

Insolvency Law Reform Bill

Government Bill 2005 No 14-2

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Insolvency Law Reform Bill and recommends that it be passed with the amendments shown.

Introduction

This bill updates the processes for conducting insolvency under the Companies Act 1993, and repeals and replaces provisions in the Insolvency Act 1967 relating to personal insolvency. It also provides for alternative means of dealing with personal insolvency, including a new no asset procedure, as well as introducing a system of voluntary administration and improving the law on cross-border insolvency.

Consistency with other legislation

Personal Property Securities Act 1999

We are aware that it was intended that this bill should be generally consistent with the Personal Property Securities Act 1999. A number of submitters raised some differences in terminology between the bill and the Act, but we understand that most of these were carefully considered and are deliberate. However, we do recommend some amendments where we consider that the two pieces of legislation should be more closely aligned.

We recommend amending the definition of "goods" in clause 3 to reflect the definition contained in the Personal Property Securities Act.

We recommend amending the provisions of the bill relating to bankruptcy to change the term "security" to "charge". The Personal Property Securities Act uses the wider term "security interest", and we are concerned that the current use of "security" in the bill may create confusion, and possibly a mistaken belief that the wider term applies under the bill.

To avoid confusion, we recommend amending the bankruptcy provisions dealing with voidable transactions to change the term "secured holder" to "secured creditor".

We note that the bill currently gives priority both to security interests that are perfected under the Personal Property Securities Act and to unperfected security interests. We note that this is inconsistent with the treatment of perfected purchase money security interests in clause 273(1)(b)(i)(B). We therefore recommend amending clause 273(1)(b)(i)(C), and clause 2(1)(b)(i)(C) in Schedule 7 of the Companies Act 1993 (which is contained in Schedule 3 of the bill), to limit these provisions to apply only to security interests in accounts receivable that are perfected under the Personal Property Securities Act, and not unperfected security interests in accounts receivable. We also recommend consequential amendments to a number of other Acts containing provisions similar to clause 273. These other amendments are included in Schedules 2 and 4.

Companies Act 1993

We recommend amending the bill to omit any references to "proof of debt" and replace these with the term "creditor's claim". The new term is used in the Companies Act, and we consider that, wherever possible, consistency in wording between the two Acts is desirable.

Lawyers and Conveyancers Act 2006

We recommend amending the bill to replace all references to "solicitor" with the word "lawyer", and amending clause 3 to define the word "lawyer" as having the same meaning as it has in the Lawyers and Conveyancers Act 2006, which applies the term to both solicitors and barristers.

Execution process

We recommend clause 24(2)(a) be omitted from the bill. Clause 24(1)(a) identifies the issuing of an execution process against the debtor or the debtor's property as an act of bankruptcy, while the definition of "execution process" in clause 24(2) includes a charging order. However, as a charging order is not a process that allows the property of the debtor to be taken into possession, it is not an act of bankruptcy, and should therefore be omitted from the definition of "execution process".

Filing debtor's application

Clause 49 outlines the process a debtor must follow when seeking to be adjudicated bankrupt. We recommend amending clause 49 to require simply that the application be lodged in accordance with the prescribed procedure. Currently the bill requires the application to be presented in person or posted, but we consider the recommended amendment is desirable in order to allow more flexibility for applications to be made by other means, for example electronically.

In addition, the bill currently requires the debtor to pay the prescribed fee at the time the application is lodged, and the Assignee may waive the fee only on the ground of financial hardship. We recommend clause 49(1)(c) be omitted to remove the requirement for the fee to be paid up front, along with a consequential amendment omitting clause 49(3). Instead, we note that clause 272 gives priority of payment to the fees and expenses properly incurred by the Assignee in carrying out their duties, and we consider that the Assignee should use this priority to claim their fee out of the distribution of the bankrupt's assets.

Bankrupt's statement of affairs

After persons have been adjudicated bankrupt, the Assignee is required under clause 68 to send them notice that they are required to file a statement of their affairs. We consider that this notice should give a clear unambiguous message to debtors that they have been adjudicated bankrupt, and recommend amending clause 68(1) to include such a statement as one of the requirements of the notice. We also recommend amending clause 68(1) to specify that the notice to the bankrupt is required to be made in the prescribed form.

We consider that the statement of affairs is an essential document, as it will contain all the information necessary for the Assignee to assess the debtor's financial status and determine whether bankruptcy, the summary instalment order, or the no asset procedure is the most appropriate process in the particular debtor's circumstances. It is therefore important that the statement be filed promptly. To encourage compliance with this requirement, we therefore recommend amending clause 288 to provide that the date of discharge should be three years from the date the Assignee accepts the statement of affairs. This should encourage the debtor to file the statement promptly to ensure the period of bankruptcy ends as soon as possible.

Creditors' meeting

The bill provides a process for the holding of a meeting of the bankrupt's creditors. We recommend amending clause 85(c) to require the Assignee, when

attending a creditors' meeting, to produce all documents in the Assignee's possession relating to the bankrupt's property if "reasonably" required. The bill currently requires that all documents be produced without discretion, but we consider that producing every accounting record, deed, and paper could be an onerous obligation for the Assignee, particularly where there is a large volume of documentation relating to the property. The recommended amendment should give the Assignee more discretion to produce documentation when it is reasonable and practicable to do so, without imposing a burdensome task on the Assignee.

We recommend amending clause 89 to allow the Assignee the discretion to record a creditors' meeting, provided that each person attending the meeting has been informed of the recording and consents to it.

We recommend amending clauses 99 and 384 to refer to the resolutions passed by the creditors' meeting as "ordinary" resolutions. We note that the bill elsewhere refers to "special resolutions", and consider it desirable that the distinction between "ordinary" and "special resolutions" be clearly established.

Bankrupt's property

We recommend amending clause 102, which extinguishes all of a bankrupt person's rights in his or her property and vests that property in the Assignee, to specify that it is subject to clause 123. Clause 123 prevents the Assignee from claiming an interest in land that is owned by the bankrupt but subject to a mortgage or charge and that is not disclaimed by the Assignee, after the bankrupt is discharged if the land has remained in the bankrupt's possession from the time of adjudication through to discharge. It was never intended that these two clauses would conflict, and we consider it necessary to clarify this to avoid confusion.

We also recommend amending clause 102 to state that it does not apply to property that is vested in the bankrupt under a clause 119(3) order. Clause 119(2) allows the bankrupt person to apply for an order that, where the Assignee has disclaimed particular property as onerous, would vest that property in the bankrupt. A clause 119(3) order gives effect to that application. However, as the provision is currently drafted, any property that is vested in the bankrupt under a clause 119(3) order would automatically vest in the Assignee again, even though the Assignee had already disclaimed that property. Our recommended amendment should prevent this circular process from occurring.

Separate accounts

We recommend including new clauses 135A and 135B, which replicate provisions in the current Insolvency Act requiring the Assignee, where 2 or more persons are jointly adjudicated bankrupt, to keep distinct accounts of the joint estate and the separate estate of each person. We believe it important that these provisions be retained in the new bill.

Duties of bankrupt

Clause 143 requires the bankrupt to immediately notify the Assignee of any change in specified personal information. We note that the clause does not currently require that the Assignee be notified of any change in the bankrupt's income, which information we consider is essential in order for the Assignee to gain higher contributions from the bankrupt for the payment of their debts. We therefore recommend amending clause 143 to require the bankrupt to inform the Assignee of any change in income.

Inspection of record of examination

Clause 164 allows the Assignee to summon the bankrupt person, or any of a number of people with specified connections to the bankrupt person, to be examined under oath before the Assignee or a District Court Judge. This examination is required to be recorded in writing under clause 164(2), while clause 166 allows the creditor or his or her lawyer, at any reasonable time, to inspect that record. We recommend amending clause 166 to allow the creditor or his or her lawyer to examine only the record of public examinations by a District Court Judge or the Court (being the High Court). We are concerned that allowing creditors unrestricted access to private examinations of third parties, such as those conducted by the Assignee, may give rise to privacy issues, and consider that limiting their access to public examinations only should address this concern.

Statement of receipts and payments

We recommend amending clause 226 to replace the phrase "statement of accounts and statement of financial position" with "statement of receipts and payments". The phrase currently used in the bill seems to suggest that the Assignee is required to produce two separate documents, when the intention in fact is that only one will be required. We also consider that the term "statement of receipts and payments" offers a better description of the document.

We also recommend amending clause 226(3) to remove the requirement for the

final statement to be filed in the Court, and instead simply require the statement to be published "in the prescribed manner". We consider this should allow use of the Internet for publishing the records, ensuring that creditors have free and easy access to the documents.

End of bankruptcy

The bill allows a bankrupt to apply at any time for an order of discharge from bankruptcy, but clause 293 requires the Assignee to summon the bankrupt to be publicly examined by the Court in several circumstances, including those that arise when either the Assignee or a creditor objects to the discharge. We realise that a creditor may initially object to discharging the bankrupt, but later withdraw the objection. However, the bill as currently worded still requires an examination to be undertaken where the objection has been withdrawn. We see no need for a public examination in those circumstances, and recommend amending clause 293(1) to record the public examination of the bankrupt only where the objection has not been withdrawn.

The bill also allows the Court to annul a bankruptcy adjudication in particular circumstances, including those where the bankrupt's debts have been fully paid or satisfied. We consider it important that the bankruptcy should not be annulled until all outstanding fees and costs owed to the Assignee have also been paid, and recommend clause 307(1)(b) and clause 308 (2)(b) be amended accordingly.

Proposal process

The bill details the process to be followed when an insolvent makes a proposal to creditors for the payment or satisfaction of the insolvent's debts. Clause 331 requires all proposals to be approved by the courts. Subclause (4) details the circumstances where the court must not approve the proposal, including (in paragraph (a)) those where the proposal would not give priority payment to preferential creditors. While it is uncommon, we understand there have been occasions where preferential creditors wished to waive their preferential status. Under clause 331(4), the courts could not accept a proposal that treats a preferential creditor as an unsecured creditor even if the creditor had chosen to waive their status. We consider this undesirable, and recommend including new clause 331(4A), to allow the courts to approve a proposal where a preferential creditor has chosen to waive their preferential status.

Summary instalment order

The bill provides a process, called a summary instalment order, where the

Assignee can require the debtor to pay his or her debts, either in instalments, in full, or to the extent considered practicable in the circumstances. We consider that a list of people currently subject to a summary instalment order should be publicly available, and recommend new clause 350A be included in the bill to provide for a public summary instalment order register to be maintained. It is recommended that this register should be published on the Insolvency Trustee and Service's website. In addition, we recommend that clause 3 be amended, and new clause 350B be included, to define the term "current summary instalment order". We also recommend amendments to Part 7, Subpart 5, so that the subpart detailing requirements for public registers also applies to the summary instalment order register.

As part of the summary instalment order process, a suitable and willing person must be appointed to supervise the debtor's compliance with the terms of the order. We recommend including new clause 344A to allow the Assignee to require the supervisor, or a past supervisor, to provide the Assignee with any document under the supervisor's possession or control relating to the debtor's property, conduct, or dealings. This will give the Assignee similar powers regarding persons under the summary instalment order to those available to the Assignee under clause 169 for bankrupt persons.

We recommend amending clause 353 to give second priority to the Assignee's costs and fees in distributions of monies paid under the summary instalment order, behind payment of administration costs (including the supervisor's remuneration), but before payment of debts and payment of any surplus to the debtor. We note that the Assignee will incur costs under the summary instalment order process, particularly in monitoring the supervisor and auditing the supervisor's accounts, and we believe covering these costs should be prioritised when money is distributed under the order.

We recommend amending clause 354 to require the supervisor to notify the Assignee as soon as practicable of any default by the debtor in making payments under the order. This should ensure that the Assignee is informed as early as possible of any problems under the summary instalment order, and appropriate action can be taken to enforce payment of the debt or place the debtor in bankruptcy.

No asset procedure

The bill outlines a new 12-month procedure to be followed as an alternative to personal bankruptcy where a debtor has no realisable assets. The no asset procedure is used only following application by the debtor. Following such an application, clause 361 currently requires the Assignee to advertise the

application and to send a summary of the debtor's assets and liabilities to known creditors. We do not consider there is any point in requiring the Assignee to advertise at the time of application, as the application may not be accepted and the advertising would not serve any useful purpose. We therefore recommend amending clause 361 to remove the advertising requirement. We do consider that the Assignee should advertise after a debtor has been admitted to the procedure, and recommend amending clause 364 to require the Assignee to advertise at this later stage.

