

BANKRUPTCY AND INSOLVENCY
(REPEAL AND RE-ENACTMENT) BILL, 2015
ARRANGEMENT OF CLAUSES

Clause:

PART I- PRELIMINARY

1. Short Title
2. Commencement
3. Interpretation

PART II- ACTS OF BANKRUPTCY

4. Acts of bankruptcy

PART III - RECEIVING ORDERS, INTERIM RECEIVERS,
CREDITORS AND RECEIVERS

Petition for receiving order

5. Filing of petition
6. Petition against estate of deceased
7. Costs of petitioner
8. Appointment of interim receiver

Appointment of interim receiver

9. Appointment of interim receiver where section 13 notice pending
10. Appointment of interim receiver where notice of intention or proposal filed
11. Costs of interim receiver Secured creditors and receivers
12. Who may be a receiver
13. Secured party to provide notice
14. Duties of receiver
15. Required action by receiver
16. Rights of receiver
17. Duties of debtor
18. Receiver to provide notice of disposition
19. Personal liability of receiver

20. Court order in respect of non-performance of duties
21. Court may order statement of accounts to be submitted for review
22. Receiver may apply to Court for directions
23. Provisions of Companies Act to apply where debtor is a company
24. Priorities of distribution in a receivership

PART IV - ASSIGNMENTS

25. Who may make an assignment

PART V - PROPOSALS

26. Who may make a proposal
27. Filing of proof of secured claim
28. Where secured creditors may not vote
29. Secured claims upon bankruptcy
30. Notice of intention
31. Trustee to assist in preparation of proposal
32. Meeting of creditors
33. Adjournment of meeting
34. Proven creditors may vote prior to meeting
35. Creditors may accept or refuse proposal
36. Proposal may include terms of supervision
37. Creditors may appoint inspectors
38. Effect of refusal of proposal by creditors
39. Substitution of trustee by Court order
40. Trustee to apply to Court for approval of proposal
41. Trustee to prepare report to Court
42. Payment of preferred claims and trustee's costs
43. Where proposal approved by Court made by bankrupt
44. Trustee to file proposal with Supervisor
45. Default in performance of proposal
46. Court may annul the proposal
47. Date of assignment where Court approval not obtained

48. Court to value claims where creditor participation required
49. Agreements not to be terminated or altered
50. Certificate of performance
51. Mutatis mutandis provisions

PART VI - PROPERTY OF THE BANKRUPT

52. Property of a bankrupt
53. Excess income of individual bankrupts to be as prescribed
54. Where assignment of certain payments ineffectual Stay of proceedings
55. Stay of proceedings upon filing of notice of intention or proposal
56. Stay of proceedings upon bankruptcy
57. Aggrieved creditor may apply to Court for removal of stay
58. Stay ineffectual against certain parties and claims

General provisions

59. Precedence of bankruptcy over certain creditors unless process Completed
60. Property of bankrupt to vest in trustee
61. Trustee to avail himself of other rights
62. Delivery of seized property to trustee
63. Trustee may surrender lease or deal with leasehold interests
64. Receiving order and assignment may be registered
65. Joint tenancy to revert to tenants in common
66. Transactions valid unless prior registration
67. Where contributory indebted to bankrupt
68. Banker to advise trustee of existence of account
69. Trustee may inspect property
70. Where trustee disposes property subject to an encumbrance
71. Persons claiming ownership interest in property of the bankrupt
72. Unpaid suppliers may prove for certain goods
73. Claim of farmer or fisherman

74. Sale of patented articles by trustee
75. Copyright works dealt with by bankrupt
76. Bankrupt's interest vests in purchaser upon sale by trustee Partnership property
77. Limited partnerships State interests
78. State claims are unsecured
79. State security to be registered to be enforceable Settlements and Preferences
80. Settlements within one year void
81. Contracts in consideration of marriage
82. Payments void subject to proof of certain facts
83. Assignment of book debts void
84. Preferences voidable if made within three months
85. Preference to related party voidable if made within twelve months
86. Transactions between initial bankruptcy event and bankruptcy
87. Proceeds from dealing with property obtained in voidable transaction
88. Good faith transactions with bankrupts protected
89. Reviewable transactions in year prior to initial bankruptcy event
90. Where dividend paid by company
91. Mutatis mutandis
92. Where proposal followed by bankruptcy

PART VII - ADMINISTRATION OF ESTATES

Meetings of creditors

93. Trustee to send notice to creditors of first meeting
94. Trustee may call meeting
95. Notice regarding subsequent meetings

Procedure at meetings

96. Chairman of first meeting
97. Quorum at meetings
98. Creditors may vote by class

99. Chairman may admit or reject proofs
 100. Completed proof of claim required to enable voting
 101. Voting where claims acquired
 102. Where non-bankrupt parties jointly liable
 103. Secured creditor may vote unsecured portion only
 104. Where trustee may vote
 105. Minutes to be proof of meeting
 106. Creditors vote by dollar Inspectors
 107. Appointment of inspectors
 108. Trustee may call meeting of inspectors
 109. Trustee to call meeting to appoint inspectors
 110. Directions of creditors to override directions by inspectors
 111. Inspectors may not acquire assets Claims provable
 112. Claims provable
 113. Where bankruptcy follows proposal
 114. Proof in respect of distinct contracts Proof of claims
 115. Proof of claim required to share in distribution
 116. Court may disallow false claims
 117. Proven creditors may examine proofs of claim Proof by secured creditors
 118. Secured creditor may prove for balance due
 119. Trustee may require proof of claim by secured creditor
 120. Trustee may require security to be sold
 121. Secured creditor may require election of trustee
 122. Amended claim where security realized
 123. Amendment of claim where security not realized
 124. Exclusion of secured creditor from dividend
 125. No creditor to receive more than 100 cents on dollar
- Admission and disallowance of proofs of claim and proofs of security*
126. Trustee to examine proofs Scheme of distribution
-

- 127. Preferred creditors
- 128. Where reviewable transaction
- 129. Claim of relative of bankrupt
- 130. Claim of participating lender
- 131. Claim of officer and director
- 132. Dividends pro rata
- 133. Property of bankrupt partnership
- 134. Where surplus remains after claims paid
- 135. Final surplus to bankrupt
- 136. Motor vehicle insurance
- 137. Supervisor's levy Dividends
- 138. Inspectors to declare dividends to ordinary unsecured creditors
- 139. Thirty-day notice to prove claims
- 140. Where claim proven after dividend declared
- 141. Final statement of receipts and disbursements to be prepared
- 142. Final statement to be complete account
- 143. Dividends on joint and separate properties
- 144. Unclaimed dividends and undistributed funds Summary
Administration
- 145. Provisions applying to summary administration
- 146. Remuneration in summary administration
- 147. Mutatis mutandis

PART VIII - BANKRUPTS

Counselling Services

- 148. Trustee to counsel individual bankrupts
- 149. Duties of bankrupts
- 150. Bankrupt corporation
- 151. Imprisoned bankrupt

Examination of bankrupts and others

- 152. Examination of bankrupt by Supervisor
-

153. Investigation by Supervisor regarding bankrupt
154. Trustee may examine bankrupt and others
155. Trustee may require delivery of property of bankrupt and production of books and records
156. Where person may be ordered by Court to pay trustee
157. Issue of warrant for apprehension and examination of persons
158. Examination by Court Arrest of bankrupts
159. Court order for arrest of bankrupt Discharge of bankrupts
160. Automatic discharge of first-time individual bankrupt
161. Bankruptcy of an individual operates as an application for discharge
162. Trustee to prepare report of application of bankrupt for discharge
163. Trustee's report to provide recommendation
164. Questions to debtor
165. Facts pursuant to which bankrupt's conduct is subject to censure
166. Value of bankrupt's assets
167. Cessation of any statutory disqualification
168. Bankrupt to report to trustee and Court
169. Court may consider effects of settlement before marriage or cohabitation
170. Debts not released by order of discharge
171. Third parties not released
172. Court may annul discharge
173. Court may annul bankruptcy
174. Issuance of orders to be delayed

PART IX - ADMINISTRATIVE OFFICIALS

Supervisor

175. Appointment of Supervisor
176. Access to trustee's accounts
177. Suspected offences Public records

178. Maintenance of public records

TRUSTEES

Licensing of trustees

179. Applications for licence as trustee

180. Form of licence

181. Payment of fees Conduct of trustees

182. Trustee prohibited from acting in specified circumstances

183. Independent legal opinion

184. Code of ethics

185. Cancelled licences

Appointment and substitution of trustees

186. Appointment or substitution of trustee by creditors

187. Rights of Supervisor where questionable trustee conduct

188. Notice to trustee

189. Protection of estate by Supervisor

190. Court removal of trustee

191. Appointment by Supervisor of non-licensed trustee

192. Duty to act

193. Acts done in good faith

Corporations as trustee

194. Corporate trustee

195. Incorporation

196. Acts by corporate trustee

197. Corporate trustee not a trust company Official name

198. Official name

Duties and powers of trustees

199. Trustee to give security

200. Delivery of property to trustee

201. Protective measures

202. Legal proceedings to protect estate

- 203. Divesting of real property
- 204. Initiation of criminal proceeding
- 205. Returns
- 206. Regulators empowered to review records
- 207. Insure property
- 208. Deposits
- 209. Maintenance books and records
- 210. Reporting by trustee
- 211. Documents to be provided to Supervisor
- 212. Report to Supervisor where trustee no longer appointed
- 213. Permission to take specified action
- 214. Borrowing with permission of Court
- 215. Trustee not required to operate business
- 216. Order for sale of assets
- 217. Application for directions
- 218. Redirection of mail
- 219. Former trustee to pass accounts
- 220. Application to Court by aggrieved party
- 221. Trustee refusing to act

Remuneration of trustee

- 222. Determination of fees Discharge of trustee
- 223. Property incapable of realisation
- 224. Trustee to apply for discharge

PART X - COURTS AND PROCEDURE

Jurisdiction of Courts

- 225. Jurisdiction of High Court
 - 226. Title of insolvency matters
 - 227. General power of Court
 - 228. Proceeding not invalidated by defect or irregularity
 - 229. Court may review, rescind, or vary order
-

- 230. Court may give leave to omit material or to send notices in alternative manner
- 231. Seizure of property of bankrupt
- 232. Evidence in Court
- 233. Orders subject to appeal
- 234. Costs are in the discretion of the Court
- 235. Application to Court where default
- 236. Trustee not personally liable

PART XI - INTERNATIONAL INSOLVENCIES

- 237. Interpretation
- 238. Copy of order to be proof of events
- 239. Stay of proceedings not to apply unless proceedings taken in Nigeria
- 240. Proceedings by foreign representatives
- 241. Court may seek aid of foreign authority
- 242. Court order may be conditional on compliance of foreign representative with other Court order
- 243. Foreign representative not prevented from proceeding due to appeal
- 244. Dividends subject to property the creditor may acquire outside Nigeria
- 245. Claim payable in foreign currency

PART XII - OFFENCES

- 246. Offences committed by bankrupt
- 247. Offences committed by undercharged bankrupt
- 248. Where debtor having previously taken bankruptcy protection and not keeping proper books
- 249. False claims, unlawful fees and unlawful transactions
- 250. Offences by trustee and others
- 251. Removal of property
- 252. Invalid trustee licence
- 253. Trustee acting outside authority

254. Offence committed by corporation
255. Court may make order for community service
256. Variation of order made under section 255
257. Court may make an order regarding damages
258. Trustee to report to Court
259. Trustee to report criminal acts
260. Substance of offence sufficient
261. Time for commencement of action

PART XIII - GENERAL

262. Power respecting Bankruptcy Rules
263. Gazette or local daily newspaper to be evidence of facts
264. Admission not admissible under any other law
265. Acts by corporations, firms and individuals of unsound mind
266. Leave of the Court required to pursue certain actions
267. Regulations
268. Transitional
269. Repeal

A BILL

FOR

AN ACT TO REPEAL THE BANKRUPTCY AND INSOLVENCY ACT,
 NO. 16 1979, CAP. B2 LAWS OF THE FEDERATION OF NIGERIA 2004
 AND RE-ENACT THE BANKRUPTCY AND INSOLVENCY ACT TO
 MAKE PROVISION FOR CORPORATE AND INDIVIDUAL
 INSOLVENCY TO PROVIDE FOR THE REHABILITATION OF THE
 INSOLVENT DEBTOR AND TO CREATE THE OFFICE OF
 SUPERVISOR OF INSOLVENCY; AND FOR OTHER MATTERS
 CONNECTED THEREWITH

Sponsored by Senator Barnabas Gemade

[] Commencement

ENACTED by the National Assembly of the of the Federal
 Republic of Nigeria as follows:

PART I - PRELIMINARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14

1. This Act may be cited as the Bankruptcy and Insolvency Act,
 2015. Short Title

2. This Act comes into force on such date as is fixed and sign into
 law by the President of the Federal Republic of Nigeria.

3.-(1) In this Act unless the context otherwise requires: Interpretation
 "affidavit" includes statutory declaration and solemn affirmation;
 "assignment" means an assignment filed with the Supervisor of Insolvency;
 "bank" means every bank to which the Banking and Financial Institutions
 Act applies;
 "bankrupt" means a person who has made an assignment or against whom a
 receiving order has been made under section 5(10);
 "books" and "records" include documents as well as data maintained or
 processed manually, mechanically, photographically or electronically by

- 1 any information storage device;
- 2 "claim provable in bankruptcy", "provable claim" or "claim provable" includes
- 3 any claim or liability provable in proceedings under this Act by a creditor;
- 4 "cohabitation relationship" means the relationship between co-habitants, who
- 5 not being married to each other are living or have lived together as husband and
- 6 wife in a bona fide domestic relationship;
- 7 "corporation" means any incorporated company, wherever or however
- 8 incorporated, that is authorized to carry on business in Nigeria or that has an
- 9 office or property in Nigeria, but does not include financial institutions to
- 10 which the financial Institutions Act applies or insurance companies;
- 11 "Court" means the High Court;
- 12 "credit card" has the same means Includes debit cards and smart cards;
- 13 "creditor" means a person having a claim, unsecured preferred by virtue of
- 14 priority under section 127 or secured, provable as a claim under this Act;
- 15 "date of the initial bankruptcy event", in respect of a person, means the earliest
- 16 of the date of filing of or making of:
- 17 (a) an assignment by or in respect of the person;
- 18 (b) a proposal by or in respect of the person;
- 19 (c) a notice of intention by the person; or
- 20 (d) the first petition for a receiving order against the person;
- 21 "debtor" includes an insolvent person and any person who, at the time an act of
- 22 bankruptcy was committed by him, resided or carried on business in Nigeria
- 23 and, where the context requires, includes a bankrupt;
- 24 "goods" include all chattels personal;
- 25 "individual" means a natural person;
- 26 "inspector" means an inspector appointed under section 107;
- 27 "insolvent person" means a person who is not bankrupt and who resides, carries
- 28 on business or has property in Nigeria, whose liabilities to creditors provable as
- 29 claims under this Act amount to not less than one million naira, and:
- 30 (a) who is for any reason unable to meet his obligations as they

1 generally become due;

2 (b) who has ceased paying his current obligations in the ordinary
3 course of business as they generally become due; or

4 (c) the aggregate of whose property is not, at a fair valuation,
5 sufficient, or, if disposed of at a fairly conducted sale under legal process,
6 would not be sufficient to enable payment of all his obligations, due and
7 accruing;

8 "Marshal" includes bailiff and any officer charged with the execution of a
9 writ or other process under this Act or any other proceeding with respect to
10 any property of a debtor;

11 "Minister" means the Minister to whom the responsibility for finance is
12 assigned;

13 "person" includes a partnership, an unincorporated association, a
14 corporation, a co-operative society or an organization, the successors of a
15 partnership, association, corporation, society or organization, and the heirs,
16 executors, liquidators of the succession, administrators or other legal
17 representative of a person;

18 "property" includes money, goods, chose in action, land and every
19 description of property, whether real or personal, legal or equitable, and
20 whether situated in Nigeria or elsewhere, and includes obligations,
21 easements and every description of estate, interest and profit, present or
22 future, vested or contingent in, arising out of or incidental to property;

23 "proposal" means a proposal for a composition, for an extension of time, or
24 for a scheme or arrangement;

25 "Receiver" means a person who has been appointed to take, or has taken,
26 possession or control, pursuant to:

27 (a) a security agreement; or

28 (b) an order of a Court made under any law that provides for or
29 authorizes the appointment of a receiver or receiver-manager, of all or
30 substantially all of-

- 1 (i) the inventory;
- 2 (ii) the accounts receivable; or
- 3 (iii) the other property, of a debtor that was acquired for, or is used in
4 relation to, a business carried on by the debtor;
- 5 "receiving order" means an order of the Court made under any law that
6 provides for or authorizes the appointment of a receiver or a receiver-manager;
- 7 "Registrar" means the Registrar of the Supreme Court;
- 8 "resolution" or "ordinary resolution" means a resolution carried by the
9 majority of votes, and for that purpose the votes of a creditor shall be calculated
10 by counting one vote for each naira of every claim of the creditor that is not
11 disallowed;
- 12 "secured creditor" means a person holding a mortgage, pledge, charge or lien
13 on or against the property of the debtor or any part thereof as security for a debt
14 due or accruing due to him from the debtor, or a person whose claim is based
15 on, or secured by, a negotiable instrument held as collateral security and on
16 which the debtor is only indirectly or secondarily liable;
- 17 "security agreement" means an agreement under which property becomes
18 subject to a security for the payment of an obligation;
- 19 "service provider" means any entity or person who supplies fuel, water,
20 electricity, telecommunications, or such services as may be prescribed;
- 21 "settlement" includes a contract, covenant, conveyance, transfer, gift and
22 designation of a beneficiary in an insurance contract, to the extent that the
23 contract, covenant, conveyance, transfer, gift, or designation is gratuitous or
24 made for merely nominal consideration;
- 25 "special resolution" means a resolution decided by a majority in number and
26 two-thirds in value of the creditors with proven claims present, personally or by
27 proxy, at a meeting of creditors and voting on the resolution;
- 28 "Supervisor" means the office of Supervisor of Insolvency established under
29 section 175;
- 30 "trustee" or "licensed trustee" means a person who is licensed or appointed

1 under this Act.

2 (2) For the purposes of this Act:

3 "related group" means a group of persons each member of which is related to
4 every other member of the group;

5 "unrelated group" means a group of persons that is not a related group;

6 (3) For the purposes of this Act:

7 "related persons" are persons who are related to each other if they are:

8 (a) individuals connected by blood relationship, marriage,
9 cohabitation relationship or adoption;

10 (b) a corporation and:

11 (i) a person who controls the corporation, if it is controlled by one
12 person;

13 (ii) a person who is a member of a related group that controls the
14 corporation; or

15 (iii) any person connected in the manner set out in paragraph (a) to
16 a person described in subparagraph (i) or (ii); or

17 (c) two corporations:

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

19 (ii) each of which is controlled by one person and the person who
20 controls one of the corporations is related to the person who controls the
21 other corporation;

22 (iii) one of which is controlled by one person and that person is
23 related to any member of a related group that controls the other corporation;

24 (iv) one of which is controlled by one person and that person is
25 related to each member of an unrelated group that controls the other
26 corporation;

27 (v) one of which is controlled by a related group a member of
28 which is related to each member of an unrelated group that controls the other
29 corporation; or

30 (vi) one of which is controlled by an unrelated group each member

1 of which is related to at least one member of an unrelated group that controls
2 the other corporation.

3 (4) For the purposes of this Act:

4 (a) where two corporations are related to the same corporation within
5 the meaning of subsection (3), they shall be deemed to be related to each other;

6 (b) where a related group is in a position to control a corporation, it
7 shall be deemed to be a related group that controls the corporation whether or
8 not it is part of a larger group by whom the corporation is in fact controlled;

9 (c) a person who has a right under a contract, in equity or otherwise,
10 either immediately or in the future and either absolutely or contingently, to, or
11 to acquire, shares in a corporation, or to control the voting rights in shares of a
12 corporation, shall, except where the contract provides that the right is not
13 exercisable until the death of an individual designated therein, be deemed to
14 have the same position in relation to the control of the corporation as if he
15 owned the shares;

16 (d) where a person owns shares in two or more corporations, he shall,
17 as a shareholder of one of the corporations, be deemed to be related to himself
18 as shareholder of each of the other corporations;

19 (e) persons are connected by blood relationship if one is the child,
20 mother, father, brother, sister, aunt, uncle or cousin of the other;

21 (f) persons are connected by marriage if one is married to the other or
22 to a person who is connected by blood relationship to the other;

23 (g) persons are connected by a co-habitational relationship if one is a
24 co-habitant of the other; and

25 (h) persons are connected by adoption if one has been adopted, either
26 legally or in fact, as the child of the other or as the child of a person who is
27 connected by blood relationship, otherwise than as a brother or sister, to the
28 other.

29 (5) For the purposes of the Act, a person who has entered into a
30 transaction with another person otherwise than at arm's length shall be deemed

1 to have entered into a reviewable transaction.

2 (6) It is a question of fact whether persons not related to one
3 another within the meaning of subsection (2) were at a particular time
4 dealing with each other at arm's length.

5 (7) Persons related to each other within the meaning of subsection
6 (2) shall be deemed not to deal with each other at arm's length while so
7 related.

8 PART II - ACTS OF BANKRUPTCY

9 4.-(1) A debtor commits an act of bankruptcy where the debtor:

Acts of
bankruptcy

10 (a) either in Nigeria or elsewhere makes an assignment of his
11 property to a trustee for the benefit of his creditors generally, whether it is an
12 assignment authorized by this Act or not;

13 (b) either in Nigeria or elsewhere makes a fraudulent conveyance,
14 gift, delivery or transfer of his property or of any part of that property;

15 (c) either in Nigeria or elsewhere makes any conveyance or
16 transfer of his property or any part of the property, or creates any charge on
17 the property that would under this Act be void as a fraudulent preference;

18 (d) with intent to defeat or delay his creditors, departs out of
19 Nigeria, or being out of Nigeria remains out of Nigeria, or departs from his
20 dwelling house or otherwise absents himself;

21 (e) permits any execution or other process issued against the debtor
22 under which any of the debtor's property is seized, levied on or taken in
23 execution to remain unsatisfied for twenty-one days, or if any of the debtor's
24 property has been sold by the Marshal, or if the execution or other process is
25 returned endorsed to the effect that the Marshal can find no property on
26 which to levy or to seize or to take;

27 (f) exhibits to any meeting of his creditors any statement of his
28 assets and liabilities that shows he is insolvent, or presents or causes to be
29 presented to that meeting a written admission of his inability to pay his
30 debts;

1 (g) assigns, removes, secretes or disposes of or attempts or is about to
2 assign, remove, secrete or dispose of any of his property with intent to defraud,
3 defeat or delay his creditors or any of them;

4 (h) gives notice to any of his creditors that he has suspended or is
5 about to suspend payment of his debts;

6 (i) defaults in any proposal made under this Act; and

7 (ii) ceases to meet his liabilities generally as they become due.

8 (2) Notwithstanding paragraph (e), where inter-pleaded proceedings
9 have been instituted in respect of the property seized, the time elapsing
10 between the date at which the proceedings were instituted and the date at which
11 the proceedings are finally disposed of settled or abandoned shall not be taken
12 into account in calculating the period of twenty-one days.

13 (3) Every assignment of his property other than an assignment
14 pursuant to this Act, made by an insolvent debtor for the general benefit of his
15 creditors, is void.

16 PART III - RECEIVING ORDERS, INTERIM RECEIVERS,

17 SECURED CREDITORS AND RECEIVERS

18 *Petition for receiving order*

Filing of
petition

19 5.-(1) Subject to this section, one or more creditors may file in Court a
20 petition for a receiving order against a debtor where it is alleged in the petition
21 that:

22 (a) the debt owing to the petitioning creditor amounts to not less than
23 one million; and

24 (b) the debtor has committed an act of bankruptcy within six months
25 immediately preceding the filing of the petition.

26 (2) Where the petitioning creditor referred to in subsection (1) is a
27 secured creditor, the petitioning creditor shall in his petition either state that he
28 is willing to give up his security for the benefit of the creditors in the event of a
29 receiving order being made against the debtor or give an estimate of the value
30 of his security.

1 (3) Where the petitioning creditor gives an estimate of the value of
2 his security, he may be admitted as a petitioning creditor to the extent of the
3 balance of the debt due to him after deducting the value so estimated, in the
4 same manner as if he were an unsecured creditor.

5 (4) The petition shall be verified by affidavit of the petitioner or by
6 someone duly authorised on his behalf having personal knowledge of the
7 facts alleged in the petition.

8 (5) Where the petition is attested:

9 (a) in Nigeria, the witness must be an attorney-at-law;

10 (b) out of Nigeria, the witness must be a Judge, Magistrate, a
11 Consul or Consular Officer, or a Notary Public.

12 (6) When the petitioning creditor cannot himself verify all the
13 statements contained in his petition he shall file in support of the petition the
14 affidavit of some person who can depose to the statements.

15 (7) Where a petition is presented against a debtor who resides or
16 carries on business at an address other than the address at which the debtor
17 was residing or carrying on business at the time of contracting the debt or
18 liability in respect of which the petition is presented, the petitioning creditor,
19 in addition to stating in the petition the description of the debtor and of his
20 then present address and description, shall in the petition, describe the
21 debtor as lately residing or carrying on business at the address at which he
22 was residing or carrying on business when the debt or liability was incurred.

23 (8) A petitioning creditor:

24 (a) who is resident abroad;

25 (b) whose estate is vested in a trustee or an assignee under any law
26 relating to bankruptcy;

27 (c) against whom a petition is pending under the Act; or

28 (d) who has made default in payment of any costs ordered by any
29 Court, to be paid by him to the debtor, may be ordered to give security for
30 costs to the debtor.

1 (9) Where two or more petitions are filed against the same debtor or
2 against joint debtors, the Court may consolidate the proceedings or any of them
3 on such terms as the Court thinks fit.

4 (10) At the hearing of the petition, the Court shall require proof of the
5 facts alleged in the petition and of the service of the petition, and, if satisfied
6 with the proof, may make a receiving order.

7 (11) Where the Court is not satisfied with the proof of the facts alleged
8 in the petition or of the service of the petition, or is satisfied by the evidence of
9 the debtor that he is able to pay his debts, or that for other sufficient cause no
10 order ought to be made, it shall dismiss the petition.

11 (12) Where there is more than one respondent to a petition, the Court
12 may dismiss the petition with respect to one or more of them, without prejudice
13 to the effect of the petition as against the other or others of them.

14 (13) On a receiving order being made, the Court shall appoint a
15 licensed trustee of the property of the bankrupt, having regard as far as the
16 Court deems just, to the wishes of the creditors.

17 (14) Where the debtor appears at the hearing of the petition and denies
18 the truth of the facts alleged in the petition, the Court may instead of dismissing
19 the petition, stay all proceedings on the petition on such terms as it may see fit
20 to impose on the petitioner as to costs or on the debtor to prevent alienation of
21 his property and for such time as may be required for trial of the issue relating to
22 the disputed facts.

23 (15) The Court may for other sufficient reason make an order staying
24 the proceedings under a petition, either altogether or for a limited time, on such
25 terms and subject to such conditions as the Court may think just.

26 (16) A petitioner who is resident outside Nigeria may be ordered to
27 give security for costs to the debtor, and proceedings under the petition may be
28 stayed until the security is furnished.

29 (17) Where proceedings on a petition have been stayed or have not
30 been prosecuted with due diligence and effect, the Court may:

1 (a) if by reason of the delay or for any other cause it is deemed just,
2 substitute or add as petitioner any other creditor to whom the debtor may be
3 indebted in the amount required by this Act;

4 (b) make a receiving order on the petition of the other creditor; and

5 (c) shall dismiss on such terms as it may deem just the petition in
6 the stayed or non prosecuted proceedings.

7 (18) Where proceedings on a petition have been stayed for trial on
8 the question of the validity of the creditor's debt, and the question has been
9 decided in favour of the validity of the debt, the petitioning creditor may
10 apply to the Registrar to fix a day on which further proceedings on the
11 petition may be had and the Registrar, on production of the judgment or
12 certified copy of the judgment shall give notice-

13 (a) to the petitioner, by post or otherwise, of the time and place
14 fixed for the hearing of the petition;

15 (b) to the debtor, at the address given in the notice to dispute; and

16 (c) to the attorneys-at-law, for the creditor and debtor.

17 (19) A petition shall not be withdrawn without the leave of the
18 Court.

19 (20) Any creditor whose claim against a partnership is sufficient to
20 entitle him to present a bankruptcy petition may present a petition against
21 anyone or more partners of the firm without including the others.

22 (21) Where a receiving order has been made against one member
23 of a partnership, and any other petition against a member of the same
24 partnership is filed, the Court may give such directions for consolidating the
25 proceedings under the petitions as it thinks just.

26 (22) Where a debtor against whom a petition has been filed dies,
27 the proceedings shall, unless the Court otherwise orders, be continued as if
28 he were alive.

29 6.-(1) Subject to section 5, a petition for a receiving order may be
30 filed against the estate of a deceased debtor.

Petition against
estate of deceased

1 (2) After service of a petition for a receiving order on the legal
 2 representative of a deceased debtor, he shall not make payment of any monies
 3 or transfer any property of the deceased debtor, except as required for payment
 4 of the proper funeral and testamentary expenses, until the petition is disposed
 5 of otherwise, in addition to any penalties to which he may be subject, he is
 6 personally liable.

7 (3) Nothing in this section invalidates any payment or transfer of
 8 property made or any act or thing done by the legal personal representative in
 9 good faith before the service of a petition referred to in subsection (2).

Costs of
petitioner

10 7.-(1) Where a receiving order is made, the costs of the petitioner shall
 11 be taxed and be payable out of the estate unless the Court otherwise orders.

12 (2) Where the proceeds of the estate are not sufficient for the payment
 13 of any costs incurred by the trustee, the Court may order the costs to be paid by
 14 the petitioner.

Appointment of
interim receiver

15 8.-(1) The Court may, if it is shown to be necessary for the protection
 16 of the estate of a debtor, at any time after the filing of a petition for a receiving
 17 order and before a receiving order is made, appoint a licensed trustee as interim
 18 receiver of the property of the debtor or any part of that property and direct the
 19 licensed trustee to take immediate possession of the property on such
 20 undertaking being given by the petitioner as the Court may impose with respect
 21 to interference with the debtor's legal rights and with respect to damages in the
 22 event of the petition being dismissed.

23 (2) The interim receiver appointed under subsection (1) may, under
 24 the direction of the Court, take conservatory measures and summarily dispose
 25 of property that is perishable or likely to depreciate rapidly in value and
 26 exercise such control over the business of the debtor as the Court deems
 27 advisable, but the interim receiver shall not unduly interfere with the debtor in
 28 the carrying out of his business except as may be necessary for conservatory
 29 purposes or to comply with the order of the Court.

Appointment of
interim receiver
where section 13
notice pending

30 9.-(1) Where the Court is satisfied that a notice is about to be sent or

1 has been sent under section 13, the Court may, subject to subsection (3),
2 appoint a trustee as interim receiver of all or any part of the debtor's property
3 that is subject to the security to which the notice relates, for such term as the
4 Court may determine.

5 (2) The Court may direct an interim receiver appointed under
6 subsection (1) to do any or all of the following:

7 (a) take possession of all or part of the debtor's property mentioned
8 in the appointment;

9 (b) exercise such control over that property, and over the debtor's
10 business, as the Court considers advisable; and

11 (c) take such other action as the Court considers advisable.

12 (3) An appointment of an interim receiver may be made under
13 subsection (1) only if it is shown to the Court to be necessary for the
14 protection of:

15 (a) the debtor's estate; or

16 (b) the interests of the creditor who sent the notice under section 13.

17 **10.-(1)** Where a notice of intention has been filed under section 30
18 or a proposal has been filed under section 44 (I), the Court may at any time
19 thereafter, subject to subsection (3), appoint as interim receiver of all or part
20 of the debtor's property, for such term as the Court may determine:

21 (a) the trustee under the notice of intention or proposal;

22 (b) another trustee; or

23 (c) the trustee under the notice of intention or proposal and another
24 trustee jointly.

25 (2) The Court may direct an interim receiver appointed under
26 subsection (1) to:

27 (a) carry out the duties set out in section 26 (18), in substitution for
28 the trustee referred to in that subsection or jointly with that trustee;

29 (b) take possession of all or part of the debtor's property mentioned
30 in the order of the Court;

Appointment of
interim receiver
where notice of
intention or
proposal filed

1 (c) exercise such control over that property, and over the debtor's
2 business, as the Court considers advisable; and

3 (d) take such other action as the Court considers advisable.

4 (3) An appointment of an interim receiver may be made under
5 subsection (I) only if it is shown to the Court to be necessary for the protection
6 of:

7 (a) the debtor's estate; or

8 (b) the interests of one or more creditors, or of the creditors generally.

Costs of
interim receiver

9 **11.**-(1) Where an appointment of an interim receiver is made under
10 section 9 or 10, the Court may make such order respecting the payment of fees
11 and disbursements of the interim receiver as it considers proper, including an
12 order giving the interim receiver a charge, ranking head of any or all secured
13 creditors, over any or all of the assets of the debtor in respect of his claim for
14 fees or disbursements; but the Court shall not make such an order unless it is
15 satisfied that all secured creditors who would be materially affected by the
16 order were given reasonable advance notification and an opportunity to make
17 representations to the Court.

18 (2) With respect to interim receivers appointed under sections 8, 9, or
19 10:

20 (a) the form and content of their accounts;

21 (b) the procedure for the preparation and taxation of those accounts;

22 and

23 (c) the procedure for the discharge of the interim receiver, shall be as
24 prescribed.

25 (3) In subsection (1), "disbursements" do not include payments made
26 in operating a business of the debtor.

Who may be
a receiver

27 **12.** Only a person who is licensed as a trustee under this Act may be
28 appointed a receiver under a security agreement.

