

ACT

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THE BANKRUPTCY ACT, 2009

ARRANGEMENT OF SECTIONS

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SIGNED this 14th day of August, 2009

DR. ERNEST BAI KOROMA,
President.



No. 7



2009

Sierra Leone

The Bankruptcy Act, 2009.

Short title.

Being an Act to provide for declaring as bankrupt any person who cannot pay his debts of a specified amount and to disqualify him from holding certain elective and public offices or from practising any regulated profession and for other related matters.

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation. 1. In this Act unless the context otherwise requires -

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

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

“debtor,” unless the context otherwise implies, includes any person, whether a Sierra Leonean or not, who at the time when any act of bankruptcy was done or suffered by him-

- (a) was personally present in Sierra Leone;
- (b) ordinarily resided or had a place of residence in Sierra Leone or was carrying on business in Sierra Leone personally or by an agent or manager; or
- (c) was a member of a firm or partnership which carried on business in Sierra Leone;

“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;

“provable debt” includes any debt or liability made by this Act to be provable in bankruptcy;

“property” includes money, goods, things-in-action and every description of property, whether real or personal and whether situated in Sierra Leone or elsewhere, obligations, easements and every description of estate, interest or contingent, arising out of or incidental to property;

“Registrar” means the Registrar of the court;

“secured creditor” means a person holding a mortgage, charge or lien on the property of the debtor or any parts of the property which is valid against creditors as a security for debt due to him from the debtor, and includes a judgement creditor;

“special resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present;

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

PART II—PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Acts of bankruptcy

2. A debtor commits an act of bankruptcy in each of the following cases:— Acts of bankruptcy.

- (a) if in Sierra Leone 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 Sierra Leone or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part of the property;
- (c) if in Sierra Leone or elsewhere he makes any conveyance or transfer of his property or any part of it, or creates any charge on it, which would under this Act or any other enactment 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 Sierra Leone, or being out of Sierra Leone remains out of Sierra Leone, or departs from his dwelling house, or otherwise absents himself;

- (e) if execution against him has been levied by seizure of his goods under process in an action, or proceedings in the court, and the goods have either been sold or held by the bailiff for twenty-one days,

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

- (f) if he files in a 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 judgement or final order against him for any amount; and
 - (i) execution not having been stayed, has a bankruptcy notice served on him, and does not, within fourteen days after service of the notice, comply with the requirements of the notice or satisfy the court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount of the judgement debt or sum ordered to be paid, and
 - (ii) which he could not set up in the action in which the judgement was obtained or the proceedings in which the order was obtained,

and for the purposes of this paragraph and of section 5, any person who is for the time being entitled to enforce a final judgement or final order shall be deemed to be a creditor who has obtained a final judgement 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, pay his debts or presents a bankruptcy petition against himself.

3. (1) A bankruptcy notice shall-

Bankruptcy notices.

- (a) be issued in the prescribed form and shall require the debtor to pay the judgement debt or sum ordered to be paid in accordance with the terms of the judgement or order, or to secure or compound for it to the satisfaction of the creditor or the court;
- (b) state the consequences of non-compliance with the notice, and
- (c) be served in the prescribed manner.

(2) A bankruptcy notice –

- (a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;
- (b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such statement;

but if the debtor does not give the 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 compliance with the notice had the actual amount due been correctly specified in it.

Jurisdiction to make receiving order.

4. Subject to the conditions specified in this Act, 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.

Conditions on which creditor may petition.

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

- (a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, is not less than Le5,000,000;
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time;
- (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 ordinarily resident in Sierra Leone, or within a year before the date of presentation of the petition, has ordinarily resided or had a dwelling house or place of business in Sierra Leone, or has carried on business in Sierra Leone, personally or by means of an agent or manager, or within that period has been a member of a firm or partnership of persons which has carried on business in Sierra Leone by means of a partner or partners or an agent or manager.

(2) If the petitioning creditor is a secured creditor he shall 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.

6. The following provisions shall have effect in the case of a firm carrying on business in Sierra Leone:-

Liability of firm to have receiving order made against it.

- (a) a creditor of the firm shall be entitled to present a bankruptcy petition against the firm, and a receiving order may be made against the firm in respect of an act of bankruptcy committed in reference to the business of the firm by any partner of the firm or by any person having control or management of the business of the firm;
- (b) an act of bankruptcy shall be deemed to be committed in reference to the business of the firm in all cases in which the act relates to the property or creditors of the firm and would be an act of bankruptcy by such partner or person if it related to his property or creditors;
- (c) it shall be sufficient that a receiving order against the firm be made in the firm's name, without mentioning the names of the partners, and the receiving order shall affect the joint and separate property of all the partners;
- (d) the right of a creditor to present a bankruptcy petition against the firm, and the jurisdiction of the court to make a receiving order or an adjudication of bankruptcy against the firm, shall not be affected by the fact, if it is so, that all or any of the partners of the firm are not citizens of Sierra Leone or are not resident in Sierra Leone.

Power of official receiver and duties of debtor on petition being filed.

7. (1) Immediately on the filing of any petition the official receiver may, in case he has reason to believe that any offence under this Act or any fraud has been or is about to be committed, by notice delivered to the debtor in person or by ordinary post, summon the debtor to attend before him to give such information as he requires and may, either by himself, or his agent authorised by him in writing, enter any premises occupied by the debtor between the hours of 8 a.m. and 6 p.m. for the purpose of inspecting his property, stock-in-trade and books of account.

(2) It shall be the duty of the debtor to furnish the official receiver with all such information as it is in the debtor's power to give or to obtain.

(3) If the debtor –

- (a) fails without reasonable cause to attend on the official receiver or to furnish him with such information;
- (b) obstructs the search of the premises or the production of any book or document required in connection with the search; or
- (c) authorises or permits any obstruction, the debtor commits an offence and is liable on conviction to imprisonment for a term not exceeding six months.

Creditor's petition and order on it.

8. (1) A creditor's petition shall –

- (a) be verified by affidavit of the creditor or of some person having knowledge of the facts on his behalf; and
- (b) be served in the same manner as a writ of summons unless some other manner of service is prescribed.

(2) At the hearing of a creditor's petition, the court shall require proof of –

- (a) the debt of the petitioning creditor;
- (b) the service of the petition; and
- (c) the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, any 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 considers 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 judgement debt or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgement or order.

(5) 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 until such time as may be required for trial of the question relating to the debt.

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

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

Debtor's
petition and
order on it.

9. (1) A debtor's petition shall state 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 then make a receiving order:

Provided that it shall be lawful for the court in its discretion to refuse the order if the court considers for sufficient cause that no order ought to be made.

(2) In this section "sufficient cause" includes-

- (a) the non-attendance of the debtor, or in the case of a firm, of at least one of the partners thereof, on the hearing of the petition;
- (b) the absence of a material book of account, of any fraud or misconduct not amounting to fraud by the debtor in relation to his affairs, or
- (c) in the case of a firm or person carrying on business under a foreign firm name, the non-production of the partnership book or of the receipt used in connection with the business.

(3) A debtor's petition shall not, after presentation be withdrawn without the leave of the court.

Appearance
of official
receiver on
petition.

10. On the hearing of any creditor's or debtor's petition, it shall be lawful for the official receiver to appear and to call, examine and cross-examine any witness and, if he so thinks fit, to support or oppose the making of a receiving order.

Effect of
receiving
order.

11. (1) On the making of a receiving order, the official receiver shall then be 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 does 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.

12. 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 of the property, and direct him to take immediate possession of the property or any part of the property.

Power to
appoint
interim
receiver.

13. (1) The court may, at any time after the presentation of a bankruptcy petition either 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 it to continue on such terms as it may think just.

