



## SAMOA

# BANKRUPTCY ACT 1908

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**BANKRUPTCY ACT 1908**

**1908**

**No.12**

**AN ACT** to consolidate certain enactments of the General Assembly relating to bankruptcy.

*[Assent and commencement date August 1908]*

**PART 1  
PRELIMINARY**

**1. Short title, application of other Acts and Parts under this Act** – (1) The short title of this Act is the Bankruptcy Act 1908.

(2) This Act is a consolidation of the enactments mentioned in Schedule 1, and with respect to those enactments the following provisions apply:

- (a) all districts, offices, appointments, adjudications, regulations, rules, Proclamations, orders, warrants, notifications, resolutions, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of

this Act, shall ensure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be taken to have so originated;

- (b) all estates and persons brought under or subject to the operation of the said enactments before the coming into operation of this Act are subject to the provisions of this Act, and all such estates shall, from the date of the coming into operation of this Act, vest in and be administered by the assignees in whom they would have been respectively vested and by whom they would have been respectively administered had the adjudication taken place immediately on the coming into operation of this Act;
  - (c) all matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.
- (3) This Act is divided into the following Parts:
- (a) PART 1: The Court. (Sections 3 to 19);
  - (b) PART 2: The Official Assignee. (Sections 20 to 25);
  - (c) PART 3: Proceedings up to Adjudication. (Sections 26 to 56);
  - (d) PART 4: Supervisors (section 57);
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  - (m) PART 13: Penal (sections 138 to 147);
  - (n) PART 14: Miscellaneous (sections 148 to 176).

**2. Interpretation** – In this Act, unless the context otherwise requires:



“adjudication” or “order of adjudication” means the filing of a debtor’s petition or an order of a Court adjudging a person a bankrupt on a creditor’s petition;

“advertised” means published in 1 or more newspapers published or generally circulated within the place in which the proceeding or matter is taken or pending;

“available act of bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the filing of the petition on which the order of adjudication is made;

“Court” means the Supreme Court;

“debt provable in bankruptcy” or “provable debt” includes any debt, demand, or liability by this Act made provable in bankruptcy;

“district” means the district of the Court for the purposes of bankruptcy jurisdiction;

“goods” includes all chattels personal;

“Judge” means a Judge of the Supreme Court;

“liability” includes:

(a) any compensation for work or labour done;

(b) any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the bankrupt; and

(c) generally includes any express and 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 un-liquidated, as respects time present or future, certain, or dependent on any 1 or more contingencies, as respects mode of valuation capable of being ascertained by fixed rules or as matter of opinion.

“Minister” means the Minister responsible for Justice and Courts Administration;

“Official Assignee” and “assignee” means the Official Assignee for Samoa or Deputy Official Assignee appointed under this Act;

“ordinary resolution” means a resolution decided by a majority in value of those of the creditors who are present, personally or by proxy, at a meeting of creditors and voting on such resolution;

“prescribed” means prescribed by this Act or by the rules;

“property” includes land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situate in Samoa 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 above defined;

“registrar” means the Registrar or Clerk of the Court, or the deputy for the time being of any such Registrar or Clerk;

“resolution” means ordinary resolution;

“rules” means the rules in force or to be made under this Act, and includes forms;

“secured creditor” means a person holding a mortgage, charge, lien, or security on the property of the debtor, or any part thereof, as a security for the debt due to him or her from the debtor, whether given directly or indirectly through another person as security for a debt due to such creditor;

“settlement” includes any conveyance or transfer of property;

“sheriff” includes any officer charged with the execution or process of the Court;

“special resolution” means a resolution decided by a majority in number and three-fourths in value of those of the creditors who are present, personally or by proxy, at a meeting of creditors and voting on the resolution, which resolution is confirmed by a like majority of the creditors present, personally or by proxy, at a subsequent meeting of which notice has been duly given, stating the purport of the resolution to be confirmed, and held at an interval of not less than 14 days nor more than 1 month from the date of the meeting at which the resolution was first passed.

## **PART 1A THE COURT**

### **Division 1 – Constitution**

**3. Court having jurisdiction** – The Court having jurisdiction in bankruptcy is the Supreme Court, as constituted under the Constitution.

4 – 6. *(Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ)).*

### **Division 2 – Powers of Judges**

**7. Judges may exercise powers of Court** – A Judge may exercise all the powers of the Court, and may exercise in Chambers the whole or any part of the jurisdiction of the Court:

**PROVIDED THAT** the public examination of a bankrupt, an application for an order of discharge, and an application to commit any person to prison for contempt of Court is to be heard and disposed of in open Court.

### **Division 3 – Jurisdiction**

**8. Jurisdiction extends throughout Samoa** – The Court has jurisdiction throughout Samoa in regard to every bankruptcy.

**9. Powers of Bankruptcy Court** – The Court may:

- (a) make orders or decrees in relation to the property of any debtor or bankrupt who becomes subject to the provisions of this Act, in its jurisdiction at law or in equity, can make any orders or decrees respectively;
- (b) decide all questions of priorities, and all other questions, whether of law or of fact, arising in any case of bankruptcy coming within the cognisance of the Court, or which the Court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case;
- (c) hear, determine, and make an order—
  - (i) in any matter of bankruptcy relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy and claimed by the Official Assignee for the benefit of the creditors, or relating to any acts done or sought to be done by the Official Assignee in his or her character of Official Assignee by virtue of the bankruptcy, and also in any application for an order of discharge; and
  - (ii) in any matter in which the Official Assignee claims any property from third parties for the benefit of creditors, or in relation to the setting aside of alleged fraudulent deeds, or transfers of or other dealings with property; and also

- (iii) in any other matter, whether in bankruptcy or not, where the Court has jurisdiction under this Act over the subject of the petition or application;
- (d) punish any bankrupt, creditor, or other person as herein provided;
- (e) review, rescind, or vary any order or decree made by it under this Act;
- (f) exercise any other powers given to it by this Act or the rules.

*10 – 12. (Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ))*

#### **Division 4 – Barristers and Solicitors**

**13. Barristers and solicitors may practise in Court and penalty for unqualified person practising** – (1) A barrister or solicitor of the Supreme Court is and may practise as a solicitor of and in the Court when sitting in bankruptcy, and in matters before Judges or Registrars in Court or in Chambers, and solicitors may appear and be heard without being required to employ counsel.

(2) A person who, not being such barrister or solicitor, practises as a solicitor in the Court sitting in bankruptcy is guilty of a contempt of Court, and is, in addition, liable to the penalty provided in any other Act in respect of practice by unqualified or disqualified persons.

*14 – 19. (Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ))*

### **PART 2 OFFICIAL ASSIGNEE**

*20. (Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ))*

**21. Official Assignee** – Subject to sections 15 and 16, the Minister may appoint an Official Assignee for the purposes of this Act.

**22. Qualifications of an Official Assignee** – A person appointed as an Official Assignee must have a qualification and experience in accounting, auditing or financial management.

**23. Duration of Appointment** – The appointment of an Official Assignee ceases when a matter for which he or she was appointed to administer concludes.

**24. Official Assignee not liable to certain actions** – An Official Assignee is not liable to an action, suit or proceeding in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or any other Act.

**25. Official name of Official Assignee, property, seal, and documents** – (1) The Official Assignee may:

- (a) sue and be sued by the official name of “The Official Assignee for Samoa in Bankruptcy of the Property of [*Inserting the name of the bankrupt*]”; and
- (b) by that name—
  - (i) hold property of every description;
  - (ii) make contracts;
  - (iii) sue and be sued;
  - (iv) enter into any engagement binding upon himself or herself (and his or her successors in office);
  - (v) carry on the business; and
- (c) do all other acts necessary or expedient to be done in the execution of his or her office.

(2) The Official Assignee shall have a seal of office, which is kept and used by him or her, and is applicable to all estates of which he or she has charge.

(3) The Official Assignee shall execute all documents which he or she has to sign for the purposes of this Act by signing his or her private name over the official name, as before mentioned, and affixing thereto his or her seal of office.

### **PART 3 PROCEEDINGS UP TO ADJUDICATION**

#### **Division 1 –Acts of Bankruptcy**

**26. Acts of bankruptcy** – (1) A debtor commits an act of bankruptcy in each of the following cases:

- (a) if, in Samoa or elsewhere, the debtor makes a conveyance or assignment of his or her property to a trustee or

- trustees for the benefit of all or any of his or her creditors;
- (b) if, in Samoa or elsewhere, the debtor makes a fraudulent conveyance, gift, delivery, or transfer of his or her property or of any part thereof;
  - (c) if, in Samoa or elsewhere, the debtor makes any conveyance or transfer of his or her property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if the debtor were adjudged bankrupt;
  - (d) if, with intent to defeat or delay his or her creditors, the debtor departs, or attempts to depart, or is about to depart, out of Samoa or, being out of Samoa remains out of Samoa, or departs from his or her dwelling house, or otherwise absents himself or herself, or keeps to his or her house;
  - (e) if the debtor files a debtor's petition in bankruptcy;
  - (f) if a creditor obtains a final judgment or final order against the debtor for any amount, and execution thereon not having been stayed, has served on the debtor in Samoa, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and the debtor does not within 7 days after service of the notice in case the service is effected in Samoa, 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 the debtor has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which the debtor could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained;
  - (g) if the debtor gives notice to any of his or her creditors that he or she has suspended or is about to suspend payment of his or her debts;
  - (h) if the debtor calls a meeting of any of his or her creditors to consider his or her position, and if a majority in number and value of the creditors present at such meeting, by resolution at such meeting, require the debtor to file a debtor's petition;

- (i) if possession has been taken under execution issued against the debtor or his or her property on any legal process:

**PROVIDED THAT**, if the judgment in pursuance of which execution is issued is satisfied within 5 days after possession has been taken under the execution, the act of bankruptcy shall *ipso facto* be annulled;

- (j) if a return of *nulla bona*, or that no sufficient goods whereon to levy can be found, is made to any execution issued against the debtor or his or her property on any legal process;

- (k) if a writ of sale directed against any land of the debtor or any interest therein is delivered to a Sheriff, and such land or interest has been advertised for sale, in at least 1 newspaper published or circulating in the town or district in which the land is situated, under such process:

**PROVIDED THAT** if the judgment in pursuance of which the writ of sale issued is satisfied within 5 days after the delivery of the writ of sale to the Sheriff and its advertisement, the act of bankruptcy shall *ipso facto* be annulled.

**Bankruptcy notices** – Section 2(2), (3), and (4) of the Bankruptcy Amendment Act 1927 provides as follows:

(2) A bankruptcy notice under the principal Act as amended by the last preceding subsection shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice, and is to be served in the prescribed manner provided that 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 such misstatement; but if the debtor does not give such notice the debtor is taken to have complied with the bankruptcy

notice if within the time allowed the debtor takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

(3) Where a final judgment or final order for any amount has been obtained against a married woman, whether or not expressed to be payable out of her separate property, that judgment or order is to be available for bankruptcy proceedings against her by a bankruptcy notice even if she may not be personally bound to pay the judgment debt or sum ordered to be paid.

(4) For the purposes of this section, a person who is entitled to enforce a final judgment or final order is taken to be a creditor who has obtained a final judgment or final order.

**Provisional protection of leases against forfeiture** – Section 13 of the Bankruptcy Amendment Act 1927 provides as follows:

13(1) In this section:

“Court” means the Supreme Court;

“lease” includes an original or derivative underlease, a grant securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his or her leave granted;

“lessee” includes an original or derivative underlessee, a grantee under any such grant as aforesaid, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee; and includes a mortgagee of a lease;

“lessor” includes an original or derivative underlessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid and the executors, administrators, and assigns of a lessor;

“underlease” includes an agreement for an under lease where the under lessee is entitled to have his or her under lease granted;

“underlessee” includes a person deriving title through or from an underlessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease consequent on the bankruptcy of the lessee, or on the commission by the lessee of a composition with his or her creditors, is subject to the conditions defined in this section.



(3) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture the Official Assignee or any lessee or underlessee whose interests are affected by the intended re-entry or forfeiture may in the lessor's action (if any), or in any action brought by himself or herself, or on motion, apply to the Court for relief, and the Court, having regard to all the circumstances of the case, may grant or refuse relief as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise as the Court in the circumstances of each case thinks fit.

(4) Where any such relief as aforesaid is granted the Court shall direct a minute or record thereof to be made on the lease or otherwise.

(5) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(6) For the purposes of this section, a lease limited to continue so long as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(7) This section applies to leases made either before or after the coming into operation of this Act, and has effect notwithstanding any stipulation to the contrary.

(8) An application to the Court for relief under this section may be made within 3 months after the lessor has re-entered or taken proceedings by action or otherwise to enforce the forfeiture, and relief may be granted despite that the lessor has taken possession of the land.

## **Division 2 –General Provisions as to Petitions**

**27. All proceedings to be commenced by filing of petition – (1)**  
All proceedings in bankruptcy shall be commenced by a petition filed in the Court.

(2) A bankruptcy petition may be filed either by the debtor or by a creditor, and on the filing thereof a fee of \$12, or such other sum as prescribed, shall be paid.

(3) A bankruptcy petition shall be filed in the Supreme Court.

**28. Signature of petitioner, how attested and identify, how proved** – The signature of the petitioning debtor or creditor shall be attested by the Registrar, or by a solicitor or a Justice, or, if the petition is signed outside of Samoa by a notary public; and the identity of the petitioning debtor or creditor is taken to be proved if the signature of the petitioner to the petition is so attested.

**29. Proceedings continued though debtor dies** – If a debtor by or against whom a bankruptcy petition is filed dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if the debtor were alive.

**30. Petition not to be withdrawn without leave** – A petition shall not after filing be withdrawn without the leave of the Court.

### **Division 3 – Petitions by Debtor**

**31. Form and consequences of debtor's petition** – A debtor's petition is to be in or to the effect of the Form No.1 in Schedule 2; and no order adjudging the debtor a bankrupt shall be required thereupon, but the filing of such a petition shall in itself be in all respects equivalent to an order of Court adjudging the debtor a bankrupt; and all terms in this Act, or in any rules thereunder, referring to adjudication and its consequences, is, if not inconsistent with the context, taken to include the case of a debtor becoming bankrupt on his or her own petition.

**32. Effect of filing joint petition** – Any 2 or more persons being partners may file a joint petition, and it has the effect of an order of adjudication against them jointly, and against each of them separately.

### **Division 4 – Petitions by Creditors**

**33. Form of creditor's petition** – A creditor's petition is to be in or to the effect of Form 2 in Schedule 2.

**34. Conditions on which creditor may petition** – A creditor is not entitled to file a bankruptcy petition against a debtor unless:

- (a) the debt owing from the debtor to the petitioning creditor, or, if 2 or more creditors join in the petition, the aggregate amount of debts owing to the several

petitioning creditors, amounts to a sum not less than \$60; and

- (b) the debtor, whether before or after incurring such debt, has committed an act of bankruptcy within 3 months before the filing of the petition; and
- (c) the debt is a liquidated sum payable either immediately or at some certain future time.

**35. Where petitioner is a secured creditor** – If the petitioning creditor is a secured creditor, the creditor 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 in the event of the debtor being adjudicated a bankrupt, or give an estimate of the value of his or her security; and in the latter case he or she 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.

**36. Petition, how verified** – A creditor's petition shall be verified by affidavit of the creditor or of some person having knowledge of the facts, and filed in the court.

**37. Issue of summons and service thereof** – (1) On the filing of a creditor's petition in the Court, a summons shall be issued out of the Court calling upon the debtor to appear before the Court on some convenient day appointed by the Registrar, and show cause why he or she should not be adjudged bankrupt.

(2) A copy of the summons and petition shall forthwith served upon the debtor, either personally or in such other mode as is prescribed or is in any particular case directed by the Court.

(3) If the act of bankruptcy alleged is that the debtor has made a conveyance or assignment of his or her property to a trustee or trustees for the benefit of his or her creditors generally, a copy of the summons or petition shall also be served on the trustee or trustees, and if it appears to the Court that it will be for the advantage of the creditors that the estate should be administered under the deed, the Court may order that the execution of the deed is not taken to be an act of bankruptcy and that the estate is to be administered thereunder, and may dismiss the petition and make such order as to costs as it deems fit, and such costs if made payable to the petitioner may be ordered to be paid out of the estate.

**38. Persons may be summoned to give evidence on petition**— The Court may, before such summons is disposed of, summon before it and examine any person who is stated by affidavit to be capable of giving information concerning any act of bankruptcy alleged to have been committed by the debtor, and may require any person so summoned to produce any books and documents in his or her custody, possession, or power.