The bill currently requires the Assignee to wait for any objections from creditors before admitting the debtor into the no asset procedure. As creditors currently have 20 working days to raise an objection, after which an investigation must be undertaken if an objection is raised, debtors could potentially have to wait two months after applying to enter the procedure before their application can be accepted. We recommend that clause 362, which outlines the process for objections by creditors, be omitted from the bill. Removing the creditor objections process should shorten the time needed to admit a debtor into the procedure. Applications will still undergo a vetting process, so acceptance will not be automatic. To ensure that creditors are not disadvantaged by the loss of the creditor objections process, we recommend including new clause 370A allowing creditors to apply at any time to the Assignee for the no asset procedure to be terminated.

We are concerned that the no asset procedure lacks penalties for people who breach the procedure while still subject to it. We therefore recommend including new clause 367A, providing for penalties similar to those that would apply where a debtor subject to a summary instalment order obtains credit beyond the specified limit. We also recommend amending clause 367(3) to raise the credit limit for people under the no asset procedure to \$1,000, which is the credit limit that applies to people under a summary instalment order.

A debtor may enter the no asset procedure by providing the Assignee with false and misleading information about their assets. When such a deception is discovered, the Assignee will terminate the debtor's participation in the procedure and creditors may seek to have the debtor adjudicated bankrupt. We recommend including new clause 369A to provide that, in such cases, the Assignee may apply to the Court for a preservation order over the debtor's assets pending an application for adjudication. This should protect the debtor's assets for the benefit of all creditors, and prevent the debtor from dissipating the assets in the period before being adjudicated bankrupt.

Offences

We recommend amending clause 427(1)(f) to ensure that it is an offence for a bankrupt to leave New Zealand at any time before being discharged. Currently, the bill makes it an offence if a bankrupt leaves within three years of their adjudication. We note that, while discharge is usually after three years, some bankruptcies may be extended for longer if creditors object to their discharge, and we therefore consider this bill should not specify a timeframe in order to allow for such extensions.

We recommend amending clause 427(2) to omit the words "time when the matter of the information arose", to be replaced with the phrase "date of the offence". This provision overrides the Summary Proceedings Act 1957 and allows a two-year period for information relating to the offences listed in subclause (1) to be laid. However, we believe that measuring the two years from the date of the offence is easy to understand and apply, whereas the "time when the matter of the information arose" is unclear. We therefore believe this amendment should improve certainty in the provision's application.

Voluntary administration

Clause 454 inserts a new Part 15A into the Companies Act, containing new sections 239A to 239AEW. It provides for a voluntary administration regime, where a company that is or may become insolvent has its business, property, and affairs voluntarily placed in administration to maximise the likelihood of the company's continued existence, or to increase the return to the company's creditors and shareholders.

We recommend amending new section 239E(2)(e) to provide for voluntary administration to be ended by any failure to execute a proposed deed of company arrangement within the allowed time under new section 239ACP. This is necessary as, if the deed is not executed within the required time, the company goes into liquidation and nothing else can be done to keep it in voluntary administration.

We note that in most cases it is likely that the person appointed as administrator of the company will become the liquidator should the company go into liquidation. We are therefore concerned that companies facing likely liquidation may choose to go into voluntary administration first, and then appoint a debtor-friendly administrator with the intention that this person will become a debtor-friendly liquidator. To ensure this does not happen, we recommend including new section 239I(4) which will prevent the company from appointing an administrator more than 10 working days after the company is served with an application for the appointment of a liquidator. This limitation is similar to the recommended amendment to clause 463, new section 241AA. We

also note that creditors can replace and reappoint administrators or liquidators if they are dissatisfied with their performance.

We recommend amending new section 239P to include the death of the administrator among the events that leave the office of the administrator vacant.

We recommend amending new sections 239Q and 239T to remove references to publishing notices in a "national newspaper". As there is no national newspaper in New Zealand, we consider such a reference to be meaningless. We note that section 3(1)(b) of the Companies Act details a process for giving public notice through newspaper advertising, and we recommend that new sections 239Q and 239T adopt that process.

New section 239V(2)(c) currently gives the administrator power to appoint an agent to do anything that the administrator "is unable" to do. However, we consider that the agent should be empowered to carry out some of the administrator's functions, and therefore recommend amending new section 239V(2)(c) to omit the phrase "is unable", to be replaced by "has power".

We recommend amending new sections 239Z(4) and 239AA by omitting the term "company officer" and replacing it with the phrase "director or officer of the company". The undefined term "company officer" was intended to apply to both of those positions, but the word "officer" as generally defined and understood in the Companies Act and other statutes would not include the director. We therefore consider this should be clarified. We also recommend similar amendments to new section 239ACS(c).

We recommend amending new section 239AI to impose on administrators the same responsibility that currently applies to liquidators to report any offences material to the administration that were committed by the company or any director, officer, or shareholder.

We recommend including new section 239AK(4) and (5) to give the administrator power to estimate the amount of a contingent debt (such as a guarantee or pending litigation), with provision for the courts to determine the amount if the administrator cannot provide an estimate or if the creditor is unhappy with the estimate. We note that this approach is consistent with the treatment of contingent debts under both the bill's personal insolvency provisions and the approach taken in corporate liquidations.

New section 239AT requires the administrator to convene a meeting of creditors to decide whether to execute a deed of company arrangement. This meeting must

be held within the convening period of 20 working days after the administrator is appointed, but the Court may extend this period in response to an application by the administrator. Currently, such an application must have been filed before the convening period expires, but we recommend amending new section 239AT to allow an application to be made before or after the period expires.

We recommend amending new section 239ACR to clarify that the administrator has standing to apply for the company to be placed into liquidation in the event that the deed of company arrangement is not executed, even though the administration will have ended once the required time has expired.

We recommend amending new section 239ADI(2)(c) to confirm that one of the points at which the administrator's liability for rent and other payments ends is the point when the administrator ceases to hold office. The administrator may cease to hold office because of resignation, removal, or death.

When an administrator has been appointed, they are required under new section 239ADW to give notice of their appointment to a number of people, including persons who hold a charge or charges over the whole, or substantially the whole, of the company's property. Under new section 239ABL, secured creditors have 10 days to enforce their charge if the charge is over the whole, or substantially the whole, of the company's property, and we recommend amending new section 239ADW to require the written notice to inform creditors of their rights to enforce the charge.

New section 239ADZ outlines the process that the deed administrator must follow if the company fails to meet the deadline for the execution of a deed of company arrangement. However, while the section currently refers only to the process for executing the deed under new section 239ACO, we note that new section 239ACP(1)(c) details an alternative procedure for executing the deed if the deed was not fully approved at the watershed meeting. We therefore recommend amending new section 239ADZ to refer to both of the sections that relate to executing a deed of company arrangement.

We recommend amending Schedule 4 to amend the Reserve Bank of New Zealand Act 1989. Currently, the Act prevents companies in liquidation going into statutory administration under the Act, and vice versa. We consider that these provisions should also prevent companies in voluntary administration going into statutory administration, and vice versa.

Appointment of liquidator

New section 241AA in clause 463 seeks to prevent a company from appointing a debtor-friendly liquidator by preventing the company from going into voluntary liquidation after a creditor has applied to the court to place the company in liquidation, unless that creditor consents in writing. We are concerned that this provision may cause problems where a company's financial position is precarious. The petitioning creditor may be unwilling to consent to the appointment of a liquidator, and delays in obtaining a court hearing may substantially worsen the financial position of the company. We therefore recommend amending clause 463 to restrict a company from going into voluntary liquidation unless it is within 10 working days after the notice of the creditor's application is served on the company. We believe this should allow companies to take quick action to move into voluntary liquidation when necessary, while still preventing a company from delaying voluntary liquidation until shortly before the court hearing. In order to protect the creditor's concerns where the company uses this provision to appoint a debtor-friendly liquidator, we recommend including new section 241AA(3), allowing the creditor that filed the original application to apply to the Court to have the appointment of the liquidator reviewed.

Qualifications of liquidators

Section 280(1) of the Companies Act details a number of conditions that disqualify a person from being appointed or acting as a liquidator. Clause 471(1) inserts new paragraphs (ca) and (cb) into that section, preventing a person from being appointed who has provided accounting services to the company, or has had an continuing business relationship with the company, its majority shareholder, or its secured creditors, in the two years before the liquidation. These new provisions are intended to prevent a perception that the liquidator may be partial towards either the company's creditors or its debtors.

We recommend amending new paragraph (ca) to replace the word "accounting" with the word "professional", as we believe the exclusion of people from acting as a liquidator should not be limited to people that have provided accounting services, but should cover those who have provided any professional services.

We recommend amending new paragraph (cb) to prohibit any persons who have a prior relationship with any of the directors of a company from acting as a liquidator of that company.

We recommend amending new paragraph (cb) to clarify that the provision of banking or financial services would not be considered a continuing business relationship that would therefore exclude a person from acting as liquidator.

In the absence of any other business relationship, we do not consider that the provision solely of a banking or financial facility is sufficient to result in a perception of partiality that would justify excluding a person from eligibility for appointment.

We recommend amending new paragraph (cb) to extend the continuing business relationship test to any person whose firm has a business relationship with the company or the other specified parties. This would ensure consistency with new paragraph (ca), where persons are excluded from eligibility for appointment as liquidator if either they or their firms have provided professional services to the company.

Qualifications of liquidators in solvent liquidations

We recommend amending clause 471(1), new paragraphs (ca) and (cb), to provide that, in the case of a solvent liquidation, a person who has provided professional services to a company may be appointed as a liquidator. In a solvent liquidation, the company has sufficient assets to fully cover its debts, and is being liquidated only to distribute the company assets to shareholders. In such cases, there is no need for concern about the impartiality or debtor-friendliness of the liquidator, and we consider a company should be able to appoint a person who has previously provided professional services.

Voidable transactions or charges

Voidable transactions

We recommend amending new section 292(4B) in clause 474 to more closely follow the equivalent provisions in Australia. We note that the Australian test of a "continuing business relationship" has been adopted in the bill to make insolvent transactions void, and we therefore consider it desirable that the bill's provisions mirror those used in Australia. A similar change has been made for the equivalent provision in relation to personal bankruptcy in clause 195.

Setting aside voidable transactions or charges

Clause 476 inserts new section 294 into the Companies Act, providing a procedure for the liquidator to set aside a voidable transaction or charge. Notice of the intention to set aside the transaction or charge must be filed with the Court and served to the affected parties specified. A process is available for the person specified in the notice to submit a written objection

to the transaction's being set aside. If a written objection is not received within 20 working days after notice is served, the transaction or charge is automatically set aside; otherwise, the liquidator may apply to the Court for the transaction to be set aside.

We recommend amending new sections 294(2)(f) and 294(4) to require the written notice of objection to contain "full particulars" of the reasons for objecting, as well as specifying the "documents that evidence or substantiate the reasons for objecting". We consider that requiring the person objecting to provide this detailed information should help the liquidator make an informed decision on whether to pursue the matter in court to seek to make the transaction void, or uphold the transaction as valid. It should also reduce the liquidator's costs and give creditors more certainty in their dealings with the insolvent company.

Model Law on Cross-Border Insolvency

Schedule 5 of the bill contains the provisions of the Model Law on Cross-Border Insolvency, which was adopted by the United Nations Commission on International Trade Law, with some changes to the wording when necessary to amend or supplement the provisions of the Model Law as it applies to New Zealand.

We note that clause 490(b) allows reference to any document relating to the Model Law originating from the United Nations Commission on International Trade Law or its working group in interpreting the part of the bill relating to cross-border insolvency. We are concerned that this provision may conflict with Article 8 of the Model Law, which requires that regard be given to the Model Law's international origin and the need for uniformity in application and the observance of good faith. We therefore recommend including new subsection (2) specifying that subsection (1) does not limit article 8 of Schedule 5. This should ensure that article 8 is treated as the dominant rule and will not be subordinated to clause 490.

