

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 253.

Insolvency.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February, 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Justice.

Accordingly, as at that date, unless some other intention is clearly indicated, by note or in the text, references in or in relation to this Chapter to—

“the Minister” should be read as references to the Minister for Justice;

“the Departmental Head” should be read as references to the Secretary for Justice¹;

“the Department” should be read as references to the Department of Justice².

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¹ Previously the Secretary for Law.

² Previously the Department of Law.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 253.

Insolvency Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 253.

Insolvency Act.

Being an Act to provide—

- (a) for the distribution of the estates of insolvent debtors amongst their creditors; and
- (b) for the release of insolvent debtors from their debts, and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

“act of insolvency” means an act of insolvency within the meaning of Section 21(1);

“the Court” means the National Court;

“creditors present”, in relation to a meeting, includes creditors who are represented at the meeting by a person duly authorized in writing by them;

“debtor’s summons” means a debtor’s summons granted under Subdivision III.3.B;

“debt provable in insolvency” includes a debt or liability made provable in insolvency under Section 110;

“dividend” includes a final dividend referred to in Section 127;

“elected trustee” means a trustee appointed under Section 54;

“examining magistrate” means a magistrate before whom a person is ordered to attend for examination under this Act;

“extraordinary resolution”, in relation to a resolution of creditors, means a resolution that has been—

- (a) passed by a majority in number and 75% in value of the creditors of the debtor present at a general meeting held in the prescribed manner, of which meeting notice has been given in the prescribed manner; and

- (b) confirmed by a majority in number and value of the creditors present at a subsequent general meeting—

- (i) of which notice has been given in the prescribed manner; and

- (ii) that is held not less than seven days nor more than 14 days after the date of the meeting referred to in Paragraph (a);

“the first meeting of creditors”, in relation to an insolvent, means the general meeting of the creditors referred to in Section 49(a);

“liability” includes—

- (a) compensation for work or labour done; and

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(b) an obligation, or the possibility of an obligation, to pay money or money's worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether the breach—

- (i) does or does not occur; or
- (ii) is or is not likely to occur or capable of occurring, and

(c) an express or implied engagement, agreement or undertaking to pay, or that is capable of resulting in the payment of, money or money's worth, whether the payment to be made be—

- (i) a fixed or unliquidated amount; or
- (ii) payable as at a present or future time; or
- (iii) certain or dependent on a contingency; or
- (iv) capable, in respect of value of being ascertained by fixed rules or assessable only by the Court or as a matter of opinion;

"the official trustee" means the official trustee appointed under Section 5;

"prescribed" means prescribed by this Act or the Rules of the National Court applicable to insolvency;

"property" means—

(a) money, goods, things in action or land, or any other kind of property; and

(b) obligations or easements, or any other kind of estate, interest or profit, present or future, vested or contingent, arising out of or incident to property referred to in Paragraph (a);

"the property of the insolvent" means the property of the insolvent that is divisible among his creditors by virtue of Section 4;

"the Registrar" means the Registrar of the Court;

"the Registry" means the office of the Registrar;

"secured creditor" means a creditor holding a mortgage, charge or lien on the insolvent's estate or part of his estate as security for a debt due to the creditor;

"special resolution", in relation to a resolution of creditors, means a resolution decided by a majority in number and 75% in value of the creditors present at the meeting and voting on the resolution;

"trustee"—

(a) includes the person for the time being filling the office of trustee, whether or not he is the official trustee; and

(b) in relation to an insolvent or an insolvent estate, means the official trustee or an elected trustee acting in respect of the estate.

2. Application.

(1) Except as otherwise provided in this Act, the provisions of this Act relating to the adjudication of insolvency apply to all debtors who are resident in, or have property in, the country.

(2) A company incorporated or registered under the *Companies Act* shall not be adjudged insolvent under this Act.

3. Calculation of a majority of creditors.

Where under this Act (otherwise than for the purposes of Division XIV.2) it is necessary to calculate a majority of creditors—

- (a) a creditor whose debt does not exceed K20.00 shall not be counted in reckoning a majority in number; and
- (b) the debt due to such a creditor shall be taken into account in reckoning a majority in value.

4. Property of insolvent that is divisible among his creditors.

(1) For the purposes of this Act, the property of the insolvent that is divisible among his creditors is—

- (a) all the property—
 - (i) belonging to or vested in the insolvent at the commencement of the insolvency; or
 - (ii) that is acquired by him, or devolves on him, during the insolvency; and
- (b) subject to Part XI., the capacity to exercise, and to take proceedings for exercising, all the powers in or over or in respect of property that might have been exercised by him for his own benefit at the commencement of or during the insolvency; and
- (c) subject to Subsection (2), all goods and chattels that are in the possession, order or disposition of the insolvent at the commencement of the insolvency by the consent and permission of the true owner—
 - (i) of which the insolvent is the reputed owner; or
 - (ii) of which he has taken on himself the sale or disposition as owner.

(2) Subsection (1)(c) does not apply to things in action other than debts due to the insolvent in the course of his trade or business.

(3) The following property of the insolvent is not divisible among his creditors :—

- (a) property held by the insolvent on trust for any other person; and
- (b) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself and his wife and children to a value (inclusive of tools, apparel and bedding) not exceeding K40.00; and
- (c) policies of life assurance or endowment, except to the extent of a charge on the policies in respect of the amount of the premiums paid on the policies during the two years immediately preceding the date of the adjudication of insolvency.

(4) This section does not affect the validity of—

- (a) a preferable lien on wool or crops, mortgage of sheep, cattle or horses or charge on stock or crops comprised in an instrument under the *Instruments Act*; or
- (b) any duly registered bill of sale.

PART II.—OFFICIAL TRUSTEE IN INSOLVENCY.

5. Appointment of official trustee.

- (1) The Minister may appoint a person to be the official trustee.
- (2) Where the official trustee—
 - (a) dies; or
 - (b) leaves the country; or
 - (c) is removed from office,

the Minister may appoint another person to be official trustee in his place.

- (3) Where a person is appointed under Subsection (2)—
 - (a) he has all the rights, powers, duties and liabilities of his predecessor as official trustee; and
 - (b) all of the property that was vested in his predecessor as official trustee vests in him by virtue of the appointment.

6. Security by official trustee.

Where required by the Minister, the official trustee shall, before entering on his duties, give such security by bond for the due performance of his duties as the Court directs.

7. Payments by official trustee to Consolidated Revenue Fund.

(1) Subject to Subsection (2), the official trustee shall pay into the Consolidated Revenue Fund 5% of any sums that come to his hands as trustee as the proceeds of property realized or debts collected by him while he is acting as trustee.

(2) The percentage referred to in Subsection (1) is not chargeable on any moneys that come to the official trustee by devolution from an elected trustee who preceded him in his office.

8. Immediate functions of official trustee in relation to insolvency on debtor's petition.

Immediately on the presentation of a petition for adjudication under Division III.2, the official trustee shall—

- (a) take possession, or cause possession to be taken, of all the property of the petitioner; and
- (b) retain the property in his possession and custody until—
 - (i) an adjudication of insolvency has been made; or
 - (ii) the petition has been dismissed.

9. Immediate functions of official trustee in relation to insolvency on creditor's petition.

- (1) In the case of a creditor's petition—
 - (a) until a trustee is elected under Section 54 by the creditors, the official trustee is the trustee for the purposes of this Act; and
 - (b) immediately on the order of adjudication being made the property of the insolvent passes to and vests in the official trustee and continues to be vested in him until a trustee is so elected by the creditors.

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- (2) On his appointment by virtue of Subsection (1)(a), the official trustee shall—
- (a) take possession, or cause possession to be taken, of the property of the insolvent; and
 - (b) cause any property of a perishable nature to be sold; and
 - (c) preserve the residue until—
 - (i) the election of a trustee; or
 - (ii) the time for the election of a trustee has elapsed,
 whichever first occurs.

10. Functions of official trustee in relation to trustees' accounts.

(1) An elected trustee of an insolvent shall, as prescribed and not less frequently than once in every six months during the insolvency, transmit to the official trustee a statement in the prescribed form and containing the prescribed particulars showing the proceedings in the insolvency.

(2) An elected trustee who fails to transmit accounts in accordance with Subsection (1) is guilty of a contempt of court.

(3) The official trustee—

- (a) shall examine the statements transmitted to him under Subsection (1); and
- (b) shall call the elected trustee to account for any misfeasance, neglect or omission that appears on the statements; and
- (c) may require the elected trustee to make good any loss that the estate of the insolvent has sustained by any such misfeasance, neglect or omission.

(4) If an elected trustee fails to comply with a requirement of the official trustee under Subsection (1)—

- (a) the official trustee may report the failure to the Court; and
- (b) the Court, after hearing the explanation (if any) of the elected trustee, shall make such order as it thinks just.

11. Oversight of trustees.

The official trustee may—

- (a) require an elected trustee to answer any inquiry made by him in relation to any insolvency in which the elected trustee is engaged; and
- (b) if he thinks fit, apply to the Court to examine the elected trustee or any other person, on oath, concerning the insolvency; and
- (c) direct a local investigation to be made of the books and vouchers of the elected trustee.

12. Functions of official trustee in relation to liquidations under Division XIV.1.

Sections 10 and 11 apply to every trustee appointed under Division XIV.1 as well as to elected trustees.

13. Oversight of insolvency officers, etc.

The officers of the Court acting in insolvency shall make such returns of the business of the Court and of their offices, at such times and in such manner and form as is prescribed by the Rules of Court of the National Court.

14. Official trustee's records.

The official trustee shall keep, in the manner prescribed by the Rules of Court of the National Court, books that, under the Rules of Court, shall be open for public information and searches.

PART III.—ADJUDICATIONS OF INSOLVENCY.

Division 1.—Preliminary.

15. Adjudication by the Court.

Adjudications of insolvency shall be made only by the Court.

16. Institution of proceedings.

Proceedings for adjudication of insolvency shall be by petition presented at, and filed in, the Registry.

17. Annulment of adjudication on application by person prejudicially affected.¹

A person prejudicially affected by an adjudication of insolvency may, within the prescribed time and on the prescribed notice to all parties, apply to the Court to annul the adjudication, and if sufficient cause is shown the Court shall annul the adjudication.

Division 2.—Debtors' Petitions.

18. Debtors' petitions generally.

(1) A debtor may petition for an adjudication of insolvency against himself.

(2) A debtor's petition may be in Form 1, and shall be signed by the petitioner and attested by a justice, a Commissioner for Affidavits or the Registrar.

19. Debtors' petitions by partnerships.

A petition for insolvency against a partnership may be presented by the majority of the members of the partnership who at the time of presenting the petition are usually resident in the country.

20. Adjudications.

Where a debtor's petition has been presented, the Court shall—

(a) proceed to adjudicate on the petition without delay; and

(b) on due proof, make an adjudication of insolvency against the petitioner.

Division 3.—Creditors' Petitions.

Subdivision A.—Acts of Insolvency.

21. Definition of acts of insolvency.

(1) The following acts on the part of a debtor are acts of insolvency :—

(a) if the debtor, in the country or elsewhere—

(i) has transferred his property to a trustee for the benefit of his creditors generally; or

¹ See, also, Section 100(2).

- (ii) has made a fraudulent conveyance, gift, delivery or transfer of his property, or any part of his property; or
- (b) if, with intent to defeat or delay his creditors, the debtor—
 - (i) has departed the country; or
 - (ii) being out of the country has remained out of it; or
 - (iii) has departed from his dwelling-house or otherwise absented himself; or
 - (iv) has begun to keep house; or
- (c) if the debtor has filed in the prescribed manner a declaration admitting his inability to pay his debts; or
- (d) if the debtor has presented a petition for adjudication of insolvency against himself under Division 2; or
- (e) if—
 - (i) an execution issued against the debtor on any legal process for payment of not less than K100.00 has been levied by seizure; and
 - (ii) the debtor has not bona fide satisfied the process, by payment or otherwise, within four days after the seizure; or
- (f) if, after the presentation of a petition for adjudication of insolvency against the debtor, he has paid, given or delivered, to the creditor who presented the petition, money or any satisfaction as security for the debt or any part of it, so that the petitioning creditor may receive a greater percentage than other creditors; or
- (g) if the debtor has given or executed a fraudulent warrant of attorney or *cognovit actionem*, or has done any equivalent act; or
- (h) if—
 - (i) the creditor presenting the petition has served on the debtor, in the prescribed manner, a debtor's summons requiring him to pay a sum due, not less than K100.00; and
 - (ii) the debtor has for such time after the service of the summons as is specified in the summons neglected to pay the sum or to secure it or compound for it to the satisfaction of the creditor; or
- (i) if the debtor—
 - (i) having against him the sentence, judgement or decree of any court; and
 - (ii) being required to do so by the sentence, judgement or decree, has failed—
 - (iii) to satisfy it; or
 - (iv) to point out to the officer charged with its execution sufficient disposable property to satisfy it; or
- (j) if the debtor—
 - (i) has consented at a meeting of his creditors to present a petition under Division 2; and

- (ii) within 48 hours from the time of consenting (or any further time made necessary by illness, distance or other sufficient cause), has not presented the petition; or
- (k) if the debtor—
 - (i) admits at a meeting of his creditors that he is unable to meet his engagements; or
 - (ii) offers at such a meeting a composition of less than 100% in cash, and he—
 - (iii) has been requested by a majority of the creditors present at the meeting to present a petition under Division 2; and
 - (iv) within 48 hours after the request (or any further time made necessary by illness, distance or other sufficient cause), has not presented the petition; or
- (l) if the debtor has given or made any preference to or in favour of a creditor that, if the debtor were adjudicated insolvent under this Act, would be a fraudulent preference of the creditor; or
- (m) if a debtor has—
 - (i) been adjudged or declared bankrupt or insolvent in any British court¹ out of Papua New Guinea having jurisdiction in bankruptcy or insolvency or for the relief of insolvent debtors; or
 - (ii) presented a petition to any such court praying adjudication of bankruptcy or insolvency against himself.

(2) A debtor who has committed an act of insolvency is liable to be adjudicated insolvent on the petition of any creditor who is competent to present the petition.

22. Available acts of insolvency.

A person shall not be adjudged an insolvent on an act of insolvency that occurred more than six months before the presentation of the petition.

Subdivision B.—Debtors' Summonses.

23. Proceedings for debtor's summons.

- (1) A debtor's summons may be granted by a Judge on a creditor proving to his satisfaction that—
 - (a) a debt sufficient to support a petition in insolvency is due to the creditor from the person against whom the summons is sought; and
 - (b) the creditor has failed to obtain payment of his debt after using reasonable efforts to do so.
- (2) A summons under Subsection (1)—
 - (a) shall be in the prescribed form, resembling as nearly as circumstances admit a writ issued by the Court; and
 - (b) shall state that if the debtor fails—
 - (i) to pay the sum specified in the summons; or

¹ *Quaere*, whether this means "one of Her Majesty's courts", "a court in one of Her Majesty's possessions" or a court in any part of the Commonwealth of Nations.

