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BANKRUPTCY  
CAP. 5

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*This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.*

<b>Legislation incorporated in this Consolidation</b>	<b>Ordinance</b>	<b>Date in Force</b>
Bankruptcy Law	Cap.5	1959
Bankruptcy (Amendment) Ordinance 1985	9/1985	25/07/1985
Bankruptcy (Amendment) Ordinance 1987	8/1987	07/05/1987

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BANKRUPTCY  
CAP. 5

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An Ordinance to amend and consolidate the Law of Bankruptcy.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows—

**Short title**

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

**Interpretation**

2. In this Law—

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

“the Court” means the Court having jurisdiction in bankruptcy under this Law;

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

“gazetted” means published in the Gazette;

“general rules” include forms;

“goods” include all chattels personal and movable property;

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

“prescribed” means prescribed by general rules within the meaning of this Law;

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

“resolution” means ordinary resolution;

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

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

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

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

**PART 1**

Proceedings from ACTO of Bankruptcy to Discharge

**What constitutes an act of bankruptcy**

- 3.—(1) A debtor commits an act of bankruptcy in each of the following cases—
  - (a) if in Cyprus or elsewhere he makes a conveyance or assignment of his property to any person for the benefit of his creditors generally;

- (b) if in Cyprus or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part thereof;
- (c) if in Cyprus or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Law be void as a fraudulent preference if he were adjudged bankrupt;
- (d) if with intent to defeat or delay his creditors he does any of the following things, namely—
  - (i) departs or makes preparation for departing, out of Cyprus, or being out of Cyprus, remains out of Cyprus; or
  - (ii) departs from his dwelling house or otherwise absents himself; or
  - (iii) begins to keep house;
- (e) if execution against him has been levied by seizure of his goods under process in action in any Court, and the goods seized have either been sold or held by the sheriff for twenty-one days, provided that, where an inter-pleader application has been made in regard to the goods seized, the time elapsing between the date at which such application has been made and the date at which the proceedings on such application are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;
- (f) if he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- (g) if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in Cyprus, or by leave of the Court, elsewhere, a bankruptcy notice under this Law, and he does not, within seven days after service of the notice, in case the service is effected in Cyprus, and in the case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgement debt or sum ordered to be paid, and which he could not set up in the action in which the judgement was obtained, or the proceedings in which the order was obtained.

For the purpose of this section any person who is, for the time being entitled, to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgement or final order;

- (h) it being indebted to a creditor in virtue (of a debt provable in bankruptcy, he fails to pay, or secure, or compound for, such debt, within such time as shall be allowed by an order made by the Court upon the application of the creditor, provided always no such application shall be entertained by the Court, unless a bankruptcy notice, requiring payment of such debt, has first been served upon him, and he has had notice of such application and has been called upon to show cause against the same;
  - (i) if he has admitted to any of his creditors that he is unable to meet his engagements or that he has suspended or is about to suspend the payment of his debts.
- (2) In this Law, the expression “a debtor,” unless the context otherwise implies, includes any person, who at the time when any act of bankruptcy was done or suffered by him—
- (a) was personally present in Cyprus; or
  - (b) ordinarily resided or had a place of residence in Cyprus; or
  - (c) was carrying on business in Cyprus, personally, or by means of an agent or manager; or
  - (d) was a member of a firm or partnership which carried on business in Cyprus.

(3) A bankruptcy notice under this law shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice—

- (a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;
- (b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

#### Receiving Order

#### **Jurisdiction to make receiving order**

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

#### **Conditions on which creditors may petition**

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

- (a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors amounts to ~~fifty~~ *five hundred* (a) pounds, and
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time, and
- (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and
- (d) the debtor is domiciled in Cyprus or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling house or place of business in Cyprus or has carried on business in Cyprus personally, or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Cyprus by means of a partner or partners or an agent or manager.

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

#### **Proceedings and order on creditor’s petition**

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

(2) At the hearing of the petition, the Court shall required proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with such proof, shall make a receiving order in pursuance of the petition.

(3) The Court may adjourn the hearing of the petition either conditionally or unconditionally, for obtaining further evidence, or for any other just cause or may dismiss the petition with or without costs, as the Court thinks just.

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(a) Amended by Ordinance 9/1985 – came into force on 25 July 1985

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt or sum ordered to be paid, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgement or order.

(5) If there are more respondents than one to the petition, the Court may dismiss the petition as to one or more of them, and may order the case to be proceeded with against the other or others of them.

(6) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner or any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(7) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court shall have jurisdiction for the trial of the question relating to such debt, subject to an appeal before the Supreme Court as herein provided and in the meantime all proceedings on the petition shall be stayed pending the results of such trial as aforesaid.

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause if it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

### **Creditors petition cannot be withdrawn**

7. A creditor's petition shall not, after presentment be withdrawn without the leave of the Court.

### **Debtor's petition (a)**

~~8.—(1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.~~

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

*8.—(1) A debtor shall not present a bankruptcy petition unless:*

*(a) the aggregate amount of his debts exceeds the sum of £5,000 —; and*

*(b) the debts are not liquidated sums and are related to certain sums payable either immediately or at some certain future time.*

*(2) A debtor's petition shall be accompanied by an affidavit to which a catalogue of the creditors with their addresses, the amounts owed to each one of them and the date on which each debt was created shall be attached together with a full statement of his property.*

*(3) The petition shall be served upon all creditors referred to in the catalogue attached to the affidavit.*

*(4) At the hearing of the petition the court shall have an absolute discretion to issue a receiving order or dismiss the petition.*

*(5) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.*

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(a) Section 8 repealed and replaced by Ordinance 8/1987 -came into force on 07 May 1987



### **Effect of receiving order**

9.—(1) On the making of a receiving order, an official receiver shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Law, no creditor to whom the debtor is indebted in respect of any debt probable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

(2) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it, if this section had not been passed.

### **Power to appoint interim receiver**

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

### **Power to stay pending proceedings**

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

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

### **Power to appoint special manager**

12.—(1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint, subject to the approval of the Court, a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give such security and account in such manner as may be directed by the Court.

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

### **Advertisement of receiving order**

13. Notice of every receiving order stating the name, address and description of the debtor, the date of the order, the Court by which the order is made, the date of the petition, shall be gazetted and advertised in two local papers, that is to say, one of which is published in the Turkish and the other in the Greek language in the prescribed manner.

## Proceeding Consequent on Order

### **First and other meetings of creditors**

**14.**—(1) As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Law referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings as to meetings of creditors, the rules in the First Schedule to this Law shall be observed.

### **Debtor's statement of affairs**

**15.**—(1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely :-

- (a) if the order is made on the petition of the debtor, within three days from the date of the order;
- (b) if the order is made on the petition of a creditor, within seven days from the date of the order.

But the Court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or official receiver.