Power to stay
action
pending
proceedings.

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

(3) Without prejudice to subsection (1), if the court orders the release of any debtor who is under execution for a civil debt, it may impose such condition as it thinks fit, and in particular it may require as a condition of such release that the debtor finds security to attend in the subsequent bankruptcy proceedings and to abide by all orders of the court relating to the proceedings.

Power to appoint special manager.

14. (1) The court may, on the application of the official receiver or of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require order the appointment of a special manager to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as may be determined by the court.

Advertisement of receiving order.

15. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local newspaper in the prescribed manner.

Proceedings consequent on order

First and other meetings of creditors.

16. (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, or whether it is expedient that the debtor is adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) The Attorney-General shall prescribe rules for the summoning of and proceedings of the first and other meetings of creditors.

Debtor's statement

Debtor's statement of affairs.

17. (1) Where a receiving order is made against a debtor, he shall prepare and submit to the official receiver a statement of and in relation to his affairs in the prescribed form verified by affidavit-

- (a) showing the particulars of the debtor's assets, debts and liabilities, whether in Sierra Leone or elsewhere;
- (b) showing the securities held by them respectively, and the dates when the securities were respectively given;
- (c) giving such further or other information as may be prescribed or as the official receiver may require; and
- (d) giving details of all property held by him in his name or under any alias, or by the spouse or children, or by any person in trust for him or them, with full particulars as to the manner and date of it being acquired.

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

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

but the court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, he may be punished for contempt of court, and the court may, on the application of the official receiver or of any creditor, adjudge him bankrupt.

(4) Any person stating himself to be a creditor of the bankrupt may, on the payment of the prescribed fee, personally or by his agent inspect the statement at all reasonable times and take any copy of it or extract from it, 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

Public examination of debtor.

18. (1) Where the court makes a receiving order, it may, unless otherwise provided in this Act, hold a public sitting, on a day appointed by the court, for the examination of the debtor; and the debtor shall attend the sitting and shall be examined as to his conduct, dealings and property.

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

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

(4) Any creditor who has tendered proof, or his representative authorised in writing, may question the debtor concerning his affairs and the cause of his failure.

(5) The official receiver shall take part in the examination of the debtor and a legal practitioner shall be allowed to take part in the examination of a debtor or appear on his behalf at the examination.

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

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

(8) The debtor shall be examined on oath and he shall answer all such questions as the court may put or allow to be put to him.

(9) The testimony of a debtor is not admissible as evidence in criminal proceedings against him except on a charge of perjury in relation to that testimony

(10) Such notes of the examination as the court thinks proper shall be taken down either in shorthand or longhand and they or the transcript shall be read over either to or by, the debtor and

signed by him and may after that, unless otherwise provided in this Act, be used in evidence against him; the notes shall also be open to the inspection of any creditor at all reasonable times upon payment of the prescribed fee.

(11) Where 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 such order shall not be made until after the day appointed for the first meeting of creditors.

Composition and schemes of arrangement

19. (1) Where a debtor 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, within seven days of submitting his statement of affairs or within such time after that as the official receiver may fix, 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.

Composition and schemes of arrangement.

(2) Pursuant to subsection (1), the official receiver shall hold a meeting of creditors before any public examination of the debtor is concluded, and send to each creditor before the meeting, a copy of the debtor's proposal with a report on it; and if at the meeting a majority in number and not less than 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 addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

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

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

(7) For the purpose of approving a composition or scheme by joint debtors the court may, if it thinks fit and on the report of the official receiver that it is expedient to do so, dispense with any public examination of any of the joint debtors if any one of them is prevented from attending the examination by illness, absence from Sierra Leone or other sufficient cause but one at least of such joint debtors shall be publicly examined.

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

(9) If the court is of the 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.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge where he is adjudged bankrupt, the court shall refuse to approve the proposal unless he provides reasonable security for the payment of not less than twenty-five *per cent* on all the unsecured debts provable against the debtor's estate.

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

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

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

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

(15) The provisions of a composition or scheme under this 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 contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court on satisfactory evidence that the composition or scheme cannot, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme.

(17) Where a debtor is adjudged bankrupt under subsection (16), any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(18) 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, then Part V shall apply as if the trustee were a trustee in bankruptcy and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" included

respectively a composition or scheme of arrangement, a compounding or arranging of a debtor and an order approving the composition or scheme.

(19) Part II shall, so far as the nature of the case and the terms of the composition or scheme admit, apply to it and the same interpretation shall be given to the words “trustee” “bankruptcy” “bankrupt” and “order of adjudication” as in subsection (18).

(20) 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.

(21) 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 if the debtor had been adjudged bankrupt.

Effect of composition or scheme.

20. 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 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

Adjudication of bankruptcy where composition not accepted or not approved.

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

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the date of the adjudication and the name of the trustee, shall be gazetted and shall be advertised in at least two newspapers, or as may be prescribed, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

22. (1) Where a debtor is adjudged bankrupt or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution appoint the official receiver or some other 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; but a person shall not be deemed not fit to act as the 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 negligence of duty.

Appointment of trustee.

(2) The person appointed shall, unless he is the official receiver, give such security as the court may direct or as may be prescribed, and the court, if satisfied with the security, shall certify under the hand of the Registrar that his appointment has been duly made, unless the appointment is disapproved by the court 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 interest of the creditors generally.

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

(4) When a debtor is adjudged bankrupt after the first meeting of creditors has been held and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee; and if no trustee is then appointed by the creditors the court shall, on the application of the official receiver appoint the official receiver or some other fit person to be trustee.

Committee of inspection.

23. (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.

(2) The committee of inspection shall consist of not more than five or less than three persons possessing one or other of the following qualifications:-

- (a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor; but no creditor or holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of a 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; but no person shall be qualified to act as a member of the committee of inspection until he holds 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 it may 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 of inspection may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

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

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

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

(8) On a vacancy occurring in the office of a member of the committee of inspection, 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 to fill the vacancy.

(9) The continuing members of the committee of inspection, provided there is not less than three such continuing members, may act notwithstanding any vacancy 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 is no committee of inspection, any act or thing or any direction or permission authorised by this Act or required to be done or given by the committee may be done or given by the court on the application of the trustee.

24. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and not less than two-thirds in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

Power to accept composition or scheme after adjudication.

(2) If the court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt 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.

(3) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt and 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.

(4) Where a debtor is adjudged bankrupt under subsection (3), all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in bankruptcy.

Control over person and property of debtor

Duties of debtor as to discovery and realisation of property.

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

(2) Every debtor referred to in subsection (1) shall-

- (a) give an inventory of his property, a list of his creditors and debtors and of the debts due to and from them respectively;
- (b) submit to such examination in respect of his property or his creditors;
- (c) attend such other meetings of his creditors;
- (d) wait as such times on the official receiver, special manager or trustee:

(e) execute such powers of attorney, conveyances, deeds and instruments; and

(f) 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 provided by this Act or be prescribed or be directed by the Court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the official receiver, special manager, trustee or any creditor or person interested.

(3) Every debtor shall if adjudged bankrupt, aid to the utmost of his power 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 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 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.

26. (1) The court may, by warrant addressed to any person or persons named in it, cause a debtor to be arrested, and any books, papers, money and goods in his possession or under his control or relating to his affairs 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: -

Arrest of debtor under certain 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 cause for believing that he has absconded,

or is about to abscond, with a view to avoiding payment of the debt in respect of the bankruptcy petition, or of avoiding appearance to the 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 dispose of or remove his goods with a view to 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 Le1,000,000 or the aggregate of Le1,000,000 in any one period of thirty days 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: or
- (e) if there is probable cause for believing that he has committed an offence under this Act.

(2) 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 the bankruptcy notice.