- (ii) to compound for that sum to the satisfaction of the creditor, a petition may be presented against him that he be adjudged an insolvent; and
- (c) shall have an endorsement to indicate to the debtor—
 - (i) the nature of the document served on him; and
 - (ii) the consequences of inattention to the requisitions made in the summons.

24. Application to dismiss summons.

- (1) A debtor served with a debtor's summons may apply to a Judge in the prescribed manner and within the prescribed time to dismiss the summons on the ground that—
 - (a) he is not indebted to the creditor serving the summons; or
 - (b) he is not indebted in an amount that justifies the creditor in presenting an insolvency petition against him.
- (2) On an application under Subsection (1), the Judge may—
 - (a) dismiss the summons, with or without costs, if he is satisfied with the allegations made by the debtor; or
 - (b) on the giving of such security (if any) as seems just for payment to the creditor of the debt, alleged by him to be due, and the costs of establishing the debt—stay all proceedings on the summons for such time as is required for the trial of the question relating to the debt.
- (3) The trial referred to in Subsection (2)(b) shall be before—
 - (a) the Court or a Judge; or
 - (b) some other court that has jurisdiction to determine questions relating to debts of the same amount.

Subdivision C.—Creditors' Petitions Generally.

25. Right to present creditors' petitions

- (1) For the purposes of this section, any number of creditors in partnership shall be deemed to be a single creditor.
- (2) Subject to Subsection (3), where a debt or the total of debts due by a debtor—
 - (a) to a single creditor amounts to K100.00 or more; or
 - (b) to two creditors amounts to K140.00 or more; or
 - (c) to three or more creditors amounts to K200.00 or more,
 the creditor or creditors may present a petition to the Court—
 - (d) that the debtor be adjudged an insolvent; and
 - (e) alleging as the ground for adjudication any act or acts of insolvency.
- (3) Subject to Subsections (4) and (5) the debt of the petitioning creditor—
 - (a) must be a liquidated sum due and subsisting at the times—
 - (i) when the act of insolvency was committed; and
 - (ii) when the petition was presented; and

(b) must not be a secured debt, unless the petitioner—

(i) states in his petition that he is ready to give up the security for the benefit of the creditors in the event of the debtor being adjudicated an insolvent; or

(ii) gives an estimate of the value of his security.

(4) In a case to which Subsection (3)(b)(ii) applies, the creditor—

(a) may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated; and

(b) if he is admitted as a petitioning creditor shall, on application being made by the trustee within the prescribed time after the date of adjudication, give up his security to the trustee for the benefit of the creditors on payment of the estimated value.

(5) A person who has given credit to a debtor for valuable consideration for a sum payable at a certain time that had not elapsed when the act of insolvency was committed may petition or join in petitioning, whether or not the time for payment has arrived at the date of presenting the petition.

26. Form of petition.

(1) A creditor's petition for an adjudication of insolvency may be in Form 2.

(2) In the petition, the following short statements of acts of insolvency may be used :—

- (a) "made a transfer of his property for his creditors"; or
- (b) "made a fraudulent conveyance (or gift or delivery or transfer) of his property (or part of his property) to E.F."; or
- (c) "with intent to defeat (or delay) his creditors departed out of the country (or remained out of the country or as the case may be)"; or
- (d) "filed a declaration of insolvency"; or
- (e) "filed an insolvency petition"; or
- (f) "suffered his property to be seized and detained for four days in execution for K100.00 (or more)"; or
- (g) "fraudulently preferred E.F., a petitioning creditor"; or
- (h) "gave a fraudulent warrant of attorney (or cognovit actionem or as the case may be)"; or
- (i) "failed for days to pay, secure or compound a debt of K that he was required to pay by a debtor's summons"; or
- (j) "failed to satisfy, or point out property to satisfy, an execution"; or
- (k) "at a creditors' meeting, consented to present an insolvency petition and failed to do so for 48 hours without excuse"; or
- (l) "at a creditors' meeting admitted his insolvency (or offered a composition) and being requested by a majority of creditors to present an insolvency petition failed to do so for 48 hours without excuse"; or
- (m) "made a fraudulent preference of E.F., a creditor"; or
- (n) "was adjudged insolvent (or bankrupt) in (or presented a petition in for an adjudication of insolvency (or bankruptcy) against himself").

27. Signature of petition.

A creditor's petition shall be signed by the petitioner or a person authorized by Section 28 to verify the petition.

28. Verification of petition.

(1) Subject to this Act, a creditor's petition shall be verified by the oath of the petitioner.

(2) Where the petitioning creditor is a corporation, joint-stock company or company authorized to sue in the name of a public officer, the petition may be verified by the manager, secretary or other authorized officer of the corporation or company.

(3) Where the petitioning creditors are two or more persons in partnership, the petition may be verified by one only of the partners.

(4) Where the petitioning creditor is out of the country, the petition may be verified by his duly authorized attorney or agent in the country.

(5) The verification shall be—

(a) by affidavit in Form 3; and

(b) annexed or subscribed to the petition.

(6) Where a petition is verified by a person other than a petitioner, he shall also show in the affidavit verifying the petition that he is authorized under this Act to verify the petition.

29. Evidentiary effect of verifying affidavit.

An affidavit verifying the petition is sufficient prima facie evidence to support the petition.

30. Service of petition.

(1) A creditor's petition shall be served on the debtor.

(2) The copy of the petition served on the debtor shall have endorsed on it a summons in Form 4, signed by the Registrar and sealed with his official seal.

(3) Service of a creditor's petition may be effected—

(a) personally; or

(b) in any other prescribed manner; or

(c) in such manner as the Court, on application by the petitioner, directs.

31. Fee for entry of appearance.

No fee is payable by a debtor for entering an appearance to a petition.

32. Proceedings on failure to appear.

If at the expiration of—

(a) four days after service; or

(b) such further time—

(i) as is prescribed; or

(ii) as the Court thinks necessary to enable the debtor to appear,

the debtor has not entered an appearance to the petition at the place appointed by the summons, the Court may, on proof of service, proceed to adjudicate the debtor insolvent.

33. Proceedings on appearance.

If the debtor appears, the petition shall be set down for hearing in Chambers before a Judge.

34. Affidavit by debtor showing cause against petition.

A debtor intending to show cause against a petition may file in the Registry any affidavit intended to be used by him for that purpose.

35. Proceedings on hearing generally.

(1) Where the debtor appears at the hearing of the petition, the Court shall require proof of—

- (a) the debt of the petitioning creditor; and
- (b) an act of insolvency alleged in the petition,

and if satisfied with the proof shall adjudge the debtor to be insolvent.

(2) The Court may—

- (a) adjourn the petition, conditionally or unconditionally—
 - (i) for the procurement of further evidence; or
 - (ii) for any other just cause; or
- (b) dismiss the petition, with or without costs as the Court thinks just.

36. Proceedings where debt contested.

(1) Where the debtor appears on the petition and denies—

- (a) that he is indebted to the petitioner; or
- (b) that he is indebted in an amount that would justify the petitioner in presenting a petition against him,

the Court may, on such security (if any) being given as it requires for payment to the petitioner of—

- (c) any debt that may be established against him in due course of law; and
- (d) the costs of establishing the debt,

stay all proceedings on the petition for such time as is required for the trial of the question relating to the debt.

(2) The trial referred to in Subsection (1) shall be before—

- (a) the Court or a Judge; or
- (b) some other court that has jurisdiction to determine questions relating to debts of the same amount.

(3) Where—

- (a) proceedings are stayed under Subsection (1); and
- (b) the Court thinks it just to do so—
 - (i) by reason of the delay caused by the stay of proceedings; or
 - (ii) for any other cause,

the Court—

- (c) may adjudge the debtor to be an insolvent on the petition of some other creditor; and

(d) in that case shall dismiss, on such terms as it thinks just, the proceedings that have been so stayed.

37. Costs.

(1) The petitioning creditor shall defray the costs and expenses of all proceedings in the insolvency until, and inclusive of, the order of adjudication.

(2) When costs and expenses have been taxed, they shall be repaid to the petitioning creditor out of the first moneys received from the estate of the insolvent.

38. Effect of payment to petitioning creditor.

Where, after the presentation of a petition for adjudication of insolvency against him, a debtor—

(a) pays money to the petitioning creditor; or

(b) gives or delivers, or procures to be given or delivered, to the petitioning creditor any satisfaction or security for his debt,

so that the petitioning creditor receives a greater percentage of his debt than the other creditors, the petitioning creditor—

(c) forfeits his whole debt; and

(d) shall repay or deliver up the money, satisfaction or security, or the full value of it, to the trustee.

Subdivision D.—Petitions against Partnerships.

39. Creditors' petitions against partnerships.

(1) A creditor of a partnership may present, in the same manner as is prescribed for a creditor's petition, a petition for adjudication of insolvency against all, or any one or more, of the members of the partnership if any of the partners has committed an act of insolvency in respect of the estate of the partnership.

(2) An order made under Subsection (1) is valid even if it does not include all the partners.

(3) After an order made under Subsection (1), the same proceedings may be taken concerning the estate of the partnership and the partner or partners as are prescribed by this Act for other estates and persons.

(4) This section does not prevent a creditor of a partnership from proceeding against—

(a) a partner; or

(b) the separate estate of a partner,

in respect of debts due by the partnership in the same way as he might proceed against him in respect of debts due by the partner in his individual capacity.

Division 4.—Summoning of Witnesses, etc., prior to Adjudication.

40. Summoning of witnesses, etc.

Before adjudication the Court may—

(a) summon the debtor or any person whom it thinks capable of giving information concerning an act of insolvency committed by the debtor to

attend before it, or in any place other than the National Capital District or the Central Province, before a magistrate; and

(b) require him to produce books or documents in his possession or control.

41. Examination of witnesses.

The examining magistrate may—

(a) examine a person summoned under Section 40; and

(b) if the person fails, without reasonable excuse, to attend the examination—

(i) order by warrant that he be arrested and brought before him for examination; or

(ii) order the seizure of all or any of the books or documents that the person has been ordered to produce,

or both.

42. Failure to appear for examination.

A person summoned under Section 40 who fails, without reasonable excuse, to attend an examination by an examining magistrate is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

Division 5.—Orders of Adjudication of Insolvency.

43. Publication of order of adjudication.

(1) A copy of an order of adjudication shall be—

(a) published in the National Gazette; and

(b) advertised locally in such manner (if any) as is prescribed.

(2) The production of a copy of the National Gazette containing an order published under Subsection (1) is conclusive evidence in all legal proceedings—

(a) that the debtor has been duly adjudged an insolvent; and

(b) of the date of the adjudication,

and it is not necessary in any such proceedings to prove any petitioning creditor's debt or any act of insolvency in order to support the adjudication.

44. Date of adjudication.

An adjudication of insolvency takes effect on the date of the order of adjudication.

45. Commencement of insolvency.

(1) Subject to Subsection (3), the insolvency of a debtor shall be deemed to have relation back to and to commence at the time of—

(a) the completion of the act of insolvency on which the order is made adjudging him to be insolvent; or

(b) if the insolvent is proved to have committed more acts of insolvency than one, the first of the acts of insolvency that is proved to have been committed by him within six months preceding the presentation of the petition on which the adjudication is founded.

(2) Subsection (1) applies whether the adjudication is made on the petition of the debtor or of a creditor.

(3) An insolvency does not relate to a prior act of insolvency unless it is proved that—

(a) at the time of committing the act the insolvent was indebted to a creditor or creditors in a sum or sums sufficient to support a petition in insolvency; and

(b) the debt or debts remain due at the time of the adjudication.

46. Effects of adjudication as to property distributable among creditors.

Where an order has been made adjudging a debtor insolvent the property of the insolvent is divisible among his creditors in proportion to the debts proved by them in the insolvency.

47. Effect of adjudication as to debts provable in the insolvency.

(1) Subject to Subsection (2), where a debtor is adjudicated an insolvent, a creditor to whom the insolvent is indebted in respect of a debt provable in the insolvency does not have any remedy against the property or person of the insolvent in respect of the debt other than a remedy prescribed by this Act.

(2) Subsection (1) does not affect the power of a creditor holding a security over the property of the insolvent to realise or otherwise deal with the security as he would have been entitled to realize or deal with it if this section had not been passed.

48. Discharge of insolvent in custody.

On adjudication of insolvency being made against him, a person in custody of the Sheriff or of a gaoler or officer—

(a) under *mesne* process; or

(b) in execution of a judgement, decree or order for a debt or demand provable in insolvency,

is, on application to the Court, entitled to an order discharging him out of custody in respect of the process or execution, absolutely or on such terms as the Court thinks proper.

49. Contents of order.

In addition to any other things that under this Act it should or may include, an order of adjudication of insolvency shall—

(a) fix a date, not being earlier than six days or later than 30 days after the date of the order, for the holding of a general meeting of the creditors of the debtor, for the purpose of the election of a trustee; and

(b) shall specify a time and place at which the debtor shall come in and deliver to the trustee a full and accurate statement, verified on oath, of—

(i) his debts and other liabilities; and

(ii) the names and residences (so far as they are known to him) of his creditors, and

(iii) the causes of his inability to meet his engagements.

PART IV.—ELECTION, ETC., OF TRUSTEES AND COMMITTEES OF INSPECTION.

*Division 1.—Meetings of Creditors for Purpose of Elections.***50. Calling of meetings.**

Notice of the first meeting of creditors shall be given in the prescribed form—

- (a) in the National Gazette; and
- (b) in the prescribed newspapers or such newspapers (if any) as the Court directs in any case; and
- (c) by affixing a copy of the notice in some conspicuous place in the Registry and the post office nearest to the place where the debtor carried on business, or resided, at the date of presenting the petition.

51. Holding of meetings.

The first meeting of creditors—

- (a) shall be held at the Registry or some convenient place near to the Registry; and
- (b) shall be held in the prescribed manner; and
- (c) shall be presided over by the Registrar or, if the Registrar is unable to attend through illness or any unavoidable cause, by such chairman as the meeting elects; and
- (d) is subject to the prescribed provisions as to quorum, adjournment and all other matters relating to the conduct of the meeting or the proceedings at the meeting.

52. Adjournment of meeting.

Subject to the directions of the Court, the Registrar or other chairman may adjourn the first meeting of creditors from time to time and from place to place.