## Public Examination of Debtor

### **Public examination of debtor**

**16.**—(1) Where the Court makes a receiving order, it shall, save as in this Law provided, hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorized in writing, may, subject to the discretion of the Court, question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver shall take part in the examination of the debtor; and for the purpose thereof, if specially authorized by the Court, may employ an advocate.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The Court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over to and signed by the debtor, or in the

case of an illiterate debtor his mark shall be affixed thereto, and may thereafter, save as in this Law provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded; but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such places as to the Court seems expedient.

(11) *On the application of the Official Receiver the Court may order, that under the circumstances of the case, a public examination shall not be carried out if no useful purpose will be served. In such a case the Official Receiver shall attach to the petition a statement of the debtor in relation to his affairs and property together with any other documents for the information of the creditors or any other interested persons. The Court, if it thinks fit, may order that the debtor or creditors, or any of them shall be present at the hearing of the application.*<sup>(a)</sup>

#### Composition of Scheme of Arrangement

### **Compositions and schemes of arrangement**

17.—(1) Where a debtor intends to make a proposal for composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, or on his behalf embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from Cyprus.

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(a) Subsection (11) inserted by Ordinance 8/1987 – came into force on 07 May 1987

(8) The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(9) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the Court may either approve or refuse to approve the proposal.

(12) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(13) A composition of scheme accepted and approved in insurance of this section shall be binding on all the creditors as far as relates to any debts due to them from the debtor and provable in bankruptcy.

(14) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of a composition or scheme under this action may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the official receiver or the trustee, or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under of in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 26 and Part 5 of this Law shall apply as if the trustee were a trustee in bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication," included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

(18) Part 3 of this Law shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy," "bankrupt" and "order of adjudication" as in the last preceding subsection.

(19) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Law would not be released by an order of discharge if the debtor had been adjudged bankrupt.

### **Effect of composition or scheme**

**18.** Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which,

under the provisions of this Law the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

### Adjudication of Bankruptcy

#### **Adjudication of bankruptcy where composition not accepted or approved**

**19.**—(1) Where a receiving order is made against a debtor then if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Law within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication and the Court by which the adjudication is made, shall be gazetted and advertised in two local papers, that is to say, one of which is published in the Turkish and the other in the Greek language in the prescribed manner, and the date of the order shall for the purpose of this Law be the date of the adjudication.

#### **Appointment of trustee**

**20.**—(1) Where a debtor is adjudged bankrupt or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

(2) A person shall be deemed not fit to act as trustee of the property of a bankrupt when he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(3) The person so appointed shall give security in such amount as shall be fixed by the Court and the Court if satisfied with the security shall certify that his appointment has been duly made, unless the debtor or a creditor objects to the appointment, and the Court is satisfied that such appointment has not been made in good faith by a majority in vale of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

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

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

(6) When a debtor is adjudged bankrupt aft her first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

#### **Committee of inspection**

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

(2) The committee of inspect shall consists of not more than five nor less than three persons, possessing one or other of the following qualifications—

- (a) that of being a creditor or the holder of a general power of attorney from a creditor, provided that no creditor and no holder of a general proxy of general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or
- (b) that of being a person to whom a creditor intends to giving a general proxy or general power of attorney; provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such proxy of power of attorney, and until the creditor has proved his debt and the proof has been admitted.

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

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

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

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

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

(8) On a vacancy occurring in the office of a member the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and when the number of members of the committee of inspection for the time being less than five, the creditors may increase that number so that it does not exceed five.

(10) If there be on committee of inspection, any act or thing or any direction or permission by this Law authorized or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

### **Power to accept composition or scheme after bankruptcy adjudication**

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

(2) If the Court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt to him or in such other person as the Court may appoint, on such terms, and subject to such conditions if any, as the Court may declare.

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

## Control over Person and Property of Debtor

### **Duties of debtor as to discovery and realization of property**

**23.**—(1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such power of attorney, conveyances, deeds, and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property, which is divisible amongst his creditor under this Law, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment of it, be guilty of a contempt of Court, and may be punished accordingly.

### **Arrest of debtor under certain circumstances**

**24.**—(1) The Court may, by warrant addressed to any police officer or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept in such places and until such time as the Court may order under the following circumstances:—

- (a) if, after a bankruptcy notice has been issued under this Law, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has been guilty of an offence punishable under this Law or that he has absconded or is about to abscond with a view of avoiding payment of the debt, in respect of which bankruptcy notice was issued, or of avoiding service of a bankruptcy petition or of avoiding appearance to any such petition or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;
- (b) if, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy;
- (c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds without the leave of the official receiver or trustee;
- (d) if, without good cause shown, he fails to attend any examination ordered by the Court:

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

(2) The Court may, at any time after the arrest of the debtor order his release on his furnishing security to the satisfaction of the court not to quit the Colony without the leave of the Court.

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

#### **Re-direction of debtor's letter, etc.**

**25.** Where a receiving order is made against a debtor, the Court on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months as the Court thinks fit, post letters, telegrams and other postal packets addressed to the debtor at any place, or places mentioned in the order for redirection shall be re-directed, sent or delivered by the Postmaster-General or the officers acting under him, to the official receiver or the trustee, or otherwise as the Court directs, and the same shall be done accordingly. The signature of the official receiver or the trustee on any money order payable to such debtor shall be sufficient acquittance thereof.

#### **Inquiry as to debtor's conduct, dealings and property**

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

(2) If any person so summoned after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made know to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or his property.

(4) If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay the official receiver or trustee, at such time and such manner as the Court deems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(5) If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just.

(6) The Court may, if it thinks fit, order that any person who if in Cyprus would be liable to be brought before it under this section shall be examined in any other place out of Cyprus.

#### **Discharge of bankrupt**

**27.—**(1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be hear until the public examination of the bankruptcy is concluded. The application shall, except when the Court in accordance with the rules under this Law otherwise directs, be heard in open Court.

