet.

(3) Every order rescinding, annulling or discharging any bankruptcy order and every notice of discharge given under section 125 (2) shall be noted in the list against the order rescinded, annulled or discharged.

Unclaimed and undistributed moneys

164. —(1) Where a trustee or nominee is in possession of or has under his control —

(a) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or

(b) after making final distribution, any unclaimed or undistributed moneys arising from the property of a bankrupt,

he shall forthwith pay those moneys to the Official Assignee to be placed to the credit of the Bankruptcy Estates Account.

(2) Upon payment under subsection (1), the Official Assignee shall issue to the trustee or nominee the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(3) The Official Assignee shall from time to time pay out of the Bankruptcy Estates Account and into the Insolvency Assistance Fund, maintained under section 165, so much of the sums standing to the credit of the Account as represents —

- (a) dividends or balances in the Account which do not exceed \$20;
- (b) dividends which were declared but have not been claimed for a period of 6 years;
- and
- (c) balances in the Account which have not been claimed for a period of 6 years from the date that —
 - (i) the bankruptcy order has been annulled by the court;
 - (ii) the bankrupt has been discharged from bankruptcy by the court;
 - (iii) the bankrupt has been discharged from bankruptcy by a certificate issued by the Official Assignee;
 - (iv) the bankruptcy petition presented against the debtor has been withdrawn by the petitioner or dismissed by the court; or
 - (v) the moneys were paid into the Account under subsection (1).

Insolvency Assistance Fund

165. —(1) The Official Assignee shall maintain and administer a fund to be known as the Insolvency Assistance Fund (referred to in this section as the Fund) in accordance with such rules as may be prescribed.

(2) There shall be paid into the Fund —

- (a) all unclaimed moneys referred to in section 164 (3); and
- (b) all costs and fees recovered by the Official Assignee in any proceedings taken under this Act in which moneys from the Fund were applied.

(3) Subject to subsections (4) and (6), the Fund may be applied by the Official Assignee for all or any of the following purposes:

- (a) for the remuneration of special managers appointed under section 113;
- (b) for the payment of all costs, fees and allowances to solicitors and other persons in proceedings on behalf of a bankrupt's estate or to recover assets of the estate;
- (c) for the payment of such costs and fees in the administration of a bankrupt's estate as the Official Assignee may determine;
- (d) for such other purposes as may be prescribed.

(4) If any claimant makes any demand against the Official Assignee for any amount of unclaimed moneys paid into the Fund under subsection (2) (a), the Minister may direct that payment of that amount, free of interest, be made to the claimant out of the Consolidated Fund.

(5) No moneys from the Fund shall be applied for any proceedings where, in the opinion of the Official Assignee, there is no reasonable ground for taking, defending, continuing or being a party to the proceedings or where there are sufficient moneys for such purpose in the bankrupt's estate.

(6) The Minister may from time to time pay such sums of moneys in the Fund into the Consolidated Fund as he may determine.

Composition of offences

165A. —(1) The Official Assignee may, in his discretion, compound any such offence under this Act or any rules made thereunder as may be prescribed as being an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

[37/99]

(2) The Minister may make rules prescribing the offences which may be compounded.

[37/99]

Rules

166. The Minister may make rules for the purposes of carrying into effect the objects of this Act and, without prejudice to the generality of this power, the rules may contain —

- (a) provisions with respect to meetings of creditors, the functions, membership and proceedings of a creditors' committee;
- (b) provisions with respect to the proof of debts, the manner and conditions of proving a debt and the manner and expenses of establishing the value of any debt or security;
- (c) provisions with respect to the scale of appropriation of salary under section 109;
- (d) provisions prescribing any fees payable under this Act and the rules; and
- (e) such incidental, supplemental and transitional provisions as may appear to the Minister to be necessary or expedient.

Transitional provisions

167.—(1) In any written law or document in which a reference is made to the Bankruptcy Act (Cap. 20, 1985 Ed.) repealed by this Act, such reference shall be read as a reference to this Act.

(2) The transitional provisions and savings set out in the Schedule shall have effect.

THE SCHEDULE

Section 167 (2)

TRANSITIONAL PROVISIONS AND SAVINGS

Bankrupts under repealed Act to continue to be bankrupts under this Act

1.—(1) A person who was a bankrupt on 15th July 1995 continues to be a bankrupt until he is discharged, or his bankruptcy is rescinded or annulled, under this Act; and the provisions of this Act shall apply to and in relation to that bankrupt as if he had become a bankrupt under this Act.

(2) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, compositions, schemes of arrangement or deeds accepted or approved, debts proved and acts and things done before 15th July 1995 in relation to a bankrupt or the property of a bankrupt shall, in relation to the administration of the conduct and affairs of the bankrupt and his property under this Act, be deemed to have been made, given, advertised, held, passed, accepted or approved, proved or done under this Act.

