

# THE BANKRUPTCY ACT.

**Commencement: 1 January, 1931.**

**An Act relating to bankruptcy.**

## PART I INTERPRETATION.

### Interpretation.

In this Act, unless the context otherwise requires—

- (a) "affidavit" includes a statutory declaration and an affirmation;
- (b) "available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;
- (c) "bailiff" means any person charged with the execution of any process;
- (d) "court" means the court having jurisdiction in bankruptcy under this Act;
- (e) "debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy;
- (f) "gazetted" means published in the Gazette;
- (g) "general rules" includes forms;
- (h) "goods" includes all chattels personal;
- (i) "local bank" means any bank in Uganda;
- (j) "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;
- (k) "prescribed" means prescribed by general rules within the meaning of this Act;
- (l) "property" includes money, goods, things in action, land, and every description of property, whether movable or immovable, and whether situate in Uganda or elsewhere; also, obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as defined in this paragraph;
- (m) "reciprocating court" means a court having jurisdiction in bankruptcy or insolvency in a reciprocating territory;
- (n) "reciprocating territory" means any territory declared a reciprocating territory under section 148;
- (o) "relative by consanguinity or affinity" means a husband, wife, grandparent, parent, son, daughter, brother, sister, uncle, aunt, nephew, niece, cousin or adopted child;
- (p) "resolution" means ordinary resolution;
- (q) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor, or any part of it, as a security for a debt due to him or her from the debtor;
- (r) "special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;
- (s) "trustee" means the trustee in bankruptcy of a debtor's estate.

## PART II PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

## Acts of bankruptcy.

### 2. Acts of bankruptcy.

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

(a) if in Uganda or elsewhere he or she makes a conveyance or assignment of his or her property to a trustee for the benefit of his or her creditors generally;

(b) if in Uganda or elsewhere he or she makes a fraudulent conveyance, gift, delivery or transfer of his or her property, or of any part of the property;

(c) if in Uganda or elsewhere he or she makes any conveyance or transfer of his or her property, or any part of the property, or creates any charge on it, which would under this or any other Act be void as a fraudulent preference if he or she were adjudged bankrupt;

(d) if with intent to defeat or delay his or her creditors he or she does any of the following things, namely, departs out of Uganda, or being out of Uganda remains out of Uganda, or departs from his or her dwelling house, or otherwise absents himself or herself, or begins to keep house;

(e) if execution against him or her has been levied by seizure of his or her goods in any civil proceeding in any court, and the goods have been either sold or held by the bailiff for twenty-one days; except that where an interpleader 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 twenty-one days;

(f) if he or she files in the court a declaration of his or her inability to pay his or her debts or presents a bankruptcy petition against himself or herself;

(g) if a creditor has obtained a final decree or final order against him or her for any amount and execution on the final decree or final order not having been stayed, has served on him or her in Uganda or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he or she does not within seven days after service of the notice, in case the service is effected in Uganda, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he or she had a counterclaim, setoff or cross demand which equals or exceeds the amount of the decree or sum ordered to be paid, and which he or she could not set up in the action in which the decree was obtained, or the proceedings in which the order was obtained.

For the purposes of this paragraph and section 3. any person who is, for the time being, entitled to enforce a final decree or final order shall be deemed to be a creditor who has obtained a final decree or final order;

(h) if the debtor gives notice to any of his or her creditors that he or she has suspended, or that he or she is about to suspend, payment of his or her debts.

(2) In this Act, unless the context otherwise requires, "debtor" includes any person, whether domiciled in Uganda or not, who at the time when any act of bankruptcy was done or suffered by him or her—

(a) was personally present in Uganda;

(b) was ordinarily resident or had a place of residence in Uganda;

(c) was carrying on business in Uganda, personally, or by means of an agent or manager; or

(d) was a member of a firm or partnership which carried on business in Uganda, and for the purposes of Part IX of this Act includes a person against whom bankruptcy proceedings have been instituted in a reciprocating territory and who has property in Uganda.

### 3. Bankruptcy notices.

(1) A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the amount in the decree or sum ordered to be paid in accordance with the terms of the decree or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of noncompliance with the notice, and shall 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 or she disputes the validity of the notice on the ground of that misstatement; but if the debtor does not give such notice, he or she shall be deemed to have complied with the bankruptcy notice if within the time allowed he or she takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified in the notice.

### Receiving order.

#### 4. Jurisdiction to make a receiving order.

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

#### 5. Conditions on which a creditor may petition.

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

(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debt owing to the several petitioning creditors, amounts to one thousand shillings;

(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 domiciled in Uganda, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling house or place of business, or has carried on business, in Uganda, personally or by means of an agent or manager, or is or within that period has been a member of a firm or partnership of persons which has carried on business in Uganda by means of a partner or partners, or an agent or manager, nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he or she is prohibited from so doing by any law relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he or she must in his or her petition either state that he or she is willing to give up his or her security for the benefit of the creditors if the debtor is adjudged bankrupt, or give an estimate of the value of his or her security.

(3) In the latter case under subsection (2), the secured creditor may be admitted as a petitioning creditor to the extent of the balance of the debt due to him or her, after deducting the value so estimated, in the same manner as if he or she were an unsecured creditor.

## **6. Proceedings and order on a creditor's petition.**

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

(2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some 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 or she is able to pay his or her debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

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

(5) Where the debtor appears on the petition, and denies that he or she is indebted to the petitioner, or that he or she is indebted to such an amount as would justify the petitioner in presenting a petition against him or her, 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 or her in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed under subsection (5).

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

## **7. Debtor's petition and order on the petition.**

(1) A debtor's petition shall allege that the debtor is unable to pay his or her debts, and the presentation of the petition shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his or her debts, and the court shall thereupon make a receiving order; except, however, that the order shall be refused until the debtor shall have filed with the official receiver a statement of and in relation to his or her affairs prepared in accordance with section 15.

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

## **8. Effect of a receiving order.**

(1) On the making of a receiving order, the official receiver shall be thereby constituted receiver of the property of the debtor; and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with

the leave of the court and on such terms as the court may impose.

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

### **9. Power to appoint an interim receiver.**

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

### **10. Power to stay pending proceedings.**

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

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

### **11. Power to appoint a special manager.**

(1) The official receiver of a debtor's estate may, on the application of any creditor, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager of the estate or business 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 or her by the official receiver.

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

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

### **12. Advertisement of a receiving order.**

Notice of every receiving order, stating the name, residential and business addresses and description of the debtor, the date of the order, the court by which the order is made and the date of the petition, shall be gazetted in the prescribed manner.

### **Proceedings consequent on a receiving order.**

### **13. First meeting of creditors.**

As soon as may be after the making of a receiving order against a debtor, a general meeting of his or her 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 shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

#### **14. Meetings to be governed by rules.**

With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule to this Act shall be observed.

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

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

(2) The statement shall be so submitted---

(a) prior to, but not more than three days before, the date of the presentation of the debtor's petition;

(b) within fourteen days of the date of the receiving order made on the petition of a creditor; but the court may, for special reasons, extend the time.

(3) In the case of a creditor's petition, if the debtor fails without reasonable excuse to comply with the requirements of this section, he or she commits an offence against this Act, and the court may, on the application of the official receiver, or of any creditor, adjudge the debtor bankrupt, and the debtor, in addition to any other punishment to which he or she may be liable, commits a contempt of court and may be punished accordingly.

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

#### **Public examination of the debtor.**

#### **16. Public examination of the debtor.**

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

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

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

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

(5) The official receiver shall take part in the examination of the debtor, and for the purpose may employ an advocate if he or she so desires.

(6) If a trustee is appointed before the conclusion of the examination, he or she may take part in the

examination.

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

(8) The debtor shall be examined upon oath, and it shall be his or her duty to answer all such questions as the court may put or allow to be put to him or her.

(9) Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him or her, and may thereafter, except as in this Act provided, be used in evidence against him or her; they shall be open to the inspection of any creditor at all reasonable times.

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

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

## **Composition or scheme of arrangement.**

### **17. Composition or scheme of arrangement.**

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

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

(3) The debtor may at the meeting amend the terms of his or her 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 or her debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received by him or her not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

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

(6) The application shall not be heard until after the conclusion of the public examination of the debtor.

(7) Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he or she may at a meeting of creditors have voted for the acceptance of the proposal.

