

Zambia

Bankruptcy Act, 1967

Chapter 82

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Zambia

Bankruptcy Act, 1967

Chapter 82

Commenced on 14 April 1967

[This is the version of this document at 31 December 1996.]

[Act No. 27 of 1967; 13 of 1994; 17 of 1994]

An Act to make provision for the administration in bankruptcy of the estates of debtors; to make provision for punishment of offences committed by debtors; to provide for reciprocity in bankruptcy proceedings between Zambia and other countries; and to provide for matters incidental to and consequential upon the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Bankruptcy Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**affidavit**" includes a statutory declaration, affirmation, and attestation on honour;

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

"**the court**" means the High Court;

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

"**gazetted**" means published in the *Gazette*;

"**general rules**" and "rules" include forms;

"**goods**" include all chattels personal;

"**local bank**" means any bank in Zambia;

"**oath**" includes affirmation, declaration, and attestation on honour;

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

"**prescribed**" means prescribed by general rules within the meaning of this Act;

"**property**" includes money, goods, things in action, land, and every description of property whether real or personal and whether situate in Zambia or elsewhere; and also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as herein defined;

"**reciprocating country**" means any country declared a reciprocating country under section one hundred and forty-nine;

"**reciprocating court**" means a court having jurisdiction in bankruptcy or insolvency in a reciprocating country;

"**relative by consanguinity or affinity**" means a husband, wife, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, cousin and shall include relationship by adoption and whether legitimate or illegitimate and on the half blood as well as of the whole blood and any person who is married to any of the foregoing;

"**resolution**" means ordinary resolution;

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

"**sheriff**" includes any officer charged with the execution of a writ or other process;

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

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

Part II – Proceedings from act of bankruptcy to discharge

3. Acts of bankruptcy

(1) A debtor commits an act of bankruptcy in each of the following cases:

- (a) if in Zambia or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
- (b) if in Zambia or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;
- (c) if in Zambia or elsewhere he makes any conveyance or transfer of his property, or of any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt;
- (d) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Zambia, or being out of Zambia remains out of Zambia, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;
- (e) if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceedings in the court, and the goods have been either sold or held by the sheriff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

- (f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- (g) if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in Zambia, or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in Zambia, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained.

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

- (h) if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.
- (2) In this Act, "a debtor", unless the context otherwise requires, includes any person, whether a Zambian citizen or not, who at the time when any act of bankruptcy was committed by him—
- (a) was personally present in Zambia; or
 - (b) ordinarily resided or had a place of residence in Zambia; or
 - (c) was carrying on business in Zambia, personally, or by means of an agent or manager; or
 - (d) was a member of a firm or partnership which carried on business in Zambia;

and, for the purposes of Part IX, includes a person against whom bankruptcy proceedings have been instituted in a reciprocating country and who has property in Zambia.

4. Bankruptcy notices

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

Provided that a bankruptcy notice—

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

Receiving order

5. Jurisdiction to make receiving order

Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

6. Conditions on which creditor may petition

- (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—
- (a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to one hundred kwacha; and
 - (b) the debt is a liquidated sum, payable either immediately or at some certain future time; and
 - (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and

- (d) the debtor is domiciled in Zambia, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business in Zambia, or has carried on business in Zambia personally or by an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Zambia by means of a partner or partners, or an agent or manager;

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

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

7. Proceedings and order on creditor's petition

- (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts and served in the prescribed manner.
- (2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of one of the alleged acts of bankruptcy, and if satisfied with the proof, may make a receiving order in pursuance of the petition.
- (3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.
- (4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.
- (5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.
- (6) Where the proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.
- (7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

8. Debtor's petition and order thereon

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

Provided that such order shall be refused unless the debtor has filed with the official receiver his statement of affairs prepared in accordance with the provisions of section sixteen.

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

9. Effect of receiving order

- (1) On the making of a receiving order, the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.
- (2) This section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

10. Power to appoint interim receiver

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

11. Power to stay pending proceedings

- (1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.
- (2) Where the court makes an order staying any action or proceedings, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding.

12. Power to appoint special manager

- (1) The official receiver may, if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business, other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, or until the official receiver shall give notice to the manager so appointed terminating his appointment, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.
- (2) The special manager shall give such security and account in such manner as the official receiver may direct.
- (3) The special manager shall receive such remuneration, as the official receiver may determine.

13. Advertisement of receiving order

Notice of every receiving order, stating the name address and description of the debtor, the trading name or names (if any) of the debtor, the date of the order and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

14. Power to rescind receiving order in certain cases

- (1) If in any case where a receiving order has been made on a bankruptcy petition it appears to the court, upon the application of the official receiver, that the whole indebtedness of the debtor amounts to a sum not exceeding eight hundred kwacha, the court, after such inquiry as it may

think fit, may rescind the receiving order and annul the adjudication order, if made, and may make a composition order having the same effect as a composition order made by a subordinate court under the Subordinate Courts Act.

- (2) If the debtor shall not comply with the terms of a composition order made under this section, the subordinate court administering his estate may, if it thinks fit, annul the composition order but without prejudice to the validity of any payment duly made, or thing done, under or in pursuance of the composition order, and the court having jurisdiction in bankruptcy shall thereupon make a receiving order against the debtor and adjudge him bankrupt. Where a debtor has been adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

[Cap. 28]

Proceedings consequent on order

15. First and other meetings of creditors

- (1) As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, and generally as to the mode of dealing with the debtor's property.
- (2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule shall be observed.

16. Debtor's statement of affairs

- (1) The debtor shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.
- (2) The statement shall be so submitted—
 - (a) before, but not more than fourteen days before, the date of the presentation of the debtor's petition, and upon such submission, the official receiver shall certify to the court under his hand that such statement has been duly submitted to him;
 - (b) within fourteen days of the date of the receiving order made on the petition of a creditor, but the official receiver may, for special reasons, extend the time.
- (3) In the case of a creditor's petition, if the debtor fails without reasonable cause to comply with the requirements of this section, he shall be guilty of a misdemeanour and the debtor shall, in addition to any other punishment to which he may be liable, be guilty of contempt of court and be punishable accordingly.
- (4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public examination of debtor

17. Public examination of debtor

- (1) Where the court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings and property.
- (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.
- (3) The court may adjourn the examination for such periods of time or generally, as the court shall think most convenient.
- (4) The court may adjourn the public examination *sine die* and may make such further order as it thinks fit, where—
 - (a) it is of opinion that the debtor is not making a full and true disclosure of his affairs;
 - (b) the debtor, without showing any sufficient reason, has failed to attend the public examination or any adjournment thereof, or to comply with any order of the court in relation to his accounts, conduct, dealings or property.
- (5) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.
- (6) The official receiver shall take part in the examination of the debtor, and for the purpose thereof may employ a legal practitioner if he so desires.
- (7) If a trustee is appointed before the conclusion of the examination, he may take part therein.
- (8) The court may put such questions to the debtor as it may think expedient.
- (9) The legal practitioner of the debtor may attend the examination, but shall not question the debtor, or address the court.
- (10) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him; and they shall also be open to the inspection of any creditor at all reasonable times.
- (11) If a debtor, on being examined before the court, refuses to answer or does not answer to the satisfaction of the court any questions which it may allow to be put, such debtor shall be guilty of contempt of court, and be punishable accordingly.
- (12) When the court is of the opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded; but notwithstanding such order the court, on the application of the official receiver, may order a further examination of the debtor and such further examination shall be deemed to be the resumption of an adjourned examination.
- (13) Where the debtor is a mentally disordered person or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as the court thinks expedient.

Composition or scheme of arrangement

18. Compositions and schemes of arrangement

- (1) Where a debtor either before or after he has been adjudged bankrupt intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.
- (2) If, in the opinion of the official receiver, the debtor's proposal is not calculated to benefit the general body of creditors or has been lodged with the object of preventing a full investigation of the debtor's conduct or affairs or is otherwise prejudicial to the administration of the debtor's estate in accordance with the provisions of this Act, the official receiver may reject the debtor's proposal, but in every other case the official receiver shall hold a meeting of creditors, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if, at that meeting, a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and, when approved by the court, shall be binding on all the creditors.
- (3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.
- (4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.
- (5) The debtor or the official receiver may, after the proposal has been accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.
- (6) Every debtor whose proposal has been accepted by the creditors shall be examined as provided by section seventeen, and the application to the court to approve the proposal shall not be heard until after the conclusion of such examination.
- (7) Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at the meeting of creditors have voted for the acceptance of the proposal.
- (8) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or is absent from Zambia.
- (9) The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.
- (10) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.
- (11) If any facts are proved on proof of which the court would be required either to suspend or attach conditions to a debtor's discharge from adjudication in bankruptcy, the court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than twenty-five ngwee in the kwacha on all the unsecured debts provable against the debtor's estate.
- (12) In any other case the court may either approve or refuse to approve the proposal.