53. Voting at meetings.

(1) At the first meeting of creditors—

- (a) a person is not entitled to vote as a creditor unless at or before the meeting he has proved a debt due to him under the insolvency in accordance with this section; and
- (b) a creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained; and
- (c) for the purpose of voting, a secured creditor shall be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security, unless at or before the meeting of creditors he gives up the security to the trustee in which case he ranks as a creditor in respect of the whole sum due to him; and
- (d) votes may be given personally or by proxy; and
- (e) a resolution other than a special resolution or an extraordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on the resolution.

(2) For the purposes of Subsection (1)(c), the amount of the balance, until the security is realized, shall be determined in the prescribed manner.

(3) A creditor desiring to vote at the first meeting of creditors shall first make preliminary proof that a debt provable under the insolvency is due to him.

(4) A proof of debt under Subsection (3) may be made by affidavit in the prescribed form before the Registrar or any Provincial Commissioner, Commissioner for Affidavits or justice who may, for that purpose, administer oaths and who—

- (a) on the proof being made to his satisfaction; and
- (b) if required by the creditor,

shall deliver a certificate to the creditor in Form 5.

(5) A certificate under Subsection (4) shall be filed in the Registry, and entitles the creditor named in the certificate to vote at the meeting as a creditor in respect of a debt of the amount stated in the certificate.

54. Election, etc., of trustees and committees of inspection.

(1) The first meeting of creditors—

(a) may, by resolution—

- (i) appoint a fit person resident in the country, whether a creditor or not, to be the trustee of the property of the insolvent at such remuneration (if any) as the creditors from time to time determine; or
- (ii) leave his appointment to the committee of inspection appointed under Paragraph (b); and

(b) may, by resolution, appoint some other fit person or persons—

- (i) not exceeding five in number; and
- (ii) being creditors qualified to vote at the first meeting of creditors or authorized in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the insolvent's property; and

(c) may, by resolution, give directions as to the manner in which the property is to be administered by the trustee.

(2) The meeting may—

(a) appoint more than one person to be the trustee and, where more than one person is appointed, shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of those persons; and

(b) may appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee.

(3) Where, in accordance with Subsection (2), more persons than one are appointed to be the trustee, they are joint tenants of the property of the insolvent.

(4) If the first meeting of creditors appoints a trustee or trustees by resolution, it shall declare—

(a) the security (if any) to be given; and

(b) to whom the security shall be given,

by the person or persons so appointed before he enters, or they enter, as the case may be, the office of trustee.

55. Election of new trustee in case of improper voting.

(1) Where the proof of a creditor who has voted at the election of a trustee and without whose vote the trustee would not have been elected is afterwards expunged or reduced, the Court may, on the application of a majority in value of the creditors who have proved, order a fresh meeting to be held for the election of a new trustee.

(2) A meeting held under Subsection (1) shall be summoned and held—

(a) at such place as the Court thinks proper; and

(b) in a manner as near as possible to that in which the first meeting of creditors was called and held.

56. Court order for election of new trustee.

On sufficient cause being shown, the Court may order a meeting for the election of a new trustee to be held at such time and place, and in such manner, as it thinks proper.

57. Certificate of appointment of trustee.

(1) The appointment of a trustee shall be reported to the Court, and on being satisfied that the requisite security (if any) has been entered into by the trustee the Court shall give a certificate declaring him to be trustee of the insolvency named in the certificate.

(2) A certificate under Subsection (1) is conclusive evidence of the appointment of the trustee.

(3) The appointment of a trustee dates from the date of the certificate under Subsection (1).

(4) Where the official trustee holds the office of trustee or the trustee is changed, a certificate of the Court—

(a) may be made declaring the person named in the certificate to be the trustee; and

(b) is conclusive evidence that the person named in the certificate is the trustee.

(5) For all purposes of any law requiring registration, enrolment or recording of transfers of property, the certificate of appointment of a trustee—

(a) shall be deemed to be a transfer of property; and

(b) may be registered, enrolled and recorded accordingly.

58. Lack of trustee.

If during an insolvency there is no trustee acting, the official trustee shall act as the trustee.

59. Lack of committee of inspection.

If during an insolvency there is no committee of inspection, an act, thing, direction or consent that is authorized or required by this Act to be done or given by a committee may be done or given by the Court on the application of the trustee.

60. Filling up numbers of members of committee of inspection.

Where the number of members of a committee of inspection is for the time being less than five, the creditors may increase the number to not more than five.

61. Defect in election.

A defect or irregularity in the election of a trustee or of a member of the committee of inspection does not invalidate any act bona fide done by him, and an act or proceeding of the trustee or of the creditors is not invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection.

*Division 2.—Retirement, Removal, Replacement, etc.***62. Trustees.**

(1) Where a vacancy occurs in the office of trustee by removal, death, resignation or otherwise, the creditors in general meeting shall fill the vacancy.

(2) A meeting for the purposes of Subsection (1) shall be convened by—

(a) the continuing trustee (if there is more than one); or

(b) the Registrar on the requisition of a creditor.

(3) The Court may, on cause shown, suspend or remove a trustee.

(4) By a special resolution at a meeting specially called for the purpose (of which the prescribed notice has been given), the creditors may remove the trustee and appoint another person to fill his office.

(5) Where a trustee is adjudged insolvent or is or becomes resident out of the country, he ceases to be trustee and, if there is no other trustee, the Registrar shall call a meeting of creditors for the appointment of another trustee in his place.

63. Committees of inspection.

(1) Where a vacancy occurs in the office of a member of a committee of inspection by removal, death, resignation or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling the vacancy.

(2) A member of the committee of inspection may resign his office by written notice signed by him and delivered to the trustee.

(3) By a special resolution at a meeting (of which the prescribed notice, stating the object of the meeting, has been given), the creditors may remove a member of the committee of inspection.

(4) Where a member of the committee of inspection is adjudged insolvent or ceases to reside in the country, he ceases to be a member of the committee.

*Division 3.—Miscellaneous.**Subdivision A.—Trustees.***64. Status of trustees.**

(1) The official title of the trustee of an insolvent shall be—

“the trustee of the property of (*name of insolvent*), an insolvent”.

(2) The trustee may, under his official title—

(a) hold property; and

(b) make contracts; and

(c) sue and be sued; and

(d) enter into engagements binding on himself and his successors in office; and

(e) do all other acts necessary or expedient to be done in the execution of his office.

65. Compliance with directions of first meeting of creditors.

The trustee shall conform to any directions given under Section 54(1)(d) by the first meeting of creditors unless the Court, for some just cause, otherwise orders.

66. Requirement of consent of committee of inspection.

(1) At any time—

- (a) the Court may make an order; or
- (b) the creditors may pass a special resolution,

declaring that all or any of the things authorized by this Act to be done by the trustee with the consent of the committee of inspection may be done by the trustee without that consent.

(2) Where an order or resolution is made or passed under Subsection (1), the provisions of this Act relating to the committee of inspection cease to apply as to things so authorized.

67. Indemnity to trustees.

(1) A trustee is not personally liable by reason only—

- (a) that any of the matters on which an adjudication of insolvency has been founded is insufficient to support the adjudication; or
- (b) of any receipt by him in his official capacity of any money or negotiable instrument if he has dealt with it—
 - (i) as directed by the Court; or
 - (ii) as required by this Act or an order made under this Act.

(2) Where an action is brought against a trustee in respect of any money or negotiable instrument received by him in his official capacity, a Judge may, on proof that the trustee has acted in the manner referred to in Subsection (1)(b)—

- (a) stay or set aside the proceedings in the action so far as the trustee is concerned; and
- (b) make such order as to costs as he thinks proper.

68. Vesting of property in trustees on appointment.

(1) On the appointment of a trustee under this Part, the property of the insolvent is immediately divested from the official trustee and is vested in the trustee so appointed.

(2) The property of the insolvent passes from trustee to trustee and vests in the trustee for the time being during his continuance in office without any conveyance, assignment or transfer.

Subdivision B.—Committees of Inspection.

69. Quorum of committees.

The creditors may, by resolution, fix the quorum required to be present at a meeting of the committee of inspection.

70. Effect of vacancies in committees.

Subject to Section 69, the continuing members of a committee of inspection may act notwithstanding any vacancy in the committee.

PART V.—PROPERTY OF INSOLVENTS DEVOLVING ON TRUSTEES.

Division 1.—Dealing with Proceeds of Sales under Execution.

71. Holding of proceeds generally.

Where the property of any person has been taken and sold in execution in respect of a sum of not less than K100.00, the Sheriff, or bailiff or other officer of the Court, or of the court of summary jurisdiction, as the case may be, shall retain the proceeds of the sale in his hands for a period of 14 days.

72. Holding of proceeds where petition presented.

In a case to which Section 71 applies, if notice is served on the Sheriff, bailiff or other officer, within the period referred to in that section, of an insolvency petition having been presented against the person whose property has been sold, the Sheriff, bailiff or officer shall hold the proceeds of the sale, after deducting sufficient to defray the costs and expenses of the execution creditor, on trust to pay it to the trustee.

73. Dealing with proceeds where no insolvency.

In a case to which Section 71 applies, if—

- (a) no notice of a petition having been presented has been served on the Sheriff, bailiff or other officer referred to in that section within the period of 14 days referred to in that section; or
- (b) a notice of a petition has been served but the person against whom the petition has been presented is not adjudged an insolvent on that petition or any other petition of which notice has been given,

the Sheriff, bailiff or officer may deal with the proceeds of the sale in the same manner as he might have done if no notice of an insolvency petition had been served on him.

Division 2.—Salaries, Pensions, etc.

74. Payment to creditors of part of salary, etc.

(1) Where an insolvent—

- (a) is or has been employed or engaged in the Public Service; or
- (b) is in receipt of any pension or compensation granted by an Act,

the trustee, during the insolvency, or the Registrar, after the close of the insolvency, shall receive for distribution among the creditors so much of the insolvent's salary, emolument or pension as the Court, on the application of the trustee, thinks just and reasonable.

(2) Any amount received in accordance with Subsection (1) shall be paid in such manner and at such times as the Court, with the written consent of the Minister, directs.

(3) Where an insolvent is in receipt of a salary or increase otherwise than as set out in Subsection (1), the Court shall, on the application of the trustee, from time to time make such order as it thinks just for the payment of the salary or income, or any part of it—

- (a) to the trustee during the insolvency; or

(b) to the Registrar, if necessary, after the close of the insolvency, to be applied by him in such manner as the Court directs.

Division 3.—Avoidance, etc., of Certain Transactions.

75. Transfers, etc., constituting acts of insolvency.

(1) Subject to this section, a conveyance, assignment, gift, delivery or transfer of any property, or other dealing with property, that would constitute under this Act an act of insolvency is void against the trustee of the insolvent.

(2) A transfer of all the debtor's property for the benefit of all his creditors, any dealing with property so transferred and an act or thing bona fide made or done by the trustee of such a transfer is valid and is not affected by the adjudication unless the trustee of the transfer had notice, before or at the time of the dealing, act or thing, that proceedings had been taken, or were about to be taken, for the purpose of obtaining an adjudication of insolvency against the debtor.

(3) Where an execution has been levied by seizure and sale the proceeds of which have been lawfully paid over under this Act to the person at whose suit the execution was issued—

- (a) the payment is valid; and
- (b) the person receiving it is not affected by the adjudication,

unless at the time of payment to him he had notice that a petition for adjudication had been presented against the debtor.

76. Voluntary settlements.

(1) For the purposes of this section, "settlement" includes a transfer of property.

(2) A settlement of property made by any person, other than a settlement made—

- (a) before and in consideration of marriage; or
- (b) in favour of a purchaser or encumbrancer in good faith and for valuable consideration; or
- (c) on or for the wife or children of the settlor of property that has accrued to the settlor after marriage in right of his wife,

is void as against the trustee under this Act if the settlor becomes insolvent—

- (d) within two years after the date of the settlement; or
- (e) within three years after the date of the settlement unless the parties claiming under the settlement can prove that at the time of making the settlement the settlor was able to pay all his debts without the aid of the property comprised in the settlement.

(3) A covenant or contract made by a person in consideration of marriage for the future settlement, on or for his wife or children, of any money or property—

- (a) in which, at the date of his marriage, he had no estate or interest, vested or contingent, in possession or remainder; and
- (b) that was not money or property of or in right of his wife,

is, on his becoming insolvent before the property or money has been actually transferred or paid under the contract or covenant, void against the trustee under this Act.

77. Fraudulent preferences.

(1) Where a debtor who is unable to pay, from his own money, his debts as they become due, has—

- (a) made a transfer, gift or delivery of property; or
- (b) given a charge on property; or
- (c) made a payment; or
- (d) incurred an obligation; or
- (e) taken or suffered any judicial proceedings,

in favour of a creditor or of a person in trust for a creditor, with a view to giving the creditor a preference over the other creditors, and—

- (f) a petition for an adjudication of insolvency is presented against him within the next six months; and
- (g) an adjudication of insolvency is made on the petition,

the transfer, gift, delivery, charge, payment, obligation or proceedings shall be deemed to be fraudulent and is or are void as against the trustee appointed under this Act.

(2) Subsection (1) does not affect the rights of a purchaser, payee or encumbrancer in good faith and for valuable consideration.

(3) Pressure by a creditor does not exempt a transaction from the operation of Subsection (1).

78. Other preferences to creditors.

(1) Where a debtor who is unable to pay his debts as they become due has—

- (a) made a transfer, gift or delivery of property; or
- (b) given a charge on property,

in favour of a creditor, or of a person in trust for a creditor, otherwise than for a reasonable and sufficient consideration given at the time of its making or giving, and—

- (c) a petition for an adjudication of insolvency is presented against the debtor within six months after the date of its making or giving; and
- (d) an adjudication of insolvency is made on the petition,

the transfer, gift, delivery or charge shall be deemed to be a fraudulent preference and is void as against the trustee of the insolvent under this Act, and is not available to the creditor as against the trustee.

(2) Any property to which Subsection (1) applies, or the full value of the property, is recoverable by the trustee from—

- (a) the creditor; or
- (b) any person who holds it in trust for the creditor; or
- (c) any person to whom the creditor or person holding the property in trust has transferred, delivered or mortgaged the property, if, at the time of the transfer, delivery or mortgage, he had notice of the fraudulent preference.

79. Other void transfers, etc.

(1) A transfer, gift or delivery of property or a charge made on property, made or given by a debtor who is unable to pay, from his own moneys, his debts as they become due, the effect of which is—

- (a) to defeat or delay the creditors of the debtor; or
- (b) to diminish the property to be divided among his creditors,

shall be deemed to be fraudulent and is void—

- (c) if a petition for adjudication of insolvency is presented against the debtor within six months—as against the petitioning creditor; and
- (d) if adjudication of insolvency is made on the petition—as against the trustee in the insolvency,

unless it is proved that the transfer, gift, delivery or charge was in fact made in good faith.