Secured party to
provide notice

29 **13.**-(1) A secured creditor who intends to enforce a security on all or
30 substantially all of:

1 (a) the inventory;
2 (b) the accounts receivable; or
3 (c) the other property, of a debtor that was acquired for, or is used in
4 relation to a business carried on by the debtor, shall send to that debtor in the
5 prescribed form and manner, a notice of that intention.

6 (2) Where a notice is required to be sent under subsection (1), the
7 secured creditor shall not enforce the security in respect of which the notice
8 is required until the expiry of ten days after sending that notice, unless the
9 debtor consents to an earlier enforcement of the security.

10 (3) For the purposes of subsection (2), consent to earlier
11 enforcement of a security may not be obtained by a secured creditor prior to
12 the sending of the notice referred to in subsection (1).

13 (4) This section does not apply, or ceases to apply:

14 (a) in respect of a secured creditor:

15 (i) whose right to realise or otherwise deal with his security is
16 protected by section 55(3) or (4); or

17 (ii) in respect of whom a stay under section 55 has been lifted
18 pursuant to section 57;

19 (b) where there is a receiver in respect of the debtor.

20 **14. A receiver shall:**

Duties of
receiver

21 (a) act honestly and in good faith;

22 (b) deal with the property of the debtor in a commercially
23 reasonable manner;

24 (c) not later than ten days after becoming a receiver, send a notice
25 of that fact, in the prescribed form and manner:

26 (i) to the Supervisor, accompanied by the prescribed fee;

27 (ii) where the debtor is bankrupt, to the trustee; and

28 (iii) where the debtor is not bankrupt, to the debtor, and to all
29 creditors of the debtor that the receiver, after making reasonable efforts, has
30 ascertained;

1 (d) send notice of his becoming a receiver to any creditor whose name
2 and address he ascertains after sending the notice referred to in subparagraph
3 (c) (iii);

4 (e) forthwith after taking possession or control, whichever occurs
5 first, of property of a debtor, prepare a statement containing prescribed
6 information relating to the receivership, and shall forthwith provide a copy of
7 the statement to the Supervisor, the debtor, the trustee, in the case of a bankrupt,
8 and to any creditor of the debtor who requests a copy at any time up to six
9 months after the end of the receivership;

10 (f) in accordance with the Bankruptcy Rules, prepare interim reports
11 relating to the receivership, and shall provide copies of those reports to the
12 Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor
13 of the debtor who requests a copy at any time up to six months after the end of
14 the receivership; and

15 (g) prepare, forthwith after the completion of his duties as receiver, a
16 final report and a statement of accounts, in the prescribed form and containing
17 the prescribed information relating to the receivership, and forthwith provide a
18 copy of that Report and statement of accounts to the Supervisor, the debtor, the
19 trustee in the case of a bankrupt, and to any creditor of the debtor or the
20 bankrupt who requests a copy at any time up to six months after the end of the
21 receivership.

Required action
by received

22 **15. A receiver must:**

23 (a) if appointed by instrument, act in accordance with the instrument
24 and any directions by the Court;

25 (b) if appointed by a Court Order, act in accordance with the
26 directions of the Court;

27 (c) not later than fourteen days after being appointed receiver, publish
28 a notice of his appointment in one issue of a local daily newspaper;

29 (d) take into his custody or control the collateral in accordance with
30 the security agreement or order providing for his appointment;

1 (e) deal with any property of the debtor in his possession or control
2 in a commercially reasonable manner;

3 (f) open and maintain a bank account in his name as receiver for the
4 deposit of all monies coming under his control as receiver;

5 (g) keep records, in accordance with accepted accounting
6 practices, of all receipts, expenditures and transactions involving collateral
7 or other property of the debtor;

8 (h) prepare monthly summaries of accounts of his administration
9 of the collateral and other property of the debtor;

10 (i) indicate on every business letter, invoice, contract, or similar
11 document used or executed in connection with the receivership, that he is
12 acting as a receiver.

13 **16. A receiver:**

Rights of
receiver

14 (a) may, subject to the rights of secured creditors, receive the
15 income from the property, pay the liability connected with the property, and
16 realize the security interest of those on behalf of whom he is appointed; and

17 (b) may not, unless appointed a receiver manager or unless the
18 Court orders otherwise, carry on the business of the debtor for more than
19 fourteen days after his appointment.

20 **17.** A debtor shall, forthwith after being notified that there is a
21 receiver in respect of any of his property, provide the receiver with the
22 names and addresses of all creditors.

Duties of
debtor

23 **18.-(1)** A receiver shall, not less than fourteen days before the
24 disposition of the collateral in whole or in part, give notice of disposition in
25 the prescribed form:

Receiver to
provide notice
of disposition

26 (a) to the debtor;

27 (b) to any person with a charge registered against the collateral;

28 (c) to any person who, as a creditor of the debtor, has given notice
29 to the receiver of its interest in the collateral; and

30 (d) if the debtor is a corporation, to a director of the debtor.

- 1 (2) The notice under subsection (1) is not required if:
- 2 (a) the collateral is money, is perishable or, on reasonable grounds, is
- 3 expected to decline significantly in value;
- 4 (b) the collateral is to be disposed of by sale on an organized market
- 5 that handles large volumes of transactions between many different sellers and
- 6 many different buyers; or
- 7 (c) the cost and care of storing the collateral is disproportionately
- 8 large to the collateral's expected value.

Personal Liability
of receiver

9 **19. A receiver:**

10 (a) is personally liable on any contract entered into by him in the

11 performance of his functions, except to the extent that the contract otherwise

12 provides; and

13 (b) is entitled in respect of the liability under paragraph (a), to an

14 indemnity out of the assets of which he was appointed to be receiver.

Court order in
respect of non-
performance of
duties

15 **20. Where the Court, on the application of the Supervisor, the debtor,**

16 **the trustee in the case of a bankrupt, a receiver or a creditor, is satisfied that the**

17 **secured creditor, the receiver or the debtor is failing or has failed to carry out**

18 **any duty imposed in this Part, the Court may make an order, on such terms as it**

19 **considers proper:**

20 (a) directing the secured creditor, receiver or debtor, as the case may

21 be, to carry out that duty; or

22 (b) restraining the secured creditor or receiver, as the case may be,

23 from realising or otherwise dealing with the property of the debtor until that

24 duty has been carried out, or both.

Court may order
statement of
accounts to be
submitted for
review

25 **21. On the application of the Supervisor, the debtor, the trustee (in the**

26 **case of a bankrupt) or a creditor, made within six months after the statement of**

27 **accounts was provided to the Supervisor pursuant to section 14, the Court may**

28 **order the receiver to submit the statement of accounts to the Court for review,**

29 **and the Court may adjust, in such manner and to such extent as it considers**

30 **proper, the fees and charges of the receiver as set out in the statement of**

1 accounts.

2 **22.** A receiver may apply to the Court for directions in relation to
3 any provision of this Part, and the Court shall give, in writing, such
4 directions, if any, as it considers proper in the circumstances including:

Receiver may
apply to Court
for directions

5 (a) an order appointing, replacing or discharging a receiver or
6 receiver-manager and approving his accounts;

7 (b) an order determining the notice to be given to any person, or
8 dispensing with notice to any person;

9 Court order in respect of non-performance of Duties Court may order
10 statement of accounts to be submitted for review Receiver may apply to
11 Court for directions.

12 (c) an order declaring the rights of persons before the Court or
13 otherwise, or directing any person to do, or abstain from doing, anything;

14 (d) an order fixing the remuneration of the receiver or receiver-
15 manager;

16 (e) an order requiring the receiver or receiver manager, or a person
17 by or on behalf of whom he is appointed:

18 (i) to make good any default in connection with the receiver's or
19 receiver-manager's custody or management of the property and business of
20 the company;

21 (ii) to relieve any such person from any default on such terms as the
22 Court thinks fit; and

23 (iii) to confirm any act of the receiver or receiver-manager; and

24 (f) an order giving direction on any matter in relation to the duties
25 of the receiver or receiver-manager.

26 **23.** Where the debtor is a corporation:

27 (a) the provisions of sections 289 to 302 of the Companies Act shall
28 apply in the absence of provisions relating thereto in this Act; and

Provisions of
Companies Act
to apply where
debtor is a
company

29 (b) where the provisions of this Act are inconsistent with the
30 provisions of sections 289 to 302 of the Companies Act, this Act shall

1 prevail.

Priorities of
distribution in
a receivership

2 24. Except where the debtor is bankrupt or the Court has ratified a
3 proposal made to creditors under this Act, the priorities in receivership, of
4 distribution of the property of a debtor shall be as established by Division 3 of
5 Part IV of the Companies Act.

6 PART IV - ASSIGNMENTS

Who may make
an assignment

7 25.-(1) An insolvent person or, if deceased, the insolvent's legal
8 personal representative, may, with the leave of the Court, make an assignment
9 of all his property for the general benefit of his creditors.

10 (2) The assignment made under subsection (1) shall be accompanied
11 by a sworn statement in the prescribed form showing:

- 12 (a) the property of the debtor divisible among his creditors;
- 13 (b) the names and addresses of all his creditors;
- 14 (c) the amounts of their respective claims; and
- 15 (d) the nature of the claim, whether secured, preferred or unsecured.

16 (3) The assignment made under subsection (1) shall be offered to the
17 Supervisor, and it is in operative until filed with the Supervisor, who shall
18 refuse to file the assignment unless it is in the prescribed form and
19 accompanied by the sworn statement required by subsection (2).

20 (4) Where the Supervisor files the assignment made under subsection
21 (1), the supervisor shall appoint as trustee a licensed trustee whom he shall, as
22 far as possible, select by reference to the wishes of the most interested creditors
23 if ascertainable at the time, and the Supervisor shall complete the assignment
24 by inserting therein as grantee the name of the trustee.

25 (5) Where the Supervisor is unable to find a licensed trustee who is
26 willing to act, the Supervisor shall, after giving the bankrupt five days notice,
27 cancel the assignment.

28 (6) Where the bankrupt is not a corporation and in the opinion of the
29 Supervisor the realisable assets of the bankrupt, after the claims of secured
30 creditors are deducted, will not exceed ten thousand dollars or such other

1 amount as is prescribed, the provision of this Act relating to the summary
2 administration of estates shall apply.

3 (7) In the determination of the realisable assets of a bankrupt for
4 the purpose of subsection (6), no regard shall be had to any property that
5 may be acquired by the bankrupt or devolve on the bankrupt before the
6 bankrupt's discharge.

7 (8) The Supervisor may direct that subsection (6) shall cease to
8 apply in respect of the bankrupt where the Supervisor determines that:

9 (a) the realisable assets of the bankrupt, after the claims of secured
10 creditors are deducted, exceed ten thousand dollars or the amount
11 prescribed, as the case may be; or

12 (b) the costs of realisation of the assets of the bankrupt are a
13 significant proportion of the realisable value of the assets, and the
14 Supervisor considers that such a direction is appropriate.

15 PART V - PROPOSALS

16 **26.**-(1) A proposal may be made by:

Who may make
a proposal

- 17 (a) an insolvent person;
18 (b) a receiver, but only in relation to an insolvent person;
19 (c) a liquidator of an insolvent person's property;
20 (d) a bankrupt; and
21 (e) a trustee of the estate of a bankrupt.

22 (2) Subject to subsection (3), a proposal must be made to the
23 creditors generally, either as a group or separated into classes as provided in
24 the proposal, and may also be made to secured creditors in respect of any
25 class of secured claims.

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

29 (4) Secured claims may be included in the same class where the
30 interests of the creditors holding those claims are sufficiently similar to give

1 them a commonality of interest, taking into account:

2 (a) the nature of the debts giving rise to the claims;

3 (b) the nature and priority of the security in respect of the claims;

4 (c) the remedies available to the creditors in the absence of the
5 proposal, and the extent to which the creditors would recover their claims by
6 exercising those remedies;

7 (d) the treatment of the claims under the proposal, and the extent to
8 which the claims would be paid under the proposal; and

9 (e) such further criteria, consistent with those set out in paragraphs (a)
10 to (d), as may be prescribed.

11 (5) The Court may, on application made at any time after a notice of
12 intention or a proposal is filed, determine in accordance with subsection (4),
13 the classes of secured claims appropriate to a proposal, and the class into which
14 any particular secured claim falls.

15 (6) Subject to section 27, as regards included secured creditors, any
16 creditor may respond to the proposal as made to the creditors generally, by
17 filing with the trustee a proof of claim in the manner provided for in:

18 (a) sections 115 to 117, in the case of unsecured creditors; or

19 (b) sections 115 to 125, in the case of secured creditors.

20 (7) In the following sections in this Part, a reference to an unsecured
21 creditor shall be deemed to include a secured creditor who has filed a proof of
22 claim under subsection (6), and a reference to an unsecured claim shall be
23 deemed to include that secured creditor's claim.

24 (8) All questions relating to a proposal, except the question of
25 accepting or refusing the proposal, shall be decided by ordinary resolution of
26 the creditors to whom the proposal was made.

27 (9) Proceedings for a proposal shall be commenced in the case of an
28 insolvent person by lodging with a licensed trustee, and in the case of a
29 bankrupt by lodging with the trustee of the estate, a copy of the proposal in
30 writing setting out the terms of the proposal and the particulars of any securities

1 or sureties proposed, signed by the person making the proposal and the
2 proposed sureties if any, and:

3 (a) if the person in respect of whom the proposal is made is
4 bankrupt, the statement of affairs referred to in section 149 (e); or

5 (b) if the person in respect of whom the proposal is made is not
6 bankrupt, a statement showing the financial position of the person at the date
7 of the proposal, verified by affidavit as being correct to the belief and
8 knowledge of the person making the proposal.

9 (10) A proposal made in respect of a bankrupt shall be approved by
10 the inspectors before any further action is taken on the proposal.

11 (11) No proposal or any security or guarantee tendered with the
12 proposal may be withdrawn pending the decision of the creditors and the
13 Court.

14 (12) Subsection (11) shall not be construed as preventing an
15 insolvent person in respect of whom a proposal has been made from
16 subsequently making an assignment.

17 (13) The trustee shall make or cause to be made such an appraisal
18 and investigation of the affairs and property of the debtor as to enable the
19 trustee to estimate with reasonable accuracy the financial situation of the
20 debtor and the cause of the debtor's financial difficulties or insolvency and
21 report the result of the appraisal and investigation to the meeting of the
22 creditors.

23 (14) The trustee shall, when filing a proposal under section 44 (1),
24 file with the proposal:

25 (a) a statement indicating the projected cashflow of the insolvent
26 person for the expected duration of the proposal in this section referred to as
27 them "cash flow statement", prepared by the person making the proposal,
28 reviewed for its reasonableness by the trustee and signed by the trustee and
29 the person making the proposal;

30 (b) a report on the reasonableness of the cashflow statement, in the

1 prescribed form, prepared and signed by the trustee; and

2 (c) a report containing prescribed representations by the person
3 making the proposal regarding the preparation of the cash-flow statement, in
4 the prescribed form, prepared and signed by the person making the proposal.

5 (15) Subject to subsection (16), any creditor may obtain a copy of the cash flow
6 statement on request made to the trustee.

7 (16) The Court may order that a cash-flow statement or any part of
8 that statement not be released to some or all of the creditors pursuant to
9 subsection (15) where it is satisfied that:

10 (a) such release would unduly prejudice the insolvent person; and

11 (b) non-release would not unduly prejudice the creditor or creditors in
12 question.

13 (17) If the trustee acts in good faith and takes reasonable care in
14 reviewing the cash flow statement, the trustee is not liable for loss or damage to
15 any person resulting from that person's reliance on the cash flow statement.

16 (18) Subject to any direction of the Court under section 27 (2) (a), the
17 trustee under a proposal in respect of an insolvent person shall, for the purpose
18 of monitoring the business and financial affairs, have access to and examine the
19 property of the insolvent person, including the premises, books, records and
20 other financial documents, to the extent necessary to adequately assess the
21 business and financial affairs of the insolvent person, from the filing of the
22 proposal until the proposal is approved by the Court or the insolvent person
23 becomes bankrupt, and shall:

24 (a) file a report on the state of the business and financial affairs of the
25 insolvent person containing any prescribed information:

26 (i) with the Supervisor forthwith after ascertaining any material
27 adverse change in the insolvent person's projected cash flow or financial
28 circumstances of the insolvent person; and

29 (ii) with the Court at such other times as the Court may order; and

30 (b) send a report on the state of the business and financial affairs of the

1 insolvent person, containing any prescribed information, to the creditors
2 and the Supervisor, in the prescribed manner, at least ten days before the
3 meeting of creditors referred to in section 32 (1).

4 (19) An interim receiver who has been directed under section 10
5 (2) to carry out the duties set out in subsection (18) in substitution for the
6 trustee shall deliver a report on the state of business and financial affairs, of
7 the insolvent person, containing any prescribed information, to the trustee at
8 least three days before the meeting of creditors referred to in section 32 (1).

9 (20) The Court may, on application by the trustee, the interim
10 receiver, if any, appointed under section 10 or a creditor, at any time before
11 the meeting of creditors, declare that the proposal is deemed to have been
12 refused by the creditors if the Court is satisfied that:

13 (a) the debtor has not acted, or is not acting, in good faith and with
14 due diligence;

15 (b) the proposal will not likely be accepted by the creditors; or

16 (c) the creditors as a whole would be materially prejudiced if the
17 application under this subsection is rejected.

18 **27.-(1)** Subject to subsections (2) to (4), a secured creditor to
19 whom a proposal has been made in respect of a particular secured claim may
20 respond to the proposal by filing with the trustee a proof of secured claim in
21 the prescribed form, and may vote on all questions relating to the proposal,
22 in respect of that entire claim, and sections 115 to 117 apply, in so far as they
23 are applicable, with such modifications as the circumstances require, to
24 proofs of secured claim.

Filing of proof
of secured claim

25 (2) Where a proposal made to a secured creditor in respect of a
26 secured claim includes a proposed assessed value of the security in respect
27 of the claim, the secured creditor may file with the trustee a proof of secured
28 claim in the prescribed form, and may vote as a secured creditor on all
29 questions relating to the proposal in respect of an amount equal to the lesser
30 of:

1 (a) the amount of the claim; and

2 (b) the proposed assessed value of the security.

3 (3) Where the proposed assessed value is less than the amount of the
4 claim of the secured creditor, the secured creditor may file with the trustee a
5 proof of claim in the prescribed form, and may vote as an unsecured creditor on
6 all questions relating to the proposal in respect of an amount equal to the
7 difference between the amount of the claim and the proposed assessed value.

8 (4) Where a secured creditor is dissatisfied with the proposed
9 assessed value of his security, the secured creditor may apply to the Court
10 within fifteen days after the proposal is sent to the creditors, to have the
11 proposed assessed value revised, and the Court may revise the proposed
12 assessed value, in which case the revised value applies for the purposes of this
13 Part.

14 (5) Where no secured creditor having a secured claim of a particular
15 class files a proof of secured claim at or before the meeting of creditors, the
16 secured creditors having claims of that class shall be deemed to have voted for
17 the refusal of the proposal.

Where secured
creditors may
not vote

18 **28.** A secured creditor to whom a proposal has not been made in
19 respect of a particular secured claim may not file a proof of secured claim in
20 respect of that claim.

Secured claims
upon bankruptcy

21 **29.** On the bankruptcy of an insolvent person who made a proposal to
22 one or more secured creditors in respect of secured claims, any proof of secured
23 claim filed pursuant to section 27 ceases to be valid or effective, and sections
24 103 and 118 to 135 apply in respect of a proof of claim filed by any secured
25 creditor in the bankruptcy.

Notice of
intention

26 **30.-(1)** Before lodging a copy of a proposal with a licensed trustee, an
27 insolvent person may file a notice of intention, in the prescribed form, with the
28 Supervisor stating:

29 (a) the insolvent person's intention to make a proposal;

30 (b) the name and address of the licensed trustee who has consented, in

1 wrwqdc writing, to act as the trustee under the proposal; and

2 (c) the names of the creditors with **claims amounting to two**
3 **hundred and fifty dollars or more and the amounts of their claims as known**
4 **or shown by the debtor's books, and attaching to the proposal a copy of the**
5 **consent referred to in paragraph (b).**

6 (2) Within ten days after filing a notice of intention under
7 subsection (1), the insolvent person shall **file with the Supervisor:**

8 (a) a statement indicating the **project and cash-flow of the insolvent**
9 **person (in this section referred to as the "cashflow statement"), prepared by**
10 **the insolvent person, reviewed for its reasonableness by the trustee under the**
11 **notice of intention, and signed by the trustee and the insolvent person;**

12 (b) a report on the reasonableness of the cash-flow statement, in
13 the prescribed form, prepared and signed by the trustee; and

14 (c) a report containing prescribed representations by the insolvent
15 person regarding the preparation of the cash flow statement, in the
16 prescribed form, prepared and signed by the insolvent person.

17 (3) Subject to subsection (4), any creditor may obtain a copy of the
18 cash-flow statement on request made to the trustee.

19 (4) The Court may order that a cash-flow statement or any part
20 thereof not be released to some or all of the creditors pursuant to subsection
21 (3), where it is satisfied that-

22 (a) such release would unduly prejudice the insolvent person; and

23 (b) non-release would not unduly prejudice the creditor or
24 creditors in question.

25 (5) If the trustee acts in good faith and takes reasonable care in
26 reviewing the cash-flow statement, the trustee is not liable for loss or
27 damage to any person resulting from that person's reliance on the cash-flow
28 statement.

29 (6) Within five days after the filing of a notice of intention under
30 subsection (1), the trustee named in the notice shall send to every known

1 creditor, in the prescribed manner, a copy of the notice.

2 (7) Subject to any direction of the Court under section 10 (2) (a), the
3 trustee, under a notice of intention, in respect of an insolvent person shall-

4 (a) for the purpose of monitoring the insolvent person's business and
5 financial affairs, have access to and examine the insolvent person's property,
6 including his premises, books, records and other financial documents, to the
7 extent necessary to adequately assess the insolvent person's business and
8 financial affairs, from the filing of the notice of intention until a proposal is
9 filed or the insolvent person becomes bankrupt; and

10 (b) file a report on the state of the insolvent person's business and
11 financial affairs, containing any prescribed information:

12 (i) with the Supervisor, forthwith after ascertaining any material
13 adverse change in the insolvent person's projected cash-flow or financial
14 circumstances; and

15 (ii) with the Court, at or before the hearing by the Court of any
16 application under subsection (9) and at such other times as the Court may
17 order.

18 (8) Where an insolvent person fails to comply with subsection (2), or
19 where the trustee fails to file a proposal with the Supervisor under section 44
20 (1) within a period of thirty days after the day the notice of intention was filed
21 under subsection (1), or within any extension of that period granted under
22 subsection (9):

23 (a) the insolvent person is, on the expiration of that period or that
24 extension, as the case may be, deemed to have made an assignment;

25 (b) the trustee shall forthwith file a report thereof in the prescribed
26 form with the receiver, who shall issue a certificate of assignment in the
27 prescribed form, which has the same effect for the purposes of this Act as an
28 assignment filed pursuant to section 25; and

29 (c) the trustee shall, within five days after the day the certificate
30 mentioned in paragraph

1 (b) is issued, send notice of the meeting of creditors under section
2 93, at which meeting the creditors may by ordinary resolution,
3 notwithstanding section 186, affirm the appointment of the trustee or
4 appoint another licensed trustee in lieu of that trustee.

5 (9) The insolvent person may, before the expiration of the thirty-
6 day period mentioned in subsection (8) or any extension thereof granted
7 under this subsection, apply to the Court for an extension, or further
8 extension, as the case may be, of that period, and the Court may grant such
9 extensions, not exceeding forty-five days for any individual extension and
10 not exceeding in the aggregate five months after the expiration of the thirty-
11 day period mentioned in subsection (8), if satisfied on each application that-

12 (a) the insolvent person has acted, and is acting, in good faith and
13 with due diligence;

14 (b) the insolvent person would likely be able to make a viable
15 proposal if the extension being applied for were granted; and

16 (c) no creditor would be materially prejudiced if the extension
17 being applied for were granted.

18 (10) The Court may, on application by the trustee, the interim
19 receiver, if any, appointed under section 10 (1), or a creditor, declare
20 terminated, before its actual expiration, the thirty-day period mentioned in
21 subsection (8) or any extension thereof granted under subsection (9), if the
22 Court is satisfied that:

23 (a) the insolvent person has not acted, or is not acting, in good faith
24 and with due diligence;

25 (b) the insolvent person will not likely be able to make a viable
26 proposal before the expiration of the period in question;

27 (c) the insolvent person will not likely be able to make a proposal,
28 before the expiration of the period in question, that will be accepted by the
29 creditors, or rejected, and where the Court declares the period in question
30 terminated, subsection 8(a) to (c) thereupon apply as if that period had

1 expired.

Trustee to assist
in preparation
of proposal

2 **31.** The trustee under a notice of intention shall, between the filing of
3 the notice of intention and the filing of a proposal, advise on and participate in
4 the preparation of the proposal, including negotiations thereon.

Meeting of
creditors

5 **32.**-(1) The trustee shall call a meeting of creditors, to be held within
6 twenty-one days after the filing of the proposal with the Supervisor under
7 section 44(1), by sending in the prescribed manner to every known creditor
8 and to the Supervisor, at least ten days before the meeting:

9 (a) a notice of the date, time and place of the meeting;

10 (b) a condensed statement of the assets and liabilities;

11 (c) a list of the creditors with claims amounting to two hundred and
12 fifty dollars or more and the amounts of their claims as known or shown by the
13 books of the debtor;

14 (d) a copy of the proposal;

15 (e) the prescribed forms, in blank, of:

16 (i) proof of claim;

17 (ii) in the case of a secured creditor to whom the proposal was made,
18 proof of secured claim; and

19 (iii) proxy, if not already sent; and

20 (f) a voting letter as prescribed.

21 (2) The Supervisor, or the nominee thereof, shall be the Chairman of
22 the meeting referred to in subsection (1) and shall decide any questions or
23 disputes arising at the meeting, and any creditor may appeal any decision of the
24 meeting to the Court.

Adjournment of
meeting

25 **33.** Where the creditors by ordinary resolution at the meeting at which
26 a proposal is being considered so require, the meeting shall be adjourned to
27 such time and place as may be fixed by the Chairman.

Proven creditors
may vote prior
to meeting

28 **34.** Any creditor who has proved a claim, whether secured or
29 unsecured, may indicate assent to or dissent from the proposal by mail,
30 personal delivery, or printed electronic transmission delivered to the trustee

1 prior to the meeting, and any assent or dissent, if received by the trustee at or
2 prior to the meeting, has effect as if the creditor had been present and had
3 voted at the meeting.

4 35.-(1) The creditors may, in accordance with this section, resolve
5 to accept or may refuse the proposal as made or as altered at the meeting or
6 any adjournment of the meeting.

Creditors may
accept or refuse
proposal

7 (2) For the purposes of subsection (1):

8 (a) the following creditors with proven claims are entitled to vote:

9 (i) all unsecured creditors; and

10 (ii) those secured creditors in respect of whose secured claims the
11 proposal was made;

12 (b) the creditors shall vote by class, according to the class of their
13 respective claims, and for that purpose:

14 (i) all unsecured claims constitute one class, unless the proposal
15 provides for more than one class of unsecured claims; and

16 (ii) the classes of secured claims shall be determined as provided
17 by section 26(4);

18 (c) the votes of the secured creditors do not count for the purpose of
19 this section, but are relevant only for the purpose of section 44 (4); and

20 (d) the proposal shall be deemed to be accepted by the creditors if,
21 and only if, all classes of unsecured creditors vote for the acceptance of the
22 proposal by a majority in number and two-thirds in value of the unsecured
23 creditors of each class present, personally or by proxy, at the meeting and
24 voting on the resolution.

25 (3) Where there is no quorum of secured creditors in respect of a
26 particular class of secured claims, the secured creditors having claims of that
27 class shall be deemed to have voted for the refusal of the proposal.

28 (4) A creditor who is related to the debtor may vote against but not
29 for the acceptance of the proposal. (5) The trustee, as a creditor, may not vote
30 on the proposal.

Proposal may include terms of supervision	1	36. At a meeting to consider a proposal, the creditors, with the consent
	2	of the debtor, may include such provisions or terms in the proposal with respect
	3	to the supervision of the affairs of the debtor as they may deem advisable.
Creditors may appoint inspectors	4	37. The creditors may appoint one or more, but not exceeding five
	5	inspectors of the estate of the debtor, who shall have the powers of an inspector
	6	under this Act, subject to any extension or restriction of those powers by the
	7	terms of the proposal.
Effect of refusal of proposal by creditors	8	38. Where the creditors refuse a proposal in respect of an insolvent
	9	person:
	10	(a) the insolvent person is deemed to have made an assignment at the
	11	time of the refusal;
	12	(b) the trustee shall forthwith file a report in respect of the refusal of
	13	the proposal in the prescribed form with the Supervisor, who shall thereupon
	14	issue a certificate of assignment in the prescribed form, which has the same
	15	effect for the purposes of this Act as an assignment filed pursuant to section 25;
	16	and
	17	(c) the trustee shall either:
	18	(i) forthwith call a meeting of creditors present at that time, which
	19	meeting shall be deemed to be a meeting called under section 93; or
	20	(ii) if no quorum exists for the purpose of subparagraph (i), send a
	21	notice, within five days after the day the certificate mentioned in paragraph (b)
	22	is issued, of the meeting of creditors under section 93, and at either meeting the
	23	creditors may by ordinary resolution, notwithstanding section 186, affirm the
	24	appointment of the trustee or appoint another licensed trustee in lieu of that
	25	trustee.
Substitution of trustee by Court order	26	39. Where a declaration has been made under section 26 (20) or 30
	27	(10), the Court may, if it is satisfied that it would be in the best interests of the
	28	creditors to do so, appoint a trustee in lieu of the trustee appointed under the
	29	notice of intention or proposal that was filed.
Trustee to apply to Court for approval of proposal	30	40. On acceptance of a proposal by the creditors, the trustee shall:

1 (a) within five days after the acceptance, apply to the Court for an
2 appointment for a hearing of the application for the approval by the Court of
3 the proposal;

4 (b) send a notice of the hearing of the application, in the prescribed
5 manner and at least fifteen days before the date of the hearing, to the debtor,
6 to every creditor who has proved a claim, whether secured or unsecured, to
7 the person making the proposal and to the Supervisor;

8 (c) forward a copy of the report referred to in paragraph (d) to the
9 Supervisor at least ten days before the date of the hearing; and

10 (D) at least two days before the date of the hearing, file with the
11 Court, in the prescribed form, a report on the proposal.

12 41.-(1) The Court shall, before approving the proposal, hear a
13 report of the trustee in the prescribed form respecting the terms of the
14 proposal and the conduct of the debtor, and, in addition, shall hear the
15 trustee, the debtor, the person making the proposal, any opposing, objecting
16 or dissenting creditor and such further evidence as the Court may require.

Trustee to prepare
report to Court

17 (2) Where the Court is of the opinion that the terms of the proposal
18 are not reasonable or are not calculated to benefit the general body of
19 creditors, the Court shall refuse to approve the proposal.

20 (3) Where any of the facts mentioned in section 165 or 169 are
21 proved against the debtor, the Court shall refuse to approve the proposal
22 unless it provides reasonable security for the payment of not less than
23 twenty-five cents on the dollar on all the unsecured claims provable against
24 the estate of the debtor or such percentage thereof as the Court may direct.

25 42.-(1) No proposal shall be approved by the Court that does not
26 provide for the payment in priority to other claims of all claims directed to be
27 so paid in the distribution of the property of a debtor and for the payment of
28 all proper fees and expenses of the trustee on and incidental to the
29 proceedings arising out of the proposal or in the bankruptcy.

Payment of preferred
claims and trustee's
costs

30 (2) No proposal in respect of an employer shall be approved by the

1 Court unless-

2 (a) it provides for payment to the employees and former employees,
3 immediately after the Court approval of the proposal of amounts equal to the
4 amounts that they would be qualified to receive under section 127 (1) (c), if the
5 employer became bankrupt on the date of the filing of the notice of intention, or
6 proposal if no notice of intention was filed, as well as wages, salaries,
7 communications or compensation for services rendered after that date and
8 before the Court approval of the proposal, together with, in the case of
9 travelling salesmen, disbursements properly incurred by those salesmen in and
10 about the bankrupt's business during the same period; and

11 (b) the Court is satisfied that the employer can and will make the
12 payments as required under paragraph (a).

13 (3) For the purpose of voting on any question relating to a proposal in
14 respect of an employer, no person has a claim for an amount referred to in
15 subsection (2) (a).

16 (4) All monies payable under the proposal shall be paid to the trustee
17 and, after payment of all proper fees and expenses mentioned in subsection (1),
18 shall be distributed by him to the creditors.

19 (5) Where the proposal provides for the distribution of property in the
20 nature of promissory notes or other evidence of obligations by or on behalf of
21 the debtor or, when the debtor is a corporation, shares in the capital stock of the
22 corporation, the property shall be dealt with in the manner set out in subsection
23 (4).

24 (6) Section 137 applies to all distributions made to the creditors by the
25 trustee pursuant to subsection (4) or (5).

26 (7) Subject to subsections (1), (2) and (3), the Court may either
27 approve or refuse to approve the proposal.

28 **43.**-(1) The approval by the Court of a proposal made after
29 bankruptcy operates to annul the bankruptcy and to re-vest in the debtor, or in
30 such other person as the Court may approve, all the right, title and interest of the

Where proposal
approved by
Court made by
bankrupt

1 trustee in the property of the debtor, unless the terms of the proposal
2 otherwise provide.