**39. Court, if satisfied, may adjudge debtor bankrupt** – If the Court, after hearing the evidence adduced by and on behalf of all parties, is satisfied that the copy summons and petition have been duly served, that the debtor has committed an act of bankruptcy within the time before mentioned, whether or not the act of bankruptcy proved is the same as the act of bankruptcy stated in the petition, and that the debtor is indebted to the petitioner or petitioners in the sum of \$60 and upwards, then the Court may adjudge the debtor bankrupt.

**40. Court, if not satisfied, may dismiss petition** – 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 summons and 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.

**41. Petition founded on non-compliance with bankruptcy notice** – When the act of bankruptcy relied on is non-compliant with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.

**42. Court may stay proceedings on petition** – Where the debtor appears on the petition, and denies that he or she:

(a) is indebted to the petitioner; or

(b) 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 requires 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 is required for trial of the question relating to the debt.

**43. When proceedings stayed, Court may adjudicate on petition by other creditor** – Where the proceedings are stayed, the Court may, if by reason of the delay caused by the proceedings, or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss on such terms as it thinks just the petition on which proceedings have been stayed as aforesaid.

**44. Court may appoint Official Assignee receiver and stay actions, execution or other legal process against debtor** – (1) The Court may if it thinks fit, on the application of any creditor, after the filing of a creditor's petition against a debtor, and before adjudication appoint the Official Assignee to be the receiver and manager of the debtor's estate, or of any part thereof, and direct him or her to take immediate possession of his or her property or business, or any part thereof; and, upon notice of such order being advertised, all proceedings to recover any debt provable under the petition shall be stayed; but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued on such terms and conditions as it thinks fit.

(2) The Court may, after the filing 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 filed by or against the debtor, either stay the proceedings or allow them to continue on such terms as it thinks fit.

**45. Court may consolidate proceedings** – Where 2 or more bankruptcy petitions are filed against the same debtor, or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as it thinks fit.

**46. Other creditor may be substituted as 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 is indebted in the amount required by this Act in the case of a petitioning creditor.

**47. Proceeding on petition may be stayed** – The Court may 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 thinks fit.

**48. Creditor of firm may petition against 1 or more partners** – A creditor, whose debt is sufficient to entitle him or her to present a bankruptcy petition against all the partners of a firm, may file a petition against any 1 or more partners of the firm without including the others.

**49. Petition may be against firm in partnership name** – A petition may be filed against any 1 or more persons carrying on business in the name of a firm under the name of such firm, to be served in such mode as the Court directs; but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm, or the name of such person, to be disclosed in such manner and verified on oath or otherwise as the Court directs.

**50. If more respondents than one, petition may be dismissed against one or more** – Where there are more respondents than 1 to a petition the Court may dismiss the petition as to 1 or more of them without prejudice to the effect of the petition as against the other or others of them.

#### **Division 5 – General as to Adjudication**

**51. Date of adjudication** – The date of the filing of a debtor's petition, or the date of the order of the Court adjudging a person to be a bankrupt on a creditor's petition, shall be the date of the adjudication for the purposes of this Act.

**52. Notice of adjudication to be advertised by Official Assignee** – (1) The Registrar, immediately upon adjudication, shall give notice thereof to the Official Assignee.

(2) Notice of an adjudication, and of the date thereof, shall in each case forthwith be advertised by the Official Assignee.

**53. Effect of adjudication to be final** – (1) Upon adjudication all the property of the bankrupt, whatsoever and wheresoever situate, vests in the Official Assignee.

(2) Upon the adjudication being advertised, all proceedings to recover any debt provable under the bankruptcy shall be stayed; but the

Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued, on such terms and conditions as it thinks just.

(3) Upon the adjudication being advertised, no execution, attachment, or other process against the debtor's property in respect of any debt provable under the bankruptcy, and no process against his or her person in respect of any debt provable under the bankruptcy, other than such process as may be had against a debtor about to depart out of Samoa shall be available without leave of the Court.

(4) Upon the adjudication being advertised, no distress for rent due by the bankrupt shall be levied, but, if previously levied, may be proceeded with.

(5) Nothing in this Act prejudices or affects the right of a local authority to recover judgment for rates against any bankrupt, and to enforce payment of the same by selling or leasing the land in respect of which such rates are payable, under any Act relating to rates and the recovery thereof.

**54. Order of adjudication to be final** – The order of adjudication is final and conclusive with respect to the validity of the adjudication and to the existence of all requisites thereto; and the order is not liable to be disturbed or impeached at law or in equity, or otherwise, on any ground whatever, nor shall any of the requisites to adjudication be disputed or required to be proved in any action, suit, or proceeding.

**55. Bankruptcy to date back of bankruptcy** – The bankruptcy of a debtor, if the same takes place on the petition of a creditor, is taken to have relation back and to commence at the time of the act of bankruptcy on which the order is made adjudging the debtor a bankrupt, or, if the same takes place upon the debtor's own petition, to have relation back to and to commence at the time of the filing of the petition; but in either case, or if the bankrupt is proved to have committed more acts of bankruptcy than 1, the bankruptcy shall 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 3 months next preceding the order of adjudication, or time of filing, as the case may be;

**PROVIDED THAT** the bankruptcy shall not relate to any prior act of bankruptcy, unless it is that at the time of committing such prior act the bankrupt was indebted to some creditor in a sum sufficient to support a petition in bankruptcy, and unless such debt is still remaining due at the time of the adjudication.

**56. Effect of adjudication on committal order under judgment summons** – (1) Where a judgment debtor, on the return of a judgment summons, under the Judgment Summons Act 1965 proves that he or she has been adjudicated a bankrupt, and that the debt is provable in the bankruptcy, no order of committal shall be made.

(2) Where a judgment debtor, after the making of an order of committal against him or her under the last-mentioned Act, files in the Court in which the order was made an affidavit stating that he or she has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, annexing to such affidavit a certificate of the Registrar certifying to the fact of adjudication, and shall forthwith upon such affidavit being so filed give notice to the judgment creditor of the filing thereof, such order of committal shall not issue, and if issued and not executed shall be recalled.

(3) Where a judgment debtor is arrested, the debtor may file in the Court upon whose warrant of committal he or she has been arrested an affidavit as mentioned in subsection (2), and give the notice to the judgment creditor thereof as therein required, and thereupon the judgment debtor shall be discharged out of custody upon the certificate of the Registrar or Clerk of the Court upon whose warrant of committal the debtor was arrested.

#### **PART 4 SUPERVISORS**

**57. Appointment of supervisors** – (1) At the first general meeting of creditors, or at any subsequent meeting, the creditors may by resolution appoint 1 or more fit persons, being creditors qualified to vote at the meeting, or the holders of general proxies from such creditors, to be a supervisor or supervisors for the purpose of superintending the administration of the bankrupt's property by the Official Assignee.

(2) The creditors may determine what remuneration shall be paid out of the estate to the supervisor or supervisors for their services, but so that the sum to be paid to them shall not exceed the scale set forth in Schedule.

(3) Any supervisor may resign his or her office by notice in writing signed by him or her and delivered to the Official Assignee.

(4) If a supervisor becomes bankrupt his or her office becomes vacant.



(5) A supervisor may be removed by an ordinary resolution at any meeting of creditors, of which 7 days' notice has been given, stating the object of the meeting.

(6) On a vacancy occurring in the office of supervisor the Official Assignee may 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 aforesaid, to fill the vacancy.

(7) The supervisors, if more than 1, shall meet at such times as they appoint, and the Official Assignee, or one of the supervisors, may also call a meeting of the supervisors and when he or she thinks necessary.

(8) The supervisors, if more than 1, may act by a majority present at a meeting, but shall not act unless a majority of them are present at a meeting.

(9) When a supervisor, if there are more than 1, is absent from 3 meetings, his or her office shall thereupon become vacant.

(10) The continuing supervisors may act despite any vacancy in their body.

## **PART 5 DUTIES OF BANKRUPT**

**58. Bankrupt to file statement of affairs** – (1) The bankrupt shall, within 3 days after adjudication, make out and deliver to the Official Assignee at his or her public office a statement (“statement”) showing the particulars of the bankrupt’s assets, debts, and liabilities, the names, residences, and occupations of his or her creditors, and the securities held by them respectively, and he or she may add to or amend the statement.

(2) The statement, addition, and amendment shall be verified by the bankrupt by affidavit.

(3) A person claiming in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so claiming to be creditor is guilty of contempt of Court.

(4) Any other person may, on payment of a fee of 10 sene inspect the statement at all reasonable times and take any copy thereof or extract therefrom.

**59. Bankrupt to give up books of account, papers, deeds, instruments and writings to Official Assignee to prepare balance sheets** – (1) Immediately upon adjudication, the bankrupt shall:

- (a) deliver up to the Official Assignee, at his or her public office, all books of account, papers, deeds, instruments, and writings relating to his or her estate in his or her custody or power and discover such as are in the custody or power of any other person; and
- (b) provide such information and particulars as are necessary to enable the Official Assignee or any person employed by him or her to prepare the bankrupt's balance sheet of his or her estate.

(2) The bankrupt shall, if required by the Official Assignee, or by the supervisors, or by resolution of the creditors, within a reasonable time after receiving notice of such requisition, prepare and deliver to the Official Assignee, at his or her public office, full, true, and particular accounts and balance sheets, showing the particulars of his or her receipts and expenditure, of his or her stocktakings, and of his or her profits and losses during any period not being earlier than 3 years before the commencement of the bankruptcy, and for this purpose he or she shall have full access to all his or her books and papers in the possession of the Official Assignee, and, if necessary in the opinion of the Official Assignee, he or she has the assistance of an accountant at the expense of the estate.

**59A. Abolishing lien over bankrupt's books** – Section 4 of the Statutes Amendment Act 1941 provides as follows:

**4. (1)** This section shall be read together with and taken to be part of the Bankruptcy Act 1908.

**(2)** No person is entitled as against the Official Assignee to withhold possession of the books of account of the bankrupt, or any papers or documents relating to the accounts or to any trade dealings of the bankrupt, or to claim any lien thereon.

**60. Bankrupt to aid in realisation** – The bankrupt shall to the utmost of his or her power aid in the realisation of his or her property, and the distribution of the proceeds amongst his or her creditors; and, more particularly, shall:

- (a) give such inventory of his or her property, and such list of his or her creditors and debtors, and of the debts due to and from them respectively, as the Official Assignee at any time requires;
- (b) submit to such examination, on oath or not, in respect of his or her property or his or her creditors as the Official

- Assignee requires, and sign a written statement of his or her evidence in such examination if required by the Official Assignee;
- (c) attend all meetings of his or her creditors unless he or she is in custody, unless prevented by sickness or other cause satisfactory to the meeting, and wait on the Official Assignee whenever requested so to do;
  - (d) execute such powers of attorney, conveyances, transfers, deeds, and instruments, and generally do all such acts and things in relation to his or her property and the distribution of the proceeds amongst his or her creditors, as are required by the Official Assignee, or prescribed by the rules, or directed by the Court by any special order made in reference to any particular bankruptcy, or on any special application by the Official Assignee or any creditor;
  - (e) at the first and other meetings of his or her creditors submit to such examination, on oath or not, as the Official Assignee or the meeting requires, and sign a written statement of his or her evidence on such examination if required by the Official Assignee or other person acting as Chairman of the meeting;
  - (f) submit to medical examination, if required by the Official Assignee, and do any other act, deed, matter, or thing needful to enable life to be insured for the benefit of his or her creditors.

**PART 6**  
**ADMINISTRATION OF BANKRUPT'S PROPERTY**

**Division 1 – Property Passing to Official Assignee**

**61. Property divisible amongst creditors** – The property of the bankrupt passing to the Official Assignee and divisible amongst his or her creditors comprises the following particulars:

- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, or acquired by or devolving upon 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 the bankruptcy or before his or her discharge;

- (c) any goods, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt by the consent and permission of the true owner, under such circumstances that the bankrupt is the reputed owner thereof:

**PROVIDED THAT** this paragraph does not—

- (i) affect any transfer or assignment of any ship, or any share thereof, made as a security for any debt by way of mortgage duly registered according to the enactments relative to the registration of ships for the time being in force; or
  - (ii) prejudice or affect any *bona fide* instrument affecting goods duly registered under any Act providing for the registration thereof; or
  - (iii) apply to consignments of goods held by the bankrupt in the ordinary course of his or her business for sale on account of any other person, the identity and ownership of which can be proved to the satisfaction of the Official Assignee or of the Court, and in respect of which the owner tenders payment to the Official Assignee of all advances made thereon by the bankrupt, and of all charges due thereon to the bankrupt's estate, and surrenders to the Official Assignee any acceptances granted by the bankrupt in his or her favour by way of advances thereon;
- (d) despite anything in this Act, property held by the bankrupt in trust for any other person shall not pass to the Official Assignee.

**62. Court may order bankrupt to pay sum towards debts** – If before the date of an absolute order of discharge, or before the taking effect of a conditional order of discharge, it is shown to the satisfaction of the Court, either by the signed statements of the examination of the bankrupt or other persons before the Official Assignee, or by affidavit, or by the evidence of witnesses taken by the Court on the hearing of the application, that a bankrupt, after a reasonable allowance for the maintenance of himself or herself and his or her family, and the payment of debts, claims, and demands not provable under the

bankruptcy, is able, from any source, to pay any sum towards the discharge of debts provable under the bankruptcy, the Court, after hearing any evidence which the bankrupt may tender, or, in case of his or her non-appearance, upon proof that he or she was served with notice of the application at least 3 days before the day of hearing, may make an order to the effect that, within a time therein specified, the bankrupt shall pay to the Official Assignee such sum towards the discharge of debts provable under the bankruptcy as the Court is satisfied the bankrupt is able to pay as aforesaid.

**Division 2 – General Powers of Official Assignee in Administration**

**63. Powers of Official Assignee – (1)** Subject to the provisions of this Act, the Official Assignee may do all or any of the following things:

- (a) sell, on such terms and conditions in all respects as he or she thinks fit, all or any part of the property of the bankrupt by public auction or public tender, with power to buy in at any such auction, or to rescind or vary any contract for sale on such terms as the Official Assignee thinks fit, with power also to sell the whole thereof to any person, or to sell the same in parcels; and in the case of perishable property, or any property offered for sale by public auction or public tender and not sold, to sell the same by private contract in 1 or more lots:

**PROVIDED THAT**, except in the case of perishable property or any property the sale of which in the opinion of the Official Assignee from any cause might be prejudiced by the delay, none of the property of the bankrupt is sold until after the date fixed for the first meeting of creditors.

Where a document is made or executed in professed exercise of the power to sell conferred by this section, the title of any person acquiring title thereunder shall not be impeachable except on the ground of fraud, or be affected on the ground that no case had arisen to authorise the sale, or that the power was otherwise improperly or irregularly exercised.

- (b) give receipts and execute reconveyances, discharges, and releases for any money received by him or her, which receipts reconveyances, discharges, or releases shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

- (d) exercise any powers the capacity to exercise which is vested in the Official Assignee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying the provisions of this act into effect;
- (e) carry on the business of the bankrupt as far as is necessary or expedient for the beneficial winding up of the same;
- (f) bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt, and also, with the leave of the Court in which any action was commenced by the debtor before adjudication, continue such action in his or her own name;
- (g) employ a solicitor or other expert to take any proceedings or do any business;
- (h) 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 conditions as to security and otherwise as the Official Assignee thinks fit;
- (i) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money to be applied in any way in which he or she might apply money raised by sale of any part of the property of the bankrupt;
- (j) refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as are agreed upon;
- (k) make such compromise or other arrangements as are thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;
- (l) make such compromise or other arrangements as are 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 Official Assignee by any person or by the Official Assignee on any person;
- (m) divide in its existing form amongst the creditors according to its estimated value any property which from its

- peculiar nature or other special circumstances cannot readily or advantageously be sold;
- (n) appear in Court and examine the bankrupt in any proceedings;
  - (o) administer oaths and take declarations for any purposes under this Act;
  - (p) appoint an agent or agents by power of attorney or otherwise to act for him or her, either in or out of Samoa, in respect of any particular estate or estates, and delegate to such agent or agents all or any of the powers conferred upon the Official Assignee in respect of such estate or estates or of any bankrupt, and revoke any such appointment; and fix the remuneration of such agent, which shall be paid out of the estate,

**PROVIDED THAT** the powers conferred upon the Official Assignee is in furtherance of and not in limitation of all other powers in anywise vested in him or her.

**Extending Official Assignee's powers of sale by private contract –** Section 4 of the Bankruptcy Amendment Act 1927 provides as follows:

“In addition to the powers conferred on the Official Assignee by section 63 of the principal Act to sell by private contract the Official Assignee may, if authorised so to do by the supervisor or supervisors (if any), or, if no supervisor has been appointed, if authorised so to do by a resolution of the creditors, 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 private contract in accordance with the terms of the authority conferred as aforesaid by the supervisor or supervisors, or by the creditors, as the case may be.”.