- (13) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by terms being embodied in an order of the court.
- (14) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.
- (15) If the court approves the composition or scheme, and if the debtor has been adjudged bankrupt, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint on such terms and subject to such conditions, if any, as the court may declare.
- (16) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.
- (17) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.
- (18) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on the application of the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects which has been contracted before the adjudication, shall be provable in the bankruptcy.
- (19) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-seven and Part V shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt", and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.
- (20) Part III shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt", and "order of adjudication", as in subsection (19).
- (21) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.
- (22) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge from adjudication in bankruptcy.

19. Effect of composition or scheme

Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of bankruptcy

20. Adjudication of bankruptcy

- (1) At the time of making a receiving order, or at any time thereafter, the court may, on the application of the debtor himself adjudge him a bankrupt.
- (2) When a receiving order has been made and the official receiver has satisfied the court that the debtor has absconded or is about to abscond, the court may forthwith adjudge the debtor bankrupt.
- (3) In every other case when a receiving order has been made, the court shall make an order adjudging the debtor bankrupt at the expiration of the time prescribed for appealing against the receiving order, if the same has not been rescinded:

Provided that the debtor may, prior to the expiration of such time, apply to the court, on the ground that he possesses assets sufficient to pay his debts in full, that an order adjudging him bankrupt be not made forthwith, and, if upon such application no order adjudging the debtor bankrupt is then made, the official receiver may apply at any time thereafter that the debtor be adjudged bankrupt, and the court may thereupon, after hearing a report of the official receiver as to the assets and liabilities of the debtor and as to his conduct, adjudge the debtor bankrupt.

- (4) On the making of an order adjudging the debtor bankrupt, the property of the debtor shall become divisible among his creditors and shall vest in a trustee as by this Act provided.
- (5) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the trading name or names (if any) of the bankrupt and the date of the adjudication, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

21. Appointment of trustee

- (1) When a debtor has been adjudged bankrupt, creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.
- (2) The person so appointed shall give security in manner prescribed to the satisfaction of the official receiver, and the official receiver, if satisfied with the security, shall certify that his appointment has been duly made, unless he objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally:

Provided that, where the official receiver makes any such objection he shall, if so requested by a majority in value of the creditors, notify the objection to the court, and thereupon the court may decide on its validity.

- (3) The appointment of a trustee shall take effect as from the date of the certificate.
- (4) The official receiver shall be the trustee for the purposes of this Act—
 - (a) until a trustee is appointed pursuant to subsection (1);
 - (b) during any vacancy in the office of trustee.

22. Committee of inspection

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

Provided that, if the official receiver is the trustee for the purposes of this Act, the appointment of a committee of inspection shall only be made if the official receiver shall have previously consented thereto.

- (2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications:
 - (a) that of being a creditor or holder of a general proxy or general power of attorney from a creditor:

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

Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.
- (3) The committee of inspection shall meet at such times as they shall from time to time appoint and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (4) The committee may act by a majority of their members present at the meeting, but shall not act unless a majority of the committee are present at the meeting.
- (5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.
- (6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.
- (7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.
- (8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.
- (9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.
- (10) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the official receiver on the application of the trustee.

Control over person and property of debtor

23. Duties of debtor as to discovery and realisation of property

- (1) Every debtor against whom a receiving order is made shall attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require:

Provided that the proceedings at any meeting shall not be invalidated by reason only of the absence of the debtor therefrom.

- (2) He shall give such inventory of his property, such list of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager or trustee, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager or trustee, or as may be prescribed by general rules made under this Act, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager or trustee or any creditor or person interested.
- (3) A bankrupt shall, to the utmost of his power, aid in the realisation of his property and the distribution of the proceeds among his creditors.
- (4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible among his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee or to any person authorised by the official receiver or trustee or by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of contempt of court, and may be punished accordingly.

24. Address and certain particulars to be furnished

- (1) Every debtor against whom an order of adjudication is made in Zambia shall, so long as such order remains in force, keep the official receiver or the trustee, as the case may be, informed of his residential and postal addresses, and shall submit every six months from the date of the said order a return, verified by affidavit, giving full particulars as to his employment, salary, earnings and other income, other moneys received and all other information relative to his affairs during the preceding period of six months.
- (2) Any person who fails to comply with the provisions of this section shall be guilty of a misdemeanour.

25. Arrest of debtor under certain circumstances

- (1) The court may, by warrant addressed to any police officer or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances:
 - (a) if, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;

- (b) if, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;
- (c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of ten kwacha without the leave of the official receiver or trustee;
- (d) if, without good cause shown, he fails to attend any examination ordered by the court:

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

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

26. Re-direction of debtor's letters

Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding six months, as the court thinks fit, letters, telegrams, cablegrams and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, or any other person in charge of the transmission and receipt of letters, telegrams, cablegrams and other postal packets, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

27. Inquiry as to debtor's conduct, dealings and property

- (1) The court may, on the application of the official receiver or trustee or creditor or any other person interested, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.
- (2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such documents, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.
- (3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property, and the official receiver or the trustee or any creditor or any such other person interested may take part in the examination and may be represented by a legal practitioner for that purpose.
- (4) If the person under examination is not the debtor, the debtor may take part in the examination and may be represented by a legal practitioner for that purpose.
- (5) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.
- (6) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official receiver or trustee, order

him to deliver to the official receiver or trustee such property or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

- (7) The court may, if it thinks fit, order that any person who if in Zambia would be liable to be brought before it under this section shall be examined in any place out of Zambia.

28. Discharge of bankrupt

- (1) A bankrupt may at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules under this Act otherwise directs, be heard in open court.
- (2) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:

Provided that—

- (i) where the bankrupt has committed any misdemeanour under this Act, or under any enactment referred to in the Third Schedule, or any misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, whether in Zambia or in any reciprocating country, or where in any case any of the facts hereinafter mentioned are proved, the court shall either—
- (a) refuse the discharge; or
 - (b) suspend the discharge for such period as the court thinks proper; or
 - (c) suspend the discharge until the debtor has paid to his creditors such dividend as the court may, in its absolute discretion, think fit; or
 - (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts;
- (ii) if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.
- (3) The facts hereinbefore referred to are—
- (a) that the bankrupt's assets were not at the date of the receiving order of a value equal to fifty ngwee in the kwacha on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets were not of a value equal to fifty ngwee in the kwacha on the amount of his unsecured liabilities had arisen from circumstances for which he could not justly be held responsible;

- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;
 - (c) that the bankrupt has continued to trade after knowing himself to be insolvent;
 - (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
 - (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
 - (f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance of living, or by gambling, or by culpable neglect of his business affairs;
 - (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
 - (h) that the bankrupt has, within three months preceding the date of the receiving order, brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;
 - (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
 - (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to fifty ngwee in the kwacha on the amount of his unsecured liabilities;
 - (k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;
 - (l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.
- (4) With a view of removing any disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate shall be subject to appeal.
- (5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to fifty ngwee in the kwacha on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to fifty ngwee in the kwacha on his unsecured liabilities, and a report by the official receiver or trustee shall be *prima facie* evidence of the amount of such liabilities.
- (6) For the purposes of this section, the report of the official receiver shall be *prima facie* evidence of the statements therein contained.
- (7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor who has proved or his representative authorised in writing. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.
- (8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

- (9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official receiver or trustee may require in the realisation and distribution of such of his property as is vested in the official receiver or trustee, and, if he fails to do so, he shall be guilty of contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

29. Fraudulent settlements

In either of the following cases, that is to say:

- (a) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest;

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

30. Effect of order of discharge

- (1) An order of discharge shall not release the bankrupt—
- (a) from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the State or of any person for any offence against any law relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Permanent Secretary, Ministry of Finance, certifies in writing his consent to the bankrupt's being discharged therefrom; or
- (b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or
- (c) from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.
- (2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.
- (3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.
- (4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

31. Power for court to annul adjudication in certain cases

- (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.
- (2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.
- (3) Notice of the order annulling an adjudication shall be forthwith gazetted.
- (4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

32. Bankrupt not to act as director or manager of company or to manage business with relative

- (1) A bankrupt shall not—
 - (a) act as director of, or directly or indirectly take part in or be concerned in the management of, any company; or
 - (b) manage, or directly or indirectly take part in or be concerned in the management of, any trade or business with any person who is a relative by consanguinity or affinity or in any trade or business in which any such person has an interest;

unless he has first made application to the court for permission so to do, and obtained such permission.

- (2) On the hearing of the application, the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, and may refuse such permission or grant the same either unconditionally or subject to such conditions or limitations as the court in its absolute discretion may think fit.
- (3) If a bankrupt in respect of whom permission as aforesaid has been granted fails to comply with any condition or limitation imposed by the court under subsection (2), the official receiver shall report the matter to the court, and the court having considered such report shall make such order thereupon, including the revocation of its original permission, as to the court may seem just.
- (4) Any person to whom subsection (1) applies who acts as a director of a company or who manages, or takes part in or is concerned in the management of, any company or trade or business as aforesaid without obtaining the permission of the court, or after revocation of such permission, shall be guilty of a misdemeanour.
- (5) This section shall apply to a bankrupt adjudicated such prior to the commencement of this Act, provided that a prosecution shall not be instituted against any such person under this section if he applies for and has been granted such permission as aforesaid before the expiration of six months from the commencement of this Act or if he ceases to act as such director or to manage, or take part in or be concerned in the management of, a company or such trade or business as aforesaid if such permission shall be refused.