3 (2) Where the Court refuses to approve a proposal in respect of an
4 insolvent person, a copy of which has been filed under section 44:

5 (a) the insolvent person is deemed to have made an assignment at
6 the time of the refusal;

7 (b) the trustee shall forthwith file a report in respect of the refusal of
8 the proposal in the prescribed form with the Supervisor, who shall then issue
9 a certificate of assignment in the prescribed form, which has the same effect
10 for the purposes of this Act as an assignment filed pursuant to section 25; and

11 (c) the trustee shall, within five days after the day the certificate
12 mentioned in paragraph (b) is issued, send notice of the meeting of creditors
13 under section 93, at which meeting the creditors may by ordinary resolution,
14 notwithstanding section 186, affirm the appointment of the trustee or
15 appoint another licensed trustee in lieu of that trustee.

16 (3) No costs incurred by a debtor on or incidental to an application
17 to approve a proposal, other than the costs incurred by the trustee, shall be
18 allowed out of the estate of the debtor if the Court refuses to approve the
19 proposal.

20 **44.-(1)** Where a proposal is made in respect of an insolvent person,
21 the trustee shall file a copy of the proposal with the Supervisor.

Trustee to file
proposal with
Supervisor

22 (2) Except in respect of claims referred to in section 192 (11),
23 where a proposal is made in respect of an insolvent person, the time with
24 respect to which the claims of creditors shall be determined is the time of the
25 filing of:

26 (a) the notice of intention; or

27 (b) the proposal, if no notice of intention was filed.

28 (3) Except in respect of claims referred to in section 192 (11),
29 where a proposal is made in respect of a bankrupt, the time with respect to
30 which the claims of creditors shall be determined is the date on which the

1 debtor became bankrupt.

2 (4) A proposal accepted by the creditors and approved by the Court is
3 binding on the creditors in respect of:

4 (a) all unsecured claims; and

5 (b) the secured claims in respect of which the proposal was made and
6 that were in classes in which the secured creditors voted for the acceptance of
7 the proposal by a majority in number and two-thirds in value of the secured
8 creditors present, personally or by proxy, at the meeting and voting on the
9 resolution to accept the proposal, but does not release the insolvent person from
10 the debts and liabilities referred to in section 170, unless the creditor assents to
11 so releasing the insolvent person.

12 (5) The acceptance of a proposal by a creditor does not release any
13 person who would not be released under this Act by the discharge of the debtor.

Default in
performance
of proposal

14 **45. Where:**

15 (a) default is made in the performance of any provision in a proposal;

16 (b) the default is not waived:

17 (i) by the inspectors; or

18 (ii) if there are no inspectors, by the creditors; and

19 (c) the default is not remedied by the insolvent person within the
20 prescribed time, the trustee shall, within such time and in such form and
21 manner as are prescribed, so inform all the creditors and the Supervisor.

Court may annul
the proposal

22 **46.-(1)** Where default is made in the performance of any provision in
23 a proposal, or where it appears to the Court that the proposal cannot continue
24 without injustice or undue delay or that the approval of the Court was obtained
25 by fraud, the Court may, on application with such notice as the Court may direct
26 to the debtor, and if applicable to the trustee and to the creditors, annul the
27 proposal.

28 (2) An order made under subsection (1) shall be made without
29 prejudice to the validity of any sale, disposition of property or payment duly
30 made, or anything done under or in pursuance of the proposal, and

1 notwithstanding the annulment of the proposal, a guarantee given pursuant
2 to the proposal remains in full force and effect in accordance with its terms.

3 (3) A proposal, although accepted or approved, may be annulled by
4 order of the Court at the request of the trustee or of any creditor whenever the
5 debtor is afterwards convicted of any offence under this Act.

6 (4) On the annulment of a proposal, the debtor shall be deemed to
7 have made an assignment and the order annulling the proposal shall so state.

8 (5) Where an order annulling a proposal has been made, the trustee
9 shall, within five days after the order is made, send notice of the meeting of
10 creditors under section 93, at which meeting the creditors may by ordinary
11 resolution, notwithstanding section 186, affirm the appointment of the
12 trustee or appoint another licensed trustee in lieu of that trustee.

13 (6) Where an order annulling the proposal described in subsection
14 (5) has been made, the trustee shall file a report thereof in the prescribed
15 form with the Supervisor, who shall then issue a certificate of assignment in
16 the prescribed form, which has the same effect for the purposes of this Act as
17 an assignment filed pursuant to section 25.

18 47. For greater certainty, where an insolvent person in respect of
19 whom a proposal has been filed under section 44 makes an assignment at
20 any time before the Court has approved the proposal, the date of the
21 bankruptcy is the date of the filing of the assignment.

Date of
assignment
where Court
approval not
obtained

22 48. A proposal made conditional on the purchase of shares or
23 securities or on any other payment or contribution by the creditors shall
24 provide that the claim of any creditor who elects not to participate in the
25 proposal shall be valued by the Court and shall be paid in cash on approval of
26 the proposal.

Court to value
claims where
creditor
participation
required

27 49.-(1) Where a notice of intention or a proposal has been filed in
28 respect of an insolvent person, no person may terminate or amend any
29 agreement with the insolvent person, or claim an accelerated payment under
30 any agreement with the insolvent person by reason only that:

Agreements not
to be terminated
or altered

- 1 (a) the insolvent person is insolvent; or
- 2 (b) a notice of intention or a proposal has been filed in respect of the
- 3 insolvent person.
- 4 (2) Where the agreement referred to in subsection (1) is a lease or a
- 5 licensing agreement, subsection (1) shall be read as including the following
- 6 paragraph:
- 7 "(c) the insolvent person has not paid rent or royalties, as the case may
- 8 be, or other payments of a similar nature, in respect of a period preceding the
- 9 filing of:
- 10 (i) the notice of intention, if one was filed; or
- 11 (ii) the proposal, if no notice of intention was filed".
- 12 (3) Where a notice of intention or a proposal has been filed in respect
- 13 of an insolvent person, no service provider may discontinue service to that
- 14 insolvent person by reason only that:
- 15 (a) the insolvent person is insolvent;
- 16 (b) a notice of intention or a proposal has been filed in respect of the
- 17 insolvent person; or
- 18 (c) the insolvent person has not paid for services rendered, or material
- 19 provided, before the filing of the proposal.
- 20 (4) Nothing in subsections (1) to (3) shall be construed:
- 21 (a) as prohibiting a person from requiring immediate payment for
- 22 goods, services, use of leased or licensed property or other valuable
- 23 consideration provided after:
- 24 (i) the notice of intention, if one was filed; or
- 25 (ii) the proposal, if no notice of intention was filed; or
- 26 (b) as requiring the further advance of money or credit.
- 27 (5) Any provision in an agreement that has the effect of providing for
- 28 or permitting anything that in substance, is contrary to subsections (1) to (3) is
- 29 of no force or effect.
- 30 (6) The Court may, on application by a party to an agreement or by a

1 service provider, declare that subsections (1) to (3) do not apply or apply
2 only to the extent declared by the Court, where the applicant satisfies the
3 Court that the operation of those subsections would be likely to cause
4 significant financial hardship.

5 (7) Subsection (1) does not apply:

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

7 (b) to prevent a Nigeria clearing agent or group clearer from
8 ceasing to act as such for an insolvent person.

9 (8) In subsections (7) and (9), "eligible financial contract" means:

10 (a) a currency or interest rate swap agreement;

11 (b) a basis swap agreement;

12 (c) a spot, future, forward, or other foreign exchange agreement;

13 (d) a cap, collar or floor transaction;

14 (e) a commodity swap;

15 (f) a forward rate agreement;

16 (g) a repurchase or reverse repurchase agreement;

17 (h) a spot, future, forward or other commodity contract;

18 (i) an agreement to buy, sell, borrow or lend securities, to clear or
19 settle securities transactions or to act as a depository for securities;

20 (j) any derivative, combination or option in respect of, or
21 agreement similar to, an agreement or contract referred to in paragraphs (a)
22 to (i);

23 (k) any master agreement in respect of any agreement or contract
24 referred to in paragraphs (a) to (j);

25 (l) any master agreement in respect of a master agreement referred
26 to in paragraph (k);

27 (m) a guarantee of the liabilities under an agreement or contract
28 referred to in paragraphs (a) to (l); or

29 (n) any agreement of a kind prescribed.

30 (9) For greater certainty, where an eligible financial contract

1 entered into before the filing in respect of an insolvent person of:

2 (a) a notice of intention; or

3 (b) a proposal, where no notice of intention was filed, is terminated on
4 or after that filing, the setting off of the obligations between the insolvent
5 person and the other parties to the eligible financial contract, in accordance
6 with its provisions, shall be permitted; and if net termination values determined
7 in accordance with the eligible financial contract are owed by the insolvent
8 person to another party to the eligible financial contract, that other party shall
9 be deemed, for the purposes of section 55, to be a creditor of the insolvent
10 person with a claim provable in bankruptcy in respect of those net termination
11 values.

12 (10) In this section:

13 "basis swap agreement" means an interest rate swap in which contracting
14 parties exchange obligations to make interest rate payments;

15 "cap transaction" means an agreement providing the right to benefit from
16 changes in interest or currency rate involving the setting of a maximum or
17 upper limit;

18 "collar transaction" means an agreement providing the right to benefit from
19 changes in interest or currency rate involving the setting of both a minimum or
20 lower limit and a maximum or upper limit;

21 "commodity swap" means a lending arrangement in which repayment is in a
22 commodity or is based on a commodity price;

23 "currency swap agreement" means a transaction in which two counter-parties
24 exchange specific amounts of two different currencies at the outset and repay
25 over time in accordance with a predetermined rule that reflects interest
26 payments and possible amortization of principal; "floor transaction" means an
27 agreement providing the right to benefit from changes in interest or currency
28 rate involving the setting of a maximum or upper limit;

29 "forward agreement" means a cash contract in which two parties agree to the
30 exchange of an asset to be delivered by the seller to the buyer at a specific future

1 date;

2 "future contract" means a contract under which one party agrees to deliver to

3 the other party on a specified future date, a specified asset at a price agreed at

4 the time of the contract and payable on the future date;

5 "interest rate swap agreement" means an agreement between two parties to

6 exchange series payments based on an agreed principal amount;

7 "master agreement" means a standard agreement that covers all transactions

8 between the parties;

9 "net termination value" means the net amount obtained after setting off the

10 mutual obligations between the parties to an eligible financial contract in

11 accordance with its provisions;

12 "repurchase agreement" means a financial agreement in which a dealer or

13 other holder of government securities sells the securities to a lender and

14 agrees to repurchase them at an agreed future date at an agreed price;

15 "reverse purchase agreement" means an overnight or similar term cash

16 equivalent investment that is collateralised by transfer of ownership in a

17 security;

18 "spot agreement" means an arrangement for expected annual immediate

19 delivery of a currency commodity at a stated rate of exchange or price.

20 Certificate of performance.

21 50. Where a proposal is fully performed, the trustee shall give a certificate to

22 that effect, in the prescribed form, to the debtor and to the Supervisor.

23 51. All the provisions of this Act, in so far as they are applicable,

24 apply, with such modifications as the circumstances require, to proposals

25 made under this Part.

Mutatis mutandis
provision

26 PART VI - PROPERTY OF THE BANKRUPT

27 52. The property of a bankrupt divisible among his creditors shall

28 not comprise-

Property of a
bankrupt

29 (a) property held by the bankrupt in trust for any other person; or

30 (b) any property that as against the bankrupt is prescribed to be

1 exempt from execution or seizure, but it shall comprise:

2 (c) all property wherever situated of the bankrupt at the date of the
3 bankruptcy or that may be acquired by or devolve on the bankrupt before the
4 discharge of the bankrupt; and

5 (d) such powers in or over or in respect of the property as might have
6 been exercised by the bankrupt for the benefit of the bankrupt.

Excess income
of individuals
bankrupts to be
as prescribed

7 **53.** -(1) Standards for determining the portion of the total income of
8 an individual bankrupt that exceed that which is necessary to enable the
9 bankrupt to maintain a reasonable standard of living shall be as prescribed.

10 (2) The trustee shall:

11 (a) having regard to the Bankruptcy Rules and to the personal and
12 family situation of the bankrupt, fix the amount that the bankrupt is required to
13 pay to the estate of the bankrupt;

14 (b) inform the Supervisor in writing of the amount fixed under
15 paragraph (a); and

16 (c) take reasonable measures to ensure that the bankrupt complies
17 with the requirement to pay.

18 (3) The trustee may, at any time, amend an amount fixed under
19 subsection (2), to take into account:

20 (a) material changes that have occurred in the personal or family
21 situation of the bankrupt; or

22 (b) a recommendation made by the Supervisor under subsection (4).

23 (4) Where the Supervisor determines that the amount required to be
24 paid by the bankrupt under subsection (2) or (3) is substantially not in
25 accordance with the applicable standards established under subsection (1), the
26 Supervisor shall recommend to the trustee and to the bankrupt an amount
27 required to be paid that the Supervisor determined is in accordance with the
28 applicable standards.

29 (5) Where the trustee and the bankrupt are not in agreement with the
30 amount that the bankrupt is required to pay under subsection (2) or (3), the

1 trustee shall, forthwith, in the prescribed form, send to the Supervisor a
2 request that the matter be determined by mediation and send a copy of the
3 request to the bankrupt.

4 (6) On the request in writing of a creditor made within thirty days
5 after the date of bankruptcy or an amendment referred to in subsection (3),
6 the trustee shall, within the five days following the thirty-day period, send to
7 the Supervisor a request in the prescribed form that the matter of the amount
8 the bankrupt is required to pay under subsection (2) or (3) be determined by
9 mediation and send a copy of the request to the bankrupt and the creditor.

10 (7) A mediation shall be in accordance with prescribed procedures.

11 (8) Documents contained in a file on the mediation of a matter
12 under this section form part of the records referred to in section 178 (2).

13 (9) Where:

14 (a) the trustee has not implemented a recommendation made by the
15 Supervisor under subsection (4);

16 (b) the issue submitted to mediation requested under subsection (5)
17 or (6) is not resolved; or

18 (c) the bankrupt fails to comply with the requirement to pay as
19 determined, under this section, the trustee may, on the request of the
20 inspectors, any of the creditors or the Supervisor, apply to the Court for the
21 hearing of the matter, and the Court may, on the hearing, in accordance with
22 the standards established under subsection (1) and having regard to the
23 personal and family situation of the bankrupt, by order, fix the amount that
24 the bankrupt is required to pay to the estate of the bankrupt.

25 (10) The Court may fix an amount that is fair and reasonable:

26 (a) as salary, wages or other remuneration for the services being
27 performed by a bankrupt for a person employing the bankrupt; or

28 (b) as payment for or commission in respect of any services being
29 performed by a bankrupt for a person, where the person is related to the
30 bankrupt, and the Court may, by order, determine the part of the salary,

1 wages or other remuneration, or the part of payment or commission, that shall
2 be paid to the trustee on the basis of the amount so fixed by the Court, unless it
3 appears to the Court that the services have been performed for the benefit of the
4 bankrupt and are not of any substantial benefit to the person for whom they
5 were performed.

6 (11) On the application of any interested person, the Court may, at any
7 time, amend an order made under this section to take into account material
8 changes that have occurred in the personal or family situation of the bankrupt.

9 (12) An order of the Court made under this section may be served on a
10 person from whom the bankrupt is entitled to receive money and in such case:

11 (a) the order binds the person to pay to the estate of the bankrupt the
12 amount fixed by the order; and

13 (b) if the person fails to comply with the terms of the order, the Court
14 may, on the application of the trustee, order the person to pay the trustee the
15 amount of money that the estate of the bankrupt would have received had the
16 person complied with the terms of the order.

17 (13) For the purposes of section 221, an application referred to in
18 subsection (9) is deemed to be a proceeding for the benefit of the estate.

19 (14) For the purposes of this section:

20 (a) "total income" referred to in subsection (1) includes,
21 notwithstanding section 52(b), all revenues of a bankrupt of whatever nature or
22 source; and

23 (b) a requirement that a bankrupt pay an amount to the estate of the
24 bankrupt that is enforceable against all property of the bankrupt, other than
25 property referred to in section 52(b).

Where
assignment
of certain
payments
ineffectual stay
of proceedings

26 **54.** -(1) An assignment of existing or future wages made by a debtor
27 before the debtor became bankrupt is of no effect in respect of wages earned
28 after the bankruptcy.

29 (2) An assignment made by a debtor of existing or future amounts
30 receivable as payment for or commission or professional fees in respect of

1 services rendered by a debtor who is a natural person before the debtor
2 became bankrupt is of no effect in respect of such amounts earned or
3 generated after the bankruptcy.

4 **55.**-(1) Subject to subsections (2) to (4) and section 57, on the filing
5 of a notice of intention under section 30 (1) in respect of an insolvent person-

Stay of proceedings
upon filing of
notice of intention
or proposal

6 (a) no creditor has any remedy against the insolvent person or the
7 insolvent person's property, or shall commence or continue any action,
8 execution or other proceedings, for the recovery of a claim provable in
9 bankruptcy, until the trustee has been discharged or the insolvent person
10 becomes bankrupt; and

11 (b) no provision of a security agreement between the insolvent
12 person and a secured creditor that provides, in substance, that on:

13 (i) the insolvent person's insolvency;

14 (ii) the default by the insolvent person of an obligation under the
15 security agreement; or

16 (iii) the filing by the insolvent person of a notice of intention under
17 section 30 (1) in respect of the insolvent person, the insolvent person ceases
18 to have such rights to use or deal with assets secured under the agreement as
19 the insolvent person would otherwise have, has any force or effect until the
20 trustee has been discharged or the insolvent person becomes bankrupt.

21 (2) The stays provided by subsection (1) do not apply:

22 (a) to prevent a secured creditor who took possession of secured
23 assets of the insolvent person for the purpose of realization before the notice
24 of intention under section 30 was filed from dealing with those assets;

25 (b) unless the secured creditor otherwise agrees, to prevent a
26 secured creditor who gave notice of intention under section 13 (1), to
27 enforce that creditor's security against the insolvent person more than ten
28 days before:

29 (i) a notice of intention was filed in respect of the insolvent person
30 under section 30; or

1 (ii) the proposal was filed, if no notice of intention under section 30
2 was filed from enforcing that security; or

3 (c) to prevent a secured creditor who gave notice of intention under
4 section 13(1) to enforce that creditor's security from enforcing the security if
5 the insolvent person has, under section 13(2), consented to the enforcement
6 action.

7 (3) Subject to sections 20, 69 and 118 to 125, the filing of a proposal
8 under section 44(1) does not prevent a secured creditor to whom the proposal
9 has not been made in respect of a particular security from realizing or otherwise
10 dealing with that security in the same manner as he would have been entitled to
11 realize or deal with it if this section had not been passed.

12 (4) Subject to sections 20, 69 and 118 to 125 where secured creditors
13 holding a particular class of secured claim voted for the refusal of a proposal, a
14 secured creditor holding a secured claim of that class may henceforth realize or
15 otherwise deal with his security in the same manner as he would have been
16 entitled to realize or deal with it if this section had not been passed.

Stay of proceedings
upon bankruptcy

17 **56.**-(1) Subject to subsection (2) and section 57, on the bankruptcy of
18 any debtor, no creditor has any remedy against the debtor or the debtor's
19 property or shall commence or continue any action, execution or other
20 proceedings, for the recovery of a claim provable in bankruptcy, until the
21 trustee has been discharged.

22 (2) Subject to sections 20, 69 and 118 to 125, the bankruptcy of a
23 debtor does not prevent a secured creditor from realizing or otherwise dealing
24 with his 70 security in the same manner as he would have been entitled to
25 realize or deal with it if this section had not been passed, unless the Court
26 otherwise orders, but in so ordering the Court shall not postpone the right of the
27 secured creditor to realize or otherwise deal with his security, except as
28 follows:

29 (a) in the case of a security for a debt that is due at the date the
30 bankrupt became bankrupt or that becomes due not later than six months

1 thereafter, that right shall not be postponed for more than six months from
2 that date; and

3 (b) in the case of a security for a debt that does not become due until
4 more than six months after the date the bankrupt became bankrupt, that right
5 shall not be postponed for more than six months from that date, unless all
6 instalments of interest that are more than six months in arrears are paid and
7 all other defaults of more than six months standing are cured, and then only
8 so long as no instalment of interest remains in arrears or defaults remain
9 unsecured for more than six months, but, in any event, not beyond the date at
10 which the debt secured by the security becomes payable under the
11 instrument or law creating the security.

12 57. A creditor who is affected by the operation of section 55 or 56
13 may apply to the Court for a declaration that those sections no longer operate
14 in respect of that creditor, and the Court may make such a declaration,
15 subject to any qualifications that the Court considers proper, if it is satisfied:

Aggrieved creditor
against certain
parties and claims

16 (a) that the creditor or person is likely to be materially prejudiced
17 by the continued operation of those sections; or

18 (b) that it is equitable on other grounds to make such a declaration.

19 58.-(1) Sections 55 and 56 do not apply in respect of a claim
20 referred to in section 112(4).

Stay ineffectual
against certain
parties and claims

21 (2) Notwithstanding subsection (1), no creditor with a claim
22 referred to in section 112(4) has any remedy, or shall commence or continue
23 any action, execution or other proceeding, against:

24 (a) property of a bankrupt that has vested in the trustee; or

25 (b) amounts that are payable to the estate of the bankrupt under
26 section 53.

27 General provisions

28 59.-(1) Every receiving order and every assignment made in
29 pursuance of this Act takes precedence over all judicial and other
30 attachments, garnishments, certificates of judgment, judgments operating

Aggrieved
creditor may
apply to Court
for removal of
stay

1 as executions or other process against the property of a bankrupt, except those
2 that have been completely executed by payment to the creditors or his agent,
3 and except the rights of a secured creditor.

4 (2) An execution levied by seizure and sale of the property of a
5 bankrupt is not invalid by reason only of its being an act of bankruptcy, and a
6 person who purchases the property in good faith under a sale by the Marshall
7 acquires a good title against the trustee.

Property of
bankrupt to vest
in trustee

8 **60.**-(1) On a receiving order being made or an assignment being filed
9 with the Supervisor, a bankrupt ceases to have any capacity to dispose or
10 otherwise deal with his property, which shall, subject to this Act and to the
11 rights of secured creditors, pass to and vest in the trustee named in the receiving
12 order or assignment, and in any case of change of trustee the property shall pass
13 from trustee to trustee without any conveyance, assignment or transfer.

14 (2) Subject to section 213 (1), the trustee may exercise the right to
15 transfer the property of the bankrupt to the same extent as the bankrupt might
16 have exercised that right if he had not become bankrupt.

Trustee to avail
himself of
other rights

17 **61.** The provisions of this Act shall not be deemed to abrogate or
18 supersede the substantive provisions of any other law or statute that are not in
19 conflict with this Act, and the trustee is entitled to avail himself of all rights and
20 remedies provided by that law or statute as supplementary to and in addition to
21 the rights and remedies provided by this Act.

Delivery of
seized property
to trustee

22 **62.**-(1) Where an assignment or a receiving order has been made, the
23 Marshal or other officer of any Court or other person having seized property of
24 the bankrupt under execution or attachment or any other process shall, on
25 receiving a copy of the assignment or the receiving order certified by the trustee
26 as a true copy, forthwith deliver to the trustee all that property.

27 (2) Where the Marshal has sold the property of a bankrupt or any part
28 of that property, he shall deliver to the trustee the money so realized.

29 (3) Any property of a bankrupt under seizure for rent or taxes shall, on
30 production of a copy of the receiving order or the assignment certified by the

1 trustee as a true copy, be delivered forthwith to the trustee, but the costs of
2 distress are a first charge on the property, and, if the property or any part
3 thereof has been sold, the money realized from the sale less the costs of
4 distress and sale be paid to the trustee.

5 63.-(1) Where the bankrupt is a lessee of premises, the trustee,
6 notwithstanding a condition, covenant or agreement in the lease, has the
7 right to hold and retain the leased premises until the expiration of the
8 tenancy on the same terms and conditions as the lessee might have held the
9 premises, had no bankruptcy occurred.

Trustee may
surrender lease
or deal with
leasehold interests

10 (2) The tenancy of the leased premises shall terminate upon the
11 trustee disclaiming the lease, but nothing shall prevent the trustee from
12 transferring or disposing of a lease, leasehold property, or any interest of the
13 lessee for the unexpired term to as full an extent as could have been done by
14 the lessee had the bankruptcy not occurred.

15 (3) If the lease contains a covenant, condition or agreement that the
16 lessee may not assign or sublet the premises without the leave or consent of
17 the landlord or other person, the covenant, condition or agreement shall be
18 of no effect in the case of such a transfer or disposition of the lease or
19 leasehold property if the Court, on the application of the trustee and after
20 notice of the application to the landlord, approves the transfer or disposition
21 proposed to be made of the lease or leasehold property.

22 (4) The entry of the trustee into possession of the leased premises
23 and the occupation of the premises by the trustee, while required for the
24 purposes of the administration by the trustee, shall not be evidence of an
25 intention on the part of the trustee to elect to retain the premises, nor effect
26 the trustee's right to disclaim the lease.

27 (5) If the trustee elects to retain the benefits of the lease and after
28 assigns the lease to a person approved by the Court, the liability of the trustee
29 and of the estate of the debtor is, subject to the provisions of subsection (6),
30 limited to the payment of rent for the period of time during which the trustee

1 remains in possession of the leased premises.

2 (6) The landlord has a preferred claim for any costs of distress and
3 arrears of rent not exceeding three months I rent accrued and due prior to the
4 date of bankruptcy and not exceeding the realization by the trustee from the
5 property on the premises under lease.

6 (7) The landlord may prove as a general creditor for all rent accrued
7 and due at the date of bankruptcy plus any accelerated rent, not exceeding three
8 months, that may be claimed under the lease, less the amount in subsection (6).

9 (8) Except as referred to in subsection (7), the landlord is not entitled
10 to prove as a creditor for rent for any portion of the unexpired term of the lease,
11 but the trustee shall pay to the landlord for the period during which the trustee
12 actually occupies and uses the premises from and after the date of bankruptcy a
13 rental calculated on the basis of the lease and payable in accordance with its
14 terms, but any payment already made to the landlord as rent in advance in
15 respect of that period, and any payment to be made to the landlord in respect of
16 accelerated rent, shall be credited against the amount payable by the trustee for
17 that period.

18 (9) Nothing in this section shall render the trustee personally liable
19 beyond the assets of the debtor in possession of the trustee.

Receiving order
and assignment
may be registered

20 **64.**-(1) Every true copy of a receiving order certified by the Registrar
21 or other officer of the Court that made it, and every true copy of an assignment
22 certified by the Supervisor, may be registered by or on behalf of the trustee in
23 respect of the whole or any part of real property that the bankrupt owns or in
24 which he has any interest or estate in the appropriate registry in accordance
25 with laws regarding same.

26 (2) Where the bankrupt is the registered owner of any land or charge,
27 the trustee, on registration of the documents referred to in subsection (1), is
28 entitled to be registered as owner of the land or charge free of all encumbrances
29 or charges mentioned in section 59 (1).

30 (3) Where a bankrupt owns any land or charge registered under any

1 Act, or has or is believed to have Receiving order and assignment may be
2 registered any interest or estate in that land or charge, and for any reason a
3 copy of the receiving order or assignment has not been registered under
4 subsection (1), a caveat or caution may be lodged with the official in charge
5 of the appropriate registry by the trustee, and any registration thereafter
6 made in respect of the land or charge is subject to the caveat or caution
7 unless it has been removed or cancelled under the provisions of the relevant
8 statute.

9 (4) The person to whom a trustee tenders or causes to be tendered
10 for registration any receiving order, assignment or other document shall
11 register it according to the ordinary procedure for registering documents
12 relating to real property.

13 (5) In the conveyance of real estate purchased from the trustee it
14 shall not be necessary to join as parties with the trustee persons in whom the
15 legal estate in any mortgage in fee or the legal interest in any mortgage term
16 of years or any other legal or equitable lien or security is vested, but such
17 conveyance when executed by the trustee shall be effectual to vest in the
18 purchase the real estate purported to be conveyed as if the person having lien
19 or security, whether the same come within the purchase money or not, had
20 been made parties to and had executed the said conveyance and had thereby
21 granted, transferred, surrendered or released the same.

22 (6) Every deed, conveyance, assignment, surrender or other
23 assurance relating solely to freehold or leasehold property or to any
24 mortgage, charge, or other encumbrance on, or any estate, right, or interest
25 in, any real or personal property which is part of the estate of the bankrupt
26 and which after the execution of the deed, conveyance, assignment,
27 surrender or other assurance, either at law or in equity, is or remains the
28 estate of the bankrupt or the trustee, and every power of attorney, proxy
29 paper, writ, order, certificate, affidavit, bond or other instrument or writing
30 relating solely to the property of the bankrupt or to any proceeding under the

1 bankruptcy shall be exempt from stamp duty and property transfer tax.

Joint tenancy
to revert to
tenants in
common

2 **65.**-(1) Where any interest of the bankrupt in any property at the date
3 of bankruptcy was held in joint tenancy, the bankruptcy shall operate as a
4 severance of the joint tenancy and a reversion to tenancy in common.

5 (2) Where a debtor:

6 (a) who is married is at the date of bankruptcy, the sole registered
7 owner of the matrimonial home and any immediately related real property not
8 exceeding one acre;

9 (b) is in a co-habitational relationship and is at the date of the
10 bankruptcy, the sole registered owner of a dwelling house in which the other
11 cohabiting partner resides and any immediately related real property not
12 exceeding one acre, the spouse or co-habitant of the debtor shall be entitled,
13 within ten days following the bankruptcy, to claim in the prescribed form a one-
14 half interest in any net proceeds from a sale or disposition by the trustee of the
15 property after satisfaction of any valid and enforceable charges registered in
16 the appropriate registry.

Transaction valid
unless prior
registration

17 **66.** Notwithstanding anything in this Act, a deed, conveyance,
18 transfer, agreement for sale, mortgage, or charge made to or in favour of a bona
19 fide purchaser or mortgagee for adequate valuable consideration and covering
20 any real property affected by a receiving order or an assignment under this Act
21 is valid and effectual according to the tenor thereof as fully and effectually and
22 to all intents and purposes as if no receiving order or assignment had been made
23 under this Act, unless the receiving order or assignment, or notice, or caution,
24 has been registered against the property in the appropriate registry prior to the
25 registration of the deed, conveyance, transfer, agreement for sale, mortgage, or
26 charge in accordance with the relevant laws.

Where
contributory
indebted to
bankrupt

27 **67.**-(1) Every shareholder or member of a bankrupt corporation is
28 liable to contribute the amount unpaid on his shares of the capital or on his
29 liability to the corporation, its members or creditors, as the case may be, made
30 under the Act, charter, or instrument of incorporation of the company or

1 otherwise.

2 (2) The amount that the contributor is liable to contribute under
3 subsection (1) shall be deemed an asset of the corporation and a debt payable
4 to the trustee forthwith on the bankruptcy of the corporation.

5 68.-(1) Where a banker has ascertained that a person having an
6 account with the banker is an undischarged bankrupt, it is his duty to inform
7 the trustee of the existence of the account, and the banker shall not make any
8 payment out of the account, except under an order of the Court or in
9 accordance with instructions from the trustee, unless on the expiration of
10 one month from the date of giving the information no instructions have been
11 received from the trustee.

Banker to advise
trustee of existence
of account

12 (2) Notwithstanding anything contained in any other Act, a
13 deposit-taking institution shall on application of the trustee disclose what
14 deposits of money, if any, of the bankrupt are remaining to the bankrupt's
15 credit and the deposit-taking institution shall, upon request of the trustee,
16 pay the same to the trustee.

17 69. Where property of a bankrupt is held as a pledge, pawn or other
18 security, the trustee may give notice in writing of the trustee's intention to
19 inspect the property, and the person so notified is not thereafter entitled to
20 realize the security until the person has given the trustee a reasonable
21 opportunity of inspecting the property and of exercising the trustee's right of
22 redemption.

Trustee may
inspect property

23 70. Where the trustee has seized or disposed of property in the
24 possession or on the premises of a bankrupt without notice of any claim in
25 respect of the property and it is made to appear that the property was not at
26 the date of the bankruptcy the property of the bankrupt or was subject to an
27 unregistered lien, a right of retention, a pledge or a charge, the trustee is not
28 personally liable for any loss or damage arising from the seizure or disposal
29 sustained by any person claiming the property or an interest in the property
30 or for the costs of proceedings taken to establish a claim to the property,

Where trustee
disposes of property
subject to an
encumbrance

1 unless the Court is of the opinion that the trustee has been guilty of negligence
2 with respect to the duties of the trustee in relation to the property.

Persons claiming
ownership interest
in property of
the bankrupt

3 71.-(1) Where a person claims any property, or interest in property, in
4 the possession of a bankrupt at the time of the bankruptcy, that person shall file
5 with the trustee a proof of claim verified by affidavit giving the grounds on
6 which the claim is based and sufficient particulars to enable the property to be
7 identified.

8 (2) The trustee with whom a proof of claim is filed under subsection
9 (1), shall within fifteen days after the filing of the claim or within fifteen days
10 after the first meeting of creditors, whichever is the later, either admit the claim
11 and deliver possession of the property to the claimant or give notice in writing
12 to the claimant that the claim is disputed with his reasons and, unless the
13 claimant appeals to the Court within fifteen days after the mailing of the notice
14 of dispute, the claimant shall be deemed to have abandoned or relinquished all
15 his right to or interest in the property to the trustee who may sell or dispose of
16 the property free of any lien, right, title or interest of the claimant.

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

19 (4) The trustee may give notice in writing to any person to prove his
20 claim to or interest in property under this section, and, unless that person files
21 with the trustee a proof of a claim in the prescribed form within fifteen days
22 after the mailing of the notice, the trustee may with the leave of the Court sell or
23 dispose of the property free of any lien, right, title or interest of that person.

24 (5) No proceedings shall be instituted to establish a claim to, or to
25 recover any right or interest in any property in the possession of a bankrupt at
26 the time of the bankruptcy, except as provided in this section.