**64. Discretion of Official Assignee – (1)** Subject to the provisions of this Act, the Official Assignee shall, in the administration of the property of the bankrupt and in the distribution thereof among his or her creditors, have regard to any directions given by resolution of the creditors at any general meeting, or by the supervisors, and any directions so given by the creditors at any general meeting shall, in case of conflict, be taken to override any directions given by the supervisors.

**(2)** Subject to the provisions of this Act, the Official Assignee shall use his or her own discretion in the management of the estate and its distribution among the creditors.

**65. Official Assignee may obtain direction of Court** – (1) The Official Assignee may apply to the Court, upon a statement in writing, verified by affidavit, for the opinion, advice, or direction of the Court on any question respecting the management of the estate, any notice of such application shall be served upon, and the hearing thereof may be attended by, all persons interested, or such of them as the Court thinks expedient.

(2) The Official Assignee, acting upon the opinion, advice, or direction of the Court, is taken to have discharged his or her duty in the subject-matter of the application, provided that he or she has not been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction.

**66. Appeal from decision of Official Assignee** – If the bankrupt, or any of the creditors, or any other person is aggrieved by any act or decision of the Official Assignee, he or she may, within 30 days from the date of such act or decision, 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.

### **Division 3 – Miscellaneous Provisions as to Administration of the Estate**

**67. Bankrupt not to recover or release property** – After adjudication neither the bankrupt nor any person claiming through or under him or her shall have power to recover any property, or to make any release or discharge thereof, nor shall the same be attached for any debt of the bankrupt by any person, and the Official Assignee for the time being shall have the like remedy to recover the same in his or her official name as the bankrupt himself or herself might have had if he or she had not been adjudicated a bankrupt.

**68. Bankrupt not to execute powers of appointment** – A bankrupt after adjudication shall not execute, whether before or after he or she obtains his or her discharge, any power of appointment, or any other power vested in him, so as to defeat or destroy any contingent or other estate or interest in any property to which he or she may be beneficially entitled at any time before his or her discharge, in default of appointment or otherwise in case of non-execution of the power.



**69. Court may order person admitting indebtedness to bankrupt to pay debt** – If a person on examination under the provisions of this Act admits that he or she is indebted to the bankrupt, the Court may thereafter, on application of the Official Assignee, and on proof that such person refuses to pay the amount admitted to be owing by him or her to the Official Assignee, order him or her to pay to the Official Assignee, at such time and manner as the Court thinks expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without the costs of the order.

**70. Bankrupt or other person may be appointed to carry on business** – The Official Assignee may, but with the sanction of the supervisors (if any), appoint the bankrupt himself or herself, or any other person whom he or she thinks fit, to superintend the management of the estate or to carry on the trade business of the bankrupt on behalf of the creditors, and in all or any other respects to aid in administering the bankrupt's estate and effects in such manner and on such terms, whether as to payment for his or her services or otherwise, as the Official Assignee and the supervisors (if any) think best for the benefit of the creditors.

**71. Official Assignee may make allowance to bankrupt** – The Official Assignee may, with the consent of the creditors expressed by resolution, make such allowance as he or she thinks just to the bankrupt out of his or her property for the support of the bankrupt and his or her family; but any such allowance may be reduced by the Court on the application of any creditor.

**72. When partners adjudicated, distinct accounts to be kept** – Under every adjudication made against 2 or more persons jointly, distinct accounts shall be kept by the Official Assignee of the joint estate and also of the separate estate of each bankrupt; and the joint estate shall be applied in the first place in satisfaction of the debts due by the bankrupts jointly and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors, and in case there is a surplus of the separate estate, such surplus shall be carried to the account of the joint estate; and in case there is a surplus of the joint estate, such surplus shall be carried to the account of the separate estate of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate.

**73. Action in name of Official Assignee's and bankrupt's partner** – When a member of a partnership is adjudged bankrupt, the Court may authorise the Official Assignee to commence and prosecute any action in the names of the Official Assignee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates is 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 therefrom he or she shall be indemnified against costs in respect thereof as the Court directs.

**74. Bankrupt a contractor jointly with other persons** – When a bankrupt is a contractor in respect of any contract jointly with any person, such person may sue or be sued in respect of the contract without the joinder of the bankrupt.

#### **Division 4 – Effect of Bankruptcy on Antecedent Transactions**

**75. Settlements, when void** – Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer 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:

- (a) shall if the settlor is adjudicated a bankrupt under this Act within 1 year after the date of such settlement, be void as against the Official Assignee; and
- (b) shall if the settlor becomes bankrupt within 3 years after the date of the settlement, be void as against the Official Assignee, unless the parties claiming under such settlement prove that the settlor was, at the time of making the settlement, able to pay all his or her debts without the aid of the property comprised in such settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

**76. Proceedings where bankrupt has erected buildings, etc., on wife's land** – (1) An Official Assignee may by summons apply to a Judge in any case in which a husband has, within 2 years before the date of adjudication, erected buildings upon or otherwise improved land of his wife, or has purchased land in her name, or provided money to purchase land in her name or on her behalf.

(2) The Judge may, upon hearing such summons, ascertain the value of the improvements, or the amount expended or paid upon or for such land, by or on behalf of the husband, and may order the wife to pay the amount so ascertained to the Official Assignee.

(3) In case the wife fails to comply with such order, the Judge, by the same or a subsequent order, may direct the Official Assignee to sell such land with the improvements thereon, or a sufficient part thereof, and to convey or transfer the same to the purchaser; and the Judge may make all vesting or other orders necessary for that purpose.

(4) The Official Assignee shall retain the whole or so much of the amount so ascertained as is sufficient, along with any other assets in the estate, to pay 100 sene in the tala to the creditors of the husband, and the whole of the balance of such proceeds shall be paid to the wife or for her benefit.

(5) On any such application evidence may be given either orally or on affidavit, or partly in both such ways, and on any appeal the Court may, if it sees fit, allow further evidence to be adduced.

(6) The costs of the proceedings shall be in the discretion of the Judge.

**77. Where married woman is bankrupt** – Sections 75 and 76 apply, with necessary modifications, to a wife who is adjudicated a bankrupt, and in any such case the word "husband" shall be read as "wife", and the word "wife" shall be read as "husband".

**78. Covenants in consideration of marriage, when void** – A covenant or contract made by a debtor in consideration of marriage for the future payment to, or for the settlement upon or for, his wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his being adjudicated a bankrupt before or within 3 months after such property or money has been actually transferred or paid under such contract or covenant, be void against the Official Assignee.

**79. Fraudulent preference; and securities on chattels executed within 4 months of bankruptcy – (1)** A conveyance or transfer of property, or charge thereon made, a payment made, an obligation incurred, and a judicial proceeding taken or suffered by a person unable to pay his or her debts as they become due from his or her own money, in favour of a creditor, or a person in trust for a creditor, with a view to giving that creditor or a 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 within 6 months after the date of making, taking, paying, or suffering the same, be taken to be fraudulent and void as against the Official Assignee.

(2) An instrument by way of security under the Chattels Transfer Act 1975 over any property of a bankrupt is void as against the Official Assignee of the bankrupt's estate if executed within 4 months prior to the adjudication, except as to money actually advanced or paid, or the actual price or value of goods sold or supplied by the grantee of the security to the grantor at the time of or after the execution thereof. Any unpaid purchase money for any property is deemed to be money actually advanced at the time of execution:

**PROVIDED THAT** the instrument for securing the same is executed within 21 days after the sale of the property.

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

**79A. Liabilities and rights of certain fraudulently preferred persons – (1)** Where, in the case of a debtor, anything made or done after the commencement of this section is void under section 79 as a fraudulent preference of a person interested in property mortgaged or charged to secure the debtor's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he or she had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his or her interest, whichever is the less.

(2) The value of the person's interest is determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the debtor's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, although it is not necessary so to do for the purposes of the bankruptcy, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection applies, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

**80. When creditor entitled to benefit of execution or attachment against the Official Assignee** – (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, the creditor is not entitled to retain the benefit of the execution or attachment as against the Official Assignee on the debtor becoming a bankrupt unless he or she has completed the execution or attachment before the date of the adjudication and before notice of the filing of any bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by the debtor.

**PROVIDED THAT:**

- (a) a person who purchases in good faith under a sale by the Sheriff any goods of a debtor on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and
- (b) the rights conferred by this subsection on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms the Court thinks fit.

(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.

**81. Duties of Sheriff as to goods taken in execution** – (1) Subject to subsection (3) where any goods of a debtor are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that the debtor has been adjudicated a bankrupt, the Sheriff

shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the Official Assignee, but the costs of the execution are first charge on the goods or money so delivered, and the Official Assignee may sell the goods or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to subsection (3), where, under an execution in respect of a judgment for a sum exceeding \$40, the goods of a debtor are sold or money is paid in order to avoid a sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 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 the debtor is adjudged a bankrupt thereon or on any other petition of which the Sheriff has notice, the Sheriff shall pay the balance to the Official Assignee, who is entitled to retain it as against the execution officer.

(3) The rights conferred by this section on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

**82. Certain payments, etc., not invalidated** – Subject to the 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, conveyances, dispositions, and other transactions, nothing in this Act invalidates, 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:

**PROVIDED THAT** the following conditions are complied with, namely, that—

- (i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the adjudication; and
- (ii) 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.

**Assignment of money payable to dairy farmer in respect of sales of milk** – Section 12 of the Bankruptcy Amendment Act 1927 provides as follows:

12. (1) In this section, unless inconsistent with the context: “dairy farmer” means a person whose business wholly or partly is the production and supply, by himself or herself or his or her agents, of milk; “milk” includes cream; “purchaser” means any person to whom a dairy farmer sells or supplies milk.

(2) A contract in writing by a dairy farmer by the terms whereof a person who makes or has made advances to a dairy farmer becomes assignee of or is otherwise entitled to receive moneys which are then or thereafter become payable to the dairy farmer by a purchaser, or any part of such moneys, is valid in law.

(3) Notice in writing to the purchaser of such contract shall be effectual to charge in the hands of the purchaser the moneys which the dairy farmer is entitled to receive from the purchaser at the time of the service of such notice, and also all other moneys which may thereafter from time to time become payable by the purchaser in respect of milk purchased or acquired by him or her from the dairy farmer.

(4) Such charge shall operate immediately upon receipt by the purchaser of the milk in respect whereof such moneys become payable, and shall further operate for the benefit of the person entitled under the contract to the extent provided by the contract, and the purchaser shall pay such moneys only to the person who under the terms of the contract is entitled to receive the same or to his or her duly authorised agent.

(5) No such contract is liable to be impeached or set aside under any provisions of the principal Act relating to preference, except only (so far as such provisions are applicable) to the extent of advances made to the dairy farmer before the making of the contract.

(6) Notice of an act of bankruptcy committed by the dairy farmer shall not affect the validity of the contract or of any advances made thereafter to the dairy farmer, or the right and

security of the person who under the terms of the contract is entitled to receive moneys from the purchaser. The rights of the parties under the contract shall, unless earlier determined by agreement continue until the actual date when an order adjudicating the dairy farmer a bankrupt is made, and shall not be affected by any relation back of such order to an earlier date.

**82A. Validity of certain payments to bankrupt and assignees –**

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, despite 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 of the adjudication and without notice of the presentation of a bankruptcy petition and is either pursuant to the ordinary course of business or otherwise in good faith.

**82B. Dealings with undischarged bankrupt, Bank accounts – (1)**

All transactions by a bankrupt with any person dealing with him or her in good faith and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the Official Assignee, be valid against the Official Assignee, and any estate or interest in any such property which by virtue of this Act is vested in the Official Assignee shall determine and pass in such manner and to such extent as may be required for giving effect to any transaction.

(2) Subsection (1) applies to transactions with respect to real property completed before 1 January 1957, in any case where there has not been any intervention by the Official Assignee before that date.

(3) 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, are deemed to be a transaction by the bankrupt with that banker dealing with him or her for value.

(4) 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 is his or her duty forthwith to inform the Official Assignee 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 Official Assignee, unless by the expiration of 1 month from the date of giving the information no instructions have been received from the Official Assignee.

**82C. Recovery of property transferred without knowledge of bankruptcy** – Where any money or property of a bankrupt has, on or after the date of the adjudication but before notice thereof has been advertised in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Act void as against the Official Assignee, then, if the person by whom the payment or transfer was made proves that when it was made he or she had not had notice of the adjudication, any right of recovery which the Official Assignee may have against him or her in respect of the money or property is not to be enforced by any legal proceedings except where and in so far as the Court is satisfied that it is not reasonably practicable for the Official Assignee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

#### **Division 5 –Apprentices and Articled Clerks**

**83. Bankruptcy discharges liability of bankrupt and apprentice** – (1) Where at the time of the bankruptcy any person is apprenticed or is an articled clerk to the bankrupt pursuant to written contract in that behalf, the bankruptcy shall, as between the bankrupt and the apprentice or articled clerk, be a complete discharge of the liability of the bankrupt and apprentice or articled clerk respectively under the contract.

(2) If any money has been paid by or on behalf of such apprentice or articled clerk to the bankrupt as an apprentice fee or premium, the Court, on proof thereof, may order such reasonable sum as it thinks fit to be paid out of the bankrupt's estate to or for the use of the apprentice or articled 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 resided or served with the bankrupt under the contract before the bankruptcy.

(3) The bankrupt, at the request and cost of the apprentice or articled clerk, shall assign the apprentice or articled clerk to any person to be named by him or her in that behalf, and the service of the apprentice or articled clerk with such person is, to the extent of the time of such service, taken to have been good service under the contract between him or her and the bankrupt.

(4) If, after the bankrupt has obtained his or her discharge, the Court is of opinion that the bankrupt is in a position to accept the services of the apprentice or articed clerk for the remainder of the term of the contract, the Court may, on the application of the apprentice or articed clerk, order the term to date from the time mentioned in such order, and the apprenticeship or articed clerkship to be on the same terms as originally provided; and all moneys paid to or for the apprentice or articed clerk under subsection (2) to be refunded to the Official Assignee.

### **Division 6 – Powers of Official Assignee in Regard to Particular Property**

**84. Onerous property may be disclaimed – (1)** Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, or of shares or stock in companies, or of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Official Assignee, even if he or she has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him or her and filed in the Court at any time within 12 months after the date of adjudication, or such extended period as may be allowed by the Court, disclaim the property: **PROVIDED THAT** where any such property has not come to the knowledge of the Official Assignee within 1 month after adjudication, he or she may disclaim such property at any time within 12 months after he or she has become aware thereof or such extended period as may be allowed by the Court.

(2) The personal liability of the bankrupt in respect of such property shall absolutely cease from the date of adjudication, and in the case of shares in companies he or she shall from the date of adjudication cease to be a member of such company.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt's estate in or in respect of the property disclaimed, and shall also discharge the Official Assignee 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 so far as is necessary for the purpose of releasing the

bankrupt and his or her estate and the Official Assignee from liability, affect the rights or liabilities of any other person.

(4) The Official Assignee is not entitled to disclaim any property under this section in any case where an application in writing has been made to the Official Assignee by any person interested in the property, requiring him or her to decide whether he or she will disclaim or not, and the Official Assignee has, for a period of 28 days after the receipt of the application or such extended period as may be allowed by the Court, failed to give notice whether he or she disclaims the property or not; and, in the case of a contract, if the Official Assignee after such application as aforesaid does not within the period or extended period disclaim the contract, he or she is deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the Official Assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as the Court deems equitable, 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, on the application of any person who claims any interest in any disclaimed property, or who is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, may make an order for the vesting of the property in or delivery thereof to a person entitled thereto, or to whom it seems just that the same 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, but no costs shall be payable by the Official Assignee in respect of such order.

(7) On any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance, transfer, or assignment for the purpose, subject, however, and without prejudice, to any underlease, subtenancy, or mortgage by demise thereof, unless the underlessee, subtenant, or mortgagee consents to such vesting order.

(8) The Court may, on such application aforesaid, make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy of any property disclaimed as the Court thinks just.

(9) 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 mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date of adjudication.

(10) The rights and powers of the lessor of any disclaimed land shall not be prejudiced or affected by the disclaimer or by any vesting order, or by anything herein contained, except as herein expressly provided.

(11) If there is no person claiming under the bankrupt who is willing to accept an order upon the terms specified in subsection (9), the Court shall have power to vest the bankrupt's estate and interest in the property in any lessor reversioner or other person with whom the bankrupt originally contracted or any person claiming under him, or 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 such lease, subject, however, and without prejudice, to any underlease, subtenancy, or mortgage by demise thereof, unless the underlessee, subtenant or mortgagee consents to such vesting order.