Overseas courts

We recommend amending clause 493 to remove the distinction between courts of a Commonwealth country and courts of any other country. As introduced, clause 493 provided that, where an overseas court requests the High Court to provide aid in relation to an insolvency proceeding, the Court can meet that request by exercising those powers that it could exercise if the matter had arisen within the Court's own jurisdiction. However, while this is a compulsory requirement when the request comes from a court in a Commonwealth country, the Court can choose whether or not to exercise this power in relation to a request from a non-Commonwealth country. We recognise the historical reason for distinguishing

between Commonwealth and non-Commonwealth countries, but see no reason for maintaining this distinction. We consider that the Court should have discretion to choose to exercise its powers under this provision whether or not the relevant country is a member of the Commonwealth.

Crown priority

Under Schedule 7 of the Companies Act, the Inland Revenue Department is listed as a preferential creditor. This means that, when a company is insolvent, payment to the Crown of PAYE, GST, resident and non-resident withholding tax, child support, and student loans are prioritised. Payments to unsecured creditors come only after Inland Revenue collects the money it is owed.

A large number of submitters expressed concern that the bill maintains the Crown priority, and proposed that the bill should remove it. We have considered the issues raised by submitters, but by majority consider that Crown priority should be retained. We note that, although other creditors may protect themselves from the risks of not being paid by the debtor by reflecting that risk in the cost of credit or by obtaining security against company assets, Inland Revenue is an involuntary creditor. In addition, the GST charged by the company, and any monies deducted from an employee's wages, have never belonged to the company, but were held on trust on behalf of the Crown, and should therefore be provided to the department.

Some submitters were concerned that the Crown priority would impair the effectiveness of the voluntary administration process, arguing that Inland Revenue would be unlikely to vote in favour of a deed of company arrangement, as it would receive a larger proportion of owed monies if the company were liquidated. However, we note that the Commissioner of Inland Revenue is required to collect "over time the highest net revenue practicable within the law". We therefore consider that Inland Revenue will vote in favour of voluntary administration where it is likely that a company can be rehabilitated and ultimately return more tax than would have been paid under liquidation.

We also considered introducing the director penalty notice system, which is used in Australia, as an alternative to Crown priority. This system would place a penalty on company directors exactly equal to the amount of outstanding PAYE, effectively making the directors personally liable for unpaid PAYE, once Inland Revenue issues a director penalty notice. However, this procedure would significantly increase directors' liability, as well as eroding the fundamental concept of limited liability. We also note that some business entities, such as trading trusts, would not be covered by such a system, which applies only to directors of companies.

Having carefully examined this matter, the majority considers it appropriate to retain the Crown priority, and recommend no amendment to the bill.

Tax arrears

Submitters arguing for the removal of the Crown priority told us that, because of its priority status, Inland Revenue has on many occasions allowed PAYE and GST debts to accumulate over an extended period, sometimes for years, before applying for a liquidation order. In the meantime other creditors, who have no knowledge that significant amounts of tax are overdue and unpaid, continue to trade with the company. When the Inland Revenue liquidation order subsequently becomes public, they discover that the quantum of the tax debt owed, coupled with the Crown priority, leaves them with a significant and sometimes crippling loss.

Submitters believe this is an unfair and unjust outcome for such creditors. They argue that if trade creditors had been aware of the tax arrears they would, in all likelihood, have initiated a liquidation order themselves at an earlier date, thus mitigating their ultimate loss.

Some of us therefore believe that when PAYE, GST, child support, and other similar payments due to Inland Revenue are unpaid for two consecutive "payment due" dates, Inland Revenue should be obliged to notify company directors of the position. This will ensure that directors are aware of the tax arrears and encourage early intervention, which may take the form of corrective action or consideration of voluntary liquidation.

Conduct of insolvency practitioners

We are concerned that unreasonably high insolvency practitioner fees could undermine the effectiveness of the voluntary administration regime. We are aware that regulations can be made setting hourly fees for liquidators under the existing provisions of the Companies Act, although this power has been rarely used to date. There is no equivalent provision covering administrators' fees.

Liquidators acting in an incompetent or dishonest manner can have significant harmful effects on creditors. We were pleased to hear that a discussion document about regulating the conduct of insolvency practitioners is being prepared, and will form the basis of targeted consultation. Final policy proposals will be presented to the Minister of Commerce later in the year. We look forward to seeing suitable protections implemented as quickly as possible.

Minor and technical amendments

We recommend clause 62(2) be amended, to change the mistaken reference from "subpart 4" to "subpart 5".

We recommend amending clause 91(1)(b) to omit the reference to "public accountant", to be replaced by the word "accountant", as the term currently used in the bill is no longer appropriate.

We recommend amending clause 116 to clarify the intent of the provision. The original drafting of the clause started by stating, "The Assignee's interest in property that is acquired by or passes to the bankrupt after adjudication ends and passes...". We are concerned that this wording is unclear, as the word "ends" may refer either to the end of adjudication or the end of the Assignee's interest in property. We consider the new wording should clarify that it is the Assignee's interest that ends.

For clarity, we recommend amending clauses 129 to 133 to refer to "consumer goods", rather than "goods", and to insert a definition of "consumer goods" in clause 129.

We recommend amending clause 213(b) to clarify that the reference to the amount the Assignee retained relates to the amount repaid in clause 211.

We recommend including new clause 436A, which repeals the Insolvency Act 1967, and revokes the Insolvency Regulations 1970, the Insolvency (Priorities) Order 1988, and the Summary Instalment Orders (District Courts) Rules 1970. The Insolvency Act will be replaced by this bill, while the regulations will be replaced with new regulations made under the new legislation.

We recommend amending clause 454, new section 239R(2)(b)(ii), to refer to the "interests statement" rather than the "statement of interests". This will ensure consistency of terminology in the bill, as the term "interests statement" is used in new section 239AP.

We recommend amending clause 454, new section 239AM(1)(c)(ii), to refer to the "creditors" rather than the "creditor".

We recommend amending clause 454, new section 239ABK, to change an incorrect section reference. The section currently refers to new section 239ADV(1)(c), but this should refer to 239ADW(1)(c).

We recommend amending clause 454, new sections 239ABL(3), 239ABM(2), 239ABN(2), 239ABQ(2), 239ABR(1), and 239ABT to omit the references to new section 239X, as these references are unnecessary.

We recommend amending clause 454, new section 239ACN(3) to omit the reference to provisions "prescribed under this Act", to be replaced by a reference to "any prescribed" provisions. We note that the definition of the word "prescribed" in clause 3(1) means prescribed, not just by the bill, but also by regulations made under the bill or by rules. We consider the recommended change will clarify that the prescribed provisions referred to include both those contained in the bill and those prescribed in regulation.

We recommend amending clause 454, new section 239ADZ, to omit a mistaken use of the word "exercised", and replace it with the word "advertised".

We recommend amending clause 475(3), to remove an incorrect reference to (1A)(b) and replace it with (1A)(a).

We recommend amending clause 493(4) to omit the reference to subsection (2). Subsection (4) currently allows the High Court to exercise the powers specified in both subsections (2) and (3), but only subsection (3) gives the High Court any powers.

We recommend amending Schedule 4 to include amendments to the Receiverships Act 1993, clarifying that preferential claims rank ahead of secured interests, and that the first security holders' claims rank ahead of those of the second security holders. We also recommend amendments extending the payment of wages, salary, and holiday pay to employees after a company goes into receivership.

We also recommend a number of consequential amendments.

New Zealand National minority view

New Zealand National opposes this bill.

This bill is being touted as the first major review of company, and personal, insolvency law in four decades.

The centre-piece of this bill is the "voluntary administration" scheme which will replace the seldom-used "compromise" scheme. These schemes aim at enabling companies in financial trouble to trade out of their difficulties. The lack of incentives and the difficulty in getting the majority of creditors' consent have been cited as the reasons for not utilising "compromise" schemes in the

past.

All the submitters on this provision were unanimous in their view that unless the Government addresses the issue of the priority status for IRD, the voluntary administration scheme will be severely compromised.

The select committee did not pursue in-depth ways to ensure that the centre-piece of the bill will be effective to the satisfaction of New Zealand National members.

We do not believe that Parliament should pass another piece of redundant legislation when there is a groundswell of opinion from practitioners who believe that it will not work, without the removal of Inland Revenue's priority status.

Further to this we do not support the newly introduced "no asset procedure" scheme where an individual can choose to enter into the scheme for 12 months in return for a write-off of up to \$40,000 at the expense of creditors. The Government is sending a clear message that "individual responsibility" in paying off debt is not an important concept.

Appendix

Committee process

The Insolvency Law Reform Bill was referred to the committee on 21 February 2006. The closing date for submissions was 7 April 2006. We received and considered 27 submissions from interested groups and individuals. We heard 11 submissions.

We received advice from the Ministry of Economic Development and the Inland Revenue Department.

Committee membership

Katherine Rich (Chairperson)
Gordon Copeland (Deputy Chairperson)
Chris Auchinvole
Charles Chauvel (from 3 August 2006)
Shane Jones
Hon Luamanuvao Winnie Laban
Hon Mahara Okeroa (until 2 August 2006)
Maryan Street

Chris Tremain
Pansy Wong

Hon Lianne Dalziel

Insolvency Law Reform Bill

Government Bill

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459 Restrictions on rights of creditors to complete execution, distraint, or attachment

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461 Restriction on enforcement of lien over documents

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471 Qualifications of liquidators

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483A Consequential amendment to section 275

483B Consequential amendment to section 312

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485 Schedule 7 substituted

Consequential amendments to other enactments

486 Consequential amendments to other enactments

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Cross-border insolvency

487 Commencement

488 Purpose

489 Interpretation

490 Further provision relating to interpretation

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Rules applying to cross-border insolvency proceedings

Schedule 6

Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insolvency Law Reform Act 2005.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

Part 1

Interpretation and scope

3 Interpretation

In this Part and Parts 2 to 7, unless the context otherwise requires,---

Assignee or Official Assignee means the Official Assignee for New Zealand, the Deputy Official Assignee for New Zealand, and any other Official Assignee or Deputy Assignee appointed under this Act

bankrupt means a person who has been adjudicated bankrupt (see section 10)

charge includes a right or interest in relation to property owned by a debtor, by virtue of which a creditor of the debtor is entitled to claim payment in priority to other creditors; but does not include a charge under a

charging order issued by a court in favour of a judgment creditor

company means any company within the meaning of the Companies Act 1993; and includes---

(a) a building society within the meaning of the Building Societies Act 1965:

(b) a society incorporated under the Incorporated Societies Act 1908:

(c) a registered society within the meaning of the Industrial and Provident Societies Act 1908:

(d) a society incorporated or registered overseas that is similar to any society in paragraphs (a) to (c)

Court means the High Court

New (unanimous)

current summary instalment order has the meaning set out in section 350B

document means a document in any form; and includes---

(a) any writing on any material; and

(b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

(c) a book, graph, or drawing; and

(d) a photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

Struck out (unanimous)

=====
goods means personal property of every kind
=====

New (unanimous)

goods has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

Judge means a Judge of the High Court

New (unanimous)

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

ordinary resolution means a resolution of creditors passed in accordance with section 92(1)(a)

overseas company means a company that is incorporated outside New Zealand

prescribed means prescribed by this Act or by regulations made under this Act or by rules

Struck out (unanimous)

=====
proof of debt and provable debt have the meaning given in section 229
=====

property means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes rights, interests, and claims of every kind in relation to property however they arise

New (unanimous)

provable debt has the meaning given to it in section 229(1)

registrar means a Registrar of the Court; and includes a Deputy Registrar relative, in relation to any person (A), means---

- (a) A's parent, spouse, child, brother, or sister; or

(b) the parent, child, brother, or sister of A's spouse; or

(c) a nominee or trustee for any of them

rules means rules for the time being in force under this Act; and includes forms prescribed by the rules

secured creditor means a person entitled to a charge on or over property owned by a debtor

shares includes stock

sheriff includes any officer who undertakes the execution or process of any court

special resolution means a resolution of creditors passed in accordance with section 92(1)(b)

spouse, in relation to a person (A), includes a person with whom A has a de facto relationship (whether that person is of the same or a different sex as A) and a civil union partner

supervisor means a person who is appointed under section 343.

Compare: 1967 No 54 s 2

4 Rights and powers under other Acts not affected

This Act does not affect---

(a) a local authority's rights under any statute relating to rates and recovery of rates---

(i) to obtain a judgment of unpaid rates:

(ii) to enforce payment of rates by selling or leasing the land for which the rates are payable:

(b) the provisions of the Joint Family Homes Act 1964:

(c) except where this Act expressly provides, a secured creditor's power to realise or otherwise deal with the {security} [charge] as if this Act had

not been passed.