27 (6) Nothing in this section shall be construed as extending the rights
28 of any person other than the trustee.

Unpaid suppliers
may prove for
certain goods

29 72.-(1) Subject to this section, where a person, in this section referred
30 to as the "supplier", has sold and delivered goods to another person, in this

1 section referred to as the "purchaser", for use in relation to the business of
2 the purchaser, and the purchaser has not fully paid for the goods, the supplier
3 may have access to and repossess the goods at the expense of the supplier,
4 and the purchaser, trustee or receiver shall release the goods, if:

5 (a) the supplier presents a written demand for repossession to the
6 purchaser, trustee or receiver, in the prescribed form and containing the
7 details of the transaction, within a period of thirty days after the delivery of
8 the goods to the purchaser;

9 (b) at the time when the demand referred to in paragraph (a) is
10 presented:

11 (i) the purchaser is bankrupt, or

12 (ii) there is a receiver in relation to the purchaser;

13 (c) at the time when the demand referred to in paragraph (a) is
14 presented, the goods:

15 (i) are in the possession of the purchaser, trustee or receiver;

16 (ii) are identifiable as the goods delivered by the supplier and are
17 not fully paid for;

18 (iii) are in the same state as they were on delivery;

19 (iv) have not been resold at arm's length; and

20 (v) are not subject to any agreement for sale at arm's length; and

21 (d) the purchaser, trustee or receiver does not, after the demand
22 referred to in paragraph (a) is presented, pay to the supplier the entire
23 balance owing.

24 (2) Where, at the time when the demand referred to in paragraph (a)
25 is presented, the goods have been partly paid for, the right of the supplier to
26 repossess under subsection (1) shall be read as a right:

27 (a) to repossess a portion of the goods proportional to the unpaid
28 amount; or

29 (b) to repossess all of the goods on paying to the purchaser, trustee
30 or receiver an amount equal to the partial payment previously made to the

1 supplier.

2 (3) For the purpose of subsection (1)(b)(i), section 47 shall be
3 disregarded and sections 38(a) and 43(2)(a) shall both be read as follows:

4 "(a) the insolvent person shall at the time of the refusal be deemed to
5 have made an assignment;".

6 (4) Where a notice of intention under section 30 or a proposal was
7 filed in respect of the purchaser after the delivery of the goods to the purchaser
8 and before there was a receiver in relation to the purchaser or the purchaser
9 became bankrupt, the period between:

10 (a) the earlier of the filing of the notice of intention or proposal; and

11 (b) the earlier of the first day there was a receiver in relation to the
12 purchaser or the day the purchaser became bankrupt, shall not be counted in
13 determining the end of the thirty-day period referred to in subsection (1)(a).

14 (5) A supplier's right to repossess goods pursuant to this section
15 expires if not exercised within ten days after the purchaser, trustee or receiver
16 presents the supplier with a written notice admitting that right, unless the ten-
17 day period is extended by mutual agreement.

18 (6) Notwithstanding any other Act or law, the right of the supplier to
19 repossess goods pursuant to this section ranks above every other claim or right
20 against the purchaser in respect of those goods, other than the right of a bona
21 fide subsequent purchaser of the goods for value without notice that the
22 supplier had demanded repossession of the goods.

23 (7) The purchaser, trustee or receiver may apply to the Court for
24 directions in relation to any matter relating to this section, and the Court shall
25 give, in writing, such directions, if any, as it considers proper in the
26 circumstances.

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

30 (9) Nothing in subsection (7) or (8) precludes a person from

1 exercising any right that the person may have under section 217(1) or 220.

2 (10) A supplier who repossess goods pursuant to this section is not
3 entitled to be paid for those goods.

4 73.-(1) Where:

Claim of farmer
or fisherman

5 (a) a farmer has sold and delivered products of agriculture, or a
6 fisherman has sold and delivered products of the sea, to another person, in
7 this section referred to as the "purchaser", for use in relation to the business
8 of the purchaser;

9 (b) the products were delivered to the purchaser within the fifteen-
10 day period preceding-

11 (i) the day on which the purchaser became bankrupt; or

12 (ii) the first day on which there was a receiver in relation to the
13 purchaser;

14 (c) as of the day referred to in subparagraph (b)(i) or (ii), the farmer
15 or fisherman has not been fully paid for the products; and

16 (d) the farmer or fisherman files a proof of claim in the prescribed
17 form in respect of the unpaid amount with the trustee or receiver, as the case
18 may be, within thirty days after the day referred to in subparagraph (b)(i) or
19 (ii), the claim of the farmer or fisherman for the unpaid amount in respect of
20 the products is secured by a charge on all the inventory of or held by the
21 purchaser as of the day referred to in subparagraph (b) (i) or (ii).

22 (2) The charge ranks above every other claim, right or charge
23 against that inventory, regardless of when that other claim, right or charge
24 arose, except a supplier's right to repossess goods pursuant to section 72,
25 notwithstanding any other law.

26 (3) Where the trustee or receiver, as the case may be, takes
27 possession of or in any way disposes of an inventory covered by the charge
28 referred to in subsection (1), the trustee or receiver is liable for the claim of
29 the farmer or fisherman to the extent of the net amount realized on the
30 disposition of that inventory, after deducting the cost of realization; and is

1 subrogated in and to all rights of the farmer or fisherman to the extent of the
2 amounts paid to them by the trustee or receiver.

3 (4) In this section:

4 "aquatic plants and animals" means plants and animals that, at most stages of
5 their development or life cycle, live in an aquatic environment;

6 "farm" means land in Nigeria used for the purpose of farming, livestock
7 raising, dairying, bee-keeping, fruit growing, the growing of trees and all
8 tillage of the soil;

9 "farmer" includes the owner, occupier, landlord and tenant of a farm;

10 "fish" includes shellfish, crustaceans and marine animals;

11 "fisherman" means a person whose business consists in whole or in part of
12 fishing;

13 "fishing" means fishing for or catching fish by any method;

14 "products of agriculture" includes:

15 (a) vegetables, fruits and all other direct products of the soil; and

16 (b) honey, livestock, dairy products, eggs and all other indirect
17 products of the soil; and

18 "products of the sea" includes fish of all kinds, marine organic and inorganic
19 life and any substances extracted or derived from the sea.

20 (5) For the purposes of this section, each thing included in the
21 following terms as defined in subsection (4), namely:

22 (a) "products of agriculture"; and

23 (b) "products of the sea"

24 comprises that thing in any form or state and any part thereof and any product
25 or by-product thereof or derived therefrom.

26 (6) For the avoidance of doubt, "goods" in section 72 includes
27 products of agriculture and products of the sea.

28 (7) Nothing in this section precludes a farmer or fisherman from
29 exercising the right that that person may have under section 72 to repossess
30 products of agriculture or products of the sea.

1 **74.-(1)** Where any property of a bankrupt vesting in a trustee Sale of patented
2 consists of patented articles that were sold to the bankrupt subject to any articles by trustee
3 restrictions or limitations, the trustee is not bound by the restrictions or
4 limitations but may sell and dispose of the patented articles free of the
5 restrictions or limitations.

6 (2) Where the manufacturer or vendor of the patented articles
7 referred to in subsection (1) objects to the disposition of them by the trustee
8 as provided by this section and gives the trustee notice in writing of the
9 objection before the sale or disposition of the patented articles, that
10 manufacturer or vendor has the right to purchase the patented articles at the
11 invoice prices of those articles, subject to any reasonable deduction for
12 depreciation or deterioration.

13 **75.-(1)** Notwithstanding anything in this Act or in any other statute, Copyright works
14 the author's manuscripts and any copyright or any interest in a copyright in dealt with by
15 whole or in part assigned to a publisher, printer, firm or person becoming bankrupt
16 bankrupt shall, where-

17 (a) the work covered by the copyright has not been published and
18 put on the market at the time of the bankruptcy and no expense has been
19 incurred in connection with the work, revert and be delivered to the author or
20 his heirs, and any contract or agreement between the author or his heirs and
21 the bankrupt shall then terminate and be void;

22 (b) the work covered by the copyright has in whole or in part been
23 put into type and expenses have been incurred by the bankrupt, revert and be
24 delivered to the author on payment of the expenses so incurred and the
25 product of those expenses shall also be delivered to the author or his heirs
26 and any contract or agreement between the author or his heirs and the
27 bankrupt shall then terminate and be void, but if the author does not exercise
28 his rights under this paragraph within six months of the date of bankruptcy,
29 the trustee may carry out the original contract; or

30 (c) the trustee at the expiration of six months from the date of the

1 bankruptcy decides not to carry out the contract, revert without expenses to the
2 author and any contract or agreement between the author or his heirs and the
3 bankrupt shall then terminate and be void.

4 (2) Where, at the time of the bankruptcy referred to in subsection (1),
5 the work was published and put on the market, the trustee is entitled to sell, or
6 authorize the sale or reproduction of, any copies of the published work, or to
7 perform or authorize the performance of the work, but:

8 (a) there shall be paid to the author or his heirs such sums by way of
9 royalties or share of the profits as would have been payable by the bankrupt;

10 (b) the trustee is not, without the written consent of the author or his
11 heirs, entitled to assign the copyright or transfer the interest or to grant any
12 interest in the copyright by licence or otherwise, except on terms that will
13 guarantee to the author or his heirs payment by way of royalties or share of the
14 profits at a rate not less than the rate the bankrupt was liable to pay; and

15 (c) any contract or agreement between the author or his heirs and the
16 bankrupt shall then terminate and be void, except with respect to the disposal,
17 under this subsection, of copies of the work published and put on the market
18 before the bankruptcy.

19 (3) The trustee shall offer in writing to the author or his heirs the right
20 to purchase the manufactured or marketable copies of the copyright work
21 comprised in the estate of the bankrupt at such price and on such terms and
22 conditions as the trustee may deem fair and proper before disposing of the
23 manufactured and marketable copies in the manner set out in this section.

Bankrupt's interest
vests in purchaser
upon sale by
trustee Partnership
property

24 76. All sales of property made by a trustee vest in the purchaser all the
25 legal and equitable estate of the bankrupt in the property.

Limited partnerships
State interests

26 77.-(1) This Act applies to limited partnerships in like manner as if
27 limited partnerships were ordinary partnerships, and, on all the general
28 partners of a limited partnership becoming bankrupt, the property of the
29 limited partnership vests in the trustee.

30 (2) Where a member of a partnership becomes bankrupt, the Court

1 may authorize the trustee to commence and prosecute any action in the
 2 names of the trustee and of the bankrupt's partner, and any release by the
 3 partner of the debt or demand to which the action relates is void.

4 (3) Notice of the application for authority to commence an action
 5 under subsection (2) shall be given to the bankrupt's partner, who may show
 6 cause against it, and on his application the Court may, if it thinks fit, direct
 7 that he shall receive his proper share of the proceeds of the action, and if he
 8 does not claim any benefit from his share, he shall be indemnified against
 9 costs in respect of the action the Court directs.

10 78.-(1) Notwithstanding any other law in relation to a bankruptcy
 11 or proposal, all provable claims, including secured claims of the State, rank
 12 as unsecured claims.

State claims are
unsecured

13 (2) Subsection (1) does not apply to claims that are secured by a
 14 security or privilege of a kind that can be obtained by persons other than the
 15 State pursuant to any law.

16 79.-(1) A security provided for in legislation for the sole or
 17 principal purpose of securing a claim of the State is valid in relation to a
 18 bankruptcy or proposal only if the security is registered, before the earliest
 19 date of:

State's security
to be registered
to be enforceable
Settlements and
preferences

20 (a) the date a petition is filed against the debtor;

21 (b) the date the debtor makes an assignment; and

22 (c) the date the debtor commences proceedings for a proposal
 23 pursuant to a prescribed system of registration.

24 (2) In relation to a bankruptcy or proposal, a security referred to in
 25 subsection (1) that is registered in accordance with that subsection is valid
 26 only in respect of amounts owing to the State at the time of that registration,
 27 plus any interest subsequently accruing on those amounts.

28 80.-(1) Any settlement of property made within the period
 29 beginning on the day that is one year before the date of the initial bankruptcy
 30 event in respect of the settlor and ending on the date that the settlor became

Settlements
within one
year void

1 bankrupt, both dates included, is void against the trustee.

2 (2) Any settlement of property made within the period beginning on
3 the day that is five years before the date of the initial bankruptcy event in
4 respect of the settlor and ending on the date that the settlor became bankrupt,
5 both dates included, is void against the trustee if the trustee can prove that the
6 settlor was, at the time of making the settlement, unable to pay all the settlor's
7 debts without the aid of the property comprised in the settlement or that the
8 interest of the settlor in the property did not pass on the executions thereof.

9 (3) This section does not extend to any settlement made:

10 (a) before and in consideration of marriage or in respect of a
11 cohabitational relationship;

12 (b) in favour of a purchaser or encumbrancer in good faith and for
13 valuable consideration; or

14 (c) on or for the spouse, cohabitant, or children of the settlor of
15 property that has accrued to the settlor after the marriage or commencement of
16 the cohabitational relationship in right of the settlor's spouse, cohabitant, or
17 children.

18 **81.**-(1) Any covenant or contract made by any person, hereinafter
19 called "the settlor", in consideration of the settlor's marriage or cohabitational
20 relationship either for the future payment of money for the benefit of the
21 settlor's spouse, cohabitant or children, or for the future settlement on or for the
22 settlor's spouse, cohabitant or children, of property wherein the settlor had not
23 at the date of the marriage or the date of entering into such cohabitational
24 relationship, any estate or interest, whether vested or contingent, in possession
25 or remainder, and not being money or property in right of the settlor's spouse or
26 cohabitant is, if the settlor becomes bankrupt and the covenant or contract has
27 not been executed at the date of the initial bankruptcy event in respect of the
28 settlor, void against the trustee.

29 (2) Notwithstanding subsection (1), as far as it enables the persons
30 entitled under the covenant or contract to claim a dividend in the settlor's

Contracts in
consideration
of marriage

1 bankruptcy proceedings under or in respect of the covenant or contract, but
2 any such claim to a dividend shall be postponed until all claims of the other
3 creditors have been satisfied.

4 **82.**-(1) Any payment of money, not being payment of premiums on
5 a policy of life insurance in favour of the spouse, child or children of the
6 settlor, or any transfer of property made by the settlor in pursuance of a
7 covenant or contract mentioned in section 81, is void against the trustee
8 unless the person to whom the payment or transfer was made proves that:

Payments void
except on proof
of certain facts

9 (a) the payment or transfer was made more than six months before
10 the date of the initial bankruptcy event in respect of the settlor;

11 (b) at the date of payment or transfer, the settlor was able to pay all
12 his debts without the aid of the money so paid or the property so transferred;
13 or

14 (c) the payment or transfer was made in pursuance of a covenant or
15 contract to pay or transfer money or property expected to come to the settlor
16 from or on the death of a particular person named in the covenant or contract
17 and was made within three months after the money or property came into the
18 possession or under the control of the settlor.

19 (2) Where any payment or transfer mentioned in subsection (1) is
20 declared void, the persons to whom it was made are entitled to claim for
21 dividend under or in respect of the covenant or contract in like manner as it
22 had not been executed at the date of the initial bankruptcy event

23 **83.**-(1) Where a person engaged in any trade or business makes an
24 assignment of his existing or future book debts or any class or part thereof
25 and subsequently becomes bankrupt, the assignment of book debts is void
26 against the trustee with respect to any book debts that have not been paid at
27 the date of bankruptcy.

Assignment of
book debts void

28 (2) This section does not apply to an assignment of book debts that
29 is registered pursuant to any statute providing for the registration thereof if
30 the assignment is valid in accordance with the statute.

1 (3) Nothing in this section renders void any assignment of book debts
2 due at the date of the assignment from specified debtors, or of debts growing
3 due under specified contracts, or any assignment of book debts included in a
4 transfer of a business made in good faith and for valuable consideration.

5 (4) For the purposes of this section, "assignment" includes
6 assignment by way of security and other charges on book debts.

Preferences
voidable if made
within three
months

7 **84.** -(1) Every conveyance or transfer of property or charge made on
8 the property, every payment made, every obligation incurred and every
9 judicial proceeding taken or suffered by any insolvent person in favour of any
10 creditor or of any person in trust for any creditor with a view to giving such
11 creditor or any surety or guarantor for the debt due to such creditor a preference
12 over the other creditors is, where it is made, incurred, taken or suffered within
13 the period beginning on the day that is three months before the date of the
14 initial bankruptcy event and ending on the date the insolvent person became
15 bankrupt, both dates included, deemed fraudulent and void as against the
16 trustee in the bankruptcy.

17 (2) Where any conveyance, transfer, charge, payment, obligation, or
18 judicial proceeding mentioned in subsection (1) has the effect of giving any
19 creditor a preference over other creditors, or over anyone or more of them, it
20 shall be presumed, in the absence of evidence to the contrary, to have been
21 made, incurred, taken, paid or suffered with a view to giving the creditor a
22 preference over other creditors, whether or not it was made voluntarily or
23 under pressure and evidence of pressure shall not be admissible to support the
24 transaction.

25 (3) Subsection (2) does not apply in respect of a margin deposit made
26 by a clearing member with a clearing house.

27 (4) In this section:

28 "clearing house" means a body that acts as an intermediary for its clearing
29 members in effecting securities transactions;

30 "clearing member" means a person engaged in the business of effecting

1 securities transactions who uses a clearing house as intermediary;
2 "creditor" includes a surety or guarantor for the debt due to the creditor;
3 "margin deposit" means a payment, deposit or transfer to a clearing house
4 under the rules of the clearing house to assure the performance of the
5 obligations of a clearing member in connection with security transactions,
6 including, without limiting the generality of the foregoing, transactions
7 respecting futures, options or other derivatives or to fulfil any of those
8 obligations.

9 **85.** Where the conveyance, transfer, charge, payment, obligation or
10 judicial proceeding mentioned in section 84 (1) is in favour of a person
11 related to the insolvent person, the period referred to in section 84(1) shall be
12 one year instead of three months.

Preference to
related party
voidable if made
within twelve
months

13 **86.** -(1) No payment, delivery, conveyance, transfer, contract,
14 dealing or transaction to, by or with a bankrupt made between the date of the
15 initial bankruptcy event and the date of the bankruptcy is valid, except the
16 following, which are valid if made in good faith, subject to the foregoing
17 provisions of this Act with respect to the effect of bankruptcy on an
18 execution, attachment or other process against property, and subject to the
19 provisions of this Act respecting settlements, preferences and reviewable
20 transactions:

Transactions
between initial
bankruptcy event
and bankruptcy

21 (a) a payment by the bankrupt to any of the creditors of the
22 bankrupt;

23 (b) a payment or delivery to the bankrupt;

24 (c) a conveyance or transfer by the bankrupt for adequate valuable
25 consideration; and

26 (d) a contract, dealing or transaction, including any giving of
27 security, by or with the bankrupt for adequate valuable consideration.

28 (2) The expression "adequate valuable consideration" in paragraph
29 (1)(c) means a consideration of fair and reasonable money value with
30 relation to that of the property conveyed, assigned or transferred, and in

1 paragraph (1)(d) means a consideration of fair and reasonable money value
2 with relation to the known or reasonably to be anticipated benefits of the
3 contract, dealing or transaction.

4 (3) Where there have been mutual credit, mutual debts or other mutual
5 dealings between a bankrupt and any other person proving or claiming to prove
6 a debt in the bankruptcy, an account may be taken of what is due from one party
7 to the other in respect of such mutual dealings, and the sum due from the one
8 party shall be set off against any sum due from the other party, and the balance
9 of the account, and no more, shall be claimed or paid on either side respectively.

Proceeds from
dealing with
property obtained
in voidable
transaction

10 **87.** -(1) Where a person has acquired the property of a bankrupt under
11 a transaction that is void or under a voidable transaction that is set aside and has
12 sold, disposed of, realized or collected the property or any part thereof, the
13 money or other proceeds, whether further disposed of or not, shall be deemed
14 the property of the trustee.

15 (2) The trustee may recover the property or the value of the property
16 or the money or proceeds from the property from the person who acquired it
17 from the bankrupt or from any other person to whom he may have resold,
18 transferred or paid over the proceeds of the property as fully and effectually as
19 the trustee could have recovered the property if it had not been sold, disposed
20 of, realized or collected.

21 (3) Notwithstanding subsection (1), where any person to whom the
22 property has been sold or disposed of has paid or given in good faith adequate
23 valuable consideration for the property, that person is not subject to the
24 operation of this section but the trustee's recourse shall be solely against the
25 person entering into the transaction with the bankrupt for recovery of the
26 consideration so paid or given or the value of the property.

27 (4) Where the consideration payable for or on any sale or resale of the
28 property or any part of the property remains unsatisfied, the trustee is
29 subrogated to the rights of the vendor to compel payment or satisfaction.

Good faith
transactions
with bankrupts
protected

30 **88.** -(1) All transactions by a bankrupt with any person dealing with

1 the bankrupt in good faith and for value in respect of property acquired by
2 the bankrupt after the bankruptcy, if completed before any intervention by
3 the trustee, are valid against the trustee, and any estate or interest in the
4 property that by virtue of this Act is vested in the trustee shall determine and
5 pass in such manner and to such extent as may be required for giving effect
6 to the transaction.

7 (2) For the purposes of this section, the receipt of any money,
8 security or negotiable instrument for or by the order or direction of a
9 bankrupt by his banker and any payment and any delivery of any security or
10 negotiable instrument made to or by the order or direction of a bankrupt by
11 his banker shall be deemed to be a transaction by the bankrupt with his
12 banker dealing with him for value.

13 89. -(1) Where a bankrupt sold, purchased, leased, hired, supplied
14 or received property or services in a reviewable transaction within the
15 period beginning on the day that is one year before the date of the initial
16 bankruptcy event and ending on the date of the bankruptcy, the Court may,
17 on the application of the trustee, inquire into whether the bankrupt gave or
18 received, as the case may be, fair market value in consideration for the
19 property or services concerned in the transaction.

Reviewable
transactions in
year prior to
initial bankruptcy
event

20 (2) Where the Court in proceedings under this section finds that the
21 consideration given or received by the bankrupt in the reviewable
22 transaction was conspicuously greater or less than the fair market value of
23 the property or services concerned in the transaction, the Court may give
24 judgment to the trustee against the other party to the transaction, against any
25 other person being privy to the transaction with the bankrupt or against all
26 those persons for the difference between the actual consideration given or
27 received by the bankrupt and the fair market value, as determined by the
28 Court, of the property or services concerned in the transaction.

29 (3) In making an application under this section, the trustee shall
30 state what in his opinion was the fair market value of the property or services

1 concerned in the transaction and what in his opinion was the value of the actual
2 consideration given or received by the bankrupt in the transaction, and the
3 values on which the Court makes any finding pursuant to this section shall be
4 the values so stated by the trustee unless other values are proven.

Where dividend
paid by company

5 **90.** -(1) Where a corporation that is bankrupt has paid a dividend,
6 other than a stock dividend, or redeemed or purchased for cancellation any of
7 the shares of the capital stock of the corporation within the period beginning on
8 the day that is one year before the date of the initial bankruptcy event and
9 ending on the date of the bankruptcy, the Court may, on the application of the
10 trustee, inquire into the transaction to ascertain whether it occurred at a time
11 when the corporation was insolvent or whether it rendered the corporation
12 insolvent.

13 (2) Where a transaction referred to in subsection (1) has occurred, the
14 Court may give judgment to the trustee against the directors of the corporation,
15 jointly and severally, in the amount of the dividend or redemption or purchase
16 price, with interest on the dividend, redemption or purchase price, that has not
17 been paid to the corporation where the Court finds that:

18 (a) the transaction occurred at a time when the corporation was
19 insolvent or the transaction rendered the corporation insolvent; and

20 (b) the directors did not have reasonable grounds to believe that the
21 transaction was occurring at a time when the corporation was not insolvent or
22 the transaction would not render the corporation insolvent.

23 (3) In making a determination under subsection (2)(b), the Court shall
24 consider whether the directors acted as prudent and diligent persons would
25 have acted in the same circumstances and whether the directors in good faith
26 relied on:

27 (a) financial or other statements of the corporation represented to
28 them by officers of the corporation or the auditor of the corporation, as the case
29 may be, or by written reports of the auditor to fairly reflect the financial
30 condition of the corporation; or

1 to the creditors and is in the general interest of the administration of the
2 estate, the Supervisor may extend the period:

3 (a) by ten days; or

4 (b) where the Supervisor is satisfied that special circumstances
5 exist, by up to thirty days.

6 (3) The trustee shall include with the notice referred to in
7 subsection (1), a list of the creditors with claims amounting to one hundred
8 dollars or more and the amount of claims together with a proof of claim and
9 proxy in the prescribed form but no name shall be inserted in the proxy
10 before it is so sent.

11 (4) In the case of the bankruptcy of an individual, the trustee shall:

12 (a) set out in the notice, in the prescribed form, information
13 concerning the financial situation of the bankrupt and the obligation of the
14 bankrupt to make payments required under section 53 to the estate of the
15 bankrupt; and

16 (b) forthwith advise the Supervisor, and any creditors who have
17 requested such information, of:

18 (i) any material change relating to the financial situation of the
19 bankrupt; and

20 (ii) any amendment made under section 53(3) to the amount that
21 the bankrupt is required to pay to the estate of the bankrupt.

22 (5) A notice in the prescribed form shall, as soon as possible after
23 the bankruptcy and not later than five days before the first meeting of
24 creditors, be published in a local daily newspaper by the trustee.

25 (6) The purpose of the first meeting of creditors shall be to:

26 (a) consider the affairs of the bankrupt;

27 (b) affirm the appointment of the trustee or substitute another in
28 place of the trustee;

29 (c) appoint inspectors; and

30 (d) give such directions to the trustee as the creditors may see fit

1 with reference to the administration of the estate.

Trustee may
call meeting

2 **94.**-(1) The trustee may at any time call a meeting of creditors and he
3 shall do so when directed by the Court and whenever requested in writing by a
4 majority of the inspectors or by any creditor with the concurrence of one-sixth
5 in value of the unsecured creditors holding one-sixth in number of the proved
6 unsecured claims.

7 (2) A meeting of the creditors may be convened by a majority of the
8 inspectors at any time when a trustee is not available to call a meeting or has
9 neglected or failed to do so when so directed by the inspectors.

Notice regarding
subsequent
meetings

10 **95.**-(1) Meetings of creditors other than the first shall be called by
11 sending a notice of the time and place of the meeting not less than five days
12 before the time of each meeting to each creditor at the address given in the
13 creditor's proof of claim.

14 (2) After the first meeting of creditors, notice of any meeting or of any
15 proceeding need not be given to any creditors other than those who have proved
16 their claims.

17 *Procedure at Meetings*

Chairman of
first meeting

18 **96.**-(1) The Supervisor or the nominee of the Supervisor shall be the
19 Chairman of the first meeting of creditors and shall decide any questions or
20 disputes arising at the meeting; and any creditor may appeal to the Court from
21 any decision arising from the meeting.

22 (2) At all meetings of creditors other than the first, the trustee shall be
23 the Chairman unless by resolution at the meeting some other person is
24 appointed.

25 (3) The Chairman of any meeting of creditors shall, in the case of a tie,
26 have a second or casting vote.

27 (4) The Chairman of any meeting of creditors shall cause minutes of
28 the proceedings at the meeting to be drawn up and entered in a book kept for
29 that purpose, and the minutes shall be signed by that Chairman or by the
30 Chairman of the next ensuing meeting.

1 (5) Where a meeting of creditors is called, the proceedings and
2 resolutions passed at the meeting, unless the Court otherwise orders, are
3 valid, notwithstanding that some creditors had not received notice.

4 97.-(1) One creditor entitled to vote, or the representative of that Quorum at
5 creditor, constitutes a quorum for a meeting of creditors. meeting

6 (2) Where there is no quorum at the first meeting of creditors:

7 (a) the appointment of the trustee shall be deemed to be confirmed;

8 and

9 (b) the Chairman shall adjourn the meeting:

10 (i) to such time and place as the Chairman fixes; or

11 (ii) without fixing a time or place for a future meeting.

12 (3) Where there is no quorum at any meeting of creditors other than
13 the first meeting, the Chairman shall adjourn the meeting to such time and
14 place as the Chairman fixes.

15 (4) The Chairman of any meeting of creditors may with the consent
16 of the meeting, adjourn the meeting, from time to time.

17 98. Every class of creditors may express its views and wishes Creditors may
18 separately from every other class and the effect to be given to those views vote by class
19 and wishes shall, in case of any dispute and subject to this Act, be in the
20 discretion of the Court.

21 99.-(1) The Chairman of any meeting of creditors has power to Chairman may
22 admit or reject a proof of claim for the purpose of voting but his decision is admit or reject
23 subject to appeal to the Court. proofs

24 (2) Notwithstanding anything in this Act, the Chairman may, for
25 the purpose of voting, accept any letter or printed matter transmitted by any
26 form or mode of telecommunication as proof of the claim of a creditor.

27 (3) Where the Chairman is in doubt as to whether a proof of claim
28 should be admitted or rejected, the Chairman shall mark the proof as
29 objected to and allow the creditor to vote subject to the vote being declared
30 invalid in the event of the objection being sustained.

1 Completed proof of claim required to enable voting.

2 **100.**-(1) A person is not entitled to vote as a creditor at any meeting of
3 creditors unless that person has duly proved a claim provable in bankruptcy
4 and the proof of claim has been duly lodged with the trustee before the time
5 appointed for the meeting.

6 (2) A creditor may vote either in person or by proxy.

7 (3) A proxy is not invalid merely because it is in the form of a letter or
8 printed matter transmitted by any form or mode of telecommunication.

9 (4) A debtor may not be appointed a proxy to vote at any meeting of
10 his creditors.

11 (5) A corporation may vote by an authorized agent at meetings of
12 creditors.

13 (6) Except as otherwise provided by this Act, a creditor is not entitled
14 to vote at any meeting of creditors if the creditor did not, at all times within the
15 period beginning on the day that is one year before the date of the initial
16 bankruptcy event in respect of the debtor and ending on the date of the
17 bankruptcy, both dates included, deal with the debtor at arm's length.

18 (7) A creditor who is not entitled to vote at a meeting of creditors by
19 virtue of subsection (6) may with leave of the Court vote at the meeting of
20 creditors when all the creditors who have dealt with the debtor at arm's length
21 do not together present at least twenty per cent in value of the claims against the
22 debtor.

Voting where
claims acquired

23 **101.**-(1) No person is entitled to vote on a claim acquired after the
24 bankruptcy of a debtor unless the entire claim is acquired.

25 (2) Subsection (1) does not apply to persons acquiring notes, bills or
26 other securities on which they are liable.

Where
non-bankrupt
parties jointly
liable

27 **102.** A creditor shall not vote in respect of any claim on or secured by a
28 current bill of exchange or promissory note held by that creditor, unless the
29 creditor is willing to treat the liability to him by virtue of the bill of exchange or
30 promissory note of every person who is liable on that bill or note antecedently

1 to the debtor, and who is not a bankrupt, as a security in his hands and to
2 estimate the value thereof and for the purposes of voting, but not for the
3 purposes of dividend, to deduct it from his claim.

4 **103.** For the purpose of voting, a secured creditor shall, unless that
5 creditor surrenders his security, state in his proof the particulars of his
6 security, the date when it was given and the value at which he assesses it, and
7 he is entitled to vote only in respect of the balance, if any, due to him after
8 deducting the value of his security.

Secured creditor
may vote
unsecured portion
only

9 **104.**-(1) Where the trustee is a creditor or a proxy for a creditor, the
10 trustee may vote as a creditor at any meeting of creditors.

Where trustee
may vote

11 (2) The vote of the trustee or of his partner, clerk, attorney-at-law
12 or attorney's clerk, either as creditor or as proxy for a creditor, shall not be
13 reckoned in the majority required for passing any resolution affecting the
14 remuneration or conduct of the trustee.

15 (3) The following persons are not entitled to vote on the
16 appointment of a trustee or inspector:

17 (a) the father, mother, child, sister, brother, uncle or aunt by blood
18 or marriage, or spouse or cohabitant of the bankrupt;

19 (b) where the bankrupt is a corporation, any officer, director or
20 employee of the corporation; and

21 (c) where the bankrupt is a corporation, any wholly owned
22 subsidiary corporation or any officer, director or employee of the
23 corporation.

24 **105.**-(1) A minute of proceedings at a meeting of creditors under
25 this Act signed at the same or the next ensuing meeting by a person
26 describing himself as or appearing to be Chairman of the meeting at which
27 the minute is signed shall be admitted in evidence without further proof.

Minutes to be
proof of meeting

28 (2) Until the contrary is proved, every meeting of creditors in
29 respect of the proceedings where a minute has been signed by the Chairman
30 shall be deemed to have been duly convened and held and all resolutions

1 passed or proceedings at the meeting to have been duly convened and held and
2 to have been duly passed.

Creditors vote by
dollar Inspectors

3 **106.** Subject to this Act, all questions at meetings of creditors shall be
4 decided by resolution carried by the majority of votes, and for that purpose the
5 votes of a creditor shall be calculated by counting one vote for each dollar of
6 every claim of the creditor that is not disallowed.

Appointment of
Inspectors

7 **107.**-(1) At the first or a subsequent meeting of creditors, the creditors
8 shall appoint one or more, but not exceeding five inspectors of the estate of the
9 bankrupt for the purpose of overseeing the administration of the estate of the
10 trustee bankrupt.

11 (2) No person is eligible to be appointed or to act as an inspector
12 unless he satisfies the criteria prescribed and is not a party to any contested
13 action or proceedings by or against the estate of the bankrupt.

14 (3) The powers of the inspectors may be exercised by a majority of
15 them.

16 (4) The creditors or inspectors at any meeting may fill any vacancy on
17 the board of inspectors.

18 (5) The creditors may at any meeting and the Court may on the
19 application of the trustee or any creditor revoke the appointment of any
20 inspector and appoint another in his stead.