(2) On the hearing of the application the Court shall take in consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under this bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:



Provided that where the bankrupt has committed any misdemeanour under this Law, or any enactment repealed by this Law, or any other misdemeanour connected with his bankruptcy or any felony connected with his bankruptcy, or where in any case any of the facts hereinafter mentioned are proved, the Court shall either—

- (a) refuse the discharge; or
- (b) suspend the discharge for such period as it deems fit; or
- (c) suspend the discharge until a dividend of not less than five hundred mils in the pound has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgement being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgement without leave of the Court, which leave may be give on proof that the bankrupt has since his discharge acquire property or income available towards payment of his debts:

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

(3) The facts hereinbefore referred to are—

- (a) that the bankrupt's assets are not of a value equal to five hundred mils in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to five hundred mils in the pound on the amount of his unsecured liabilities has arisen from circumstance for which he cannot justly be held responsible;
- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;
- (c) that the bankrupt has continued to trade after knowing himself to be insolvent;
- (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
- (f) that the bankrupt has brought on, or contributed to his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
- (h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;
- (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
- (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to five hundred mils in the pound on the amount of his unsecured liabilities;
- (k) that the bankrupt has on any previous occasion whether under this Law or any Law for the time being in force in Cyprus been adjudged bankrupt, or made a composition or arrangement with his creditors;

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

(4) With a view to removing any statutory disqualification an account of bankruptcy which is removed if the bankrupt obtains from the Court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the Court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section a bankrupt's assets shall be deemed of a value equal to five hundred mils in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to five hundred mils in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

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

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

(8) The power of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

#### **Procedure on failure of bankrupt to apply discharge**

**28.** In the event of a bankrupt failing to apply for his discharge as in the last preceding section hereof mentioned the official receiver shall, as soon as may be after the granting of the trustee's release by the Court but no later than ~~two~~ **four (a)** years after the close of the public examination *or the date of the Order of the Court dispensing with the public examination as provided in subsection (1) of Section 16 of this Ordinance (b)* if the trustee has not been released by that time, apply to the Court for the consideration by them of such bankrupt's discharge. The Court may require the bankrupt to be present for examination at any hearing convened in pursuance of the provisions of this section, and may make such order as seems just having regard to all the circumstances.

#### **Duties of discharged bankrupt**

**29.** A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of contempt of Court; and 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.

#### **Effect of order of discharge**

**30.—(1)** An order of discharge shall not release the bankrupt from any debt on a recognizance nor from any fine or debt which with the bankrupt may be chargeable at the suit of the Crown (or of any person) for any offence against any Law, or on a bail bond entered into for the appearance of any person prosecuted for any offence; and he shall not be discharged from such excepted debts unless the Governor certify in writing under the hand of the Administrative Secretary his consent to his being discharged therefrom.

(2) An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor for any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

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(a) Amended by Ordinance 8/1987 – came into force on 07 May 1987

(b) Text inserted by Ordinance 8/1987 – came into force on 07 May 1987

(3) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had any joint contract with him, or any person who was surety or in the nature of a surety for him.

(4) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(5) An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

### **Power for Court to annul adjudication in certain cases**

**31.**—(1) Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in two local papers one of which is published in the Turkish and the other in the Greek language.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with casts, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

## **PART 2**

### **DISQUALIFICATION OF BANKRUPT**

#### **Disqualification of un-discharged bankrupt**

**32.**—(1) Where a debtor is adjudged bankrupt, he shall, subject to the provisions of this Law, be disqualified for being elected or holding or exercising the office of:—

- (a) member of Legislative Council;
- (b) mayor or member of a Municipal Council;
- (c) member of a District Council (Medjlis Idare);
- (d) mukhtar.

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

- (a) the adjudication in bankruptcy is annulled; or
- (b) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

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

#### **Office vacated by bankruptcy of holder thereof**

**33.** If the debtor is adjudged bankrupt whilst being elected member of the Legislative Council or whilst holding the office of mayor or member of the Municipal Council or whilst being a member

of a District Council (Medjlis Idare) or whilst holding the office of mukhtar, his seat or office shall thereupon become vacant.

## PART 3

### ADMINISTRATION OF PROPERTY

#### Provable Debts

#### **Description of debts provable in bankruptcy**

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

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency, or for any other reason does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

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

(7) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself, 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.

(7) “Liability” shall, for the purposes of this Law, include—

- (a) any compensation for work or labour done;
- (b) any obligation or possibility of an obligation to pay money or money’s worth on the breach of any expressed or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;
- (c) generally, any expressed or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money or money’s worth; whether the payment is, as respects amount, fixed or unliquidated; as respect time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

#### **Mutual credit and set off**

**35.** Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Law, and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled

under this section to claim the benefit of any set off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

#### Appropriation of Assets

#### Payment of preliminary expenses

**36.**—(1) The assets remaining after payment of the actual expenses incurred in realizing any of the assets of the debtor shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely—

- (a) the actual expenses incurred by the official receiver in protecting the property or assets of the debtor or any part thereof and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;
- (b) the fees, percentages, and charges payable to, or costs, charges, and expenses incurred or authorized by the official receiver;
- (c) the remuneration of the special manager, if any; and
- (d) the taxed costs of the petitioning creditor so far as the same may not have been disallowed by the Court.

(2) Whenever the Court is satisfied the property of a debtor in respect of whose estate a receiving order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the debtor without notice of any available act of bankruptcy committed by the debtor, the Court may, in its discretion, order the payment of the costs of such legal proceedings or any part of them out of the estate with the same priority as to payment as is herein provided in respect of the taxed costs of the petitioner.

#### Rules as to proof of debts

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

#### Priority of debts

~~**38.** (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts but after payment of the preliminary expenses in section 36 hereinbefore mentioned—~~

- ~~(a) all Government taxes and duties, Municipal or village rates due from the bankrupt at the date of the receiving order and having first become due and payable within twelve months next before that time;~~
- ~~(b) all wages or salary of any clerk or servant, whether or not earned wholly or in part by way of commission, in respect of services rendered to the bankrupt during the four months next preceding the date of the receiving order, not exceeding fifty pounds;~~
- ~~(c) all wages of any labourer or workman not exceeding twenty five pounds, whether payable for time or for piecework, in respect of services rendered to the bankrupt during two months before the date of the receiving order;~~
- ~~(d) such part of any premium paid by or on behalf of any apprentice under service to the bankrupt as the Court may order;~~
- ~~(e) all amounts, not exceeding in any individual case one hundred pounds, due in respect of compensation under the Workmen's Compensation Law<sup>(a)</sup>, the liability whereof accrued before the date of the receiving order, subject nevertheless to the provisions of section 31 of that Law;~~

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(a) Cap.188

- (f) ~~all rent accrued due to the landlord during the four months next preceding the date of the receiving order. (a)~~

**38.**—(1) *In the distribution of the property of a bankrupt there shall be paid in priority to all other debts but after payment of the preliminary expenses in Section 36 herein before mentioned—*

- (a) *all taxes and duties or village rates payable under any legislation of the Sovereign Base Areas or the Republic due from the bankrupt at the date of the receiving order and having first become due and payable within twelve months next before that time;*
- (b) *any amount of earnings of an employed person in respect of his employment by the bankrupt during the eighteen weeks immediately before the issue of the receiving order, but in no case shall such amount of earnings exceed the product of eighteen multiplied by twice the basic insurable earnings payable from time to time to the employed person;*
- (c) *any amount of compensation which the bankrupt shall be obliged to pay to the employed person due to bodily injury sustained as a result of an accident arising out of his employment and during his employment by the bankrupt;*
- (d) *any amount due to the employed person from leave derived from his employment by the bankrupt for a period of employment not exceeding one year;*
- (e) *all rent accrued due to the landlord during the four months next preceding the date of the receiving order;*
- (f) *for the purposes of paragraphs (b),(c) and (d) of this subsection the expressions “earnings” “employed person” and “basic insurable earnings” shall have the meanings assigned to them by the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980.(b).*

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

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, is sufficient to meet them.