Part III – Administration of property

Proof of debts

33. Description of debts provable in bankruptcy

- (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.
- (2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.
- (3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.
- (4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.
- (5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.
- (6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purpose of this Act, be deemed to be a debt not provable in bankruptcy.
- (7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may assess the value, or may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.
- (8) "Liability" shall, for the purposes of this Act, include—
 - (a) any compensation for work or labour done;
 - (b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is not likely to occur or be capable of occurring, before the discharge of the debtor;
 - (c) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to the mode of valuation, capable of being ascertained by fixed rules or as a matter of opinion.

34. Mutual credit and set-off

Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

35. Rules as to proof of debts

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

36. Priority of debts

Subject to the provisions of this Act and of any other law, all debts proved in the bankruptcy shall be paid *pari passu*.

37. Preferential claim in case of apprenticeship

- (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official receiver or trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the official receiver or trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the official receiver or trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.
- (2) Where it appears expedient to the official receiver or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

38. Landlord's power of distress in case of bankruptcy

- (1) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.
- (2) Where any goods of a debtor have been taken in execution, the limit on the amount of rent which the party at whose suit the execution is sued out is liable to pay to the landlord under section 1 of the Landlord and Tenant Act, 1709, of the United Kingdom, shall, unless notice of claim for rent due has been served on the sheriff or bailiff or other officer levying the execution by or on behalf of the landlord before the commencement of the debtor's bankruptcy, be six months' rent, instead of one year's rent, and the rights of the landlord under the said provisions shall not extend to any claim for rent payable in respect of any period subsequent to the date of such notice, unless such notice was served as aforesaid before the commencement of the debtor's bankruptcy.
- (3) Nothing in subsection (2) shall be construed as imposing any liability on the sheriff, bailiff or other officer levying the execution, or on the person at whose suit the execution was sued out, to account for any sum actually paid to the landlord by him before notice was served on him that a receiving order had been made against the debtor, but the landlord shall be liable to pay to the official receiver or the trustee in the bankruptcy any sum he may have received from such sheriff, bailiff, officer or other person as aforesaid in excess of the amount which he was entitled to be paid, without prejudice, however, to the right of the landlord to prove for the amount of such excess.

39. Postponement of claims

- (1) In the distribution of the property of a bankrupt a dividend shall not be payable in respect of—
 - (a) a claim by a relative by consanguinity or affinity of such bankrupt for salary or wages, or for any other benefit whatsoever in respect of services rendered to the bankrupt;
 - (b) a claim by a spouse of such bankrupt in respect of any property lent or entrusted by that spouse to the bankrupt for the purpose of any trade or business carried on by him, whether solely or in partnership with any other person or persons;
 - (c) a claim to which section 3 of the Partnership Act, 1890, of the United Kingdom, applies;until all claims of the other creditors of the bankrupt for valuable consideration in money or money's worth have been satisfied.
- (2) The claims referred to in subsection (1) shall rank equally between themselves and, if the property of the bankrupt shall be insufficient to meet them, they shall abate in equal proportions between themselves.
- (3) In this section, "spouse" means a person who, at the date when such property was lent or entrusted to the bankrupt, was lawfully married to the bankrupt, and includes a person married by customary law.

Property available for payment of debts

40. Relation back of trustee's title

- (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.
- (2) Where a receiving order is made against a judgment debtor in pursuance of section ninety-nine, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

41. Description of bankrupt's property divisible amongst creditors

The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

- (a) property held by the bankrupt on trust for any other person;
- (b) clothing, furniture and articles of personal or household use, to a value not exceeding two hundred kwacha in the whole;

but it shall comprise the following particulars:

- (i) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

- (ii) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and
- (iii) any property lent or entrusted by a relative by consanguinity or affinity to the bankrupt for the purpose of any trade or business carried on by him or otherwise.

42. Provisions as to second bankruptcy

- (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then, for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.
- (2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section fifty-one), vest in the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.
- (3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of bankruptcy on antecedent and other transactions

43. Restriction of rights of creditor under execution or attachment

- (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.
- (2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.
- (3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

44. Duties of sheriff as to goods taken in execution

- (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver

the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the cost of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

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

45. Avoidance of certain settlements

- (1) Any settlement of property, not being a settlement made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.
- (2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or in remainder, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract, to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.
- (3) Any payment of money (not being payment of premiums on a policy of life insurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—
 - (a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or
 - (b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or
 - (c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;but in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.
- (4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property, including money.

46. Avoidance of general assignments of book debts unless registered

- (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Lands and Deeds Registry Act with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules under that Act:

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or debts growing due under specified contracts, or any assignment of book debts included in a transfer of business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

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

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47. Avoidance of preference in certain cases

- (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, whether before or after a bankruptcy petition has been presented against him, by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented before, or within six months after, the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.
- (2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.
- (3) Where a receiving order is made against a judgment debtor in pursuance of section ninety-nine, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

48. Protection of *bona fide* transaction without notice

Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

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

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

- (i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and
- (ii) that the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not at the

time of the payment, delivery, conveyance, assignment, contract, dealing or transaction notice of any available act of bankruptcy committed by the bankrupt before that time.

49. Validity of certain payments to bankrupt and assignee

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

50. Recovery of property transferred without knowledge of receiving order

Where any money or property of a bankrupt has, on or after the date of the receiving order, but before notice thereof has been gazetted in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Act void as against the trustee in the bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

51. Dealings with undischarged bankrupt

- (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value in respect of property, whether real or personal, acquired by the bankrupt after adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.
- (2) For the purposes of subsection (1), the receipt of any money, security or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.
- (3) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

Realisation of property

52. Possession of property by trustee

- (1) The trustee shall, as soon as may be, take possession of the deeds, books and documents of the bankrupt, and all other parts of his property capable of manual delivery.
- (2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may, on his application, enforce such acquisition or retention accordingly.

- (3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.
- (4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.
- (5) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of contempt of court, and may be punished accordingly on the application of the trustee.

53. Seizure of property of bankrupt

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

54. Appropriation of portion of salary or wages to creditors

- (1) Where the bankrupt is a member of the Defence Force, or a public officer, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the Permanent Secretary of the Ministry under which the pay or salary is enjoyed, may direct; but before making any order under this subsection, the court shall communicate with such Permanent Secretary as to the amount, time and manner of the payment to the trustee, and shall obtain the written consent of such Permanent Secretary to the terms of such payment.
- (2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the State, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.
- (3) Where a bankrupt is an employee and earning wages or other remuneration, whether or not payment of such wages or other remuneration is made by the day or by any other period of time, and whether or not the amount of such wages or other remuneration is calculated by reference to hourly rates, or rates related to any other period of time, or piece-work rates, or shift rates or overtime rates, or in any way otherwise calculated, the court, on the application of the trustee shall, from time to time, make such order as it thinks just, for the payment of any part of such wages or other remuneration to the trustee, to be applied by him in such manner as the court may direct.
- (4) Every order made under subsection (1) shall be served upon the bankrupt and upon the Permanent Secretary of the Ministry under which the pay or salary is enjoyed, and every order made under subsection (2) or (3) shall be served upon the bankrupt, and may also be served upon the person by whom such salary or income, or half-pay, or pension, or compensation, or wages or other remuneration is paid, or upon the bankrupt's employer, as the case may be; and, if any such order as aforesaid is served upon such Permanent Secretary, or the person paying such salary or income, or half-pay, or pension, or compensation, or wages or other remuneration, or the employer, as the

case may be, the amounts of salary or income, or half-pay, or pension, or compensation, or wages, or other remuneration specified in such order shall thereafter be paid to the trustee in conformity with the terms thereof.

- (5) Nothing in this section shall take away or abridge any power of the President to dismiss a bankrupt, or to declare the half-pay, or pension, or compensation, or any part thereof, of any bankrupt to be forfeited.

55. Vesting and transfer of property

- (1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudicated bankrupt, the property of the bankrupt shall vest in the official receiver as such trustee.
- (2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.
- (3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office without any conveyance, assignment, or transfer whatever.
- (4) An order of adjudication in bankruptcy together with, if a trustee has been appointed, the certificate of appointment of such trustee, shall for all purposes of any law in force in Zambia requiring registration of conveyances, assignments or transfers of property, be deemed to be such a conveyance, assignment or transfer, and may be registered accordingly.
- (5) Notwithstanding the provisions of this section, no land situate in Zambia, and no interest in any such land, shall vest in the official receiver, or in the trustee, until the official receiver, or such trustee, has been registered as Proprietor thereof, or has been registered as Registered Proprietor thereof, as provided by the Lands and Deeds Registry Act.