- (8) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he or she is unavoidably prevented from attending the examination by illness or absence from Uganda.
- (9) The court shall, before approving the proposal, hear a report of the official receiver as to the terms of the proposal, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.
- (10) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.
- (11) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge, were he or she adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.
- (12) In any other case, the court may either approve or refuse to approve the proposal.
- (13) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.
- (14) A composition or scheme accepted and approved under this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him or her in an action for seduction or affiliation, or under a judgment against him or her as a correspondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of that liability.
- (15) 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.
- (16) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.
- (17) If default is made in payment of any installment due under 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.
- (18) Where a debtor is adjudged bankrupt under subsection (17), any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.
- (19) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his or her business, or to distribute the composition, section 27 and Part V of this Act shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" include respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.
- (20) Part III of this Act shall, so far as the nature of the case and the terms of the composition or scheme

admit, apply thereto, the same interpretation being given to the terms "trustee", "bankruptcy", "bankrupt" and "order of adjudication" as in subsection (19).

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

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

## **18. Effect of a composition or scheme.**

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

### **19. Adjudication of bankruptcy where a composition is not accepted or approved.**

(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting, or any adjournment of that 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 or her creditors, and shall vest in a trustee; and the court shall at the same time specify on the order of adjudication the period within which the debtor shall apply for his or her discharge.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, residential and business addresses and description of the bankrupt, and the date of the adjudication, shall be gazetted in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

### **20. Appointment of a trustee.**

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

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

(3) Any person, other than the official receiver, so appointed shall give security in a manner prescribed to the satisfaction of the court, and the court, if satisfied with the security, shall certify that his or her appointment has been duly made, unless the court objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his or her connection with or relation to the bankrupt, or his or her estate or any particular creditor make it difficult for him or her to act with impartiality in the interests of the creditors generally.

- (4) The appointment of a trustee shall take effect as from the date of the certificate.
- (5) The official receiver may be appointed the trustee by the creditors, and, should he or she so desire, in such case, there shall be no committee of inspection, and the official receiver may do all things which may be done by a trustee with the permission of the committee of inspection.
- (6) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or if there are negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the court, and thereupon the court shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment; but the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the court.
- (7) 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 immediately summon a meeting of creditors for the purpose of appointing a trustee.

## **21. Committee of inspection.**

- (1) The creditors qualified to vote may, at their first or any subsequent meeting by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.
- (2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications—
  - (a) that of being a creditor or holder of a general proxy or general power of attorney from a creditor, but no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his or her 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 such person shall be qualified to act as a member of the committee of inspection until he or she holds such a proxy or power of attorney, and until the creditor has proved his or her debt and the proof has been admitted.
- (3) The committee of inspection shall meet at such times as it shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.
- (4) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.
- (5) Any member of the committee may resign his or her office by notice in writing signed by him or her and delivered to the trustee.
- (6) If a member of the committee becomes bankrupt or compounds or arranges with his or her creditors or is absent from five consecutive meetings of the committee, the office of that member shall thereupon become vacant.
- (7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of

which seven days' notice has been given stating the object of the meeting.

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

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

(10) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the court or the official receiver on the application of the trustee.

## **22. Power to accept a composition or scheme after a bankruptcy adjudication.**

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

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

(3) If default is made in payment of any installment 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 the adjudication, shall be provable in the bankruptcy.

## **Control over the person and property of the debtor.**

### **23. Duties of the debtor as to discovery and realisation of property.**

(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 or her creditors and shall submit to such examination and give such information as the meeting may require.

(2) Every debtor shall give such inventory of his or her property, such list of his or her creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his or her property or his or her creditors, attend such other meeting of his or her creditors, wait at such times on the official receiver, special manager or trustee, execute such powers of attorney, conveyances, deeds and instruments and generally do all such acts and things in relation to his or her property and the distribution of

the proceeds among his or her creditors, as may be reasonably required by the official receiver, special manager or trustee or as may be prescribed by general rules, or be directed by the court by any special order 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 or her power, in the realisation of his or her property and the distribution of the proceeds among his or her creditors.

(4) If a debtor willfully fails to perform the duties imposed on him or her by this section, or to deliver up possession of any part of his or her property which is divisible among his or her creditors under this Act, and which is for the time being in his or her possession or under his or her control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he or she, in addition to any other punishment to which he or she may be subject, commits a contempt of court, and may be punished accordingly.

## **24. Address and particulars of employment to be furnished.**

(1) Every debtor residing in Uganda against whom an order of adjudication is made in Uganda on or after the 30th April, 1948, shall, so long as the order remains in force, keep the official receiver or the trustee, as the case may be, informed of his or her residential and postal addresses and shall submit every three months from the date of the order a return, verified by affidavit, giving full particulars as to his or her employment, salary, earnings and other income during the preceding three months.

(2) This section shall apply in like manner to every debtor resident in Uganda against whom an order of adjudication has been made on or before the 30th April, 1948.

(3) Any person who fails to comply with this section commits an offence.

## **25. Arrest of a debtor under certain circumstances.**

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

(a) if, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him or her, it appears to the court that there is probable reason for believing that he or she has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his or her affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him or her;

(b) if, after presentation of a bankruptcy petition by or against him or her, it appears to the court that there is probable cause for believing that he or she is about to remove his or her goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he or she has concealed or is about to conceal or destroy any of his or her goods, or any books, documents or writings which might be of use to his or her creditors in the course of his or her bankruptcy;

(c) if, after service of a bankruptcy petition on him or her, or after a receiving order is made against him or her, he or she removed any goods in his or her possession above the value of one hundred shillings, without

the leave of the official receiver or trustee;

(d) if, without good cause shown, he or she fails to attend any examination ordered by the court.

(2) No arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his or her arrest is served with the bankruptcy notice.

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

## **26. Redirection of a debtor's letters, etc.**

Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time not exceeding six months as the court thinks fit, letters, telegrams, cablegrams and other postal articles, addressed to the debtor at any place mentioned in the order for redirection, shall be redirected, sent or delivered by the managing director of the Uganda Post Limited, or the officers acting under him or her, or by any other person in charge of the transmission and receipt of telegrams and cablegrams, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

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

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

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

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

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

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

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

## **28. Bankrupt to apply for a discharge.**

(1) Where, on or after the 30th April, 1948, any order of adjudication is made, then the bankrupt shall,

within a period specified by the court, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded.

(2) An application for an order of discharge shall, except when the court in accordance with rules made under this Act otherwise directs, be heard in open court.

(3) On the hearing of the application, the court shall take into consideration a report of the official receiver of Uganda or any reciprocating territory as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his or her 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 or her after acquired property, except that---

(a) where the bankrupt has committed any offence under this Act or any other offence connected with his or her bankruptcy whether in Uganda or any reciprocating territory, or where in any case any of the facts hereafter mentioned are proved to have occurred either in Uganda or any reciprocating territory, the court shall---

(i) refuse the discharge;

(ii) suspend the discharge for such period as the court thinks proper;

(iii) suspend the discharge until the debtor has paid to his or her creditors such dividend as the court in its absolute discretion may determine; or

(iv) require the bankrupt as a condition of his or her discharge to consent to a decree being entered against him or her by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the decree without leave of the court, which leave may be given on proof that the bankrupt has since his or her discharge acquired property or income available towards payment of his or her debts;

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

(4) The facts referred to in subsection (3)(a) are---

(a) that the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his or her unsecured liabilities, unless he or she satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his or her unsecured liabilities has arisen from circumstances for which he or she 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 or her and as sufficiently disclose his or her business transactions and financial position within the three years immediately preceding his or her bankruptcy;

(c) that the bankrupt has continued to trade after knowing himself or herself to be insolvent;

(d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof of which shall lie on him or her) of being able to pay it;

- (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his or her liabilities;
  - (f) that the bankrupt has brought on, or contributed to, his or her bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his or her business affairs;
  - (g) that the bankrupt has put any of his or her creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him or her;
  - (h) that the bankrupt has brought on, or contributed to, his or her bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;
  - (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his or her debts as they became due, given an undue preference to any of his or her creditors;
  - (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his or her assets equal to ten shillings in the pound on the amount of his or her unsecured liabilities;
  - (k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his or her creditors;
  - (l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust;
  - (m) that the bankrupt has made default in payment of any sum ordered by the court under section 53.
- (5) With a view to removing any legal disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his or her discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his or her part, the court may, if it thinks fit, grant such a certificate, and a refusal to grant such a certificate shall be subject to appeal.
- (6) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his or her unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his or her unsecured liabilities, and a report by the official receiver or the trustee shall be prima facie evidence of the amount of such liabilities.
- (7) For the purposes of this section, the report of the official receiver shall be prima facie evidence of the statements contained in the report.
- (8) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor.
- (9) 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 or her discharge, give such assistance as the trustee may require in the realisation and distribution of such of his or her property as is vested in the trustee, and, if he or she fails to do so, he or she commits a contempt of court; and the court may also, if it thinks fit, revoke his or her discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

## **29. Failure to apply for a discharge.**

If the bankrupt does not appear on the day fixed for hearing his or her application for discharge or on such subsequent day as the court may direct, or if the bankrupt does not apply for an order of discharge within the period specified under section 28(1), he or she commits an offence against this Act.