(4) The joint estate of partners shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(5) Subject to the provisions of this Law, all debts proved in the bankruptcy shall be paid *pari passu*.

(6) If there is any surplus after payment of the debts it shall be applied in payment of interest from the date of the receiving order at the rate of nine pounds per centum per annum on all debts proved in the bankruptcy.

(7) Nothing in this section shall alter the effect of section 7 of the Partnership and Business Names Law, or the order off the liquidation of the debts of a deceased person under the provisions of the Administration of Estates Law.

### **Postponement of husband’s and wife’s claims**

**39.**—(1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him

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(a) Subsection (1) repealed and replaced by Ordinance 8/1987 – came into force on 07 May 1987

(b) Ordinance 16/1980, 5/1983, 1/1984, 5/1986 and 17/1985

to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

(3) The provisions of this section shall not apply to claims in respect of any money or other estate lent or entrusted by a husband to his wife or by a wife to her husband before the commencement of this Law.

#### Property Available for Payment of Debts

#### **Relation back of trustee's title**

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

#### **Description of bankrupt's property divisible amongst creditors**

**41.** The property of the bankrupt divisible among his creditors in this Law referred to as the property of the bankrupt, shall comprise the following particulars:-

- (a) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge;
- (b) the capacity to exercise and to take proceedings for exercising all such powers in and 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;
- (c) all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

#### **Property not divisible amongst creditors**

**42.** The following shall not form part of the bankrupt's property divisible amongst his creditors, namely:—

- (a) property held by the bankrupt on trust for any other person;
- (b) all property as would exempt from execution under any Law for the time being in force in Cyprus.

#### **Provisions as to second bankruptcy and dealings with persons adjudged bankrupts**

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

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of subsection (5) and subsection (6) of this section) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

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

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

(5) All transactions by a bankrupt with any person dealing with him *bonâ -fide* and for value, in respect of property, whether movable or immovable, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Law is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

For the purpose of this subsection, the receipt of any money, security, or negotiable instrument made to, or by order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(6) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the Court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

#### Effect of Bankruptcy on Antecedent Transactions

#### **Restriction of rights of creditors under execution or attachment**

**44.**—(1) Where a creditor has issued execution against the goods or immovable property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Law, an execution or attachment shall be deemed to be completed—

- (a) in the case of goods, chattels, or other movable property in the possession of the debtor or of negotiable instruments, by seizure and sale;



- (b) in the case of good, chattels, or other movable property to which the debtor is entitled subject to a lien or right of some person to the immediate possession thereof, by attachment by prohibition order and sale;
- (c) in the case of lands, houses or other immovable property or any interest therein by attachment and due registration thereof at the Land Registry Office;
- (d) in the case of an attachment of a debt not being a negotiable instrument, by receipt of the debt;
- (e) in the case of shares in any public company or corporation, by attachment by prohibition order;
- (f) in the case of property in the custody or under the control of any public officer in his official capacity or in Court, by attachment by prohibition order duly obtained and served.

(3) Any execution levied by seizure and sale on the goods, chattels or other movable property of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods, chattels or other movable property under a sale by the sheriff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

#### **Duties of sheriff as to good taken in execution**

**45.**—(1) Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or to the trustee, as the case may be, who shall be entitled to retain the same as against the execution creditor.

#### **Avoidance of certain settlements**

**46.**—(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future Settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy except so far as it enables the persons entitled under the covenant or

contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

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

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

(4) "Settlement" shall for the purpose of this section, include any conveyance or transfer of property.

#### **Avoidance of preferences in certain case**

**47.**—(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

#### **Protection of *bona fida* transactions without notice**

**48.**—(1) Subject to the foregoing provisions of this Law with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Law shall invalidate in the case of a bankruptcy:—

- (a) any payment by the bankrupt to any of his creditors;
- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration:

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

- (a) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction as the case may be, takes place before the date of the receiving order; and
- (b) that the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

## Realization of Property

### **Vesting and transfer of property**

**49.**—(1) Immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall best in the trustee. Until the trustee is appointed the official receiver shall be the trustee for the purposes of this section.

(2) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from the trustee, including under that term the official receiver when he fills the office of trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

### **Possession of property by trustee**

**50.**—(1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

### **Seizure of the property of bankrupt**

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

### **Appropriation of portion of pay or salary to creditors**

**52.**—(1) Where a bankrupt is an officer or clerk employed or engaged in the civil service of the Government, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the Department under which the pay or salary is enjoyed, may direct.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the department of the Accountant-General, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

### **Disclaimer of onerous property**

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

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

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed, as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a lease with out the leave of the Court, except in any case which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Law in respect of any disclaimed property, and on hearing such persons as thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein names in that behalf without any conveyance or assignment for the purpose:

Provided always, 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 be demise except upon the terms of making that person—

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

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

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such

disclaimer has expired but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become aware of the existence of such property, whichever period may last expire.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

#### **Powers of trustee to deal with property**

**54.** Subject to provisions of this Law, the trustee may do all or any of the following things:—

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers the capacity to exercise which is vested in the trustee under this Law, and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Law.

#### **Powers exercisable by trustee with permission of committee of inspection**

**55.**—(1) The trustee may with the permission of the committee of inspection, do all or any of the following things:—

- (a) carry on the business of bankrupt, so far as may be necessary for the beneficial winding up of the same;
- (b) bring, institute, or defend any action or other legal proceedings relating to the property of the bankrupt;
- (c) employ an advocate or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;
- (d) accept as the consideration of the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee thinks fit;
- (e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;
- (f) refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or un-liquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;
- (g) make such compromise or other agreement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;
- (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

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

### **Right of trustee to inspect goods pawned, etc.**

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

### **Protection of official receivers and trustees from personal liability in certain cases**

**57.** Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the Court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

### Distribution of Property

#### **Declaration and distribution of dividends**

**58.—**(1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of the creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals not more than six months.

(4) Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debts.

(5) When the trustee has declared a dividend he shall send to each creditor who has proved his debt a notice showing the amount of the dividend and when and how it is payable and a statement in the prescribed form as to the particular of the estate.