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56. Disclaimer of onerous property

- (1) Where any part of the property of a bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee, or within twelve months from the date of the order of adjudication, if the official receiver is acting as trustee in default of the appointment of a trustee, or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, or after the date of the order of adjudication, as the case may be, he may disclaim such property at any time within twelve months after he has become aware thereof, or such extended period as may be allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed, as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.
- (3) A trustee shall not be entitled to disclaim a State lease or a lease registered under the provisions of the Lands and Deeds Registry Act without the leave of the court, and the court may, before or

on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

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- (4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it.
- (5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.
- (6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same shall be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly, on registration of such vesting order under the provisions of the Lands and Deeds Registry Act, if such property consists of land or an interest in land, in the person therein named in that behalf without any conveyance or assignment for the purpose.

Provided that, where the property disclaimed is of a lease-hold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee except upon the terms of making that person—

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

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

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- (7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, the official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.
- (8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

- (9) No land situate in Zambia held in fee simple by a person who has become bankrupt shall be disclaimed by the trustee, or any other person entitled thereto, except with the consent of the President and by transfer to the State.

57. Powers of trustee to deal with property

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

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction, or tender, or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers, the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act;
- (e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and sections 56 to 58, 60 to 65, 67 and 71 of the Fines and Recoveries Act, 1833, of the United Kingdom, shall extend and apply to proceedings under this Act as if those sections were herein re-enacted and in terms made applicable to those proceedings.

58. Powers exercisable by trustee with permission of committee of inspection

- (1) The trustee may, with the permission of the committee of inspection, do all or any of the following things:
 - (a) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same;
 - (b) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
 - (c) employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;
 - (d) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee thinks fit;
 - (e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;
 - (f) refer any dispute to arbitration, compromise any debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;
 - (g) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;
 - (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (2) The permission given for the purposes of subsection (1) shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.
- (3) All or any of the things mentioned in subsection (1) may, subject to the provisions of this Act, be done without such permission by the official receiver when acting as trustee, if a committee of inspection has not been appointed.

59. Power to allow bankrupt to manage property

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

Provided that no such permission shall be required when the official receiver is acting as trustee and a committee of inspection has not been appointed.

60. Allowance to bankrupt for maintenance or service

The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court:

Provided that no such permission shall be required when the official receiver is acting as trustee and a committee of inspection has not been appointed.

61. Right of trustee to inspect goods pawned, etc.

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

62. Limitation of trustee's powers in relation to copyright

Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

63. Protection of official receiver and trustees from personal liability in certain cases

Where the official receiver or trustee has seized or disposed of any goods, chattels, property or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising

from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

Distribution of property

64. Declaration and distribution of dividends

- (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.
- (2) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof, specifying the latest date for lodging proofs, to each person who has been notified to him as being a creditor and who has not proved his debt or has not established it to his satisfaction.
- (3) After the latest date so specified for lodging proofs, or, if the court on application by any person claiming to be a creditor grants him further time for establishing his claim, then, on the expiration of such further time, the property of the bankrupt shall be divided among the creditors whose proofs of debt have been admitted for dividend, without regard to the claims of any other persons.
- (4) When the trustee has declared a dividend, he shall send to each creditor whose proof has been admitted a notice showing the amount of the dividend and when and how it is payable.

65. Joint and separate dividends

- (1) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estates. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.
- (2) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.
- (3) Where joint and separate properties are being administered, the expenses of and incidental to such administration shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

66. Provision for creditors residing at a distance, etc.

- (1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements of affairs, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.
- (2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.
- (3) Subject to the foregoing provisions and to section one hundred and thirty-seven, he shall distribute as dividends all money in hand.

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

Any creditor who has not proved his debt by the latest date for lodging proofs as specified in the notice of intention to declare a dividend shall not participate in that dividend, but shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends.

68. Interest on debts

- (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five *per centum per annum*, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.
- (2) In dealing with the proof of the debt, the following rules shall be observed:
 - (a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one;
 - (b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;
 - (c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

69. No action for dividend

No action for a dividend shall lie against the trustee, but, if the trustee refuses to pay, or unreasonably delays in paying, any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

70. Right of bankrupt to surplus

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

Part IV – Official receiver and staff

71. Appointment of official receiver and assistant official receivers

- (1) There shall be an official receiver of debtors' estates for Zambia, and as many assistant official receivers as may be required from time to time.
- (2) The official receiver and the assistant official receivers shall be appointed and be removable by the Public Service Commission acting in the name of, and on behalf of, the President and they shall be officers of the court.

- (3) An assistant official receiver shall have the same powers, rights and duties, and shall be subject to the liabilities, of the official receiver under this Act, and may represent the official receiver in all matters, including proceedings in court.
- (4) The official receiver shall be a corporation sole by the name of the official receiver and shall have perpetual succession, and an official seal, and may sue, or be sued in his corporate name.
- (5) Where, at the commencement of this Act, any property is vested in any person by virtue of his office of official receiver, the said property shall, by virtue of this Act, vest in the official receiver in his corporate name.

72. Appointment of acting and deputy official receiver

- (1) A fit and proper person may be appointed to act in the office of, and to discharge the duties of, the official receiver during any temporary vacancy in that office, or during the temporary absence of the official receiver through illness or otherwise.
- (2) A fit and proper person may at any time be appointed by the official receiver to be a deputy official receiver, under such conditions as to remuneration and otherwise as the circumstances may require, and a person so appointed shall have the same powers, rights and duties, and shall be subject to the same liabilities as the official receiver.
- (3) The appointment of an acting official receiver made in pursuance of subsection (1) shall terminate upon the reason for the appointment ceasing to exist.
- (4) The appointment of any person as deputy official receiver in pursuance of subsection (2) may be terminated where the circumstances shall so require.

73. Status of official receiver

- (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.
- (2) The official receiver may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act, administer oaths.
- (3) All provisions in this or any other Act referring to the trustee in bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.
- (4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

74. Duties of official receiver as regards debtor's conduct

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

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

75. Duties of official receiver as regards debtor's estate

- (1) As regards the estate of a debtor, it shall be the duty of the official receiver—
 - (a) on the making of a receiving order and prior to an order of adjudication, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;
 - (b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;
 - (c) to summon and preside at the first meeting of creditors;
 - (d) to issue forms of proxy for use at the meetings of creditors;
 - (e) to report to the creditors, save as in this Act otherwise provided, as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
 - (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, the adjudication order, and such other matters as it may be necessary to advertise;
 - (g) to act as trustee until a trustee be appointed and during any vacancy in the office of trustee.
- (2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

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

Part V – Trustees in bankruptcy

Official name

76. Official name of trustee

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

Appointment

77. Power to appoint joint or successive trustees

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

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

78. Proceedings in case of vacancy in office of trustee

- (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.
- (2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

79. Discretionary powers of trustee and control thereof

- (1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.
- (2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days:

Provided that the persons at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.
- (3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.
- (4) Subject to the provisions of this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

80. Appeal to court against trustee or official receiver

If the bankrupt or any creditor, or any other person, is aggrieved by any act or decision of the trustee or official receiver, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

81. Control of official receiver over trustees

- (1) The official receiver shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as may be deemed expedient.
- (2) The official receiver may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and may, if the official receiver thinks fit, apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

- (3) The official receiver may also direct an investigation to be made of the books and vouchers of the trustee and may employ an accountant for that purpose at the expense of the estate of the bankrupt:

Provided that where the court so orders such expense shall be paid by the trustee personally.

Remuneration and costs

82. Remuneration of trustee

- (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection.
- (2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the court that the remuneration is unnecessarily large, the court shall fix the amount of the remuneration.
- (3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or the creditors, in respect of any expenses which the remuneration is expressed to cover.
- (4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the court, approve.
- (5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any legal practitioner, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any legal practitioner or other person that may be employed about a bankruptcy.

83. Allowance and taxation of costs

- (1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.
- (2) Where the trustee is a legal practitioner, he may contract that the remuneration for his services as trustee shall include all professional services.
- (3) All bills and charges of legal practitioners, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer if the trustee, or the official receiver, or one-fourth in number or value of the creditors, shall, by notice served on the person delivering such bill or making such charge, so require, and no payment in respect thereof shall then be allowed in the trustee's accounts without proof of such taxation having been made. The prescribed officer shall satisfy himself before passing such bills and charges that the employment of such legal practitioners and other persons, in respect of the particular matters out of which such bills or charges arise, has been duly sanctioned, where so required by the provisions of this Act or by general rules. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.
- (4) Every such person shall, on being so required by the trustee, or by the official receiver, or by one-fourth in number or value of the creditors (which request shall be made a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after the receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any

claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, payments, accounts, audit

84. Trustee to furnish list of creditors

The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of fifteen fee units and the further sum of three fee units for every folio of seventy-two words in excess of five folios, together with the cost of the postage thereof.

[As amended by Act [No. 13 of 1994](#)]

85. Trustee to furnish statement of creditors

It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the court so direct.

86. Books to be kept by trustee

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

87. Annual statement of proceedings

- (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the official receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars and made out in the prescribed form.
- (2) The official receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

88. Trustee not to pay into private account

No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

89. Bankruptcy estates account

- (1) A Bankruptcy Estates Account shall be kept by the official receiver with a prescribed bank, and all moneys received by him in respect of proceedings under this Act shall be paid to that account.