## **30. Fraudulent settlements.**

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

- (a) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of property comprised in the settlement; or
- (b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property in which the settlor had not at the date of his marriage any estate or interest (not being money or property of or in right of the settlor's wife), if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, in like manner as in cases where the debtor has been guilty of fraud.

## **31. Effect of an order of discharge.**

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

- (a) from any debt on a recognisance nor from any debt with which the bankrupt may be chargeable at the suit of the Government or of any person for any offence against any law relating to any branch of the general revenue of Uganda, or at the suit of the bailiff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he or she shall not be discharged from such excepted debts unless the Secretary to the Treasury certifies in writing his or her consent to the bankrupt being discharged, from an excepted debt;
- (b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he or she was a party, nor from any debt or liability of which he or she has obtained forbearance by any fraud to which he or she was a party; or
- (c) from any liability under a judgment against him or her in an action for seduction or affiliation, or under a judgment against him as a correspondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of that liability.

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

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings in the order, 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 or she is released by the order, the bankrupt may plead that the cause of action occurred before his or her 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 her, or any person who was surety or in the nature of a surety for him or her.

**32. Power for the court to annul an adjudication in certain cases.**

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

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

(3) Notice of the order annulling an adjudication shall be immediately gazetted.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any 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.

**PART III ADMINISTRATION OF PROPERTY.****Proof of debts.****33. Description of debts provable in bankruptcy.**

(1) Demands in the nature of un-liquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

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

(3) Except as provided in subsections (1) and (2), 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 or she may become subject before his or her discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

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

(5) Any person aggrieved by any estimate made by the trustee under subsection (4) may appeal to the court.

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

(7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may assess the value, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall, for the purposes of this Act, include---

(a) any compensation for work or labour done;

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

### **34. Mutual credit and setoff.**

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

### **35. Rules as to proof of debts.**

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

### **36. Priority of debts.**

- (1) In the distribution of the property of a bankrupt, there shall be in priority to all other debts—
- (a) all taxes and local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment;
  - (b) all rents payable to Uganda Land Commission or a district land board which are not more than five years in arrear;
  - (c) all wages or salary, whether or not earned wholly or in part by way of commission, of any clerk or servant in respect of service rendered to the bankrupt during four months before the date of the receiving order, not exceeding two thousand shillings;
  - (d) all wages of any labourer or worker not exceeding two thousand shillings whether payable for time or for piecework in respect of services rendered to the bankrupt during four months before the date of the receiving order, or, in the case of an African labourer or worker, during twelve months before that date;
  - (e) all sums of money deposited by Africans with the bankrupt for safe custody, whether the bankrupt held himself or herself out as a banker or not;
  - (f) all amounts due in respect of compensation under the Workers Compensation Act the liability for which accrued before the date of the receiving order, unless the bankrupt had at that date, under such a contract with insurers as is mentioned in section 20 of that Act, rights capable of being transferred to or vested in the worker. Where any such compensation is a weekly payment, the amount due in respect thereof shall be

- taken to be the amount of the lump sum for which the weekly payment could be redeemed if the employer made an application for that purpose under section 20 of that Act;
- (g) all amounts due in respect of contributions payable during the twelve months immediately preceding the date of the receiving order by the bankrupt as the employer of any person under the National Social Security Act.
- (2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet paid them, in which case they shall abate in equal proportions between themselves.
- (3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged immediately 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 of the goods or effects, except that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom that payment is made.
- (5) If a debtor by or against whom a bankruptcy petition has been presented dies, this section shall apply as if he or she were bankrupt, and as if the date of his or her death were substituted for the date of the receiving order.
- (6) In the case of partners---
- (a) the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his or her separate debts;
- (b) if there is a surplus of the separate estates, it shall be dealt with as part of the joint estate;
- (c) if there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.
- (7) Subject to this Act, all debts proved in the bankruptcy shall be paid *pari passu*.
- (8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of 6 percent per year on all debts proved in the bankruptcy.
- (9) Nothing in this section shall prejudice the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

### **37. Preferential claim in case of apprenticeship.**

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

of the case.

(2) Where it appears expedient to a trustee, he or she may, on the application of any apprentice or artied clerk to the bankrupt, or any person acting on behalf of such apprentice or artied clerk, instead of acting under subsection (1), transfer the indenture of apprenticeship or articles of agreement to some other person.

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

The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him or her from the bankrupt, with this limitation, that if such distress for rent is 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.

### **39. Postponement of claims of relatives.**

Where a receiving order has been made against a debtor, any relative by consanguinity or affinity of that debtor who has a claim against the debtor for salary or wages due or in respect of any money or other estate lent or entrusted to the debtor shall not be entitled to claim as a creditor in respect of that claim until all claims of other creditors for valuable consideration or money's worth have been satisfied.

### **Property available for payment of debts.**

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

(1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor, 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 her, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months immediately before the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against a judgment debtor under section 100, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months before the date of the order.

#### **41. Description of bankrupt's property divisible among creditors.**

(1) The property of the bankrupt divisible among his or her creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars---

(a) property held by the bankrupt on trust for any other person;

(b) the tools, if any, of his or her trade and the necessary wearing apparel and bedding of himself or herself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding three hundred shillings in the whole, except that in any case the court, having regard to the bankrupt's station in life, may in its discretion order that this allowance be increased to any value not exceeding eight hundred shillings in the whole.

(2) The property of the bankrupt shall comprise the following particulars---

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

(c) all goods, being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his or her trade or business, by the consent and permission of the true owner, under such circumstances that he or she is the reputed owner of the goods, but things in action other than debts due or growing due to the bankrupt in the course of his or her trade or business shall not be deemed goods within the meaning of this paragraph.

## **42. Provisions as to a second bankruptcy.**

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

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him or her bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him or her since he or she was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed among the creditors in the last preceding bankruptcy, shall (subject to any disposition of the property made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to section 50) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy.

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

## **Effect of bankruptcy on antecedent and other transactions.**

## **43. Restriction of rights of a creditor under execution or attachment.**

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

#### **44. Duties of a bailiff as to the goods taken in execution.**

- (1) Where any goods of a 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 money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part of the goods, for the purposes of satisfying the charge.
- (2) Where, under an execution in respect of a decree for a sum exceeding four hundred shillings, the goods of a debtor are sold or money is paid in order to avoid sale, the bailiff shall deduct his or her costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him or her of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor on the bankruptcy petition or on any other petition of which the bailiff has notice, the bailiff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.
- (3) Where any goods in the possession of an execution debtor at the time of seizure by a bailiff are sold by the bailiff without any claim having been made to those goods, the purchaser of the goods so sold shall acquire a good title to the goods, and no person shall be entitled to recover against the bailiff or any other person lawfully acting under his or her authority, for any sale of the goods or for paying over the proceeds of the sale prior to the receipt of a claim to the goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor.
- (4) Nothing in subsection (3) shall affect the right of any claimant, who may prove that at the time of sale he or she had a title to the goods, to any remedy to which he or she may be entitled against any person other than that bailiff.

#### **45. Avoidance of certain settlements.**

- (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement,

be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in the property passed to the trustee of the settlement on its execution.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife, husband or children, or for the future settlement on or for the settlor's wife, husband or children, or property, in which the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his or her bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the person entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy, under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

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

(a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy;

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

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three months after the money or property came into possession or under the control of the settlor, but, if any such payment or transfer is declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

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

#### **46. Avoidance of general assignments of book debts unless registered.**

(1) Where a person engaged in any trade or business made an assignment to any other person of his or her existing or future book debts or any class of those debts, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the law with respect to the registration of bills of sale shall apply accordingly.

(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 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.

#### **47. Avoidance of preference in certain cases.**

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

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

(3) Where a receiving order is made against a judgment debtor under section 100, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

#### **48. Protection of bona fide transactions without notice.**

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

(a) any payment by the bankrupt to any of his or her creditors;

(b) any payment or delivery to the bankrupt;

(c) any conveyance or assignment by the bankrupt for valuable consideration;

(d) any contract, dealing or transaction by or with the bankrupt for valuable consideration, if both the following conditions are complied with

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

#### **49. Validity of certain payments to a bankrupt and an assignee.**

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

#### **50. Dealings with an undischarged bankrupt.**

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

## **Realisation of property.**

### **51. Possession of property by the trustee.**

- (1) The trustee shall, as soon as may be, take possession of the deeds, books and documents of the bankrupt, and all other parts of his or her property capable of manual delivery.
- (2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he or she were a receiver of the property appointed by the court, and the court may, on his or her application, enforce such acquisition or retention accordingly.
- (3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he or she 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 trustees.
- (5) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his or her possession or power, as such officer, banker, attorney, or agent, which he or she is not by law entitled to retain as against the bankrupt or the trustee. If he or she does not, he or she commits a contempt of court, and may be punished accordingly on the application of the trustee.