(2) Pressure by a creditor does not protect a transaction from the operation of Section 78(2), and such a transaction does not acquire any validity by reason only that it was made or done under an agreement made before the adjudication.

80. Saving of certain transactions.

(1) This Act does not invalidate—

- (a) a payment made in good faith and for value received to an insolvent before the date of the order of adjudication by a person who did not, at the time of the payment, have notice of any act of insolvency committed by the insolvent and available against him for an adjudication of insolvency; or
- (b) any payment or delivery of money or goods belonging to an insolvent made to him, before the date of the order of adjudication, by a depositary of the money or goods who did not, at the time of the payment or delivery, have notice of any act of insolvency committed by the insolvent and available against him for an adjudication of insolvency; or
- (c) any contract or dealing with an insolvent made in good faith and for valuable consideration before the date of the order of adjudication by a person who did not, at the time of the making of the contract or dealing, have notice of any act of insolvency committed by the insolvent and available against him for an adjudication of insolvency.

(2) Subject to the provisions of this Act relating to —

- (a) the proceeds of the sale and seizure of goods; or
- (b) the avoidance of—
 - (i) settlements; and
 - (ii) transfers, charges, payments and judicial proceedings, on the ground of their constituting fraudulent preferences or otherwise,

the following transactions by and in relation to the property of an insolvent are valid notwithstanding any prior act of insolvency:—

- (c) a disposition, or a contract with respect to the disposition, of property by transfer, charge, delivery of goods, payment of money or otherwise, made by an insolvent in good faith and for valuable consideration before the date of the order of adjudication with any person who did not, at the time of the making of the disposition, have notice of any act of insolvency committed by the insolvent and available against him for an adjudication of insolvency; and

- (d) any execution or attachment against the property of the insolvent executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account the execution or attachment was issued did not, at the time of the seizure and sale, have notice of any act of insolvency committed by the insolvent and available against him for an adjudication of insolvency.

Division 4.—Transfer, etc., of Certain Property.

81. Property outside Papua New Guinea.

Where an insolvent has any property outside the country, the Court may, on the application of the trustee, order the insolvent—

- (a) to execute all such deeds and other instruments; and
 (b) to do and concur in all such acts, matters and things,

as are necessary to enable the trustee to realize or make available the property or the proceeds of the property, or such part of the property or the proceeds of the property as the Court thinks proper for distribution among the creditors of the insolvent.

82. Property held by bankers, etc.

(1) A banker, attorney or agent of an insolvent shall pay and deliver to the trustee all moneys and securities in his possession or power as banker, attorney or agent, unless by law he is entitled to retain them as against the insolvent or the trustee.

(2) A person who contravenes or fails to comply with Subsection (1) is guilty of a contempt of court, and may, on the application of the trustee, be punished accordingly.

(3) For the purposes of Subsection (1), a person is not entitled to withhold possession of any books of account, papers or writings relating to the estate as against the trustee, or to claim a lien on them.

Division 5.—Discovery of Assets.

83. Order to attend for examination and produce documents.

(1) On the application of the trustee or of a creditor at any time after an order of adjudication has been made against an insolvent, the Court may—

- (a) order—
- (i) the insolvent or his spouse; or
 - (ii) any person who is—
 - (A) known or suspected to have in his possession any of the estate or effects belonging to the insolvent; or
 - (B) supposed to be indebted to the insolvent; or
 - (iii) any person whom the Court thinks able to give information concerning the insolvent or his trade, dealings or property,
- to attend before it, or (in any place other than the National Capital District or the Central Province) before any magistrate, at a time or times to be specified in the order; and
- (b) order any person referred to in Paragraph (a) to produce any documents in his custody or control relating to the insolvent or his trade, dealings or property.

(2) If a person in respect of whom an order under Subsection (1) is made refuses, after having been tendered a reasonable sum for expenses—

- (a) to come before the Court or the examining magistrate at the time appointed; or
- (b) to produce the documents,

without a lawful impediment made known to and allowed by the Court or examining magistrate at the time of sitting, the Court or examining magistrate may, by warrant addressed to a member of the Police Force or a prescribed officer, cause the person to be arrested and brought up for examination.

84. Examinations.

(1) The Court or an examining magistrate may examine, or cause to be examined, on oath, orally or by written interrogatories, any person brought before it or him under Section 83 concerning the insolvent, or his trade, dealings or property.

(2) A person examined under Subsection (1) who refuses to answer to the satisfaction of the Court or the examining magistrate, as the case may be, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

85. Incriminating questions.

A question put to an insolvent on any examination under this Act is not unlawful by reason only that the answer may expose him to punishment for a misdemeanour against Subdivision VI.4.A. of the *Criminal Code*.

86. Order for payment of indebtedness to insolvent found on examination.

On the application of the trustee, the Court or examining magistrate may order a person who appears on examination to be indebted to the insolvent to pay to the trustee the amount, or any part of the amount, appearing to be due—

- (a) with or without costs of the examination; and
- (b) at such time and in such manner as the Court or examining magistrate thinks expedient,

in full discharge of the full amount, or otherwise, as the Court or examining magistrate thinks proper.

87. Reward for discovery of concealed property.

A person who makes discovery, or gives information to the trustee that leads to the discovery, of any concealed property of an insolvent not previously known by the trustee is entitled to such reward, not exceeding 10% of the value of the property so discovered, as the Court allows.

Division 6.—Seizure and Attachment.

88. Seizure under order of Court.

(1) A person acting under warrant of the Court may—

- (a) seize and attach any property of the insolvent in the custody or possession of the insolvent or of any other person; and

(b) for that purpose, break open—

(i) any house, building or room of the insolvent where the insolvent is supposed to be; or

(ii) any building or receptacle of the insolvent where any of his property is supposed to be.

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may grant a search warrant to a member of the Police Force or a prescribed officer of the Court, who may execute the warrant according to its tenor.

(3) The person making a seizure or attachment under this section shall leave with the person in whose possession any property is attached—

(a) a copy of the warrant; and

(b) an inventory of the property with a notice annexed that the property has been attached by him.

(4) Any property that is attached under this section may be—

(a) removed; or

(b) secured on the premises by sealing up any repository, room or closet,

and in the latter case some person may be left on the premises in custody of the property.

Division 7.—Miscellaneous.

89. Redirection of letters addressed to insolvents.

(1) In this section, “the Postmaster General” means the Departmental Head of the Department responsible for posts and telegraphs¹.

(2) On the application of the trustee, the Court may order that, for such time (not exceeding three months from the date of the order of adjudication) as it thinks proper, letters posted and addressed to the insolvent at any place or any of the places referred to in the order shall be redirected, sent or delivered by the Postmaster General or officers acting under his direction, to the trustee, or otherwise as the Court directs.

PART VI.—ADMINISTRATION OF PROPERTY OF INSOLVENTS.

Division 1.—General.

90. Duties of insolvent.

(1) It is the duty of an insolvent to aid, to the best of his ability, in the realization of his property and the distribution of the proceeds among his creditors.

(2) The insolvent shall, on or before the day appointed by the order of adjudication for the purpose, deliver to the trustee the statement referred to in Section 49(b), and shall also—

(a) give such inventory of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively; and

(b) submit to such examination, on oath or otherwise, by the trustee in respect of his property or his creditors; and

(c) attend such meetings of his creditors; and

¹ As at the effective date, the reference was to the Director of Posts and Telegraphs.

- (d) wait at such times on the trustee; and
- (e) execute such powers of attorney, transfers, deeds and instruments; and
- (f) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors,

as are—

- (g) reasonably required by the trustee; or
 - (h) prescribed; or
 - (i) directed by the Court by any special order made—
 - (i) in reference to any particular insolvency; or
 - (ii) on the occasion of any special application by the trustee or creditor.
- (3) For the purpose of Subsection (2)(b), the trustee may administer oaths.
- (4) An insolvent who wilfully fails—
- (a) to perform the duties imposed on him by this section; or
 - (b) to deliver up possession to the trustee of any part of the property in his possession or under his control that is divisible among his creditors under this Act,

is, in addition to any other punishment to which he may be subject, guilty of a contempt of court¹.

91. Trustees' discretion in administration.

Subject to this Act, and to any directions under Section 92 and any other prescribed directions, the trustee shall exercise his own discretion in the management of the estate and its distribution among the creditors.

92. Directions to trustees by committees of inspection and meetings of creditors.

(1) In the administration of the property of the insolvent and in the distribution of the property among his creditors, the trustee shall have regard to any directions given—

- (a) by resolution of the creditors at a general meeting; or
- (b) by the committee of inspection.

(2) For the purposes of Subsection (1), directions given by the creditors at a general meeting override directions given by the committee of inspection.

93. Meetings of committees of inspection.

(1) The trustee—

- (a) shall call a meeting of the committee of inspection at least once in every two months; and
- (b) may call special meetings of the committee as he thinks necessary.

(2) At a meeting of the committee of inspection under Subsection (1)(a), the committee may audit the accounts of the trustee and determine whether any or what dividend is to be paid.

94. Meetings of creditors.

(1) The trustee shall from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes.

¹ But see Constitution, Section 37.

(2) During the continuance of an insolvency, the Court may from time to time summon general meetings of the creditors to ascertain their wishes, and if it thinks fit it may direct the Registrar to preside at any such meeting.

(3) A general meeting of the creditors may be summoned by a member of the committee of inspection.

(4) The provisions of this Act relating to the first meeting of creditors in an insolvency apply to any subsequent general meeting of creditors, except that—

- (a) subject to Subsection (2), a meeting may be presided over by any person chosen by the creditors present at the meeting; and
- (b) any creditor whose debt has been proved or the value of whose debt has been ascertained at, or subsequent to, the first meeting of creditors shall be allowed to be present and to vote at the meetings.

95. Applications by trustees to the Court for directions.

(1) The trustee may, by a written statement verified by affidavit, apply to the Court for, and is entitled to have, its opinion, advice or direction on any question respecting the management of the insolvent estate or his duty in connexion with the estate.

(2) Notice of an application under Subsection (1) shall be given to all persons interested, or to such of them as the Court directs.

(3) A trustee who acts on the opinion, advice or direction of the Court obtained under Subsection (1) shall be deemed to have acted rightly in respect of the subject-matter of the application, unless he has been guilty of a wilful fraud, concealment or misrepresentation in obtaining the opinion, advice or direction.

96. Trustee as receiver.

In relation to, and for the purpose of, acquiring or retaining possession of the property of an insolvent, a trustee is in the same position as if he were a receiver of that property appointed by the Court in its equitable jurisdiction, and on application by the trustee, the Court may enforce the acquisition or retention of the property as if he were a receiver.

97. Appeals.

(1) The insolvent or a creditor, debtor or other person aggrieved by any act or decision of a trustee may appeal to the Court.

(2) On an appeal under Subsection (1), the Court may—

- (a) confirm, reverse or modify the act or decision complained of; and
- (b) make such order as it thinks just.

Division 2.—Dealings with Property of Insolvents.

98. Duty of trustees to take possession of books and other personal property.

As soon as possible, the trustee shall take possession of—

- (a) the deeds, books and documents of the insolvent; and
- (b) all other property capable of manual delivery.

99. General powers of trustees.

(1) Subject to this Act, the trustee may—

- (a) receive and decide on proof of debts in the prescribed manner; and

- (b) carry on the business of the insolvent so far as is necessary for the beneficial winding-up of the business; and
- (c) sell all the property of the insolvent, including the goodwill of the business (if any) and the book debts due or growing due to the insolvent, by public auction or private contract, and if he thinks fit transfer the whole of the property to any person or company or to sell it in parcels; and
- (d) give receipts for any money received by him, which receipts effectually discharge the person paying the moneys from all responsibility in respect of the application of the money; and
- (e) prove, rank, claim and draw a dividend in the matter of the insolvency of a debtor of the insolvent; and
- (f) execute all powers of attorney, deeds and other instruments that are expedient or necessary for the purpose of giving effect to the provisions of this Act; and
- (g) exercise any other powers the capacity to exercise which is vested in him under this Act.

(2) Subject to Subsection (3) and to Section 66, the trustee may, with the sanction of the committee of inspection—

- (a) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts; and
- (b) appoint the insolvent—
 - (i) to superintend the management of the property; or
 - (ii) to carry on his trade (if any) for the benefit of the creditors; or
 - (iii) to aid in administering the property in such manner and on such terms as the creditors direct; and
- (c) bring or defend any action, suit or other legal proceedings relating to the property of the insolvent; and
- (d) refer any dispute to arbitration; and
- (e) on the receipt of such sums, payable at such times and generally on such terms as are agreed on, compromise any debt, claim or liability, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the insolvent and any debtor or person who has incurred any liability to the insolvent; and
- (f) make any compromise or other arrangement that he thinks expedient—
 - (i) with creditors, or persons claiming to be creditors, in respect of any debts provable under the insolvency; or
 - (ii) with respect to any claim arising out of or incidental to the property of the insolvent that is made or capable of being made—
 - (A) on the trustee by any person; or
 - (B) by the trustee on any person; and
- (g) divide among the creditors, in its existing form and according to its estimated value, any property that from its peculiar nature or other special circumstances cannot advantageously be realised by sale; and
- (h) employ a shorthand writer to take notes of the proceedings at a meeting of creditors or an examination held under this Act.

(3) Sanction under Subsection (2) may be—

- (a) a general permission to do all or any of the things referred to in that subsection; or
- (b) permission to do all or any of those things in a specified case.

100. Compositions and schemes of settlement.

(1) With the sanction of a special resolution of the creditors present at a meeting of which the prescribed notice specifying the object of the meeting has been given, and subject to the approval of the Court testified by a Judge—

- (a) signing the instrument containing the terms of the composition or scheme; or
- (b) embodying the terms in an order of the Court,

the trustee may—

- (c) accept a composition offered by the insolvent; or
- (d) assent to a general scheme of settlement of the affairs of the insolvent,

on such terms as are thought expedient, and with or without a condition that the order of adjudication is to be annulled.

(2) Where—

- (a) an order annulling the adjudication is made a condition of a composition with the insolvent, or of a general scheme for the liquidation of his affairs; and
- (b) the Court approves the composition or general scheme,

the Court shall annul the adjudication on application made by or on behalf of an interested person.

(3) On motion made in a summary manner by an interested person, the provisions of any composition or general scheme made under this Act may be enforced by order of the Court.

(4) Disobedience of an order made under Subsection (3) is a contempt of court.

(5) The approval of the Court is conclusive as to the validity of a composition or scheme under this section, and a composition or scheme so approved is binding on all the creditors so far as relates to any debts due to them and provable under the insolvency.