#### **Joint and separate dividends**

**59.—**(1) Where one partner of a firm is adjudged bankrupt a creditor to whom the bankrupt is indebted jointly with the other partner of the firm, or any of them shall not receive any dividend out of the separate property of the bankrupt until all separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incidents to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

#### **Provision for creditors residing at a distance, etc.**

**60.—**(1) In the calculation and distribution of a dividend the trustee shall make provision for debts probable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary

course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts probable in bankruptcy, the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

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

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

### **Interest on debts**

**62.** Where a debt has been proved, and such debt includes interest, or any particular consideration in lieu of interest, such interest or consideration shall, for all purpose of dividend, be calculated at a rate not exceeding nine per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

### **Final dividend**

**63.—**(1) When the trustee has converted into money all property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he shall declare a final dividend but before so doing he shall give notice in manner prescribed to the person whose claims to be creditors have been notified to him, but not established to his satisfaction that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to declare a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or if the Court, on application by any such creditor, grants him further time for establishing his claim, then on the expiration of such further time, the final dividend shall be distributed among the creditors who have proved, without regard to the claims of any other person.

(3) If the Court admits any claim which may have been rejected by the trustee, the holder of such claim shall be entitled to be paid out of all available property in the hands of the trustee, any dividend to which he would have been entitled if his claim had not been rejected by the trustee.

### **No action for dividends**

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

### **Power to allow bankrupt to manage property**

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

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

bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate but any such allowance may be reduced by the Court.

### **Right of bankrupt to surplus**

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

## **PART 4**

### **OFFICIAL RECEIVERS**

#### **Appointment by Governor of official receivers of debtor's estate**

**67.**—(1) The Governor may, at any time after the passing of this Law, and from time to time, appoint to be official receivers of debtors' estates such persons and at such salaries as he thinks fit and may remove any person so appointed for such office. The financial part of the duties of official receivers shall be entirely under the direct control and supervisions of the Accountant-General in the first instance and of the Director of Audit, but such official receivers shall be officers of the Court to which they are respectively attached.

(2) The Governor may determine the number of official receivers to be appointed, the security to be given by an official receiver so appointed, and the Judicial Districts to be assigned to them. The same person may be appointed to act for more than one Judicial District.

(3) Whenever an official receiver shall be absent temporarily through illness or otherwise, the President of that District Court to which such official receiver is attached may if the Governor has not made a provisional appointment, appoint another officer of the Court to discharge during the time of such absence the duties of the official receiver. Such officer of the Court shall give security as may be determined by the President of the District Court.

(4) The trustee shall supply the official receiver with such information, and give him such access to, and facilities from inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Law.

#### **Duties of official receiver as regards the debtor's conduct**

**68.** As regards the debtor, it shall be the duty of the official receiver—

- (a) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Law, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;
- (b) to make such other reports concerning the conduct of the debtor as the Court may direct;
- (c) to take such part as may be directed by the Court in the public examination of the debtor;
- (d) to take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Attorney-General may direct.

#### **Duties of official receiver as regards debtor's estate**

**69.**—(1) As regards the estate of a debtor, it shall be the duty of the official receiver—

- (a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
- (b) to authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditor, it appears necessary so to do;



- (c) to summon and preside at the first meeting of creditors;
- (d) to issue forms of proxy for use at the meetings of creditors;
- (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager the official receiver shall have the same powers as if he were a receiver and manager appointed by the Court but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise order, incur any expenses beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court from time to time directs.

#### **Duties of official receiver as regards debtor's estate**

**70.**—(1) As regards the estate of a debtor, it shall be the duty of the official receiver—

- (a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
- (b) to authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditor, it appears necessary so to do;
- (c) to summon and preside at the first meeting of creditors;
- (d) to issue forms of proxy for use at the meetings of creditors;
- (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager the official receiver shall have the same powers as if he were a receiver and manager appointed by the Court but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise order, incur any expenses beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court from time to time directs.

**PART 5**  
**TRUSTEES IN BANKRUPTCY**

**Official name of trustee**

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

**Power to appoint joint or successive trustees**

**72.—**(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more person than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Law included under the term “trustee,” and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the Court.

**Proceedings in case of vacancy in office of trustee**

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

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the Court and the Court may appoint a trustee.

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

**Discretionary powers of trustee and control thereof**

**74.—**(1) Subject to the provisions of this Law, the trustee shall I the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by special resolution of the creditors at any general meeting or by the committee of inspection and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may summon general meetings of creditors for the purpose of ascertaining their wishes, he may also apply to the Court, for directions in relation to any particular matter arising under the bankruptcy.

(3) Subject to the provisions of this Law, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

**Appeal to Court against trustee**

**75.** If the bankrupt or any creditor, debtor or other person is aggrieved by any act or decision of the trustee he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks fit.

### **Official receiver to inquire into the conduct of the trustee**

**76.**—(1) The official receiver shall take cognizance of the conduct of the trustee, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements of the law with respect to the performance of his duties, or in the event of any complaint being made by the bankrupt or any creditor in regard thereto, the official receiver shall inquire into the matter and may move the Court accordingly and the Court may make such order as may be deemed expedient.

(2) The official receiver may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and may, if the official receiver thinks fit, apply to the court to examine on oath the trustee or any person concerning the bankruptcy.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the trustee.

### **Remuneration of trustee**

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

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

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

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Court, approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any advocate, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration, or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up or give up any part of his remuneration, either as receiver, manager, or trustee to the bankrupt or any advocate or other person that may be employed about a bankruptcy.

### **Allowance and taxation of costs**

**78.**—(1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Law or rules to be performed by himself.

(2) Where the trustee is an advocate he may contract that the remuneration of his services as trustee shall include all professional services.

(3) All bills and charges of advocates, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which such charges arise, had been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

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

#### **Trustee not to pay money into private account**

**79.** The trustee shall not pay sums received by him as trustee into his private banking account. He shall have at such local bank as the committee of inspection or in default of appointment the Court shall appoint, a separate and distinct account in the name of the estate administered by him, in which bank all sums received by him shall be paid to the credit of the estate; and if he, at any time, keeps in his hands any sum exceeding fifty pounds for more than ten days he shall be subject to the following liabilities, that is to say—

- (a) he shall pay interest at the rate of twenty per centum per annum on the excess of such sum above fifty pounds as he may retain in his hands;
- (b) unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of the official receiver or of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

#### **Accounts of trustee. Payments**

**80.** The trustee shall open and keep proper books of accounts and of other matters relating to his trusteeship and shall make his payments, in the prescribed manner.

#### **Returns of accounts to official receiver**

**81.—(1)** The trustee shall cause his accounts to be audited every month by the committee of inspection and he shall, every three months, forward a certified copy of such accounts to the official receiver.

(2) He shall transmit to the official receiver on his application, a statement showing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars, and made out in the prescribed form.

(3) The trustee, for the purposes of the examination of such accounts and statement, shall furnish the official receiver with such vouchers and information as shall be required.

(4) If the trustee fails to transmit any of the accounts and statements above referred to or to furnish the vouchers and information required, the Court may on the application of the official receiver deal with the trustee as provided in paragraph (b) of section 79.