(3) 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.

27. Where a receiving order is made against a debtor the court, on the *ex parte* application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit all mail 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 competent authorities to the official receiver or the trustee or otherwise as the court directs.

Re-direction of debtor's mail.

28. (1) The court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it, the debtor or 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 think capable of giving information respecting the debtor, his dealing or property, and the court may require that person to produce any documents in his custody or power relating to the debtor, his dealings or property.

Inquiry as to debtor's conduct, dealings and 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 the document, 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, by itself or by a commissioner for oaths appointed for the purpose, 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.

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

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

(6) The court may, if it thinks fit, order that any person who if in Sierra Leone would be liable to be brought before it under this section be examined in any place out of Sierra Leone by a commissioner for oaths appointed for the purpose.

Discharge of
bankrupt.

29. (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 any public examination of the bankrupt is concluded.

(2) When the bankrupt does not of his own accord, within such time as the court may think reasonable, apply for his discharge, the court, may, of its own motion or on the application of the official receiver or the trustee or any creditor who has proved, make an order calling upon the bankrupt to come up for his discharge on a day to be fixed by the court, and on due service of the order, if the bankrupt does not appear on the day fixed thereby, the court may make such order as it thinks fit, subject to this section, and the debtor shall, in addition to any other punishment to which he may be subject, be guilty of contempt of court and may be punished accordingly.

(3) The application shall, except when the court in accordance with rules made under this Act otherwise directs, be heard in open court.

(4) On the hearing of the application, or on the day on which the bankrupt has been ordered to come up for his discharge or any subsequent day, 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 acquired property.

(5) Where the bankrupt has committed any offence in relation to his bankruptcy under this Act, or where in any case any of the facts in subsection (7) are proved, the court shall—

- (a) refuse the discharge;
- (b) suspend the discharge for a period of not less than two years;
- (c) suspend the discharge until a dividend of not less than fifty *per cent* has been paid to the creditors;
- (d) require the bankrupt as a condition of his discharge to consent to judgement being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the day 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.

(6) Where 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 the order, the court may modify the terms of the order, or of any substituted order, in the manner and upon the conditions as it may think fit.

(7) The facts referred to in subsection (5) are-

- (a) that the bankrupt's assets are not of a value equal to fifty *per cent* of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value of fifty *per cent* of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and has not sufficiently disclosed his business transactions and financial position within the three years immediately preceding 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 provable ground of expectation (proof of which shall lie on him) of being able to pay;
- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

- (f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or culpable neglect of his business affairs;
- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
- (h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense by bringing a 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 to making his assets equal to fifty *per cent* of his unsecured liabilities;
- (k) that the bankrupt has on any previous occasion, whether in Sierra Leone or elsewhere, 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.

(7) For the purpose of this section, a bankrupt's assets shall be deemed of a value equal to fifty *per cent* 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 might have realised, an amount of not less than fifty *per cent* of his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

(8) For the purposes of this section, the report of the official receiver shall be *prima facie* evidence of the statements contained in it.

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

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

(11) A discharged bankrupt shall, notwithstanding his discharge give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but it shall not prejudice the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

Effect of
order of
discharge.

30. (1) An order of discharge shall not release the bankrupt-

- (a) from any debt or 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 an enactment relating to any branch of the public service

on a bail bond entered into for the appearance of any person prosecuted for the offence; or

- (b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(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. (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. Power of court to annul adjudication in certain cases.

(2) Where an adjudication is annulled under this section, all sale and disposition of property and payment duly made and all acts 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 such appointment revert to the debtor for all his estate or interest in the estate on such terms and subject to such conditions, if any, as the court may order.

(3) Notice of the order annulling an adjudication shall be forthwith published in the *Gazette* and unless otherwise prescribed shall be advertised in at least two daily newspapers.

(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 proceedings 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.

Automatic discharge of bankrupt.

32. (1) Notwithstanding anything contained in this Act or any other enactment, but subject to this section, a bankrupt is automatically discharged from bankruptcy after the expiration of five years beginning with the commencement of the bankruptcy.

(2) A bankrupt may, immediately after been automatically discharged under subsection (1), apply to the court for a certificate of discharge and the court shall, if satisfied that the relevant period has elapsed, issue to him a certificate of discharge, and the date from which such discharge shall be effective shall be the date of the issue of such certificate.

(3) An application for an order of discharge under this section may be made *ex parte* to a judge in chambers supported by an affidavit showing that the requisite period of seven years has elapsed since the commencement of the bankruptcy.

(4) An order for discharge under this section shall not release the bankrupt from any debts proved in bankruptcy, but the bankrupt shall not be liable to be adjudged bankrupt again in respect of the same debts.

(5) Every certificate of discharge under this section shall be published in the *Gazette*.

(6) On obtaining his certificate of discharge, the bankrupt shall cease to be subject to the various disqualifications and disabilities which he is under as an undischarged bankrupt.

PART III – ADMINISTRATION OF PROPERTY

Proof of debts

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

(2) A person having notice of any act of bankruptcy against the debtor shall not prove in bankruptcy for any debt or liability contracted by the debtor subsequent to the date of his having the notice.

(3) Unless otherwise provided, 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 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 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 the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

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

- (8) In this section, “liability” includes -
- (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 or is not likely to occur or is capable of occurring, before the discharge of the debtor;
 - (c) 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, or, as to mode of valuation capable of being ascertained by fixed rules or as a matter of opinion.

Mutual credit and set off.

34. 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-

- (a) an account shall be taken of what is due from one party to the other in respect of the mutual dealings, and the sum due from the other party shall be set off against any sum due from the other party; and
- (b) 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 any act of bankruptcy committed by the debtor and available against him.

35. The Rules of Court Committee shall make rules with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and other related matters. Rules as to proof of debts.

36. (1) The assets remaining after payment of the actual expenses incurred in realising any of the assets of the debtor shall, subject to any order of the court, first be liable to the following payments which shall be made in the following order of priority, namely:- Priority of costs and charges.

- (a) the actual expenses incurred by the official receiver in protecting or attempting to protect the property or assets of the debtor or any part of the property and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;
- (b) the fees, percentages and charges payable to, or costs, charges and expenses incurred or authorised by the official receiver, whether acting as official receiver or trustee;
- (c) the remuneration of the special manager, if any; and
- (d) the taxed costs of the petitioner, so far as it may not have been disallowed by the court.

(2) Whenever the court is satisfied that the property of a debtor in respect of whose estate a receiving order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the debtor without notice of any available act of bankruptcy committed by the debtor, the court may, in its discretion order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is provided in subsection (1) in respect of the taxed costs of the petitioner.

Priority of debts.

37. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(a) all debts due from the bankrupt to the State at the date of the receiving order and having become due and payable within twelve months next before that time;

(b) all wages or salaries (including commission, provided that the amount is fixed or ascertainable at the date of the receiving order) of any employee in respect of services rendered to the bankrupt during four months next before the date of the receiving order, not exceeding Le300,000;

Cap. 219.

(c) all amounts due in respect of compensation under the Workmen's Compensation Act, the liability of which accrued before the date of the receiving order, subject to that Act;

Act No. 5 of 2001.

(d) all contributions payable under the National Social Security and Insurance Trust Act, 2001, by the bankrupt, in respect of employed contributors or workmen in an insured trade during twelve months before the receiving order;

Act No. 5 of 2001.

(e) all amounts due, in respect of contributions payable during the twelve months before the receiving order, by the bankrupt as the employer of any persons under the National Social Security and Insurance Trust Act, 2001.

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

(3) Subject to section 36 and to the retention of such sums as may be necessary for the costs of administration or otherwise, the debts referred to in this section shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that in respect of any money paid under such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt and as if the date of his death were substituted for the date of the receiving order.