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

**84A. Liability for rent charge on bankrupt's land after disclaimer** – (1) Where on a disclaimer under section 84 land vests subject to a rent charge in the State or any other person, that shall not, subject to subsection (2), impose on the State or the other person or its or his or her successors in title any personal liability in respect of the rent charge.

(2) This section does not affect any liability in respect of sums accruing due after the State or the said other person, or some person claiming through or under the State or the other person, has taken possession or control of the land or has entered into occupation thereof.

(3) This section applies to land vesting and sums accruing due before, as well as after, the commencement of this section.

**85. Official Assignee may exercise bankrupt's right to transfer stock, shares, or any other property transferable** – When 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, standing in his or her name in his or her own right, the Official Assignee 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; and all persons whose acts or consents are necessary in this behalf shall, at the request of the Official Assignee, do all acts, deeds, matters, and things necessary to enable such transfer to be completed.

**86. Bankrupt to execute assurances of property outside Samoa**

– Where the bankrupt has any property of any kind, or any right, title, or interest in any property, elsewhere than in Samoa, of which he or she may dispose by law, he or she shall forthwith, upon the request of the Official Assignee, execute all necessary assurances for granting and assigning the same to the Official Assignee for the benefit of the creditors of the bankrupt.

**87. Treasurer, or other officer, or banker, solicitor, or agent of a bankrupt having property of a bankrupt to deliver the same to Official Assignee**

– Any treasurer or other officer, or any banker, solicitor, or agent of a bankrupt, having any money or securities belonging to the bankrupt in his or her custody, possession, and power as such officer or agent which he or she is not entitled by law to retain as against the bankrupt or the Official Assignee shall on demand pay and deliver the same to the Official Assignee.

**Division 7 – Enforcing Surrender of Property**

**88. Conditions on which Court may order debtor to be arrested**

– (1) The Court, at the instance of the Official Assignee or any creditor, after the service on a debtor of a bankruptcy notice under this Act or after the filing of a petition in bankruptcy by or against a debtor, and if it appears:

- (a) that there is probable reason for believing that the debtor is about to go abroad or quit his or her place of residence, with a view of defeating, delaying, or embarrassing proceedings under this Act; or
- (b) that there is probable cause for believing that the debtor is about to remove any of his or her property with a view of preventing or delaying such property being taken possession of for the purposes of this Act, 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 property, or any of his or her books, documents, or writings,—

may by warrant cause such debtor to be arrested and kept in custody until he or she finds sureties to the satisfaction of the Court that he or she will appear and attend from time to time as the Court orders until he or she is discharged by the Court, and may cause any books, papers, moneys, or property belonging to such debtor, wheresoever they may be found, to be seized and kept until such time as the Court directs.

(2) A person arrested upon any such warrant, or whose books, papers, moneys, or property are seized under such warrant, may apply at any time after such arrest or seizure to the Court for a summons against the Official Assignee or creditor aforesaid to show cause why the person arrested should not be discharged out of custody, or why his or her books, papers, moneys, or property should not be delivered up to him or her; and the Court may make such order therein as it thinks fit.

(3) Any such warrant may, if the Court so orders, be transmitted by telegraph (the telegraphic charges being first duly paid) and executed on the telegraphic copy thereof, accompanied by a telegraphic copy of the order of the Court.

**89. Right of Official Assignee to seize bankrupt's property. Court may grant warrant** – (1) The Official Assignee or any other person may, if thereunto authorised by a warrant issued by the Court, seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, with a view to such seizure, may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his or her property is supposed to be, and seize and take possession of his or her property there.

(2) Where there is reason to believe that property, or any book, paper, or document relating to the affairs or property of the bankrupt, is concealed in any house or place, the Court may, if it thinks fit, grant a search warrant to the Official Assignee and his or her assistants, or other persons appointed by the Court, who may execute the same according to the tenor thereof, and shall in respect to the execution thereof have the like protection as is allowed by law in respect of the execution of a search warrant for property supposed to be stolen.

**90. Bankrupt refusing to quit tenement** – If the bankrupt or any member of his or her family refuses, when required by the Official Assignee, to quit and deliver up possession of any tenement forming

part of the property vested in the Official Assignee under the bankruptcy, the Official Assignee may apply to the Court for a summons calling upon such person to show cause why he or she should not forthwith quit and deliver up possession of the premises, and on the hearing of the said summons the Court may make such order as the case may require, and such order shall be enforceable as any other order of the Court.

**91. Redirection to Official Assignee of letters of bankrupt** – The Court, upon the application of the Official Assignee, may order that, for such time as it thinks fit, not exceeding 3 months from the date of such order, post letter addressed to the bankrupt shall be redirected, sent, or delivered by the Postmaster-General or the officers acting under him or her to such Official Assignee, or otherwise as the Court directs, and the same shall be done accordingly; and any such letters may be opened by the Official Assignee, and any property therein belonging to the bankrupt may be retained by the Official Assignee and shall form part of the bankrupt's estate.

#### **Division 8 – Examination Before Official Assignee or Judge**

**92. Official Assignee may examine persons respecting bankrupt or his or her property** – (1) The Official Assignee may before or after the date of the order of discharge, summon and examine on oath the bankrupt, or his or her spouse, or any other person known or suspected to have in his or her possession any of the property, or any book, paper, or document relating to the affairs or property of the bankrupt, or supposed to be indebted to the bankrupt, or whom he or she deems capable of giving any information respecting the bankrupt, his or her trade, dealings, or property, or concerning his or her income from any source, or his or her expenditure, and may require such person to produce and surrender to the Official Assignee any book, paper, or documents in his or her custody or power relating to the dealings or property of the bankrupt.

(2) The Official Assignee may, in lieu of summoning and examining the bankrupt or such other person as aforesaid, summon him or her to appear before a Judge at an appointed time and place, and such Judge is empowered to administer the oath and conduct such examination.

(3) The examination of the bankrupt and each such person shall be committed to writing, and the bankrupt and such person, on being required to do so, shall sign the same.

(4) If the bankrupt or any other person so summoned fails without reasonable excuse to come before the Official Assignee or Judge at the time appointed, then the court may, on the application of the Official Assignee, by warrant, cause the bankrupt or any such person to be apprehended and brought up for examination before the Court.

(5) All expenses occasioned by such apprehension and examination before the Court shall be paid by the person apprehended and examined, if it appears to the Court that the evidence given by him or her was necessary for the purposes of the estate.

(6) The bankrupt, and each other person attending on any such summons, may have such expenses allowed to him or her or them as the rules direct, and no person so summoned to attend is liable to any penalty or punishment for failing to obey the summons unless the reasonable expenses of his or her attendance are first paid or tendered to him or her.

(7) Save with the consent of the Court, on the application of the Official Assignee and subject to such conditions as the Court may prescribe, it is not lawful for any person to publish a report of any examination held before the Official Assignee under subsection 1 hereof, or of any matter arising in the course of such examination, and every person who, in breach of this subsection, publishes any such report is liable on summary conviction to a fine of 2 penalty units.

**93. Privilege and representation of witnesses** – (1) The bankrupt or other person who is summoned or examined by the Court, or by the Official Assignee or Judge, under any of the powers given by this Act, are not excused from answering any question on the ground that the answer may criminate or tend to criminate such bankrupt or person.

(2) A statement made by any bankrupt or person in answer to any question put by or before such Court, or Official Assignee or Judge, is not, in criminal proceedings, admissible in evidence against such bankrupt or any person, except upon a charge of perjury against such bankrupt or person in respect of his or her sworn testimony upon such examination; but this provision is subject, and without prejudice, to section 124(6).

(3) Whenever a bankrupt or other person is examined by the Court, or by the Official Assignee or Judge, under any of the powers given by this Act, he or she may be represented by a barrister or solicitor, who may also examine him or her; and his or her answers to such barrister or solicitor shall form part of this examination.



**PART 7  
MEETINGS OF CREDITORS**

**Division 1 –Summoning of Meetings**

**94. When and how meetings to be summoned – (1)** The Official Assignee shall summon the first meeting of creditors at his or her own office, or at some convenient place, for a day not later than 14 days after the adjudication, unless the Court for any special reason deems it expedient that the meeting be summoned for a later day.

**(2)** The Official Assignee shall forthwith advertise a notice of the time and place appointed for such meeting, and a copy of such notice shall be served upon the bankrupt, and shall be sent by post letter or postcard to each creditor mentioned in the bankrupt's statement of affairs at the address given therein, or such other address as may be known to the Official Assignee.

**(3)** The Official Assignee may call a meeting of the creditors at his or her own office, or at such place as in his or her opinion is most convenient for the majority of the creditors, and shall call such meeting when required by  $\frac{1}{4}$  in value of the creditors who have proved their debts.

**(4)** Meetings subsequent to the first meeting are summoned by sending notice by post letter or postcard of the time and place thereof to each creditor at the address given in his or her proof, or, if he or she has not proved, at the address given in the bankrupt's statement of affairs, or at such other address as may be known to the Official Assignee.

**Division 2 – Procedure**

**95. Chairman, adjournment, administering of oaths, minutes, and books of account, deeds, and papers to be produced – (1)** The Chairman at any meeting is the Assignee or some person appointed by the Assignee; but, if the Assignee is not present at the meeting, the meeting may elect 1 of their number qualified to vote at the meeting to act as chairman during the absence of the Assignee or any person so appointed. A person so appointed or elected while acting as chairman in the absence of the Assignee or any person so appointed. A person so appointed or elected while acting as chairman in the absence of the Assignee is empowered to administer any oaths which the Assignee could have administered if present.

(2) The Official Assignee or chairman, with the consent of the meeting, may adjourn any meeting.

(3) The Official Assignee shall, if required, produce to every meeting and to any adjournment thereof all books of account, deeds, and papers then in his or her possession relating to the property of the bankrupt.

(4) The Official Assignee shall cause to be kept minutes of the proceedings at every meeting and the minutes shall be signed by the Official Assignee or the chairman.

(5) The minutes of any general meeting of creditors, upon proof of signature of the Official Assignee or chairman presiding at such meeting, are prima facie evidence in all Courts of justice of what passed at such meeting

(6) A meeting shall not be competent to act for any purpose except the election of a chairman in the absence of the Official Assignee, or any person appointed by him or her to be Chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented at least 3 creditors, or all the creditors if their number does not exceed 3.

(7) If within a  $\frac{1}{4}$  of an hour from the time appointed for a meeting a quorum of creditors is not present or represented, the meeting shall be adjourned either *sine die* or to such time and place as the Official Assignee or chairman appoints.

### Division 3 – Proxies

**96. Creditor may vote by proxy** – (1) A creditor may vote either in person or by proxy.

(2) An instrument of proxy shall be in the prescribed form or to the effect thereof, and shall be signed by the creditor before a Justice, solicitor, or Postmaster, and must be produced to the Official Assignee before or at the meeting to entitle the holder thereof to vote, and may be revoked by notice to the Official Assignee.

(3) A creditor residing or being absent more than 10 miles from the place of meeting may give a general proxy to a person, and a creditor may give a general proxy to his or her manager or clerk, or any other person in his or her regular employment; and in such latter case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

(4) A person holding a power of attorney from a creditor empowering him or her to recover debts due to such creditor shall, on

producing such power of attorney or a copy thereof authenticated to the satisfaction of the Official Assignee before or at the meeting, be taken to be the holder of a general proxy from such creditor, and may vote on his or her behalf.

(5) A creditor may give a special proxy to any person to vote at any special meeting or adjournment thereof for or against any specific resolution, or for or against any specific person as supervisor.

(6) No person acting under either a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself or herself, his or her partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor, or as a supervisor.

#### **Division 4 – Voting**

**97. Right to vote – (1)** At a meeting of creditors a person is not entitled to vote as a creditor unless at or previously to the meeting he or she has duly proved a debt provable under the bankruptcy to be due or owing to him or her.

(2) A creditor shall not vote at the meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(3) A secured creditor may vote in respect of the debt due to him or her only after valuing, surrendering, or realising his or her security in accordance with the provisions hereinafter contained in respect of secured creditors.

(4) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note unless he or she is willing to treat the liability to him or her thereon of every person who is liable thereon antecedently to the debtor, and who is not a bankrupt, as a security in his or her hands, and to estimate the value thereof, and, for the purpose of voting, but not for the purposes of dividend, to deduct it from his or her proof; provided that the Official Assignee may require the production of such bill or note.

(5) If an order of adjudication is made against 1 partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his or her debt for the purpose of voting at any meeting of creditors, and is entitled to vote thereat.

(6) The Official Assignee has power to admit or reject a proof for the purpose of voting.

## PART 8 PROOFS OF DEBT

### Division 1 – What Debts are Provable

**98. Demands provable and not provable** – (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust are not provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the bankrupt shall not prove under the bankruptcy for any debt or liability contracted by the bankrupt subsequent to the date of his or her so having notice, except in respect of a debt or liability contracted for the supply of the necessaries of life for the use of the bankrupt and his or her family.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of adjudication, or to which he or she becomes subject before his or her discharge by reason of any obligation incurred before the date of adjudication, are taken to be debts provable in bankruptcy.

### Division 2 – Effect of Proof

**99. Proof of debt an election to take benefit of bankruptcy** – The proving or claiming of a debt or demand under this Act is deemed an election by the creditor to take the benefit of the bankruptcy with respect to that debt or demand, and any action, suit, or proceeding by the creditor to recover such debt or enforce such demand is to be *ipso facto* restrained.

### Division 3 – Debts, How and When Proved

**100. Creditors to prove upon adjudication and manner of proof** – (1) Each creditor shall prove his or her debt, whether a preferential claim or not, as soon as may be after the making of the order of adjudication.

(2) A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Assignee an affidavit verifying the debt.

(3) The affidavit may be made by the creditor himself or herself, or by some person authorised by or on behalf of the creditor; and if made by a person so authorised it shall state his or her authority and means of knowledge.

(4) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated; and the Official Assignee may at any time call for the production of the vouchers.

(5) A creditor shall bear the cost of proving his or her debt, unless the Court specially orders otherwise.

(6) Each creditor who has lodged a proof is entitled to see and examine the proofs of other creditors before the first meeting and at all reasonable times.

(7) A creditor may, with the leave of the Official Assignee, from time to time amend his or her proof.

(8) An amendment of a proof is made subject to the same formalities as an original proof, and shall be sworn or declared to in the same manner.

(9) No proof shall be admitted or amended after the expiration of 2 months from the date of the adjudication, except under special circumstances approved by the Official Assignee or by the Court as sufficient to justify the delay.

(10) Companies and other bodies incorporated or authorised to sue may prove by an agent, who are deemed the claimant, and who shall in his or her affidavit declare that he or she is such agent, and that he or she is authorised to make such proof, or to give a discharge for debts due to the company.

#### **Division 4 – Admission or Rejection of Proofs**

##### **101. Official Assignee to examine proofs and admit or reject –**

(1) The Official Assignee has power to accept or reject proofs either wholly or in part, and he or she shall examine every proof and the grounds of the debt, as soon as conveniently may be, admit or reject it, in whole or in part, or require further evidence in support of it.

(2) If he or she rejects a proof, he or she shall give notice to the creditor on the grounds of the rejection.

(3) If he or she thinks that a proof has been improperly admitted, the Court may, on the application of the Official Assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

(4) If he or she fails to decide upon the admission or rejection of a proof for 14 days after notice to decide upon it has been given to him or her by the bankrupt or any creditor, the Court may, upon the application of the bankrupt or such creditor, admit or reject such proof, or make such other order as it thinks fit.

(5) If within 30 days after the Official Assignee has served notice on any creditor of the rejection of his or her proof such creditor does not apply to the Court to reverse such decision, and the Court, on the hearing of such application, does not reverse such decision, the same shall be final and conclusive as to the right of the creditor to prove for the debt or claim in respect of which the proof has been disallowed.

(6) The Official Assignee has power to summon before him or her, and to examine on oath or otherwise, any person who has tendered or made a proof, whether preferential or otherwise, or who has made a declaration or statement, and may also summon before him or her any such person or any person capable of giving evidence concerning such proof, or the debt sought to be proved; and, in case any person so summoned fails to attend, or refuses to be sworn or to give evidence, the fourth and following subsections of section 92 is to be read as applicable to any summons or examination under this section.

(7) All costs incident to such order and examination shall be paid by the person so failing or refusing, unless the Court otherwise orders.

### **Division 5 – Proofs by Secured Creditors**

**102. Secured creditors** – (1) A secured creditor shall state in his or her proof the particulars of his or her security, the date when it was given, and the value at which he or she estimates it, and is taken to be a creditor only in respect of the balance due to him or her after deducting the value so estimated.

(2) If a secured creditor surrenders his or her security to the Official Assignee for the general benefit of the creditors he or she may prove for the whole debt.

(3) If the Official Assignee is dissatisfied with the value at which a security is assessed, he or she may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the Official Assignee, or, in default of such agreement, as the Court may direct.