101. Employment of lawyers and agents.

(1) The trustee may—

- (a) employ a lawyer or other agent; and
- (b) where the trustee is himself a lawyer, contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee, including all professional services.

(2) Notwithstanding any law to the contrary, a contract referred to in Subsection (1)(b) is lawful.

102. Disclaimer of onerous property.

(1) Where any property of the insolvent acquired by the trustee under this Act consists of—

- (a) land burdened with onerous covenants; or
- (b) unmarketable shares in companies; or
- (c) unprofitable contracts; or

(d) any other property that is unsaleable or not readily saleable because it binds the possessor—

- (i) to the performance of an onerous act; or
- (ii) to the payment of a sum of money,

the trustee may, by writing under his hand, disclaim the property.

(2) The trustee may exercise the powers conferred by Subsection (1) notwithstanding that he has endeavoured to sell the property, or has taken possession of it or exercised any act of ownership in relation to it.

(3) On the execution of a disclaimer under Subsection (1)—

- (a) if the property disclaimed is a contract, it shall be deemed to be determined from the date of the order of adjudication; and
- (b) if the property disclaimed is a lease, it shall be deemed to have been surrendered on the date of the disclaimer; and
- (c) if the property disclaimed is shares in a company, they shall be deemed to be forfeited and to have reverted to the company on and from the date of the disclaimer; and
- (d) any other disclaimed property reverts, subject to Subsection (4), to the person entitled on the determination of the estate or interest of the insolvent.

(4) In a case to which Subsection (3)(d) applies, whether or not there is any person in existence who is entitled to the estate or interest of the insolvent, no estate or interest in the property remains in the insolvent.

(5) A person interested in any disclaimed property may apply to the Court, and the Court may—

- (a) order possession of the disclaimed property to be delivered up to the applicant; or
- (b) make such other order as to the possession of the property as is just.

(6) A person injured by this section (other than a company shares in which are forfeited under this section) shall be deemed to be a creditor of the insolvent to the extent of the injury, and may prove it as a debt under the insolvency.

(7) Subject to Subsection (8), the trustee is not entitled to disclaim any property under this section where—

- (a) a written application has been made to him by a person interested in the property requiring him to decide whether he will disclaim or not; and
- (b) for not less than 28 days after the receipt of the application, or such further time as is allowed by the Court, the trustee has declined or neglected to give notice, whether or not he disclaims the property.

(8) Where at the date of the adjudication the insolvent is the lessee of any premises, the trustee may, instead of disclaiming immediately, elect to retain the premises for a period—

- (a) not exceeding three months; and
- (b) ending not later than the expiration of the lease,

and at the end of that period may disclaim the lease.

103. Rights to transfer shares, etc.

Where any portion of the property of an insolvent consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the right to transfer the property is vested absolutely in the trustee to the same extent as it would have been in the insolvent if he had not become insolvent.

104. Things in action.

Where any portion of the property of an insolvent consists of things in action, any action, suit or other proceedings instituted by the trustee for the recovery of the things shall be instituted in his official title, and for the purpose of the action, suit or other proceeding any such thing in action—

- (a) is assignable in law; and
- (b) shall be deemed to have been duly assigned to the trustee in his official capacity.

105. Transfers subject to rights of redemption, mortgages, etc.

(1) Where the insolvent has made a transfer, assurance, delivery, deposit or pledge of any deeds, writings, goods or chattels subject to a condition for redemption or redelivery on payment of money or otherwise at a future day that has not arrived at the date of presenting the petition, the trustee—

- (a) may, before the time appointed for the redemption has arrived, make payment or tender of money or other performance according to the condition, as fully as the insolvent could have done at the time so appointed; and
- (b) on the tender, payment or other performance is entitled—
 - (i) to have and receive the deeds, writings, goods or chattels so transferred, assured, delivered, deposited or pledged; and
 - (ii) to recover them from the person to whom they were transferred, assured, delivered, deposited or pledged or any other person in whose possession they may be and who has notice of the condition.

(2) Where a debt or sum of money due to or by an insolvent is charged on any land by way of equitable mortgage, the Court may—

- (a) on the application of the trustee or equitable mortgagee; and
- (b) on notice to all parties interested,

make an order for the sale of the land.

(3) With the leave of the Court, a mortgagee may bid at the sale of any mortgaged property.

106. Payments into bank.

(1) The trustee shall pay all sums received by him—

- (a) into such bank and to such account as the majority, in number and value, of the creditors at a meeting appoint; and
- (b) failing an appointment under Paragraph (a), into such bank and to such account as the Court appoints.

(2) If, after a bank has been appointed under Subsection (1), the trustee keeps any sum exceeding K100.00 in his hands for more than 10 days—

- (a) he shall pay interest at the rate of 20% per annum on the excess over that sum; and
- (b) on the application of any creditor, he shall be dismissed from office by the Court,

unless he proves to the satisfaction of the Court that his reason for retaining the money was sufficient.

(3) If a trustee is dismissed under Subsection (2)(b), he—

- (a) has no claim for remuneration; and
- (b) is liable to any expenses to which the creditors are put by or in consequence of his dismissal.

107. Trustees' books, etc.

(1) The trustee shall keep in such manner as the Rules of Court of the National Court direct—

- (a) proper books of account showing his receipts and disbursements and dealings with the estate of the insolvent; and
- (b) books in which he shall from time to time make entries or minutes of proceedings at meetings and of such other matters as the Rules of Court direct.

(2) Subject to the control of the Court, any creditor of the insolvent may, personally or by his agent, inspect any books kept by the trustee under Subsection (1).

Division 3.—Payments to Insolvents, Apprentices, etc.

108. Allowances in respect of maintenance of insolvents, etc., and for services.

With the consent of—

- (a) the creditors testified by a resolution passed in general meeting; or
- (b) the committee of inspection,

the trustee may, from time to time during the insolvency, make out of the estate such allowance to the insolvent as is approved by the creditors or committee of inspection—

- (c) for the support of the insolvent and his family; or
- (d) if he is engaged in winding-up his estate—in consideration of his services.

109. Apprentices, etc.

(1) Subject to Subsection (4), where—

- (a) at the time of the presentation of the petition for adjudication a person is apprenticed or is an artied clerk to the insolvent; and
- (b) the insolvent, or the apprentice or artied clerk, gives to the trustee written notice to that effect, the order of adjudication is a complete discharge of the indenture or articles.

(2) If any money has been paid, as a fee, to the insolvent by or on behalf of the apprentice or artied clerk, the trustee may, on application by the apprentice or clerk, or by a person on behalf of the apprentice or clerk, pay out of the property of the insolvent, to or for the use of the apprentice or clerk, such sum as the trustee thinks reasonable.

(3) Before making a payment under Subsection (2), the trustee shall take into account—

- (a) the amount paid by or on behalf of the apprentice or articted clerk; and
- (b) the time during which he served with the insolvent under the indenture or articles before the commencement of the insolvency; and
- (c) the other circumstances of the case.

(4) On application by or on behalf of the apprentice or articted clerk, the trustee may, if it appears expedient, transfer the indenture or articles to some other person.

(5) A decision of the trustee under Subsection (2) is subject to appeal to the Court.

Division 4.—Proof of Debts.

110. Debts provable in insolvency.

(1) Subject to Subsections (2) and (3), all debts and liabilities, present or future, certain or contingent, to which the insolvent—

- (a) is subject at the date of the order of adjudication; or
- (b) becomes subject during the continuance of the insolvency by reason of any obligation incurred before the date of the order of adjudication,

are debts provable in insolvency.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise are not provable in an insolvency.

(3) A person who has notice of an act of insolvency available for adjudication against the insolvent shall not prove for a debt or liability contracted by the insolvent after the date of his having the notice.

111. Manner of proof.

(1) All debts shall be proved before the trustee.

(2) Proof of debt may be made by affidavit sworn before the Registrar, a justice or a Commissioner for Affidavits, or in any other manner that is prescribed or that the trustee thinks satisfactory.

(3) An estimate of the value of any debt or liability provable under Section 110 that by reason of its being subject to a contingency or contingencies, or for any other reason, does not bear a certain value shall be made—

- (a) where the Rules of Court of the National Court are applicable—in accordance with those Rules; and
- (b) where those Rules are not applicable—in the discretion of the trustee.

(4) A person aggrieved by an estimate made by a trustee under Subsection (3) may appeal to the Court.

(5) On an appeal under Subsection (4) the Court may—

- (a) if it thinks the value of the debt or liability is incapable of being fairly estimated—make an order to that effect; or
- (b) if it thinks that the value of the debt or liability is capable of being fairly estimated—direct the value to be assessed before it or some other competent court, and give all necessary directions for that purpose.

(6) For the purposes of this Act, a debt or liability to which Subsection (5)(a) applies is a debt not provable in the insolvency.

(7) For the purposes of this Act, the value of a debt or liability as assessed under Subsection (5)(b) is provable as a debt in the insolvency.

112. Proof of future debts.

(1) Where proof has been made in respect of a debt, or a fixed or ascertained amount, that has not accrued due at the date of adjudication, the proof shall be allowed for the full amount of the debt.

(2) For the purpose of counting the vote of the creditor, in estimating the value of a debt referred to in Subsection (1) a rebate, at the prescribed rate, by way of discount shall be made, computed from the time of voting to the time at which the debt would have become payable according to the terms on which it was contracted.

113. Proof of rents and other periodical payments.

(1) When any rent or other payment falls due at stated periods and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part up to the day of the adjudication as if the rent or payment grew due from day to day.

(2) Subsection (1) does not affect the operation of Section 120.

114. Proof in respect of certain contracts.

Where an insolvent is, at the date of the order of adjudication, liable in respect of distinct contracts—

- (a) as member of two or more distinct firms; or
- (b) as a sole contractor and also as a member of a firm,

the fact that—

- (c) the firms are in whole or in part composed of the same individuals; or
- (d) the sole contractor is also one of the joint contractors,

does not prevent proof in respect of those contracts against the properties respectively liable on them.

115. Secured creditors.

(1) On giving up his security, a creditor who holds a specific security on the property or any part of the property of the insolvent—

- (a) may prove for his whole debt; and
- (b) is entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security in the manner and at the time prescribed.

(2) With the consent of the committee of inspection, the trustee may, within 30 days after proof has been tendered by a secured creditor, require the creditor to give up his security on payment of the specified value.

(3) On payment in accordance with Subsection (2), the creditor shall give up his security, and shall do, make and execute all necessary acts, transfers and assurances for that purpose.

(4) A secured creditor who has proved may, at any time before he is required under Subsection (3) to give up his security, correct his valuation of the security by making a fresh proof of his debt.

(5) A creditor who—

(a) holds a security to which this section applies; and

(b) does not comply with this section,

shall be excluded from all share in any dividend.

116. Allowance of interest.

Interest, computed up to the date of adjudication, on a debt provable in insolvency may be allowed by the trustee in the same circumstances as those in which interest would have been allowable if an action had been brought for the debt.

117. Expunging, etc., of proofs.

On the application of a creditor or of the insolvent, or on his own motion, and after the prescribed notice, the trustee may at any time expunge or reduce any proof of debt.

Division 5.—Set-offs.

118. Claims to and payment of set-offs.

(1) Subject to Subsection (2), where there have been mutual credits, mutual debts or other mutual dealings between the insolvent and any other person proving or claiming to prove a debt in his insolvency—

(a) an account shall be taken of what is due from the one party to the other in respect of the mutual dealings; and

(b) the sum due from the one party shall be set off against any sum due from the other party,

and the balance of the account (and no more) shall be claimed or paid on either side respectively.

(2) A person is not entitled under Subsection (1) to claim the benefit of a set-off against any property of an insolvent in a case where, at the time of giving credit to the insolvent or of incurring the debt to the insolvent, he had notice of an act of insolvency committed by the insolvent and available against him for adjudication.

Division 6.—Ranking of Debts.

119. Preferential debts.

(1) The following are preferential debts:—

(a) local rates due from the insolvent at the date of the order of adjudication that became due and payable within 12 months before that date; and

(b) rates and assessments assessed on the insolvent to 1 January or 1 July immediately preceding the date of the order of adjudication, but not exceeding in the whole one year's assessment; and

(c) subject to Subsection (2), wages or salary of a clerk, servant, labourer or workman (other than a person employed under an employment contract under the *Native Employment Act 1958* (Adopted)) in the employment of the

insolvent, but not exceeding three months' wages or salary and not exceeding K100.00; and

(d) wages of a person employed under an employment contract under the *Native Employment Act 1958* (Adopted).

(2) Subsection (1)(c) applies only in respect of wages or salary claimed for the three months immediately preceding the date of the order of adjudication.

(3) Preferential debts—

(a) subject to Section 120—shall be paid in priority to all other debts; and

(b) rank equally between themselves; and

(c) shall be paid in full unless the property of the insolvent is insufficient to meet them, in which case they abate in equal proportions between themselves.

(4) Except as provided for by this section, all debts provable under the insolvency shall be paid at an equal rate.

120. Preference for certain rents.

(1) Distress for rent shall not be made, levied or proceeded in against the property of a debtor after—

(a) an order of adjudication has been made against him; or

(b) a petition has been presented by him under Division III.2.

(2) The landlord or person to whom rent is payable is entitled to receive out of the estate, in priority to all other creditors—

(a) so much rent as is then due; and

(b) a sum in place of rent proportioned to the period (if any) that has elapsed between the last date at which rent became due and the date of the order of adjudication,

but the amount so received shall not exceed the amount of three months' rent.

(2) The landlord or person entitled to rent may prove for any surplus that is due above the amount received under Subsection (2).

Division 7.—Dividends.

121. Declaration of dividend.

(1) From time to time, as the committee of inspection determines, the trustee shall declare a dividend and distribute it among the creditors who have proved in the insolvency.

(2) If at any time the trustee does not declare a dividend for six months, he shall summon a meeting of the creditors and explain to them his reasons for not declaring a dividend.

(3) The trustee shall cause notice of all dividends and moneys payable to creditors, and when and where they are to be paid, to be published in the *National Gazette*, and in such other newspapers as are prescribed.

122. Provision for distant creditors and for debts claimed but not yet proved.

In the calculation and distribution of a dividend, the trustee shall make provision for—

(a) debts provable in insolvency appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant from the place

where the trustee is acting that in the ordinary course of communication they have not had sufficient time—

- (i) to tender their proofs; or
 - (ii) to establish them if disputed; and
- (b) debts provable in insolvency the subject of claims not yet determined.

123. Late proofs of debt.

(1) A creditor who has not proved his debt before the declaration of a dividend is entitled to be paid out of any moneys in the hands of the trustee, before the moneys are made applicable to the payment of any future dividend, any dividends that he has failed to receive.