### **52. Seizure of the property of a bankrupt.**

Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody Of possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or

receptacle of the bankrupt or the debtor where any of his or her 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 or her, 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.

### **53. Appropriation of a proportion of pay or salary to creditors.**

(1) Where a bankrupt is an officer of the Uganda Peoples' Defence Forces, or a public officer, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the head of the Ministry or department under which the pay or salary is enjoyed, may direct.

(2) Before making any order under subsection (1), the court shall communicate with the head of the Ministry or department as to the amount, time and manner of the payment to the trustee, and shall obtain the written consent of the head of the Ministry to the terms of the payment.

(3) Where a bankrupt is in receipt of a salary or income other than as referred to in subsections (1) and (2), 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 or income, or of any part of the salary or income, to the trustee, to be applied by him or her in such manner as the court may direct.

(4) Where a bankrupt is an employee and earning wages, irrespective of whether payment of the wages is made by the day or any other period of time, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of any part of the wages to the trustee to be applied by him or her in such manner as the court may direct.

(5) Nothing in this section shall take away or abridge any power conferred by or under any written law to dismiss or terminate the service of any officer to whom subsection (1) applies.

### **54. Appropriation of income of property restrained from anticipation.**

Where a married woman who has been adjudged bankrupt has property the income of which is subject to a restraint on anticipation, the court shall have power, on the application of the trustee, to order that, during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution among the creditors, and in the exercise of such power, the court shall have regard to the means of subsistence available for the woman and her children.

### **55. Vesting and transfer of property.**

(1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

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

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

(4) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of Uganda requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

**56. Disclaimer of onerous property.**

(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he or she has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation to it, but subject to this section, may, by writing signed by him or her, 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; except that where any such property has not come to the knowledge of the trustee within one month after such appointment, he or she may disclaim that property at any time within twelve months after he or she has become aware of it or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his or her 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 or her, but shall not, except as far as is necessary for the purpose of releasing the bankrupt and his or her 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 any cases which may be prescribed by general rules, and the court may, before or on granting the leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him or her to decide whether he or she will disclaim or not, and the trustee has for 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 or she disclaims the property or not; and, in the case of a contract, if the trustee, after the application as aforesaid does not within that period or extended period disclaim the contract, he or she shall be deemed to have adopted it.

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

(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery of the property to any person entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him or her, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised in it shall vest accordingly in the person named in the order in that behalf without any conveyance or assignment for the purpose; but where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of

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

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, an official receiver is acting as trustee, he or she may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but the power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

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

### **57. Power of the trustee to deal with property.**

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

(a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power to 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 or her, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application of the money;

(c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;

(d) exercise any powers, the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act;

(e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

### **58. Powers exercisable by the trustee with permission of the committee of inspection.**

(a) The trustee may, with the permission of the committee of inspection, do all or any of the following things---

(1) 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 an advocate or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;
  - (d) accept as the consideration 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 or her debts;
  - (f) refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or un-liquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;
  - (g) make such compromise or other arrangements 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 this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing for which permission is sought in the specified case.

### **59. Power to allow the bankrupt to manage property.**

The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself or herself 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 or her creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

### **60. Allowance to the bankrupt for maintenance or service.**

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

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

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

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

Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright,

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

### **63. Protection of the official receiver and trustee from personal liability in certain cases.**

Where the official receiver or trustee has seized or disposed of any goods, chattels, property or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the 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 such property, nor for the costs of any proceedings taken to establish a claim to the property, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of those goods, chattels, property or other effects.

### **Distribution of property.**

#### **64. Declaration and distribution of dividends.**

- (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends among the creditors who have proved their debts.
- (2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.
- (3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.
- (4) Before declaring a dividend, the trustee shall cause notice of his or her intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice of that intention to each creditor mentioned in the bankrupt's statement who has not proved his or her debt.
- (5) When the trustee has declared a dividend, he or she shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable and a statement in the prescribed form as to the particulars of the estate.

#### **65. Joint and separate dividends.**

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

## **66. Provisions for creditors residing at a distance, etc.**

(1) In the calculation and distribution of a dividend, the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish time, if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

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

(3) Subject to subsections (1) and (2), the trustee shall distribute as dividend all money in hand.

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

Any creditor who has not proved his or her 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 or she may have failed to receive before that money is applied to the payment of any future dividend, but the creditor shall not be entitled to disturb the distribution of any dividend declared before his or her debt was proved by reason that he or she has not participated in the distribution.

## **68. Interest on debts.**

(1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding 8 percent per year, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he or she may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed——

(a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be reopened and the whole transaction treated as one;

(b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;

(c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

**69. Final dividend.**

(1) When the trustee has realised all the property of the bankrupt, or so much of it as can, in the joint opinion of the trustee and of the committee of inspection, be realised without needlessly protracting the trusteeship, the trustee shall declare a final dividend, but before so doing he or she shall give notice in the manner prescribed to the persons whose claims to be creditors have been notified to him or her, but not established to his or her satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he or she 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 any such claimant grants him or her further time for establishing his or her 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 persons.

**70. No action for dividend.**

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

**71. Right of the bankrupt to surplus.**

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

**PART IV OFFICIAL RECEIVER AND STAFF.****72. Appointment of an official receiver and deputy official receivers.**

(1) There shall be an official receiver of debtors' estates for Uganda and as many deputy official receivers as may be required from time to time who shall have jurisdiction in such areas as may be specified.

(2) Subject to the provisions of any written law relating to the appointment of persons to the public service, the official receiver and the deputy official receiver shall be appointed, be removable by and be under the general authority and directions of the Minister and they shall also be officers of the court.

(3) A deputy official receiver shall have the same powers, rights and duties within the area for which he or she is appointed as an official receiver under this Act.

**73. Status of the official receiver.**

(1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his or her estate.

(2) The official receiver may, for the purposes of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

(3) All provisions in this or any other Act referring to the trustee in 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 or her such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him or her such aid as may be requisite for enabling the official receiver to perform his or her duties under this Act.

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

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

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

#### **75. Duties of the official receiver as to the debtor's estate.**

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

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

(2) For the purposes of his or her duties as interim receiver or manager, the official receiver shall have the same powers as if he or she 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 or she thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods; except that when the debtor cannot prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person to assist in the preparation of the statement of affairs.

### **PART V TRUSTEES IN BANKRUPTCY.**

**official name.**

**76. Official name of the trustee.**

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

**Appointment.****77. Power to appoint joint or successive trustees.**

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

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

**78. Proceedings in case of vacancy in the office of trustee.**

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the court, and the court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the court as in the case of a first appointment.

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

**Control over the trustee.****79. Discretionary powers of the trustee and control thereof.**

(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 or her creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his or her duty to summon meetings at such times as the creditors, by resolution either at the meeting appointing the trustee or otherwise, may direct, and any creditor may,

with the concurrence of one-sixth in value of the creditors (including himself or herself), at any time 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; but the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him or her out of the estate if the creditors or the court so direct.

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

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

## **80. Appeal to the court against the trustee.**

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

## **81. Control of the official receiver over trustees.**

(1) The official receiver shall take cognisance of the conduct of trustees, and, if any trustee does not faithfully perform his or her duties, and duly observe all the requirements imposed on him or her by law with respect to the performance of his or her duties, or if any complaint is made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such action thereon as may be deemed expedient.

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

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

## **Remuneration and costs.**

### **82. Remuneration of the trustee.**

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

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

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

(4) Where a trustee acts without remuneration, he or she shall be allowed out of the bankrupt's estate such

proper expenses incurred by him or her in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the court, approve.

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

### **83. Allowance and taxation of costs.**

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

(2) Where the trustee is an advocate, he or she may contract that the remuneration for his or her services as trustee shall include all professional services.

(3) All bills and charges of advocates, managers, accountants, auctioneers, brokers and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect of those bills and charges shall be allowed in the trustee's accounts without proof of such taxation having been made.

(4) The taxing officer shall satisfy himself or herself before passing those bills and charges that the employment of such advocates and other persons, in respect of the particular matters out of which the charges arise, has been duly sanctioned.