(4) If the sale be by public auction, the creditor, or the Official Assignee on behalf of the estate, may bid or purchase.

(5) Where a creditor has so valued his or her security, he or she may amend the valuation and proof on showing to the satisfaction of the Official Assignee or the Court that the valuation and proof were made bona fide on a mistaken estimate; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court orders, unless the Official Assignee allows the amendment without application to the Court; and from the date of such amendment, the amended proof shall be the proof of that creditor for all purposes under this Act.

(6) A secured creditor shall, on application made by the Official Assignee within 6 months from the date of the proof, but before the declaration of the final dividend, and before the secured creditor has realised his or her security, and on payment of the value of his or her security as estimated in his or her proof, in addition to the reasonable costs of any attempted sale under subsection (3), and in addition to such sum as he or she has expended since the date of the proof in the improvement of the property forming the security, give up his or her security to be dealt with as part of the property of the bankrupt for the benefit of the creditors.

(7) If the Official Assignee does not wish to take over any security as in subsection (6), any creditor may, with the consent of the Official Assignee, within 6 months from the date of the proof, but before the declaration of the final dividend, and before the secured creditor has realised his or her security, and upon payment of the value of such security as estimated in the original or amended proof, in addition to the reasonable costs of any attempted sale under subsection (3), and in addition to such sum as the secured creditor may have expended since the date of the proof in the improvement of the property forming the security, require such secured creditor to transfer such security to him or her for his or her own benefit, and he or she shall thereupon transfer such security accordingly.

(8) If a creditor after having valued his or her security subsequently realises it before the declaration of a final dividend, or if it is realised under subsection (3), the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor; but if the security of a mortgage over land and the mortgagee becomes the purchaser thereof under the provisions of the Property Law Act 1952 the amount to be substituted shall be the value thereof as agreed upon between the Official Assignee and the secured creditor, or, in case

they do not agree, as fixed by arbitration under the Arbitration Act 1976 the costs to be fixed as directed by the arbitrators or umpire.

(9) If a secured creditor does not comply with this section he or she shall be excluded from all share in any dividend.

(10) Subject to the provisions of this section, a creditor shall in no case receive more than 100 sene in the tala and interest as provided by this Act.

(11) Except as in this Act expressly provided, nothing in this Act shall 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 and deal with it if this Act had not been passed.

### **Division 6 – Proofs in Particular Cases**

**103. Trade discounts** – A creditor proving his or her debt shall deduct therefrom all trade discounts, and such portion of any discount he or she may have agreed to allow for payment in cash as exceeds 5% on the net amount of his or her claim.

**104. Set-off** – Where mutual credit has been given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, or where any person entitled to prove in respect of any debt or demand is indebted or liable to the bankrupt in respect of any debt or demand the account between the bankrupt and such person is to be stated, and one debt or demand may be set against another, and no more than appears due on either side on the balance of account shall be claimed or paid on either side,

**PROVIDED THAT** a person is not entitled under this section to claim the benefit of any set-off against the property of a bankrupt where he or she had, at the time of giving credit to the bankrupt, notice of an available act of bankruptcy committed by the bankrupt; and a creditor claiming the benefit of a set-off shall, in his or her proof, declare that he or she had at the time of giving credit no notice of such an act of bankruptcy.

**105. Interest** – When a debt or sum certain on which interest is not reserved or agreed for is due at the time of the adjudication, and is provable, the creditor may prove also for interest at the rate in force in the case of judgment debts in the Supreme Court for the period intervening between the time when the debt or sum was payable, if it was payable by virtue of a written instrument at a certain time, or, if not, then between the time when demand of payment was made in



writing, with a notice in writing that interest would be claimed from that demand until payment, and the date of adjudication.

**106. Debt payable at future time** – A creditor in respect of a debt not payable at the time of the adjudication, whether on a negotiable instrument or not, may prove the debt as if it was payable presently, allowing thereout discount at the rate aforesaid from the date of adjudication until the time when the debt is payable,

**PROVIDED THAT** no discount is to be made from a debt payable within 3 months of the adjudication.

**107. Debt owing on invalid security** – A creditor secured by a security which under the provisions of this or any other Act is declared wholly or in part void against the Official Assignee in the bankruptcy is entitled to prove for so much of the money which is justly owing to him or her and is not admitted to be secured under the said security.

**108. Bankrupt liable as member of several firms** – (1) If a bankrupt was at the date of adjudication liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also 1 of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

(2) Any separate creditor of a bankrupt is at liberty to prove his or her debt under any adjudication of bankruptcy made against such bankrupt jointly with any other person.

**109. Official Assignee to estimate value of contingent debt** – (1) An estimate shall be made by the Official Assignee of the value of any debt or liability provable under the bankruptcy which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(2) A person aggrieved by any estimate made by the Official Assignee as aforesaid may appeal to the Court.

(3) If, in the opinion of the Court, the value of the debt or liability cannot be 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 taken to be a debt not provable in the bankruptcy.

(4) If, in the opinion of the Court, the value of the debt or liability can be fairly estimated, the Court may direct the value to be assessed before the Court itself, without the intervention of assessors, and may give all necessary directions for this purpose, and the amount of the value when assessed is taken to be a debt provable in the bankruptcy.

**110. How claim for unliquidated damages assessed** – Where the bankrupt is at the time of adjudication liable, under a contract or promise, to a demand in the nature of unliquidated damages, then, despite that such contract or promise has not been broken before the adjudication, the Official Assignee may agree with the person claiming as to the amount to be allowed as assessed damages; and if the Official Assignee and such person do not agree, the Court may direct the damages to be assessed before the Court itself, without the intervention of assessors, and may give all necessary directions for that purpose, and the damages so agreed on or assessed may be proved under the bankruptcy.

**111. When company may prove for unpaid calls** – Where the bankrupt is at the time of the adjudication a member of a company registered under any Act relating to the registration of companies, and not in the course of being wound up under that Act, the company, despite that the Official Assignee has disclaimed such shares, may prove for the amount of calls made before the adjudication, in respect of the shares held by the bankrupt and not paid, and may claim for the value, estimated as the Court directs, of the liability to calls to be made in respect of such shares within 1 year after the adjudication:

**112. Clerks, servants, artisans, labourers or workmen may prove for salary or wages beyond preferential claim** – Any clerk, servant, artisan, labourer, or workman may, in addition to his or her preferential claim for salary or wages as hereinafter provided, prove and obtain a dividend on any claim he or she may have for salary and wages beyond that hereinafter made a preferential claim.

**113. Right of holder of marine policy, though not beneficially interested** – Where a policy of insurance on a ship or on goods has been effected with the bankrupt as a subscriber or underwriter, the person effecting the policy may prove in respect thereof, although he or she was not beneficially interested in the ship or goods.

**114. When a surety for bankrupt may prove** – Where a person is at the time of the adjudication surety or liable for any debt or liability of the bankrupt, and pays or satisfies the debt or liability, or any part of it in discharge of the whole, although he or she does so after the adjudication, the following provisions shall have effect:

- (a) if the creditor has proved, the surety or person liable may stand in his or her place in respect of the proof.
- (b) if the creditor has not proved, the surety or person liable may prove for the payment made by him or her as a debt, not disturbing former dividends, and may receive dividends.

**115. Right of judgment creditor to prove for costs** – A person who, under a verdict, judgment, decree, order, or rule in or of any Court obtained before the adjudication would have been entitled to recover costs from the bankrupt if he or she had not become bankrupt may prove for the amount of such costs when taxed, although the taxation is not had before the adjudication.

**116. Proof for costs, etc., payable under process of contempt** – A person entitled to enforce against the bankrupt payment of any money, costs, or expenses by process of contempt issuing out of any Court may prove for the amount payable under the process, subject to such ascertaining of the amount as may properly be had by taxation or otherwise.

**117. Plaintiff must relinquish action or suit before proving** – A creditor who has brought an action or instituted a suit against a bankrupt in respect of a debt or demand provable under this Act shall not prove a claim in respect of that debt or demand without first relinquishing the action or suit,

**PROVIDED THAT:**

- (a) such creditor is not liable by reason thereof to pay the costs of the action or suit;
- (b) where the action or suit is against the bankrupt jointly with any other person, the relinquishment thereof as against the bankrupt shall not affect the action or suit as against that other person;
- (c) if the bankruptcy is annulled, the creditor may proceed in the action or suit as if he or she had not proved or claimed.

**PART 9**  
**COMPOSITION WITH CREDITORS**

**118. Composition with creditors** – (1) The creditors may, by special resolution, accept a composition in satisfaction of the debts due to them from the bankrupt, embodying in such resolution the terms of the composition.

(2) The confirming resolution may vary the preliminary resolution so that the terms of the composition assented to by such confirming resolution are not unfavourable to the creditors than those specified in the preliminary resolution.

(3) The notice of the meeting to pass the confirming resolution shall state generally the terms of the proposal for composition, and shall be accompanied by a report of the Official Assignee thereon.

(4) For computing the requisite majority of creditors for the passing of such confirming resolution as aforesaid, if the proposal for composition provides for the payment in full of all creditors whose respective debts do not exceed a certain amount, that class of creditors shall not be reckoned either in number or value.

(5) When the confirming resolution has been passed, either the bankrupt or the Official Assignee may apply to the Court to approve the composition, and notice of the application is to be given to each creditor.

(6) The Court shall, before approving a composition, hear a report of the Official Assignee as to the terms of the composition and as to the conduct of the debtor, and any objection which may be made by or on behalf of any creditor.

(7) The Court may refuse to approve the composition if it is of opinion:

- (a) that subsections (1), (2), (3), and (4) have not been complied with; or
- (b) that the terms of the composition are not reasonable or not calculated to benefit the general body of creditors; or
- (c) that the bankrupt has committed any such misconduct as would justify the Court in refusing, qualifying, or suspending his or her discharge; or
- (d) that for any reason it is not expedient that the composition should be approved.

(8) No composition 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.

(9) If the Court approves the composition, the approval may be testified by the seal of the Court being attached to the deed hereinafter mentioned containing the terms of the composition, or by the terms being embodied in an order of the Court.

(10) A composition so approved by the Court is binding on all the creditors, so far as relates to any debts due to them and provable under the bankruptcy.

(11) At the time a composition is approved the Court may correct or supply any accidental or formal error or omission therein, but no alteration in the substance of the composition is to be made.

(12) The approval of the Court is conclusive as to the validity of the composition.

(13) Forthwith after the Court has approved a composition the bankrupt and the Official Assignee shall execute a deed of composition for carrying the proposal into effect, and such deed shall be produced to the Court by the Official Assignee, who shall forthwith apply to the Court to confirm the said deed.

(14) The Court, if satisfied that the deed is in conformity with the composition as approved, shall direct the deed to be entered and filed in the Court, and shall annul the adjudication of bankruptcy, and the deed shall thereupon be binding in all respects upon all the creditors as if they had severally executed the same; and the property of the bankrupt shall vest and be dealt with thereafter as provided in the deed.

(15) When any such deed of composition has been entered by the Registrar he or she shall endorse thereon the fact of such entry and filing in the Court, and shall deliver the deed to the Official Assignee, who shall forthwith have the deed registered in the Land Registry Office against any lands or interest therein referred to, and on such registration being effected shall return the deed to the file in the Court.

(16) The registration of any such deed is sufficient to pass any land affected thereby, and to vest such land in accordance with the terms expressed in the deed.

(17) When any such deed of composition is entered by the Registrar the Official Assignee shall forthwith, subject to the provisions of the said deed, put the bankrupt (or, as the case may be, the trustee under the composition) into possession of the bankrupt's property, or such of it as is in possession of the Official Assignee and as is intended by the composition to re-vest in the debtor or trustee.

(18) When default is made in payment of any composition approved by the Court as aforesaid, either by the debtor or the trustee, if any, no

action to enforce such payment shall lie; but the remedy of any person aggrieved is by application to the Court.

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

(20) Despite the approval of a composition, and whether the adjudication of bankruptcy is annulled or not, the Court, from and after the passing of the preliminary resolution, shall continue to have exclusive jurisdiction in the following matters, namely:

- (a) the enforcement in any respect of the execution of the trusts, powers, covenants, or other provisions of the deed of composition;
- (b) the hearing of any application of the bankrupt, or of any trustee or inspector acting under the deed, or of any creditor or person claiming to be a creditor, respecting the custody, distribution, inspection, management, or winding up of the bankrupt's property or affairs, or any act or thing relating thereto done or happening after the execution of the deed by the bankrupt;
- (c) the claim of any person to be a creditor;
- (d) the audit or examination of the accounts of a trustee or inspector;
- (e) the taxation or examination of the costs or charges of a solicitor, accountant, auctioneer, broker, or other person acting or employed under the deed;
- (f) any matter for the submission whereof to the Court provision is made by the deed;

(21) On any application under the preceding subsection the Court may proceed and direct and authorise proceedings with respect to the summoning and examination of the bankrupt and witnesses, and otherwise, as in bankruptcy, and may make such order concerning the subject of the application and the costs thereof as seems just, and such order is enforceable as an order in bankruptcy.

(22) The Court shall determine all questions arising under the deed of composition according to the law and practice in bankruptcy, so far as the same are applicable.

(23) If the confirming resolution is not passed within 1 month after the passing of the preliminary resolution, or if the composition is not approved by the Court within 1 month after the passing of the confirming resolution, or if the deed of composition is not executed by

the bankrupt within 7 days after the approval of the composition by the Court, the proceedings in the bankruptcy shall, immediately on the expiration of any such period, go on as if there had been no resolution, and that period shall not be reckoned in the calculation of time for any of the purposes of this Act.

(24) Where the adjudication is against members of a partnership, the joint creditors and each class of separate creditors may make distinct compositions, and, if so made, the majorities of creditors required for passing the confirming resolution aforesaid shall be distinct majorities of each such class, but otherwise the joint and separate creditors shall have votes as 1 body.

(25) The delay of any 1 of such classes of creditors in accepting, or their failure to accept, a composition shall not prevent any other of such class from accepting such composition.

(26) Where a bankrupt makes any composition with his or her creditors he or she shall remain liable for the unpaid balances of any debt which he or she incurred or increased, or whereof, before the date of the composition, he or she obtained forbearance by any fraud:

**PROVIDED THAT** the defrauded creditor has not assented to the composition otherwise than by proving his or her debt and accepting dividends.

(27) No deed shall be entered and filed in the Court unless the commission, as specified in Part 2 of Schedule 3, is paid to the Official Assignee.

## **PART 10 DISTRIBUTION OF ASSETS**

### **Division 1 – Official Assignee’s Bank Account**

**119. Official Assignee to pay money into bank – (1)** The Official Assignee shall day by day, except on public or bank holidays, pay all money received by him or her during the day into such bank as the Minister directs, to his or her own credit as Official Assignee.

(2) A separate account for each estate shall be kept by the Official Assignee of all money paid into or withdrawn from the bank in respect thereof; and all money required for the purposes of any estate is to be withdrawn from the sum to the credit of the Official assignee’s account at the bank aforesaid by cheques signed by the Official Assignee, which must either be crossed or made payable to the order of the recipient.

(3) If an Official Assignee retains in his or her hands any moneys contrary to the provisions of this section, he or she is, unless he or she

explains the retention to the satisfaction of the Court hearing the information, liable to a fine not exceeding 20% upon the amount so retained, and is also liable to be dismissed from his or her office and to pay any expenses occasioned by reason of his or her default.

**119A. Commissions payable to the Official Assignee** – All commissions payable to the Official Assignee shall be paid into the Treasury Fund.

### **Division 2 – Application of assets when realised**

**120. Priorities** – (1) The moneys received by the Official Assignee by the realization of the property of a bankrupt shall be applied by the Official Assignee as follows:

- (a) first, in payment of —
  - (i) all costs, charges, allowances, and expenses properly incurred by or payable by the Official Assignee in the execution of his or her office.
  - (ii) the costs and expenses incurred by a creditor in procuring the order of adjudication, inclusive of and subsequent to the preparation and filing of the petition.
  - (iii) the costs and expenses incurred by a debtor in filing his or her petition, and other matters consequent thereon;
- (b) secondly, in payment of all commission payable to the supervisor and Official Assignee respectively, as specified in Schedule 3;
- (c) thirdly, in payment of any rent for any period not exceeding 3 months actually due and payable by the bankrupt at the date of adjudication in respect of a period terminating not later than the said date, if there were at that date goods on the premises in respect of which the rent was payable liable, but for the bankruptcy, to distress for rent,

**PROVIDED THAT** no person entitled to a preference claim for rent hereunder is entitled to more than the value of such goods so distrainable, such value to be fixed by the Court in a summary way in the event of the Official Assignee and landlord not agreeing as to the amount,



**PROVIDED ALSO THAT** goods subject to a valid and duly registered security under the Chattels Transfer Act 1975 is not deemed to be liable to distress for the purposes of this section unless they realise upon sale by the secured creditor more than the amount secured by such security, in which case the right of priority shall attach to the amount paid to the Official Assignee of the estate,

**PROVIDED FURTHER THAT** goods which the bankrupt is entitled to select under the next succeeding section are not deemed to be liable to distress for the purposes of this section,

- (d) fourthly, in payment, *paripassu*, of all debts provable and proved in the bankruptcy;
- (e) fifthly, in payment of interest from the date of adjudication on all debts proved in the bankruptcy at the rate for the time being in force in the case of judgment debts in the Supreme Court;
- (f) sixthly, in payment to the bankrupt of any surplus.