(6) In the case of partners, 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 and if there is a surplus of the separate estates, in proportion to the right and interest of each partner in the joint estate.

(7) Subject to this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

(8) Where there is a surplus, there shall be charged on each debt an interest rate of eight percent.

(9) Where there is a surplus after the payment of any debt or deductions, such surplus shall be paid to the bankrupt.

38. The landlord or other person to whom any rent is due from the bankrupt may, subject to the provisions of any enactment affecting rent, at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for

Landlord's power of distress.

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.

Postponement of husband's and wife's claims.

39. (1) Where a married woman is adjudged bankrupt, she shall not be entitled to claim any dividend as a creditor in respect of any money or other estate on loan or entrusted by the husband to her until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

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

(3) In this section "married woman" and "wife" include women married under any enactment in force in any part of Sierra Leone relating to marriage

Property available for payment of debts

Relating back of trustee's title.

40. 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.

41. (1) The property of the bankrupt divisible among his creditors, and in this Act referred to as the property of the bankrupt, shall, subject to subsection (2), comprise the following:-

Description of bankrupt's property divisible among creditors.

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

(2) The property of the bankrupt divisible among his creditors shall not include the following:-

- (a) property held by the bankrupt on trust for any other person;
- (b) the tools, if any, of his trade and the necessary wearing apparel and bedding of himself and his family dependent on and residing with him, to a value, inclusive of tools and apparel and bedding, not exceeding Le1,000,000 in the whole.

42. (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon the order, the trustee in the

Provisions as to second bankruptcy.

last preceding bankrupt 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 the 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 among the creditors in such last preceding bankruptcy, shall, subject to any disposition made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to this Act, 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 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 the 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

Restriction of rights of creditor under execution or attachment.

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

(2) For the purposes of this section-

- (a) an execution shall be deemed to be completed by seizure and sale;

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

(c) an execution against land is completed by seizure, or, in the case of any equitable interest in lands, houses or other immovable property, by the appointment of a receiver or manager.

(3) An execution completed under this section 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 bailiff shall, in all cases acquire a good title to them against the trustee in bankruptcy.

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

Duties of bailiff as to goods taken in execution.

(2) Where under an execution in respect of a judgment for a sum exceeding Le100,000, the property of a debtor is sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale and pay the balance into court, and if within fourteen days of such sale or payment a bankruptcy petition is presented by or against the debtor, the balance shall be paid out to the trustee in the bankruptcy, who will be entitled to retain it against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition has been presented.

45. Any disposition of property not made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall-

Avoidance of certain dispositions.

- (a) if the grantor becomes bankrupt within two years after the date of the disposition, be void against the trustee in the bankruptcy,
- (b) if the grantor becomes bankrupt at any subsequent time within six years after the date of the grant, be void against the trustee in the bankruptcy, unless the parties claiming under the grant can prove that the grantor was, at the time of making the disposition, able to pay all his debts without the aid of the property comprised in the disposition, and that the interest of the grantor in such property passed to the grantee on the execution thereof.

Avoidance of general assignments of book debts unless registered.

46. (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 of debts and is subsequently adjudged 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 with the Registrar in a register to be kept by him for that purpose.

(2) 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 of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any assignment of assets for the benefit of creditors generally.

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

Avoidance of preference in certain cases.

47. (1) Every conveyance or transfer of property, or charge on the property made, every payment made, every obligation incurred and every judicial proceedings taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or of any person in trust for any creditor, with a view to giving the 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 it is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering it, 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.

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

Protection of *bona fide* transaction without notice.

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

Provided that the following conditions are complied with:-

- (e) 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
- (f) 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 had, 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.

Recovery of property transferred without knowledge of receiving order.

49. Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice of the order has been published in the *Gazette*, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is, under 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.

Validity of certain payments to bankrupt and assignee.

50. 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 without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise *bona fide*.

Dealings with undischarged bankrupt.

51. (1) All transactions by a bankrupt with any person dealing with him *bona fide* and for value, in respect of property, whether personalty leasehold or pure personalty, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this 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 the transaction; and for the purpose of this subsection, the receipt of any money, security or negotiable instrument from 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.

(2) Where any individual, company or firm has ascertained that a person having a deposit, whether a deposit in respect of capital or not, or a credit balance, with such individual, company or firm is an undischarged bankrupt, then it shall be the duty of such individual, company or firm forthwith to inform the official receiver and the trustee in the bankruptcy of the existence of

the deposit or credit balance; and the individual, company or firm shall not make any payment out of or in respect of the deposit or credit balance without instructions from the official receiver or the trustee in the bankruptcy.

(3) In case of any contravention of subsection (2), the individual or the directors and officers of the company or the partners and managers of the firm, as the case may be, commit an offence and shall be liable on summary conviction to a fine not exceeding Le5,000,000 or to imprisonment for a term not exceeding six months.

Realisation of property

52. (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. Possession of property by trustee.

(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 the acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stocks, shares in ships, 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 this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer or any banker, attorney, employee, employer or agent, of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, which the person is not by law entitled to retain as against the bankrupt or the trustee and any person who fails to do so shall be guilty of contempt of court and shall be punished accordingly on the application of the trustee.

Seizure of property of bankrupt.

53. 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 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 of 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.

Sale of property out of Sierra Leone.

54. Subject to any enactment relating to foreign exchange, where the bankrupt possesses any property out of Sierra Leone, the trustee shall require him to join in selling it for the benefit of the creditors and to sign all necessary authorities, powers, deeds and documents for the purpose, and if and so often as the bankrupt refuses to do so he may be punished for contempt of court.

Appropriation of portion of pay etc. to creditors.

55. (1) Where a bankrupt is an officer or clerk or otherwise employed or engaged in the public service of the Government, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, may direct.

(2) Before making any order under this section, the court shall communicate with the Accountant-General or any other person authorised to pay salaries of public officers as to the amount, time and manner of the payment to the trustee, and shall obtain the written consent of the Accountant-General or such other person to the terms of the payment.

(3) Where a bankrupt is in receipt of salary or income other than as mentioned in subsection (1), or is entitled to any half-pay or pension, 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 or pension or of any part of it, to the trustee to be applied by him in such manner as the court may direct.

(4) Nothing in this section shall take away or abridge any power to dismiss a bankrupt or pursuant to any enactment, to declare the pay, pension, allowance, compensation, salary or income of any bankrupt to be forfeited.

56. (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 adjudged bankrupt the property of the bankrupt shall vest in the trustee. Vesting and transfer of property.

(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 the term 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.

57. (1) Where any part of the property of the bankrupt consists of land or any tenure burdened with onerous covenants, shares or stocks in companies, unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor 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 such extended period as may be allowed by the court, disclaim the property; but, where the property has not come to the knowledge of the trustee within one month after the appointment, he may disclaim the property at any time within twelve months after he has become aware of it or such extended period as may be allowed by the court. Disclaimer of onerous property.

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

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in prescribed cases, and the court may, before granting such leave, require such notices to be given to persons interested and impose such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not and the trustee has, for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee after the application does not within the 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 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 the court thinks equitable, and any damages payable under the order to the person may be proved by him as a debt under the bankruptcy.

(6) The court may, on application by any person claiming either to have any interest in any disclaimed property or to be under any liability not discharged by this Act in respect of any disclaimed property and on hearing the person make an order for the vesting of the property in or delivery thereof to any person entitled to it, or to whom it is just that it should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just: and on such vesting order being made, the property comprised in it shall vest accordingly in the person named in it in that behalf without any conveyance or assignment for the purpose; but where the property disclaimed is a lease-hold, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making 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) subject only to the same liabilities and obligations as if the lease had comprised only the property comprised in the vesting order.