21 (6) Where there are no inspectors, any act or thing or any direction or
22 permission by this Act authorized or required to be done or given by inspectors
23 may be done or given by the Court on the application of the trustee.

Trustee may
call meeting of
Inspectors

24 **108.**-(1) The trustee may call a meeting of inspectors when he deems
25 it advisable and he shall do so when requested in writing by a majority of the
26 inspectors.

27 (2) An inspector may, if all the other inspectors consent, participate in
28 a meeting of inspectors by means of such telephone or other communication
29 facilities as permit all persons participating in the meeting to communicate
30 with each other, and an inspector participating in such a meeting by such means

1 is deemed for the purpose of this Act to be present at that meeting.

2 (3) In the event of an equal division of opinion at a meeting of
3 inspectors, the opinion of any absent inspector shall be sought in order to
4 resolve the difference, and in the case of a difference that cannot be so
5 resolved, it shall be resolved by the trustee, unless it concerns his personal
6 conduct or interest in which case it shall be resolved by the creditors or the
7 Court.

8 **109.** Where there are no inspectors of the estate of the bankrupt or
9 where the inspectors fail to exercise the powers conferred upon them, the
10 trustee shall call a meeting of the creditors for the purpose of appointing
11 inspectors or substituting other inspectors, taking such action or giving such
12 directions as may be necessary.

Trustee to call
meeting to appoint
inspectors

13 **110.**-(1) Subject to this Act, the trustee shall in the administration
14 of the property of the bankrupt and in the distribution of that property among
15 his creditors have regard to any directions that may be given by resolution of
16 the creditors at any general meeting or by the inspectors, and any directions
17 so given by the creditors shall in case of conflict be deemed to override any
18 directions given by the inspectors.

Directions of
creditors to
override directions
by inspectors

19 (2) The decisions and actions of the inspectors are subject to review
20 by the Court at the instance of the trustee or any interested person and the
21 Court may revoke or vary any act or decision of the inspectors and it may
22 give such directions, permission or authority as it deems proper in
23 substitution or may refer any matter back to the inspectors for
24 reconsideration.

25 **111.**-(1) No inspector is directly or indirectly, capable of
26 purchasing or acquiring for himself or for another any of the property of the
27 estate for which he is inspector, except with the prior approval of the Court.

Inspectors may
not acquire assets

28 (2) No defect or irregularity in the appointment of an inspector
29 vitiates any act done by him in good faith.

30 (3) The inspectors shall from time to time verify the bank balance

1 of the estate, examine the trustee's accounts and inquire into the adequacy of
2 the security filed by the trustee, and subject to subsection (4), shall approve the
3 trustee's final statement of receipts and disbursements, dividend sheet and
4 disposition of unrealized property.

5 (4) Before approving the final statement of receipts and
6 disbursements of the trustee, the inspectors shall satisfy themselves that all the
7 property has been accounted for and that the administration of the estate has
8 been completed as far as can reasonably be done and shall determine whether
9 or not the disbursements and expenses incurred are proper and have been duly
10 authorized, and the fees and remuneration just and reasonable in the
11 circumstances.

12 (5) Each inspector:

13 (a) may be repaid actual and necessary travel expenses incurred in
14 relation to the performance of the inspector's duties; and

15 (b) may be paid such fees per meeting as are prescribed.

16 (6) An inspector duly authorized by the creditors or by the other
17 inspectors to perform special services for the estate may be allowed a special
18 fee for those services, subject to approval of the Court, which may vary that fee
19 as it deems proper having regard to the nature of the services rendered in
20 relation to the fiduciary obligations of the inspector to the estate.

Claims provable

21 **112.-(1)** All debts and liabilities, present or future, to which the
22 bankrupt is subject on the day on which the bankrupt becomes bankrupt or to
23 which the bankrupt may become subject before the bankrupt's discharge by
24 reason of any obligation incurred before the day on which the bankrupt
25 becomes bankrupt shall be deemed to be claims provable in proceedings under
26 this Act.

27 (2) The determination whether a contingent or unliquidated claim is a
28 provable claim and the valuation of such a claim shall be made in accordance
29 with section 126.

30 (3) A creditor may prove a debt not payable at the date of bankruptcy

1 and may receive dividends equally with the other creditors, deducting only
2 thereout a rebate of interest at the rate of five per cent per annum computed
3 from the declaration of a dividend to the time when the debt would have
4 become payable according to the terms on which it was contracted.

5 (4) A claim in respect of a debt or liability referred to in section
6 170(1)(c) or (d) payable under an order or agreement made before the date
7 of the initial bankruptcy event in respect of the bankrupt and at a time when
8 the spouse, cohabitant or child was living apart from the bankrupt, whether
9 the order or agreement provides for periodic amounts or lump sum amounts,
10 is a claim provable under this Act.

11 **113.**-(1) The claims of creditors under a proposal are, in the event
12 of a debtor subsequently becoming bankrupt, provable in the bankruptcy for
13 the full amount of the claims less any dividends paid on those claims
14 pursuant to the proposal, and the provable claims of creditors arising after
15 the proposal until the date of bankruptcy shall be provable in the bankruptcy.

Where bankruptcy
follows proposal

16 (2) Where interest on any debt or sum certain is provable under this
17 Act but the rate of interest has not been agreed on, the creditor may prove
18 interest at a rate not exceeding five per cent per annum to the date of the
19 bankruptcy from the time the debt or sum was payable, if evidenced by a
20 written instrument, or, if not so evidenced, from the time notice has been
21 given to the debtor of the interest claimed.

22 **114.** Where a bankrupt was, at the date of the bankruptcy, liable in
23 respect of distinct contracts as a member of two or more distinct firms, or as
24 a sole contractor and also as a member of a firm, the fact that the firms are in
25 whole or in part composed of the same individuals, or that the sole
26 contractor is also one of the joint contractors, shall not prevent proof, in
27 respect of the contracts, against the properties respectively liable on the
28 contracts.

Proof in respect
of distinct
contracts

29 **115.**-(1) Every creditor shall prove his claim, and a creditor who
30 does not prove his claim is not entitled to share in any distribution that may

Proof of claim
required to share
in distribution

1 be made.

2 (2) A claim shall be proved by delivering to the trustee a proof of claim
3 in the prescribed form.

4 (3) The proof of claim may be made by the creditor himself or by a
5 person authorised by him on behalf of the creditor, and, if made by a person so
6 authorised, it shall state his authority and means of knowledge.

7 (4) The proof of claim shall contain or refer to a statement of account
8 showing the particulars of the claim and any counterclaim that the bankrupt
9 may have to the knowledge of the creditor and shall specify the vouchers or
10 other evidence, if any, by which it can be substantiated.

11 (5) The proof of claim shall state whether the creditor is or is not a
12 secured or preferred creditor.

13 (6) Where any rent or other payment for certain periods falls due at
14 stated times the person entitled to the rent or payment may prove for a
15 proportionate part of the rent or other payment to the date of bankruptcy as if
16 the rent or payment grew due from day-to-day.

Court may
disallow false
claims

17 **116.** Where a creditor or other person in any proceedings under this
18 Act files with the trustee a proof of claim containing any wilfully false
19 statement or wilful misrepresentation, the Court may, in addition to any other
20 penalty provided in this Act, disallow the claim in whole or in part as the Court
21 in its discretion may see fit.

Proven creditors
may examine
proofs of claim

22 **117.**-(1) Every creditor who has lodged a proof of claim is entitled to
23 see and examine the proofs of other creditors.

24 (2) Proofs of claims for wages of workers and others employed by the
25 bankrupt may be made in one proof by the bankrupt or someone on behalf of
26 the bankrupt or by a representative of a Ministry responsible for labour matters
27 or a representative of a union representing workers and others employed by the
28 bankrupt, by attaching to the proof a schedule setting out the names and
29 addresses of the workers and others and the amounts severally due to them, but
30 that proof does not disentitle any worker or other wage-earner to file a separate

1 proof on their own behalf.

2 **118.-(1)** Where a secured creditor realizes his security, he may
3 prove the balance due to him after deducting the net amount realized.

Secured creditor
may prove for
balance due

4 (2) Where a secured creditor surrenders his security to the trustee
5 for the general benefit of the creditors, he may prove his whole claim.

6 **119. -(1)** Where the trustee has knowledge of property that may be
7 subject to a security, the trustee may, by serving notice in the prescribed
8 form, require any person to file, in the prescribed form and manner, a proof
9 of the security that gives full particulars of the security, including the date on
10 which the security was given and the value at which that person assesses it.

Trustee may
require proof of
claim by secured
creditor

11 (2) Where the trustee serves a notice pursuant to subsection (1),
12 and the person on whom the notice is served does not file a proof of security
13 within thirty days after the day of service of the notice, the trustee may, with
14 leave of the Court, sell or dispose of any property that was subject to the
15 security, free of that security.

16 (3) A creditor is entitled to receive a dividend in respect only of the
17 balance due to him after deducting the assessed value of his security.

18 (4) The trustee may redeem a security on payment to the secured
19 creditor of the debt or the value of the security as assessed, in the proof of
20 security, by the secured creditor.

21 **120.-(1)** Where the trustee is dissatisfied with the value at which a
22 security is assessed, the trustee may require that the property the security
23 comprises be offered for sale at such time and on such terms and conditions
24 as may be agreed on between the creditor and the trustee or, in default of
25 such an agreement, as the Court may direct.

Trustee may
require security
to be sold

26 (2) Where a sale under subsection (1) is by public auction the
27 creditor or the trustee on behalf of the estate may bid or purchase.

28 (3) The costs and expenses of a sale made under this section are in
29 the discretion of the Court.

30 **121.** Notwithstanding section 119(3) and section 120, the creditor

Secured creditor
may require
election of trustee

1 may, by notice in writing, require the trustee to elect whether he will exercise
2 the power of redeeming the security or requiring it to be realized, and if the
3 trustee does not, within one month after receiving the notice or such further
4 time or times as the Court may allow, signify in writing to the creditor his
5 election to exercise the power, the trustee is not entitled to exercise that power,
6 and the equity of redemption or any other interest in the property comprised in
7 the security that is vested in the trustee shall vest in the creditor, and the amount
8 of the claim of the trustee shall be reduced by the amount at which the security
9 has been valued.

Amended claim
where security
realized

10 **122.** Where a creditor after having valued his security subsequently
11 realises it, or it is realized under section 120, the net amount realised shall be
12 substituted for the amount of any valuation previously made by the creditor and
13 shall be treated in all respects as an amended valuation made by the creditor.

Amendment of
claim where
security not
realized

14 **123.**-(1) Where a trustee has not elected to acquire the security as
15 provided in this Act, a creditor may at any time amend the valuation and proof
16 on showing to the satisfaction of the trustee or the Court that the valuation and
17 proof were made in good faith on a mistaken estimate or that the security has
18 diminished or increased in value since its previous valuation.

19 (2) An amendment pursuant to subsection (1) shall be made at the cost
20 of the creditor and on such terms as the Court orders, unless the trustee allows
21 the amendment without application to the Court.

22 (3) Where a valuation has been amended pursuant to this section, the
23 creditor:

24 (a) shall forthwith repay any surplus dividend that he may have
25 received in excess of that to which he would have been entitled on the amended
26 valuation; or

27 (b) is entitled to be paid out of any money for the time being available
28 for dividend any dividend or share of dividend that he may have failed to
29 receive by reason of the amount of the original valuation before that money is
30 made applicable to the payment of any future dividend, but he is not entitled to

1 disturb the distribution of any dividend declared before the amendment is
2 filed with the trustee.

3 **124.** Where a secured creditor does not comply with sections 118
4 to 123, he shall be excluded from any dividend.

Exclusion of
secured creditor
from dividend

5 **125.** Subject to section 121, a creditor shall in no case receive more
6 than one hundred cents on the dollar and interest as provided by this Act.

No creditor to
receive more
than one hundred
cents on dollar

7 *Admission and disallowance of proofs of claim and proofs of security*

8 **126.**-(1) The trustee shall examine every proof of claim or proof of
9 security and the grounds for the proof and may require further evidence in
10 support of the claim or security.

Trustee to
examine proofs

11 (2) The trustee shall determine whether any contingent claim or
12 unliquidated claim is a provable claim, and, if it is a provable claim, the
13 trustee shall value it, and the claim, is subject to this section, deemed a
14 proved claim to the amount of its valuation.

15 (3) The trustee may disallow in whole or in part:

16 (a) any claim;

17 (b) any right to a priority under the applicable order of priority set
18 out in this Act; or

19 (c) any security.

20 (4) Where the trustee makes a determination under subsection (2),
21 or pursuant to subsection (3), disallows, in whole or in part, any claim, any
22 right to a priority or any security, the trustee shall provide, in the prescribed
23 manner, to the person whose claim was subject to a determination under
24 subsection (2) or whose claim, right to a priority or security was disallowed
25 under subsection (3), a notice in the prescribed form setting out the reasons
26 for the determination or disallowance.

27 (5) A determination under subsection (2), or a disallowance
28 referred to in subsection (3) is final and conclusive unless, within a thirty-
29 day period after the service of the notice referred to in subsection (4) or such
30 further time as the Court may on application made within that period allow,

1 the person to whom the notice was provided appeals from the trustee's decision
2 to the Court in accordance with the Bankruptcy Rules.

3 (6) The Court may expunge or reduce a proof of claim or a proof of
4 security on the application of a creditor or of the debtor if the trustee declines to
5 interfere in the matter.

6 *Scheme of distribution*

Preferred
creditors

7 **127.**-(1) Subject to subsection (2) and the rights of secured creditors,
8 the proceeds realized from the property of a bankrupt shall be applied in
9 priority of payment as follows:

10 (a) in the case of a deceased bankrupt, the reasonable funeral and
11 testamentary expenses incurred by the legal personal representative of the
12 deceased bankrupt;

13 (b) the costs of administration, in the following order:

14 (i) the expenses and fees of any person acting under a direction made
15 under section 189(1)(a);

16 (ii) the expenses and fees of the trustee; and

17 (iii) legal costs;

18 (c) the levy payable under section 137;

19 (d) excluding severance, claims for wages, salaries, commissions or
20 compensation of any employee for services rendered during the six months
21 immediately preceding the bankruptcy to the extent of four thousand dollars in
22 each case, together with, in the case of a travelling salesman, disbursements
23 properly incurred by that salesman in and about the bankrupt's business, to the
24 extent of an additional two thousand dollars in each case, during the same
25 period.

26 (e) contributions payable by the bankrupt, as an employer, pursuant to
27 the National Insurance Act and the Widows and Orphans Pension Act;

28 (f) all taxes including land tax or income tax assessed on the bankrupt
29 and not exceeding in total one year's assessment;

30 (g) the landlord pursuant to section 63(6);

1 (h) claims of individuals being of less than thirty years of age as of
2 the date of bankruptcy having contracted directly with the bankrupt, in each
3 case to the extent of fifteen hundred dollars, and where there are insufficient
4 funds in the estate to pay all such claims, they shall be paid rateably; and

5 (i) all claims of all persons having contracted directly with the
6 bankrupt, in each case to a maximum of one thousand dollars, and where
7 there are insufficient funds in the estate to pay all such claims, they shall be
8 paid rateably.

9 (2) Where a proposal made by an insolvent person has been
10 approved by the Court pursuant to section 42(7), the insolvent person has
11 not subsequently been adjudged bankrupt, and the trustee has not been
12 required to notify the Supervisor pursuant to section 45, the claims under
13 subsection (1)(d) and (e) shall be read as including only those amounts due
14 for the periods commencing twelve and six months, respectively, before the
15 proposal was filed.

16 (3) Subject to the retention of such sums as may be necessary for
17 the costs of administration or otherwise, payment in accordance with
18 subsections (1) and (2) shall be made as soon as funds are available for the
19 purpose.

20 (4) A creditor whose rights are restricted by this section is entitled
21 to rank as an unsecured creditor for any balance of claim due to him.

22 **128.** A creditor who entered into a reviewable transaction with a
23 debtor at any time prior to the bankruptcy of the debtor is not entitled to
24 claim a dividend in respect of a claim arising out of that transaction until all
25 claims of the other creditors have been satisfied unless the transaction was in
26 the opinion of the trustee or of the Court a proper transaction.

Where
reviewable
transaction

27 **129.** A father, child, mother, brother, sister, uncle or aunt by blood,
28 marriage, or adoption of a bankrupt is not entitled to have a claim preferred
29 as provided by section 127, in respect of wages, salary, commission or
30 compensation for work done or services rendered to the bankrupt.

Claim of relative
of bankrupt

Claim of
participating
lender

1 **130.** Where a lender advances money to a borrower engaged or about
2 to engage in trade or business under a contract with the borrower that the lender
3 shall receive a rate of interest varying with the profits or shall receive a share of
4 the profits arising from carrying on the trade or business, and the borrower
5 subsequently becomes bankrupt, the lender of the money is not entitled to
6 recover anything in respect of the loan until the claims of all other creditors of
7 the borrower have been satisfied.

Claim of officer
and director

8 **131.** Where a corporation becomes bankrupt, no officer or director of
9 the corporation is entitled to have his claim preferred as provided by section
10 127 in respect of wages, salary, commission or compensation for work done or
11 services rendered to that corporation in any capacity.

Dividends
pro rata

12 **132.** Subject to this Act, all claims proved in a bankruptcy shall be
13 paid rateably.

Property of
bankrupt
partnership

14 **133.**-(1) Where partners become bankrupt, their joint property shall
15 be applicable in the first instance in payment of their joint debts, and the
16 separate property of each partner shall be applicable in the first instance in
17 payment of his separate debts.

18 (2) Where there is a surplus of the separate properties of the partners,
19 it shall be dealt with as part of the joint property.

20 (3) Where there is a surplus of the joint property of the partners, it
21 shall be dealt with as part of the respective separate properties in proportion to
22 the right and interest of each partner in the joint property.

23 (4) Where a bankrupt owes or owed debts both individually and as a
24 member of one or more partnerships, the claims shall rank first on the property
25 of the individual or partnership by which they were contracted and shall only
26 rank on the other estate or estates after all the creditors of the other estate or
27 estates have been paid in full.

28 (5) Where the joint property of any bankrupt partnership is
29 insufficient to defray any costs properly incurred, the trustee may pay such
30 costs as cannot be paid out of the joint property out of the separate property of

1 the bankrupts or one or more of them in such proportion as he may determine
 2 with the consent of the inspectors of the estates out of which the payment is
 3 intended to be made, or, if the inspectors withhold or refuse their consent,
 4 with the approval of the Court.

5 134. Where there is a surplus after payment of the claims as
 6 provided in sections 127 to 133, it shall be applied in payment of interest
 7 from the date of the bankruptcy at the rate of six per cent per annum on all
 8 claims proved in the bankruptcy and according to their priority.

Where surplus
remains after
claims paid

9 135. The bankrupt or the legal personal representative of a
 10 deceased bankrupt is entitled to any surplus remaining after payment in full
 11 of his creditors with interest as provided by this Act and of the costs, charges
 12 and expenses of the bankruptcy proceedings.

Final surplus to
bankrupt

13 136. Nothing in this Act affects the right of any person who has a
 14 claim against the bankrupt for damages on account of injury to or death of
 15 any person, or injury to property, occasioned by a motor vehicle, or on
 16 account of injury to property being carried in or on a motor vehicle, to have
 17 the proceeds of any liability insurance policy applied in or toward the
 18 satisfaction of the claim.

Motor vehicle
insurance

19 137. -(1) For the purpose of defraying the expenses of the
 20 supervision by the Supervisor, there shall be payable to the Supervisor for
 21 deposit with the State a levy on all payments, made by the trustee by way of
 22 dividend or otherwise on account of the claims of creditors, whether
 23 unsecured, preferred or secured creditors, and including the State claiming
 24 in respect of taxes or otherwise.

Supervisor's
levy

25 (2) The levy referred to in subsection (1) shall be five per cent of all
 26 payments and shall be charged proportionately against all payments and
 27 deducted from the payments by the trustee before payment is made.

28 *Dividends*

29 138. -(1) Subject to the retention of such sums as may be necessary
 30 for the costs of administration or otherwise, the trustee shall, from time to

Inspectors to
declare dividends
to ordinary
unsecured
creditors

1 time as required by the inspectors, declare and distribute dividends among the
2 unsecured creditors entitled to dividends.

3 (2) Where the validity of any claim filed with the trustee has not yet
4 been determined, the trustee shall retain sufficient funds to provide for
5 payment of the claim in the event that the claim is admitted.

6 (3) No action for a dividend lies against the trustee, but, if the trustee
7 refuses or fails to pay any dividend after having been directed to do so by the
8 inspectors, the Court may, on the application of any creditor, order him to pay
9 it, and also to pay personally interest on the dividend for the time that it is
10 withheld as well as the costs of the application.

Thirty-Day
notice to prove
claims

11 **139.** -(1) The trustee may, after the first meeting of the creditors, give
12 notice by registered mail to every person with a claim of which the trustee has
13 notice or knowledge but whose claim has not been proved that if that person
14 does not prove his claim within a period of thirty days after the mailing of the
15 notice the trustee will proceed to declare a dividend or final dividend without
16 regard to that person's claim.

17 (2) Where a person notified under subsection (1) does not prove the
18 claim within the time limit or within such further time as the Court may allow
19 on proof of merits and satisfactory explanation of the delay in making proof,
20 the claim of that person shall, notwithstanding anything in this Act, be
21 excluded from all share in any dividend, but a taxing authority may notify the
22 trustee within the period referred to in subsection (1) that it proposes to file a
23 claim as soon as the amount has been ascertained, and the time for filing the
24 claim shall thereupon be extended to three months or such further time as the
25 Court may allow.

26 (3) Notwithstanding subsection (2), a claim may be filed for an
27 amount payable under the Income Tax Act within the time limit referred to in
28 subsection (2) or within three months from the time the return of income or
29 other evidence of the facts on which the claim is based is filed or comes to the
30 attention of the State.

1 (4) Unless the trustee retains sufficient funds to provide for
2 payment of any claims that may be filed under the Income Tax Act, no
3 dividend shall be declared until the expiration of three months after the
4 trustee has filed all returns that the trustee is required to file.

5 **140.** A creditor who has not proved his claim before the declaration
6 of any dividend is entitled on proof of his claim to be paid out of any money
7 for the time being in the hands of the trustee, any dividend or dividends he
8 may have failed to receive before that money is applied to the payment of
9 any future dividend, but he is not entitled to disturb the distribution of any
10 dividend declared before his claim was proved for the reason that he has not
11 participated in that dividend, except on such terms and conditions as may be
12 ordered by the Court.

Where claim
proven after
dividend declared

13 **141.** When the trustee has realized all the property of the bankrupt
14 or all of that property that can, in the joint opinion of the trustee and of the
15 inspectors, be realized without needlessly protracting the administration,
16 and settled or determined or caused to be settled or determined, the claims of
17 all creditors to rank against the estate of the bankrupt, the trustee shall
18 prepare a final statement of receipts and disbursements and dividend sheet
19 and, subject to this Act, divide the property of the bankrupt among the
20 creditors who have proved their claims.

Final statement
of receipts and
disbursements
to be prepared

21 **142.-(1)** The trustee's final statement of receipts and
22 disbursements shall contain a complete account of all monies received by
23 the trustee out of the property of the bankrupt or otherwise, the amount of
24 interest received by the trustee, all monies disbursed and expenses incurred
25 and the remuneration claimed by the trustee, together with full particulars,
26 description and value of all property of the bankrupt that has not been sold or
27 realised, setting out the reason why the property has not been sold or
28 realised and the disposition made thereof.

Final statement
to complete
account

29 (2) The statement referred to in subsection (1) shall be prepared in
30 the prescribed form or as near thereto as the circumstances of the case will

1 permit and together with the dividend sheet shall be submitted to the inspectors
2 for their approval.

3 (3) The trustee shall forward a copy of the statement and dividend
4 sheet to the Supervisor after they have been approved by the inspectors.

5 (4) The Supervisor shall comment as he sees fit and his comments
6 shall be placed by the trustee before the taxing officer for his consideration on
7 the taxation of the accounts of the trustee.

8 (5) After the Supervisor has commented on the taxation of the
9 trustee's accounts or advised the trustee that the Supervisor has no comments to
10 make and the accounts of the trustee have been taxed, the trustee shall, in the
11 prescribed manner, forward to every creditor whose claim has been proved, to
12 the Registrar, to the Supervisor and to the bankrupt:

13 (a) a copy of the final statement of receipts and disbursements;

14 (b) a copy of the dividend sheet; and

15 (c) a notice in the prescribed form of his intention to pay a final
16 dividend after the expiration of fifteen days from the mailing of the notice,
17 statement and dividend sheet and to apply to the Court for his discharge on a
18 subsequent date not less than thirty days after the payment of the dividend.

19 (6) No interested person is entitled to object to the final statement and
20 the dividend sheet unless, prior to the expiration of the fifteen days referred to
21 in subsection (5) (c), that person files notice of his objection with the Registrar
22 setting out his reasons for the objection and serves a copy of the notice on the
23 trustee.

Dividends on
joint and separate
properties

24 **143.** Where joint and separate properties are being administered, the
25 dividends may be declared together, and the expenses of administering the
26 properties shall be apportioned by the trustee.

Unclaimed
dividends and
undistributed
funds

27 **144.**-(1) Before proceeding to discharge, the trustee shall forward to
28 the Supervisor for deposit, as prescribed, the unclaimed dividends and
29 undistributed funds that the trustee possesses, other than those exempted by the
30 Bankruptcy Rules, and shall provide a list of names and the post office

1 addresses, in so far as known, of the creditors entitled to the unclaimed
2 dividends, showing the amount payable to each creditor.

3 (2) The Supervisor shall, after receiving the dividends and funds
4 and the list referred to in subsection (1), on application, pay to any creditor
5 his proper dividend as shown on that list, and such payment has effect as if
6 made by the trustee.

7 *Summary administration*

8 145. The following provisions apply to the summary
9 administration of estates under this Act:

Provisions
applying to
summary
administration

10 (a) all proceedings under this section shall be titled "Summary
11 Administration";

12 (b) the security to be deposited by a trustee under section 199 shall
13 not be required unless directed by the Supervisor;

14 (c) a notice of the bankruptcy shall not be published in a local
15 newspaper unless such publication is deemed expedient by the trustee or
16 ordered by the Court;

17 (d) all notices, statements and other documents shall be sent by
18 ordinary mail;

19 (e) a first meeting of creditors:

20 (i) is required to be called by the trustee only if it is requested
21 within thirty days after the date of the bankruptcy by the Supervisor or by
22 creditors who have in the aggregate at least twenty-five per cent in value of
23 the proven claims;

24 (ii) must be called in the prescribed form and manner; and

25 (iii) must be held within twenty-one days after being called;

26 (f) there shall be no inspectors unless the creditors decide to
27 appoint them, and if no inspectors are appointed, the trustee, in the absence
28 of directions from the creditors, may do all things that may ordinarily be
29 done by the trustee with the permission of the inspectors;

30 (g) in such circumstances as may be specified by the Supervisor,

1 the estates of individuals who, because of their relationship, could reasonably
2 be dealt with as one estate may be dealt with as one estate;

3 (h) in such circumstances as are specified by the Supervisor and with
4 the approval of the Supervisor, the trustee may deposit all monies relating to
5 the summary administration of estates in a single trust account;

6 (i) a notice of bankruptcy and:

7 (i) a notice of impending automatic discharge of the bankrupt; or

8 (ii) an application for discharge of the bankrupt may be given in a
9 single notice in the prescribed form;

10 (j) notwithstanding section 142, the procedure respecting the
11 accounts of the trustee, including the taxation of those accounts shall be as
12 prescribed; and

13 (k) notwithstanding section 224(1), (5) and (6), the procedure for the
14 discharge of the trustee shall be as prescribed.

Remuneration
in summary
administration

15 146. For the summary administration of estates, the trustee shall
16 receive such fees and disbursements as may be prescribed.

Provisions to
apply mutatis
mutandis

17 147. Except as provided in section 145, all provisions of this Act, in
18 so far as they are applicable, apply with such modifications as the
19 circumstances require to summary administration.

20 PART VIII- BANKRUPTS

21 *Counselling Services*

Trustee to
counsel
individual
bankrupts

22 148.-(1) The trustee shall provide, or provide for, counselling for an
23 individual bankrupt and his immediate family as prescribed, and the estate of
24 the bankrupt shall pay the costs of the counselling, as costs of administration of
25 the estate according to the prescribed tariff.

26 (2) Where counselling is provided by a trustee to a debtor who is not
27 bankrupt, that counselling must be provided as prescribed.

28 (3) Section 160 (1) (g) does not apply to an individual bankrupt who
29 has refused or neglected to receive counselling provided pursuant to
30 subsection (1).

1 *Duties of bankrupts*

2 **149. A bankrupt shall:**

Duties of
bankrupts

3 (a) make discovery of and deliver all his property that is under his
4 possession or control to the trustee or to any person authorized by the trustee
5 to take possession of it or any part thereof;

6 (b) deliver to the trustee, for cancellation, all credit cards issued to
7 and in the possession or control of the bankrupt;

8 (c) deliver to the trustee all books, records, documents, writings
9 and papers including without restricting the generality of the foregoing, title
10 papers, insurance policies and tax records and returns and copies thereof in
11 any way relating to his property or affairs;

12 (d) at such time and place as may be fixed by the Supervisor, attend
13 upon the Supervisor for examination under oath with respect to his conduct,
14 the causes of his bankruptcy and the disposition of his property;

15 (e) within five days following the bankruptcy, unless the time is
16 extended by the Supervisor, prepare and submit to the trustee a statement of
17 the bankrupt's affairs in the prescribed form verified by affidavit and
18 showing:

19 (i) the particulars of the bankrupt's assets and liabilities;

20 (ii) the names and addresses of the bankrupt's creditors;

21 (iii) the securities held by them respectively;

22 (iv) the dates when the securities were respectively given; and

23 (v) such further or other information as may be required, but where
24 the affairs of the bankrupt are so involved or complicated that the bankrupt
25 alone cannot reasonably prepare a proper statement of affairs, the
26 Supervisor may, as an expense of the administration of the estate, authorize
27 the employment of a qualified person to assist in the preparation of the
28 statement;

29 (f) make or give all the assistance within his power to the trustee in
30 making an inventory of his assets;

- 1 (g) make disclosure to the trustee:
- 2 (i) of all property disposed of within the period beginning on the day
- 3 that is one year before the date of the initial bankruptcy event or beginning on
- 4 such other antecedent date as the Court direct, and ending on the date of the
- 5 bankruptcy; and
- 6 (ii) how and to whom and for what consideration any part of the
- 7 property was disposed of except such part as had been disposed of in the
- 8 ordinary manner of trade or used for reasonable personal expenses;
- 9 (h) make disclosure to the trustee of all property disposed of by gift or
- 10 settlement without adequate valuable consideration within the period
- 11 beginning on the day that is five years before the date of the initial bankruptcy
- 12 event and ending on the date of the bankruptcy;
- 13 (i) attend the first meeting of his creditors unless prevented by
- 14 sickness or other sufficient cause and at the meeting submit thereat to
- 15 examination;
- 16 (j) when required, attend other meetings of his creditors or of the
- 17 inspectors, or attend on the trustee;
- 18 (k) submit to such other examinations under oath with respect to his
- 19 property or affairs as may be required;
- 20 (l) aid to the utmost of his power in the realization of his property and
- 21 the distribution of the proceeds among his creditors;
- 22 (m) execute such powers of attorney, conveyances, deeds and
- 23 instruments as may be required;
- 24 (n) examine the correctness of all proofs of claim filed, if required by
- 25 the trustee;
- 26 (o) in case any person has to his knowledge filed a false claim,
- 27 disclose the fact immediately to the trustee;
- 28 (p) inform the trustee of any material change in the bankrupt's
- 29 financial situation;
- 30 (q) until his application for discharge has been disposed of and the

1 administration of the estate completed, keep the trustee advised at all times
2 of his place of residence or address; and

3 (r) generally do all such acts and things in relation to his property
4 and the distribution of the proceeds among his creditors as may be
5 reasonably required by the trustee, or may be prescribed by the Bankruptcy
6 Rules, or may be directed by the Court by any special order made with
7 reference to any particular case or made on the occasion of any special
8 application by the trustee, or any creditor or person interested.

9 **150.** Where a bankrupt is a corporation, the officer executing the
10 assignment, or such officer of the corporation, or person who has, or has had,
11 directly or indirectly, control of the corporation as the Supervisor may
12 specify, shall attend before the Supervisor for examination and shall
13 perform all of the duties imposed on a bankrupt by section 149, and, in case
14 of failure to do so, the officer or person is punishable as though that officer or
15 person were the bankrupt.

Bankrupt
corporation

16 **151.** Where a bankrupt is undergoing imprisonment, the Court
17 may, in order to enable the bankrupt:

Imprisoned
bankrupt

18 (a) to attend Court in bankruptcy proceedings at which his personal
19 presence is required;

20 (b) to attend the first meeting of creditors; or

21 (c) to perform the duties required of him under this Act, direct that
22 the bankrupt be brought before the Court in the protective custody of a
23 Marshal, or other duly authorised officer at such time and place as may be
24 designated, or the Court may make such other order as it deems proper and
25 requisite in the circumstances.

26 *Examination of bankrupts and others*

27 **152.**-(1) Before the discharge of a bankrupt, the Supervisor may,
28 on the attendance of the bankrupt, examine the bankrupt under oath with
29 respect to the conduct of the bankrupt, the causes of the bankruptcy and the
30 disposition of the bankrupt's property and shall put to the bankrupt questions

Examination of
bankrupt by
Supervisor

1 as the Supervisor may see fit.

2 (2) The Supervisor shall make notes of an examination made under
3 subsection (1) and shall forward a copy of the notes to the trustee and the Court
4 for deposit therein.