**Apportionment of rent** – Section 9(2) of the Bankruptcy Amendment Act 1927 provides as follows:

9.(2) When any rent or other payment falls due at stated periods, the person entitled to the rent or payment may prove for a proportionate part thereof as if the rent or payment grew due from day to day.

**121. Bankrupt to select furniture and household effects to the value of \$200** – The bankrupt is entitled immediately upon adjudication to select and retain as his or her own property his or her tools of trade and furniture and household effects, including the wearing apparel of himself or herself and family, to the value in the opinion of the Official Assignee of \$200:

**PROVIDED THAT** this provision is without prejudice to any valid security there may be over the same, and shall not confer any rights upon the bankrupt to any other portion of his or her property if his or her tools of trade, household furniture, and effects do not in the opinion of the Official Assignee amount in value to \$200, or are subject to any such security.

**122. Creditors may give back portion of estate** – The creditors may by resolution give back to the bankrupt any portion of his or her estate, but shall not give back any portion of his or her estate exceeding in the

opinion of the Official Assignee \$100 in value, except by a special resolution.

### **Division 3 – Dividends**

#### **123. Official Assignee to declare dividends as soon as possible –**

(1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the Official Assignee shall, with all convenient speed, declare and distribute dividends among the creditors who have proved their debts.

(2) Notice of the time and place where any dividend will be paid shall be sent to the creditors, and shall be advertised.

(3) Any creditor who has proved his or her debt may apply to the Court for an order requiring the Official Assignee to proceed with the distribution of the assets of any estate forthwith, in such manner as the Court directs, having regard to the circumstances of the case.

(4) In any such case the Court may make such order as it thinks fit, or may refuse to make any such order.

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

(6) In the case of a dividend declared after the expiration of 6 months after adjudication the Official Assignee is not obligated to make provision for debts such as those referred to in the last preceding subsection, save where the Court otherwise orders.

(7) A creditor who has not proved his or her debt before the declaration of any dividend or dividends is entitled to be paid a dividend or dividends out of any moneys for the time being remaining in the hands of the Official Assignee available for future distribution amongst the creditors, but he or she is not entitled to disturb the distribution of any dividend declared before he or she proved his or her debt.

(8) A creditor who has duly amended his or her proof after the declaration of a dividend is, if his or her claim is increased by such amendment, entitled to be paid a further dividend in respect of such increase out of any moneys for the time being remaining in the hands of the Official Assignee available for future distribution among the creditors;

but he or she is not entitled to disturb the distribution of any dividend declared before the said proof was amended.

(9) A creditor who has duly amended his or her proof so as to reduce his or her claim after receiving a dividend shall refund to the Official Assignee the dividend on the amount by which his or her claim is thus reduced.

(10) The creditors of 2 or more bankrupts jointly shall not receive any dividend out of the separate property of any one of such bankrupts until his or her separate creditors have received the full amount of their respective debts, nor shall any separate creditor receive a dividend out of the joint property until the creditors of the bankrupts jointly have received the full amount of their respective debts.

(11) When the Official Assignee has converted into money all the property of the bankrupt, or so much thereof as can in the joint opinion of the Official Assignee and of the supervisors (if any) be realised without needlessly protracting the bankruptcy, he or she shall declare a final dividend.

(12) Subject to the provisions of the Bills of Exchange Act 1976, and subject to the power of the Court in any other case on special grounds to order production to be dispensed with, every bill of exchange, promissory note, or other negotiable instrument or security upon which proof has been made shall be exhibited to the Official Assignee before payment of dividend thereon, and the amount of dividend paid is to be endorsed on the instrument.

## **PART 11 DISCHARGE**

### **Division 1 – Examination of Bankrupt**

**124. If Official Assignee or creditors desire it, bankrupt to be publicly examined** (1) If the Official Assignee, after adjudication and before the making of an absolute order of discharge, files in the Court a statement to the effect that it is desirable that the debtor should submit to a public examination, or if the creditors, at any meeting before the making of an absolute order of discharge, pass an ordinary resolution to the like effect, and a copy of such resolution verified by affidavit of the Official Assignee or chairman is filed in the Court, the Court shall hold a public sitting day after the expiration of 7 days after notice of the filing of such statement or affidavit is served on the bankrupt; and the bankrupt shall

attend thereat, and shall be examined as to his or her conduct, dealings, and property.

(2) At least 7 days' notice of the intention to hold such examination shall be advertised by the Official Assignee, and shall be sent to the creditors.

(3) Prior to such examination the Official Assignee shall file in the Court a full report on the estate, and the conduct of the bankrupt, and on all other matters with which it is desirable for the purposes of this Act that the Court should be acquainted.

(4) The Official Assignee, or a creditor who has proved his or her claim, or the solicitor for the Official Assignee or for a creditor who has proved his or her claim, may, without any notice to the bankrupt, examine him or her.

(5) The bankrupt is to be examined upon oath, and it is his or her duty to answer all such questions as the Court puts or allows to be put to him or her.

(6) Such notes of the examination as the Court thinks proper shall be taken down in writing, and is to be read over to and signed by the debtor, and may thereafter be used in evidence against him or her despite anything contained in this Act, and they shall also be opened to the inspection of any creditor or his or her solicitor at all reasonable times.

(7) The bankrupt is not taken to have passed his or her public examination until the Court, by order, declares that his or her affairs have been sufficiently investigated and that his or her examination is finished.

## **Division 2 – Application for Discharge**

**125. Bankrupt may apply for discharge at any time** – (1) A bankrupt may after adjudication apply to the Court for an order of discharge; but if prior to the day of hearing a statement by the Official Assignee, or a copy of a resolution by the creditors, to the effect that it is desirable that the bankrupt should submit to a public examination has been filed, then the application for an order of discharge shall be adjourned until the examination is finished.

(2) Notice of the day on which the bankrupt proposes to make the application for discharge shall be advertised by the bankrupt and sent to the Official Assignee and all the creditors at least 2 weeks prior to the day so proposed.

(3) After the expiration of 4 months from the date of the adjudication of a bankrupt, the Official Assignee may, by notice in writing, require him

or her to apply for his or her discharge, and in every such case the following provisions apply:

- (a) if the bankrupt fails for 10 days thereafter to take all necessary steps for this purpose the Official Assignee may apply to the Judge to have the bankrupt committed for contempt of Court;
- (b) if it appears to the Official Assignee that the bankrupt is unable to pay the Court fees and outlay incidental to his or her application for discharge, the fees shall, on production of a certificate by the Official Assignee shall take all necessary steps to pay out of the estate all other outlay in respect of the application for the bankrupt's discharge.
- (c) the Judge shall have power to make such order in the premises as he or she thinks proper.

### **Division 3 – Hearing of Application**

**126. Court may examine Official Assignee. Official Assignee or creditor may oppose application. Report as to bankrupt** – (1) The Court, at the hearing, may examine the Official Assignee as to the bankrupt's conduct and affairs.

(2) The Official Assignee or any creditor who has proved his or her claim may, without notice to the bankrupt, oppose the bankrupt's application for an order of discharge, and may examine the bankrupt as to any matter or thing relating to his or her estate, and as to his or her transactions and conduct, and as to the alleged causes of the inability to pay his or her debts.

(3) The Court may adjourn the hearing of any such application as it thinks fit, and may require any opposing creditor to furnish the bankrupt before the time appointed for the adjourned hearing with a written statement of his or her objections to the bankrupt's discharge.

(4) Prior to the day appointed for the hearing of an application for discharge, if he or she has not already done so, the Official Assignee shall file in the Court a full report on the estate and the conduct of the bankrupt, and on all other matters with which it is desirable that the Court should be acquainted.

**127. Powers of Court to grant absolute, suspended, or conditional discharges** – On the hearing of an application for an order of discharge the Court may, in its own absolute discretion, either:

- (a) grant or refuse an immediate order of discharge; or
- (b) suspend the same from taking effect for such time as the Court thinks fit; or
- (c) grant an order of discharge to take effect upon the performance of any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income that may after the date of the order become due to the bankrupt, and touching property of the bankrupt acquired after the date of the order, or touching the payment of any of the preferential claims referred to in section 128; or
- (d) grant an order, subject to the bankrupt consenting to judgment being entered against him or her by the Official Assignee for the whole or any portion of the balance of the debts provable under the bankruptcy that is not satisfied at the date of his or her discharge; but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given proof that the bankrupt has since his or her discharge on acquired property or income available for the payment of his or her debts:

**PROVIDED THAT** the Court shall not grant any absolute and immediate order of discharge if it appears to the Court that the bankrupt has been guilty of any offence under this Act, or, where the Court is satisfied, upon the representation of any creditor or Official Assignee, that there is ground to believe that the bankrupt has been guilty of any such offence, or where the Court is of opinion that the bankrupt has been guilty of misconduct or gross negligence in the conduct of his or her business.

*128. Repealed by section 14 of the Bankruptcy Amendment Act 1956.*

**129. Court may reverse order of discharge – (1)** Within 2 years after the grant of an absolute order of discharge, or after the taking effect of a suspended or conditional order of discharge, the Court may, on the application of the Official Assignee or of any creditor, reverse such order of discharge, if after notice to the bankrupt any facts are established to the satisfaction of the Court which, had they been known to the Court at the time of granting such order, would have justified the Court in refusing to grant the order or in imposing any conditions precedent to its taking effect.

**(2)** No such application for a reversal of the order of discharge shall be entertained if the facts upon which it is intended to be based were

known to or could by exercise of reasonable diligence have been ascertained by the Official Assignee or the creditor making the application at the time of the granting of the order of discharge.

(3) The reversal of any order of discharge shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been made, and any property acquired by the bankrupt since the granting of the order which is reversed, and vested in him or her at the date of such reversal, vests in the Official Assignee subject to any encumbrances thereon, and shall, in the first instance, be applied by the Official Assignee in satisfaction of debts incurred by the bankrupt since the date of the order so reversed.

(4) Upon the Court reversing such order of discharge the Court may grant a new order of discharge, either absolute, suspended, or conditional.

**130. Repeated applications for discharge** – Any bankrupt may apply for an order of discharge from time to time, unless the Court on any application fixes a period within which he or she is not entitled to make such application.

**131. Absolute discharge where failure to comply with conditions** – In case of failure to comply with the whole or any of the conditions fixed by the said conditional order of discharge the Court may grant an absolute order of discharge to the bankrupt on his or her application, if the Court is satisfied that the failure to comply with such conditions arises from circumstances for which the bankrupt cannot justly be held responsible.

#### **Division 4 – Effects of Discharge**

**132. What debts discharge releases bankrupt from** – An order of discharge shall not release the bankrupt from:

- (a) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he or she was a party;
- (b) any debt or liability whereof he or she has obtained forbearance by any fraud to which he or she was a party;
- (c) any judgment debt for which he or she is liable under section 127;
- (d) any debt on a recognisance, and any debt with which the bankrupt may be chargeable at the suit of the Government or any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Police or other public officer on a bail

bond entered into for the appearance of any person prosecuted for any such offence, unless the Minister of Finance certifies consent to his or her being discharged therefrom,—

but it shall release the bankrupt from all other debts provable in the bankruptcy.

**133. Order of discharge conclusive evidence of bankruptcy** – An order of discharge is conclusive evidence of the bankruptcy and of the validity of the proceedings therein; and in any proceedings instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he or she is released by such order, the bankrupt may plead that the cause of action occurred before his or her discharge, and may give this Act and the special matter in evidence.

**134. Discharge not to release partners, co-trustees, or a person who was jointly bound or a surety** – An order of discharge shall not release any person who at the date of adjudication 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.

**135. Discharged bankrupt to assist Official Assignee** – A discharged bankrupt shall, despite his or her discharge, give such assistance as the Official Assignee or the Court requires in the realisation and distribution of such of his or her property as is vested in the Official Assignee; and if he or she without reasonable cause fails to do so he or she is guilty of a contempt of Court.

**List of undischarged bankrupts to be gazetted annually** – Section 14 of the Bankruptcy Amendment Act 1927 provides as follows:

14.(1)The Minister of Justice shall in April 1928, and in the same month in each year thereafter, cause to be compiled a list setting forth the name, occupation, and address of, and such other relevant particulars as he or she thinks proper with respect to, each person who has been adjudged bankrupt at any time since the 31 March, 1927, and who on the 31 March of the year in which the list is compiled has not obtained an order of discharge, or whose order of discharge is suspended for a term not then expired or is subject to conditions not then fulfilled.



(2)The Minister may, as he or she thinks fit, publish any list compiled pursuant to the last preceding subsection in such manner as he or she thinks proper, or publish so much of the list as relates to adjudications in bankruptcy made within any specified period ending on the date of the compilation of the list. Any list or portion of a list so published is available for sale to the public at a price to be fixed by the Minister.

(3)No action shall lie against the State or against the Minister of Justice or any Official Assignee or other person in respect of the publication of any matter pursuant to this section.

## **PART 12 ANNULLING OF ADJUDICATION**

**136. When Court may annul adjudication** – (1) In any of the cases following the Court may by order, on the application of any person interested, annul the adjudication, and thereupon the adjudication shall be annulled from and after the date of the order annulling it, that is to say:

- (a) where, in the opinion of the Court, an order of adjudication ought not to have been made; or
- (b) where it is proved to the satisfaction of the Court that the debts of the bankrupt are fully paid or satisfied; or
- (c) where the court has approved a composition, or in any other case where the Court, after examining the Official Assignee as to the bankrupt's conduct and affairs, is satisfied that the bankruptcy was caused by misfortune without any misconduct on the part of the bankrupt.

(2) For the purposes of this section any debt disputed by the bankrupt is considered as paid or satisfied if he or she enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs.

(3) A notice of every order annulling any adjudication shall be forthwith advertised by the Official Assignee.

**137. Effect of annulment** – (1) Upon the making of an order annulling an adjudication all property of the bankrupt vested in the Official Assignee under the bankruptcy, and not at the date of the order annulling the adjudication sold or disposed of by the Official Assignee,

shall re-vest in the bankrupt without the necessity of any conveyance, transfer, or assignment of any kind.

(2) An order annulling an adjudication shall not prejudice or affect the validity of any contract, sale, disposition, or payment duly made or anything duly done by the Official Assignee prior to the making of that order.

(3) An order annulling an adjudication has the effect of releasing the Official Assignee from his or her administration of the estate in like manner as if an order for his or her release had been made under section 150.