- (2) Every trustee in bankruptcy shall, in such manner and at such times as the official receiver shall direct, pay the money received by him to the Bankruptcy Estates Account at the prescribed bank, and the official receiver shall furnish him with a certificate of receipt of the money so paid:

Provided that—

- (i) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or obtaining advances, or because of the probable amount of the cash balance, or if the committee satisfies the official receiver that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the official receiver shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select;
 - (ii) in any bankruptcy, composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the court may, if for special reasons it thinks fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the court may direct.
- (3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.
 - (4) If a trustee at any time retains for more than ten days a sum exceeding one hundred kwacha, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty *per centum per annum*, and shall have no claim to remuneration, and may be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

90. Investment of surplus funds

- (1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' estates, the official receiver may invest the excess of such cash balance or any part thereof by placing the same on deposit or in a savings account with the prescribed bank or on deposit in the Post Office Savings Bank and such deposit or savings account shall be held in the name of the official receiver for the credit of the Bankruptcy Estates Account.
- (2) Whenever any part of the money so invested is, in the opinion of the official receiver, required to answer any demands in respect of bankrupts' estates, the official receiver shall withdraw from deposit or from such savings account such sum as may be required and shall pay the same to the credit of the Bankruptcy Estates Account at the prescribed bank.
- (3) The interest on such deposit or savings account shall be transferred to the credit of the general revenues of the Republic, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

91. Audit of trustee's accounts

- (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the official receiver or as he may direct, an account of his receipts and payments as such trustee.
- (2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
- (3) The official receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the auditor with such vouchers and information as the auditor

may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

- (4) When any such account has been audited, one copy thereof shall be filed and kept by the official receiver, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Vacation of office by trustee

92. Release of trustee

- (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the official receiver shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the official receiver, shall take into consideration the report, and any objection which may be urged, by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.
- (2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.
- (3) An order of the official receiver releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.
- (5) Where, on the release of a trustee, the official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done, or default made, or liability incurred, by any prior trustee.

93. Office of trustee vacated by insolvency

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

94. Removal of trustee

- (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which fourteen days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.
- (2) If the official receiver is of opinion—
 - (a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Act; or
 - (b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or
 - (c) that he is, by reason of mental disorder or continued sickness or absence, incapable of performing his duties; or

- (d) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or

where in any other matter he has been removed from office on the ground of misconduct, the official receiver may remove the trustee from his office, subject nevertheless to an appeal to the court.

Part VI – Constitution, procedure and powers of court

Jurisdiction

95. Jurisdiction in bankruptcy

- (1) The court having jurisdiction in bankruptcy shall be the High Court.
- (2) Subject to general rules, all bankruptcy matters shall be entitled "In bankruptcy".

96. Judge may exercise his powers in chambers

Subject to the provisions of this Act and to general rules, a Judge of the court may exercise in chambers the whole or any part of his jurisdiction.

97. Jurisdiction in bankruptcy of registrar

- (1) The registrars of the court shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in exercise of the said powers and jurisdiction shall be deemed the order or act of the court.
- (2) Subject to general rules limiting the powers conferred by this section, a registrar shall have power—
- (a) to hear bankruptcy petitions, and to make receiving orders and adjudications thereon;
 - (b) to hold the public examination of debtors;
 - (c) to grant orders of discharge;
 - (d) to hear and determine an application to act as director, or to manage, or take part in the management of, any company, or of any trade or business with a person who is a relative by consanguinity or affinity or in which any such person has an interest;
 - (e) to approve compositions or schemes of arrangement;
 - (f) to make interim orders in cases of urgency;
 - (g) to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;
 - (h) to hear and determine any unopposed or *ex parte* application;
 - (i) to summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property;
 - (j) to grant certificates of removal of disqualifications.
- (3) A registrar shall not have power to commit for contempt of court.

98. General powers of bankruptcy courts

- (1) Subject to the provisions of this Act, the court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.
- (2) The court in the exercise of its jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act and by the Supreme Court of Zambia Act.

[Cap. 25]

- (3) Where default is made by a trustee, debtor or other person in obeying any order or direction given by the official receiver or any person lawfully acting on his behalf, the court may, on the application of the official receiver, order such defaulting trustee, debtor or person to comply with the order or directions so given; and the court may also, if it thinks fit upon any such application, make an immediate order for the committal of such defaulting trustee, debtor or other person:

Provided that the power given by this subsection shall be in addition to and not in substitution for any other right or remedy in respect of such default.

99. Power to make receiving order in lieu of committal order

Where application is made by a judgment creditor to the court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor; and in such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Act shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Appeals

100. Appeals in bankruptcy

- (1) The court may at any time review, rescind or vary any order made by it under its bankruptcy jurisdiction.
- (2) Orders of the court in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal, but no appeal shall be entertained except in conformity with such rules as may for the time being be in force in relation to the appeal.
- (3) Where by this Act an appeal to the court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Procedure

101. Discretionary powers of court

- (1) Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court.
- (2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

- (3) The court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.
- (4) Where by this Act, or by general rules, the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court may think fit to impose.
- (5) Subject to general rules under this Act, the court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or, out of Zambia, by commission.

102. Consolidation of petitions

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

103. Power to change carriage of proceedings

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

104. Continuance of proceedings on death of debtor

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

105. Power to stay proceedings

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

106. Power to present petition against one partner

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

107. Power to dismiss petition against some respondents only

Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

108. Property of partners to vest in same trustee

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

109. Actions by trustee and bankrupt's partners

Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by

such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

110. Actions on joint contracts

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

111. Proceedings in partnership name

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

Orders and warrants of court

112. Courts to be auxiliary to other Commonwealth courts

The court and all the officers thereof shall, in all matters of bankruptcy, act in aid of and be auxiliary to every court elsewhere in the Commonwealth having jurisdiction in bankruptcy or insolvency, and an order of the court seeking aid, with a request to this court, shall be deemed sufficient to enable this court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request or this court could exercise in regard to similar matters within their respective jurisdictions, save that to enable the official receiver of Zambia to act as the agent of an officer of a reciprocating court, or to enable an officer of this court to seek the aid of an official receiver of a reciprocating court, in the manner provided in Part IX, it shall not be necessary for this court, or any reciprocating court, to make any order, or send any request, under this section.

113. Commitment to prison

Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient.

Part VII – Supplemental provisions

Application of Act

114. Exclusion of companies

A receiving order shall not be made against any corporation or against any partnership or association or company registered under the Companies Act, or any enactment repealed by that Act.

[Cap. 388]

115. Limited partnerships

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

116. Privilege of parliament

If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

117. Small estates

Where a petition is presented by or against a debtor, if the court is satisfied by affidavit or otherwise, or the official receiver reports to the court, that the amount of the unsecured liabilities of the debtor is not likely to exceed in value four thousand kwacha, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

- (a) the appointment of a trustee shall be made only by special resolution of the creditors;
- (b) there shall be no public examination of the debtor unless the official receiver shall apply to the court that the debtor be publicly examined, or the court, on the application of a creditor, after hearing a report of the official receiver as to the assets and liabilities of the debtor and as to his conduct, shall so order;
- (c) such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the debtor;

Provided that if the creditors at any time resolve that a trustee be appointed in the bankruptcy, thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

118. Administration in bankruptcy of estate of person dying insolvent

- (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.
- (2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, if probate or letters of administration have been granted, the court may, in the prescribed manner, either before probate or letters of administration have been granted or afterwards, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.
- (3) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may, when satisfied that the estate is insufficient to pay its debts, transfer the proceedings to the court in the exercise of its jurisdiction in bankruptcy, and thereupon the last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.
- (4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver, as trustee thereof, and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Act:

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act, relating to trustees and committees of inspection, shall apply to trustees and committees of inspection appointed under the power so conferred.

- (5) With the modifications hereinafter mentioned, all the provisions of Part III (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general rules under subsection (11), the following provisions, namely section twenty-seven (which relates to inquiries as to the debtor's conduct, dealings and property); section eighty-three (which relates to the costs of trustees, managers and other persons); and section one hundred and seventeen (which relates to the summary administration of small estates); shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act, and subsection (1) of section thirty-eight shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.
- (6) In the administration of the property of a deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Act or any other law relating to the priority of other debts, be payable in full out of the debtor's estate, in priority to all other debts.
- (7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration, such surplus shall be paid over to the legal personal representative (if any) of the deceased debtor's estate, or dealt with in such other manner as the court may order.
- (8) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.
- (9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor; and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under subsection (11).
- (10) Unless the context otherwise requires, "creditor", in this section, means one or more creditors qualified to present a bankruptcy petition as in this Act provided.
- (11) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

General rules

119. Power to make general rules

The Chief Justice may, from time to time, by statutory instrument, make general rules for carrying into effect the objects of this Act; and may, from time to time, alter, amend, or revoke all or any of such general rules, as occasion may require.

Fees, remuneration and audit

120. Fees and percentages

The Chief Justice may prescribe a scale of fees and percentages to be charged in respect of proceedings under this Act; and may, by statutory instrument, make general rules, regulating the deposits payable

and by whom and in what manner such deposits, fees and percentages are to be collected and accounted for; and may, from time to time, vary, increase or diminish such fees and percentages and alter, amend or revoke all or any of such general rules, as occasion may require.