5 (3) Where the examination under subsection (1) is held:

6 (a) before the first meeting of creditors, the notes shall be
7 communicated to the creditors at the meeting; or

8 (b) after the first meeting of creditors, the notes shall be made
9 available to any creditor who requests them.

10 (4) Where a bankrupt fails to present himself for examination by the
11 Supervisor, the Supervisor shall report the failure to the trustee.

Investigation by
Supervisor
regarding
bankrupt

12 **153.**-(1) The Supervisor may make or cause to be made any inquiry or
13 investigation that may be deemed necessary in respect of the conduct of the
14 bankrupt, the causes of his bankruptcy and the disposition of his property, and
15 the Supervisor shall report the findings on any such inquiry or investigation to
16 the trustee and to the Court.

17 (2) Where, pursuant to subsection (1), an inquiry or investigation is
18 made by the Supervisor, the Supervisor shall, out of the monies appropriated by
19 Parliament to defray the expenses of the office of the Supervisor, pay such
20 reasonable costs and expenses incurred in connection with the inquiry or
21 investigation, not being ordinary costs or expenses of his office.

22 (3) Section 155 applies in respect of an inquiry or investigation under
23 subsection (1).

Trustee may
examine bankrupt
and others

24 **154.**-(1) The trustee, on ordinary resolution passed by the creditors or
25 on the written request or resolution of a majority of the inspectors, may, without
26 an order, examine under oath before the Court or other authorised person, the
27 bankrupt, any person reasonably thought to have knowledge of the affairs of
28 the bankrupt or any person who is or has been an agent, clerk, servant, officer,
29 director or employee of the bankrupt, respecting the bankrupt, his dealings or
30 property and may order any person liable to be so examined to produce any

1 books, documents, correspondence or papers in his possession or power
2 relating in all or in part to the bankrupt, his dealings or property.

3 (2) On the application to the Court by the Supervisor, any creditor
4 or other interested person and on sufficient cause being shown, the Court
5 may make an order for the examination under oath, before the Registrar or
6 other authorised person:

7 (a) of the trustee;

8 (b) the bankrupt;

9 (c) an inspector or a creditor; or

10 (d) any other person named in the order, for the purpose of
11 investigating the administration of the estate of any bankrupt, and may
12 further order any person liable to be so examined to produce any books,
13 documents, correspondence or papers in the person's possession or power
14 relating in all or in part to the bankrupt, the trustee or any creditor, the costs
15 of the examination and investigation to be in the discretion of the Court.

16 (3) The evidence of any person examined under this section shall, if
17 transcribed, be filed in the Court and may be read in any proceedings before
18 the Court under this Act and to which the person examined is a party.

19 **155.-(1)** Where a person has, or is believed or suspected to have, in
20 his possession or power any of the property of the bankrupt, or any book,
21 document or paper of any kind relating in whole or in part to the bankrupt,
22 his dealings or property, or showing that he is indebted to the bankrupt, he
23 may be required by the trustee to produce the book, document or paper for
24 the information of the trustee, or to deliver to him any property of the
25 bankrupt in his possession.

Trustee may
require delivery
of property of
bankrupt and
production of
books and records

26 (2) Where a person fails to produce a book, document or paper or to
27 deliver property as required by this section within five days after being
28 required to do so, the trustee may, without an order, examine the person
29 before the Registrar of the Court or other authorized person concerning the
30 property, book, document or paper that the person is supposed to possess.

1 (3) Any person referred to in subsection (1) may be compelled to
2 attend and testify, and to produce on his examination any book, document or
3 paper that under this section he is liable to produce, in the same manner and
4 subject to the same rules of examination, and the same consequences of
5 neglecting to attend or refusing to disclose the matters in respect of which he
6 may be examined, as would apply to a bankrupt.

Where person
may be ordered
by Court to pay
trustee

7 **156.-(1)** Where a person on examination admits that he is indebted to
8 the bankrupt, the Court may, on the application of the trustee, order him to pay
9 to the trustee, at such time and in such manner as to the Court seems expedient,
10 the amount admitted or any part of the amount either in full discharge of the
11 whole amount in question or not, as the Court thinks fit, with or without costs of
12 the examination.

13 (2) Where any person on examination admits that he has in his
14 possession any property belonging to the bankrupt, the Court may, on the
15 application of the trustee, order him to deliver to the trustee the property or any
16 part of the property at such time, in such manner and on such terms as to the
17 Court may seem just.

Issue of warrant
for apprehension
and examination
of persons

18 **157.** Where the bankrupt fails to present himself for examination
19 before the Supervisor as required by section 149 (d) or where he or any other
20 person is served with an appointment or summons to attend for any
21 examination but refuses or neglects to attend as required by the appointment or
22 summons, the Court may, on the application of the trustee, by warrant cause the
23 bankrupt or other person so in default to be apprehended and brought up for
24 examination.

Examination
by Court

25 **158.-(1)** Any person being examined is bound to answer all questions
26 relating to the business or property of the bankrupt, to the causes of his
27 bankruptcy and the disposition of his property.

28 (2) The Court may order that any person who, if in Nigeria, would be
29 liable to be brought before the Court for any examination under this Act, shall
30 be examined in any place out of Nigeria.

Arrest of Bankrupts

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

159.-(1) The Court may by warrant cause a **bankrupt to be arrested** and detained, and any books, papers and property in his possession to be seized, and the books, papers, electronic documents and property to be safely kept as directed until such time as the Court may order, under the following circumstances:

Court order for
arrest of bankrupt

(a) where, after the filing of a bankruptcy petition against the bankrupt, it appears to the Court that there are grounds for believing that he has absconded or is about to abscond from Nigeria with a view to:

(i) avoiding payment of the debt in respect of which the bankruptcy petition was filed;

(ii) avoiding appearance to any such petition;

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

(iv) otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;

(b) where, after making an assignment, it appears to the Court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Nigeria with a view to avoiding payment of his debts or to avoiding examination in respect of his affairs;

(c) where, after the filing of a bankruptcy petition or an assignment, it appears to the Court there are reasonable grounds for believing that the debtor:

(i) is about to remove his property with a view to preventing or delaying possession being taken of the property by the trustee; or

(ii) has concealed or is about to conceal or destroy any of his property or any books, documents or writings that might be of use to the trustee or to his creditors in the course of the bankruptcy proceedings;

(d) where the bankrupt removes any property in his possession above the value of two hundred dollars without leave of the Court or the trustee; or

1 (e) where after the commencement of proceedings under this Act, the
2 bankrupt has failed to obey an order of the Court.

3 (2) No payment or proposal made or security given after arrest made
4 under this section is exempt from the provisions of this Act relating to
5 fraudulent preferences.

6 *Discharge of bankrupts*

Automatic
discharge of
first-time
individual
bankrupt

7 **160.**-(1) Except as provided in subsection (2), the following
8 provisions apply in respect of an individual who has never before been
9 bankrupt under the laws of Nigeria or any prescribed jurisdiction:

10 (a) the trustee shall, before the expiration of the eight-month period
11 immediately following the date on which a receiving order is made against, or
12 an assignment is made by the individual bankrupt, file a report prepared under
13 section 162 (1) with the Supervisor and send a copy of the report to the
14 bankrupt and to each creditor who requested a copy;

15 (b) the trustee shall, not less than fifteen days before the date of
16 automatic discharge provided for in paragraph (g), give notice of the
17 impending discharge, in the prescribed form, to the Supervisor, the bankrupt
18 and every creditor who has proved a claim, at the creditor's last known address;

19 (c) where the Supervisor intends to oppose the discharge of the
20 bankrupt, the Supervisor shall give notice of the intended opposition, stating
21 the grounds for the opposition to the trustee and to the bankrupt at any time
22 prior to the expiration of the nine months period immediately following the
23 bankruptcy;

24 (d) where a creditor intends to oppose the discharge of the bankrupt,
25 the creditor shall give notice of the intended opposition, stating the grounds for
26 the opposition to the Supervisor, to the trustee and to the bankrupt at any time
27 prior to the expiration of the nine-month period immediately following the
28 bankruptcy;

29 (e) where the trustee intends to oppose the discharge of the bankrupt,
30 the trustee shall give notice of the intended opposition in prescribed form and

1 manner, stating the grounds for the opposition to the bankrupt and the
2 Supervisor at any time prior to the expiration of the nine-month period
3 immediately following the bankruptcy;

4 (f) where the Supervisor, the trustee or a creditor opposes the
5 discharge of the bankrupt, the trustee shall, unless the matter is to be dealt
6 with by mediation under section 163, forthwith apply to the Court for an
7 appointment for the hearing of the opposition in the manner referred to in
8 sections 161 to 168, which hearing shall be held:

9 (i) within thirty days after the day the appointment is made; or

10 (ii) at such later time as may be fixed by the Court at the request of
11 the bankrupt or the trustee; and

12 (g) where the Supervisor, the trustee or a creditor has not opposed
13 the discharge of the bankrupt in the nine-month period immediately
14 following the bankruptcy, then, subject to section 148(3):

15 (i) on the expiration of that nine months period, the bankrupt is
16 automatically discharged; and

17 (ii) forthwith after the expiration of that nine-month period, the
18 trustee shall issue a certificate to the discharged bankrupt, in the prescribed
19 form, declaring that the bankrupt is discharged and is released from all debts
20 except those matters referred to in section 223 and shall send a copy of the
21 certificate to the Supervisor.

22 (2) Nothing in subsection (1) precludes an individual bankrupt
23 from applying to the Court for discharge before the expiration of the nine-
24 month period immediately following the bankruptcy, and subsection (1)
25 ceases to apply to an individual bankrupt who makes an application before
26 the expiration of that period.

27 (3) The provisions of this Act concerning the discharge of
28 bankrupts apply in respect of an individual bankrupt who has never before
29 been bankrupt under the laws of Nigeria or of any prescribed jurisdiction, to
30 the extent that those provisions are not inconsistent with this section,

1 whether or not the bankrupt applies to the Court for a discharge referred to in
2 subsection (2).

3 (4) An automatic discharge by virtue of subsection (1) (g) is deemed,
4 for all purposes, to be an absolute and immediate order of discharge.

Bankruptcy of
an individual
operates as an
application for
discharge

5 **161.**-(1) Subject to section 160, the making of a receiving order
6 against, or an assignment by, any person except a corporation operates as an
7 application for discharge, unless the bankrupt, by notice in writing, files in the
8 Court and serves on the trustee a waiver of application before being served by
9 the trustee with a notice of the trustee's intention to apply to the Court for an
10 appointment for the hearing of the application as provided in this section.

11 (2) The trustee, before proceeding to the discharge and in any case not
12 earlier than three months and not later than one year following the bankruptcy
13 of any person who has not served a notice of waiver on the trustee, shall on five
14 days notice to the bankrupt apply to the Court for an appointment for a hearing
15 of the application on a date not more than thirty days after the date of the
16 appointment or at such other time as may be fixed by the Court at the request of
17 the bankrupt or trustee.

18 (3) A bankrupt who has given a notice of waiver as provided in
19 subsection (1) may, at any time at the bankrupt's own expense, apply for a
20 discharge by obtaining from the Court an appointment for hearing, which shall
21 be served on the trustee not less than twenty-one days before the date fixed for
22 the hearing of the application, and the trustee on being served therewith shall
23 proceed as provided in this section.

24 (4) A bankrupt corporation may not apply for a discharge unless it has
25 satisfied the claims of its creditors in full.

26 (5) The Court may, before issuing an appointment for hearing an
27 application for discharge, if requested by the trustee, require such funds to be
28 deposited with, or such guarantee to be given to, the trustee, as it deems proper,
29 for the payment of the fees and disbursements incurred in respect of the
30 application.

1 (6) The trustee, on obtaining or being served with an appointment
2 for hearing an application for discharge, shall, not less than fourteen days
3 before the day appointed for the hearing of the application, send a notice of
4 the application in the prescribed form to the Supervisor, the bankrupt and
5 every creditor who has proved a claim, at the creditor's last known address.

6 (7) Where the trustee is not available to perform the duties required
7 of a trustee on the application of a bankrupt for a discharge, the Court may
8 authorize any other person to perform such duties and may give such
9 directions as it deems necessary to enable the application of the bankrupt to
10 be brought before the Court.

11 **162.-(1)** The trustee shall prepare a report in the prescribed form
12 with respect to:

Trustee to
prepare report
of application
of bankrupt for
discharge

- 13 (a) the affairs of the bankrupt;
14 (b) the causes of his bankruptcy;
15 (c) the manner in which the bankrupt has performed the duties
16 imposed on him under this Act or obeyed the orders of the Court;
17 (d) the conduct of the bankrupt both before and after the date of the
18 initial bankruptcy event;
19 (e) whether the bankrupt has been convicted of any offence under
20 this Act; and
21 (f) any other fact, matter or circumstance that would justify the
22 Court in refusing an unconditional order of discharge, and the report shall be
23 accompanied by a resolution of the inspectors declaring whether or not they
24 approve or disapprove of the report, and in the latter case, the reasons of the
25 disapproval shall be given.

26 (2) Where an application of a bankrupt for a discharge is pending,
27 the trustee shall file the report prepared under subsection (1) in the Court not
28 less than two days, and forward a copy to the Supervisor, to the bankrupt and
29 to each creditor who requested a copy not less than ten days before the day
30 appointed for hearing the application, and in all other cases the trustee,

1 before proceeding to the discharge, shall file the report in the Court and
2 forward a copy to the Supervisor.

3 (3) The Supervisor may make such further or other report to the Court
4 as he deems expedient or as in his opinion ought to be before the Court on the
5 application referred to in subsection (2).

6 (4) The trustee or any creditor may attend the Court and be heard in
7 person or by counsel.

8 (5) For the purposes of the application referred to in subsection (2),
9 the report of the trustee is evidence of the statements contained in the report.

10 (6) Where a bankrupt intends to dispute any statement contained in
11 the trustee's report prepared under subsection (1), the bankrupt shall at or
12 before the time appointed for hearing the application for discharge give notice
13 in writing to the trustee specifying the statements in the report that he proposes
14 at the hearing to dispute.

15 (7) A creditor who intends to oppose the discharge of a bankrupt on
16 grounds other than those mentioned in the trustee's report shall give notice of
17 the intended opposition, stating the grounds of the opposition to the trustee and
18 to the bankrupt at or before the time appointed for the hearing of the application
19 for discharge.

Trustee's report
to provide
recommendation

20 **163.**-(1) The report prepared under section 162 (1) shall include a
21 recommendation as to whether or not the bankrupt should be discharged
22 subject to conditions, having regard to the bankrupt's conduct and ability to
23 make payments.

24 (2) The trustee shall consider the following matters in making a
25 recommendation under subsection (1):

26 (a) whether the bankrupt has complied with a requirement imposed on
27 the bankrupt under section 53;

28 (b) the total amount paid to the estate by the bankrupt, having regard
29 to the bankrupt's indebtedness and financial resources; and

30 (c) whether the bankrupt, where the bankrupt could have made a

1 viable proposal, chose to proceed to bankruptcy rather than to make a
2 proposal as the means to resolve the indebtedness.

3 (3) A recommendation that the bankrupt be discharged subject to
4 conditions is deemed to be an opposition to the discharge of the bankrupt.

5 (4) Where the bankrupt does not agree with the recommendation of
6 the trustee, the bankrupt may, before the expiration of the ninth month after
7 the date of the bankruptcy, send the trustee a request in writing to have the
8 matter determined by mediation.

9 (5) Where a request for mediation has been made under subsection
10 (4) or the discharge of the bankrupt is opposed by a creditor or the trustee in
11 whole or in part on a ground referred to in section 165 (m) or (n), the trustee
12 shall send an application for mediation in the prescribed form to the
13 Supervisor within five days after the expiration of the nine-month period
14 referred to in subsection (4) or within such further time as the Supervisor
15 may allow.

16 (6) A mediation shall be in accordance with prescribed procedures.

17 (7) Where the issues submitted to mediation are not resolved by
18 mediation or the bankrupt has failed to comply with conditions that were
19 established by the trustee or as a result of mediation, the trustee shall
20 forthwith apply to the Court for an appointment for the hearing of the matter,
21 which hearing shall be held:

22 (a) within thirty days after the day the appointment is made; or

23 (b) at such later time as may be fixed by the Court, and the
24 provisions of this Part in respect of applications to the Court under this
25 subsection in relation to the discharge of a bankrupt apply, with such
26 modifications as the circumstances require.

27 (8) Where the bankrupt complies with the conditions imposed on
28 the bankrupt by the trustee in relation to the discharge of the bankrupt or as a
29 result of mediation referred to in this section, the trustee shall:

30 (a) issue to the bankrupt a certificate of discharge in the prescribed

1 form releasing the bankrupt from all debts other than a debt referred to in
2 section 170(1); and

3 (b) send a copy of the certificate of discharge to the Supervisor.

4 (9) Documents contained in a file on the mediation of a matter under
5 this section form part of the records referred to in section 10(2).

Questions to
debtor

6 **164.**-(1) On the hearing of an application of a bankrupt for a
7 discharge, the Court may put such questions to the debtor and receive such
8 evidence as it thinks fit.

9 (2) On the hearing of an application of a bankrupt for a discharge, the
10 Court may either grant or refuse an absolute order of discharge or suspend the
11 operation of the order for a specified time, or grant an order of discharge subject
12 to any terms or conditions with respect to any earnings or income that may
13 afterwards become due to the bankrupt or with respect to his after-acquired
14 property.

15 (3) The Court shall on proof of any of the facts mentioned in section
16 165:

17 (a) refuse the discharge of a bankrupt;

18 (b) suspend the discharge for such period as the Court thinks proper;

19 or

20 (c) require the bankrupt, as a condition of his discharge, to perform
21 such acts, pay such monies, consent to such judgments or comply with such
22 other terms as the Court may direct.

23 (4) Where at any time after the expiration of one year after the date of
24 any order made under this section the bankrupt satisfies the Court that there is
25 no reasonable probability for his being in a position to comply with the terms of
26 the order, the Court may modify the terms of the order or of any substituted
27 order, in such manner and on such conditions as it may think fit.

28 (5) The powers of suspending and of attaching conditions to the
29 discharge of a bankrupt may be exercised concurrently.

Facts pursuant to
which bankrupt's
conduct is subject
to censure

30 **165.** The facts referred to in section 164 are:

1 (a) the assets of the bankrupt are not of a value equal to thirty-three
2 and one-third cents on the dollar on the amount of the bankrupt's unsecured
3 liabilities, unless the bankrupt satisfies the Court that the fact that the assets
4 are not that value has arisen from circumstances for which the bankrupt
5 cannot justly be held responsible;

6 (b) the bankrupt has omitted to keep such books of account as are
7 usual and proper in the business carried on by the bankrupt and does not
8 sufficiently disclose the business transactions and financial position of the
9 bankrupt within the three years before the date of the initial bankruptcy
10 event;

11 (c) the bankrupt has continued to trade after becoming aware of
12 being insolvent;

13 (d) the bankrupt has failed to account satisfactorily for any loss of
14 assets or for any deficiency of assets to meet the bankrupt's liabilities;

15 (e) the bankrupt has brought on, or contributed to, the bankruptcy
16 by rash and hazardous speculations, by unjustifiable extravagance in living,
17 by gambling or by culpable neglect of the bankrupt's business affairs;

18 (f) the bankrupt has put any of the bankrupt's creditors to
19 unnecessary expense by a frivolous or vexatious defence to any action
20 properly brought against the bankrupt;

21 (g) the bankrupt has, within the period beginning on the day that is
22 three months before the date of the initial bankruptcy event and ending on
23 the date of the bankruptcy, incurred unjustifiable expense by bringing a
24 frivolous or vexatious action;

25 (h) the bankrupt has, within the period beginning on the day that is
26 three months before the date of the initial bankruptcy event and ending on
27 the date of the bankruptcy, when unable to pay debts as they became due,
28 given an undue preference to any of the bankrupt's creditors;

29 (i) the bankrupt has, within the period beginning on the day that is
30 three months before the date of the initial bankruptcy event and ending on

1 the date of the bankruptcy, incurred liabilities in order to make the bankrupt's
2 assets equal to thirty-three and one-third cents on the dollar on the amount of
3 the bankrupt's unsecured liabilities;

4 (j) the bankrupt has on any previous occasion been bankrupt or made
5 a proposal to creditors;

6 (k) the bankrupt has been guilty of any fraud or fraudulent breach of
7 trust;

8 (l) the bankrupt has committed any offence under this Act or any
9 other statute in connection with the bankrupt's property, the bankruptcy or the
10 proceedings under the bankruptcy;

11 (m) the bankrupt has failed to comply with the requirement to pay
12 imposed under section 53;

13 (n) the bankrupt, if the bankrupt could have made a viable proposal,
14 chose bankruptcy rather than a proposal to creditors as the means to resolve the
15 indebtedness; and

16 (o) the bankrupt has failed to perform the duties imposed on the
17 bankrupt under this Act or to comply with any order of the Court.

Value of
bankrupt's
assets

18 **166.** For purposes of section 165, the assets of a bankrupt shall be
19 deemed of a value equal to thirty-three and one-third cents on the dollar on the
20 amount of his unsecured liabilities when the Court is satisfied that the property
21 of the bankrupt has realized, is likely to realize or, with due care in realization,
22 might have realized an amount equal to thirty-three and one-third cents on the
23 dollar on his unsecured liabilities.

Cessation of
any statutory
disqualification

24 **167.**-(1) A statutory disqualification on account of bankruptcy ceases
25 when the bankrupt is discharged and obtains from the Court a certificate to the
26 effect that the bankruptcy was caused by misfortune without any misconduct
27 on his part.

Bankrupt to
report to trustee
and Court

28 (2) The Court may, if it thinks fit, grant a certificate mentioned in
29 subsection (1), and a refusal to grant such a certificate is subject to appeal.

30 **168.**-(1) Where an order is granted on terms or conditions or on the

1 bankrupt consenting to judgment, the bankrupt shall, until the terms,
2 conditions or judgment are satisfied-

3 (a) give the trustee such information as he may require with respect
4 to his earnings and after acquired property and income; and

5 (b) not less than once each year, file in the Court and with the
6 trustee a statement verified under oath showing the particulars of any
7 property or income he may have acquired subsequent to the order for his
8 discharge, and the trustee or any creditor may require the bankrupt to attend
9 for examination under oath with respect to the facts contained in the
10 statement or with respect to his earnings, income, after-acquired property or
11 dealings.

12 (2) Where the bankrupt fails to give information or to file a
13 statement as required by subsection (1), to attend for examination when
14 required to do so or to answer all questions fully and accurately with respect
15 to his earnings, income, after-acquired property or dealings, the Court may
16 on the application of the trustee or of any creditor revoke the order of
17 discharge.

18 (3) Where a conditional order of discharge of a bankrupt is made
19 providing for payment of a further dividend or sum of money by the
20 bankrupt, all payments on account in respect of the dividend or sum of
21 money shall be made to the trustee for distribution to the creditors.

22 **169. Where:**

23 (a) a settlement is made before and in consideration of marriage, or
24 made before and in consideration of a cohabitational relationship and the
25 settlor is not at the time of making the settlement able to pay all his debts
26 without the aid of the property comprised in the settlement; or

27 (b) any covenant or contract is made in consideration of marriage
28 or cohabitation, for the future settlement on or for the settlor's spouse,
29 cohabitant or children of any property the settlor had not at the date of
30 marriage, or at the date of cohabitation, any estate or interest, not being

Court may
consider effects
of settlement
before marriage

1 property of or in right of his or her spouse or cohabitant, if the settlor becomes
2 bankrupt, and it appears to the Court that the settlement, covenant or contract
3 was made in order to defeat or delay his creditors, or was unjustifiable having
4 regard to the state of the settlor's affairs at the time when it was made, the Court
5 may refuse or suspend an order of discharge or grant an order subject to
6 conditions in like manner as in cases where the bankrupt has been guilty of
7 fraud.

Debts not
released by
order of
discharge

8 170.-(1) An order of discharge does not release the bankrupt from:

9 (a) any fine, penalty, restitution order or other order similar in nature
10 to a fine, penalty or restitution order, imposed by a Court in respect of an
11 offence, or any debt arising out of a recognisance or bail;

12 (b) any award of damages by a Court in civil proceedings in respect
13 of:

14 (i) bodily harm intentionally inflicted, or sexual assault; or

15 (ii) wrongful death resulting from the bodily harm or sexual assault
16 referred to in paragraph (i);

17 (c) any debt or liability for maintenance of the spouse or cohabitant of
18 the bankrupt;

19 (d) any debt or liability under a support, maintenance or affiliation
20 order or under an agreement for maintenance and support of a spouse,
21 cohabitant or child living apart from the bankrupt;

22 (e) any debt or liability arising out of fraud, embezzlement,
23 misappropriation or defalcation while acting in a fiduciary capacity;

24 (f) any debt or liability for obtaining property by false pretences or
25 fraudulent misrepresentation;

26 (g) liability for the dividend that a creditor would have been entitled to
27 receive on any provable claim not disclosed to the trustee, unless the creditor
28 had notice or knowledge of the bankruptcy and failed to take reasonable action
29 to prove his claim; or

30 (h) any debt for interest owed in relation to an amount referred to

1 paragraphs (a) to (g);

2 (i) any debt or obligation in respect of a loan made under the
3 Revolving Fund Loan Act or any other law which provides for loans or
4 guarantees of loans to students where the date of bankruptcy of the bankrupt
5 occurred:

6 (i) before the date of which the bankrupt ceased to be a fulltime or
7 part-time student, as the case may be, under the relevant law; or

8 (ii) within ten years after the date on which the bankrupt ceased to
9 be a full-time or part-time student.

10 (2) Subject to subsection (1), an order of discharge releases the
11 bankrupt from all claims provable in bankruptcy.

12 (3) At any time after ten years after a bankrupt who has a debt
13 referred to in subsection (1)(i) ceases to be a full-time or part-time student as
14 the case may be under the relevant law, the Court may, on application, order
15 that subsection (1) does not apply to the debt if the Court is satisfied that:

16 (a) the bankrupt has acted in good faith in connection with the
17 liabilities under the loan; and

18 (b) the bankrupt has and will continue to experience financial
19 difficulty to such an extent that the bankrupt will be unable to pay the
20 liabilities under the loan.

21 **171.** An order of discharge does not release a person who at the date
22 of the bankruptcy was a partner or co-trustee with the bankrupt or was
23 jointly bound or had made a joint contract with the bankrupt, or a person who
24 was surety or in the nature of a surety for the bankrupt.

Third parties
not released

25 **172.**-(1) Where a bankrupt after his discharge fails to perform the
26 duties imposed on him by this Act, the Court may, on application, annul his
27 discharge.

Court may
annual discharge

28 (2) Where it appears to the Court that the discharge of a bankrupt
29 was obtained by fraud, the Court may, on application, annul his discharge.

30 (3) An order revoking or annulling the discharge of a bankrupt does

1 not prejudice the validity of a sale, disposition of property, payment made or
2 thing duly done before the revocation or annulment of the discharge.

Court may
annul bankruptcy

3 **173.**-(1) Where, in the opinion of the Court, a receiving order ought
4 not to have been made or an assignment ought not to have been filed, the Court
5 may by order annul the bankruptcy.

6 (2) Where an order is made under subsection (1), all sales,
7 dispositions of property, payments duly made and acts done theretofore by the
8 trustee or other person acting under his authority, or by the Court, are valid, but
9 the property of the bankrupt shall vest in such person as the Court may appoint,
10 or, in default of that appointment, without any conveyance or assignment
11 whatever revert to and re-vest in the debtor for all his estate and interest in the
12 property upon such terms and subject to such conditions, if any, as the Court
13 may order.

Issuance of
orders to be
delayed

14 **174.** An order of discharge or annulment shall be dated on the day on
15 which it is made, but it shall not be issued or delivered until the expiration of the
16 time allowed for an appeal, and, if an appeal is entered, not until the appeal has
17 been finally disposed of.

18 PART IX - ADMINISTRATIVE OFFICIALS

19 *Supervisor*

Appointment of
Supervisor

20 **175.**-(1) For the purposes of this Act, there shall be a Supervisor of
21 Insolvency who shall be responsible to the Minister for the general
22 administration of this Act and whose office shall be a public office.

23 (2) The Supervisor shall supervise the administration of all estates
24 and matters to which this Act applies.

25 (3) The Supervisor shall, without limiting the authority conferred by
26 subsection (2):

27 (a) receive applications of licences to act as trustees under this Act and
28 issue licences to persons whose applications have been approved;

29 (b) where not otherwise provided for, require the deposit of one or
30 more continuing guaranty bonds as security for the due accounting of all

1 property received by trustees and for the due and faithful performance by
2 them of their duties in the administration of estates to which they are
3 appointed, in such amount as the Supervisor may determine, and:

4 (i) which amount may be increased or decreased as he may deem
5 expedient;

6 (ii) the security shall be in a form satisfactory to the Supervisor;
7 and

8 (iii) may be enforced by the Supervisor for the benefit of the
9 creditors;

10 (c) from time to time make or cause to be made such inspection or
11 investigation of estates or other matters to which this Act applies, including
12 the conduct of a trustee or a trustee acting as a receiver or interim receiver, as
13 the supervisor may deem expedient and for the purpose of the inspection or
14 investigation the Supervisor or any person appointed by the Supervisor for
15 the purpose shall have access to and the right to examine and make copies of
16 all books and records pertaining or relating to any estate or other matter to
17 which this Act applies;

18 (d) receive and keep a record of all complaints from any creditor or
19 other person interested in any estate and make such specific investigations
20 with regard to such complaints as the Supervisor may determine; and

21 (e) examine trustees' accounts of receipts and disbursements and
22 final statements.

23 (4) The Supervisor may by way of notice, intervene in any matter
24 or proceeding in Court, where the Supervisor considers it expedient to do so,
25 as if the Supervisor were a party to the matter of proceedings.

26 176.-(1) The Supervisor, or anyone duly authorized by him in
27 writing on his behalf, is entitled to have access to and to examine and make
28 copies of the banking accounts of a trustee in which estate funds may have
29 been deposited, and, when required, all deposit slips, cancelled cheques or
30 other documents relating to the banking accounts in the custody of the bank

Access to
trustee's
accounts

1 or the trustee shall be produced for examination.

2 (2) The Supervisor, or anyone duly authorized in writing by or on
3 behalf of the Supervisor, may with the leave of the Court granted on an ex parte
4 application examine the books, records, and deposit accounts of a trustee or
5 any other person designated in the order granting that leave for the purpose of
6 tracing or discovering the property or funds of an estate when there are
7 reasonable grounds to believe or suspect that the property or funds of an estate
8 have not been properly disclosed or dealt with and for that purpose may under a
9 warrant from the Court enter on and search any premises.

10 (3) Where the Supervisor, on ex parte application, satisfies the Court
11 that it is necessary and in the public interest to do so, the Court may issue an
12 order directing a deposit-taking institution that holds a deposit account of a
13 trustee or such other person as is designated in the order not to make payments
14 out of the account until such time as the Court otherwise directs.

Suspected
offences

15 177.-(1) Where, on information supplied by a trustee or other person,
16 the Supervisor suspects on reasonable grounds, that a person has, in
17 connection with any estate or matter to which this Act applies, committed an
18 offence under this Act or any other law, the Supervisor may, if it appears to the
19 Supervisor that the alleged offence might not otherwise be investigated, make
20 or cause to be made such enquiries or investigations as the Supervisor deems
21 expedient with respect to:

- 22 (a) the conduct, dealings and transactions of the debtor concerned;
23 (b) the causes of the bankruptcy or insolvency of the debtor; and
24 (c) the disposition of the property of the debtor.

25 (2) Where, on the application of the Supervisor or the Supervisor's
26 authorised representative, a subpoena has been issued by the Court, the
27 Supervisor may, for the purpose of an investigation under subsection (1),
28 examine or cause to be examined under oath before the Court or other
29 authorised person:

- 30 (a) the debtor;

1 (b) any person whom the Supervisor suspects, on reasonable
2 grounds, has knowledge of the affairs of the debtor; or

3 (c) any person who is or has been an agent, clerk, servant, officer,
4 director or employee of the debtor, with respect to:

5 (i) the conduct, dealings and transactions of the debtor;

6 (ii) the causes of the bankruptcy or insolvency of the debtor; and

7 (iii) the disposition of the property of the debtor, and may order any
8 person liable to be so examined to produce any books and records in the
9 person's possession or under the control of the person relating to the debtor
10 and the conduct, dealings and transactions of the debtor or the disposition of
11 the debtor's property.

12 (3) A person being examined pursuant to this section is bound to
13 answer all questions relating to the conduct, dealings and transactions of the
14 debtor, the causes of the debtor's bankruptcy or insolvency and the
15 disposition of the debtor's property.

16 (4) A statement or admission made by any person in any
17 examination or deposition before the Court on the hearing of any matter in
18 bankruptcy shall not be admissible as evidence against that person in any
19 proceeding in respect of any offence under any other law.

20 (5) No person shall hinder, molest or interfere with any person
21 doing anything that he is authorized by or pursuant to this section to do, or
22 prevent or attempt to prevent any person doing any such thing, and,
23 notwithstanding any other law, every person shall, unless he is unable to do
24 so, do everything he is required by or pursuant to this section to do.

25 (6) Where any book or record is examined or produced in
26 accordance with this section, the person by whom it is examined or to whom
27 it is produced or the Supervisor may make or cause to be made one or more
28 copies thereof, and a document purporting to be certified by the Supervisor
29 or a person authorized by the Supervisor to be a copy made pursuant to this
30 section is admissible in evidence and has the same probative force as the

1 original document would have if it were proven in accordance with the
2 Evidence Act.

3 (7) Notwithstanding section 127, a recovery made as the result of any
4 inquiries or investigation made or caused to be made pursuant to this section
5 shall be applied to the reimbursement of any costs and expenses incurred by
6 the Supervisor on the recovery, not being ordinary costs or expenses of the
7 office of the Supervisor, and the balance remaining in respect of the recovery
8 shall be made available for the benefit of the creditors of the debtor.