(7) Any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court may 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 in it by the bankrupt.

(8) 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 this section, notwithstanding that the time prescribed by this section for such disclaimer has expired; but the disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances referred to or has become aware of the existence of the property whichever period expires last.

(9) 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 it as a debt under the bankruptcy.

58. Subject to this Act and to any rules of Court, a trustee may do all or any of the following things:-

Powers of trustee to deal with property.

- (a) sell all or any part of the property of the bankrupt including the goodwill of the business, if any and the book debts due or growing due to the bankrupt, by public auction or private contract, and may transfer the whole of the property to any person or company, or to sell it 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;
- (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 of 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.

Powers exercisable by trustee with permission of committee of inspection.

59. (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 business;
- (b) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
- (c) employ a legal practitioner 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, or 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 among 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 those 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.

Power to allow bankrupt to manage property.

60. 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 of the property 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.

Allowance to bankrupt for maintenance or service.

61. 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 the allowance may be reduced by the court.

Right of trustee to inspect goods pawned, etc.

62. 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 notice has been given, the person 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.

Limitation of trustee's powers in relation to copyright.

63. Where the property of a bankrupt comprises the copyright in any work or interest in the copyright and he is liable to pay to the author of the work royalties or a share of the profits in respect of the work, the trustee shall not be entitled to sell 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.

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

64. 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 or under the control of a debtor against whom a receiving order has been made and it is thereafter made to appear that the 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 the seizure or disposal sustained by any person claiming the property nor for the cost of any proceedings taken to establish a claim to it, unless the court is of the opinion that the official receiver or trustee has been guilty of bad faith or of gross negligence in respect of it.

Distribution of property

65. (1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, with all promptness declare and distribute dividends among the creditors who have proved their debts. Declaration and distribution of dividends.

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

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

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

(5) When the trustee has declared a dividend, he shall cause to be published in the *Gazette* and shall send to each creditor who has proved his debt a notice showing the amount of the dividend and when and how it is payable.

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

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together and the expenses of and

incidental to the dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to work done for and the benefit received by each property.

Provision for creditor residing at a distant place etc.

67. (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, or otherwise, to be due to persons resident in places so distant from Sierra Leone 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) A trustee shall also make provision for any distributed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to this section, a trustee shall distribute as dividend all monies in hand.

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

68. Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend he may not have received before that money is applied to the payment of any future dividend: but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated in it.

Interest on debts.

69. (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 one *per cent* above the prevailing bank rate and be calculated only up 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 re-opened and the whole transaction treated as one;

- (b) any payment 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 its value 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.

70. (1) When the trustee has realised all the property of the bankrupt or so much of it as can be realised without needlessly protracting the trusteeship, he shall declare a final dividend but before doing so he shall give notice in the manner prescribed, to the persons whose claims to be creditors have been notified to him but not so established to his satisfaction that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited or if the court on application by such claimant 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 who have proved their debts, without regard to the claims of any other person.

No action for dividend.

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

Right of bankrupt to surplus.

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

PART IV—OFFICIAL RECEIVER

Official receiver.
Act. No. 5 of 2009.

73. (1) The official receiver shall be the person appointed as the Registrar under the Companies Act, 2009 and shall perform the duties conferred on the official receiver by this Act.

(2) The person appointed as Assistant Registrar shall act, subject to this Act, as deputy official receiver.

(3) Every deputy official receiver shall have all the powers conferred on the official receiver by this Act.

(4) Every deputy official receiver shall act under the general authority and direction of the official receiver for the time being, who shall in turn act under the general authority and direction of the Court.

Status of official receiver.

74. (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 proceedings under this Act administer oaths.

(3) All provisions in this Act referring to the trustee in a 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.

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

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

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

- (a) pending the appointment of a trustee, to act as the interim receiver of the debtor's estate, and where a special manager is not appointed, as its manager;
- (b) to raise money in any case where, in the interests of the creditors it appears necessary to do so;
- (c) to summon and preside at the first meeting of creditors;
- (d) to issue forms of proxy for use at the meetings of creditors;

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

Duties of official receiver as to debtor's estate.

- (e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;
- (f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;
- (g) to act as trustee during any vacancy in the office of trustee;
- (h) to assist the debtor in preparing his statement of affairs in case the debtor has no legal practitioner acting for him and is unable properly to prepare it himself, and for this purpose he may employ at the expense of the estate any person or persons to assist in its preparation.

(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 but 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 disposal of perishable goods.

(3) The official receiver shall account to the court and pay over all moneys and deal with all securities in such manner as the court may, from time to time direct.

PART V – TRUSTEES IN BANKRUPTCY

Official name

Official name of trustee.

77. The official name of a trustee in bankruptcy shall be '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.

Appointments

78. (1) The creditors may, if they think fit, appoint more persons as trustees and, when more persons than one person are appointed, 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 the persons; but all the persons are in this Act included under the term 'trustee' and shall be joint tenants of the property of the bankrupt.

Power to appoint joint or successive trustees.

(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 such person not being approved by the court.

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

Proceedings in case of vacancy in office of trustees.

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

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

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

Control of trustees

80. (1) Subject to this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution of the property among his creditors have regard to any directions that may be given by 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.

Discretionary powers of trustee and control of bankrupt.

(2) The trustee may, from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and he shall 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-fourth 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.

(3) The person at whose instance the meeting is summoned shall, if so required, 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 court so directs.

(4) The trustee may apply to the court in the manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(5) Subject to this Act, the trustee shall use his discretion in the management of the estate and its distribution among the creditors.

Appeal to court against trustee.

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

Control of court over trustee.

82. (1) The court shall take cognisance 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 this Act, any rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the court by any creditor in regard to his duties by notice duly served on the trustee at least eight clear days before the date of hearing, the court shall inquire into the matter and take such action on the complaint as the court thinks fit.

(2) The court may either of its own motion or on the application of the official receiver, at any time require a trustee to answer any inquiry made by the court or the official receiver in relation to any bankruptcy in which the trustee is engaged and may examine on oath the trustee or any other person concerning the bankruptcy.

(3) The court may also direct an investigation to be made of the books and vouchers of the trustee.

Remuneration of trustee

83. (1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part of the amount distributed in dividend; and such percentage shall be as the court may approve.

Remuneration of trustee.

(2) The remuneration shall cover all expenses except actual out-of-pocket expenses properly incurred and no liability shall attach to the bankrupt's estate or to the creditors in respect of any other expenses.

(3) 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 court may approve.

(4) A trustee shall not, under any circumstances make any arrangement for or accept from the bankrupt or any legal practitioner, auctioneer or any other person who may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit beyond his remuneration payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any legal practitioner or other person who may be employed about a bankruptcy.

84. (1) Where a trustee or manager receives remuneration for his service no payment shall be allowed in his account in respect of the performance by any other person of the ordinary duties which are required by this Act to be performed by him.

Allowance and taxation of costs.

(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 trustee, shall be taxed by the Registrar and no payments in respect of the bills shall be allowed in the trustee's accounts without proof of such taxation having been made.

(4) The Registrar shall satisfy himself before passing the bills and charges that the employment of the legal practitioners and other persons, in respect of the particular matters out of which the charges arise, has been duly sanctioned; and the sanction shall be obtained before the employment, except in cases of urgency, and in such cases it shall be shown that no undue delay took place in obtaining the sanction.

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

Receipts, payments, accounts and audit

Trustee etc. to furnish required list of creditors.

85. The trustee or official receiver shall, whenever requested by any creditor to do so, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of Le5,000 per folio of seventy-two words.

Trustee to furnish statement of accounts.