#### **Release of trustee**

**82.—(1)** When the trustee has realized all the property of the bankrupt or so much thereof as can in his opinion be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has resigned, or has been removed from his office, or has ceased to act by reason of a composition having been approved, he may request the official receiver to call a meeting of the creditors to consider an application to be made to the Court for his release.

(2) At such meeting the trustee shall lay before the creditors an account showing the manner in which the bankruptcy has been conducted, with a list of unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for his release.

(3) The creditors assembled at the meeting may express their opinion on the conduct of the trustee, and they or any of them may appear before the Court and oppose the release of the trustee.

### **Power of the Court to grant or withhold release of trustee**

**83.** The Court, after hearing what, if anything, can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withholds the release shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just, to grant the release of the trustee.

### **Effect of release of trustee**

**84.—**(1) The order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee but such order may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(2) When the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

(3) When on the release of a trustee, and official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred by any prior trustee.

### **Trustee becoming bankrupt**

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

### **Creditors may remove trustee**

**86.—**(1) The creditors may by ordinary resolution at a meeting specially called for that purpose, of which notice shall be given in the prescribed manner, remove a trustee appointed by them and appoint another one in his stead.

(2) If, on the application of the official receiver or any interested person, the court is of opinion—

- (a) that a trustee is guilty of misconduct, or fails to perform his duties under this Law; or
- (b) that his trusteeship is being protracted without any probable advantage to the creditors; or
- (c) that he is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties; or
- (d) that his connection with or relation to the bankrupt, or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or
- (e) where in any other matter he has been removed from office on the ground of misconduct,

the Court may remove him from his office.

## **PART 6**

### **JURISDICTION, PROCEDURE, AND POWERS OF COURT**

#### **Jurisdiction to be exercised by District Courts**

**87.** The Courts having jurisdiction in bankruptcy shall be the District Courts and in the exercise of such jurisdiction shall subject to the provisions of this Law have all the powers conferred on District Courts as in the trial of a civil action.

### **Petition where to be presented**

**88.**—(1) A bankrupt petition against a debtor shall be presented to the District Court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition.

(2) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

### **Cases stated for the opinion of the Supreme Court**

**89.** If any question of law arises in any bankruptcy proceeding in a District Court, which all parties to the proceedings desire, or which one of them and the Judges of the District Court may desire, to have determined in the first instance in the Supreme Court, the District Court shall state the facts in the form of a special case, for the opinion of the Supreme Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the Supreme Court for the purposes of the determination.

### **General powers and jurisdiction of Courts in bankruptcy**

**90.**—(1) Subject to the provisions of this Law every Court having jurisdiction under this Law 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 may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) The Court shall have jurisdiction to try and adjudicate upon all questions of ownership relating to goods and immovable property claimed by or from the trustee, whether such property be in the possession of the trustee or not, and to decide and adjudicate upon any debt or claim due to or from the bankrupt.

(3) Where default is made by any trustee, debtor or other person in obeying any order or direction of the Court, under any power conferred by this Law, or when any person is guilty of contempt of Court, the Court may after hearing such person, or after proof of his having been duly summoned to attend the Court, commit such person to prison for any term not exceeding one month. And the Court may at any time rescind any such order provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

### **Courts of bankruptcy in Cyprus to be auxiliary to other British Courts of Bankruptcy**

**91.** The Courts having jurisdiction in bankruptcy in Cyprus and the officers of those Courts respectively shall act in aid of and be auxiliary to British Courts elsewhere having jurisdiction in bankruptcy, and an order of such British Court situated elsewhere as aforesaid seeking aid, with a request to a Court in Cyprus having jurisdiction in bankruptcy, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either the Court which made the request, or the Court to which such request is made, could exercise in regard to similar matter within their jurisdictions.

### **Appeal**

**92.**—(1) Every Court having jurisdiction in bankruptcy under this Law may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

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

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

(4) Where by this Law or by general rules, time for doing anything is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5) Subject to general rules, the Court may, in any matter, take the whole or any part of the evidence either *viva voce*, or by interrogatories or upon affidavit or by commission abroad.

#### **Discretionary powers of the Court**

**93.**—(1) Subject to the provisions of this Law and to general rules, the cost of and incidental to any proceeding in the Court under this Law shall be in the discretion of the Court.

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

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

(4) Where by this Law or by general rules, time for doing anything is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5) Subject to general rules, the Court may, in any matter, take the whole or any part of the evidence either *viva voce*, or by interrogatories or upon affidavit or by commission abroad.

#### **Consolidation of petitions**

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

#### **Power to change carriage or proceedings**

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

#### **Continuance of proceedings on death of debtor**

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

#### **Power to stay proceedings**

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

#### **Power to present petition against one partner**

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

#### **Actions by trustee and bankrupt's partners**

**99.** Where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void, but notice of the application for authority to commence the action shall be given to him, and he may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he

does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

### **Proceedings in partnership name**

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

### **Actions on joint contracts**

**101.** Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **Formal defect not to invalidate proceedings**

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

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

### **Summary administration in small cases**

**103.**—(1) When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed two hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Law shall be subject to the following modifications:—

- (a) if the debtor is adjudged bankrupt, the official receiver shall be trustee in bankruptcy;
- (b) there shall be no committee of inspection, but the official receiver may do with the permission of the Court all things which may be done by the trustee with the permission of the committee of inspection;
- (c) no advocates' fees shall be allowed in any such case except upon a certificate of the Court that the presence of an advocate as aforesaid was necessary.

(2) Such other modifications may be made in the provisions of this Law as may be prescribed by general rules with a view of saving expenses and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Law relating to the examination or discharge of the debtor.

## **PART 7**

### **SUPPLEMENTAL PROVISIONS**

#### **Exclusion of partnership and companies**

**104.** A receiving order shall not be made against any corporation or against any partnership or association, or company registered under the Companies Law. (i)



### **Application to limited partnerships**

**105.** Subject to such modifications as may be made by general rules under this Law, the provisions of this Law shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the trustee.

### **Who may be adjudged bankrupt**

**106.** Any debtor, whether trade or not, against whom proceedings can be legally taken in Cyprus for the recovery of a debt shall be liable to be adjudged a bankrupt as in the Law provided:

Provided always that no debtor, not being a trader or farmer at the time of the commencement of this Law, shall be adjudged bankrupt in respect of a debt incurred before the commencement of this Law, or in consequence of proceedings legally taken for the recovery of such debt.

### **Administration in bankruptcy of estate of person dying insolvent**

**107.—**(1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy.

(2) Upon the prescribed notice being given to the executor of the deceased debtor or if there is none to the administrator of his estate, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.

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

(4) With the modifications, hereinafter mentioned, all the provisions of Part 3 of this Law, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Law.

(5) Provided always that nothing in this section shall alter the order of the liquidation of the debts of a deceased person under the provisions of the Administration of Estates Law. **(ii)**

(6) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the executor or administration of the estate of the deceased debtor to payment of the proper funeral and testamentary expense incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Law relating to the priority of other debts payable in full, out of the debtor's estate, in priority to all other debts.