Compare: 1967 No 54 s 3(1), (2), (3)

5 Act binds the Crown

This Act binds the Crown.

Compare: 1967 No 54 s 4

6 Corporations and other entities not subject to Act

A corporation, association, or company incorporated or registered under any Act must not---

- (a) be adjudicated bankrupt:
- (b) make a proposal to its creditors:
- (c) be the subject of a summary instalment order under this Act:
- (d) be admitted to the no asset procedure.

Compare: 1967 No 54 s 168

Part 2

Nature of bankruptcy, and process of being made bankrupt

Subpart 1---Bankruptcy and its alternatives

7 Nature of bankruptcy

(1) Bankruptcy affects the legal status of a person and has important consequences. These include---

(a) the bankrupt's property vests in the Official Assignee:

(b) the bankrupt is limited in the business activities he or she can undertake:

(c) the Official Assignee may be entitled to recover assets that the bankrupt has transferred before bankruptcy.

(2) This section is intended only as a guide to the consequences of bankruptcy.

8 Alternatives to bankruptcy

(1) A debtor who is insolvent may have an alternative to bankruptcy, such as---

(a) making a proposal to creditors (see subpart 2 of Part 5); or

(b) paying creditors in instalments under a summary instalment order (see subpart 3 of Part 5); or

(c) entry to the no asset procedure (see subpart 4 of Part 5).

(2) This section is intended only as a guide to the alternatives to bankruptcy.

Subpart 2---Process of being made bankrupt

9 Introduction to subpart 2

(1) This subpart describes how a person is adjudicated bankrupt.

(2) In this subpart, the person who is adjudicated bankrupt is called the debtor.

Adjudication

10 Adjudication

(1) Adjudication occurs when a debtor is adjudicated bankrupt.

(2) A debtor is adjudicated bankrupt if either---

(a) a creditor of the debtor applies to the Court for an order of adjudication, and the Court makes the order; or

(b) the debtor files an application with the Assignee for adjudication.

11 Adjudication by Court

(1) A Court may adjudicate the debtor bankrupt if---

(a) a creditor of the debtor has applied under section 13 for the debtor's adjudication; and

(b) the debtor has committed an act of bankruptcy.

(2) The Court's options in dealing with a creditor's application are set out in sections 36 to 44.

(3) What is an act of bankruptcy is set out in sections 17 to 28.

12 Adjudication on debtor's initiative

(1) A debtor may be adjudicated bankrupt by filing an application for adjudication with the Assignee.

(2) The requirements for a debtor's application are set out in sections 45 and 46.

(3) The procedure for filing a debtor's application is set out in section 49.

Court adjudication on creditor's application

13 When creditor may apply for debtor's adjudication

A creditor may apply for a debtor to be adjudicated bankrupt if---

(a) the debtor owes the creditor \$1,000 or more or, if 2 or more creditors join in the application, the debtor owes a total of \$1,000 or more to those creditors between them; and

(b) the debtor has committed an act of bankruptcy within the period of 3 months before the filing of the application; and

(c) the debt is a certain amount; and

(d) the debt is payable either immediately or at a date in the future that is certain.

Compare: 1967 No 54 s 23

14 Application by secured creditor

The Court must not make an order of adjudication on the application of a secured creditor unless the creditor has established that the amount of the debt exceeds the value of the {security} [charge] by at least \$1,000.

Compare: 1967 No 54 s 25

15 Court's permission required for withdrawal of application

A creditor may only withdraw an application for adjudication with the permission of the Court.

Compare: 1967 No 54 s 26(10)

Acts of bankruptcy

16 Requirement of act of bankruptcy

(1) A debtor must not be adjudicated bankrupt on a creditor's application unless the debtor has committed an act of bankruptcy within the period of 3 months before the creditor files the application.

(2) The acts of bankruptcy are set out in sections 17 to 28.

17 Failure to comply with bankruptcy notice

(1) A debtor commits an act of bankruptcy if---

(a) a creditor has obtained a final judgment or a final order against the debtor for any amount; and

(b) execution of the judgment or order has not been halted by a court;
and

(c) the debtor has been served with a bankruptcy notice; and

(d) the debtor has not, within the time limit specified in subsection
(4),---

(i) complied with the requirements of the notice; or

(ii) satisfied the Court that he or she has a cross claim against
the creditor.

(2) The form that the bankruptcy notice must take is set out in section 29.

(3) The debtor must have been served with the bankruptcy notice in New
Zealand, unless the Court gave permission for the service of the notice on the
debtor outside New Zealand.

(4) The time limit referred to in subsection (1)(d) is,---

(a) if the debtor is served with the bankruptcy notice in New Zealand,
10 working days after service; or

(b) if the debtor is served outside New Zealand, the time specified in
the order of the Court permitting service outside New Zealand.

(5) In this section, a creditor who has obtained a final judgment or a final
order includes a person who is for the time being entitled to enforce a final
judgment or final order.

(6) In this section, if a Court has given permission for enforcing an
arbitration award that the debtor pay money to the creditor,---

(a) final order includes the arbitration award; and

(b) proceedings includes the arbitration proceedings in which the award
was made.

(7) In subsection (1)(d)(ii), cross claim means a counterclaim, set-off, or
cross demand that---

(a) is equal to, or greater than, the judgment debt or the amount that

the debtor has been ordered to pay; and

(b) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

Compare: 1967 No 54 s 19(1)(d), (2)

18 Disposition of property to trustee for benefit of creditors

(1) A debtor commits an act of bankruptcy if, in New Zealand or elsewhere, the debtor disposes of all, or substantially all, of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors.

(2) This section is subject to section 41(3)(a).

Compare: 1967 No 54 s 19(1)(a)

19 Fraud or intent to prefer a creditor

A debtor commits an act of bankruptcy if the debtor takes any of the following steps fraudulently or with an intent to give any creditor an advantage over other creditors:

- (a) disposes of his or her property, or part of it:
- (b) creates a charge on his or her property or gives any security in it:
- (c) makes any payment:
- (d) incurs any obligation.

Compare: 1967 No 54 s 19(1)(b)

20 Departure from New Zealand

A debtor commits an act of bankruptcy if the debtor takes any of the following steps with intent to defeat or delay his or her creditors:

(a) departs, attempts to depart, or prepares to depart, from New Zealand:

(b) if the debtor is already outside New Zealand, remains there.

Compare: 1967 No 54 s 19(1)(c)

21 Avoidance of creditors

A debtor commits an act of bankruptcy if the debtor, with intent to defeat or delay his or her creditors, avoids them by, for example, leaving or keeping away from the debtor's home, or by staying within that home.

Compare: 1967 No 54 s 19(1)(c)

22 Notice of suspension of debts

A debtor commits an act of bankruptcy if the debtor notifies any of the debtor's creditors that the debtor has suspended, or is about to suspend, payment of the debtor's debts.

Compare: 1967 No 54 s 19(1)(e)

23 Admission to creditors of insolvency

(1) A debtor commits an act of bankruptcy if the debtor admits at a meeting of creditors that he or she is insolvent and---

(a) a majority of the creditors present at the meeting require the debtor to file an application for adjudication; or

(b) the debtor agrees to file an application for adjudication and does not do so within 2 working days after the meeting.

(2) In subsection (1)(a), majority means a majority by number of creditors present and the value of their combined debts.

Compare: 1967 No 54 s 19(1)(f)

24 Possession under execution process

(1) A debtor commits an act of bankruptcy if---

(a) an execution process has been issued against the debtor or property of the debtor; and

(b) property of the debtor has been taken into possession under the execution process; and

(c) the judgment or order for which the execution process has been issued is not satisfied within 5 working days after possession has been taken.

(2) In this section, execution process means---

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=====
(a) a charging order; or
=====

(b) a writ of sale; or

(c) a writ of possession; or

(d) a writ of arrest; or

(e) a writ of sequestration.

(3) The period of 5 working days in subsection (1)(c) is qualified if an interpleader application has been made in respect of the debtor's property that has been taken into possession. In that case the period of 5 working days does not include the days that elapse between---

(a) the date when the application is made; and

(b) the date when the application is finally determined, withdrawn, abandoned, or otherwise resolved.

Compare: 1967 No 54 s 19(1)(g)

25 Writ of sale

(1) A debtor commits an act of bankruptcy if---

(a) a writ of sale directed against any land of the debtor, or any interest in that land, has been delivered to a sheriff; and

(b) as part of the execution process, the 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.

(2) However, subsection (1) does not apply, and an act of bankruptcy is not committed, if the judgment or the order under which the writ of sale has been issued is satisfied within 5 working days after the writ of sale has been both delivered to the sheriff and advertised.

Compare: 1967 No 54 s 19(1)(h)

26 Return that sufficient goods not found under execution process

A debtor commits an act of bankruptcy if, under an execution process issued against the debtor or the debtor's property, a return is made that sufficient goods and chattels of the debtor could not be found on which to levy the debt.

Compare: 1967 No 54 s 19(1)(i)

27 Removal or concealment of property

A debtor commits an act of bankruptcy if the debtor takes any of the following steps with intent to prejudice his or her creditors, or to give 1 creditor an advantage over another:

(a) removes or attempts to remove any of the debtor's property from any place:

(b) conceals or attempts to conceal any of his or her property.

Compare: 1967 No 54 s 19(1)(j)

28 Unsatisfied judgment for non-payment of trust money

A debtor commits an act of bankruptcy if---

(a) the debtor is required by law to keep a trust account; and

(b) judgment has been given against the debtor for non-payment of trust money; and

(c) the judgment is not satisfied within 5 working days after the date of the judgment.

Compare: 1967 No 54 s 19(1)(k)

Bankruptcy notice

29 Form of bankruptcy notice

(1) The bankruptcy notice must---

(a) be in the prescribed form; and

(b) require the debtor, in relation to the judgment debt or the sum ordered to be paid under a final order,---

(i) to pay the amount owing, plus costs; or

(ii) to give security for the amount owing that satisfies the Court or the creditor; or

(iii) to compromise the amount owing on terms that satisfy the Court or the creditor; and

(c) state what are the consequences if the debtor does not comply with the notice; and

(d) be served on the debtor in the prescribed manner.

(2) The bankruptcy notice may name an agent to act on behalf of the creditor in so far as the notice requires---

(a) any payment to be made to the creditor; or

(b) any other step to be taken that involves the creditor.

(3) In this section,---

(a) creditor includes a person entitled to enforce a final judgment or final order; and

(b) final order includes an arbitration award that the debtor pay money to the creditor, if the Court has given permission to enforce the award.

Compare: 1967 No 54 ss 19(2), 20(a)

30 Effect of overstatement of amount owing

(1) Overstatement in a bankruptcy notice of the amount owing by the debtor does not invalidate the notice, unless---

(a) the debtor notifies the creditor that the debtor disputes the validity of the notice because it overstates the amount owing; and

(b) the debtor makes that notification within the time specified in the notice for the debtor to comply with the notice.

(2) A debtor complies with a notice that overstates the amount owing by---

(a) taking steps that would have been compliance with the notice had it stated the correct amount owing (for example, by paying the creditor the correct amount owing plus costs); and

(b) taking those steps within the time specified in the notice for the debtor to comply.

Compare: 1967 No 54 s 20(b)

Effect on execution process of filing creditor's application

31 Creditor's execution process must not be issued or continued

(1) A creditor who applies for a debtor to be adjudicated bankrupt must not issue an execution process against the debtor in respect of the debtor's property or person to recover a debt on which the application is based.

(2) If the creditor has already issued the execution process, the creditor must not continue it.

(3) However, the creditor may apply to the Court for permission to issue or continue the execution process, as the case may be.

Compare: 1967 No 54 s 24(1)

32 Execution processes by other creditors

(1) After a creditor's application for adjudication has been filed, the debtor or any creditor may apply to the Court for an order halting the issue or continuance of an execution process against the debtor in respect of the debtor's property or person by any other creditor.

(2) On an application under subsection (1), the Court may---

(a) halt the execution process, on the terms and conditions (if any) that the Court thinks appropriate; or

(b) allow the execution process to continue, on the terms and conditions (if any) that the Court thinks appropriate.

Compare: 1967 No 54 s 24(2)

33 Execution process issued by another court

(1) This section applies if an execution process has been issued out of a court (Court 1) other than the Court (Court 2) where the application for adjudication was filed.