121. Remuneration

- (1) The Chief Justice, on the recommendation of the Remuneration Committee appointed pursuant to the Legal Practitioners Act, may prescribe and regulate, in such manner as he may think fit, the remuneration of legal practitioners in respect of business done under this Act; and may vary, increase or diminish such remuneration as he may think fit, on such recommendation as aforesaid.
- (2) The Chief Justice may prescribe whether any and what remuneration is to be allowed to any person (other than a public officer or a legal practitioner) performing any duties under this Act; and may vary, increase or diminish such remuneration, as he may think fit.

[Cap. 30]

122. Audit of accounts of official receiver

The accounts of the official receiver in connection with proceedings under this Act shall be audited in such manner as the Minister responsible for finance may direct; and, for such purpose, the official receiver shall make such returns and give such information as the auditor appointed by the said Minister for the purpose may require.

Evidence

123. Gazette to be evidence

- (1) A copy of the *Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.
- (2) The production of a copy of the *Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

124. Evidence of proceedings at meetings of creditors

- (1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.
- (2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

125. Evidence of proceedings in bankruptcy

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

126. Swearing of affidavits

Subject to general rules, any affidavit to be used in the court may be sworn before any person authorised to administer oaths in the High Court, or before any registrar in bankruptcy, or a magistrate, or, in the case of a person residing out of Zambia, before any person qualified to administer oaths in the country where

he resides (he being certified to be qualified as aforesaid by a Zambian diplomatic representative or other diplomatic representative acting for the Republic of Zambia, or by a notary public).

127. Death of debtor or witness

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

128. Certificate of appointment of trustee

A certificate of the official receiver that a person has been appointed trustee under this Act shall be conclusive evidence of his appointment.

129. Certificate of acts of official receiver

A certificate signed by the official receiver that any order made, certificate issued or act done, is the order, certificate or act of the official receiver shall be conclusive evidence of the fact so certified.

Miscellaneous

130. Computation of time

- (1) Where by this Act or general rules any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Saturday, Sunday, public holiday or any other day on which the offices of the court are wholly closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.
- (2) Where by this Act or general rules the time limited for doing any act or thing is less than six days, a Saturday, Sunday, public holiday or any other day on which the offices of the court are wholly closed shall be excluded in computing such time.
- (3) Where by this Act or general rules any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

131. Service of notices

All notices and documents for the service of which no special mode is directed shall be sufficiently served if sent by post to the last known address of the person to be served therewith.

132. Formal defects not to invalidate proceedings

- (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which no objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.
- (2) No defect or irregularity in the appointment or election of a receiver, special manager, trustee or member of a committee of inspection shall vitiate any act done by him in good faith.

133. ***

[Repealed by Act No. 17 of 1994]

134. Acting as corporations, partners, etc.

For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a mentally disordered person may act by his receiver.

135. Certain provisions to bind the state

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

Unclaimed dividends and indivisible balances

136. Unclaimed and undistributed dividends or funds

- (1) Where the trustee, under any bankruptcy, composition or scheme, pursuant to this Act or any enactment referred to in the Third Schedule, has in his hands or under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the prescribed bank; and the official receiver shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.
- (2) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or the official receiver or other person.
- (3) Where any unclaimed dividends or undistributed money have been paid into the Bankruptcy Estates Account in pursuance of this section or by the official receiver when acting as trustee, and have remained in that account for a period of not less than two years, the official receiver shall transfer such money to the credit of the general revenues of the Republic.
- (4) Any person claiming to be entitled to any money paid into the Bankruptcy Estates Account or the general revenues of the Republic pursuant to this section may apply to the official receiver for payment to him of the same, and the official receiver, if satisfied that the person claiming is so entitled, shall make payment to such person of the sum due; and if the money claimed has been paid to the credit of the general revenues of the Republic the Permanent Secretary, Ministry of Finance, shall direct that the same shall be paid, to the person so claiming, out of public funds, if the official receiver certifies that the person claiming is so entitled.
- (5) Any person dissatisfied with the decision of the official receiver in respect of his claim may appeal to the court.

137. Indivisible balances

- (1) Where the trustee, under any bankruptcy, composition or scheme, pursuant to this Act or any enactment referred to in the Third Schedule, has in his hands or under his control, after payment of all debts directed to be paid in priority in the distribution of the property of a bankrupt, any sum of money, not exceeding two hundred kwacha in amount, which is insufficient to pay a dividend of at least two and a half ngwee in the kwacha to creditors who have proved their debts, and it appears to him that retention of such money will needlessly protract the trusteeship, he may pay such money to the Bankruptcy Estates Account at the prescribed bank; and the official receiver shall furnish him

with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

- (2) The money to which subsection (1) relates and any money under the control of the official receiver acting as trustee which, after payment of all debts directed to be paid in priority in the distribution of the property of a bankrupt, does not exceed two hundred kwacha in amount and is insufficient to pay a dividend of at least two and a half ngwee in the kwacha to creditors who have proved their debts, shall continue to be an asset of the estate of the bankrupt, or the debtor, as the case may be, but if it shall appear to the official receiver that there will be no addition to such money from further money coming to the credit of the said estate, the official receiver may transfer such money to the credit of the general revenues of the Republic.
- (3) If further money shall come to the credit of the estate of the bankrupt, or the debtor, as the case may be, which, together with the moneys from such estate transferred to the credit of the general revenues of the Republic under the provisions of subsection (2), shall exceed two hundred kwacha or shall be sufficient to pay a dividend of at least two and a half ngwee in the kwacha to creditors who have proved their debts, the Permanent Secretary, Ministry of Finance, shall direct that such money so transferred be repaid into the Bankruptcy Estates Account for division between such creditors by way of dividend.

Part VIII – Bankruptcy offences

138. Fraudulent debtors

- (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of a misdemeanour:
 - (a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as he has disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud;
 - (b) if he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
 - (c) if he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
 - (d) if, after the presentation of a bankruptcy petition by or against him, or within two years next before such presentation, he conceals any part of his property to the value of twenty kwacha or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
 - (e) if, after the presentation of a bankruptcy petition by or against him, or within two years next before such presentation, he removes any part of his property to the value of twenty kwacha or upwards, unless he proves that he had no intent to defraud;
 - (f) if he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;
 - (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;
 - (h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

- (i) if, after the presentation of a bankruptcy petition by or against him, or within two years next before such presentation, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
 - (j) if, after the presentation of a bankruptcy petition by or against him, or within two years next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
 - (k) if, after the presentation of a bankruptcy petition by or against him, or within two years next before such presentation, he parts with, alters, or makes any omission in, or is privy to parting with, altering, or making any omission in, any document affecting or relating to his property or affairs, unless he proves that he had no intent to defraud;
 - (l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within two years next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
 - (m) if, within two years next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;
 - (n) if, within two years next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;
 - (o) if, within two years next before the presentation of a bankruptcy petition by or against him, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud;
 - (p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy;
 - (q) if he makes default in payment for the benefit of his creditors of any portion of salary, wages or other income in respect of the payment of which the court is authorised to make an order;
 - (r) if, within one year immediately preceding the date of the making of the receiving order, he has continued to trade or carry on business, after knowing himself to be insolvent;
 - (s) if, within six months before the making of a receiving order, he sells goods at a price lower than cost, unless he proves that he had no intent to defraud;
 - (t) if he has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it.
- (2) For the purposes of this section, "trustee" means the official receiver or trustee administering the debtor's estate for the benefit of his creditors.
- (3) Any person guilty of a misdemeanour under subsection (1) shall be liable on conviction to imprisonment for a term not exceeding three years, except in the cases mentioned respectively in paragraphs (m), (n) and (o) of such subsection when he shall be liable to imprisonment for a term not exceeding five years.

- (4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid, shall be guilty of a misdemeanour and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour.

139. Undischarged bankrupt obtaining credit

Where a person who has been adjudged bankrupt in Zambia or adjudged bankrupt or insolvent in any reciprocating country and has not obtained his discharge—

- (a) either alone or jointly with any other person obtains credit to the extent of twenty kwacha or upwards from any person without informing that person that he is an undischarged bankrupt; or
- (b) engages in any trade or business under a name other than that under which he was adjudged bankrupt or insolvent without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudged bankrupt or insolvent;

he shall be guilty of a misdemeanour.

140. Frauds by bankrupts, etc.

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

he shall be guilty of a misdemeanour.

- (2) For the purpose of paragraph (b) of subsection (1), it is hereby declared that if any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property he shall be deemed to have made a transfer of or charge on, his property.

141. Bankrupt guilty of gambling, etc.

Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of a misdemeanour, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business—

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

date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

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

142. Bankrupt failing to keep proper accounts

- (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of a misdemeanour, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

- (2) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit and explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stock-takings, and accounts of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, except that it shall not be necessary to record the name and address of each customer and the article sold in the case of goods sold by way of retail trade to the actual consumer for cash at a price not lower than cost.