86. It shall be lawful for any creditor, with the concurrence of one-fourth 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 the notice, and the trustee shall, upon receipt of the notice furnish and transmit the statement of the accounts; but the person at whose instance the accounts are furnished shall, if so required, 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 court so directs.

87. (1) Every trustee in a bankruptcy shall 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.

Annual statement of proceedings.

(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 statements or in his accounts or otherwise, and may apply to the court for an order that the trustee make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

88. 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 or use them otherwise than in the administration of the estate.

Trustee not to pay sums into private account.

89. (1) The official receiver shall open in his name as official receiver an account at a bank and shall pay to the credit of the account all sums received by him as the official receiver or as trustee, and every trustee in a bankruptcy other than the official receiver, receiving money as trustee shall open an account at the bank in the name of the debtor's estate and shall pay to the credit of the account all sums which may be received by him as a trustee

Payment of money into bank.

(2) If a trustee at any time retains for more than ten days a sum exceeding Le100,000, or such other amount as the court may in any particular case authorise him to retain, then unless he explains the retention to the satisfaction of the court he shall-

- (a) pay interest on the amount so retained in excess at the rate of twenty *per cent per annum*;
- (b) have no claim to remuneration and may be removed from his office by the court; and

- (c) be liable to pay expenses occasioned by reason of his default.

(3) Any trustee paying money into his private bank account or using it otherwise than in the administration of the estate may, without prejudice to any other liability be dismissed from office without remuneration and may be ordered by the court to make good all losses and expenses which the creditors may suffer in consequence of his conduct.

Records and accounts to be kept by trustee.

90. (1) The trustee shall keep a record in writing in which he shall enter minutes of all proceedings had and resolutions passed at any meeting of creditors or of the committee of inspection and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property.

(2) The trustee shall also keep an account, to be called the estate account, in the form of an ordinary debtor and creditor account, in which he shall enter from day- to-day all his receipts and payments as trustee.

(3) The trustee shall produce at every meeting of creditors and at every meeting of the committee of inspection the record and account mentioned in subsections (1) and (2) and also the passbook of the estate's bank account, and the documents shall be open to the inspection of any creditor at all reasonable times.

Audit of trustee's account.

91. (1) Every trustee other than the official receiver shall, at such times as may be prescribed but not less than once in each year during his tenure of office, send to the official receiver an account of his receipts and payments as trustee.

(2) The account which shall be in the prescribed form and made in duplicate shall be verified by an affidavit 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 official receiver with such vouchers and information as he may require, and he may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When the accounts have been audited, they shall be filed and kept by the official receiver and shall be open on payment of the prescribed fee to the inspection of any creditor or of the bankrupt or any person interested.

(5) The court may, if it so desires examine the trustee and after hearing the explanation, if any, of the trustee, make the order as it may think just for compelling the trustee to make good any loss to the estate which, after the audit or examination, may appear to the court to have been occasioned by any misfeasance, neglect or improper conduct.

Vacation of office by trustee

92. (1) When the trustee has-

Release of trustee.

(a) realised all the property of the bankrupt or so much of it as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any;

(b) ceased to act by reason of a composition having been approved: or

(c) resigned or has been removed from his office, the official receiver shall on the application of the trustee, prepare a report on his accounts, which shall be submitted to the court, and the court shall take into consideration the report and any objection made by a creditor or other interested person against the trustee, and shall either grant or withhold the release.

(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 duties.

(3) An order of the court releasing the trustee shall discharge him from liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but such order may be

revoked 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 then 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.

Office of trustee vacated by insolvency.

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

Removal of trustee.

94. (1) The creditors may by ordinary resolution, at a meeting specially called for that purpose of which seven days notice has been given, remove a trustee, other than the official receiver, appointed by them and may at the same or any subsequent meeting appoint another person to fill the vacancy.

- (2) If the court is of the opinion that—
- (a) a trustee appointed by the creditors is guilty of misconduct or has failed to perform his duties under this Act;
 - (b) his trusteeship is being needlessly protracted without any probable advantage to the creditors;
 - (c) he is by reason of mental or physical disability or absence incapable of performing his duties;
 - (d) his connection with or relation to the bankrupt or his estate or any particular creditor might make it difficult for him to act with impartiality in the interest of the creditors generally; or

(e) the interests of the creditors require it, the court may remove him from office and appoint another person in his place.

PART VI—CONSTITUTION, PROCEDURE AND POWERS OF COURT

Jurisdiction

95. Subject to this Act, the court may 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 cognisance of the court or which the court may think it expedient or necessary to decide for the purpose of doing justice or making a complete distribution of property in such case.

General power of court.

Review and appeals

96. (1) The court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

Review and appeals in bankruptcy.

(2) An order of the court shall be subject to appeal to the Court of Appeal.

(3) The appeal shall be lodged within twenty-one days from the time when the decision appealed against is pronounced or made.

Procedure

97. The rules and practice of the court for the time being regulating the ordinary civil procedure of the court shall, so far as it may be applicable and not inconsistent with this Act, be applied to bankruptcy proceedings, and every order of the court made in connection with bankruptcy proceedings may be enforced in the same way as a judgement of the court made in respect of any other civil proceedings may be enforced.

General rules of procedure.

98. 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.

Continuance of proceedings on death of debtor.

99. (1) 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.

Actions by trustee and bankrupt's partner.

(2) Any release by the 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.

(3) The partner may apply to the court which 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 from the proceeds he shall be indemnified against costs in respect thereof as the court directs.

Actions on joint contracts.

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

Proceedings in partnerships.

101. 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 a case the court may, on application by any person interested, order the names of the persons who are partners in the firm or the names of such person to be disclosed in the manner, and verified on oath or otherwise, as the court may direct.

PART VII—SUPPLEMENTAL PROVISIONS

Disobedience to order of court.

102. (1) Where default is made by a trustee, debtor or other persons in obeying any order or direction made or given by the court under this Act, the court may make an order for the committal of such trustee, debtor or other person for contempt of court.

(2) The power given by subsection (1) shall be deemed to be in addition to and not in substitution for any other right, remedy or liability in respect of the default.

Application of Act

Exclusion of corporations and companies.

103. A receiving order shall not be made against any corporation, or against any association or company registered under the Companies Act, 2009.

Act No. 5 of 2009.

Administration in bankruptcy of estate of person dying bankrupt.

104 (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 in bankruptcy of the estate of the deceased debtor.

(2) The petition shall be served on the legal or personal representative of the deceased debtor, or if there is none in Sierra Leone, on the Registrar-General, and the court may in the prescribed manner, (upon proof of the petitioner's debts 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) Upon an order being made for the administration in bankruptcy of a deceased debtor's estate, the property of the debtor shall vest in the official receiver as trustee and he shall forthwith proceed to realise and distribute it in accordance with this Act but—

- (a) 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;
- (b) if no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the court.

(4) With the modifications mentioned in this section and, subject to any modification that may be made in it by subsection (9), sections 28 and 84 shall, so far as they 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 section 38 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(5) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal or 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 this Act relating to the priority of other debts, be payable in full out of the debtor's estate in priority to all other debts.

(6) 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 and interest as provided in this Act, it shall be paid over to the legal or personal representative of the deceased debtor's estate, or failing that to the Administrator-General.

(7) Service, on the legal or personal representative of a deceased debtor or on the Administrator-General, 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 the service, no payment or transfer of property made by the legal or personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; and unless otherwise provided in this Act, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal or personal representative before the date of the order for administration.

(8) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal or personal representative of the debtor or by the Administrator-General; and where a petition is so presented by a representative or by the Administrator-General, this section shall apply subject to such modifications as may be prescribed under subsection (9).

(9) Any prescription for carrying this section into effect may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules

105. The Rules of Court Committee may make such rules not inconsistent with this Act for carrying into effect the provisions of this Act or for prescribing anything required to be prescribed by this Act.