(5) The sanction must be obtained before the employment, except in case of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction

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

### **Receipts, payments, accounts, audit.**

#### **84. Trustee to furnish a list of creditors.**

The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him or her by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for the list the sum of fifty cents per folio of one hundred words, together with the cost of the postage of the list.

#### **85. Trustee to furnish a statement of accounts.**

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

transmit the statement of the accounts.

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

### **86. Books to be kept by the trustee.**

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

### **87. Annual statement of proceedings.**

(1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the official receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The official receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect or omission, which may appear on the statements or in his or her accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

### **88. Trustee not to pay into the trustee's private account.**

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

### **89. Payment of money into the prescribed bank.**

(1) A bankruptcy estates account shall be kept by the official receiver with the prescribed bank, and all monies received by him or her in respect of proceedings under this Act shall be paid to that account.

(2) Every trustee in bankruptcy shall in such manner and at such times as the official receiver shall direct pay the money received by him or her to the bankruptcy estates account at the prescribed bank, and the official receiver shall furnish him or her with a certificate of receipt of the money so paid; except that---

(a) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee satisfies the court that for any other reason it is for the advantage of the creditors that the trustee should have an account with the local bank, the court shall, on the application of the committee of inspection, authorise the trustee to make his or her payments into and out of such local bank as the committee may select;

(b) in any bankruptcy composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the court may, if for special reasons it thinks fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his or her payments into and out of such local bank as the court may direct.

(3) Where the trustee opens an account in a local bank, he or she shall open and keep it in the name of the

debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his or her payments into and out of the local bank in the prescribed manner.

(4) Subject to any general rules relating to small bankruptcies under section 117, where the debtor at the date of the receiving order has an account at a bank, the account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding one thousand shillings, or such other amount as the court in any particular case authorises him or her to retain, then, unless he or she explains the retention to the satisfaction of the court, he or she shall pay interest on the amount so retained in excess at the rate of 20 percent per year, and shall have no claim to remuneration, and may be removed from his or her office by the court, and shall be liable to pay any expenses occasioned by reason of his or her default.

## **90. Investment of surplus funds.**

(1) Whenever the cash balance standing to the credit of the bankruptcy estates account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' estates, the official receiver may place the excess funds or any part of them on fixed deposit with the prescribed bank.

(2) Whenever any money so placed on deposit is, in the opinion of the official receiver, required to answer any demands in respect of bankrupts' estates, the official receiver shall thereupon withdraw the money from fixed deposit and repay it to the credit of the cash balance of the bankruptcy estates account.

(3) All interest accruing from any money so placed on deposit shall be paid by the official receiver to the credit of a separate account entitled the Bankruptcy Contingency Fund at the prescribed bank.

(4) Where it appears that it is in the public interest to do so and that other funds are not available or properly chargeable, the court may on the application of the official receiver authorise him or her to employ money in the Bankruptcy Contingency Fund to defray the cost in whole or in part of any of the following---

(a) the prosecution of any debtor for any bankruptcy offences alleged to have been committed by him or her;

(b) the institution of proceedings and the payment of expenses of witnesses, if any, for the discovery or recovery of property belonging to any debtor;

(c) the institution of proceedings to set aside an alleged fraudulent preference;

(d) the employment of counsel in matters connected with an estate which by reason of their difficulty or other good cause cannot be dealt with by the official receiver himself or herself;

(e) the employment of interpreters in cases where the court is unable to provide an interpreter;

(f) the payment of expenses involved in arresting a debtor and bringing him or her before the court;

(g) any other expenditure which the court may deem fit.

(5) The court may in its discretion order that the fund be reimbursed in whole or in part if any money is recovered as a result of the expenditure authorised under subsection (4).

## **91. Audit of a trustee's accounts.**

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

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory

declaration in the prescribed form.

(3) The official receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

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

### **Vacation of office by trustee.**

#### **92. Release of a trustee.**

(1) When the trustee has realised all the property of the bankrupt, or so much of it as can, in his or her opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his or her office, the court shall, on his or her application, cause a report on his or her accounts to be prepared, and, on his or her complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(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 or she may have done or made contrary to his or her duty.

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

(4) Subsections (1), (2) and (3) shall apply to the official receiver when he or she is, or is acting as, trustee, and when the official receiver has been released under this section, he or she shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate but no liability shall attach to him or her personally by reason of his or her so continuing in respect of any act done, default made, or liability incurred before his or her release.

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

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

#### **93. Office of trustee vacated by insolvency.**

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

#### **94. Removal of a trustee.**

(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 appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereafter provided in case of a vacancy in the office

of trustee.

(2) If the court is of opinion---

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

## **PART VI CONSTITUTION, PROCEDURE AND POWERS OF COURT.**

### **Jurisdiction.**

#### **95. Jurisdiction in bankruptcy.**

The court having jurisdiction in bankruptcy shall be the High Court, but the Chief Justice may by statutory order delegate all or any part of the jurisdiction of the High Court in bankruptcy to any magistrate's court, either generally or for the purpose of any particular case or class of cases.

#### **96. Judge may exercise his or her powers in chambers.**

Subject to this Act, and to general rules, a judge of the court may exercise in chambers the whole or any part of his or her powers.

#### **97. Official receiver to make payments in accordance with directions of court.**

Where any monies or funds have been received by the official receiver under this Act and the court makes an order declaring that any person is entitled to the monies or funds, the official receiver shall make payment accordingly to that person.

#### **98. General powers of the court.**

- (1) Subject to this Act, the court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within its cognisance, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.
- (2) Where default is made by a trustee, debtor or other person in obeying any order or direction given by the official receiver, the court may on the application of the official receiver order the defaulting trustee, debtor or person to comply with the order or directions so given; and the court may also, if it thinks fit upon any such application, make an immediate order for the committal of the defaulting trustee, debtor or person.
- (3) The power given by subsection (2) shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

### **99. Disqualifications of bankrupt.**

(1) Where a debtor is adjudged bankrupt, he or she shall be disqualified for---

(a) being appointed or acting as a justice of the peace;

(b) being elected to, or holding or exercising the office of mayor, alderman or municipal councillor, or a member of a town council, school committee or road board.

(2) If a person is adjudged bankrupt while holding the office of justice of the peace, mayor, alderman or municipal councillor, or a member of a town council, school committee or road board, his or her office shall thereupon become vacant.

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

(a) the adjudication of bankruptcy against him or her is annulled;

(b) five years have elapsed from the date of his or her discharge; or

(c) he or she obtains from the court his or her discharge with a certificate to the effect that his or her bankruptcy was caused by misfortune without any misconduct on his or her part.

(4) The court may grant or withhold such certificate as it thinks fit, but any refusal of the certificate shall be subject to appeal.

### **Judgment debtors.**

#### **100. Power to make a receiving order in lieu of a committal order.**

(1) Where application is made by a decree holder to the court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu of the committal, with the consent of the decree holder and on payment by him or her of the prescribed fee, make a receiving order against the debtor.

(2) In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and this Act shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

### **Appeals.**

#### **101. Appeals in bankruptcy.**

(1) The court may review, rescind or vary any order made by it.

(2) Orders of the court in bankruptcy matters shall, at the instance of the person aggrieved, be subject to appeal, but no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

(3) Where by this Act an appeal to the court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

### **Procedure.**

### **102. Discretionary power of the court.**

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

### **103. Consolidation of petitions.**

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

### **104. Substitute petitioner.**

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

### **105. Continuance of proceedings on death of a debtor.**

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

### **106. Power to stay proceedings.**

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

### **107. Power to present a petition against one partner.**

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

### **108. Power to dismiss a petition against some respondents only.**

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

### **109. Property of partners to be vested in same trustee.**

Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership,

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

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

Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him or her, and he or she may show cause against it, and on his or her application the court may, if it thinks fit, direct that he or she shall receive his or her proper share of the proceeds of the action, and if he or she does not claim any benefit from the proceeds of the action, he or she shall be indemnified against costs in respect of the action as the court directs.

#### **111. Actions on joint contracts.**

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

#### **112. Proceedings in partnership name.**

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

#### **113. Court to be auxiliary to other Commonwealth courts.**

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

#### **114. Commitment to prison.**

Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and, if the gaoler of any prison refuses to receive any prisoner so committed, he or she shall on conviction be liable for every such refusal to a fine not exceeding two thousand shillings.

### **PART VII SUPPLEMENTAL PROVISIONS.**

## **Application of the Act.**

### **115. Married women.**

Every married woman shall be subject to the bankruptcy laws as if she were feme sole.

### **116. Exclusion of companies.**

A receiving order shall not be made against any corporation or against any association or company registered under the Companies Act and any Act passed in substitution for it.