143. Bankrupt absconding with property

If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him or within six months before such presentation, quits Zambia and takes with him, or attempts or makes preparations to quit Zambia and take with him, any part of his property to the amount of forty kwacha or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of felony.

144. False claim, etc.

If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be guilty of a misdemeanour unless he proves that he had no intent to defraud.

145. Criminal liability after discharge or composition

Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved or that the adjudication of bankruptcy has been annulled.

146. General penalty

A person guilty of an offence declared to be a felony or misdemeanour under this act in respect of which no special penalty is imposed by this act shall be liable on conviction to imprisonment for a term not exceeding two years.

147. Form of charge

In a charge for an offence under this Act it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant or document of, the court acting under this Act or any enactment referred to in the Third Schedule.

148. Evidence as to frauds by directors and officers of corporations or companies

A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any of the felonies referred to in sections three hundred and twenty-four and three hundred and twenty-five of the Penal Code.

[Cap. 87]

Part IX – Provisions for reciprocity with other countries**149. Declaration of reciprocating countries and courts**

Where the Attorney-General is satisfied that the legislature of any other country has enacted provisions for reciprocity in bankruptcy which in that country have the like effect as the provisions contained in this Part, he may, by statutory order, declare such country to be a reciprocating country, and the court thereof having jurisdiction in bankruptcy a reciprocating court for the purposes of this Act, and the provisions of this Part shall then apply to all bankruptcy proceedings subsequently instituted in the declared country against a debtor having property in Zambia.

150. Effect of receiving order, etc., made by reciprocating court against debtor with property in Zambia

Where a receiving order or order of adjudication or any appointment of a special manager or interim receiver has been made in any reciprocating country in bankruptcy proceedings against a debtor having property in Zambia, such order or appointment shall, subject to the other provisions of this Part, have the like effect as if it had been made in bankruptcy proceedings against the debtor in Zambia, and the debtor and his creditors shall be deemed to be in the same position and have the same rights and privileges, and be subject to the same disqualifications, restrictions, obligations and liabilities, in every respect as if such order or appointment had been made under this Act.

151. Vesting of bankrupt's property in trustee appointed in reciprocating country

Where an order of adjudication is made by a reciprocating court, the property of the bankrupt situated in Zambia shall, by virtue of such order, vest in the person from time to time discharging the office of trustee of the property of the bankrupt in the reciprocating country, in the same manner as if the order of adjudication and the appointment of trustee had been made in Zambia, and the superintendence of such trustee shall continue to be exercised by the committee of inspection appointed in the reciprocating country or, if there be no such committee, by the reciprocating court.

152. Powers of official receiver, etc., appointed in reciprocating country

The official receiver, interim receiver, special manager or trustee of a reciprocating country officiating in bankruptcy proceedings against a debtor having property in Zambia shall, subject to the control of the court by which he is appointed, be solely responsible for conducting those proceedings, and managing the affairs of the debtor or bankrupt within Zambia, and for such purposes shall, each in his respective capacity, have the same powers, rights, duties, obligations and liabilities as if he had derived his authority

under this Act, and in any such proceedings where by this Act a debtor, creditor or other person interested is required to do any act at the direction of the official receiver, interim receiver, special manager or trustee, or is permitted by this Act to move in any matter in connection with such proceedings, every such debtor, creditor or person interested shall do such act at the direction of, and in all such matters treat and negotiate with or proceed against, the official receiver, interim receiver, special manager or trustee, as the case may be, of the reciprocating country, except in so far as any such official may have delegated his authority to the official receiver of Zambia as his agent in the manner hereinafter provided.

153. Official receiver to act as agent of official receiver etc., of reciprocating country

Every official receiver, interim receiver, special manager or trustee of or appointed in a reciprocating country officiating in bankruptcy proceedings against a debtor having property in Zambia may require the official receiver of Zambia to act as his agent either in regard to any specific matter, or generally to take all such steps as may be lawful under this Act, for the discovery, seizure, protection, disclaimer or realisation of any property of the bankrupt situated within Zambia, and in such event it shall be the duty of the official receiver of Zambia to act accordingly.

154. Mode of requesting official receiver to act as agent

- (1) Every request to act as agent as aforesaid shall be made in the manner prescribed under this Act, and shall be gazetted, and as from the date of such request and without further formality or authority the official receiver shall, as regards the debtor or bankrupt and his property and creditors situated in Zambia and for the purposes for which he is authorised, have the same rights, powers and duties as are conferred under the provisions of this Act upon the official receiver, interim receiver, special manager or trustee, as the case may be:

Provided that nothing herein contained shall confer on the official receiver any interest or title in any such property otherwise than as an agent as aforesaid.

- (2) On the receipt of the prescribed request, the official receiver shall file with the registrar of the court the original, or a properly authenticated copy, of the request, and upon such filing the court shall take judicial notice of the appointment as agent under the provisions of this Part.
- (3) Notwithstanding the provisions of subsection (1), the official receiver may, in any case in which it is made to appear to him that immediate action is desirable, commence discharging his duties as agent as aforesaid in any manner applicable to the circumstances, if upon receipt of a telegraphic or other information he is satisfied that—
 - (a) bankruptcy proceedings have been instituted in a reciprocating country against a debtor having property in Zambia; and
 - (b) the prescribed request for him to act has been signed and despatched; and
 - (c) he has been indemnified against all costs, charges and expenses to be incurred by him.
- (4) Unless the contrary intention appears, every request to act as agent sent to the official receiver of Zambia shall be deemed to permit him to delegate at his discretion the powers and duties vested in him as such agent to any deputy or assistant official receiver appointed in pursuance of this Act.

155. Duties of official receiver acting as agent

It shall be the duty of the official receiver of Zambia to remit the proceeds of the realisation of the property of the bankrupt, and all other money of the estate coming into his hands as such agent as aforesaid, to the person for whom he is acting, or as such person may direct, after deducting such expenses as may have been properly incurred by him; and the distribution among the creditors of all such money shall be carried out in accordance with the law of the reciprocating country in which the adjudication order was made:

Provided that the provisions of this section shall not be in derogation of any law.

156. Transmission of proofs of debt

Where a receiving order or an order of adjudication has been made in a reciprocating country and the official receiver in Zambia is acting as agent in the manner hereinbefore provided, proofs of debts contracted by the debtor in Zambia may be filed with the official receiver of Zambia in the form prescribed by the law of such reciprocating country, and in every such case it shall be his duty to receive, deal with and forward, in the manner prescribed by rules made under this Part, such proofs to the official receiver or trustee, as the case may be, in such reciprocating country.

157. Power of court to make orders under sections 11 and 25

If, on the application of the official receiver or any creditor or other person interested, it appears to the court that bankruptcy proceedings have been instituted in a reciprocating court against a debtor having property situated in Zambia, the court may, notwithstanding that no such proceedings have been instituted in Zambia, exercise as regards the person, property and affairs of the debtor all the powers conferred by sections eleven and twenty-five as may in the circumstances be applicable.

158. Enforcement of warrants of reciprocating court

Any order, warrant or search warrant made or issued by a reciprocating court shall be enforced by the court in Zambia in the same manner in all respects as if such order, warrant or search warrant had been made or issued by itself.

159. Limitation on powers of court to entertain proceedings

Subject to the other provisions of this section, a reciprocating court shall have sole jurisdiction in all matters in or arising out of any bankruptcy proceedings taken before such court against a debtor having property in Zambia, and no court in Zambia shall entertain any suit, application or other matter arising in or out of such proceedings, except—

- (a) upon the institution of any proceedings by or against the official receiver of Zambia in respect of any matters within the scope of his authority in the capacity of agent as aforesaid;
- (b) in the case of any civil suit or proceedings within the ordinary civil jurisdiction of such court by or against the official receiver, interim receiver, trustee or special manager of or appointed in a reciprocating country;
- (c) upon the institution of any proceedings affecting the property of the debtor or bankrupt situated in Zambia;
- (d) upon the receipt of a request to act in aid of or be auxiliary to such reciprocating court;
- (e) for the public examination of the debtor in regard only to his property situated within Zambia or his dealings with any person ordinarily resident or carrying on business in Zambia:

Provided that such public examination shall not be held until the public examination before the reciprocating court shall have been concluded or adjourned *sine die*;
- (f) for the exercise of powers under Part VIII in relation only to bankruptcy offences alleged to have been committed within Zambia;
- (g) upon the institution of any proceedings for or arising out of the enforcement or execution of any order, warrant or search warrant made or issued by a reciprocating court; or
- (h) upon an application for the exercise of the powers conferred on the court by sections eleven, twenty-five, twenty-six and fifty-four.