(7) If, on the administration of the deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Law in case of bankruptcy, such surplus shall be paid over to the executor or administrator of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(8) Notice of the presentation of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and any transfer, disposition, charge, delivery, contract, or payment made, relating to, or affecting the property to be administered under the order, and any execution or attachment had against the said property or any part thereof, after notice of the presentation of such petition, shall be void as against the official receiver. Save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done or suffered in good faith before the making of the order for administration.

### **Power to make general rules**

**108.** The Governor, with the advice and assistance of the Chief Justice, may from time to time by writing under the hand and official seal of the Governor and the hand of the Chief Justice make, revoke, and alter general rules to be gazetted for carrying into effect the objects of this Law and prescribing the fees, charges and percentages to be charges or taken for or in respect of proceedings thereunder.

### **Fees, charges, etc., of official receiver**

**109.**—(1) The fees, charges and percentages of the official receiver fixed as in section 108 hereof mentioned and all other costs or expenses of the official receiver shall be levied by the official receiver out of the debtor's estate and shall be paid into the Department of the Accountant-General. Such fees, charges, percentages and other costs or expenses shall be paid by privilege as provided in section 36 hereof.

(2) All necessary disbursements made by the official receiver when acting under this Law (the amount of which disbursements shall be settled by the Court) shall be paid out of the estate, if sufficient, and otherwise shall be payable by the petitioning creditor and recoverable upon a certificate of the Registrar of the amount allowed by the Court:

Provided that it shall be lawful for the Governor to remit the whole or part of the costs payable by the petitioning creditor under this section.

### **Gazette to be evidence**

**110.**—(1) A copy of the Gazette containing any notice inserted therein in pursuance of this Law shall be evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

### **Evidence of proceedings at meetings of creditors**

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

(2) Until the contrary is provided, 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**

**112.** Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order of certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Law shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any Judge thereof, or is certified as a true copy by any Registrar thereof, be receivable in evidence in all legal proceedings whatever.

### **Swearing of affidavits**

**113.** Subject to general rules any affidavit to be used in bankruptcy proceedings may be sworn before such persons who are authorised to administer oaths in civil proceedings before the District Court.

### **Death of debtor or witness**

**114.** In case of the death of a debtor or his wife, or of a witness whose evidence has been received by any Court in any proceedings under this Law, 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.

### **Disposal of unclaimed funds and dividends**

**115.**—(1) Where the trustee has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, the trustee has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same to the Registrar of the Court, who shall carry the same to an account to be termed “The Bankruptcy Estates Accounts.” The Registrar’s receipt for the money so paid shall be sufficient discharge to the trustee in respect thereof.

(2) The trustee, whether he has obtained his release or not, may be called upon by the Court to account for any unclaimed funds or dividends, and any failure to comply with the requisitions of the Court in this behalf may be dealt with as a contempt of Court.

(3) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account may, within five years of the date when the same was so paid in, apply to the Registrar for payment to him of the same, and the Registrar, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Registrar may appeal to the Court.

(4) After any money has remained unclaimed in the Bankruptcy Estates Account for a period of five years, the Registrar shall pay the same over to the Accountant-General for use of the Crown, and all claims thereon shall be thenceforth barred.

### **Punishment of fraudulent debtors**

**116.** Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall, in each of the cases following, be deemed guilty of an offence, and on conviction thereof, shall be liable to be imprisoned for any term not exceeding five years, that is to say—

#### *Failure to make full discovery to trustee*

(a) if he does not to the best of his knowledge and belief, fully and truly discover to the trustee all his property movable and immovable, and how and whom and for what consideration and when he disposed of any part thereof, and what sums he has annually spent for his personal expenses and the ordinary expenses of his family, unless the Court is satisfied that he had no intent to defraud;

#### *Failure to deliver up property*

(b) if he does not deliver up to the trustee, or as he may direct, all such part of his movable and immovable property as is in his custody or under his control, and which by law constitutes the assets divisible amongst his creditors, unless the Court is satisfied that he had no intent to defraud;

#### *Failure to deliver books, etc.*

(c) if he does not deliver up to the trustee, or as he may direct, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless the Court is satisfied that he had no intent to defraud;

#### *Concealment, mutilation, falsification, etc., of books, etc.*

(d) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise to defraud;

*Preventing the production of books, etc.*

- (e) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise to defraud;

*False entries*

- (f) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise defraud;

*Parting with, altering documents*

- (g) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs;

*Omission in statements*

- (h) if, he makes any material omission in any statement affecting or relating to his property or affairs unless the Court is satisfied that he had no intent to defraud;

*Concealment of property or debts, or disposition of property for less than market value*

- (i) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property or any debt due to or from him, or disposes of any part of his goods or property for any consideration which is substantially less in value than the usual market value of such goods or property, unless the Court is satisfied that he had no intent to defraud;

*Removal of property*

- (j) if, after the presentation of bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property;

*Failure to inform trustee of false debts*

- (k) if, knowing or believing that a false debt has been claimed or proved by any person under the bankruptcy he fails for the period of one month from the date of such knowledge of belief to bring the matter to the notice of the trustee;

*Fictitious losses, etc.*

- (l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation he attempts to account for any part of his property by fictitious losses or expenses;

*Obtaining credit on false representation*

- (m) if, within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of such a petition and before the making of a receiving order, he, by any false representation or other fraud, had obtained any property on credit and had not paid for the same;

*Obtaining credit on false pretences of carrying on business*

- (n) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or after the presentation of such a petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and he had not paid for the same, unless the Court is satisfied that he had no intent to defraud;

*Pawning, mortgaging, etc., property obtained on credit*

- (o) if, within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation of such a petition and before the making of a

receiving order, he pawns, pledges, mortgages, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the Court is satisfied that he had no intent to defraud;

*Making gift, sale, mortgage, etc., of property*

- (p) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he had made any gift, sale, delivery, transfer, mortgage of, or any charge on his property, unless the Court is satisfied that he had no intent to defraud;

*Obtaining consent of creditors by false representation*

- (q) if, he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or bankruptcy;

*Quitting or attempting to quit Colony*

- (r) if, after the presentation of any bankruptcy petition by or against him, he quits or attempts to quit the Colony, unless the Court is satisfied that he had no intent to defraud;

*Permitting assets to be applied for the benefit of certain creditors*

- (s) if, knowing his insolvency, he shall have permitted or suffered the whole or substantially the whole of his assets to be seized by, or applied for the benefit of a creditor or creditors to the detriment of and with intent to defraud other creditors.

*Trustee defined*

For the purpose of this section, the expression “trustee” means the official receiver of the debtor’s estate or trustee administering his estate for the benefit of his creditors.