(2) A creditor to whom Subsection (1) applies is not entitled to disturb, on the ground that he did not participate in the distribution, the distribution of any dividend declared before his debt was proved.

124. Dividends in relation to future debts.

(1) In the case of a debt or amount to which Section 112 applies, the creditor is entitled to receive dividends on it equally with the other creditors, but after deducting for the purposes of the first dividend a rebate, at the prescribed rate, by way of discount.

(2) The rebate referred to in Subsection (1) shall be calculated—

- (a) on so much of the debt as remains unpaid at the time of the declaration of the first dividend; and
- (b) from the time of the declaration to the time at which the debt would have become payable according to the terms on which it was contracted.

125. Actions for dividends.

(1) An action or suit for a dividend does not lie against a trustee.

(2) If a trustee refuses to pay a dividend, the Court may order the trustee—

- (a) to pay the dividend; and
- (b) to pay out of his own money—
 - (i) interest on the dividend for the time that it is withheld; and
 - (ii) the costs of the application.

126. Forfeiture of unclaimed dividends.

Where a dividend remains unclaimed for five years—

- (a) it is vested in the State and shall be paid by the trustee into the Consolidated Revenue Fund; and
- (b) at any time after a dividend is vested in the State under Paragraph (a), a Judge may—
 - (i) in the case of the disability or absence overseas of the person entitled to the sum so vested; or
 - (ii) for any other reason appearing to him sufficient, recommend that the sum be repaid out of money provided for the purpose.

*Division 8.—Final Dividends and Distribution of Surplus.***127. Final dividends.**

When the trustee has converted into money all of the property of the insolvent or so much of it as can, in the joint opinion of himself and the committee of inspection, be realized without needlessly protracting the insolvency, he shall declare a final dividend.

128. Distribution of net surplus.

Subject to Part VII., the insolvent is entitled to any surplus of his estate remaining after payment of—

- (a) his debts, with interest at the prescribed rate; and
- (b) the costs, charges and expenses of the insolvency.

PART VII.—CLOSE OF INSOLVENCY AND DISCHARGE OF INSOLVENT, ETC.*Division 1.—Close of Insolvency.***129. Last examination of insolvent.**

(1) On the application of—

- (a) the trustee; or
- (b) if the trustee omits to make an application, the insolvent,

the Court shall—

- (c) appoint a day, not earlier than one month from the date of the order of adjudication, for the insolvent to attend in court to pass his last examination; and
- (d) shall cause the prescribed notice of the examination to be given.

(2) The Court may extend the time appointed under Subsection (1).

(3) The Court may adjourn the last examination for such period as it thinks proper, if—

- (a) the examination and accounts of the insolvent are not satisfactory and it appears to the Court that his failure to give further or better information or accounts is attributable to any neglect or default on his part; or
- (b) it appears to the Court that the insolvent has wilfully disobeyed any order of the Court in his insolvency; or
- (c) the Court thinks that the examination should be adjourned.

(4) In any place other than the National Capital District or the Central Province, the Court may order that the last examination shall be held before a magistrate.

(5) A magistrate before whom an examination is held under Subsection (4) has, for the purposes of the examination, all the powers of the Court under Subsections (1), (2) and (3).

130. Close of insolvency.

(1) Where—

- (a) all of the property of the insolvent, or so much of it as can, in the joint opinion of the trustee and the committee of inspection, be realized without needlessly protracting the insolvency, has been realized for the benefit of his creditors; or

(b) a composition or arrangement has been completed,
the trustee shall make a report to the Court to that effect.

(2) If on a report under Subsection (1) the Court is satisfied that—

(a) the whole of the property of the insolvent has been realized for the benefit of his creditors; or

(b) so much of it as can be realized without needlessly protracting the insolvency has been so realized; or

(c) a composition or arrangement has been completed,

the Court shall make an order that the insolvency is closed.

(3) A copy of an order under Subsection (2) shall be published in the National Gazette.

(4) The production of the copy of the National Gazette containing a copy of an order under Subsection (2) is conclusive evidence of the order having been made and of its date and contents.

Division 2.—Discharge of Insolvent.

131. Certificates of discharge.

An insolvent may obtain from the Court a certificate of discharge—

(a) in accordance with Section 132—in the circumstances set out in that section;
or

(b) in accordance with Section 133—with certain consents or after two years from the date of the adjudication; or

(c) in accordance with Section 134—as of right, with certain consents after three years from the date of the adjudication; or

(d) in accordance with Section 140(3).

132. Discharge for absence of responsibility or full settlement.

(1) Subject to Subsection (3), at any time after the insolvent has passed his last examination, or at any earlier time with the consent of the creditors testified by a special resolution, the insolvent may, on the prescribed notice, apply to the Court for a certificate of discharge.

(2) A certificate of discharge shall not be given under this section unless it is proved to the Court that—

(a) the insolvency arose from circumstances for which the insolvent cannot justly be held responsible; or

(b) a special resolution of his creditors has been passed to the effect that—

(i) the insolvency arose from circumstances for which he cannot justly be held responsible; and

(ii) the creditors desire that a certificate of discharge be granted to him; or

(c) the gross amount realized in the estate is equal to the total amount of debts proved in the estate.

(3) If—

(a) the insolvent has made default in giving up to his creditors the property that he is required to give up by this Act; or

- (b) a prosecution has been commenced against him under any law relating to the punishment of fraudulent debtors,

the Court may—

- (c) suspend, for such time as it thinks just; or
- (d) withhold,

the certificate of discharge.

133. Discharge after one year with consent of creditors, or after two years in any case.

(1) Subject to Subsection (2), on the application of an insolvent who has not obtained a certificate of discharge (whether or not an application has been made under Section 132), and after the prescribed notice has been given, the Court may grant a certificate of discharge—

- (a) with the consent, testified in writing, of a majority in number of the creditors who have proved in the estate and whose debts amount to K20.00 or more each—at the expiration of the period of 12 months after the date of the adjudication; or
- (b) without the consent of any creditor—at the expiration of two years after that date,

and may, for that purpose vary any previous decision.

(2) On an application under Subsection (1), the insolvent shall make oath that—

- (a) he has made a full and fair discovery of his estate; and
- (b) he has not granted or promised any payment or security for the purpose of obtaining the consent of his creditors; and
- (c) he has not entered into any collusive agreement for the purpose of obtaining that consent.

(3) On an application under Subsection (1), the Court may withhold or suspend the certificate for such period as it thinks just.

134. Right to discharge after three years.

(1) At the expiration of three years from the date of the order of adjudication, an insolvent who has not obtained a certificate of discharge may—

- (a) after giving the prescribed notice; and
- (b) with the written consent of a majority of the creditors who have proved in the estate and whose debts amount to K20.00 or more each,

apply to the Court for a certificate of discharge.

(2) On an application under Subsection (1), the insolvent shall make oath that—

- (a) he has made a full and fair discovery of his estate; and
- (b) he has not granted or promised any payment or security for the purpose of obtaining the consent of his creditors; and
- (c) he has not entered into any collusive agreement for the purpose of obtaining that consent.

(3) On proof to the satisfaction of the Court that the consent has been obtained without fraud or collusion, the Court shall grant the certificate of discharge.

135. Conditional grant of certificate.

If on an application for a certificate of discharge, the Court is of opinion that the certificate ought not to be granted unconditionally, it may grant the certificate subject to any condition concerning any salary, pension, emolument, profit, wages, earnings or income that may afterwards become due to, or be earned by, the insolvent, and generally concerning property acquired at a later date.

136. Form, etc., of certificate.

A certificate of discharge—

- (a) shall be in the prescribed form; and
- (b) shall be under the hand of the Registrar and the seal of the Court; and
- (c) shall not be drawn up or take effect until—
 - (i) after the expiration of the time allowed for appeal; or
 - (ii) if an appeal is brought—after the decision on the appeal; and
- (d) shall be dated—
 - (i) the day after the expiration of the time allowed for appeal; or
 - (ii) the day of the decision on the appeal,as the case requires.

137. Effect of certificate of discharge.

(1) Subject to Subsections (2) and (3), a certificate of discharge releases the insolvent from all debts provable under the insolvency with the exception of debts—

- (a) due to the State; or
- (b) with which the insolvent stands charged at the suit of—
 - (i) the State or any other person, for an offence against a law relating to any branch of the public revenue; or
 - (ii) the Sheriff or other public officer, on a bail bond entered into for the appearance of a person prosecuted for any such offence.

(2) An insolvent shall not be discharged from debts referred to in Subsection (1) unless the Secretary for Finance, with the approval of the Minister, consents in writing to the discharge.

(3) A certificate of discharge does not release the insolvent from any debt or liability—

- (a) that was incurred by means of fraud or breach of trust; or
- (b) that has not been enforced as a result of fraud; or
- (c) that was due by him as trustee of an insolvent estate in respect of any sum of money improperly retained or employed by him as trustee.

(4) A certificate of discharge does not release any person who, at the date of the order of adjudication—

- (a) was a partner; or
- (b) was jointly bound; or
- (c) had made a joint contract,

with the insolvent.

138. Evidence of discharge.

In any proceedings instituted against an insolvent in respect of a debt from which he is released by a certificate of discharge—

- (a) the certificate is sufficient evidence of the insolvency and of the validity of the insolvency proceedings; and
- (b) the insolvent may—
 - (i) plead that the cause of action occurred before his discharge; and
 - (ii) give this Act and the special matter in evidence.

139. Payments, etc., to influence creditors.

(1) A payment, contract, covenant or security for the payment of money, made or given by an insolvent or other person to or in trust for a creditor for the purpose of persuading or inducing him, or with intent to persuade or induce him—

- (a) to forbear from opposing the grant of a certificate of discharge; or
- (b) to consent to the grant of a certificate of discharge; or
- (c) not to appeal against the grant of a certificate of discharge,

is void.

(2) In a case to which Subsection (1) applies—

- (a) any money paid may be recovered; and
- (b) any money agreed to be paid or secured is not recoverable.

*Division 3.—Undischarged Insolvents.***140. Position of undischarged insolvents.**

(1) In this section, "undischarged insolvent" means an insolvent—

- (a) whose insolvency has closed under Division 1; and
- (b) who has not been granted a certificate of discharge under Division 2.

(2) No portion of a debt provable under the insolvency is enforceable against the property of an undischarged insolvent until the expiration of the period of three years from the close of the insolvency.

(3) If during the period referred to in Subsection (2) the insolvent pays to his creditors such additional sum as, together with the assets realized in the estate, makes up 100% of all debts proved in the insolvency, he is entitled to a certificate of discharge in the same manner as if that amount had originally been paid out of his property on the debts.

(4) If at the expiration of the period referred to in Subsection (2) the insolvent has not obtained a certificate of discharge, any balance remaining unpaid in respect of a debt proved in the insolvency (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgement debt, and—

- (a) subject to the rights of persons who have become creditors of the debtor since the close of his insolvency; and
- (b) with the consent of the Court,

may be enforced against any property of the debtor, but only to the extent, and at the time and in the manner, directed by the Court after the giving of such notice and the doing of such acts as are prescribed for the purpose.

Division 4.—Annulment of Adjudication.

141. Annulment on payment in full.

If an insolvent, or a person on behalf of an insolvent—

- (a) pays all his creditors in full; or
- (b) obtains a release of the debts due by him to his creditors,

the insolvent may apply to the Court for an order annulling the adjudication, and on being satisfied that all the creditors of the insolvent have been paid in full or have released their debts the Court may make such an order, on such terms as to commission or remuneration, or charges already incurred, as it thinks just.

142. Consequences of annulment.

(1) Where an adjudication in insolvency is annulled, whether under Section 141 or under any other provision of this Act—

- (a) subject to Paragraph (b), all sales and dispositions of property and payments duly made, and all acts previously done, by the trustee or any person acting under his authority, or by the Court, are valid; and

(b) the property of the insolvent—

- (i) vests in such person as the Court appoints; or
- (ii) in default of an appointment under Subparagraph (i), reverts to the insolvent,

for all his estate or interest in it, on such terms and subject to such conditions (if any) as the Court, by order, declares.

(2) A copy of the order of the Court annulling the adjudication of a debtor as an insolvent shall be—

- (a) published without delay in the National Gazette; and
- (b) advertised locally in the prescribed manner.

PART VIII.—RELEASE OF TRUSTEES.

143. Application for release.

(1) When an insolvency is closed, the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release.

(2) At the meeting called under Subsection (1), the trustee—

- (a) shall lay before the assembled creditors an account showing the manner in which the insolvency has been conducted, with a list of the unclaimed dividends (if any) and of the property (if any) outstanding; and
- (b) shall inform the meeting that he proposes to apply to the Court for release.

(3) A copy of the account referred to in Subsection (2)(a) shall be transmitted by the trustee to the official trustee at least 14 days before the trustee applies to the Court for his release.

(4) The official trustee shall make to the Court a report on the account referred to in Subsection (2)(a), and on such other matters as he thinks should be reported.

(5) The creditors present at the meeting called under Subsection (1) may express their opinion as to the conduct of the trustee, and any of them, or the official trustee, may appear before the Court and oppose the release of the trustee.

(6) After hearing anything put forward against the release of the trustee, the Court shall grant or withhold the release.

(7) If the Court withholds the release, it shall—

(a) make any order that it thinks just charging the trustee with the consequences of any act or default that he has done or made contrary to his duty; and

(b) suspend his release until the order has been complied with and the Court thinks it just to grant his release.

144. Effect of release.

(1) Subject to Subsection (2), the order of the Court releasing the trustee discharges him from all liability in respect of any act done, or default made, by him—

(a) in the administration of the affairs of the insolvent; or

(b) in relation to his conduct as trustee of the insolvent.

(2) An order releasing a trustee may be revoked by the Court on proof that it was obtained by fraud.

145. Disposal of unclaimed dividends and outstanding property.

(1) Unclaimed dividends and any other moneys arising from the property of the insolvent remaining under the control of the trustee at the close of the insolvency, or accruing after the close, shall be accounted for and paid over to such account as is directed by the Rules of Court of the National Court.

(2) Any person entitled to unclaimed dividends or other moneys to which Subsection (1) applies may claim them as directed by the Rules of Court of the National Court.

(3) The trustee shall deliver a list of any of the insolvent's outstanding property to the prescribed persons, and where practicable shall realise the property and apply it for the benefit of the creditors in the prescribed manner.

PART IX.—PARTNERSHIP INSOLVENCIES, JOINT AND SEPARATE ESTATES, ETC.

146. Amalgamation of proceedings against partners.

Where one member of a partnership has been adjudicated an insolvent and another adjudication is made against a member of the same partnership—

(a) unless the Court otherwise directs, the property of the last-mentioned member vests in the trustee appointed in respect of the property of the first-mentioned member; and

(b) the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the partnership as it thinks just.