160. Concurrent bankruptcies

- (1) For the purposes of this section, "concurrent bankruptcy proceedings" means bankruptcy or insolvency proceedings instituted concurrently against the same debtor in any two or more reciprocating countries, one of which may or may not be Zambia.
- (2) Where concurrent bankruptcy proceedings have been instituted affecting property in Zambia, all such property shall vest in the trustee appointed in the country where the order of adjudication first is made; but if two or more such orders bear the same date or if for any reason no such adjudication order is made, then such property shall vest in or be administered by the trustee or receiver of the country where the receiving order first is made.
- (3) In any case where concurrent bankruptcy proceedings have been instituted in Zambia and, in pursuance of subsections (2) and (4), the property of the debtor or bankrupt situated in Zambia vests in or is administered by a trustee or receiver in a reciprocating country, the court shall rescind its receiving order and annul its order of adjudication, if made, or dismiss the petition upon such terms, if any, as the court may think fit; but the rescission of a receiving order or an annulment of adjudication under this subsection shall not invalidate any acts lawfully done by the receiver or trustee of Zambia or any other person lawfully acting under the authority of either of them.
- (4) Notwithstanding the other provisions of this section, in any case where concurrent bankruptcy proceedings have been instituted in Zambia, the court may, after such inquiry and reference to such reciprocating courts as it deems fit, order that the property of the debtor situated in Zambia shall vest in or be administered by a trustee or receiver in Zambia or in some reciprocating country other than that determined under the provisions of subsection (2) if, upon an application by the official receiver or any creditor or other person interested it appears that a majority of the creditors in number and in value are resident in Zambia, or such other reciprocating country, and that from the situation of the property of the debtor or bankrupt or other causes his estate and effects may be more conveniently administered, managed and distributed in Zambia or such other reciprocating country.

161. Power of official receiver, etc. to require official receiver in reciprocating country to act as his agent

- (1) Where a receiving order or an order of adjudication is made in Zambia against a debtor or bankrupt having property situated in a reciprocating country and where, under the provisions of this Act, the property of the debtor or bankrupt is administered by or vested in the official receiver, or a trustee, of or appointed in Zambia, it shall be the duty of the official receiver or such trustee and any interim receiver or special manager appointed in pursuance of this Act to take all such steps as may be lawful in any reciprocating country for the proper administration of any property of the debtor or bankrupt situated in such country, and at his discretion and without further authority to request in the prescribed manner any bankruptcy official in such country empowered in that behalf to act as his agent either generally or for any specific purpose, and to give such directions and to publish such notices and to do all such things in the reciprocating country as may be lawful for the administration of the estate.
- (2) Unless for any reason the contrary intention is expressed, every request sent to a bankruptcy official in a reciprocating country requiring him to act as an agent as aforesaid shall contain a consent that he may assign the powers and duties vested in him as such agent to his deputy or any officer ordinarily authorised to act for him in the reciprocating country.
- (3) Where, in any proceedings mentioned in subsection (1), the official receiver, interim receiver, special manager or trustee has completed and despatched to a reciprocating country a request to a bankruptcy official therein to act as his agent as aforesaid, and where the circumstances of the case so require, he may request such bankruptcy official in the reciprocating country by telegram or otherwise to act as agent until such time as the prescribed request arrives in the ordinary course of post, provided that he undertakes to indemnify such bankruptcy official against any costs, charges and expenses which the latter may incur in acting as such agent as aforesaid.

162. Power to make rules under Part IX

- (1) The Chief Justice may, by statutory instrument, make rules for the purpose of carrying into effect all or any of the objects of this Part, and, in addition and for such purpose, shall have power to make rules extending or varying the time limited under this Act or any general rules made under section one hundred and nineteen, for the doing of any act or taking any proceeding, in so far as such limitation of time affects persons ordinarily resident or carrying on business in a reciprocating country who are or may be interested in any bankruptcy proceedings in Zambia against a debtor having property in such reciprocating country:

Provided that no rules made under the powers conferred by this subsection shall come into force until the Chief Justice, by statutory notice, declares himself satisfied that the rule-making authorities in reciprocating countries have made rules having the like effect within their respective countries.

- (2) Notwithstanding the provisions of subsection (1), the Court may in respect of any particular matter exercise its general powers of extension of time under subsection (4) of section one hundred and one in favour of a person ordinarily residing or carrying on business in a reciprocating country who is interested in bankruptcy proceedings instituted in Zambia against a debtor having property in such reciprocating country.

Part X – Repeals

163. Repeals and savings

- (1) The British Acts set forth in the Third Schedule are hereby repealed in so far as they apply to Zambia.
- (2) This Act shall apply to proceedings commenced under any enactment referred to in the Third Schedule and pending at the commencement of this Act, as if commenced under this Act.
- (3) The provisions of this Act shall apply to, and in respect of, the property of a debtor against whom a receiving order has been made, or who has been adjudged bankrupt, under any enactment referred to in the Third Schedule, and to, and in respect of, such debtor, as if such receiving order had been made, or such debtor had been adjudged bankrupt, under the provisions of this Act:

Provided that—

- (i) no person shall be prosecuted for an offence committed before the commencement of this Act unless such offence was a misdemeanour or felony under any enactment referred to in the Third Schedule;
 - (ii) in the distribution of the property of any such debtor no creditor shall receive a lesser payment than he would have received if this Act had not been passed; but, notwithstanding the provisions of this proviso, section one hundred and thirty-seven shall be deemed always to have been in force.
- (4) Until revoked or altered under the provisions of this Act, any fees prescribed and any general rules and orders made under the High Court Act and the Bankruptcy Act, 1914, of the United Kingdom, which are in force at the commencement of this Act, shall continue in force, so far as the same remain applicable, and shall have effect as if made under this Act.

[Cap. 27]

First Schedule (Section 15(2))

Meetings of creditors

First meeting of creditors

1. The official receiver shall summon the first meeting of creditors as soon as may be convenient after the date of the receiving order by giving not less than two clear days' notice of the time and place thereof in the *Gazette*.
2. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, but the proceedings at the first meeting shall not be invalidated by reason of any such notice not having been sent or received before the meeting.
3. The meeting shall be held at such place as is, in the opinion of the official receiver, most convenient for the majority of the creditors.

Subsequent meetings of creditors

4. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this act.
5. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

Provisions applicable to all meetings of creditors

6. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. the chairman at subsequent meetings shall be such person as the meeting shall by resolution appoint.
7. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors, unless he has duly proved a debt provable in the bankruptcy to be due to him from the debtor, and the proof has been duly lodged with the official receiver or trustee at least one clear day before the time appointed for the meeting or lodged with the chairman at such meeting prior to the proof being used for the purpose of voting.
8. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.
9. For the purposes of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. if he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.
10. A creditor shall not vote in respect of any debt on, or secured by, a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.
11. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty *per centum*:

Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty *per centum* shall not be made if the trustee requires the security to be given up.

12. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.
13. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. if he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.
14. A creditor may vote either in person or by proxy.
15. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or after the appointment of a trustee, by the trustee.
16. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.
17. A creditor may give a general proxy to any person or persons. a proxy given to more than one person may be exercised by any one of them and a proxy given to persons by a firm name may be exercised by any one of the partners of that firm or by any employee thereof authorised by a partner in that behalf.
18. A creditor may give a special proxy to any person or persons to vote at any specified meeting or adjournment thereof on all or any of the following matters:
 - (a) for or against any specific proposal for a composition or scheme of arrangement;
 - (b) for or against the appointment of any specified person as trustee subject or not to any specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection;
 - (c) on all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof.

A special proxy given to more than one person or to persons by a firm name may be exercised as prescribed by rule 17.

19. A proxy shall not be used unless it is deposited with the official receiver or trustee at least one resolution affecting the remuneration or conduct of the trustee.

[Please note: paragraphs omitted in the original.]

Second Schedule (Section 35)

Proof of debts

Proof in ordinary cases

1. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.
2. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. if made by a person so authorised, it shall state his authority and means of knowledge.

3. The affidavit shall contain, or refer to, a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. the official receiver or trustee may at any time call for the production of the vouchers.
4. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors, unless the court on application is satisfied that the omission has arisen from inadvertence, and in that case the court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the court may consider to be just.
5. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.
6. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at or before the first meeting, and at all other reasonable times.
7. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five *per centum* on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured creditors

8. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.
9. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.
10. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.
11.
 - (1) Where the security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.
 - (2) If the trustee is dissatisfied with the value at which the security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction, the creditor or the trustee on behalf of the estate, may bid or purchase.
 - (3) The creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.
12. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the court that the valuation and proof were made *bona fide* on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.
13. Where a valuation has been amended in accordance with rule 12, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of

- any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.
14. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 11, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.
 15. If a secured creditor does not comply with the foregoing rules, he shall be excluded from a share in any dividend.
 16. Subject to the provisions of rule 11, a creditor shall in no case receive more than one hundred ngwee in the kwacha.

Proof in respect of distinct contracts

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

Periodical payments

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

Interest

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

Debt payable at a future time

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

Admission or rejection of proofs

21. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. if he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.
22. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.
23. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision.
24. The court may also expunge or reduce a proof upon the application of a creditor, or the debtor, if the trustee declines to interfere in the matter.

Miscellaneous

25. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.
26. The official receiver, when no trustee has been appointed or during any vacancy in the office of trustee, shall have all the powers of a trustee with respect to the examination, admission and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

Third Schedule (Section 163)

Enactments repealed

The Bankruptcy Act, 1914, of the United Kingdom.

The Bankruptcy (Amendment) Act, 1926, of the United Kingdom.