### **PART 13**

#### **PENAL**

**138. Crimes by bankrupt** – (1) A person adjudged bankrupt is taken to have committed a crime, and on conviction is liable to 2 years imprisonment, who:

- (a) has carried on trade by means of fictitious capital; or
- (b) could not have had, at the time when any of his or her debts were contracted, any reasonable or probable expectation of being able to pay the same, as well as all his or her other debts; or
- (c) has, with intent to conceal the true state of his or her affairs, wilfully omitted at any time to keep proper books or accounts; or
- (d) has, within 3 years before the commencement of the bankruptcy, failed to keep such books of account as are usual and proper in the business carried on by him or her, and as sufficiently set forth his or her business transactions and disclose his or her financial position; or
- (e) has put any of his or her creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due; or
- (f) has, with intent to defraud his or her creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his or her property; or
- (g) has, with intent to defraud his or her creditors, concealed or removed any part of his or her property since or within 2 months before the date of any unsatisfied judgement or order for payment of money obtained against him or her; or

- (h) has, by rash and hazardous speculations, gambling, drunkenness, or unjustifiable extravagance in living, brought about his or her bankruptcy; or
- (i) within 3 years before the commencement of the bankruptcy, has made payments out of the regular course of his or her business, not being for the ordinary expenses of himself or herself (or his or her family), unless it is proved that such payments were justifiable; or
- (j) does not to the best of his or her knowledge and belief fully and truly discover to the Official Assignee all his or her property, and how, and to whom, and for what consideration, and when he or she disposed of any part thereof, 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 expenses of his or her family, unless it is proved that he or she had no intent to defraud; or
- (k) does not deliver up to or to the order of the Official Assignee—
  - (i) all such part of his or her 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 it is proved that he or she had no intent to defraud; and
  - (ii) 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 it is proved that he or she had no intent to defraud; or
- (l) fails to deliver up possession to the Official Assignee of any part of his or her property which is divisible amongst his or her creditors, and which may for the time being be in his or her possession or under his or her control, unless it is proved that he or she had no intent to defraud; or
- (m) makes any material omission in any statement relating to his or her affairs, unless it is proved that he or she had no intent to defraud; or
- (n) knowing or believing that a false debt has been proved by any person under the bankruptcy, fails for the period of 1 month to inform the Official Assignee thereof; or
- (o) after the presentation of a bankruptcy petition by or against him or her, prevents the production of any book,

- document, paper, or writing affecting or relating to his or her property or affairs, unless it is proved that he or she had no intent to conceal the state of his or her affairs or to defeat the law; or
- (p) after the presentation of a bankruptcy petition by or against him or her, or within 2 years next before such presentation—
    - (i) 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 it is proved that he or she had no intent to conceal the state of his or her affairs or to defeat the law; or
    - (ii) 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 it is proved that he or she had no intent to conceal the state of his or her affairs or to defeat the law; or
    - (iii) fraudulently parts with, alters, or makes any omission, 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; or
  - (q) after the presentation of a bankruptcy petition by or against him or her, or within 2 years next before such presentation—
    - (i) conceals any part of his or her property to the value of \$20 or upwards, or conceals any debt due to or from him or her, unless it is proved that he or she had no intent to defraud; or
    - (ii) fraudulently removes any part of his or her property of the value of \$20 or upwards; or
  - (r) after the presentation of a bankruptcy petition by or against him or her, or at any meeting of his or her creditors within 12 months next before such presentation, attempts to account for any part of his or her property by fictitious losses or expenses; or
  - (s) within 3 years next before the presentation of a bankruptcy petition by or against him or her —
    - (i) by any false representation or other fraud, or by any false balance sheet or other false statement of his or

- her affairs, or under the false pretence of carrying on business and dealing in the ordinary course of trade, has obtained any property on credit and has not paid for the same, unless it is proved that he or she had no intent to defraud; or
- (ii) pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he or she has obtained on credit and has not paid for, unless it is proved that he or she had no intent to defraud; or
  - (t) 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 any agreement with reference to his or her affairs or his or her bankruptcy; or
  - (u) after the presentation of a bankruptcy petition by or against him or her, or within 12 months before such presentation, quits Samoa and takes with him or her, or attempts or makes preparation for quitting Samoa and for taking with him or her, any part of his or her property to the amount of \$40 or upwards that ought by law to be divided amongst his or her creditors, unless it is proved that he or she had no intent to defraud; or
  - (uu) quits Samoa within 3 years after the date of the adjudication, and before he or she has ceased to be a bankrupt by reason of the granting of an absolute order of discharge or the taking effect of a suspended or conditional order of discharge or the making of an order of annulment, without having first obtained the consent of the Official Assignee, or attempts to quit Samoa as aforesaid, or makes preparation for quitting Samoa as aforesaid; or
  - (v) before he or she obtains his or her absolute order of discharge, or before a suspended or conditional order of discharge takes effect under this Act, obtains credit to the extent of \$40 or upwards from any person without informing such person that he or she is an undischarged bankrupt; or
  - (w) has, within 3 months before the commencement of the bankruptcy, when unable to pay his or her debts as they became due, given, with intent to defraud his or her other

creditors, an undue preference to any of his or her creditors.

(2) For the purposes of subsection (1)(uu) the following provisions apply:

- (a) an application for the consent of the Official Assignee to the departure of a bankrupt from Samoa shall be made in writing by the bankrupt or his or her solicitor and shall be verified by affidavit and contain particulars of the bankrupt's proposed departure, including—
  - (i) his or her reasons for leaving Samoa; and
  - (ii) whether he or she intends to return to Samoa; and
  - (iii) the approximate date of departure and, where applicable, the approximate date of return;
- (b) the Official Assignee, having regard to the interests of the creditors, may in his or her discretion refuse any such application or grant it either unconditionally or upon or subject to such conditions as he or she thinks fit;
- (c) every decision of the Official Assignee under this subsection is subject to appeal to the Court under section 66;
- (d) an order of discharge granted subject to the bankrupt consenting to a judgment being entered against him or her is not deemed to take effect until the judgment is satisfied.

**139.** *Repealed by clause 3 of the Samoa Bankruptcy Order 1992.*

**140. Bailee defined** – A person in possession of the whole or any part of the estate of any bankrupt after such estate has become vested in the Official Assignee is, with respect to the estate so in his or her possession, deemed to be a bailee, and shall be liable accordingly.

**141. Inserting notices in newspaper without authority** – A person who inserts or causes to be inserted in any newspaper any notice or advertisement under or purporting to be under this Act without authority, or knowing the same to be false in any material particular, commits an offence against this Act, and is liable for every such offence to a fine not exceeding 1 penalty unit or to imprisonment for any term not exceeding 3 months.

**142. False declaration** – A person who wilfully and with intent to defraud makes any affidavit or statement of account for the purposes of this Act which is untrue in any material particular, knowing the same or any statement on which it is endorsed or to which it is appended to be untrue in any material particular, commits a crime, and is liable on conviction to imprisonment for a term not exceeding 2 years.

**142A. Failure to comply with Part 5** – Without limiting the provisions of section 155, a person commits an offence against this Act who fails to comply with a provision of Part 5 or does any act in contravention of that Part, and is liable on summary conviction before a Judge to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 1 month.

### **Division 1 – Miscellaneous**

**143. Court to have power to commit for trial** – The Court having jurisdiction in bankruptcy has all powers and jurisdiction requisite for the purpose of committing for trial any bankrupt where there is, in the opinion of the Court, ground to believe that the bankrupt is of an offence under this Act, and for granting or refusing bail to any such bankrupt.

**144. When the Official Assignee's duty to prosecute** – The Official Assignee, when he or she has reason to suspect that any person has committed an offence under this Act, shall lay the facts of the case, so far as he or she is acquainted with them, before any person acting as State Solicitor or State Prosecutor, and if such State Solicitor or State Prosecutor certifies that there are reasonable grounds for a prosecution, then the Official Assignee shall lay an information against such person.

**145. Prosecutions to be conducted as ordinary criminal prosecutions** – Where a person is charged with a crime under this Act, and the certificate of the State Solicitor or State Prosecutor has been obtained to the prosecution as hereinbefore mentioned, the prosecution shall be conducted as an ordinary criminal prosecution, and all the expenses of the prosecution, including the expenses of the proceedings before the Justices, shall be allowed and paid out of any moneys appropriated by Parliament for criminal prosecutions, unless the Court orders the same to be paid out of the bankrupt's estate.

**146. Essentials of indictment** – In an indictment for a crime under this Act it is sufficient to set forth the substance of the offence charged, in or to the effect of 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, adjudication, or any proceedings in, or order, warrant, or document of any Court acting under this Act.

**147. Indictment not to be quashed by technicalities** – No indictment shall be quashed for any technical defect therein, or any formal defect therein appearing on the face thereof, but each such indictment shall, either before or after verdict, as required, be amended by the Judge and the trial proceed as if such defects respectively had not occurred, and a conviction shall be had in every case where the evidence at the trial manifests that an offence has been committed.

## **PART 14 MISCELLANEOUS**

**148.** *Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ).*

### **Division 1 – Accounts and Audit**

**149. Official Assignee to keep proper books of account** – (1) The Official Assignee shall keep proper books of account, showing a debtor and creditor account of his or her receipts and payments, and of the balance belonging to each estate of which he or she is the Official Assignee, in the prescribed form, and shall, whenever required by the Court verify the same by statutory declaration.

(2) The accounts of the Official Assignee or agent of the same, and of all estates coming into his or her hands, shall be audited by the Audit Office, and the Controller and Auditor General has the same powers in respect to all moneys belonging to any estate in bankruptcy and to all persons dealing therewith as he or she has by virtue of any Act in respect to the public moneys and to persons dealing therewith.

(3) The accounts so audited is to be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

(4) Within 1 month after the notice of the distribution of a final dividend in any state is advertised, or when the whole of the estate is realised if it is insufficient to pay a dividend, the Official Assignee shall prepare and submit to the Audit Office a statement of accounts and balance sheet, showing in detail his or her receipts and payments in respect to such estate; and the Audit Office shall forthwith prepare a



report on such statement of accounts and balance sheet, and file such report and statement and balance sheet in the Court, and give notice to the Official Assignee of such filing.

(5) A statement of accounts and balance sheet so submitted shall be verified by a statutory declaration of the Official Assignee, and with the report of the Audit Office shall, when filed as aforesaid, be open to inspection without fee by the bankrupt, or by any creditor, or by any person interested.

(6) Notice of the filing of every such statement of accounts and the report of the Audit Office shall be advertised by the Official Assignee.

(7) If the Official Assignee is dissatisfied with any decision or finding of the Controller and Auditor-General, the Official Assignee may, within 2 months thereafter, appeal to the Judge, who shall give such decision thereon as he or she thinks proper.

### **Division 2 – Release of Official Assignee**

**150. Official Assignee may apply for order of release** – (1) The Official Assignee shall, after the advertising of the filing of the statement of accounts and report, apply to the Court for an order releasing him or her from his or her administration of the estate, and shall advertise notice of his or her intention to make application or an order of release, and of the time at which he or she intends to make such application.

(2) The hearing of the application shall be on a day not less than 14 days and not exceeding 30 days after the advertisement of the intention to apply.

(3) On the hearing, the Court shall take into consideration the Auditor's report, and any objection which may be urged by any creditor or person interested against the release of the Official Assignee, and shall either grant or withhold the release accordingly.

(4) Where the release of an Official Assignee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the Official Assignee, with the consequences of any act or default he or she may have done or made contrary to his or her duty.

(5) An order of the Court releasing the Official Assignee of a bankruptcy 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 Official Assignee of the bankrupt up to date of such order.

(6) Such order may be revoked only on proof that it was obtained by fraud.

(7) If any further property of the bankrupt comes to the hands of the Official Assignee after the date of an order of release, he or she shall, after realising or otherwise dealing with such property, apply for and obtain, in the same manner and subject to the same conditions as before mentioned in respect of the first order of release, a further order of release in respect of his or her administration of such further property.

### **Division 3 – Surplus Moneys**

**151. Before preparing statement of accounts, etc., money to be paid to Public Trustee** – (1) Before preparing the statement of accounts and balance sheet of any estate, as provided by section 149, the Official Assignee, after deducting when necessary the costs of his or her release, shall pay any moneys belonging to such estate then standing to his or her credit into the Public Trust Office, and the Public Trustee shall hold the same subject to the claims of any person who afterwards appears to be entitled thereto.

(2) All such moneys are taken to be placed in the Public Trust Office subject to the Acts relating to such office, and subject also to this Act.

(3) All unclaimed dividends and any other undivided surplus or other money unclaimed, the produce of any bankrupt's estate, is, after the expiration of 12 months from the declaration of the final dividend, or from the time at which the surplus or other money became undivided or unclaimed in the Public Trust Office, carried to a Bankruptcy Surplus Account, and is deemed one common and general fund, and may be promiscuously issued to answer the demands thereon.

(4) Money standing to the credit of the Bankruptcy Surplus Account is subject to the order of the Court for the payment thereof of any dividend or for the distribution of any money in the matter to which any part thereof originally belonged, or for the payment thereof of any money required for the purposes of this act and authorised to be so applied.

(5) In case of any defalcation by an Official Assignee or any person employed under this Act, if there remains any deficiency after realising upon any security given by such Official Assignee or other person, the amount of such deficiency shall be paid out of the bankruptcy Surplus Account, and the Public Trustee shall pay the same accordingly upon the requisition of the Minister responsible for Justice, and without further appropriation than this Act.

(6) Subject as aforesaid, the investment, realisation, and disposition of all or any moneys standing to the credit of the Bankruptcy Surplus Account, and of any profits accruing therefrom, is subject to the Acts relating to the Public Trust Office.

**152. Bankrupt may be appointed assignee of his or her estate –** Where the Assignee has obtained an order of Court releasing him or her from his or her office in respect to any estate, and where it is probable that further assets may be recovered, the Court may appoint the bankrupt the assignee of his or her estate upon trust for the creditors therein until repayment of their proved debts, and after payment of such debts in trust for his or her own benefit:

**PROVIDED THAT** before such bankrupt so appointed assignee is permitted to commence any suit or legal proceeding against any person alleged to be a debtor to such estate, he or she shall give security for the costs of such suit or proceeding to the satisfaction of the Registrar of the Supreme Court where such proceedings are to be commenced.

#### **Division 4 – Witnesses and Evidence**

**153. Depositions, petition, etc., as evidence – (1)** In case of the death of a witness whose evidence has been received by any Court in any proceeding under this Act, his or her deposition purporting to be sealed with the seal of the Court or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

(2) Any petition, order, certificate, deposition, or proceeding under this Act purporting to be sealed with the seal of the Court, or any writing purporting to be a copy thereof and to be so sealed, shall, whether for purposes of this act or not, be admitted as evidence of the document which it purports to be or whereof it purports to be a copy, and of the making of the orders and taking of the proceedings therein stated or referred to by the person at the time and in the manner therein or thereon stated or appearing, and is a record of the Court under the seal whereof it purports to be without further notice.

(3) Judicial and official notice shall be taken of the signature of any Judge, Registrar, or Clerk acting under this Act, attached or subscribed to any judicial or official proceeding or document purporting to be made or signed in a matter of bankruptcy or other matter under this Act.

(4) The production of copies of the newspapers containing any notice or advertisement by this Act directed or authorised to be advertised therein shall be admitted as conclusive proof in all legal

proceedings of any matter therein contained and by this Act directed or authorised to be advertised.

(5) Notices required by this Act to be advertised may be so framed as to comprise notices concerning more bankruptcies or more deeds or other matters than one in one advertisement.

(6) It is not necessary to publish a copy of any order of Court made under this Act, and publication of notice of any such order shall, for the purposes of evidence, have the same effect as publication therein of a copy of the order, and all expenses for advertising shall be limited accordingly.

(7) Notices required by this Act to be advertised by the Official Assignee shall, immediately after publication of the advertisement, be forwarded by the Official Assignee to the Government Printer to be gazetted free of cost to the estate.

### **Division 5 – Notices and Service of Documents**

**154. Documents, how served** – (1) Notices or documents by this act required to be served on or sent to any person, and not by this Act directed to be served personally, may be sent by post letter or postcard, addressed to the last known place of business or abode of such person, subject to such regulations respecting registration and other things as the rules direct, or shall be served in such manner as the Court in any particular case orders.

(2) Notices or documents of any kind required to be served on any person, corporation, or company not resident or carrying on business in Samoa is taken to be duly served for the purposes of this Act if served on the attorney or recognised agent within Samoa of such person, corporation, or company; or, if there is no such attorney or agent, then the Court may order service to be made within such time and in such manner and form as the Court thinks fit.

(3) If any accredited agent of a corporation or company has, in the course of his or her agency, notice of any act of bankruptcy, the corporation or company is deemed to be affected by such notice.

(4) Notices required to be served within a limited time are not required to be served on a creditor who is not resident in Samoa, or who has no residence therein a known duly authorised agent.

(5) When the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof under the seal of the Court by prepaid post

letter to the address for service of the plaintiff or other party prosecuting such proceeding.

(6) Notices or documents required to be served on a partnership for the purposes of this Act may be served upon 1 member of the partnership, or left at the usual place of business of the partnership.

(7) Notices or documents required to be served upon a corporation may be served by posting or delivering the same to the manager, clerk, secretary, or other principal officer of such corporation at the registered office or other place where such corporation carries on business.

**155. Publication of notices** – Notices required to be published by the Official Assignee shall be published in a newspaper circulating in Samoa.

**156 – 162.** *Repealed by clause 3 of the Samoa Bankruptcy Order 1922 (NZ).*

#### **Division 6 – Real Property of Foreign Bankrupts**

**163. Foreign bankrupt entitled to real property in Samoa** – If any person who has been adjudged or declared bankrupt or insolvent by any British Court out of Samoa, and has not obtained his or her discharge or certificate, is seized of or entitled to any real property in Samoa, the Official Assignee, trustee, or other representative of his or her creditors may apply for and, on proof of such bankruptcy or insolvency, and of the want of such discharge or certificate, and without further evidence, obtain adjudication against him or her in the Supreme Court; and such adjudication has the like effect and consequences as if he or she had been originally adjudged bankrupt by that Court.

#### **Division 7 – Other Provisions**

**164. Bankrupt may inspect books and documents** – A bankrupt may, at all reasonable times before discharge, and without fee, inspect his or her books and documents in the presence of the Official Assignee or any person appointed by the Official Assignee, and may bring with him or her each time any person to assist the bankrupt.