147. Proof, etc., by creditors of partnerships.

Where one member of a partnership is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other member of the partnership, or with any of them—

(a) may prove his debt for the purpose of voting at any meeting of creditors and is entitled to vote; and

(b) shall not receive any dividend out of the separate property of the insolvent until all of the separate creditors have received the full amount of their respective debts.

148. Joint and separate dividends.

Where joint and separate properties are being administered—

- (a) dividends of the properties shall, subject to any order to the contrary made by the Court on the application of an interested person, be declared together; and
- (b) the expenses of and incidental to the dividends shall be fairly apportioned by the trustee between the joint and separate properties in relation to the work done for, and the benefit received by, each property.

PART X.—PROCEEDINGS IN INSOLVENCY.

Division 1.—General Powers and Practice of the Court.

149. Dealing with matters in Chambers¹.

A Judge—

- (a) may sit in Chambers for the despatch of such business as may be heard in Chambers without detriment to the public advantage arising from the discussion of questions in open court; and
- (b) when sitting in Chambers has the same powers and jurisdiction as when sitting in open court.

150. Power of review.

The Court may review, rescind or vary any order made by it under this Act.

151. Cases stated.

(1) In any insolvency or other proceedings under this Act, the parties may, at any stage of the proceedings, state any question in a special case for the opinion of the Court.

(2) If it is stated in a special case under Subsection (1) that a decision of the Court made under that subsection shall be final, no appeal lies from the decision².

152. Costs.

Subject to this Act, the Court may award costs in any matter under this Act.

153. General powers of the Court.

Subject to this Act, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact—

- (a) arising in any case of insolvency coming within the cognizance of the Court; or
- (b) that the Court thinks it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in a case of insolvency.

¹ But see Constitution, Section 37(12),(13).

² But see Constitution, Section 155.

154. Staying of proceedings.

On proof to its satisfaction that any proceedings in insolvency ought to be stayed—

- (a) because negotiations are pending for the liquidation of the affairs of the insolvent by arrangement, or for the acceptance of a composition by the creditors, under Part XIV.; or
- (b) for any other sufficient reason,

the Court may at any time make an order staying the proceedings, altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

155. Committal to prison.

(1) Where the Court commits a person to prison, the committal may be to such convenient prison as the Court thinks expedient.

(2) If the officer-in-charge of a prison refuses to receive a prisoner committed under Subsection (1), he is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Division 2.—Supplemental Procedural Provisions.

156. Consolidation of proceedings.

Where two or more insolvency petitions are presented against the same debtor or against debtors who are members of the same partnership, the Court may consolidate the proceedings or any of them on such terms as it thinks proper.

157. Failure to proceed.

If a petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required in the case of a petitioning creditor.

158. Proceedings by corporations.

A corporation may prove a debt, vote and otherwise act in any insolvency by a duly authorized agent.

159. Proceedings by creditors who are partners.

In the case where creditors are partners, anything authorized by this Act to be done by a creditor may be done by any of the members of the partnership in the name and on behalf of the partnership.

160. Appointment of agents by creditors.

(1) Subject to Subsection (2), a creditor may, in the prescribed manner, by instrument appoint a person to represent him in all matters relating to a debtor or his affairs in which the creditor is concerned under this Act.

(2) An appointment under Subsection (1) shall not be made by way of sale of a debt or thing in action.

(3) A representative appointed under Subsection (1) stands in the same position, for all purposes of this Act, as the creditor who appointed him.

161. Death of insolvent.

Where a debtor who has been adjudicated an insolvent dies, the Court may order that the proceedings in the matter be continued as if he were alive.

Division 3.—Evidentiary Provisions.

162. Form of evidence.

In all matters under this Act, the Court may, in its discretion, take the whole or any part of the evidence—

- (a) orally on oath; or
- (b) by written interrogatories; or
- (c) on affidavit,

and may issue commissions for the purpose of taking evidence at any place inside or outside the country.

163. Evidence of proceedings at meetings of creditors.

(1) The Registrar or any other person presiding at a meeting of creditors under this Act shall cause minutes of all resolutions and proceedings of the meeting—

- (a) to be kept and duly entered in a book; and
- (b) from time to time to be duly filed in the Court.

(2) Where minutes are kept in accordance with Subsection (1)—

- (a) any such minute purporting to be signed by the chairman of the meeting at which a resolution was passed or any proceedings were had; or
- (b) a copy of the minutes certified as prescribed by this Act,

shall be received as evidence in all legal proceedings.

(3) Until the contrary is proved—

- (a) a meeting of creditors in respect of the proceedings of which minutes have been kept shall be deemed to have been duly held and convened; and
- (b) all resolutions passed or proceedings had at the meeting shall be deemed to have been duly passed and had.

164. Evidence of proceedings in insolvency.

(1) In this section, "instrument to which this section applies" means—

- (a) any petition or copy of a petition in insolvency; or
- (b) any order or copy of an order made by the Court under this Act; or
- (c) any certificate or copy of a deed or arrangement in insolvency; or
- (d) any other instrument or copy of an instrument, affidavit or document made or used in the course of any proceedings under this Act.

(2) Where an instrument to which this section applies—

- (a) appears to be sealed with the seal of the Court; or
- (b) purports to be—
 - (i) signed by a Judge; or

(ii) sealed with the seal of the Registry,
in proceedings under this Act,
it is receivable in evidence in all legal proceedings.

165. Depositions, etc.

(1) Any evidence or depositions taken under this Act before an examining magistrate shall be transmitted to the Court.

(2) Any evidence or depositions referred to in Subsection (1), and any other evidence or depositions taken in the insolvency, are, with all just exceptions, admissible and may be used in the insolvency as required.

166. Transcripts of oral testimony.

(1) Where an examination of the insolvent or of witnesses is held under this Act before the Court, the Court may, on the application of the trustee or of a creditor, direct the evidence of the insolvent or witnesses, or of any of them, to be taken down by a shorthand writer appointed by the Court.

(2) A shorthand writer appointed under Subsection (1) shall be sworn to faithfully report the evidence.

(3) In a case to which Subsection (1) applies, a transcript of the notes of the shorthand writer or reporter, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses in the same manner as depositions signed by them could be admitted.

(4) Any expenses incurred for the purposes of this section are in the first instance the responsibility of the person making the application under Subsection (1).

167. Death of witness.

In the case of the death of a witness (including the insolvent or his wife) whose evidence has been taken by the Court or an examining magistrate in any proceedings under this Act, the deposition or a copy of the deposition of the deceased person, purporting to be—

(a) sealed with the seal of the Court; or

(b) signed by the examining magistrate,

shall be admitted as evidence of the matters deposed.

PART XI.—PROCEEDINGS BY AND AGAINST DEBTORS.

168. Continuance of certain actions by insolvents.

(1) Notwithstanding this Act, an insolvent may continue in his own name and for his own benefit any action for personal injury or a wrong done to himself or to a member of his family that was commenced by him before the adjudication of insolvency.

(2) The whole or any part of the sum recovered in an action referred to in Subsection (1) during the insolvency shall, if the Court so orders, be paid over by the insolvent to the trustee.

169. Actions against insolvents.

- (1) At any time after the presentation of a petition against a debtor, the Court may—
 - (a) restrain further proceedings in any action, suit, execution or other legal process against the debtor in respect of a debt provable in insolvency; or
 - (b) allow any such proceedings, whether in progress at the commencement of the insolvency or commenced during its continuance, to proceed on such terms as the Court thinks just.
- (2) At any time after the presentation of a petition against a debtor, the Court may also—
 - (a) appoint a receiver or manager of the property or business, or any part of the property or business, of the debtor; and
 - (b) direct immediate possession to be taken of the property or business, or of any part of it.
- (3) An application under this section may be made *ex parte*.

170. Rights, etc., under third party insurance.

- (1) In this section, "insured person" means a person who is insured under a policy of insurance against liabilities that he may incur to third parties.
- (2) Where—
 - (a) an insured person becomes insolvent or makes a composition or arrangement with his creditors; and
 - (b) before or after he becomes insolvent the liability for which he is insured is incurred,

his rights against the insurer under the policy in respect of the liability are, notwithstanding anything in law to the contrary, transferred to the third party to whom the liability was so incurred.

- (3) Where rights are transferred to a third party under Subsection (2), the insurer is under the same liability to the third party as he would have been under to the insured, but—
 - (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, this section does not affect the rights of the insured against the insurer in respect of the excess; and
 - (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, this section does not affect the rights of the third party against the insured in respect of the balance.

171. Proceedings by trustees and partners of insolvents.

- (1) Where a member of a partnership is adjudged insolvent, the Court may, with the consent of the creditors testified by a special resolution, authorize the trustee to commence and prosecute any legal proceedings in the names of the trustee and of the insolvent's partner or partners.
- (2) In a case to which Subsection (1) applies—
 - (a) the proceedings may be taken as if they had been commenced with the consent of the partner or partners; and
 - (b) any release by the partner or partners of the debt or demand to which the proceedings relate is void.

(3) Notice of an application under Subsection (1) for authority to commence the proceedings shall be given to the partner or partners, and—

- (a) he or they may show cause against it; and
- (b) on his or their application the Court may, if it thinks fit, direct that he or they shall—
 - (i) receive his or their proper share of the proceeds of the proceedings; and
 - (ii) if he or they do not claim any benefit from those proceeds—be indemnified against costs in respect of the proceedings.

PART XII.—ABSCONDING DEBTORS.

172. Absconding, etc., after granting of debtor's summons and before adjudication of insolvency.

(1) If after a debtor's summons has been granted and before a petition for adjudication of insolvency is presented against the debtor it appears to the Court that there is probable reason for believing that the debtor is about to leave the country or to quit his place of residence, in order to avoid—

- (a) payment of the debt for which the summons has been granted; or
- (b) service of a petition of insolvency; or
- (c) appearing to a petition; or
- (d) examination in respect of his affairs,

or otherwise to avoid, delay or embarrass proceedings in insolvency, the Court may, by warrant addressed to a member of the Police Force or to a prescribed officer of the Court, cause the debtor to be arrested and safely kept in the prescribed manner for such time as the Court orders.

(2) Subsection (1) does not alter or qualify the right of the debtor—

- (a) to apply to the Court, in the prescribed manner, to dismiss the debtor's summons; or
- (b) to pay, secure or compound for the debt within the prescribed time,

without being deemed to have committed an act of insolvency.

(3) Where, as referred to in Subsection (2)—

- (a) a payment or composition is made; or
- (b) a security is offered,

that the Court thinks reasonable, the debtor shall, unless the Court otherwise orders, be discharged out of custody.

(4) An arrest under this section is not valid unless the debtor has been served with the debtor's summons before or at the time of his arrest.

(5) A payment or composition of a debt that is made, or a security that is given, for a debt, after an arrest made under this section, is exempted from the provisions of this Act relating to fraudulent preferences.

173. Absconding, etc., after petition.

Where—

(a) after a petition of insolvency is presented against a debtor it appears to the Court that there is probable reason for believing that he—

(i) is about to leave the country or to quit his place of residence in order to avoid—

(A) service of the petition; or

(B) appearing to the petition; or

(C) an examination in respect of his affairs,

or otherwise to delay or embarrass the proceedings in insolvency; or

(ii) is about to remove his goods or chattels in order to prevent or delay possession of them being taken by the trustee; or

(iii) has concealed or is about to conceal or destroy any of his goods or chattels or any books, documents or writings that might be of use to his creditors in the course of his insolvency; or

(b) after service of the petition on a debtor or after an adjudication of insolvency against him, he—

(i) removes any goods or chattels in his possession above the value of K10.00 without the leave of the trustee; or

(ii) without good cause shown, fails to attend an examination ordered by the Court,

the Court may, by warrant addressed to a member of the Police Force or to a prescribed officer of the Court—

(c) cause the debtor to be arrested and any books, papers, money, goods and chattels in his possession to be seized; and

(d) cause him and them to be safely kept as prescribed until such time as the Court orders.

PART XIII.—MISCELLANEOUS.

174. Expenses of Registrar.

Where the Registrar attends under this Act at any place for the purpose of presiding at a meeting of creditors or of otherwise acting under this Act, his travelling and incidental expenses incurred in doing so, and those of any clerk or officer attending him, shall, after being settled by the Court, be paid out of the insolvent's property, if it is sufficient, and otherwise are part of the expenses of the Court.

175. Assignees of things in action.

A person to whom any thing in action belonging to an insolvent is assigned under this Act may bring or defend in his own name any proceeding relating to it.

176. Contracts with insolvents and other persons jointly.

Where an insolvent is a party to a contract jointly with any other person, that person may sue or be sued in respect of the contract without the joinder of the insolvent.

177. Exemptions from stamp duty.

The following matters are exempt from duty under the *Stamp Duties Act*, except in respect of fees under this Act:—

- (a) a deed, transfer, assignment or other assurance relating solely to—
 - (i) freehold or leasehold property; or
 - (ii) any mortgage, charge or other encumbrance on, or any estate, right or interest in, property,
 that—
 - (iii) is part of the estate of an insolvent; and
 - (iv) after the execution of the deed, transfer assignment or other assurance is or remains (whether at law or in equity) the estate of the insolvent or of the trustee of the insolvent; and
- (b) a power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument relating solely to the property of an insolvent or to any proceedings under this Act.

178. Proceedings in respect of things done under this Act.

(1) Proceedings against a person for anything done under this Act may be brought only within six months of the cause of action arising.

(2) Where it appears that—

- (a) the matter complained of was done by the authority of this Act; or
- (b) the proceedings were brought after the time specified in Subsection (1),

the verdict shall be given for the defendant.

179. Order for prosecution¹

Where—

- (a) a trustee in an insolvency reports to the Court that in his opinion an insolvent has been guilty of an offence against this Act or Subdivision VI.4.B of the *Criminal Code*; or
- (b) it is represented to the Court by a creditor or member of a committee of inspection that there is ground to believe that the insolvent has been guilty of an offence against this Act or Subdivision VI.4.B of the *Criminal Code*,

and the Court is satisfied that the report or representation is true and that there is a reasonable probability that the insolvent may be convicted, the Court—

- (c) shall order the trustee to prosecute the insolvent for the offence; and
- (d) may hold the insolvent to bail to appear before a magistrate to answer the charge to be preferred against him for the offence.

180. Expenses of prosecution¹.

(1) Where—

- (a) the prosecution of an insolvent is ordered by the Court under this Act; or
- (b) the insolvent is committed for trial by order of the Court,

the expenses of the prosecution shall, on production of the order, be borne by the State.