Uncompleted proceedings under repealed Act

2.—(1) Where —

(a) a bankruptcy notice under the repealed Act has been served on a debtor before 15th July 1995; and

(b) the debtor has failed, whether before or after 15th July 1995, to comply with the notice,

a bankruptcy petition may be presented against the debtor under the repealed Act, and proceedings in relation to the petition may, subject to sub-paragraph (3), be taken and had under that Act as if this Act had not been enacted.

(2) Where a bankruptcy petition has been presented against a debtor under the repealed Act before 15th July 1995, but an adjudication order has not been made on the petition, and the petition has not been withdrawn or dismissed before that date, proceedings in relation to the petition may, subject to sub-paragraph (3), be continued, or taken and had, after that date under the repealed Act as if this Act had not been enacted.

(3) Where a person becomes a bankrupt on a petition to which sub-paragraph (1) or

(2) applies, all subsequent proceedings in relation to the bankrupt or his estate shall be

taken and had, and this Act shall apply as if he had become a bankrupt on a creditor's petition presented under this Act.

(4) Any proceedings (including the hearing of an appeal) in a court or before the Registrar under the repealed Act that had not been completed before 15th July 1995 may be continued and completed, and any right of appeal in relation to those proceedings may be exercised and the appeal heard and determined as if this Act had not been enacted.

(5) Any right of appeal from an order of a court having jurisdiction under the repealed Act, being an order made before 15th July 1995, may be exercised, and the appeal heard and determined, after that date, as if this Act had not been enacted.

(6) Any right of appeal to a court having jurisdiction in bankruptcy under the repealed Act from an act or decision of the Official Assignee, the Registrar or any other officer under the repealed Act done or made before 15th July 1995 and any right to apply to such a court to review such an act or decision may be exercised, and the appeal or application heard and determined, by the High Court.

(7) In relation to any such case as is mentioned in sub-paragraph (1), the references in any written law to a petition, order or other matter which is provided for under the repealed Act and corresponds to a petition, order or other matter provided for under the provisions of this Act shall continue on and after 15th July 1995 to give effect as references to the petition, order or matter provided for by the repealed Act; but otherwise those references shall have effect on and after that date as references to the petition, order or matter provided for by those provisions of this Act.

Application of section 148 to existing estates of deceased debtors

3.—(1) Where an order for the administration in bankruptcy of a deceased debtor's estate has been made under Part VIII of the repealed Act, but the administration of the estate has not been completed before 15th July 1995, the estate of the deceased debtor shall, subject to this paragraph, be administered and distributed as if an order for administration of the estate had been made under section 148 of this Act, and the provisions of that section shall apply in relation to the estate accordingly.

(2) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, debts proved and acts and things done before 15th July 1995 in relation to the estate of a deceased debtor shall, in relation to the administration and distribution of the estate under section 148 of this Act, be deemed to have been made, given, advertised, held, passed, proved or done under that section.

Offences committed before 15th July 1995

4. Where a bankruptcy order is made under this Act on or after 15th July 1995 on a petition to which paragraph 2 (1) or (2) applies, a person shall not be guilty of an offence under Part X of this Act in respect of anything done before that date; but shall be guilty of an offence under the repealed Act in respect of anything done before that date which would have been an offence under that Act if the making of the bankruptcy order had been the making of a receiving order or an adjudication order under that Act.

Schedule to be without prejudice to section 166

5.—(1) This Schedule shall be without prejudice to the power conferred by this Act under which rules under section 166 of this Act may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into force of the rules or 15th July 1995.

(2) Rules made under section 166 of this Act may provide for such notices served before 15th July 1995 as may be prescribed to be treated for the purposes of this Act as statutory demands served under section 62 (a) (i) of this Act.

Transactions before 15th July 1995

6. —(1) A transaction entered into before 15th July 1995 shall not be set aside under this Act except to the extent that it could have been set aside under the law in force immediately before that date.

(2) References in sub-paragraph (1) to setting aside a transaction shall include the making of any order which varies or reverses any effect of such a transaction.

Computation of time

7. —(1) Where any period of time specified in a provision of the repealed Act is current immediately before 15th July 1995, this Act shall have effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current shall be deemed for the purposes of this Act —

(a) to run from the date or event from which it was running immediately before that date; and

(b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been enacted.

(2) Any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as mentioned in sub-paragraph (1) shall be under this Act as they were or would have been under the repealed Act.

Punishment of offences committed before 15th July 1995

8. —(1) Offences committed before 15th July 1995 under any provision of the repealed Act may, notwithstanding any repeal by this Act, be prosecuted and punished after that date as if this Act had not been enacted.

(2) Where an offence for the continuance of which a penalty was provided has been committed under any provision of the repealed Act, proceedings may be taken under this Act in respect of the continuance of the offence on and after 15th July 1995 in the like manner as if the offence had been committed under the corresponding provision of this Act.

Schedule not to prejudice section 16 of Interpretation Act

9. Nothing in this Schedule shall be taken as prejudicing section 16 of the Interpretation Act (Cap. 1) (effect of repeal).

Meaning of “repealed Act”

10. In this Schedule, “repealed Act” means the Bankruptcy Act (Cap. 20, 1985 Ed.) in force immediately before 15th July 1995.