(2) If it is proved to Court 1 that an application for the adjudication of the debtor has been filed in Court 2, Court 1 may---

(a) halt the execution process, subject to the terms and conditions (if any) that Court 1 thinks appropriate; or

(b) allow the execution process to continue, but on the terms and conditions (if any) that Court 1 thinks appropriate.

Compare: 1967 No 54 s 24(2)

34 No restriction on execution process if application for adjudication

withdrawn or dismissed

The restrictions in sections 31 to 33 on issuing or continuing an execution process do not apply if the application for adjudication is withdrawn or dismissed.

Compare: 1967 No 54 s 24(5)

35 Meaning of execution process

In sections 31 to 34, execution process means any of the following:

(a) issuing or proceeding with any of the following writs or warrants under a judgment or order obtained against the debtor in any court in its civil jurisdiction (except a judgment or order for possession of any land or building obtained on the ground that the debtor is a trespasser or that the debtor's tenancy has expired):

(i) a writ or warrant for the possession, seizure, or sale of any property:

(ii) a writ of attachment:

(b) obtaining a garnishee order in favour of a judgment creditor under rule 270 of the District Courts Rules 1948:

(c) obtaining an order that a judgment creditor may sue a subdebtor under rule 271(2)(c) of the District Courts Rules 1948:

(d) having a charging order nisi made absolute under rule 585 of the High Court Rules:

(e) beginning or continuing proceedings in any court for the appointment of a receiver of any property, except an application for the appointment of the Assignee as receiver and manager under section 50:

(f) exercising any power of re-entry under a lease, or any power terminating a lease:

(g) seizing or selling any property by way of distress for rent.

Compare: 1967 No 54 s 24(4)

Court's options when hearing creditor's application

36 Court may adjudicate debtor bankrupt

The Court may, at its discretion, adjudicate the debtor bankrupt if the creditor has established the requirements set out in section 13.

Compare: 1967 No 54 s 26(1)

37 Court may refuse adjudication

The Court may, at its discretion, refuse to adjudicate the debtor bankrupt if---

- (a) the applicant creditor has not established the requirements set out in section 13; or
- (b) the debtor is able to pay his or her debts; or
- (c) it is just and equitable that the Court does not make an order of adjudication; or
- (d) for any other reason an order of adjudication should not be made.

Compare: 1967 No 54 s 26(2)

38 Court may halt application

- (1) The Court may at any time halt the creditor's application for adjudication.
- (2) The Court may halt the application on the terms and conditions (if any), and for the period, that the Court thinks appropriate.

Compare: 1967 No 54 s 26(7)

39 Orders if more than 1 application

(1) If there is more than 1 application for adjudication, and 1 application has been halted by a court order, the Court may, if there is a good reason, make an order of adjudication on the application that has not been halted.

(2) If the Court makes an order of adjudication under subsection (1), the Court must dismiss the application that has been halted, on the terms and conditions (if any) that the Court thinks appropriate.

Compare: 1967 No 54 s 26(6)

40 Orders if more than 1 debtor

If a creditor's application for adjudication relates to more than 1 debtor, the Court may refuse adjudication of 1 or some of the debtors without affecting the application in relation to the remaining debtor or debtors.

Compare: 1967 No 54 s 26(8)

41 Order that disposition or proposal not act of bankruptcy

(1) This section applies if the debtor---

(a) has made a disposition of all, or substantially all, of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors;
or

(b) has made a proposal under Part 5; or

(c) has applied for a summary instalment order under Part 5.

(2) The debtor or the trustee or any creditor may apply for an order under this section.

(3) On the application, the Court may make any of the following orders:

(a) order that the disposition or proposal is not an act of bankruptcy:

(b) halt or refuse the application for adjudication:

(c) order that any other application for adjudication must not be filed:

(d) make any order as to costs that the Court thinks appropriate:

(e) if it orders that costs must be paid to the creditor who has applied for adjudication, order that the costs must be paid out of the debtor's estate.

(4) This section does not limit the powers of the Court under section 37.

Compare: 1967 No 54 s 26(3)

42 Halt or refusal of application when judgment under appeal

(1) This section applies if the creditor's application for adjudication relies on 1 of the following acts of bankruptcy:

(a) the debtor failed to comply with a bankruptcy notice (see section 17):

(b) a judgment against the debtor for non-payment of trust money is not satisfied within 5 working days after the date of the judgment (see section 28).

(2) If the debtor has appealed against the judgment or order underlying the bankruptcy notice or the judgment for non-payment of trust money, as the case may be, and the appeal is still to be decided, then the Court may---

(a) halt the creditor's application for adjudication; or

(b) refuse the application.

Compare: 1967 No 54 s 26(4)

43 Court may halt application while underlying debt determined

(1) This section applies if the debtor appears in opposition to a creditor's application and the debtor says either---

(a) that he or she does not owe a debt to the creditor; or

(b) that he or she does owe a debt to the creditor, but the debt is less than \$1,000.

(2) The Court may, instead of refusing the application, halt the application so that the question of whether the debt is owed, or how much of the debt is owed, can be resolved at a trial.

(3) As a condition of halting the application, the Court may require the debtor to give security to the creditor for any debt that may be established as owing by the debtor to the creditor, and for the costs of establishing the debt.

Compare: 1967 No 54 s 26(5)

44 Substitution of creditor

(1) The Court may substitute another creditor (Creditor 2) for the creditor making the application for adjudication (Creditor 1), if---

(a) Creditor 1 has not proceeded with due diligence or at the hearing of the application offers no evidence; and

(b) the debtor owes Creditor 2 \$1,000 or more.

(2) In that case, Creditor 2 must file another application for adjudication, but can rely on the act of bankruptcy to which Creditor 1's application related.

Compare: 1967 No 54 s 26(9)

Debtor's application

45 When debtor may file application

A debtor may file an application with the Assignee to have himself or herself adjudicated bankrupt if the debtor has combined debts of \$1,000 or more.

46 Debtor must first file statement of affairs

(1) A debtor may not file an application for adjudication unless the debtor has first filed with the Assignee a statement of the debtor's affairs in the prescribed form.

(2) The Assignee may reject a statement of affairs that in the Assignee's opinion is incorrect or incomplete.

47 Debtor automatically adjudicated bankrupt

(1) A debtor who files an application with the Assignee to have himself or herself adjudicated bankrupt is automatically adjudicated bankrupt when the application is filed.

(2) That adjudication has the same consequences as if the debtor had been adjudicated bankrupt by the Court.

Compare: 1967 No 54 s 21

48 Debtors' joint application

(1) Two or more debtors who are partners in a business partnership may file a joint application.

(2) The debtors are automatically adjudicated bankrupt both separately and jointly when the application is filed.

Compare: 1967 No 54 s 22

49 Steps for filing debtor's application

(1) To file an application for adjudication, a debtor must---

(a) complete the prescribed application form; and

Struck out (unanimous)

=====

(b) take it in person during business hours, or post it, to an office of the Assignee; and

=====

New (unanimous)

(b) lodge it with the Assignee in accordance with the prescribed procedure.

Struck out (unanimous)

(c) pay the prescribed fee, unless the Assignee waives it.

(2) The debtor files the application when it is endorsed by the Assignee as having been received.

Struck out (unanimous)

(3) The Assignee may waive the prescribed fee only on the ground of financial hardship to the debtor.

Subpart 3---Appointment of receiver

Power of Court to appoint Assignee as receiver

50 Application for appointment of Assignee as receiver

(1) After a creditor's application for adjudication has been filed, a creditor of the debtor may apply to the Court for an order appointing the Assignee as receiver and manager of all or part of the debtor's property.

(2) The Court may make the order at any time before it makes an order of adjudication.

(3) As part of the order, the Court may authorise the Assignee to take all or any of the following steps:

(a) take possession of any property:

(b) sell any perishable property or property that is likely to fall rapidly in value:

(c) control the debtor's business or property as directed by the Court.

(4) An order for the Assignee's control of the debtor's business must be confined to what is necessary, in the Court's opinion, for conserving the debtor's property.

Compare: 1967 No 54 s 27

51 Additional orders after receiver's appointment

After the appointment of the Assignee as receiver and manager, the Court may, on an application by a creditor or the Assignee, make additional orders under section 50.

Compare: 1967 No 54 s 27(2)

52 Appointment of Assignee as receiver and manager must be advertised

The appointment of the Assignee as receiver and manager of the debtor's property must be advertised in accordance with regulations made under this Act for that purpose.

53 Execution process halted

(1) A creditor of the debtor must not issue an execution process of the kind referred to in section 35 after the appointment of the Assignee as receiver and manager has been advertised.

(2) A creditor must not continue an execution process already issued before the advertisement.

(3) However, a creditor or any other person interested may apply to the Court for an order allowing the issue or continuation of an execution process, and the Court may make an order on the terms and conditions that it thinks appropriate.

Compare: 1967 No 54 s 27(3)

54 Effect when execution process halted

If the execution process is halted under section 53, then sections 77, 108 to 112, and 115 apply as if the order halting the execution process was an adjudication.

Compare: 1967 No 54 s 24(3)

Subpart 4---Adjudication

Adjudication

55 Bankruptcy commences on adjudication

The bankruptcy commences on the date and at the time when the debtor is adjudicated bankrupt.

56 Date of adjudication

In this Act, date of adjudication means,---

(a) if the debtor is adjudicated bankrupt on a creditor's application, the date and time when the Court made the order of adjudication; or

(b) if the debtor is adjudicated bankrupt on the debtor's application, the date and time when the debtor filed the application (see section 49(2)).

Compare: 1967 No 54 s 28

57 Date and time of adjudication must be recorded

(1) If the debtor is adjudicated bankrupt on a creditor's application, the Court must record the date and time when the order was made.

(2) If the debtor is adjudicated bankrupt on the debtor's application, the Assignee must record on the application the date and time when the debtor filed the application.

Compare: 1967 No 54 s 28A

58 Registrar must notify Assignee of adjudication by Court

The registrar must notify the Official Assignee as soon as possible after the Court makes an order of adjudication.

59 Official Assignee must nominate Assignee

The Official Assignee must nominate an Assignee to be the Assignee of the debtor's property, and may at any time direct that another Assignee is the Assignee of the debtor's property.

60 Presumption that act or transaction entered into or effected after adjudication

(1) This section applies if there is doubt whether an act was done, or a transaction entered into or effected, before or after the date of adjudication.

(2) The presumption is that the act was done, or the transaction entered into or effected, after the date of adjudication, but the presumption does not apply if the contrary is proved.

61 Adjudication final and binding

Unless an adjudication is appealed under this Act,---

(a) No one can later assert that the adjudication was not valid or that a prerequisite for adjudication was absent; and

(b) the adjudication is binding on all persons.

Compare: 1967 No 54 s 30

62 Public register of discharged and undischarged bankrupts

(1) The Assignee must maintain a public register of discharged and undischarged bankrupts.

(2) The register must be maintained in accordance with subpart {4} [5] of Part 7.

Subpart 5---What happens on adjudication

63 Debtor adjudicated bankrupt called the bankrupt

In this Act, a debtor who has been adjudicated bankrupt is called the bankrupt.

64 Outline of what happens on adjudication

(1) On adjudication---

(a) the Assignee must advertise the adjudication; and

(b) the bankrupt must file with the Assignee a statement of his or her affairs, if the bankrupt has not already done so; and

(c) the Assignee may call a meeting of the bankrupt's creditors; and

(d) proceedings to recover certain debts must be halted; and

(e) the property of the bankrupt vests in the Assignee.

(2) This section is a guide only to the immediate consequences of adjudication.

Assignee must advertise adjudication

65 Assignee must advertise adjudication

(1) The Assignee must advertise the adjudication of the bankrupt as soon as practicable after it has occurred.

(2) The Assignee must advertise the adjudication in the prescribed manner.

(3) Subsection (1) is subject to section 66.

Compare: 1967 No 54 s 31

66 Order that Assignee must not advertise pending appeal or application for annulment

The Court may order that the Assignee must not advertise the adjudication if the bankrupt has appealed against an order of adjudication or if the bankrupt has applied for an annulment of the adjudication.

Bankrupt's statement of affairs

67 Bankrupt must file statement of affairs with Assignee

After adjudication, the bankrupt must file with the Assignee a statement of the bankrupt's affairs in the prescribed form, unless the bankrupt has already filed a statement under section 46.