Power to
make rules.

106. The Rules of Court Committee may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act. Fees and remuneration.

Fees and Remuneration

107. All fees and commissions received by or payable to the official receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the official receiver as an interim receiver or otherwise, shall be paid by such officer forthwith into the Consolidated Fund. Disposal of official receiver's fees.

108. (1) A copy of the *Gazette* containing any notice inserted in it in pursuance of this Act, shall be evidence of the facts stated in it. Gazette to be evidence.

109. (1) Minutes of proceedings at a meeting of creditors, signed by a person describing himself as or appearing to be chairman of the meeting, shall be received in evidence without further proof. Evidence of proceedings at meetings of creditors.

(2) Until the contrary is proved, every meeting of creditors in respect of which minutes have been so signed shall be deemed to have been duly convened and held and all resolutions duly passed.

110. 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 the Registrar, or is certified as a true copy by the Registrar shall be receivable in evidence in all legal proceedings. Evidence of proceedings in bankruptcy.

111. Subject to such rules as may be prescribed, any affidavit to be used in a bankruptcy may be sworn before any person authorised to administer oaths, or in the case of a person who is out of Sierra Leone, before a magistrate, justice of the peace, Commissioner for Oaths or other person qualified to administer oaths in the country where he resides. Swearing of affidavit.

Death of debtor or witness.

112. In the case of the death of a debtor or the spouse, 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 of the deposition purporting to be so sealed, shall be admitted as evidence of the matters deposed to in it.

Statements made to official receiver or trustee through interpreter.

113. Any statement made by a debtor or creditor in any bankruptcy to the official receiver or trustee through an interpreter shall be deemed to have been made to the official receiver or trustees as the case may be and evidence in this statement shall be receivable from the official receiver or trustee, on it being proved either that the interpreter employed was a sworn interpreter or that he held the substantive or acting appointment of interpreter, or of clerk and interpreter, to the official receiver.

Certificate of appointment of trustee.

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

(2) Where the limited time so appointed or allowed is less than six days, holidays shall not be reckoned in the computation of the time.

(3) Where the limited time so appointed or allowed expires on one of the days specified in this section, the act or proceedings 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 specified.

(4) This section shall take effect notwithstanding anything contained in sections 23, 24 and 25.

Miscellaneous

Service of notice.

115. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served.

Formal defect not to invalidate proceedings.

116. (1) No proceedings in bankruptcy shall be invalidated by any formal defect or by any irregularity unless the court is of the opinion that substantial injustice cannot be remedied by any order of the court.

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

117. Every—

- (a) deed, assignment, surrender or other assurance relating solely to interests in land, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property, which is part of the estate of any bankrupt, and which, after the execution of the deed, assignment, surrender or other assurance, either at law or in equity, or remains the estate of the bankrupt or of the trustee under the bankruptcy; and
- (b) power of attorney, proxy paper, writ, order certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy,

Exemption of deeds etc. from stamp duty.

shall be exempted from stamp duty except in respect of fees under this Act.

118. 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 lunatic by his committee.

Actions of corporations, partners, etc.

119. Except otherwise provided in this Act, this Act relating to the remedies against the property of a debtor, the priorities of debts and the effect of a discharge, shall bind the State.

Certain provisions to bind the State.

Unclaimed funds or dividends

120. (1) Where the trustee, under any bankruptcy, composition or scheme, pursuant to this Act has under his control any unclaimed dividend which has remained unclaimed for more than six months or where, after making a final dividend, he has on 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 Registrar who shall pay it to an account to be termed “the Bankruptcy Estate Account”.

Unclaimed and undistributed dividends or funds.

(2) The Registrar's receipt for the money so paid shall be a sufficient discharge to the trustee in respect of the bankruptcy, composition or scheme.

(3) The trustee, whether he has obtained his release or not, may be called upon by the court to account for any unclaimed funds or dividends and any failure to comply with the requisition of the court may be dealt with as contempt of court.

(4) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account may, within five years of the date when it is so paid in, apply to the Registrar for payment to him of the moneys, and the Registrar, if satisfied that the person claiming is entitled, shall make an order for the payment to the person of the sum due.

(5) Any person dissatisfied with the decision of the Registrar may appeal to the court.

(6) After any money has remained unclaimed in the Bankruptcy Estates Account for a period of five years, it shall be paid into the Consolidated Fund.

PART VIII—DISQUALIFICATION OF BANKRUPT

Disqualification
of bankrupt.

121. (1) Where a person is adjudged bankrupt under this Act, he shall, subject to this Act or any other enactment be disqualified from—

- (a) being elected to the office of President, Vice-President or Member of Parliament;
- (b) being appointed as Minister, Deputy Minister, Judge of the Superior Court of Judicature, Ambassador or High Commissioner;
- (c) being elected as a member of a local council, Mayor, Deputy Mayor, Chairperson or Deputy Chairperson of a local council.
- (d) being appointed or acting as a trustee of a trust estate;
- (e) being admitted to practice any profession for the time being regulated by law on his own

or in partnership or in any other form of association (other than as an employee) with any other person.

(2) The disqualifications to which a bankrupt is subject under this section shall, unless otherwise provided by any other enactment, be removed and cease if and when—

- (a) the adjudication of bankruptcy against him is annulled;
- (b) he is automatically discharged pursuant to this Act; or
- (c) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

(3) The court may grant or withhold the certificate mentioned in paragraph (c) of subsection (2) as it thinks fit, but any refusal of the certificate shall be subject to appeal.

122. (1) Subject to any other enactment, if a person is adjudged bankrupt whilst holding any of the offices or appointments specified in subsection (1) of section 121, his office or appointment shall then become vacant or terminated. Offences and penalties.

(2) Subject to any other enactment, if a person is adjudged bankrupt whilst practising any of the professions mentioned in subsection (1) of section 121, he shall then cease to be entitled to practice, and shall accordingly cease to practise the profession concerned on his own or in partnership or any other form of association (other than as an employee) with any other person.

123. (1) If any person disqualified under this Part from being elected to any office or any legislative body and, knowing that he is disqualified, puts himself forward for such election, he commits an offence. Vacation of office etc. by bankrupt.

(2) If any person disqualified under this Part from being appointed to any office and, knowing that he is so disqualified, puts forward for such appointment, he commits an offence.

(3) If any person disqualified under this Part from sitting or voting in any legislative or other body specified in subsection (1) of section 121 and, knowing that he is so disqualified, sits or votes in such body, commits an offence.

(4) If any person disqualified under this Part from entering upon the practice of any profession and, knowing that he is so disqualified, puts himself forward to be called, nominated or otherwise invited to practice the profession concerned on his own or in partnership or any other form of association (other than as an employee) with any other person, he commits an offence.

(5) If any person disqualified under this Part from continuing to hold any office or from continuing the practice of any profession on his own or in partnership or any other form of association (other than as an employee) with any other person, and, knowing that he is so disqualified, continues to do so, commits an offence.

(6) Any person who commits an offence under this Part, in respect of which no penalty is imposed, shall be liable on conviction to a fine not exceeding Le20,000,000 or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

PART IX – BANKRUPTCY OFFENCES

Fraudulent
debtors.