9 *Public records*

Maintenance of
public records

10 **178.**-(1) The Supervisor shall keep, or shall cause to be kept, in such
11 form as the Supervisor deems appropriate and for the prescribed period, a
12 public record of:

13 (a) proposals;

14 (b) bankruptcies;

15 (c) licences issued to trustees by the Supervisor; and

16 (d) notices sent to the Supervisor by receivers pursuant to section 14,
17 and, on request for the records and on payment of such fee as may be
18 prescribed, shall provide, or cause to be provided, any information contained
19 in that public record.

20 (2) The Supervisor shall keep, or cause to be kept, in such form as the
21 supervisor deems appropriate and for the prescribed period, such other records
22 relating to the administration of the Act as the Supervisor deems necessary.

23 **TRUSTEES**

24 *Licensing of trustees*

Application
for licence as
trustee

25 **179.**-(1) A person who wishes to obtain a licence to act as a trustee
26 shall file with the Supervisor an application for a licence in the prescribed
27 form.

28 (2) The Supervisor, after such investigation concerning an applicant
29 for a licence to act as a trustee as the Supervisor considers necessary, may issue
30 the licence if the Supervisor having regard to the qualifications prescribed is

1 satisfied that the applicant is qualified to obtain the licence.

2 **180.** A licence shall be in the prescribed form and shall be subject to Form of licence
3 such conditions and limitations as are specified by the Supervisor in the
4 licence.

5 **181.**-(1) Prior to the issue of a licence, the applicant shall pay such Payment of fees
6 fees as may be prescribed and thereafter on the thirty-first day of December
7 following the day on which a licence is issued, and on the thirty-first day of
8 December in each year, the trustee shall pay such fees as may be prescribed.

9 (2) A licence ceases to be valid:

10 (a) on the failure of the trustee to pay a fee in accordance with
11 subsection (1); or

12 (b) if the trustee becomes bankrupt.

13 (3) Where a licence has ceased to be valid by reason of:

14 (a) failure to pay fees, the Supervisor may reinstate the trustee
15 where the trustee pays the outstanding fees together with any penalty
16 amount prescribed and provides a reasonable written explanation of the
17 failure to pay the fees in accordance with subsection (1); or

18 (b) the trustee becoming bankrupt, the Supervisor may, on written
19 representations made by the trustee, reinstate the licence subject to such
20 conditions and limitations as the Supervisor considers appropriate and may
21 specify in that licence.

22 (4) A licence may be suspended or cancelled by the Supervisor
23 where:

24 (a) the trustee is convicted of an indictable offence;

25 (b) the trustee has failed to comply with any of the conditions or
26 limitations to which the licence is subject;

27 (c) the trustee has ceased to act as a trustee; or

28 (d) the trustee so requests.

29 (5) Notice of an intended decision under subsection (4) shall be in
30 writing setting out the reasons of the Supervisor for the decision and shall be

1 sent to the trustee at least ten days before the decision takes effect.

2 (6) Where a licence ceases to be valid by virtue of subsection (2) or is
3 suspended or cancelled under subsection (4), the Supervisor may impose on
4 the trustee such requirements as the Supervisor considers appropriate,
5 including a requirement that the trustee deposit security for the protection of an
6 estate.

7 (7) For the avoidance of doubt, section 188 does not apply in respect
8 of a suspension or cancellation of a licence under subsection (4).

9 *Conduct of trustees*

Trustee prohibited
from acting in
specified
circumstances

10 **182.**-(1) Except with the permission of the Court and on such
11 conditions as the Court may impose, no trustee shall act as trustee in relation to
12 the estate of a debtor:

13 (a) where the trustee is, or at any time during the two preceding years
14 was:

15 (i) a director or officer of the debtor;

16 (ii) an employer or employee of the debtor or of a director or officer of
17 the debtor;

18 (iii) related to the debtor or to any director or officer of the debtor; or

19 (iv) the auditor, accountant or attorney at-law, or a partner or
20 employee of the auditor, accountant or attorney at-law, of the debtor; or

21 (b) where the trustee is:

22 (i) the trustee under a trust indenture issued by the debtor or any
23 person related to the debtor; or

24 (ii) related to the trustee under a trust indenture referred to in
25 subsection (1)(a)(i).

26 (2) No trustee shall act as a trustee in relation to the estate of a debtor
27 where the trustee is already:

28 (a) the trustee in the bankruptcy of, or in a proposal concerning any
29 person related to the debtor; or

30 (b) the receiver or the liquidator of the property of any person related

1 to the debtor, without making, at the time of being appointed as trustee in
 2 relation to the estate of the debtor and at the first meeting of creditors, full
 3 disclosure of that fact and of the potential conflict of interest.

4 **183.**-(1) No trustee shall, while acting as the trustee of an estate, act
 5 for or assist a secured creditor of the estate to assert any claim against the
 6 estate or to realize or otherwise deal with the security that the secured
 7 creditor holds, unless the trustee has obtained a written opinion of an
 8 attorney-at-law who does not act for the secured creditor, that the security is
 9 valid and enforceable as against the estate.

Independent
 legal opinion

10 (2) On commencing to act for or assist a secured creditor of the
 11 estate in the manner set out in subsection (1), a trustee shall notify forthwith
 12 the Supervisor and the creditors or the inspectors:

13 (a) that the trustee is acting for the secured creditor;
 14 (b) of the basis of any remuneration paid by the secured creditor;
 15 and
 16 (c) of the opinion referred to in subsection (1).

17 (3) Within two days after receiving a request for a copy of the
 18 opinion referred to in subsection (1), a trustee shall provide the Supervisor
 19 with that copy and shall also provide a copy to each creditor who has made a
 20 request for a copy.

21 **184.** A trustee shall comply with such code of ethics respecting the
 22 conduct of trustees as may be prescribed.

Code of ethics

23 **185.** A trustee shall not engage the services of another trustee
 24 whose licence has been cancelled under section 181 (4)(a) or 187 (1).

Cancelled
 licences

25 *Appointment and substitution of trustees*

26 **186.** The creditors may, at any meeting by special resolution,
 27 appoint or substitute another licensed trustee for the trustee named in an
 28 assignment, receiving order or proposal, or otherwise appointed or
 29 substituted.

Appointment or
 substitution of
 trustee by creditors

30 **187.**-(1) Where, after making an investigation into the conduct of a

Rights of Supervisor
 where questionable
 trustee conduct

1 trustee, it appears to the Supervisor that:

2 (a) a trustee has not properly performed the duties of a trustee or has
3 been guilty of any improper management of an estate;

4 (b) a trustee has not fully complied with this Act, the Bankruptcy
5 Rules, or any law with regard to the proper administration of any estate; or

6 (c) it is in the public interest to do so, the Supervisor may do one or
7 more of the following:

8 (i) cancel or suspend the licence of the trustee;

9 (ii) place such conditions or limitations on the licence as the
10 Supervisor considers appropriate including a requirement that the trustee
11 successfully take an exam or enrol in such course as may be prescribed; and

12 (iii) require the trustee to make restitution to the estate of such amount
13 of money as the estate has been deprived of as a result of the trustee's conduct.

14 (2) This section and section 188 apply, in so far as they are applicable,
15 in respect of former trustees, with such modifications as the circumstances
16 require.

Notice to
trustee

17 **188.**-(1) Where the Supervisor intends to exercise any of the powers
18 referred to in section 187 (1), the Supervisor shall send the trustee written
19 notice of the powers that the Supervisor intends to exercise and the reasons
20 therefore and afford the trustee a reasonable opportunity for a hearing.

21 (2) At a hearing referred to in subsection (1), the Supervisor:

22 (a) has power to administer oaths;

23 (b) is not bound by any legal or technical rules of evidence in
24 conducting the hearing;

25 (c) shall deal with the matters set out in the notice of the hearing as
26 informally and as expeditiously as the circumstances and a consideration of
27 fairness permit; and

28 (d) shall cause a summary of any oral evidence to be made in writing.

29 (3) The notice referred to in subsection (1) and, where applicable, the
30 summary of oral evidence referred to in subsection (2)(d), together with such

1 documentary evidence as the Supervisor receives in evidence shall form the
2 record of the hearing.

3 (4) The record of the hearing referred to in subsection (3) is public,
4 unless the Supervisor is satisfied that personal or other matters that may be
5 disclosed are of such a nature that the desirability of avoiding public
6 disclosure of those matters, in the interest of a third party or in the public
7 interest, outweighs the desirability of the access by the public to information
8 about those matters.

9 (5) The decision of the Supervisor after a hearing referred to in
10 subsection (1), together with the reasons given for the hearing, shall be
11 given in writing to the trustee not later than three months after the
12 conclusion of the hearing, and the decision shall be made public.

13 (6) Any decision of the supervisor may on application to the Court
14 be reviewed, set aside, or confirmed.

15 **189.**-(1) The Supervisor may, for the protection of an estate in the
16 circumstances referred to in subsection (2):

Protection of
estate by
Supervisor

17 (a) direct a person to deal with property of the estate described in
18 the direction in such manner as may be indicated in the direction, including
19 the continuation of the administration of the estate;

20 (b) direct any person to take such steps as the Supervisor considers
21 necessary to preserve the books and records of the estate;

22 (c) direct a bank or other depository not to payout funds held to the
23 credit of the estate except in accordance with the direction; and

24 (d) where action in respect of a trustee is being taken under section
25 181(4) or 187(1), refuse to appoint the trustee in respect of any new estates
26 until a decision in respect of the trustee is made.

27 (2) The circumstances in which the Supervisor is authorised to
28 exercise the powers set out in subsection (1) are where:

29 (a) an estate is left without a trustee by the death, removal or
30 incapacity of the trustee;.

1 (b) the Supervisor makes or causes to be made any investigation
2 pursuant to section 175 (3)(c);

3 (c) the Supervisor exercises any of the powers set out in section 187;

4 (d) the fees referred to in section 181(1) have not been paid in respect
5 of the licence of a trustee;

6 (e) a trustee becomes insolvent;

7 (f) a trustee is convicted of an indictable offence or has failed to
8 comply with any of the conditions or limitations to which the trustee's licence
9 is subject; or

10 (g) a circumstance referred to in section 181(4)(c) or (d) exists and the
11 Supervisor is considering cancelling the licence.

12 (3) A direction given pursuant to subsection (1):

13 (a) shall state the statutory authority pursuant to which the direction is
14 given;

15 (b) is binding on the person to whom it is given; and

16 (c) is, in favour of the person to whom it is given, conclusive proof of
17 the facts set out in the direction.

18 (4) A person who complies with a direction given pursuant to
19 subsection (1) is not liable for any act done by the person only in compliance
20 with that direction.

Court removal
of trustee

21 **190.** The Court on the application of any interested person, may for
22 cause remove a trustee and appoint another licensed trustee in the trustee's
23 place.

Appointment by
Supervisor of
non-licensed
trustee

24 **191.** Where no licensed trustee can be found who is willing to act as
25 trustee, the Court or the Supervisor may appoint a responsible person to
26 administer the estate of the debtor, and that person, for that purpose, has all the
27 powers of a licensed trustee under this Act, and the provisions of this Act apply
28 to that person as if a licence had been issued to that person under section 175 (3)
29 (a).

Duty to act

30 **192.-(1)** No trustee is bound to assume the duties of trustee in matters

1 relating to assignments, receiving orders or proposals, but having accepted
2 an appointment in relation to those matters the trustee shall, until discharged
3 or another trustee is appointed in the place of the trustee, perform the duties
4 required of a trustee under this Act.

5 (2) In subsections (3) to (9), reference to a trustee means a trustee in
6 a bankruptcy or proposal and includes an interim receiver or a receiver.

7 (3) Notwithstanding anything in any law, where a trustee carries on
8 in that position the business of the debtor or continues the employment of
9 the debtor's employees, the trustee is not by reason of that fact personally
10 liable in respect of any claim against the debtor or related to a requirement
11 imposed on the debtor to pay an amount where the claim arose before or
12 upon the trustee's appointment. .

13 (4) A claim referred to in subsection (3) shall not rank as costs of
14 administration.

15 (5) Notwithstanding anything in any law, a trustee is not personally
16 liable in that position for any environmental condition that arose or
17 environmental damage that occurred:

18 (a) before the trustee's appointment; or

19 (b) after the trustee's appointment, unless it is established that the
20 condition arose or the damage occurred as a result of the trustee's negligence
21 or misconduct.

22 (6) Nothing in subsection (5) exempts a trustee from any duty to
23 report or make disclosure imposed by a law referred to in that subsection.

24 (7) Notwithstanding anything in any law but subject to subsection
25 (5) where an order is made which has the effect of requiring a trustee to
26 remedy any environmental condition or environmental damage affecting
27 property involved in a bankruptcy, proposal or receivership, the trustee is
28 not personally liable for failure to comply with the order, and is not
29 personally liable for any costs that are or would be incurred by any person in
30 carrying out the terms of the order:

1 (a) where, within such time as is specified in the order and where no
2 time is specified, within ten days after the order is made, within ten days after
3 the appointment of the trustee, if the order is in effect when the trustee is
4 appointed, or during the period of the stay referred to in paragraph

5 (b) the trustee:

6 (i) complies with the order; or

7 (ii) on notice to the person who issued the order, abandons, disposes
8 of or otherwise releases any interest in any real property affected by the
9 condition or damage;

10 (b) where during the period of a stay of the order granted, on
11 application made within the time specified in the order referred to in paragraph
12 (a), within ten days after the order is made or within ten days after the
13 appointment of the trustee, where the order is in effect when the trustee is
14 appointed, to:

15 (i) the Court or body having jurisdiction under the law pursuant to
16 which the order was made to enable the trustee to contest the order; or

17 (ii) the Court having jurisdiction in bankruptcy for the purposes of
18 assessing the economic viability of complying with the order; or

19 (c) if the trustee had, before the order was made, abandoned or
20 renounced or been divested of any interest in any real property affected by the
21 condition or damage.

22 (8) The Court may grant a stay of the order referred to in subsection
23 (7) on such notice and for such period as the Court deems necessary for the
24 purpose of enabling the trustee to assess the economic viability of complying
25 with the order.

26 (9) Where the trustee has abandoned or renounced any interest in real
27 property affected by the environmental condition or environmental damage,
28 claims for costs of remedying the condition or damage shall not rank as costs of
29 administration.

30 (10) Any claim by the State against the debtor in a bankruptcy,

1 proposal or receivership for costs of remedying any environmental
2 condition or environmental damage affecting real property of the debtor is
3 secured by a charge on the real property and on any other real property of the
4 debtor that is contiguous thereto and that is related to the activity that caused
5 the environmental condition or environmental damage, and the charge (a) is
6 enforceable in the same way as a mortgage, or other security on real
7 property; and

8 (b) ranks above any other claim, right or charge against the
9 property, notwithstanding any other provision of this Act or anything in any
10 other law.

11 (11) Notwithstanding section 112(1), a claim against a debtor in a
12 bankruptcy or proposal for the costs of remedying any environmental
13 condition or environmental damage affecting real property of the debtor
14 shall be a provable claim, whether the condition arose or the damage
15 occurred before or after the date of the filing of the proposal or the date of the
16 bankruptcy.

17 **193.** No defect or irregularity in the appointment of a trustee
18 vitiates any act done by the trustee in good faith.

Acts done in
good faith

19 *Corporations as trustees*

20 **194.** A body corporate may hold a licence as trustee only if a
21 majority of its directors and a majority of its officers hold licences as
22 trustees.

Corporate
trustee

23 **195.** Notwithstanding the Companies Act, no person may be
24 incorporated under the Act for the purpose of acting as a trustee in
25 insolvency from within Nigeria unless its incorporation has been consented
26 to by the Supervisor.

Incorporation

27 **196.** A body corporate that holds a licence as a trustee may perform
28 the duties and exercise the powers of a trustee only through a director or
29 officer of the body corporate who holds a licence as a trustee.

Acts by corporate
trustee

30 **197.** Every body corporate that is incorporated by or under an Act

Corporate trustee
not a trust company

1 of Parliament and that holds a licence as a trustee may carry on the business of a
2 trustee and shall not, in respect of its operations as a trustee, be construed to be
3 carrying on the business of a trust company.

4 *Official name*

Official name

5 **198.** The official name of a trustee acting in bankruptcy proceedings
6 is "The Trustee of the Estate of (insert name of the bankrupt), a Bankrupt", and
7 the official name of a trustee acting with respect to a proposal by an insolvent
8 person is "The Trustee acting in re the proposal of (insert the name of the
9 debtor)"

10 *Duties and powers of trustees*

Trustee to give
security

11 **199.**-(1) Every trustee duly appointed shall forthwith give security in
12 cash or by bond of a guarantee company satisfactory to the Supervisor for the
13 due accounting for the payment and the transfer of all property received by him
14 as trustee and for the due and faithful performance of his duties.

15 (2) The security required to be given under subsection (1) shall be
16 deposited with the Supervisor, shall be given in favour of the creditors
17 generally and may be enforced by any succeeding trustee or by one of the
18 creditors on behalf of all by direction of the Court, and may be increased or
19 reduced by the Supervisor.

20 (3) The trustee shall, as soon as possible, take possession of the deeds,
21 books and records, and all property of the bankrupt and make an inventory and
22 for the purpose of making an inventory the trustee is entitled to enter, subject to
23 subsection (4), on any premises on which the deeds, books and records, or
24 property of the bankrupt may be, notwithstanding that they may be in the
25 possession of a Marshal, a secured creditor or other claimant to the deeds,
26 books, records or property of the bankrupt.

27 (4) Where the premises referred to in subsection (3) are occupied by a
28 person other than the bankrupt, the trustee may not enter the premises without
29 the consent of that other person except under the authority of a warrant issued
30 under section 231.

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

6 (6) No person is, as against the trustee, entitled to withhold
7 possession of the books and records belonging to the bankrupt or to set up
8 any lien or right of retention on those books and records.

9 **200.** Where a person has in his possession or power any property of
10 the bankrupt that he is not by law entitled to retain as against the bankrupt or
11 the trustee, that person shall deliver the property to the trustee.

Delivery of
property to
trustee

12 **201.** The trustee may when necessary in the interest of the estate of
13 the bankrupt-

Protective
measures

14 (a) take conservatory measures and summarily dispose of property
15 that is perishable or likely to depreciate rapidly in value; and

16 (b) carry on the business of the bankrupt until the date fixed for the
17 first meeting of creditors.

18 **202.-(1)** The trustee may prior to the first meeting of creditors,
19 obtain such legal advice and take such Court proceedings as he may
20 consider necessary for the recovery or protection of the property of the
21 bankrupt.

Legal proceedings
to protect estate

22 (2) In the case of an emergency where the necessary authority
23 cannot be obtained from the inspectors in time to take appropriate action, the
24 trustee may obtain such legal advice and institute such legal proceedings
25 and take such action as he may deem necessary in the interests of the estate
26 of the bankrupt.

27 (3) The trustee shall verify the bankrupt's statement of affairs.

28 **203.-(1)** The trustee may, with the permission of the inspectors,
29 divest all or any part of the trustee's right, title or interest in any real property
30 of the bankrupt by notice or disclaimer by the trustee, and the official in

Divesting of
real property

1 charge of the land registry office, as the case may be, where title to the real
2 property is registered shall accept and register in the land register the notice
3 when tendered for registration.

4 (2) Registration of a notice under subsection (1) operates as a
5 discharge or release of any document previously registered in the land register
6 by or on behalf of the trustee with respect to the property referred to in the
7 notice.

Initiation of
criminal
proceedings

8 **204.** The trustee may initiate such criminal proceedings as may be
9 authorised by the creditors, the inspectors or the Court against any person
10 believed to have committed an offence under this Act.

Returns

11 **205.** The trustee is not liable to make any return that the bankrupt was
12 required to make more than one year prior to the commencement of the
13 calendar year, or the fiscal year of the bankrupt where that is different from the
14 calendar year in which he became bankrupt.

Regulators
empowered to
review records

15 **206.** The trustee shall at all reasonable times permit any authorised
16 person to inspect the books and records of the bankrupt in order to prepare or
17 verify returns that the bankrupt is by statute required to file.

Insure
property

18 **207.**-(1) The trustee shall forthwith temporarily insure and keep
19 insured in his official name all the insurable property of the bankrupt, for such
20 amount and against such hazards as he may deem advisable until the inspectors
21 are appointed; and the inspectors shall determine the amount for which and the
22 hazards against which the bankrupt's property shall be insured by the trustee.

23 (2) All insurance covering property of the bankrupt in force at the date
24 of bankruptcy shall in the event of loss suffered, without any notice to the
25 insurer or other action on the part of the trustee and notwithstanding any statute
26 or rule of law or contract or provision to a contrary effect become payable
27 immediately to the trustee as if the name of the trustee were written in the
28 policy or contract of insurance as that of the insured or as if no change of title or
29 ownership had come about and the trustee were the insured.

Deposits

30 **208.**-(1) Subject to subsections (2) and (3), a trustee shall forthwith

1 deposit all monies received for an estate in a separate trust account for each
2 estate.

3 (2) The trustee shall deposit moneys pursuant to subsection (1) in a
4 deposit-taking institution licensed under the Financial Institutions Act.

5 (3) Where monies referred to in subsection (1) are situated in a
6 country other than Nigeria, the trustee may, where authorized by the
7 Supervisor, deposit the monies in a financial institution in that country that
8 is similar to a bank.

9 (4) The trustee shall not withdraw any money from the trust
10 account of an estate without the permission in writing of the inspectors or,
11 on application, the Court, except for the payment of dividends and charges
12 incidental to the administration of the estate.

13 (5) All payments made by a trustee under subsection (1) shall be
14 made by cheque drawn on the estate account or in such manner as may be
15 specified by the Supervisor.

16 (6) The trustee shall not deposit any sums received by the trustee in
17 the trustee's official capacity as a trustee in any banking account kept by the
18 trustee for the trustee's personal use.

19 (7) Any interest recoverable in respect of the account shall be part
20 of the assets of the estate.

21 **209.**-(1) The trustee shall keep proper books and records of the
22 administration of each estate to which he is appointed, in which shall be
23 entered:

Maintenance
books and records

24 (a) a record of all monies received or disbursed by him;

25 (b) a list of all creditors filing claims;

26 (c) the amount and disposition of those claims;

27 (d) a copy of all notices sent out;

28 (e) the original signed copy of all minutes, proceedings had, and
29 resolutions passed at any meeting of creditors or inspectors;

30 (f) Court orders; and

1 (g) all such other matters or proceedings as may be necessary to give a
2 complete account of his administration of the estate.

3 (2) The estate books and records relating to the administration of an
4 estate are deemed to be the property of the estate, and, in the event of any
5 change of trustee, shall forthwith be delivered to the substituted trustee.

6 (3) The trustee shall permit the books and records referred to in
7 subsection (2) to be inspected and copies of those books and records made by
8 the Supervisor, the bankrupt, or any creditor or their agents at any reasonable
9 time.

Reporting by trustee

10 **210.**-(1) The trustee shall report in writing-

11 (a) when required by the inspectors, to every creditor;

12 (b) when required by any specific creditor, to the creditor; and

13 (c) when required by the Supervisor, to the Supervisor or the
14 creditors, showing the condition of the bankrupt's estate, the monies on hand, if
15 any, and particulars of any property remaining unsold.

16 (2) The trustee is entitled to charge against the estate of the bankrupt,
17 for the preparation and delivery of any report referred to in subsection (1), only
18 his actual disbursements.

Documents to provided to Supervisor

19 **211.**-(1) The trustee shall, forthwith after the receipt or preparation of
20 the documents referred to in section 145:

21 (a) send them to the Supervisor along with a true copy of:

22 (i) the notice referred to in section 93;

23 (ii) the statement referred to in section 149 (e);

24 (iii) the trustee's final statement of receipts and disbursements and the
25 dividend sheet; and

26 (iv) every order made by the Court on the application for discharge of
27 a bankrupt or for annulling any bankruptcy; and

28 (b) file a copy of the documents referred to in paragraphs (ii) and (iii)
29 in the Court.

30 (2) The trustee shall forward promptly to the Supervisor copies of all

1 notices, reports and statements sent by the trustee to the creditors and, when
2 required, copies of such other documents as the Supervisor may specify.

3 **212.-(1) Where:**

4 (a) the licence of a trustee has been **cancelled or suspended, or has**
5 **ceased to be valid by reason of failure to pay fees;**

6 (b) a trustee has been removed **from continuing the administration**
7 **of an estate; or**

8 (c) a trustee dies or becomes **incapacitated, the trustee or the legal**
9 **representative of the trustee shall, within such time as is fixed by the**
10 **Supervisor:**

11 (i) **prepare and forward to the supervisor a detailed financial**
12 **statement of the receipts and disbursements together with a list of and report**
13 **on the unadministered property of every estate under the administration of**
14 **the trustee for which the trustee has not been discharged; and**

15 (ii) **shall forward to such other trustee as may be appointed in the**
16 **place of the trustee or, pending the appointment of the other trustee, to the**
17 **Supervisor, all the remaining property of every estate under the**
18 **administration together with all the books and records relating thereto.**

19 (2) **Every trustee before proceeding to his discharge shall, unless**
20 **he has already done so, prepare and file the report referred to in section 162**
21 **and forward a copy to the Supervisor.**

22 **213.-(1) The trustee may, with the permission of the inspectors, do**
23 **all or any of the following things:**

24 (a) **sell or otherwise dispose of for such price or other consideration**
25 **as the inspectors may approve of all or any part of the property of the**
26 **bankrupt, including the goodwill of the business, if any, and the book debts**
27 **due or falling due to the bankrupt, by tender, public auction or private**
28 **contract, with power to transfer the whole of the property to any person or to**
29 **sell the same in parcels;**

30 (b) **lease any real property;**

Report to
Supervisor where
trustee no longer
appointed

Permission to
take specified
action

- 1 (c) carry on the business of the bankrupt, in so far as may be necessary
2 for the beneficial administration of the estate of the bankrupt;
- 3 (d) bring, institute or defend any action or other legal proceedings
4 relating to the property of the bankrupt;
- 5 (e) employ an attorney-at-law or other agent to take any proceedings
6 or do any business that may be sanctioned by the inspectors;
- 7 (f) accept as the consideration for the sale of any property of the
8 bankrupt a sum of money payable at a future time, subject to such stipulations
9 as to security and otherwise as the inspectors think fit;
- 10 (g) incur obligations, borrow money and give security on any
11 property of the bankrupt by mortgage, charge, assignment, pledge or
12 otherwise, and the obligations and money borrowed shall be discharged or
13 repaid with interest out of the property of the bankrupt in priority to the claims
14 of the creditors;
- 15 (h) compromise and settle any debt owing to the bankrupt;
- 16 (i) compromise any claim made by or against the estate;
- 17 (j) divide in its existing form among the creditors, according to its
18 estimated value, any property that from its particular nature or other special
19 circumstances cannot be readily or advantageously sold;
- 20 (k) disclaim any property which binds the possessor of the property to
21 the performance of any onerous act or to the payment of any sum of money;
- 22 (l) elect to retain for the whole part of its unexpired term, or to assign,
23 surrender, disclaim any lease of, or other temporary interest in, any property of
24 the bankrupt; and
- 25 (m) appoint the bankrupt to aid in administering the estate of the
26 bankrupt in such manner and on such terms as the inspectors may direct.
- 27 (2) The permission given for the purposes of subsection (1) is not a
28 general permission to do all or any of the things mentioned in that subsection,
29 but is only a permission to do the particular thing or things or class of thing or
30 things that the permission specifies.

1 **214.**-(1) With the permission of the Court, an interim receiver or
2 trustee, may prior to the appointment of inspectors, make necessary or
3 advisable advances, incur obligations, borrow money and give security on
4 the property of the debtor in such amounts, on such terms and on such
5 property as may be authorised by the Court; and those advances, obligations
6 and money borrowed shall be repaid out of the property of the debtor in
7 priority to the claims of the creditors.

Borrowing with
permission of
Court

8 (2) The creditors or inspectors may by resolution limit:

9 (a) the amount of the obligations that may be incurred; and

10 (b) the advances that may be made or moneys that may be
11 borrowed by the trustee and may limit the period of time during which the
12 business of the bankrupt may be carried on by the trustee.

13 (3) All debts incurred and credit received in carrying the business
14 of a bankrupt are deemed to be debts incurred and credit received by the
15 estate of the bankrupt.

16 **215.** The trustee is not under any obligation to carry on the business
17 of the bankrupt:

Trustee not required
to operate business

18 (a) where in his opinion the realizable value of the property of the
19 bankrupt is insufficient to protect him fully against possible loss occasioned
20 by so doing; and

21 (b) the creditors or inspectors, on demand made by the trustee,
22 neglect or refuse to secure him against such possible loss.

23 **216.** -(1) The Court may make an order providing for the sale of
24 any or all of the assets of the estate of the bankrupt, either by tender, private
25 sale or public auction, setting out the terms and conditions of the sale and
26 directing that the proceeds from the sale shall be used for the purpose of
27 reimbursing the trustee in respect of any costs that may be owing to him or of
28 any monies that he may have advanced for the benefit of the estate.

Order for sale
of assets

29 (2) If no bid is received for the assets of the estate of the bankrupt
30 sufficient to reimburse the trustee, the Court may make an order vesting in

1 the trustee personally all assets of the estate and on the making of the order the
2 rights to the assets and interests of the creditors and of the bankrupt to the
3 assets, shall be determined and ended.

Application for
directions

4 **217.**-(1) A trustee may apply to the Court for directions in relation to
5 any matter affecting the administration of the estate of a bankrupt and the Court
6 shall give in writing such directions, if any, as appears to be proper in the
7 circumstances.

8 (2) Where an estate has not been fully administered within three years
9 after the bankruptcy, the trustee shall, if requested to do so by the Supervisor,
10 report that fact to the Court as soon as practicable thereafter, and the Court shall
11 make such order as it considers fit to expedite the administration of the estate.

Redirection of
mail

12 **218.**-(1) Subject to subsection (2), the trustee may, by sending to the
13 Managing Director of the Nigerian Postal Services:

14 (a) a notice in the prescribed form; and

15 (b) a copy of the trustee's certificate of appointment, request that any
16 mail addressed to a bankrupt that is directed to any place referred to in the
17 notice be redirected or sent by the Managing Director of the Nigerian Postal
18 Corporation to the trustee or to such other person as the trustee may designate;
19 and when the Managing Director receives those documents, he shall so redirect
20 or send that mail.

21 (2) A notice referred to in subsection (1) may refer to a bankrupt's
22 residence only where the trustee has, on application, obtained permission from
23 the Court.

24 (3) Where a bankrupt is an individual, a notice referred to in
25 subsection (1) is operative only during the three-month period immediately
26 following the date of bankruptcy unless the Court, on application, extends that
27 period on such terms as the Court considers fit.

Former trustee
to pass accounts

28 **219.**-(1) On the appointment of a substituted trustee, the former
29 trustee shall forthwith pass his accounts before the Court and deliver to the
30 substituted trustee all the property of the estate, together with all books and

1 records of the bankrupt and of those relating to the administration of the
2 estate.

3 (2) A substituted trustee shall:

4 (a) if appointed by the creditors, file with the Court a copy of the
5 minutes of the meeting at which the substituted trustee was appointed signed
6 by the Chairman;

7 (b) notify the Supervisor of the appointment of the substituted
8 trustee;

9 (c) if required by the inspectors, register a notice of the
10 appointment in the land register of any land titles or registry office where the
11 assignment or receiving order has been registered; and

12 (d) as soon as funds are available, pay to the former trustee his
13 remuneration and disbursements as approved by the Court.

14 **220.** Where the bankrupt or any of the creditors or any other person
15 is aggrieved by any act or decision of the trustee, he may apply to the Court
16 and the Court may confirm, reverse or modify the act or decision
17 complained of and make such other order in the premises as it thinks just.

Application
to Court by
aggrieved
party

18 **221.**-(1) Where a creditor requests the trustee to take any
19 proceedings that in his opinion would be for the benefit of the estate of a
20 bankrupt and the trustee refuses or neglects to take the proceedings, the
21 creditor may obtain from the Court an order authorising him to take the
22 proceedings in his own name and at his own expense and risk, on notice
23 being given to the other creditors of the contemplated proceeding, and on
24 such other terms and conditions as the Court may direct.

Trustee refusing
to act

25 (2) On an order under subsection (1) being made, the trustee shall
26 assign and transfer to the creditor all his right, title and interest in the chose-
27 in-action or subject matter of the proceeding, including any document in
28 support of the chose-in-action or proceedings.

29 (3) Any benefit derived from a proceeding taken pursuant to
30 subsection (1), to the extent of his claim and the costs, belongs exclusively

1 to the creditor instituting the proceedings, and the surplus, if any, belongs to the
2 estate.

3 (4) Where, before an order is made under subsection (1), the trustee,
4 with the permission of the inspectors, signifies to the Court his readiness to
5 institute the proceedings for the benefit of the creditors, the order shall fix the
6 time within which he shall do so, and in that case the benefit derived from the
7 proceedings, if instituted within the time so fixed, belongs to the estate.

8 *Remuneration of trustee*

Determination
of fees

9 **222.**-(1) The remuneration of the trustee shall be such as is voted to
10 the trustee by ordinary resolution at any meeting of creditors, or if the creditors
11 resolve by ordinary resolution, by the inspectors.

12 (2) Where the remuneration of the trustee has not been fixed under
13 subsection (1), the trustee shall apply to the Court for an order fixing the
14 amount of the trustee's remuneration.

15 (3) Where the business of the debtor has been carried on by the trustee
16 or under his supervision, he may be allowed such special remuneration for such
17 services as the creditors or the inspectors may by resolution authorise, and, in
18 the case of a proposal, such special remuneration as may be agreed to by the
19 debtor, or in the absence of agreement with the creditors or debtor such amount
20 as may be approved by the Court.