Compare: 1967 No 54 s 33

68 Notice that bankrupt must file statement of affairs

(1) As soon as practicable after adjudication, the Assignee must send the bankrupt a notice [in the prescribed form] stating---

New (unanimous)

(aa) that the bankrupt has been adjudicated bankrupt; and

(a) that the bankrupt must file a statement of the bankrupt's affairs in the prescribed form; and

(b) the time when the statement must be filed.

(2) The Assignee must send the notice to the address of the bankrupt given in the application for adjudication or the bankrupt's last known address.

(3) This section does not apply if the bankrupt has already filed a statement under section 46.

Compare: 1967 No 54 s 33(1)

69 Time for filing statement of affairs

The bankrupt must file a statement of the bankrupt's affairs in the prescribed form with the Assignee within 10 working days after receiving the Assignee's notice under section 68(1) that the statement must be filed.

70 Bankrupt may file additional or amended statements or answers

At any time after filing a statement of affairs with the Assignee under section 46 or section 67, the bankrupt may file additional or amended statements or answers.

Assignee must call meeting of creditors

71 Assignee must call meeting of creditors

- (1) After adjudication, the Assignee must call the first meeting of the bankrupt's creditors, unless the Assignee dispenses with the meeting under section 73.
- (2) The Assignee may call the meeting by giving notice of the time and place of the meeting to---
 - (a) the bankrupt; and
 - (b) each creditor named in the bankrupt's statement of affairs; and
 - (c) any other creditors known to the Assignee.
- (3) The Assignee must advertise the time and place of the meeting in the prescribed manner.

Compare: 1967 No 54 s 34(1), (2)

72 Time when meeting must be held

- (1) The first creditors' meeting must be held---
 - (a) within 25 working days after the bankrupt files the bankrupt's statement of affairs; or
 - (b) if the bankrupt is late in filing the statement or does not file a statement at all, at the latest within 25 working days after adjudication.
- (2) However, the Assignee may delay calling the first creditors' meeting if the Assignee considers that there are special circumstances that justify the delay.

Compare: 1967 No 54 s 34(1)

73 Assignee may dispense with first creditors' meeting

(1) The Assignee need not call a first creditors' meeting if the Assignee---

(a) decides that the meeting should not be called; and

(b) sends each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Assignee, a notice that complies with section 74; and

(c) does not receive, within 10 working days after the Assignee's notice was sent, written notice from a creditor requiring the Assignee to call the meeting.

(2) In deciding whether the meeting should not be called, the Assignee must consider---

(a) the bankrupt's assets and liabilities; and

(b) the likely result of the bankruptcy; and

(c) any other relevant matters.

Compare: 1967 No 54 s 34A

74 Notice that first creditors' meeting should not be called

The Assignee's notice to creditors under section 73(1)(b) must---

(a) state that the Assignee considers that the first creditors' meeting should not be called; and

(b) give the reasons for not calling the meeting; and

(c) state that the Assignee will not call the meeting unless a creditor gives the Assignee written notice, within 10 working days after the Assignee's notice was sent, requiring the Assignee to call the meeting.

Compare: 1967 No 54 s 34A

75 Documents to be sent with notice of meeting

(1) The Assignee must send the following documents with the notice of the first creditors' meeting:

(a) a summary of the bankrupt's statement of assets and liabilities; and

(b) extracts from, or a summary of, the bankrupt's explanation of the causes of the bankruptcy; and

(c) any comments on the bankruptcy that the Assignee chooses to make.

(2) However, subsection (1) does not apply if the Assignee has not received the bankrupt's statement of affairs when the notice is sent.

(3) A failure in sending or receiving the documents in subsection (1) does not affect the validity of the proceedings at the meeting.

Compare: 1967 No 54 s 35

Court proceedings are halted

76 Effect of adjudication on Court proceedings

(1) On adjudication, all proceedings to recover any debt provable in the bankruptcy are halted.

(2) However, on the application by any creditor or other person interested in the bankruptcy, the Court may allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the Court thinks appropriate.

Compare: 1967 No 54 s 32

Execution process

77 Execution process must not be begun or continued after adjudication advertised

(1) A creditor must not begin or continue an execution, attachment, or other process in respect of the bankrupt's property or person, for the recovery of a debt provable in the bankruptcy, after---

(a) the Assignee has advertised the bankrupt's adjudication; or

(b) the Assignee has given notice of the adjudication to the creditor.

(2) After advertisement of the adjudication or notice by the Assignee to the creditor, a creditor must not seize or sell any property by way of distress for rent due and owing by the bankrupt, but the creditor may continue with the distress procedure if already begun.

Compare: 1967 No 54 s 50(5)

Bankrupt's death

78 Effect of bankrupt's death after adjudication

If the bankrupt dies after adjudication, the bankruptcy continues in all respects as if the bankrupt were alive.

Compare: 1967 No 54 s 137

Subpart 6---Role of creditors

79 Overview of creditors' role in bankruptcy

The role of the creditors in the bankruptcy is primarily to---

(a) attend meetings of the creditors; and

(b) submit proofs of the debts of the bankrupt.

Creditors' meetings

80 Types of creditors' meetings

(1) There are 2 types of creditors' meetings:

(a) the first creditors' meeting; and

(b) subsequent meetings.

(2) The rules for calling the first creditors' meeting are set out in sections 71 to 75.

81 Subsequent meetings

(1) The Assignee may call subsequent meetings of creditors.

(2) The Assignee must call a subsequent meeting if required to do so by one-quarter in number and value of the creditors who have proved their debts.

(3) The Assignee must call the meeting by taking the steps set out in section 71(2) and (3).

Compare: 1967 No 54 s 36

82 Meeting and resolution not defective for lack of notice

A creditors' meeting, and the resolutions passed at the meeting, are valid even if some creditors did not receive the notice of the meeting, unless a Court orders otherwise.

Compare: 1967 No 54 s 40(6)

Conduct of creditors' meetings

83 Chairperson

(1) The chairperson of a creditors' meeting is the Assignee or a person appointed by the Assignee to be the chairperson.

(2) However, if neither the Assignee nor the person (if any) appointed by the Assignee to be the chairperson attends the meeting, the creditor or creditors may elect 1 of themselves to act as chairperson for the purpose of the meeting, but only if that person is entitled to vote at the meeting.

(3) A person appointed by the Assignee or elected by the creditors to act as

chairperson may administer any oath that the Assignee could have administered if the Assignee had attended the meeting.

Compare: 1967 No 54 s 37(1)

84 Chairperson may adjourn meeting

The Assignee or the chairperson of a meeting may adjourn the meeting from time to time and place to place.

Compare: 1967 No 54 s 37(3)

85 Assignee must report to meeting

If the Assignee attends a creditors' meeting or an adjournment of the meeting, the Assignee---

(a) must report on the administration of the bankrupt's estate; and

(b) must give any creditor any further information that the creditor may properly require; and

(c) must, if [reasonably] required, produce for the meeting (or its adjournment) all accounting records, deeds, and papers in the Assignee's possession that relate to the bankrupt's property.

Compare: 1967 No 54 s 37(4)

86 Attending a creditors' meeting

(1) A person may attend a creditors' meeting---

(a) by being physically present at the time and place appointed for the meeting; or

(b) if the Assignee makes it available, by means of an audio or audio-visual link, so that all those participating in the meeting can hear and be heard by each other.

(2) A creditor may also attend by voting by postal or electronic vote under

section 93 or by proxy on any resolution to be put to the meeting.

87 Bankrupt may be required to attend and be questioned

(1) The bankrupt must, if required by the Assignee, attend all creditors' meetings by being physically present or present by an audio or audio-visual link.

(2) The Assignee, the chairperson of a creditors' meeting, a creditor, or a representative of a creditor may question the bankrupt as to his or her property, conduct, or dealings. The chairperson of the meeting must allow only questions that relate to the bankrupt's property, conduct, or dealings.

(3) The questioning may be on oath.

(4) The bankrupt must sign a statement of the bankrupt's evidence given under the questioning, if required to do so by the Assignee or the chairperson of the meeting.

Compare: 1967 No 54 s 37(2)

88 Attendance by non-creditors

A person who is not a creditor of the bankrupt may attend a creditors' meeting with the consent of---

(a) the Assignee; or

(b) the creditors attending the meeting, voting by ordinary resolution.

Compare: 1967 No 54 s 37(5)

89 Minutes [and record of meeting]

(1) The Assignee must ensure that minutes are kept of every creditors' meeting.

(2) The Assignee or the chairperson must sign the minutes.

New (unanimous)

(3) The Assignee may record the meeting, but only with the consent of each person attending the meeting.

Compare: 1967 No 54 s 37(6)

90 Number of persons for valid meeting

(1) For a valid creditors' meeting, at least the following persons must attend:

- (a) the Assignee or a person who represents the Assignee; and
- (b) a creditor or a person who represents a creditor.

(2) The meeting lapses if those persons do not attend, and the Assignee may call another meeting.

Compare: 1967 No 54 s 38

91 Who may represent creditor or bankrupt

(1) At a creditors' meeting, any of the following persons may represent a creditor and, if the bankrupt attends, any of the following persons except the person in paragraph (d) may represent the bankrupt:

- (a) a {barrister or solicitor} [lawyer]:
- (b) {a public} [an] accountant:
- (c) a person who keeps the creditor's or bankrupt's accounts:
- (d) in the case of a creditor, a person who is the creditor's authorised agent under a power of attorney:
- (e) a person who satisfies the Assignee that he or she represents the creditor or bankrupt:
- (f) in the case of a partnership, a partner.

(2) In addition to the persons listed in subsection (1), a creditor may be

represented,---

(a) in the case of the Crown, by any officer of the appropriate government department:

(b) in the case of a public body, by an officer of that body:

(c) in the case of a company, by a director, or its general manager or accountant, or by a person authorised in writing by one of those persons.

Compare: 1967 No 54 s 39

92 Voting at meetings

(1) For a creditors' meeting to pass---

(a) an ordinary resolution, a majority in number and value of the creditors (or their representatives) who attend and who vote on the resolution must vote in favour of it:

(b) a special resolution, three-quarters in number and value of the creditors (or their representatives) who attend and who vote on the resolution must vote in favour of it.

(2) For the purposes only of determining whether the requisite majority by value has voted in favour of a resolution,---

(a) the Assignee may admit or reject proofs of debt; and

(b) the Assignee may adjourn the meeting in order to admit or reject proofs of debt; and

(c) a person whose debt has been admitted is a creditor.

Compare: 1967 No 54 s 40(1)

93 Postal and electronic votes

(1) A creditor who is entitled to vote at a creditors' meeting may vote on a resolution to be put to the meeting---

(a) by postal vote; or

(b) by electronic vote, if the voting paper for the resolution allows it, in accordance with the procedure specified in the voting paper.

(2) A postal or electronic vote must reach the Assignee at least 2 working days before the meeting begins if it is to be counted at the meeting.

(3) A voting paper for each resolution to be put to a creditors' meeting must accompany the notice of the meeting, together with instructions for returning the voting paper or electronic vote (if allowed by the voting paper under section 93(1)(b)) to the Assignee at least 2 working days before the meeting begins.

94 Who may vote at creditors' meeting

Creditors of the bankrupt who are entitled to vote, or their representatives, may vote at a creditors' meeting, but this rule is qualified by the provisions of sections 95 to 97.

95 When secured creditor may vote

A debt that is secured does not entitle the creditor to vote unless the creditor has taken 1 of the following steps under this Act:

(a) surrendered the {security} [charge]; or

(b) valued the {security} [charge]; or

(c) realised the {security} [charge].

Compare: 1967 No 54 s 40(2)

96 When creditor under bill of exchange or promissory note may vote

(1) A debt on, or secured by, a current bill of exchange or promissory note does not entitle the creditor to vote unless the creditor is willing to take the following steps:

(a) treat a qualifying liability (which is defined in subsection (2)) as

a {security} [charge] in the creditor's hands; and

(b) estimate the value of the {security} [charge]; and

(c) deduct the value of the {security} [charge] from the creditor's {proof of debt} [claim] for the purposes of voting (but not for the purposes of distribution under subpart 10 of Part 3); and

(d) show the bill or note to the Assignee when the Assignee requires it.

(2) In this section, qualifying liability means the liability to the creditor on the bill or note of every person who---

(a) is liable on the bill or note antecedently to the debtor; and

(b) is not a bankrupt.