124. (1) Any person who has been adjudged bankrupt and in respect of whose estate a receiving order has been made, in each of the following cases commits an offence if:-

- (a) 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, to whom and for what consideration and when he disposed of any part of it, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;

- (b) he does not deliver up to the trustee, or as the trustee directs, all such part of his movable property 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 the trustee 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) after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he conceals any part of his property to the value of Le10,000,000 or more or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
- (e) after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of Le10,000,000 or more.
- (f) he makes any material omission or misstatement in any statement relating to his affairs, unless he proves that he had no intent to defraud;
- (g) knowing or having any reason to believe 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;
- (h) after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing 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) after the presentation of a bankruptcy petition by or against him or within twelve months next before the presentation, he removes, conceals, destroys, mutilates or falsifies or is privy to the removal, 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) after the presentation of a bankruptcy petition by or against him or within twelve months next before the presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;
 - (k) after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within twelve months next before the presentation, he attempts to account for any part of his property by fictitious losses or expenses;
 - (l) within twelve months 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 false representation or other fraud has obtained any property on credit, and has not paid for it;

- (m) within twelve months next before the presentation of a bankruptcy petition by or against him or after the presentation 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 it, unless he proves that he had not, within twelve months 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 had obtained on credit and has not paid for, unless in the case of a trader such pawning, pledging or disposing of, is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; or
- (n) he makes any false representation or other fraud for the purpose of obtaining the consent of his creditor to an agreement with reference to his affairs,

and shall be liable on conviction to a fine not exceeding Le20,000,000 or to imprisonment for a term not exceeding two years or to both the fine and imprisonment

(2) A person who has sent out of Sierra Leone any property which he has obtained on credit and has not paid for shall, until the contrary is proved be deemed to have disposed of it otherwise than in the ordinary way of his trade if, the property, not having been paid or accounted for at the date of the receiving order by the person to whom it was sent, the last-mentioned person does not pay or account for it within a reasonable time after being called upon to do so by the trustee or cannot be found within a reasonable time.

Certain offences by person other than debtor.

125. (1) If any manager, accountant or book-keeper in the employment of the debtor does any act which, if committed by the debtor would be a contravention of paragraph (i) or (j) of subsection (1) of section 124 or is privy to the act whether committed by the debtor or by any other person, the manager, accountant or book-keeper commits an offence under this Act and shall be liable on conviction to a fine not exceeding Le20,000,000 or to imprisonment for a term not exceeding one year.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under section 124, every person who takes in the pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged or disposed of in such circumstances referred to in this Act, commits an offence and shall be liable on conviction to a fine not exceeding Le20,000,000 or imprisonment for a term not exceeding one year.

Undischarged bankrupt obtaining credit.

126. Any undischarged bankrupt commits an offence if-

- (a) either alone or jointly with any other person, he obtains credit to the extent of Le2,000,000 or more from any person without first informing that person that he is an undischarged bankrupt;
- (b) he engages in any trade or business under a name or names other than that or those under which he was adjudicated bankrupt and in the course of such trade or business obtains credit from any person without first disclosing to the person the name or names under which he was adjudicated bankrupt; or
- (c) he engages in any trade or business under a name or names or other than that or those under which he was adjudicated bankrupt without first publishing, once in the Gazette, and in three successive issues of two daily newspapers, a notice containing the following particulars:-
 - (i) the name or names under which he was adjudicated bankrupt;

- (ii) the last address at which he carried on any trade or business prior to the adjudication;
- (iii) the name or names under which he intends to carry on the trade or business;
- (iv) the nature of the trade or business which he intends to carry on; and
- (v) the address or addresses at which he intends to carry it on,

and shall be liable on conviction to a fine not exceeding Le20,000,000 or a term of imprisonment not exceeding one year or to both the fine and imprisonment.

127. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made, in each of the following cases commits an offence if:-

- (a) in incurring any debt or liability he obtains credit under false pretences, or by means of any other fraud;
- (b) with intent to defraud his creditors or any of them he makes or causes to be made any gift or transfer of or charge on his property;
- (c) with intent to defraud his creditors he conceals or removes 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; or
- (d) with intent to defraud his creditors or any of them he causes or connives at the levying of any execution against his property,

and shall on conviction be liable to a fine not exceeding Le20,000,000 or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

Fraud by bankrupt etc.

Bankrupt
guilty of
gambling etc.

128. (1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, commits an offence if—

- (a) he engages in any trade or business and has outstanding at the date of the receiving order, any debts contracted in the course and for the purposes of the trade or business;
- (b) 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 speculation and such gambling or speculation are unconnected with his trade or business;
- (c) 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 or hazardous speculation; or
- (d) 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 one 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,

and is liable on conviction to a fine not exceeding Le20,000,000 or to a term of imprisonment not exceeding one year to both the fine and imprisonment.

(2) In determining for the purposes of subsection (1) whether any speculation was rash and hazardous, the financial position of the accused person at the time when he entered into the speculation shall be taken into consideration.

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

129. (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made commits an offence 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 accounts 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 and shall on conviction be liable to fine not exceeding Le20,000,000 or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Bankrupt
failing to
keep proper
accounts.

(2) A person who has not kept or has not preserved the books of account shall not be convicted of any offence—

- (a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not, on any previous occasion in Sierra Leone or elsewhere been adjudged bankrupt or made a composition or arrangement with his creditors, Le20,000,000, or in any other case Le10,000,000; or
- (b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

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

(4) 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 or 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 dealings in goods, statements of annual stock-takings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

Bankrupt absconding with property.

130. 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 the presentation, leaves Sierra Leone and takes with him, or attempts or makes preparation to leave Sierra Leone and takes with him, any part of his property to the amount of Le10,000,000 or more, which ought by law to be divided among his creditors, he (unless he proves that he had no intent to defraud) commits an offence and is liable on conviction to a fine not exceeding Le5,000,00 or to imprisonment for a term not exceeding one year.

Debtor concealing himself to avoid service etc.

131. (1) If any person against whom a receiving order is made conceals himself or absents himself from his usual or last known place of abode or business or leaves Sierra Leone with intent to avoid service of any process in bankruptcy or to avoid examination in respect of his affairs or otherwise to defeat, embarrass or delay any proceedings against him in bankruptcy, he commits an offence and is liable on conviction to a fine not exceeding Le5,000,000 or imprisonment for a term not exceeding six months or to both the fine and imprisonment.

(2) For the purpose of this section a person who, after the presentation of a bankruptcy petition by or against him or within three months next before the presentation, conceals or absents himself or leaves Sierra Leone shall, until the contrary is proved be deemed to have concealed or absented himself or left Sierra Leone with such intent.

132. If any creditor, or any person claiming to be a creditor, in a bankruptcy proceeding, wilfully and with intent to defraud makes any false claim or any proof, declaration or statement or account which is untrue in any material particular, he commits an offence and is liable on conviction to a fine not exceeding Le20,000,000 or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

False claim etc.

133. Where the official receiver or a trustee in a bankruptcy reports to the court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has committed an offence under this Act, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has committed an offence, the court shall, if it appears to it that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for the offence, but no order shall be a condition antecedent to any prosecution under this Act.

Order by court for prosecution on report of trustee.

134. Where a debtor has been guilty of an offence he shall not be exempt from being proceeded against by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Criminal liability after discharge or composition.

135. (1) A person who has committed an offence under this Act in respect of which no penalty, is imposed shall be liable to a fine not exceeding Le20,000,000 or a term of imprisonment not exceeding one year or to both the fine and imprisonment.

Trial and punishment of offences.

(2) Summary proceedings in respect of any the offence shall not be instituted after one year from the first discovery of the offence either by the official receiver or by the trustee in bankruptcy, or in the case of proceedings instituted by a creditor, in no case shall they be instituted by the creditor after three years from the commission of the offence

(3) In any prosecution 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 to it 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.

Summary trial. **136.** An offence under this Act may be dealt with summarily.

Regulations. **137.** Subject to this Act, the Attorney-General and Minister of Justice may, by statutory instrument make regulations to give effect to this Act.

Passed in Parliament this *4th* day of *August*, in the year of our Lord two thousand and nine.

VICTOR KAMARA,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR KAMARA,
Clerk of Parliament.