### **117. Application of the Act in case of small estates.**

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

- (a) if the debtor is adjudged bankrupt, the official receiver shall be the trustee in the bankruptcy;
- (b) there shall be no committee of inspection, but the official receiver may do all things which may be done by the trustee with the permission of the committee of inspection;
- (c) such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor, except that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

### **118. Administration in bankruptcy of the estate of a person dying insolvent.**

- (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he or she been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.
- (2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.
- (3) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver, as its trustee, and he or she shall immediately proceed to realise and distribute it in accordance with this Act; except that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

- (4) If a trustee other than the official receiver is appointed and 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.
- (5) With the modifications hereafter mentioned, all the provisions of Part III of this Act (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made in those provisions by general rules under subsection (11), the following provisions, namely, sections 27, 83, and 92 (4) (so far as it relates to the effect of the release of the official receiver) and 117 shall, so far as those sections 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.
- (6) 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 personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him or her in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.
- (7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee, after payment in full of all debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, the surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.
- (8) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, if an order for administration is made on the petition, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice, no payment or transfer of property made by the legal personal representative shall operate as a discharge to him or her as between himself or herself and the official receiver or trustee; except as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.
- (9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor, and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under subsection (11).
- (10) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition as provided in this Act.
- (11) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

## **General rules.**

### **119. Power to make general rules.**

The Chief Justice, with the approval of the Minister, may make general rules for carrying into effect the objects of this Act.

## **Fees and salaries, etc.**

### **120. Fees, etc.**

The Chief Justice, with the approval of the Minister, may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act.

### **121. Salaries and remuneration.**

The Chief Justice, with the approval of the Minister, shall direct whether any and what remuneration is to be allowed to any person (other than the official receiver or his or her staff) performing any duties under this Act, and may vary, increase or diminish such remuneration, as he or she may think fit.

## **Evidence.**

### **122. Gazette to be evidence.**

(1) A copy of the Gazette containing any notice inserted in the Gazette under this Act shall be evidence of the facts stated in the notice.

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

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

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

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

### **124. Evidence of proceedings in bankruptcy.**

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

### **125. Swearing of affidavits.**

Subject to general rules, any affidavit to be used in the court may be sworn before any person authorised to administer oaths in the court, or before a magistrate or a justice of the peace, or in the case of a person residing out of Uganda, before any person qualified to administer oaths in the country where he or she resides (he or she being certified to be qualified as aforesaid by a foreign service officer or diplomatic

representative of a Commonwealth country, or by a notary public).

### **126. Death of the debtor or a witness.**

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

### **127. Certificate of appointment of a trustee.**

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

### **miscellaneous.**

### **128. Computation of time.**

(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time, the time shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the offices of the court are wholly closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days specified in this section.

(2) Where by this Act the time limited for doing any act or thing is less than six days, a Sunday, public holiday and any other day on which the offices of the court are wholly closed shall be excluded in computing the time.

(3) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days specified in this section.

### **129. Service of notices.**

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 with the notices or other documents.

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

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

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

**131. Exemption of deeds, etc. from stamp duty.**

(1) Every deed, conveyance, assignment or other assurance relating solely to freehold or leasehold property, or to any mortgage charge or other incumbrance on, or any estate, right or interest in, any movable or immovable property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every 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, shall be exempt from stamp duty, except in respect of fees under this Act.

(2) For the purposes of this section, "bankruptcy" shall include any proceeding under this Act whether before or after adjudication, and "bankrupt" shall include any debtor proceeded against under this Act.

**132. Acting of corporations, partners, etc.**

For all or any of the purposes of this Act, a corporation may act by any of its officers authorised for that purpose under the seal of the corporation, a firm may act by any of its members, and a person of unsound mind may act by the manager of his or her estate or other persons appointed under the Administration of Estates of Persons of Unsound Mind Act.

**133. Certain provisions to bind the Government.**

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

**Unclaimed funds or dividends.****134. Unclaimed and undistributed dividends or funds under this Act.**

(1) Where the trustee, under any bankruptcy, composition or scheme, under this Act, has under his or her control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he or she has in his or her hands or under his or her control any unclaimed or undistributed money arising from the property of the debtor, he or she shall immediately pay it to the bankruptcy estates account at the prescribed bank.

(2) The official receiver shall furnish the trustee with a certificate of receipt of the money so paid, which shall be an effectual discharge to him or her in respect of the money.

(3) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive or distribute any funds or dividends under the Deeds of Arrangement Act have remained or remain unclaimed or undistributed for six months after they became claimable or distributable, or in any other case for two years after the receipt of the funds or dividends by the trustee or other person, the trustee or other person shall immediately pay them to the bankruptcy estates account at the prescribed bank.

(4) The official receiver shall furnish the trustee or other person with a certificate or receipt of the money so paid, which shall be an effectual discharge to him or her in respect of the money.

- (5) The official receiver may at any time order any such trustee or other person to submit to him or her an account verified by affidavit of the sums received and paid by him or her as aforesaid, and may direct and enforce an audit of the account.
- (6) The official receiver may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section, the court shall have and, at the instance of the official receiver, may exercise, all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part II of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.
- (7) The provisions of this section shall not, except as expressly declared in this section, deprive any person of any larger or other right or remedy to which he or she may be entitled against such trustee or other person.
- (8) Where any unclaimed dividends or undistributed money paid into the bankruptcy estates account under this section shall have remained in that account for two years, the official receiver shall transfer the money to the credit of the Bankruptcy Contingency Fund.
- (9) Any person claiming to be entitled to any monies paid into the bankruptcy estates account or the Bankruptcy Contingency Fund under this section may apply to the official receiver for payment to him or her of the monies, and the official receiver, if satisfied that the person claiming is so entitled, shall make an order for the payment to that person of the sum due.
- (10) If the money claimed under subsection (9) has been paid to the credit of the Bankruptcy Contingency Fund and that fund is insufficient to meet the sum required to be paid, the deficiency shall be met out of the Consolidated Fund.
- (11) Any person dissatisfied with the decision of the official receiver in respect of his or her claim may appeal to the court.

## PART VIII BANKRUPTCY OFFENCES.

### 135. Fraudulent debtors.

- (1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made commits an offence in each of the following cases---
- (a) if he or she does not to the best of his or her knowledge and belief fully and truly discover to the trustee all his or her property, movable and immovable, and how and to whom and for what consideration and when he or she disposed of any part of it, except such part as has been disposed of in the ordinary way of his or her trade, if any, or laid out in the ordinary expense of his or her family, unless he or she proves that he or she had no intent to defraud;
- (b) if he or she does not deliver up to the trustee, or as he or she directs, all such part of his or her movable and immovable property as is in his or her custody or under his or her control, and which he or she is required by law to deliver up, unless he or she proves that he or she had no intent to defraud;
- (c) if he or she does not deliver up to the trustee, or as he or she directs, all books, documents, papers and writings in his or her custody or under his or her control relating to his or her property or affairs, unless he or she proves that he or she had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition by or against him or her, or within two years immediately before that presentation, he or she conceals any part of his or her property to the value of two

- hundred shillings or upwards, or conceals any debt due to or from him or her, unless he or she proves that he or she had no intent to defraud;
- (e) if, after the presentation of a bankruptcy petition by or against him or her, or within two years immediately before that presentation, he or she fraudulently removes any part of his or her property to the value of two hundred shillings or upwards;
- (f) if he or she makes any material omission in any statement relating to his or her affairs, unless he or she proves that he or she had no intent to defraud;
- (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he or she fails for a month to inform the trustee thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him or her, he or she prevents the production of any book, document, paper or writing affecting or relating to his or her property or affairs, unless he or she proves that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (I) if, after the presentation of a bankruptcy petition by or against him or her, or within two years immediately before that presentation, he or she conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his or her property or affairs, unless he or she proves that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (j) if, after the presentation of a bankruptcy petition by or against him or her, or within two years immediately before that presentation, he or she makes or is privy to the making of any false entry in any book or document affecting or relating to his or her property or affairs, unless he or she proves that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (k) if, after the presentation of a bankruptcy petition by or against him or her, or within two years immediately before that presentation, he or she 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 or her property or affairs;
- (l) if, after the presentation of a bankruptcy petition by or against him or her, or at any meeting of his or her creditors within two years immediately before that presentation, he or she attempts to account for any part of his or her property by fictitious losses or expenses;
- (m) if, within two years immediately before the presentation of a bankruptcy petition by or against him or her, or after the presentation of a bankruptcy petition and before the making of a receiving order, he or she, by any false representation or other fraud, has obtained any property on credit and has not paid for it;
- (n) if, within two years immediately before the presentation of a bankruptcy petition by or against him or her, or after the presentation of a bankruptcy petition and before the making of a receiving order, he or she obtains under false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his or her trade, any property on credit and has not paid for it, unless he or she proves that he or she had no intent to defraud;
- (o) if, within two years immediately before the presentation of a bankruptcy petition by or against him or her, or after the presentation of a bankruptcy petition and before the making of a receiving order, he or she pawns, pledges or disposes of any property which he or she has obtained on credit and has not paid for, unless, in the case of a trader, the pawning, pledging or disposing is in the ordinary way of his or her trade, and unless in any case he or she proves that he or she had no intent to defraud;

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

(q) if he or she makes default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court is authorised to make an order;

(r) if, within one year preceding the date of the making of the receiving order, he or she has continued to trade after knowing himself or herself to be insolvent;

(s) if, within six months before the making of a receiving order, he or she sells goods at a price lower than cost, unless he or she proves that he or she had no intent to defraud his or her creditors;

(t) if he or she has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him or her) of being able to pay it.