**Un-discharged bankrupts obtaining credit**

**117.** Where an un-discharged bankrupt—

- (a) either alone or jointly with any other person obtains credit to the extent of ten pounds or upwards from any person without informing that person that he is an un-discharged bankrupt; or
- (b) 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,

he shall be guilty of an offence and on conviction thereof, liable to be imprisoned for any term not exceeding three years.

**Frauds by bankrupts**

**118.** If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made—

- (a) in incurring any debt or liability, has obtained credit under false pretences or by means of any other fraud;
- (b) with intent to defraud his creditors or any of them, has made or caused to be made any gift, delivery, or transfer of or any charge on his property;
- (c) with intent to defraud his creditors, had concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

he shall be guilty of an offence, and on conviction thereof, shall be liable to be imprisoned for any term not exceeding five years.

### **Punishment of persons removing etc., property of bankrupt**

**119.** If any person, after the presentation of a bankruptcy petition by or against any debtor who is subsequent adjudged bankrupt, or within twelve months next before such presentation, removes or conceals or causes to be removed or concealed or receives either for his own benefit or for the benefit of such debtor or of any other person, any part of the property of such debtor which ought by law to be divided amongst his creditors, such person shall be guilty of an offence, and on conviction thereof, shall be liable to be imprisoned for any term not exceeding five years, unless the Court is satisfied that he had no intent to defraud.

### **False claims, declarations, etc., against bankrupt**

**120.** If any creditor or any person claiming to be a creditor in any bankruptcy proceeding wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he shall be guilty of an offence and on conviction thereof, shall be liable to be imprisoned for any term not exceeding one year.

### **Punishment of trustee for concealment, etc., of affairs of bankrupt**

**121.** Whoever being a trustee shall, in any report or statement relating to the affairs of any person who has been adjudged bankrupt, wilfully make any material omission, or conceal or withhold any information or matter tending to show the true condition of the affairs of such person or the circumstances of the bankruptcy, or shall in any way assist any person to commit any of the offences in this Law mentioned, and then in every such case such trustee shall be guilty of an offence and on conviction thereof, shall be liable to be imprisoned for any term not exceeding three years.

### **Bankrupt failing to keep proper accounts**

**122.—(1)** If any person is adjudged bankrupt or has made a composition or arrangement with his creditors, or if a receiving order is made in respect of his estate, he shall be guilty of an offence, if, having during the whole or any part of the two years immediately preceding the date of the presentation of the bankruptcy petition been engaged in any trade or business, he has not kept proper books of account throughout those two years or such part thereof as aforesaid, and, if so engaged at the date of presentation of the petition, thereafter, whilst so engaged, up to the date of the receiving order, or has not preserved all books of accounts so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section if his unsecured liabilities at the date of the receiving order did not exceed one hundred pounds, or if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) Any person found guilty of an offence under the provisions of this section shall be liable to be imprisoned for any term not exceeding three years:

Provided always that a prosecution shall not be instituted against any person under this section except by order of the Court.

(3) For the purposes of this section, a person shall be deemed not to have kept proper books or account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade, business or profession, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid and, where the trade or business has involved dealing in goods, also accounts of all goods sold including a description in sufficient detail of all goods sold and purchased whether for cash or credit, as will enable such goods to be identifiable and also particulars of the name and address of the supplier or purchaser of such goods, and statements of annual stocktaking showing the basis upon which such stocktakings are made: Provided that a person engaged in any retail trade in which it would be a hardship or against the usual custom of the trade to enter such details as are hereinbefore required, then and in such cases, the omission shall be deemed to be excusable.

(4) Paragraph (d), (f), and (g) of section 116 of this Law (which relate to the destruction, mutilation, and falsification and other fraudulent dealing with books and documents), shall in their application to such books as aforesaid, have effect as if “two years next before the presentation of the bankruptcy petition” were substituted for the time mentioned in those paragraphs as the time prior to the presentation within which the acts or omissions specified in those paragraphs constitute an offence.

### **Bankrupt guilt of gambling, etc.**

**123.**—(1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of an offence and on conviction thereof, liable to be imprisoned for any term not exceeding three years, if having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business—

- (a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or
- (b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or
- (c) on being required by the official receiver at any time, or in the course of his public examination by the Court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

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

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

### **Bankrupt absconding with property**

**124.** If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits Cyprus and take with him, or attempts or makes preparation to quit Cyprus and take with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence and on conviction thereof, be liable to be imprisoned for any term not exceeding three years.

### **Prosecution of offences**

**125.** If, in the course of any proceedings taken under any bankruptcy petition or on the representation of the official receiver, the trustee, or of any creditor, it appears to the Court that there is reason to suppose that any person has been guilty of an offence under this Law, the Court shall, if it appears to the Court that there is reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable order the prosecution of such person accordingly and in an such case may order the person to be prosecuted into custody, if present, or, if not present, may grant a warrant for his arrest and detention until he can be taken before a magistrate to be dealt with according to law.

## **Criminal liability after discharged or competition**

**126.** Where a debtor has been guilty of a criminal offence, he shall not be exempt from being proceeded against therefore by reason that he has obtained his discharge or that a composition or scheme of arrangements has been accepted or approved.

## **SCHEDULE 1**

Section 14

### **Meetings of Creditors**

**1.** The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any reason deem it expedient that the meeting be summoned for a later day.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**16.—**(1) Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of any commissioner of oaths.

(2) General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(3) A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

- (a) for or against any specific proposal for a composition or scheme of arrangement;
- (b) for or against the appointment of any specified person as trustee at a specified rate or remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;
- (c) on all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof.

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

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

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

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

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

**22.** If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the

same time and place, or to such other days as the chairman may appoint, not being less than seven or more than twenty-one days.

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

**24.** No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor: Provide that where any person holds special proxies to vote for the appointment of himself as a trustee he may use the said proxies and vote accordingly.

**25.** As soon as may be after a meeting of creditors, the official receiver shall file in Court a copy of the minutes of proceedings and resolutions had and taken at such meeting.

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

## SCHEDULE 2

Section 37

### PROOF OF DEBTS

#### *Proof in Ordinary Cases*

- 1.** Every creditor shall prove his debt as soon as may be after the making of a receiving order.
- 2.** A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.
- 3.** The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.
- 4.** The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.
- 5.** The affidavit shall state whether the creditor is or is not a secured creditor and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.
- 6.** A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.
- 7.** Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.
- 8.** A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### *Proof by Secured Creditors*

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

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

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

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

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

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

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

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

**15.** If a creditor after having valued his security subsequently realizes it, or if it is realised under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

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

**17.** Subject to the provisions of rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Law.

*Proof in respect of Distinct Contracts*

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

*Periodical Payments*

**19.** Where any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove

for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

*Interest*

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

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

*Debt payable at a Further Time*

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

*Admissions or Rejection of Proofs*

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

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

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

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

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

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

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**i** Cap. 113

**ii** Cap. 189