Compare: 1967 No 54 s 40(3)

97 Person disqualified from voting through preferential effect

(1) A person (A) must not vote in favour of a resolution that would directly or indirectly enable any of the persons listed in subsection (2) to receive any remuneration out of the bankrupt's estate other than as a creditor sharing rateably with the other creditors.

(2) The persons referred to in subsection (1) are---

(a) A:

(b) A's business partner, employer, or employee:

(c) a creditor that A represents:

(d) the business partner, employer, or employee of a creditor that A represents.

Compare: 1967 No 54 s 40(4)

98 Creditor of partner

The adjudication of a partner in a firm who is indebted to a creditor jointly with 1 or more of his or her partners entitles the creditor to prove the debt for the purpose of voting at any creditors' meeting, and to vote.

Compare: 1967 No 54 s 40(5)

99 Creditors may appoint expert or committee to assist Assignee

(1) A creditors' meeting may pass {a} [an ordinary] resolution---

(a) appointing an expert to assist the Assignee in the administration of the bankrupt's estate; and

(b) providing for the expert's remuneration out of the estate.

(2) A creditors' meeting may pass {a} [an ordinary] resolution appointing a committee of any persons to assist the Assignee in the administration of the bankrupt's estate, but in that case the Court must approve any remuneration of the members of the committee out of the estate.

Compare: 1967 No 54 s 41(1), (2)

Documents

100 Creditor's right to inspect documents

A creditor, or a {solicitor} [lawyer] or accountant acting for that creditor, who has lodged a {proof of debt} [creditor's claim form] may at any reasonable time inspect and take extracts or copies of---

(a) the bankrupt's accounting records:

(b) the bankrupt's answers to questions under section 87:

(c) the bankrupt's statement of affairs:

(d) all proofs of debt:

(e) the minutes of any creditors' meeting.

Compare: 1967 No 54 s 131

Part 3

Dealing with bankrupt and bankrupt's property

Subpart 1---Status of bankrupt's property

General

101 Status of bankrupt's property on adjudication

(1) On adjudication,---

(a) all property (whether in or outside New Zealand) belonging to the bankrupt or vested in the bankrupt vests in the Assignee without the Assignee having to intervene or take any other step in relation to the property, and any rights of the bankrupt in the property are extinguished; and

(b) the powers that the bankrupt could have exercised in, over, or in respect of any property (whether in or outside New Zealand) for the bankrupt's own benefit vest in the Assignee.

(2) This section is subject to section 104.

Compare: 1967 No 54 s 42(1), (2)

102 Status of property acquired during bankruptcy

(1) Between the commencement of bankruptcy and discharge of the bankrupt,---

(a) all property (whether in or outside New Zealand) that the bankrupt acquires or that passes to the bankrupt vests in the Assignee without the Assignee having to intervene or take any other step in relation to the property, and any rights of the bankrupt in the property are extinguished; and

(b) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's own benefit vest in the Assignee.

(2) This section is subject to section 104 [and section 123].

New (unanimous)

(3) This section does not apply to property that is vested in the bankrupt under an order made under section 119(3).

Compare: 1967 No 54 s 42(2)

103 Property vests in replacement Assignee

If the Assignee is replaced, the property and powers vested in the former Assignee under section 101 or section 102 vest in the replacement Assignee.

Compare: 1967 No 54 s 42(1)

104 Property held in trust by bankrupt

Property held by the bankrupt in trust for another person does not vest in the Assignee.

Compare: 1967 No 54 s 42(3)

105 Effect of other laws

(1) Nothing in the Land Transfer Act 1952 restricts the operation of sections 101 to 104.

(2) Sections 101 to 104 do not affect the operation of any other law that prevents any property from vesting in the Assignee.

Compare: 1967 No 54 s 42(5)

106 Court may order that money due to bankrupt is assigned to Assignee

(1) The Court may, on the application of the Assignee, order that any money due to the bankrupt, or any money to become due or payable to the bankrupt, is assigned or charged to, or in favour of, the Assignee.

(2) The assignment or charge is a discharge to the person who pays the Assignee.

Compare: 1967 No 54 s 45A

Court

107 Application of section 272 to payments by bankrupt or assignments by Court

The Assignee must apply the following payments in accordance with section 272:

- (a) any amount paid by the bankrupt under section 145:
- (b) any amount paid to the Assignee under an order made under section 106.

Compare: 1967 No 54 s 45B

Bankrupt's property subject to execution process

108 When execution creditor may retain execution proceeds

- (1) This section applies to a creditor who has, before adjudication,---
 - (a) issued execution against the bankrupt's property; or
 - (b) attached a debt due by the bankrupt.
- (2) The creditor may retain the benefit of the execution or attachment (including the proceeds) only if the creditor completed the execution or attachment---
 - (a) before adjudication; and
 - (b) before the creditor had notice that an application for adjudication had been filed or that the bankrupt had committed an act of bankruptcy (other than an act of bankruptcy arising out of the creditor's execution or attachment).
- (3) The creditor may retain as against the Assignee a payment made by the bankrupt in the course of the execution or attachment to avoid the execution or attachment as if---
 - (a) the payment was the proceeds of the execution or attachment; and

(b) the execution or attachment was completed when the payment was made.

(4) The right of a creditor under this section to retain the benefit of an execution or attachment is subject to sections 192 to 195.

Compare: 1967 No 54 s 50(1), (2), (6)

109 Effect of notice to sheriff of adjudication

(1) This section applies if the sheriff has taken the property of a debtor in execution and is served with notice of the debtor's adjudication before the property is sold or before the execution is completed by the receipt or recovery of the full amount of the levy of execution.

(2) If the Assignee requires it, the sheriff must deliver to the Assignee any goods and money seized or received in part satisfaction of the execution.

(3) The costs of the execution are a first charge on the goods or money delivered to the Assignee, and the Assignee may sell the goods or part of the goods to satisfy the charge.

Compare: 1967 No 54 s 50(3)

110 Sheriff must retain proceeds of execution for 10 working days

(1) This section applies if, under execution of a judgment for a sum of more than \$100, the sheriff sells property of the debtor or is paid money in order to avoid a sale.

(2) The sheriff must deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 10 working days (which in this section is called the 10-day period), to be applied in accordance with subsection (3) or subsection (4).

(3) If the sheriff is served with notice within the 10-day period that the debtor has filed an application for adjudication, the sheriff must pay the balance to the Assignee, who is entitled to retain it as against the execution creditor.

(4) If the sheriff is served with notice within the 10-day period that a

creditor has filed an application for the adjudication of the debtor, subject to subsection (3),---

(a) the sheriff must retain the balance until the application (and any other application of which notice is served on the sheriff pending disposal of the first application) has been disposed of; and

(b) the sheriff must---

(i) if adjudication results, pay the balance to the Assignee; or

(ii) if adjudication does not result, pay the balance to the execution creditor, who is entitled to retain it as against the Assignee (subject to section 112).

(5) If the sheriff is not served with notice within the 10-day period that an application for the adjudication of the debtor has been filed, the sheriff must pay the balance to the execution creditor, who is entitled to retain it as against the Assignee.

Compare: 1967 No 54 s 50(4)

111 Purchaser under sale by sheriff acquires good title

A purchaser in good faith of a debtor's property, on which execution has been levied and which is sold by the sheriff, acquires a good title to the property as against the Assignee.

Compare: 1967 No 54 s 50(7)

112 Court may set aside rights conferred on Assignee

The Court may set aside the rights conferred on the Assignee under sections 109 and 110 in favour of the execution creditor, to the extent and on the terms and conditions (if any) that the Court thinks appropriate.

Compare: 1967 No 54 s 50(8)

Validity of property transactions with bankrupt

113 Transaction in good faith and for value after adjudication

(1) This section applies to a transaction between a person (A) and the bankrupt in relation to property that the bankrupt has acquired, or that has passed to the bankrupt, after adjudication.

(2) The transaction is valid as against the Assignee if---

(a) A deals with the bankrupt in good faith and for value; and

(b) the transaction is completed without an intervention by the Assignee.

(3) If A is the bankrupt's bank, a transaction by A dealing with the bankrupt for value includes---

(a) the receipt by A of any money, {security} [charge], or negotiable instrument from the bankrupt or by the bankrupt's order or direction; and

(b) a payment by A to the bankrupt or by the bankrupt's order or direction; and

(c) the delivery by A of a {security} [charge] or negotiable instrument to the bankrupt or by the bankrupt's order or direction.

(4) A payment of money or delivery of property by a legal personal representative to, or by the direction of, the bankrupt is a transaction for value.

Compare: 1967 No 54 s 49(1)(a), (3), (4)

114 Executions and attachments in good faith

(1) This section applies to property that the bankrupt has acquired, or that has passed to the bankrupt, after adjudication.

(2) An execution or attachment against the property is valid as against the Assignee if it is---

(a) in good faith; and

(b) in respect of a debt or liability incurred by the bankrupt after

adjudication; and

(c) completed before an intervention by the Assignee.

Compare: 1967 No 54 s 49(1)(b)

115 When execution or attachment completed for purposes of section 108 or section 114

For the purposes of section 108 or section 114---

(a) an execution against goods is completed by seizure and sale:

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

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Compare: 1967 No 54 s 50(2)

Struck out (unanimous)

=====
116 Assignee's interest in property passes

The Assignee's interest in property that is acquired by or passes to the bankrupt after adjudication ends and passes in the manner and to the extent necessary to give effect to a transaction, execution, or attachment to which section 113 or section 114 applies.

Compare: 1967 No 54 s 49(2)
=====

New (unanimous)

116 Assignee's interest in property passes

(1) This section applies to the Assignee's interest in property that is acquired by or passes to the bankrupt after adjudication.

(2) The Assignee's interest in property to which this section applies ends and passes in the manner and to the extent necessary to give effect to a

transaction, execution, or attachment to which section 113 or section 114 applies.

Compare: 1967 No 54 s 49(2)

Disclaimer of onerous property

117 Assignee may disclaim onerous property

(1) Subject to section 120, the Assignee may disclaim onerous property.

(2) Subsection (1) applies even if the Assignee has taken possession of the property, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(3) The Assignee must, within 10 working days after the disclaimer, send a written notice of the disclaimer to every person whose rights are, to the Assignee's knowledge, affected by it.

(4) For the purposes of this section and section 120, onerous property---

(a) means---

(i) an unprofitable contract; or

(ii) property of the bankrupt that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act; or

(iii) a litigation right that, in the opinion of the Assignee, has no reasonable prospect of success or cannot reasonably be funded from the assets of the bankrupt's estate; but

(b) does not include---

(i) a netting agreement to which sections 253 to 261 apply; or

(ii) any contract of the bankrupt that constitutes a transaction under that netting agreement.

Compare: 1993 No 105 s 269(1), (2), (4)

118 Effect of disclaimer

A disclaimer by the Assignee---

(a) brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the Assignee and the bankrupt in relation to the property disclaimed:

(b) does not affect the rights, interests, or liabilities of any other person, except in so far as is necessary to release the Assignee or the bankrupt from a liability.

Compare: 1993 No 105 s 269(3)

119 Position of person who suffers loss as result of disclaimer

(1) A person suffering loss or damage as a result of disclaimer by the Assignee may---

(a) claim as a creditor in the bankruptcy for the amount of the loss or damage, taking account of the effect of an order made by the Court under paragraph (b):

(b) apply to the Court for an order that the disclaimed property be delivered to, or vested in, that person.

(2) The bankrupt may also apply for an order that the disclaimed property be delivered to, or vested in, the bankrupt.

(3) The Court may make an order under subsection (1)(b) or subsection (2) if it is satisfied that it is fair that the property should be delivered to, or vested in, the applicant.

Compare: 1993 No 105 s 269(5), (6)

120 Assignee may be required to elect whether to disclaim

The Assignee loses the right to disclaim if---

(a) a person whose rights would be affected by the disclaimer has sent the Assignee a written notice requiring the Assignee to elect whether to disclaim the onerous property in question; and

(b) the notice specifies a date to disclaim that is not less than 20 working days after the Assignee has received the notice; and

(c) the Assignee does not disclaim the onerous property before the close of that date.

Compare: 1993 No 105 s 270

121 Liability for rentcharge on bankrupt's land after disclaimer

(1) The vesting of land subject to a rentcharge after disclaimer by the Assignee in the Crown, any other person, or their successors in title does not make any of those persons personally liable for the rentcharge.