¹ But see Constitution, Section 177.

(2) In any other case, the expenses of the prosecution of an insolvent for an offence against this Act, up to the time of his committal for trial, shall be borne by the person instituting the prosecution.

PART XIV.—ARRANGEMENTS AND COMPOSITIONS.

Division 1.—Liquidations By Arrangements.

181. Resolution for liquidation by arrangement.

(1) A debtor who is unable to pay his debts may summon a general meeting of his creditors.

(2) A meeting summoned under Subsection (1) may, by a special resolution, declare that the affairs of the debtor are to be liquidated by arrangement and not in insolvency.

(3) A meeting summoned under Subsection (1), or a subsequent meeting held at an interval of not more than one week, may appoint a trustee, with or without a committee of inspection.

(4) Unless prevented by sickness or other cause satisfactory to the meeting, the debtor shall—

- (a) be present at the meeting at which the special resolution is passed; and
- (b) answer any inquiries made of him; and
- (c) subject to Subsection (5), produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due.

(5) If the debtor is prevented from being at the meeting summoned under Subsection (1), a person shall, on his behalf, produce the statement referred to in Subsection (4).

182. Registration of resolution.

(1) A special resolution passed under Section 181(2), together with—

- (a) the statement of the assets and debts of the debtor produced under Section 181(4) or (5); and
- (b) the name of the trustee appointed; and
- (c) the names of the members of the committee of inspection (if any),

shall be sent to the Registrar.

(2) On receipt of the special resolution, the Registrar shall—

- (a) inquire whether the resolution was passed in the manner prescribed by Section 181; and
- (b) if satisfied that it was duly passed and that a trustee has been appointed (with or without a committee of inspection)—without delay register the resolution and the statement of the assets and debts.

(3) The resolution and statement shall be open for inspection on the prescribed conditions.

(4) The liquidation shall be deemed to have commenced as from the date of the appointment of the trustee.

(5) In the absence of fraud, the registration under this section of a special resolution is conclusive evidence that—

- (a) the resolution was duly passed; and

- (b) all the requirements of this Act in respect of the resolution were complied with,

but, on sufficient cause being shown, the registration may be cancelled by the Court on the application of a creditor.

183. Meetings of creditors.

(1) Subject to Subsection (2), the provisions of this Act relating to—

- (a) the first meeting of creditors; and
(b) subsequent meetings of creditors,

in the case of an insolvency, including—

- (c) the description of creditors entitled to vote at such meetings; and
(d) the debts in respect of which the creditors are entitled to vote,

apply respectively to the first meeting of creditors and to subsequent meetings of creditors, for the purposes of this Part.

(2) Every meeting of creditors shall be presided over by a chairman elected at the meeting, and no creditor is entitled to vote at a meeting until, by a statutory declaration, he has proved—

- (a) a debt provable in the insolvency to be due to him; and
(b) the amount of the debt; and
(c) any prescribed particulars.

184. Certificate of appointment of trustee.

A certificate by the Registrar in respect of the appointment of a trustee under Section 181 has the same effect as a certificate under Section 57 has in the case of an insolvent.

185. Property of debtor divisible among creditors.

(1) On the appointment of a trustee under Section 181, the property of the debtor that would, if he were made insolvent, be divisible among his creditors vests in the trustee.

(2) Property referred to in Subsection (1) is divisible among the creditors, and all settlements, transfers, charges, payments, obligations and proceedings that would be void against the trustee in the case of an insolvency are void against the trustee appointed under Section 181.

186. Powers of trustee and distribution of property.

(1) For the purposes of this Division—

- (a) the trustee has the same powers and shall perform the same duties as a trustee under an insolvency; and
(b) the property of the debtor shall be distributed in the same manner as in an insolvency.

(2) Where a committee of inspection is not appointed, the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to the committee.

187. Accounting for moneys, etc., by trustees.

(1) The creditors in a liquidation under this Division may, at their first or any general meeting, prescribe the bank into which the trustee is to pay any moneys received by him and the sum that he may retain in his hands.

(2) The provisions of this Act with respect to the audit of the accounts of trustees elected by creditors in insolvency apply to the case of a debtor whose affairs are under liquidation under this Division.

188. Close of liquidation, discharge of debtor and release of trustee.

(1) Notwithstanding Section 189, the provisions of this Act with respect to—

- (a) the close of an insolvency; and
- (b) the discharge of an insolvent; and
- (c) the release of a trustee of an insolvent,

do not apply to or in relation to a liquidation under this Division.

(2) The close of a liquidation under this Division may be fixed, and the discharge of the debtor and the release of the trustee may be granted, by a special resolution of the creditors in general meeting, but a trustee shall not be released unless his accounts have been audited as provided for by Section 187(2).

(3) The trustee shall report the discharge of the debtor to the Registrar, and a certificate of discharge given by the Registrar has the same effect as a certificate of discharge given to an insolvent under Division VII.2.

189. Application of insolvency provisions.

(1) Subject to Section 188(1) and to Subsection (2), the provisions of this Act relating to insolvency apply, so far as they are applicable, to and in relation to a liquidation under this Division.

(2) In the application, by virtue of Subsection (1), to a liquidation under this Division, of the provisions of this Act relating to insolvency—

- (a) the appointment under Section 181 of a trustee shall be deemed to be—
 - (i) the presentation of a petition in insolvency; or
 - (ii) the service of such a petition; or
 - (iii) an order of adjudication in insolvency,

— as the case requires, under those provisions; and

- (b) a reference in those provisions to an insolvent shall be read as a reference to a debtor whose affairs are under liquidation under this Division; and
- (c) a reference in those provisions to an insolvency shall be read as a reference to a liquidation under this Division.

190. Adjudication of insolvency.

Where, on satisfactory evidence, it appears to the Court that a liquidation under this Division cannot—

- (a) because of legal difficulties; or
- (b) because there is no trustee for the time being; or
- (c) for any other sufficient reason,

proceed without injustice or undue delay to the creditors or to the debtor, the Court may, on the petition of the debtor or of a creditor who is competent under this Act to present a petition for adjudication, adjudge the debtor to be an insolvent, and proceedings in insolvency may be taken accordingly.

*Division 2.—Compositions with Creditors.***191. Calculation of a majority of creditors for purposes of Division 2.**

In the calculation, for the purposes of the definition "extraordinary resolution" in Section 1 in its application to this Division, of a majority for the purposes of a composition under this Division—

- (a) the value of the debts of secured creditors shall, as nearly as circumstances permit, be estimated in the same way; and
- (b) the same description of creditors are entitled to vote at a general meeting,

as in an insolvency.

192. Resolution for composition.

(1) Without any proceedings in insolvency, the creditors of a debtor who is unable to pay his debts may, by an extraordinary resolution, resolve that a composition be accepted in satisfaction of the debts due to them from the debtor.

(2) Unless prevented by sickness or other cause satisfactory to the meeting, the debtor shall—

- (a) be present at both meetings at which the extraordinary resolution is passed; and
- (b) answer any inquiries made of him; and
- (c) subject to Subsection (3), produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due.

(3) If the debtor is prevented from being at the meetings under Subsection (1) a person shall, on his behalf, produce the statement referred to in Subsection (2).

193. Registration of resolution.

(1) An extraordinary resolution passed under Section 192(1), together with the statement as to the assets and debts of the debtor produced under Section 192(2) or (3), shall be sent to the Registrar.

(2) On receipt of the extraordinary resolution, the Registrar shall—

- (a) inquire whether the resolution was passed in the manner prescribed by Section 192; and
- (b) if satisfied that it was duly passed—without delay register the resolution and statement of assets and debts,

but until registration has taken place the resolution has no effect.

(3) Before an extraordinary resolution is registered under Subsection (2), the debtor shall make oath—

- (a) that he has fully and truly, to the best of his knowledge disclosed—
 - (i) all his assets and liabilities; and
 - (ii) the names of his creditors; and
 - (iii) the amount of their debts; and
- (b) that he has not—
 - (i) granted or promised any payment or security; or
 - (ii) made or promised any preference of any creditor; or

(iii) entered into any collusive agreement, for the purpose of obtaining assent to the resolution,

and the oath shall be presented to the Registrar and shall be registered with the resolution.

(4) Any creditor of the debtor may inspect the statement at prescribed times and on payment of such fee (if any) as is prescribed.

(5) In the absence of fraud, the registration under this section of an extraordinary resolution is conclusive evidence that—

(a) the resolution was duly passed; and

(b) all the requirements of this Act in respect of the resolution were complied with,

but, on sufficient cause being shown, the registration may be cancelled by the Court on the application of a creditor.

194. Variation of composition.

(1) The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, but without prejudice to the rights of any persons taking interests under those provisions who do not assent to the addition or variation.

(2) An extraordinary resolution passed under Subsection (1) shall be presented to the Registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

195. Effect and enforcement of compositions.

(1) Subject to Section 194, the provisions of a composition accepted by an extraordinary resolution under this Division are binding on all the creditors whose names and addresses and the amount of whose debts are shown in the statement of the debtor produced to the meetings at which the resolution was passed, but do not affect or prejudice the rights of any other creditors.

(2) The provisions of a composition under this Division may be enforced by the Court on motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on the motion is a contempt of court.

196. Statements concerning bills of exchange and promissory notes.

(1) Where—

(a) a debt arises on a bill of exchange or promissory note; and

(b) the debtor is ignorant of the holder of the bill or note,

he shall set out in statement of his debts—

(c) the amount of the bill or note; and

(d) the date on which it falls due; and

(e) the name of the acceptor or person to whom it is payable; and

(f) any other particulars within his knowledge concerning it.

(2) The insertion of the particulars referred to in Subsection (1)(c) to (f) is, for the purposes of this Division, a sufficient description of the creditor in respect of the debt.

(3) Any mistake made inadvertently by the debtor in the statement of his debts may be corrected, after the prescribed notice has been given, with the consent of a general meeting of his creditors.

197. Adjudication of insolvency.

Where, on satisfactory evidence, it appears to the Court that a composition under this Division cannot—

- (a) because of legal difficulties; or
- (b) for any other sufficient reason,

proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor an insolvent, and proceedings in insolvency may be taken accordingly.

Division 3.—General.

198. Debts incurred by fraud.

Where a debtor makes an arrangement or composition with his creditors under this Part, he remains liable for the unpaid balance of any debt—

- (a) that he incurred or increased; or
- (b) of which, before the date of the arrangement or composition, he obtained forbearance,

by fraud, unless the defrauded creditor has assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

199. Form of Gazette notice.

All proceedings and notices directed or authorized by this Act or the Rules of Court of the National Court applicable to insolvency (other than notices by the trustee) to be inserted in the National Gazette shall be marked with the seal of the Court and certified by the Registrar.

SCHEDULE.

PAPUA NEW GUINEA.

Insolvency Act.

Sec. 18(2).

Form 1.

DEBTOR'S PETITION.

(Heading as for other proceedings in the National Court).

The petition of _____, of _____, shows that the petitioner is unable to meet his engagements with his creditors.

The petitioner therefore prays that he be adjudicated insolvent.

Insolvency

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PAPUA NEW GUINEA.

Insolvency Act.

Sec. 26(1).

Form 2.

CREDITOR'S PETITION.

(Heading as for other proceedings in the National Court).

The petition of _____, of _____, shows that _____, of _____, (merchant, or as the case may be), is indebted to him in the sum of K _____.

The petitioner is informed and believes that *(name of debtor)* lately and while so indebted to the petitioner committed the following act of insolvency:

The petitioner therefore prays that *(name of debtor)* may be adjudged insolvent.

PAPUA NEW GUINEA.

Insolvency Act.

Sec. 28(5).

Form 3.

AFFIDAVIT VERIFYING PETITION.

I, _____ of _____, swear that the statements in the above (or annexed) petition are to the best of my belief true in substance and in fact.

PAPUA NEW GUINEA.

Insolvency Act.

Sec. 30(2).

Form 4.

SUMMONS ENDORSED ON PETITION.

To *(name of debtor)*:

You are required to enter an appearance to this petition within _____ days (exclusive of the day of service) after the service of it on you, otherwise you will be adjudicated insolvent.

PAPUA NEW GUINEA.

Insolvency Act.

Sec. 53(4).

Form 5.

CERTIFICATE OF PROOF OF DEBT.

In the Insolvent Estate of *(name of insolvent)*, _____ *(name of creditor)* has proved before me a debt of K _____ in this estate.

Dated _____ 19 _____

(Title of Certifying Officer.)

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 253.

Insolvency.

APPENDIX.

SOURCE OF THE INSOLVENCY ACT.

Part A.—Previous Legislation.

Insolvency Act 1951 (No. 64 of 1951).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	5, 72(in part), 79(6), 83, 126(in part), 188(2)	31	46 (in part)
2	20, 21	32	46 (in part)
3	6	33	47
4	72	34	48
5	64	35	49
6	65	36	50, 51
7	66	37	53
8	67	38	52
9	69, 70	39	54
10	177,178	40	59(1)
11	179	41	59(2) (in part)
12	180	42	59(2) (in part)
13	181(1)	43	56(1) (in part), (2)
14	181(2)	44	56(1) (in part)
15	22	45	60
16	23, 24	46	71
17	25	47	61
18	27, 28	48	62
19	29	49	55, 68
20	30	50	75 (in part)
21	31	51	75 (in part), 79 (in part)
22	32	52	81
23	35	53	76, 77, 79 (in part)
24	36	54	78 (in part), 87(1)
25	33, 34	55	84
26	37, 38	56	85
27	40	57	80, 87(9)
28	39, 41 (in part), 42	58	87(3)
29	41 (in part)	59	87(17)
30	43, 44, 45	60	87(14) (in part)
		61	87(15)
		62	87(2), (4), (5), (6)
		63	87(10), (12), (13), (16)

¹ Unless otherwise indicated, references are to the Act set out in Part A.

Section, etc., in Revised Edition.	Previous Reference	Section, etc., in Revised Edition.	Previous Reference.
64	87(8)	121	138, 142
65	78(4)	122	139
66	87(18)	123	140
67	86	124	127 (in part)
68	82, 87(7)	125	144
69	87(11)	126	185
70	87(14) (in part)	127	141
71	88(1) (in part)	128	143
72	88(1) (in part)	129	150, 151
73	88(2)	130	152
74	89, 90	131	—
75	91	132	153
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77	93	134	155
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79	95	136	158
80	98, 99	137	159, 161
81	96	138	160
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83	100	140	162
84	102	141	149
85	101	142	164
86	103	143	182
87	106	144	184
88	104, 105	145	183
89	107	146	145
90	108	147	146
91	110(1)	148	147
92	109(1)	149	9
93	109(2)	150	11
94	110(2), 111(2), 114	151	12
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