21 (4) In the case of two or more trustees acting in succession, the
22 remuneration shall be apportioned between the trustees in accordance with the
23 services rendered by each, and in the absence of agreement between the
24 trustees the Court shall determine the amount payable to each.

25 (5) On application by the trustee, a creditor or the debtor and on notice
26 to such parties as the Court may direct, the Court may make an order increasing
27 or reducing the remuneration.

28 *Discharge of trustee*

Property
incapable of
realization

29 **223.**-(1) With the permission of the inspectors, any property of a
30 bankrupt found incapable of realization shall be returned to the bankrupt prior

1 to the trustee's application for discharge.

2 (2) Where a trustee is unable to dispose of any property as provided
3 in this section, the Court may make such order as it may consider necessary.

4 **224.-(1)** When a trustee has completed the duties required of him
5 with respect to the administration of the property of a bankrupt, he shall
6 apply to the Court for a discharge.

Trustee to apply
for discharge

7 (2) The Court may discharge a trustee with respect to any estate on
8 full administration thereof or, for sufficient cause, before full
9 administration.

10 (3) A trustee when replaced by another trustee is entitled to be
11 discharged if he has accounted to the satisfaction of the inspectors and the
12 Court for all property that came to his hands, and a period of three months
13 has elapsed after the date of the replacement without any undisposed of
14 claim or objection having been made by the bankrupt or any creditor.

15 (4) When the accounts of a trustee have been approved by the
16 inspectors and taxed by the Court and all objections, applications and
17 appeals have been settled or disposed of and all in dividends have been paid,
18 the estate is deemed to have been fully administered.

19 (5) Any interested person desiring to object to the discharge of a
20 trustee shall, at least five days prior to the date of the hearing, file notice of
21 objection with the Registrar of the Court setting out the reasons for the
22 objection and serve a copy of the notice on the trustee.

23 (6) The Court shall consider the objection filed under subsection
24 (5) and may grant or withhold a discharge or give such directions as it may
25 deem proper in the circumstances.

26 (7) Nothing in or done under the authority of this section relieves or
27 discharges or shall be deemed to relieve or discharge a trustee from the
28 results of any fraud.

29 (8) The discharge of a trustee discharges him from all liability:

30 (a) in respect of any act done or default made by him in the

1 administration of the property of the bankrupt; and

2 (b) in relation to his conduct as trustee, but any discharge may be
3 revoked by the Court on proof that it was obtained by fraud or by suppression
4 or concealment of any material fact.

5 (9) Nothing in subsection (8) shall be construed to prevent an
6 investigation or a proceeding in respect of a trustee under section 187(1).

7 (10) The discharge of a trustee under this section operates as a release
8 of the security provided pursuant to section 199(1).

9 (11) Notwithstanding his discharge, the trustee remains the trustee of
10 the estate for the performance of such duties as may be incidental to the full
11 administration of the estate.

12 (12) The Court, on being satisfied that there are assets that have not
13 been realized or distributed, may, on the application of any interested person,
14 appoint a trustee to complete the administration of the estate of the bankrupt;
15 and the trustee shall be governed by the provisions of this Act, in so far as they
16 are applicable.

17 PART X - COURTS AND PROCEDURE

18 *Jurisdiction of Courts*

Jurisdiction of
High Court

19 **225.** The Court shall have and exercise jurisdiction in respect of
20 bankrupts and matters of insolvency, and such jurisdiction shall be exercised
21 under and subject to this Act, the Bankruptcy Rules and any other enactment
22 relating to bankruptcy and insolvency.

Title of
insolvency
matters

23 **226.** Subject to the Bankruptcy Rules:

24 (a) all proceedings used in Court must be dated and entitled in the
25 name of the Court in which they are used, together with the words "In
26 Bankruptcy and Insolvency";

27 (b) every document used in the filing of a petition or used after the
28 filing of an assignment must be entitled "In the Matter of the Bankruptcy of";

29 (c) every document used in the filing of a proposal before bankruptcy
30 must be entitled "In the Matter of the Proposal of and

1 (d) every document used in the course of a receivership must be
2 entitled " In the Matter of the Receivership of....."

3 227. Subject to this Act, the Court shall have full power to decide
4 all questions of priorities and all other questions whatsoever whether law or
5 fact, that may arise in any case of insolvency coming within the cognizance
6 of the Court or which the Court may deem it expedient or necessary to
7 decide for the purpose of doing complete justice or making a complete
8 distribution of property in any such case.

General power
of Court

9 228. No proceeding in bankruptcy shall be invalidated by any
10 formal defect or by any irregularity, unless the Court before which an
11 objection is made to the proceeding is of the opinion that substantial
12 injustice has been caused by the defect or irregularity and that the injustice
13 cannot be remedied by any order of that Court.

Proceeding not
invalidated by
defect or
irregularity

14 229.-(1) The Court may review, rescind, or vary any order made by
15 it under its jurisdiction in insolvency.

Court may review,
rescind, or vary
order

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

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

21 230.-(1) Where in the opinion of the Court the cost of preparing
22 statements, lists of creditors or other material required by this Act to be sent
23 with notices to creditors, or the cost of sending the material or notices, is
24 unjustified in the circumstances, the Court may give leave to omit the
25 material or any part thereof or to send the material or notices in such manner
26 as the Court may direct.

Court may give
leave to omit
material or to
send notices in
alternative
manner

27 (2) Where by this Act or by the Bankruptcy Rules the time for
28 doing any act or thing is limited, the Court may extend the time either before
29 or after the expiration thereof, upon such terms, if any, as the Court may
30 think fit to impose.

Seizure of
property of
bankrupt

1 **231.**-(1) Where on ex parte application by the trustee or interim
2 receiver the Court is satisfied by information on oath that there are reasonable
3 grounds to believe there is in any place or premises any property of the
4 bankrupt, the Court may issue a warrant authorising the trustee or interim
5 receiver to enter and search that place or premises and to seize the property of
6 the bankrupt, subject to such conditions as may be specified in the warrant.

7 (2) In executing a warrant under subsection (1), the trustee or interim
8 receiver shall not use force unless the trustee or interim receiver is
9 accompanied by a constable or officer of the Court and the use of force has been
10 specifically authorised in the warrant.

Evidence in
Court

11 **232.**-(1) Subject to the Bankruptcy Rules, the Court may in any matter
12 take the whole or any part of the evidence either viva voce or by interrogatories
13 or upon affidavit or, out of Nigeria, by commission.

14 (2) Subject to the Bankruptcy Rules, any affidavit to be used in Court
15 may be sworn before any person authorised to administer oaths in the Court or,
16 in the case of a person who is out of Nigeria, before a Magistrate or Justice of
17 the Peace or other person qualified to administer oaths in the country where he
18 resides (being appointed a Magistrate or Justice of the Peace or so qualified by
19 reason of being a diplomatic or consular representative for Nigeria or by a
20 Notary Public).

21 (3) Any document made or used in the course of any bankruptcy
22 proceedings or other proceedings had under this Act shall, if it appears to be
23 sealed with the seal of the Court having jurisdiction in insolvency, purports to
24 be signed by any Judge thereof or is certified as a true copy by any Registrar
25 thereof, be admissible in evidence in all legal proceedings.

26 (4) The production of an original document relating to any insolvency
27 proceeding or a copy certified by the person making it as a true copy thereof or
28 by a successor in that office of that person as a true copy of a document found
29 among the records in his control or possession is evidence of the contents of
30 those documents.

1 (5) In case of the death of the bankrupt or the spouse or cohabitant
 2 of a bankrupt or a witness, whose evidence has been received by any Court
 3 in any proceedings under this Act, the deposition of the deceased person,
 4 purporting to be so sealed, shall be admitted as evidence of the matters
 5 therein deposed to.

6 233.-(1) Orders in insolvency matters shall at the instance of any
 7 person aggrieved, be subject to appeal in the same manner as other orders of
 8 the Court.

Orders subject
to appeal

9 (2) Where by this Act an appeal to the Court is given against any
 10 decision of the Supervisor or trustee, the appeal shall be brought within
 11 twenty-one days from the time when the decision appealed against is
 12 pronounced or made.

13 234. Subject to this Act and the Bankruptcy Rules, the costs of and
 14 incidental to any proceedings in Court under this Act shall be in the
 15 discretion of the Court.

Costs are in the
discretion of the
Court

16 235. Where default is made by a trustee, debtor, or other person in
 17 obeying any order or direction given by the Court, the Supervisor or the
 18 trustee under any power conferred by this Act, in addition to any other
 19 remedy provided for under this Act, the Supervisor, trustee, or other
 20 interested person may apply to the Court for an order requiring such person
 21 to comply with the order or direction so given, and the Court may also, if it
 22 thinks fit, upon any such application, make an immediate order for the
 23 committal of such person.

Application to
Court where
default

24 236. Where an action or any proceedings is brought by or against a
 25 trustee, or where a trustee is made a party to any action or proceedings on his
 26 application or on the application of any other party thereto, he is not
 27 personally liable for costs unless the Court otherwise directs.

Trustee nor
personally
liable

28 PART XI - INTERNATIONAL INSOLVENCIES

29 237. In this Part:

Interpretation

30 "debtor" means an insolvent person who has property in Nigeria, a bankrupt

1 who has property in Nigeria or a person who has the status of a bankrupt under
2 foreign law in a foreign proceeding and has property in Nigeria;

3 "foreign proceeding" means a judicial or an administrative proceeding
4 commenced outside Nigeria in respect of a debtor, under a law relating to
5 bankruptcy or insolvency and dealing with the collective interests of creditors
6 generally;

7 "foreign representative" means a person, other than a debtor, holding office
8 under the law of a jurisdiction outside Nigeria who, irrespective of the person's
9 designation, is assigned, under the laws of the jurisdiction outside Nigeria,
10 functions in connection with a foreign proceeding that are similar to those
11 performed by a trustee, liquidator, administrator or receiver appointed by the
12 Court.

Copy of order
to be proof of
events

13 **238.**-(1) For the purposes of this Part, where a bankruptcy,
14 insolvency, reorganization or like order has been made in respect of a debtor in
15 a foreign proceeding, a certified copy of the order is, in the absence of evidence
16 to the contrary, proof that the debtor is insolvent and proof of the appointment
17 of the foreign representative made by the order.

18 (2) Where a foreign proceeding has been commenced and a receiving
19 order or assignment is made under this Act in respect of a debtor, the Court may,
20 on application and on such terms as it considers appropriate, limit the property
21 to which the authority of the trustee extends to the property of the debtor
22 situated in Nigeria and to such property of the debtor outside Nigeria as the
23 Court considers can be effectively administered by the trustee.

24 (3) The Court may, in respect of a debtor, make such orders and grant
25 such relief as it considers appropriate to facilitate, approve or implement
26 arrangements that will result in a co-ordination of proceedings under this Act
27 with any foreign proceeding.

28 (4) An order of the Court under this Part may be made on such terms
29 and conditions as the Court considers appropriate in the circumstances.

30 (5) Nothing in this Part prevents the Court, on the application of a

1 foreign representative or any other interested person, from applying such
2 legal or equitable rules governing the recognition of foreign insolvency
3 orders and assistance to foreign representatives as are not inconsistent with
4 the provision of this Act.

5 (6) Nothing in this Part requires the Court to make any order that is
6 not in compliance with the laws of Nigeria or to enforce any order made by a
7 foreign Court.

8 **239.** A stay of proceedings that operates against creditors of a
9 debtor in a foreign proceeding does not apply in respect of creditors who
10 reside or carry on business in Nigeria with respect to property in Nigeria
11 unless the stay of proceedings is the result of proceedings taken in Nigeria.

Stay of proceedings
not to apply unless
proceedings taken
in Nigeria

12 **240.** A foreign representative may commence and continue
13 proceedings pursuant to sections 5 and 8 to 11 and section 26(1) in respect of
14 a debtor as if the foreign representative were a creditor, trustee, liquidator or
15 receiver of property of the debtor, or the debtor.

Proceedings
by foreign
representatives

16 **241.**-(1) The Court may seek the aid and assistance of a Court,
17 tribunal or other authority in a foreign proceeding by order or written
18 request or otherwise as the Court considers appropriate.

Court may seek
aid of foreign
authority

19 (2) On application by a foreign representative in respect of a
20 foreign proceeding commenced for the purpose of effecting a composition,
21 an extension of time or a scheme of arrangement in respect of a debtor or in
22 respect of the bankruptcy of a debtor, the Court may grant a stay of
23 proceedings against the debtor or the debtor's property in Nigeria on such
24 terms and for such period as is consistent with the relief provided for under
25 sections 55 to 58 in respect of a debtor in Nigeria who files a notice of
26 intention or a proposal or who becomes bankrupt in Nigeria.

27 (3) On application by a foreign representative in respect of a
28 debtor, the Court may, where it is satisfied that it is necessary for the
29 protection of the debtor's estate or the interest of a creditor or creditors:

30 (a) appoint a trustee as interim receiver of all or any part of the

1 debtor's property in Nigeria, for such term as the Court considers appropriate;
2 and

3 (b) direct the interim receiver to do all or any of the following:

4 (i) take conservatory measures and summarily dispose of property
5 that is perishable or likely to depreciate rapidly in value;

6 (ii) take possession of all or part of the debtor's property mentioned in
7 the appointment and exercise such control over the property and over the
8 debtor's business as the Court considers appropriate; and (iii) take such other
9 action as the Court considers appropriate.

10 (4) Section 11 applies, with such modifications as the circumstances
11 require, in respect of an interim receiver appointed under subsection (3).

12 (5) On application of a foreign representative in respect of a debtor,
13 the Court may authorize the examination under oath by the foreign
14 representative of the debtor or of any person in relation to the debtor who, if the
15 debtor were a bankrupt referred to in section 154, would be a person who could
16 be examined under that section.

Court order may
be conditional
on compliance of
foreign representative
with other Court
order

17 **242.** An application to the Court by a foreign representative under this
18 Part does not submit the foreign representative to the jurisdiction of the Court
19 for any other purpose except with regard to the costs of the proceedings, but the
20 Court may make any order under this Part conditional on the compliance by the
21 foreign representative with any other order of the Court.

Foreign representative
not reverted from
proceeding due
to appeal

22 **243.** A foreign representative is not prevented from making an
23 application to the Court under this Part by reason only that proceedings by way
24 of appeal or review have been taken in a foreign proceeding, and the Court may,
25 on an application where such proceedings have been taken, grant relief as if the
26 proceedings had not been taken.

Dividends subject
to property the
creditor may
acquire outside
Nigeria

27 **244.-(1)** Where any receiving order, proposal or assignment is made
28 in respect of a debtor under this Act:

29 (a) the amount that a creditor receives or is entitled to receive outside
30 Nigeria by way of a dividend in a foreign proceeding in respect of the debtor;

1 and

2 (b) the value of any property of the debtor that the creditor acquires
3 outside Nigeria-

4 (i) on account of a provable claim of the creditor; and

5 (ii) by way of a transfer that, if it were subject to this Act, would be
6 set aside or reviewed under sections 80 to 92, shall be taken into account in
7 the distribution of dividends to creditors of the debtor in Trinidad and
8 Tobago as if they were a part of that distribution.

9 (2) The creditor is not entitled to receive a dividend from the
10 distribution in Nigeria referred to in subsection (1) until every other creditor
11 who has a claim of equal rank in the order of priority established under this
12 Act has received a dividend, the amount of which is the same percentage of
13 that other creditor's claim as the aggregate of the amount referred to in
14 paragraph (a) and the value referred to in paragraph (b) is of that creditor's
15 claim.

16 **245.** A claim for a debt that is payable in a currency other than
17 Nigeria currency shall be converted to Nigeria currency:

Claim payable in
foreign currency

18 (a) in the case of a proposal in respect of an insolvent person and
19 unless otherwise provided in the proposal, where a notice of intention was
20 filed under section 30, as of the day the notice was filed or, if no notice was
21 filed, as of the day the proposal was filed with the Supervisor under section
22 44;

23 (b) in the case of a proposal in respect of a bankrupt and unless
24 otherwise provided in the proposal, as of the date of the bankruptcy; or

25 (c) in the case of a bankruptcy, as of the date of the bankruptcy.

26 **PART XII - OFFENCES**

27 **246.**-(1) Any bankrupt who:

28 (a) makes any fraudulent disposition of the bankrupt's property
29 before or after the date of the initial bankruptcy event;

30 (b) refuses or neglects to answer fully and truthfully all proper

Offences committed
by bankrupt

- 1 questions put to the bankrupt at any examination held pursuant to this Act;
- 2 (c) makes a false entry or knowingly makes a material omission in a
3 statement or accounting;
- 4 (d) after or within one year immediately preceding the date of the
5 initial bankruptcy event:
- 6 (i) conceals, destroys, mutilates, falsifies, makes an omission in or
7 disposes of, or is privy to the concealment, destruction, mutilation,
8 falsification, omission from or disposition of, a book or document affecting or
9 relating to the bankrupt's property or affairs, unless the bankrupt had no intent
10 to conceal the state of the bankrupt's affairs;
- 11 (ii) obtains any credit or any property by false representations made
12 by the bankrupt or made by any other person to the bankrupt's knowledge;
- 13 (iii) fraudulently conceals or removes any property of a value of two
14 hundred dollars or more or any debt due to or from the bankrupt;
- 15 (iv) hypothecates, pawns, pledges or disposes of any property that the
16 bankrupt has obtained on credit and has not paid for, unless in the case of a
17 trader the hypothecation, pawning, pledging or disposing is in the ordinary way of
18 trade and unless the bankrupt had no intent to defraud; or
- 19 (e) after the filing of a petition against him, or within six months
20 before the filing of the petition, leaves Nigeria and takes with him, or attempts
21 or makes preparation to leave Nigeria and take with him, any part of his
22 property to the amount of two thousand dollars or upwards, which ought by law
23 to be divided amongst his creditors, commits an offence and is liable on
24 summary conviction, to a fine of ten thousand dollars and imprisonment for
25 one year, or on conviction on indictment, to a fine of twenty thousand dollars
26 and imprisonment for three years.
- 27 (2) A bankrupt who, without reasonable cause fails to comply with an
28 order of the Court made under section 53 or to do any of the things required of
29 the bankrupt under section 149 commits an offence and is liable:
- 30 (a) on summary conviction, to a fine of fifty thousand naira and

1 imprisonment for one year; or

2 (b) on conviction on indictment, to a fine of Fifty thousand naira
3 and imprisonment for a term of three years.

4 **247.** An undischarged bankrupt who:

5 (a) engages in any trade or business without disclosing to all
6 persons with whom he enters into any business transaction valued at more
7 than five hundred dollars that he is an undischarged bankrupt; or

8 (b) obtains credit to a total of one thousand dollars or more from
9 any person or Persons without informing such persons that he is an
10 undischarged bankrupt. commits an offence and is liable on summary
11 conviction, to a fine of ten thousand dollars and imprisonment for one year.

12 **248.**-(1) Where any person who on any previous occasion has been
13 bankrupt or made a proposal to creditors becomes bankrupt or makes a
14 proposal, that person commits an offence and is liable on summary
15 conviction to a fine of ten thousand dollars and imprisonment for one year,
16 if:

17 (a) being engaged in any trade or business, at any time within the
18 period beginning on the day that is two years before the date of the initial
19 bankruptcy event and ending on the date of the bankruptcy, that person has
20 not kept and preserved proper books and records; or

21 (b) within the period mentioned in paragraph (a), that person
22 conceals, destroys, mutilates, falsifies or disposes of, or is privy to the
23 concealment, destruction, mutilation, falsification or disposition of, any
24 book or record affecting or relating to the person's property or affairs, unless
25 the person had no intent to conceal the state of the person's affairs.

26 (2) For the purposes of this section, a debtor shall be deemed not to
27 have kept proper books of account if he has not kept such books or accounts
28 as are necessary to exhibit or explain his transactions and financial position
29 in his trade or business, including a book or books containing entries from
30 day-to-day in sufficient detail of all cash received and cash paid, and, where

Offences committed
by undischarged
bankrupt

Where debtor
having previously
taken bankruptcy
protection and not
keeping proper
books

1 the trade or business has involved dealings in goods, also accounts of all goods
2 sold and purchased, and statements of physical inventory counts.

False claims,
unlawful fees
and unlawful
transactions

3 **249.**-(1) Where a creditor, or a person claiming to be a creditor in any
4 proceedings under this Act, wilfully and with intent to defraud makes any false
5 claim or any proof, declaration or statement of account that is untrue in any
6 material particular, the creditor or person commits an offence and is liable on
7 summary conviction to a fine of twenty-five thousand dollars and
8 imprisonment for two years.

9 (2) Where an inspector accepts from the bankrupt or from any person,
10 firm or corporation acting on behalf of the bankrupt or from the trustee any fee,
11 commission or emolument other than or in addition to the regular fees provided
12 for by this Act, the inspector commits an offence and is liable on summary
13 conviction to a fine of ten thousand dollars and imprisonment for five years.

14 (3) Where the bankrupt enters into any transaction with any person for
15 the purpose of obtaining a benefit or advantage to which either of them would
16 not be entitled, the bankrupt commits an offence and is liable on summary
17 conviction to a fine of fifty thousand Naira and imprisonment for a term of one
18 year.

Offences by
trustee and
others

19 **250.**-(1) A person who:

20 (a) not being a licensed trustee, does any act as, or represents himself
21 to be, a licensed trustee;

22 (b) being a trustee, either before providing the bond required by
23 section 199 (I) or after providing the bond but at any time while the bond is not
24 in force, acts as or exercises any of the powers of trustee;

25 (c) having been appointed a trustee, with intent to defraud, fails to
26 observe or to comply with any of the provisions of this Act, or fails duly to do,
27 observe or perform an act or duty that he may be ordered to do, observe or
28 perform by the Court pursuant to this Act;

29 (d) having been appointed a trustee, without reasonable exercise, fails
30 to observe or to comply with any of the provisions of this Act, or fails duly to

1 do, observe or perform any act or duty that he may be ordered to do, observe
2 or perform by the Court pursuant to this Act;

3 (e) having been appointed a trustee to any estate and another trustee
4 having been appointed in his place, does not deliver to the substituted trustee
5 on demand all unadministered property of the estate, together with the
6 books, records and documents of the estate and of his administration;

7 (f) directly or indirectly solicits or canvasses any person to make an
8 assignment or proposal under this Act, or to petition for a receiving order;

9 (g) being a trustee, directly or indirectly, solicits proxies to vote at a
10 meeting of creditors; or

11 (h) being a trustee:

12 (i) makes any arrangement under any circumstances with the
13 bankrupt, or an Attorney-at-law, auctioneer or other person employed in
14 connection with a bankruptcy, for any gift, remuneration or pecuniary or
15 other consideration or benefit whatever beyond the remuneration payable
16 out of the estate; or

17 (ii) accepts any such consideration or benefit from any such
18 person, or makes any arrangement for giving up, or gives up, any part of his
19 remuneration, either as a receiver or trustee, to the bankrupt or any solicitor,
20 auctioneer or other person employed in connection with the bankruptcy,
21 commits an offence and is liable on summary conviction to a fine of one
22 hundred thousand dollars, and imprisonment for a term of five years.

23 (2) A person who fails to comply with or contravenes any provision
24 of section 177 commits an offence and is liable on summary conviction to a
25 fine of ten thousand dollars and imprisonment for one year.

26 (3) Every person who contravenes or fails to comply with an order
27 made under section 255:

28 (a) commits an offence and is liable on summary conviction to a
29 fine of ten thousand dollars and imprisonment for a term of one year; or

30 (b) commits an indictable offence and is liable to a fine of twenty

1 thousand dollars and imprisonment for three years.

2 (4) Nothing in subsection (1) (h) shall be construed to apply to a
3 sharing of trustee's fees among persons who together act as trustee of the estate
4 of a bankrupt or as joint trustee to a proposal.

5 (5) Subject to this Act, every person who contravenes or fails to
6 comply with a provision of this Act or the Bankruptcy Rules commits an
7 offence and is liable on summary conviction to a fine of ten thousand dollars
8 and imprisonment for one year.

Removal of
property

9 **251.** A person, except the trustee, who:

10 (a) within thirty days after delivery to the trustee of the proof of claim
11 mentioned in section 71; or

12 (b) where no proof has been delivered, removes or attempts to remove
13 the property or part mentioned in section 71 out of the charge or possession of
14 the bankrupt, the trustee or other custodian of the property, except with the
15 written permission of the trustee, commits an offence and is liable on summary
16 conviction to a fine of twenty thousand dollars and imprisonment for a term of
17 two years.

Invalid trustee
licence

18 **252.** Any trustee who exercises any of the powers or perform any of
19 the duties of a trustee while the trustee's licence has ceased to be valid for
20 failure to pay licence fees, after the trustee's licence has been suspended or
21 cancelled under section 181(4) or after having been informed pursuant to
22 section 188(5) of the suspension or cancellation of the trustee's licence
23 commits an offence and is liable on summary conviction to a fine of twenty
24 thousand dollars and imprisonment for a term of two years.

Trustee acting
outside authority

25 **253.** Where the Supervisor has placed conditions or limitations on the
26 licence of a trustee and the trustee exercises any of the powers of a trustee other
27 than the powers that the trustee is authorized to exercise, the trustee commits an
28 offence and is liable on summary conviction to a fine not exceeding Two
29 hundred Thousand dollars and imprisonment for two years.

Offences committed
by corporation

30 **254.** Where a corporation commits an offence under this Act, any

1 officer, director or agent of the corporation, or any person who has or has
2 had, directly or indirectly, control of the corporation, who directed,
3 authorised, assented to, acquiesced in or participated in the commission of
4 the offence commits an offence and is liable on conviction to the punishment
5 provided for the offence, whether or not the corporation has been prosecuted
6 or convicted.

7 **255.** Where a person has been convicted of an offence under this
8 Act, the Court may, having regard to the nature of the offence and the
9 circumstances surrounding its commission, and in addition to any other
10 punishment that may be imposed under this Act, make an order directing the
11 person to perform community service, subject to such reasonable conditions
12 as may be specified in the order.

Court may make
order for community
service

13 **256.**-(1) Subject to subsection (2), where a Court has made an
14 order under section 255 in respect of a person, the Court may, on application
15 by the person or the Attorney General of Nigeria require the person to appear
16 before it and, after hearing the person or the Attorney General, the Court
17 may vary the order in one or any combination of the following ways that is
18 applicable and that, in the opinion of the Court, is desirable because of a
19 change in the circumstances of the person since the order was made-

Variation of order
made under section
255

20 (a) by making changes in the order or conditions specified therein
21 or extending the period for which the order is to remain in force for such
22 period, not exceeding one year, as the Court considers desirable; or

23 (b) by reducing the period for which the order is to remain in force
24 or relieving the person, either absolutely or partially or for such period as the
25 Court considers desirable, of compliance with any condition that is
26 specified in the order.

27 (2) Before varying an order under subsection (1), the Court may
28 direct that notice be given to such persons as the Court considers to be
29 interested, and may hear any such persons.

30 (3) Where an application made under subsection (1) in respect of a

1 person has been heard by the Court, no application may be made with respect to
2 the person except with leave of the Court.

Court may make
an order regarding
damages

3 **257.**-(1) Where a person has been convicted of an offence under this
4 Act and any other person has suffered loss or damage because of the
5 commission of the offence, the Court may, at the time sentence is imposed,
6 order the person who has been convicted to pay to the person who has suffered
7 loss or damage or to the trustee of the bankrupt an amount by way of
8 satisfaction or compensation for loss or damage to property suffered by that
9 person as a result of the commission of the offence.

10 (2) Where an amount that is ordered to be paid under subsection (1) is
11 not paid forthwith, the person in favour of whom the order has been made may
12 file the order in Court and that order is enforceable against the person who has
13 been convicted in the same manner as if it were a judgment rendered against the
14 person who has been convicted in that Court in civil proceedings.

trustee to report
to Court

15 **258.**-(1) Whenever a trustee has grounds to believe that:

16 (a) an offence under this Act or under any other law has been
17 committed with respect to any bankrupt estate in connection with which he has
18 been acting under this Act; or

19 (b) that for any special reason an investigation should be had in
20 connection with that estate, it is the duty of the trustee to:

21 (i) report the matter to the Court, including in the report a statement of
22 all the facts or circumstances of the case within his knowledge, the names of the
23 witnesses who should in his opinion be examined, and a statement respecting
24 the offence or offences believed to have been committed; and

25 (ii) forward a copy of the report forthwith to the Supervisor.

26 (2) A creditor, inspector or other interested person who believes on
27 reasonable grounds that a person has committed an offence under this Act or
28 under any other law, in connection with a bankrupt, his property or his
29 transactions, may file a report with the Court of the facts on which that belief is
30 based, or he may make such further representations supplementary to the

1 report of the trustee as he may deem proper.

2 (3) Whenever the Court is satisfied on the representation of the
3 Supervisor or trustee or of any creditor, inspector or other interested person,
4 that there is ground to believe that any person has committed an offence
5 under this Act or under any other law in connection with the bankrupt, his
6 property or transactions, the Court may authorise the trustee to initiate
7 proceedings for the prosecution of that person for that offence.

8 (4) Where a trustee is authorised or directed by the creditors, the
9 inspectors or the Court to initiate proceedings against any person believed
10 to have committed an offence, the trustee shall institute the proceedings and
11 shall send or cause to be sent to the Attorney General, a duly certified copy
12 of the resolution or order, together with a copy of all reports or statements of
13 the facts on which the order or resolution was based.

14 **259.**-(1) Where the trustee believes on reasonable grounds that an
15 offence under this Act or any other law relating to the property of the
16 bankrupt was committed either before or after the date of the initial
17 bankruptcy event by the bankrupt or any other person, the trustee shall make
18 a report to the Attorney General.

Trustee to report
criminal acts

19 (2) A copy of a report made under subsection (1) shall be sent by
20 the trustee to the Supervisor.

21 **260.** In an information, complaint or indictment for an offence
22 under this Act, it is sufficient to set out the substance of the offence charged
23 in the words of this Act, specifying the offence or as near thereto as
24 circumstances admit, without alleging or setting out any debt, act of
25 bankruptcy, trading, adjudication or any proceedings, in, or order, warrant,
26 or document of, any Court acting under this Act.

Substance of
offence sufficient

27 **261.** A prosecution by indictment under this Act shall be
28 commenced within five years from the time of the commission of the
29 offence and, in the case of an offence punishable on summary conviction,
30 the complaint shall be made or the information laid within three years from

Time for
commencement
of action

1 the time when the subject matter of the complaint or information arose.

2 PART XIII - GENERAL

Power respecting
Bankruptcy Rules

3 **262.** For the purpose of carrying into effect the objects of this Act,
4 Rules of Court may be made under the Trustee to report criminal acts
5 Substance of offence sufficient Time for commencement of action Power
6 respecting Bankruptcy Rules, Supreme Court of Judicature Act and such Rules
7 may provide for:

8 (a) the sittings of the Court and a Judge of the Court in chambers;

9 (b) the practice and procedure in Court; and

10 (c) any matters relating to the practice and procedure of the Court, the
11 duties of the officers of the Court, and the costs of or fees upon and percentages
12 to be charged for or in respect of proceedings provided that no rules so made
13 shall extend the jurisdiction of the Court.

Gazette or local
daily newspaper
to be evidence
of facts

14 **263.**-(1) A copy of the Gazette or local daily newspaper containing
15 any notice inserted in the Gazette or local newspaper in pursuance of this Act
16 shall be evidence of the facts stated in the notice.

17 (2) The production of a copy of the Gazette or local newspaper
18 containing any notice of a receiving order, an assignment, a proposal, or a
19 receivership shall be conclusive evidence in all legal proceedings of the order
20 or declaration having been duly made and of its date.

21 (3) Copies authenticated by the signature of the Supervisor or trustee
22 of any entries in the books kept by them with respect to any estate vested in or
23 administered by the Supervisor or trustee under this Act shall be admissible in
24 evidence in any legal proceeding or for any other purpose and shall have the
25 same effect in evidence in all respects as the originals from which copies were
26 made.

27 (4) In all legal proceedings, judicial notice shall be taken of the
28 signature of the Supervisor and of the trustee but any Court, Judge or
29 Magistrate may require such signature to be proved as may be required under
30 the Evidence Act, if it is doubtful to the Court, Judge or Magistrate whether the

1 alleged signature is genuine.

2 **264.** A statement or admission made by any person in any
3 compulsory examination or deposition before the Court on the hearing of
4 any matter in bankruptcy shall not be admissible as evidence against that
5 person in respect of any offence under any other law.

Admission not
admissible under
any other law

6 **265.** For all or any purposes of this Act:

7 (a) a corporation may act by any of its officers authorized in that
8 behalf under the seal of the corporation;

9 (b) a firm may act by any of its members; and

10 (c) an individual of unsound mind may act by his committee.

Acts by corporations,
firms and individuals
of unsound mind

11 **266.** Except by leave of the Court, no action lies against the
12 Supervisor, an interim receiver or a trustee with respect to any report made
13 under, or any action taken pursuant to this Act.

Leave of the Court
required to pursue
certain actions

14 **267.**-(1) The Minister may make Regulations:

15 (a) generally for giving effect to this Act; and

16 (b) for prescribing anything that is authorized or required to be
17 prescribed by the Act.

Regulations

18 (2) Regulations made under subsection(1) shall be subject to
19 negative resolution of the National Assembly.

20 **268.** With effect from the date of the commencement of this Act:

Transitional

21 (a) any winding up which is commenced or treated as having
22 commenced before the commencement of this Act; or

23 (b) any case in which a petition in bankruptcy was presented, or a
24 receiving order or adjudication in bankruptcy was made before the
25 commencement of this Act, shall be subject to the law in force immediately
26 before the commencement of this Act.

269. The Bankruptcy Act is repealed.

Repeal

EXPLANATORY MEMORANDUM

This Bill seeks to revise the law relating to bankruptcy to make provision for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor and to create the office of Supervisor of Insolvency.