(2) For the purposes of subsection (1), "trustee" means the official receiver of the debtor's estate or trustee administering his or her estate for the benefit of his or her creditors.

(3) Any person who commits an offence under subsection (1) is liable on conviction to imprisonment for any term not exceeding three years except in the cases mentioned in paragraphs (m), (n) and (o) of that subsection when he or she is liable on conviction to imprisonment for any term not exceeding five years.

(4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(o), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawn or pledged or disposed of in such circumstances as aforesaid commits an offence and is liable on conviction to be punished in the same way as if he or she had received the property knowing it to have been obtained in circumstances amounting to an offence punishable under section 314 of the Penal Code Act.

### **136. Undischarged bankrupt obtaining credit.**

Where a person who has been adjudged bankrupt or insolvent in Uganda or any reciprocating territory and has not obtained his or her discharge——

(a) either alone or jointly with any other person obtains credit to the extent of one hundred shillings or upwards from any person without informing that person that he or she is an undischarged bankrupt;

(b) engages in any trade or business under a name other than that under which he or she was adjudicated bankrupt without disclosing to all persons with whom he or she enters into any business transaction the name under which he or she was adjudicated bankrupt, he or she commits an offence.

### **137. Frauds by bankrupts, etc.**

(1) If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made---

(a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud;

(b) with intent to defraud his or her creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his or her property; or

(c) with intent to defraud his or her creditors, has concealed or removed any part of his or her property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him or her, he or she commits an offence.

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

### **138. Bankrupt guilty of gambling, etc.**

(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, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of that trade or business---

(a) he or she has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his or her insolvency by gambling or by rash and hazardous speculations, and the gambling or speculations are unconnected with his or her trade or business;

(b) he or she has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his or her estate by such gambling or rash and hazardous speculations as mentioned in paragraph (a) of this subsection; or (c) on being required by the official receiver at any time, or in the course of his or her public examination by the court, to account for the loss of any substantial part of his or her estate incurred within a year immediately preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he or she fails to give a satisfactory explanation of the manner in which such loss was incurred.

(2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he or she entered into the speculations shall be taken into consideration.

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

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

(1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made commits an offence, if, having been engaged in any trade or business during any period in the three years immediately before the date of the presentation of the bankruptcy petition, he or she has not kept proper books of account throughout that period and throughout any further period in which he or she 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; except that a person who has not kept or has not preserved books of account shall not be convicted of an offence under this section---

(a) if his or her 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 been adjudged bankrupt or insolvent or made a composition or arrangement with his or her creditors in Uganda or any reciprocating territory, five thousand shillings or in any other case one thousand shillings; or

(b) if he or she proves that in the circumstances in which he or she traded or carried on business the omission was honest and excusable.

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

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he or she has not kept such books or accounts as are necessary to exhibit or explain his or her transactions

and financial position in his or her trade or business, including a book containing entries from day-to-day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, 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 of the goods in sufficient detail to enable the goods and the buyers and sellers of the goods to be identified.

#### **140. Bankrupt absconding with property.**

If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him or her, or within six months before such presentation, quits Uganda and takes with him or her, or attempts or makes preparation to quit Uganda and take with him or her, any part of his or her property to the amount of four hundred shillings or upwards, which ought by law to be divided among his or her creditors, he or she (unless he or she proves that he or she had no intent to defraud) commits an offence.

#### **141. False claim, etc.**

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

#### **142. Order by the court for prosecution on report of trustee.**

Where an official receiver or trustee in a bankruptcy reports to the court that in his or her 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 any such offence, the court shall, if it appears to the court 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.

#### **143. Criminal liability after discharge or composition.**

Where a debtor has committed any criminal offence, he or she shall not be exempt from being proceeded against for it by reason that he or she has obtained his or her discharge or that a composition or scheme of arrangement has been accepted or approved.

#### **144. General penalty.**

A person guilty of an offence under this Act in respect of which no special penalty is imposed by this Act is liable on conviction to imprisonment for a period not exceeding two years.

#### **145. Form of charge.**

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

warrant or document of, the court acting under this Act.

#### **146. Director of Public Prosecutions to act in certain cases.**

Where the court orders the prosecution of any person for any offence under this Act or for any offence arising out of or connected with any bankruptcy proceedings, the Director of Public Prosecutions shall institute and carry on the prosecution, except that where the order of the court is made on the application of the official receiver and based on his or her report, the official receiver may institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before a magistrate's court, unless in the course of the proceedings circumstances arise which render it desirable that the remainder of the proceedings should be carried on by the Director of Public Prosecutions.

#### **147. Evidence as to frauds by agents.**

A statement or admission made by any person in any compulsory examination or deposition before the court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence relating to frauds by agents, bankers or factors.

### **PART IX PROVISIONS FOR RECIPROCITY WITH OTHER TERRITORIES.**

#### **148. Declaration of reciprocating territories and courts.**

Where the Minister is satisfied that the legislature of any territory, the court of which having jurisdiction in bankruptcy is subordinate to the Court of Appeal, has enacted provisions for reciprocity in bankruptcy which in that territory have the like effect as the provisions contained in this Part of this Act, the Minister may by statutory instrument declare that territory to be a reciprocating territory, and the court of that territory having jurisdiction in bankruptcy, a reciprocating court for the purposes of this Act, and as from the date of publication of that instrument in the Gazette the provisions of this Part of this Act shall apply to all bankruptcy proceedings subsequently instituted in the declared territory against a debtor having property in Uganda.

#### **149. Local effect of receiving order, etc. made by reciprocating court against debtor having property in Uganda.**

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

#### **150. Vesting of bankrupt's local property in trustee appointed in reciprocating territory.**

Where an order of adjudication is made by a reciprocating court, the property of the bankrupt situated in Uganda shall, by virtue of that order, vest in the person from time to time discharging the office of trustee

of the property of the bankrupt in the reciprocating territory, in the same manner as if the order of adjudication and the appointment of trustee had been made in Uganda, and the superintendence of the trustee shall continue to be exercised by the committee of inspection appointed in the reciprocating territory or, if there is no such committee, by the reciprocating court.

### **151. Local powers of official receiver, etc. appointed in a reciprocating territory.**

The official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in Uganda shall, subject to the control of the court by which he or she is appointed, be solely responsible for conducting those proceedings and managing the affairs of the debtor or bankrupt within Uganda, and for such purposes shall, each in his or her respective capacity, have the same powers, rights, duties, obligations and liabilities as if he or she had derived his or her authority under this Act; and in any such proceedings where by this Act a debtor, creditor or other person interested is required to do any act at the direction of an official receiver, interim receiver, special manager or trustee, or is permitted by this Act to move in any matter in connection with such proceedings, every such debtor, creditor or person interested shall do such act at the direction of, and in all such matters treat and negotiate with or proceed against the official receiver, interim receiver, special manager or trustee as the case may be, of the reciprocating territory, except insofar as any such official may have delegated his or her authority to the official receiver of Uganda as his or her agent in the manner hereafter provided.

### **152. Local official receiver to act as agent of official receiver, etc. of reciprocating territory.**

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

### **153. Mode of requesting official receiver to act as agent.**

(1) Every request to act as agent as provided in section 152 shall be made in the manner prescribed under this Act, and shall be published as a notice in the Gazette, and upon that publication and without further formality or authority, the official receiver shall, as regards the debtor or bankrupt and his or her property and creditors situated in Uganda and for the purposes for which he or she is authorised, have the same rights, powers and duties as are conferred under this Act upon an official receiver, interim receiver, special manager or trustee as the case may be; but nothing in this subsection shall be taken to confer on the official receiver any interest or title in any such property otherwise than as an agent as aforesaid.