**165. Court officers and Official Assignee to produce petitions, orders, proceedings, books and documents** – The proper officer of the Court, and the Official Assignee of any bankrupt's estate, on the

reasonable application of the bankrupt or of his or her solicitor, or of any creditor who has proved or of his or her solicitor, shall produce and show to the applicant all petitions, orders, proceedings, books, and documents relating to the bankruptcy, and the applicant may take copies or extracts thereof or therefrom as the rules direct.

**166. Power of Official Assignee to return or destroy books** – The Official Assignee may, after 2 years from the date of the order of release in each case of bankruptcy, deliver up to the bankrupt or his or her personal representative all books of accounts deposited with him or her as Official Assignee, or destroy or otherwise dispose of them.

**167. Bankruptcy proceedings not annulled by defects, misnomer, inaccurate description or omission** – The proceedings in any bankruptcy shall not be annulled or set aside by reason of any defect, misnomer, inaccurate description, or of the omission of anything required to be done in or concerning any such proceedings, provided that no person is injuriously affected thereby; and the Court may, in any case where any such omission or error is made, direct the same to be rectified, and shall order the proceedings to be continued upon such terms as it thinks best in the interests of all persons concerned.

**168. Where bankrupt dies after adjudication** – If any bankrupt dies after adjudication, the proceedings in the bankruptcy shall be carried on and continued in all respects as if such bankrupt were living.

#### **Division 8 – Protection of Persons in Execution of Act**

**169. No action for malicious prosecution against Official Assignee. Procedure when action brought for anything done in pursuance of Court warrant** – (1) No action shall lie against an Official Assignee for malicious prosecution by reason of any proceedings under this act if taken upon the certificate of the State Solicitor or State Prosecutor, as mentioned in section 144.

(2) No action shall be brought against any Official Assignee, bailiff, assistant, or other person for anything done in obedience to any warrant of the Court, unless the party intending to bring such action has served on or left at the usual place of abode of such Official Assignee, bailiff, assistant, or person a written demand, signed by him or her, for the perusal of the warrant and for a copy thereof, and compliance with the demand has been refused or neglected for 6 days after such demand.

(3) If, after such demand and compliance therewith, any person brings an action against such Official Assignee, bailiff, assistant, or person without making the petitioning creditor (if any, and if living) a defendant, the jury at the trial of the action, on production and proof of the warrant, shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Court by which the warrant was granted.

(4) If such action is brought against the petitioning creditor and such Official Assignee, bailiff, assistant, or person, the jury shall, on proof of the warrant, give the verdict for such Official Assignee, bailiff, assistant, or person, notwithstanding any such defect of jurisdiction.

(5) If the verdict is given against the petitioning creditor, the plaintiff shall recover his or her costs against him or her, to be taxed so as to include such costs as the plaintiff is liable to pay to such Official Assignee, bailiff, assistant, or person.

(6) In any action brought against the petitioning creditor, either alone or jointly with such Official Assignee, bailiff, assistant, or person, for anything done in obedience to the warrant, proof by the plaintiff that a defendant is petitioning creditor is sufficient for the purpose of making him or her liable in the same manner and to the same extent as if the act complained of in the action had been done by him or her personally.

(7) The Official Assignee is not liable in any action or proceeding for or by reason of any act or thing done by him or her under any order of adjudication that is afterwards reversed or set aside.

(8) No action or proceeding shall lie against any Official Assignee or other person acting under the authority or in the execution or intended execution or in pursuance of this Act, for any alleged irregularity or trespass, or any act or thing done or omitted by him or her under this Act, unless notice in writing (specifying the cause of the action or proceeding, and the name and residence of the intending plaintiff or prosecutor, and of his or her solicitor or agent in the matter) is given by the intending plaintiff or prosecutor to the intended defendant 1 month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within 3 months next after the act or thing complained of is done or omitted, or, in case of continuing damage, within 3 months next after the doing of such damage has ceased.

(9) Any such action is to be laid and tried in the place where the cause of action or a material part thereof arose, and not elsewhere.

(10) In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him or her as Official Assignee, or (as the case may be) when acting otherwise under the authority or in the execution or intended execution or in pursuance of this Act, and may give all special matter in evidence.

(11) On the trial of any such action the plaintiff is not permitted to go into evidence of any cause of action not stated in his or her notice.

(12) The plaintiff in any such action shall not succeed if tender of sufficient amends is made by the defendant before the commencement of the action; and in case no tender has been made the defendant may, by leave of the Court in which the action is brought, at any time pay into the Court such sum of money as he or she thinks fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in any ordinary action.

### **Division 9 – Stamps**

**170. Documents exempt from stamp duty** – No stamp duty (other than fees under this Act) or any other duty is payable on:

- (a) any instrument for effecting a composition with creditors under this Act; or
- (b) any deed, conveyance, assignment, surrender, or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge, or other encumbrance on, or any estate of any bankrupt, and which after the execution of such deed, conveyance, assignment, surrender, or assurance is or remains, either at law or in equity, the estate of the bankrupt or of the Official Assignee under the bankruptcy; or
- (c) any power of attorney, proxy, writ, order, certificate, bond, or other instrument or writing relating solely to the estate of any bankrupt or to any bankruptcy under this Act.

### **Division 10 – Commission**

**171. Commission payable** – (1) There shall be payable in respect of proceedings under this Act the commissions set forth in Part 3 of Schedule 3, or such other commissions in lieu thereof or in addition thereto, or in respect of other matters under this Act, as the rules direct.



(2) All such commissions shall be paid into the Public Account and form part of the Treasury Fund.

**Division 11 – Court Fees Remitted**

**172. Court fees not payable in certain cases** – No Court fees paid on filing the final statement of account, or any affidavit therewith, or the report of the Audit Office, or the notice of motion for release of the Official Assignee, or the sealing of the order of release.

**Division 12 – Advertisement and Postages Paid Out of Treasury Fund**

**173. Certain advertisements and postages to be paid out of Treasury Fund**– The cost of advertising notices of adjudication, of the time and place of the first meeting of creditors, of the filing of the final statement of accounts, of the filing of the report of the Audit Office, and of the intention to apply for an order releasing the Official Assignee, and also the cost of all postages incurred by the Official Assignee, are to be paid out of the Treasury Fund.

**Division 13 – Costs**

**174. Court may award costs, and scale may be prescribed** – (1) The Court may, in all matters before it, award such costs as it deems fit, and the rules may prescribe a scale of costs to be allowed to solicitors and others in respect of proceedings under this Act, in addition to the costs actually paid out of pocket other than fees to counsel, and the Court may make such orders as to the taxation of costs as it thinks fit.

(2) Where in any matter no special costs are appointed, the Judge shall fix the costs at the time of the hearing.

(3) The Official Assignee may, if he or she thinks fit, pay any costs relative to proceedings in bankruptcy not exceeding \$20 in amount, exclusive of necessary costs and disbursements; but no costs beyond that sum shall be paid except upon an order of the Court, and no costs that the Official Assignee is otherwise liable to pay shall be payable to any solicitor unless such solicitor renders his or her bill for the same within 1 month after being requested so to do by notice in writing from the Official Assignee.

(4) A bankrupt shall not pay any money to his or her solicitor for costs, except the fee payable under this Act on the filing of his or her

petition under this Act and a sum of \$40 towards his or her costs; and, except as aforesaid, any money so paid, either before or after adjudication, shall be recoverable by the Official Assignee before the Court in a summary way.

(5) No solicitor has or is taken to have any lien on any deed or instrument in his or her possession belonging to a bankrupt except for the actual amount of costs owing to him or her in respect to the preparation of such deed or instrument.

(6) If, on any application made to the Court in any matter relating to any bankruptcy, the court is of opinion that the application is vexatious or frivolous, or otherwise unnecessary, it may order that the solicitor by whom such application is made is not paid any costs by any person in respect of such application.

#### **Division 14 – Application of Act**

**175. Corporation, association or incorporated or registered company not subject to Act** – No corporation, association, or company incorporated or registered under any Act in force for the time being relating to the incorporation or registration of corporations, associations, or companies is subject to the provisions of this Act.

**176. Act to extend to married women and to aliens** – This Act shall extend to married women, both to make them subject thereto and to entitle them to all the benefits given thereby, and shall in like manner extend also to aliens.

### **SCHEDULES**

#### **SCHEDULE 1 (Section 1 (2))**

#### **ENACTMENTS CONSOLIDATED 1892, NO. 24 - THE BANKRUPTCY ACT 1892**

#### **SCHEDULE 2 (Sections 31 and 33)**

**(1) DEBTOR’S PETITIONIN BANKRUPTCY  
(Sections 26, 31 and 51)**

In the Court of Samoa,

In the matter of the Bankruptcy Act 1908 I, A.B., of [Residence and occupation], hereby petition to be adjudged a bankrupt, as I am unable to pay my debts. *[If the petition is to be filed in a District Court, add: And I declare that my liabilities do not exceed \$600].*

A.B.

Witness to signature:

C.D.,  
Registrar [or Solicitor, or Justice].

**(2) CREDITOR’S PETITIONIN BANKRUPTCY  
(Sections 33, 36, 37, 44 and 51)**

In the Court of Samoa

In the matter of the Bankruptcy Act 1908; and  
In the matter of [Name, address, and description of debtor]

To the Honourable ....., Judge of the abovementioned Court

The day of 20...

The humble petition of [Name, address, and description of petitioner]or showeth,-

1. That the above named debtor is indebted to your petitioner in the sum of *[Here give amount and parti-culars of debt, and when payable].*
2. That the above named debtor has committed an available act of bankruptcy, as follows: *[Here state particulars of the act of bankruptcy, and state date of occurrence].*
3. That your petitioner has no security for the said debt *[or, if the petitioner is a secured creditor, he or she must give particulars of the security, and say that he or she is willing either to give up his or her security or estimate its value].*

4. Your petitioner therefore prays that the above named debtor be adjudged a bankrupt.

Witness to signature:

C.D.

Registrar [or Solicitor, or Justice].

**(3)WARRANT OF COMMITTALFOR CONTEMPT OF COURT  
(Section 56(3))**

In the [*Insert name of Court,*] holder at [*Place*]

To the Bailiff of the said Court [*or A.B., Constable at ....., and to all other constables at .....*], and to the Superintendent of the at .....

THESE are to command you and every of you to apprehend A.B., of ....., ....., and convey him or her to the said ....., and to deliver him or her to the said Superintendent thereof; and you, the said Superintendent, are hereby required to receive him, the said A.B., into your custody in the said ....., and him or her there safely to keep for the term of ....., unless the sum of \$..... is sooner paid. I, the undersigned, the Judge of the said Court, having now here adjudged the said A.B. to pay a fine of \$....., and in default of immediate payment thereof to be imprisoned for the said term, for that the said A.B. [*Here state shortly substance of contempt*].

Given under my hand, and sealed with the seal of the said Court, at this .....day of ..... 20.....

[L.S.]

Judge, etc.

In view of the provisions of the Penal Institutions Act 1954, a warrant should be addressed to the Superintendent of the particular penal institution established under that Act.

**SCHEDULE 3  
(Sections 118(27), 120(1)(b) and 171(1))**

**PART 1**  
**SUPERVISOR'S REMUNERATION**  
**(Sections 57 and 120(1)(b))**

On the net receipts from the bankrupt's property, including the net receipts of his or her business if carried on after bankruptcy, but after deducting any sums paid to secured creditors out of the proceeds of or in respect of their securities, not exceeding:

On the first amount of			
\$2,000 or any less sum	...	...	2.5 per cent
On the next amount of			
\$2,000 or any less sum...	...	...	1.25 per cent
On all further sums	.....	...	0.50 per cent

**PART 2**  
**OFFICIAL ASSIGNEE'S COMMISSION ON COMPOSITION**  
**(Section 118(27))**

On the amount of the composition agreed to be paid, but in lieu of any commission under the next Part of this Schedule:

On the first amount of			
\$2,000 or any less sum	...	...	1.25 per cent
On the next amount of			
\$2,000 or any less sum...	...	...	1.00 per cent
On all further sums	...	...	0.50 per cent

Or such smaller percentage as may be fixed by the Court.

**PART 3**  
**OFFICIAL ASSIGNEE'S COMMISSION**  
**(Section 171)**

*This Part was superseded by rules made on 31 July 1922 [Gazette, 1922, Vol. II, page 1926] which were in turn replaced by the following rules made by rule 2 of the rules made on 14 September 1931 [reprinted after rule 166 in S.R. 19457/111].*

**RULES****OFFICIAL ASSIGNEE'S COMMISSION**

The commission to be paid into the Public Account out of the estate pursuant to section 171 of the Bankruptcy Act 1908 is as follows:

On the net value of the estate realised by the Official Assignee, but after deducting any sums paid to secured creditors out of the proceeds of or in respect of their securities.

On the first amount of \$500 or any less sum: 21/2 per cent with a minimum of \$6.60.

On the next \$3,500 or any less sum: 6 1/2 percent.

On all further sums: 3 1/2 per cent.

**PROVIDED THAT** where the bankrupt's business is carried on by the Official Assignee, the commission is to be calculated on the gross receipts of such business.

In the case of partnerships, commission is to be payable in respect of the partnership estate computed apart from the separate estates of the bankrupts:

**PROVIDED THAT** where under the provisions of Part 4 of the Administration Act 1976 an estate is administered by an Official Assignee or Deputy Official Assignee, no commission is to be payable in respect of moneys or any portion of moneys received under any policy of insurance where, such moneys or such portion are not available for the payment of the debts of the deceased.

**DEPUTY OFFICIAL ASSIGNEE'S REMUNERATION  
(REDUCED BY 10% - SEE NOTE BELOW)**

Remuneration pursuant to section 21 of the abovementioned Act is paid out of the Official Assignee's commission to Deputy Official Assignees who are not members of the Public Service as follows:

On the first amount of \$200 or any less sum realised by the Deputy Official Assignee, calculated as above 20% with a minimum of \$6.60.

On the next \$3,500 or any less sum: 5%.

On all further sums: 2 1/2%.

**PROVIDED THAT** the minimum remuneration of \$6.60 abovementioned shall be payable to the Deputy Official Assignee despite that the assets in the estate may be insufficient to produce such an amount as commission.

The proviso printed in square brackets was inserted by the Bankruptcy Amendment Rules 1944 (S.R. 1944/15).

In that proviso, the Administration Act 1975, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Administration Act 1952.

An Order in Council of 31 October 1931 (*Gazette, 1931, Vol. III, page 3091*) provides as follows:

The remuneration made payable to Deputy Official Assignees by the rules made by Order in Council of 14 September 1931, published in the *Gazette of the 17th day of the same month, at page 2809*, is subject to a deduction of 10%.

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### REVISION NOTES 2008 – 2023

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division from 2008 – 2023 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
  - (i) “Every” and “any” changed to “a” (or where appropriate “each”)
  - (ii) “shall be” changed to “is”; “shall be deemed” changed to “is taken”; “shall have” changed to “has”
  - (iii) “shall be guilty” changed to “commits”
  - (iv) “notwithstanding” changed to “despite” “although” or “even if”
  - (v) “pursuant to” (and “in pursuance of”) changed to “under”
  - (vi) “it shall be lawful” changed to “may”
  - (vii) “it shall be the duty” changed to “shall”
  - (viii) Numbers and symbols in words changed to figures (e.g. percent %)
  - (ix) “hereby”, “from time to time” (or “at any time” and “for the time being”) removed
  - (x) “the provisions of” deleted where appropriate
  - (xi) “etc.” deleted and substituted complete sentences
  - (xii) With reference to the Bankruptcy Order of NZ, “regulation 3” changed to “clause 3”
  - (xiii) “Crown” changed to “State”
  - (xiv) “Consolidated Fund” changed to “Treasury Fund”
  - (xv) “Judicature Act 1908” changed to “Constitution”

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Bankruptcy Amendment Act 2010, No.15*, commenced on 16 August 2010.

- Section 2** - New terms and definitions for “Court” and “Minister” were inserted.
- Sections 21, 22, 23 & 24** - New sections 21, 22, 23 and 24 were inserted.
- Section 118(27)** - The comma and the words “which commission shall be paid into the Public Account and form part of the Consolidated Fund” were deleted.
- Section 119** -
- In subsection 1, reference to “Governor-General” was deleted and substituted “Minister”.
  - The provision titled “Official Assignee to have 1 bank account for all estates” which makes reference to the Finance Act 1931 (No.2) was deleted.
  - The provision titled “Investment of cash balances of Official Assignee’s bank accounts” which makes reference to the Finance Act 1933 (No.2) was deleted.
- Sections 119A & 115** - New sections 119A and 115 were inserted.

*This Act is administered by  
the Ministry of Justice and Courts Administration.*