(2) On the receipt of the prescribed request, the official receiver shall file with the chief registrar of the High Court the original or a properly authenticated copy of the request, and upon such filing the court shall take judicial notice of the appointment as agent under the provisions of this Part of this Act.

(3) Notwithstanding subsection (1), the court may, in any case in which it is made to appear to the court that immediate action is desirable, give the official receiver leave to commence discharging his or her duties as agent as aforesaid in any manner applicable to the circumstances, before the publication of the prescribed request, if upon the receipt of telegraphic or other information the court is satisfied that---

- (a) bankruptcy proceedings have been instituted in a reciprocating territory against a debtor having property in Uganda;
  - (b) the prescribed request for the official receiver to act has been signed and dispatched; and
  - (c) the official receiver has been indemnified against all costs, charges and expenses to be incurred by him or her.
- (4) Any provisional authority conferred on an official receiver by the court under subsection (3) may be revoked, unless within such time as may in the circumstances seem reasonable the prescribed request is filed under subsection (2).
- (5) Unless the contrary intention appears, every request to act as agent sent to the official receiver of Uganda shall be deemed to permit him or her to delegate at his or her discretion the powers and duties vested in him or her as such agent to any deputy official receiver appointed under this Act.

#### **154. Duties of official receiver acting as agent.**

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

#### **155. Transmission of proofs of local debts.**

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

#### **156. Power of local court to make orders under sections 10 and 25.**

If on the application of the official receiver or any creditor or other person interested, it appears to the court that bankruptcy proceedings have been instituted in a reciprocating court against a debtor having property situated in Uganda, the court may, notwithstanding that no such proceedings have been instituted in Uganda, exercise as regards the person, property and affairs of the debtor all the powers conferred by sections 10 and 25 as may be applicable in the circumstances.

#### **157. Local enforcement of warrants of reciprocating court.**

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

#### **158. Limitation on powers of local court to entertain proceedings.**

Subject to the other provisions of this section, a reciprocating court shall have sole jurisdiction in all matters

in or arising out of any bankruptcy proceedings taken before such court against a debtor having property in Uganda, and no court in Uganda shall entertain any suit, application or other matter arising in or out of such proceedings except---

- (a) upon the institution of any proceedings by or against the local official receiver in respect of any matters within the scope of his or her authority in the capacity of agent as aforesaid;
- (b) in the case of any civil suit or proceedings within the ordinary civil jurisdiction of such court by or against the official receiver, interim receiver, trustee or special manager of or appointed in a reciprocating territory;
- (c) upon the institution of any proceedings affecting the property of the debtor or bankrupt situated in Uganda;
- (d) upon the receipt of a request to act in aid of or be auxiliary to the reciprocating court;
- (e) for the public examination of the debtor in regard only to his or her property situated within Uganda or his or her dealings with any person ordinarily resident or carrying on business in Uganda, except that the public examination shall not be held until the public examination before the reciprocating court shall have been concluded or adjourned sine die;
- (f) for the exercise of powers under Part VIII of this Act in relation only to bankruptcy offences alleged to have been committed within Uganda;
- (g) upon the institution of any proceedings for or arising out of the enforcement or execution of any order, warrant or search warrant made or issued by a reciprocating court; or
- (h) upon an application for the exercise of the powers conferred on the court by sections 10, 25, 26 and 53.

### **159. Concurrent bankruptcies.**

(1) For the purposes of this section, "concurrent bankruptcy proceedings" means bankruptcy or insolvency proceedings instituted concurrently against the same debtor in any two or more reciprocating territories, one of which may or may not be Uganda; where concurrent bankruptcy proceedings have been instituted affecting property in Uganda, all such property shall vest in the trustee appointed in the territory where the order of adjudication first is made; but if two or more such orders bear the same date or if for any reason no such adjudication order is made, then the property shall vest in or be administered by the trustee or receiver of the territory where the receiving order first is made.

(2) In any case where concurrent bankruptcy proceedings have been instituted in Uganda and under subsections (1) and (4) the property of the debtor or bankrupt situated in Uganda vests in or is administered by a trustee or receiver in a reciprocating territory, the court shall rescind its receiving order and annul its order of adjudication, if made, or dismiss the petition upon such terms, if any, as the court may think fit.

(3) The rescission of a receiving order or an annulment of adjudication under subsection (2) shall not invalidate any acts lawfully done by the receiver or trustee of Uganda or any other person lawfully acting under the authority of either of them.

(4) Notwithstanding the other provisions of this section, in any case where concurrent bankruptcy proceedings have been instituted in Uganda the court may, after such inquiry and reference to such reciprocating courts as it deems fit, order that the property of the debtor situated in Uganda shall vest in or be administered by a trustee or receiver in Uganda or in some reciprocating territory other than that determined under the provisions of subsection (1) if, upon an application by the official receiver or any creditor or other person interested, it appears that a majority of the creditors in number and value are

resident in Uganda or such other reciprocating territory, and that from the situation of the property of the debtor or bankrupt or other causes his or her estate and effects may be more conveniently administered, managed and distributed in Uganda or such other reciprocating territory.

(5) The court shall not make an order under subsection (4) unless it appears that a similar order has first been made by the reciprocating court of the territory therein and according to the law of which the property of the debtor would have been administered under subsection (1), but for such order.

### **160. Power of official receiver, etc. to request an official receiver in a reciprocating territory to act as his or her agent.**

(1) Where a receiving order or an order of adjudication is made in Uganda against a debtor or bankrupt having property situated in a reciprocating territory and where, under this Act, the property of the debtor or bankrupt is administered by or vested in the official receiver or a trustee of or appointed in Uganda, it shall be the duty of such official receiver or trustee and any interim receiver or special manager appointed under this Act to take all such steps as may be lawful in any reciprocating territory for the proper administration of any property of the debtor or bankrupt situated in that territory, and at his or her discretion and without further authority to request in the prescribed manner any bankruptcy official in that territory empowered for that purpose to act as his or her agent either generally or for any specific purpose, and to give such directions and to publish such notices and to do all such things in the reciprocating territory as maybe lawful for the administration of the estate.

(2) Unless for any reason the contrary intention is expressed, every request sent to a bankruptcy official in a reciprocating territory requiring him or her to act as an agent as provided in subsection (1) shall contain a consent that he or she may assign the powers and duties vested in him or her as agent to his or her deputy or any officer ordinarily authorised to act for him or her in the reciprocating territory.

(3) Where in any proceedings mentioned in subsection (1) the official receiver, interim receiver, special manager or trustee shall have completed and dispatched to a reciprocating territory a request to a bankruptcy official therein to act as his or her agent as aforesaid and where the circumstances of the case so require, the court may, on the application of the official receiver, interim receiver, special manager or trustee and on an undertaking to indemnify against costs and charges being given, request the reciprocating court by telegram or otherwise to authorise the bankruptcy official of such court empowered for that purpose to act as agent until such time as the prescribed request shall arrive in the ordinary course of post.

### **161. Power to make special rules under this Part.**

(1) The Chief Justice, with the approval of the Minister, may make rules for the purpose of carrying into effect all or any of the objects of this Part of this Act, and, in addition and for such purpose, shall have power to make rules extending or varying the time limited under this Act or any rules made under section 119 for the doing of any act or taking any proceeding, insofar as the limitation of time affects persons ordinarily resident or carrying on business in a reciprocating territory who are or may be interested in any bankruptcy proceedings in Uganda against a debtor having property in that reciprocating territory; but no rules made under the powers conferred by this subsection shall come into force until the Chief Justice shall by statutory instrument declare himself or herself satisfied that the rule making authorities in all reciprocating territories have made rules having the like effect within their respective territories.

(2) Notwithstanding subsection (1), the court may in respect of any particular matter exercise its general

powers of extension of time under section 102, in favour of a person ordinarily residing or carrying on business in a reciprocating territory, who is interested in bankruptcy proceedings instituted in Uganda against a debtor having property in that reciprocating territory.

## **PART X GENERAL.**

### **162. Bankruptcy Rules, 1915, applied.**

Until the Chief Justice makes general rules and prescribes fees under the powers conferred in sections 119 and 120, the Bankruptcy Rules, 1915, made under section 132 of the Bankruptcy Act, 1914, of the United Kingdom and the scale of fees prescribed under section 133 of the same Act are declared to be in force in Uganda and shall be read with and considered as part of this Act, and the court may construe the rules with such verbal alterations not affecting the substance as may be deemed expedient to render the rules applicable to local circumstances and to any matter before the court, except that any such construction or alteration shall not be inconsistent with the provisions of this act.