(2) However, this section does not affect the liability of a person in subsection (1) for rentcharge accruing after that person has taken possession or control of the land or has entered into possession of it.

Compare: 1967 No 54 s 79

Land subject to mortgage

122 Transmission of interest in land

(1) This section applies to an interest in land that---

(a) is owned by the bankrupt; and

(b) is subject to a mortgage or a charge; and

(c) is not disclaimed by the Assignee.

(2) The Assignee must---

(a) register, under the Land Transfer Act 1952, the transmission of the interest in the land to the Assignee; or

(b) give notice to the mortgagee or other person entitled under the charge that the Assignee cannot, or does not intend to, register transmission of the interest in the land.

(3) Notice under subsection (2)(b) is notice that the interest has vested in the Assignee, and the mortgagee or person entitled under the charge is, in the event of entering into possession or selling, liable to account to the Assignee as if the Assignee was the registered proprietor of the interest.

Compare: 1967 No 54 s 80(1), (2)

123 Assignee cannot claim interest in land if bankrupt remains in possession until discharge

(1) The Assignee cannot, after the bankrupt's discharge, claim an interest in land to which section 122(1) applies and for which the Assignee has not registered a transmission if the bankrupt---

(a) was in possession of the interest at the time of adjudication; and

(b) remained in possession until discharge from bankruptcy.

(2) Subsection (1) applies whether or not the Assignee gave a notice under section 122(2)(b).

(3) However, the Assignee may apply to the Court for an order that the Assignee is entitled, after discharge, to claim the bankrupt's interest in the land, and the Court must have regard to---

(a) the good faith of the bankrupt; and

(b) the time that has elapsed since adjudication; and

(c) the value of any improvements made by the bankrupt; and

(d) all other relevant matters.

Compare: 1967 No 54 s 80(3)

Shares and other securities

124 Assignee may transfer shares and other securities

(1) The Assignee may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it if the bankrupt had not been adjudicated bankrupt:

(a) securities in a company:

(b) securities of the New Zealand Government:

(c) securities issued by a local authority:

(d) shares in ships:

(e) any other property transferable in the records of a company, office, or person.

(2) A person whose act or consent is necessary for the transfer of the property must, on the Assignee's request, do whatever is necessary for the transfer to be completed.

(3) In the case of the transfer by the Assignee of securities in a company, a shareholder to whom the securities must be offered for sale under the constitution and who agrees to purchase must pay a reasonable price for the securities, whether or not the constitution provides a procedure for fixing the price.

Compare: 1967 No 54 s 74(1), (2), (3)

125 Assignee may disclaim liability under shares

The Assignee may disclaim any liability under shares owned by the bankrupt in any company by disclaiming the shares as onerous property under section 117, but section 119 (which relates to the position of a person who suffers loss as result of disclaimer) and section 120 (which provides that the Assignee may be required to elect whether to disclaim) do not apply to a disclaimer of liability under shares.

Compare: 1967 No 54 s 78(1)

126 Assignee may be required to elect whether to disclaim liability under

shares

The Assignee loses the right to disclaim liability under shares if---

(a) the company or a person who has an interest in the shares has sent the Assignee a written notice requiring the Assignee to elect whether to disclaim liability under the shares; and

(b) the notice specifies a date to disclaim that is not less than 20 working days after the Assignee has received the notice; and

(c) the Assignee does not disclaim liability under the shares before the close of that date.

Compare: 1967 No 54 s 78(3)

127 Transfer of shares after disclaimer

(1) After disclaimer, the Assignee may, subject to the rules of any other Act and to the constitution of the company, transfer the shares in question to any person who has an interest in them.

(2) If that person refuses to accept the transfer or if no person has an interest in them, the Assignee may transfer the shares to the bankrupt if the bankrupt consents, and in that case the bankrupt is entitled as against the Assignee to retain the shares and the proceeds if the bankrupt sells them.

(3) If the Assignee does not transfer the shares to a person who has an interest in them or to the bankrupt, the board of the company may---

(a) sell the shares; or

(b) with the Court's approval and whatever any other Act may say, cancel the shares as it thinks appropriate.

(4) The Assignee is a director of the company for the purposes of transferring, selling, or cancelling the shares under this section if---

(a) immediately before adjudication the bankrupt was a director of the company; and

(b) the number of directors is less than the minimum number of directors

required by law or the company's constitution as a result of the bankrupt's disqualification as a director.

Compare: 1967 No 54 s 78(4), (5), (6)

128 Company may prove for unpaid calls

(1) This section applies if the Assignee has disclaimed liability under shares and the company has not been put into liquidation.

(2) The company may prove in the bankruptcy for---

(a) the amount of unpaid calls made before adjudication in respect of the bankrupt's shares; and

(b) the value of calls to be made in respect of the bankrupt's shares within 1 year after adjudication.

(3) The Court must determine the value of the calls to be made if the Assignee and the company cannot agree.

Compare: 1967 No 54 s 78(7)

[Consumer] goods on hire purchase

129 Meaning of hire purchase terms used in this subpart

In sections 130 to 133,---

cash price, [consumer goods,] creditor, debtor, {goods,} and post-possession notice have the same meanings as in section 2(1) of the Credit (Repossession) Act 1997

hire purchase agreement has the same meaning as in section 2(1) of the Administration Act 1969 (except that an agreement made otherwise than at retail is not a hire purchase agreement for the purposes of this Act)

purchaser means the person to whom [consumer] goods are disposed of under a hire purchase agreement, and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights.

Compare: 1967 No 54 s 91(1)

130 Restrictions on creditor dealing with [consumer] goods

(1) This section applies if---

(a) the bankrupt purchased [consumer] goods under a hire purchase agreement before adjudication; and

(b) the creditor either---

(i) took possession of the goods within 21 days before adjudication, and after adjudication still possesses them; or

(ii) takes possession of the goods after adjudication.

(2) The creditor must not sell or dispose of the [consumer] goods or part with possession of them (except for storage or repair) until 1 month after the date when the creditor serves a post-possession notice on the Assignee (which in this section and section 131 is called the 1-month period).

(3) However, subsection (2) does not apply if the Assignee consents in writing to the creditor selling or disposing of or parting with possession of the [consumer] goods before the expiry of the 1-month period.

Compare: 1967 No 54 s 91(2), (3)

131 Assignee's powers in relation to hire-purchase [consumer] goods

(1) The Assignee may,---

(a) within the 1-month period, exercise the right under section 30 of the Credit (Repossession) Act 1997 to introduce a buyer for {the} [consumer] goods; or

(b) at any time before the creditor sells or agrees to sell {the} [consumer] goods under section 25 of the Credit (Repossession) Act 1997, settle the bankrupt's obligations as debtor in accordance with section 31 of that Act.

(2) This section applies no matter what the Credit (Repossession) Act 1997

says.

Compare: 1967 No 54 s 91(4)

132 Creditor in possession of [consumer] goods may prove in bankruptcy if Assignee has not exercised powers

(1) This section applies if---

(a) a creditor has taken possession of [consumer] goods purchased under a hire purchase agreement, whether before or after the adjudication of the debtor; and

(b) the Assignee has not acted under section 131 in relation to the goods.

(2) The creditor may prove in the bankruptcy for the amount (which is subject to the limit in section 35 of the Credit (Repossession) Act 1997) that the creditor was entitled to recover from the bankrupt as debtor.

(3) If the creditor does prove in the bankruptcy under subsection (2),---

(a) the creditor must submit the following documents with the {proof of debt} [creditor's claim form]:

(i) the relevant post-possession notice; and

(ii) the statement of account mentioned in section 33 of the Credit (Repossession) Act 1997; and

(b) the Assignee has the rights conferred on a debtor by sections 20 to 36 of the Credit (Repossession) Act 1997.

Compare: 1967 No 54 s 91(5)

133 Creditor may assign [consumer] goods to Assignee

(1) This section applies if---

(a) the bankrupt purchased [consumer] goods under a hire purchase agreement before adjudication; and

(b) at the time of adjudication the creditor either---

(i) has not taken possession of the goods; or

(ii) has taken possession of them and has not sold or disposed of or parted with possession of them.

(2) The creditor may assign the [consumer] goods to the Assignee, and, if the creditor does so, may prove in the bankruptcy for the net balance due to the creditor under the agreement.

Compare: 1967 No 54 s 91(6)

Second bankruptcy

134 Status of bankrupt's property on second bankruptcy

(1) Notwithstanding section 102, the rules in subsections (2) to (4) apply if a bankrupt, before discharge, is adjudicated bankrupt for a second time.

(2) Property that is acquired by, or has passed to, the bankrupt since the first adjudication, including property acquired or that has passed since the second adjudication, vests in the Assignee in the second bankruptcy.

(3) However, the Court may, if it thinks it appropriate, order that all or part of the following assets or their proceeds vest in the Assignee in the first bankruptcy:

(a) assets in the second bankruptcy that, in the Court's opinion, were acquired independently of the creditors in the second bankruptcy:

(b) assets in the second bankruptcy that devolved upon the bankrupt.

(4) A surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and must be paid to the Assignee in the first bankruptcy.

Compare: 1967 No 54 s 59(1)(a), (b), (2)

135 Effect of notice to Assignee of application for adjudication

(1) This section applies if the Assignee in a bankruptcy receives notice that a creditor has filed an application for a second adjudication.

(2) The Assignee must hold property in his or her possession that has been acquired by, or passed to, the bankrupt since the first adjudication until the application for a second adjudication has been dealt with.

(3) The Assignee must transfer the property and its proceeds, less any deduction for the Assignee's costs and expenses, to the Assignee in second bankruptcy if the creditor's application results in a second adjudication, or if the bankrupt is automatically adjudicated bankrupt on his or her own application.

Compare: 1967 No 54 s 59(1)(c)

New (unanimous)

Persons jointly adjudicated bankrupt

135A Separate accounts

In the case of the adjudication of 2 or more persons jointly, the Assignee must keep distinct accounts of---

- (a) the joint estate; and
- (b) the separate estate of each bankrupt.

Compare: 1967 No 54 s 82(1)

New (unanimous)

135B How joint and separate estates must be applied

- (1) The joint estate must first be applied to the debts due by the bankrupts jointly.
- (2) The separate estate of each bankrupt must first be applied to the debts of that bankrupt.
- (3) Any surplus in the joint estate must be credited to the separate estate

of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate.

(4) Any surplus in the separate estate of a bankrupt must be credited to the joint estate.

Compare: 1967 No 54 s 82(1)

Subpart 2---Duties of bankrupt

136 General duty of bankrupt

(1) The bankrupt must, to the best of the bankrupt's ability, assist in the realisation of the bankrupt's property and the distribution of the proceeds among the creditors.

(2) This duty is in addition to any other duty imposed on the bankrupt by this Act or by any other enactment or law.

Compare: 1967 No 54 s 60

Duties in relation to property

137 Bankrupt must disclose property acquired before discharge

The bankrupt must as soon as practicable after acquisition notify the Assignee of any property that is---

- (a) acquired by, or passes to, the bankrupt before discharge; and
- (b) divisible among the creditors.

Compare: 1967 No 54 s 60(b)

138 Bankrupt must deliver property to Assignee on demand

(1) On demand by the Assignee, the bankrupt must deliver all or any of the bankrupt's property that is divisible among the creditors, and that is under the bankrupt's possession or control, to the Assignee or a person authorised by

the Assignee to receive it.

(2) On demand by the Assignee, the bankrupt must deliver to the Assignee, or a person authorised by the Assignee to receive it, any property that is acquired by, or passes to, the bankrupt before his or her discharge.

Compare: 1967 No 54 s 60(e), (f)

139 Bankrupt must take all steps required in relation to property and distribution of proceeds to creditors

(1) The bankrupt must take all the steps (including the steps specified in subsection (2)) in relation to the bankrupt's property, and the distribution of the proceeds to the creditors, that are---

(a) required by the Assignee; or

(b) prescribed by rules or regulations made under this Act; or

(c) directed to be done by the Court by an order made in reference to a particular bankruptcy; or

(d) directed to be done by the Court on an application by the Assignee or a creditor.

(2) The steps referred to in subsection (1) include the execution by the bankrupt of powers of attorney, conveyances, transfers, deeds, assurances, and instruments.

Compare: 1967 No 54 s 60(d)

Duties to provide information

140 Bankrupt must give Assignee accounting records and other documents

(1) As soon as practicable after adjudication, the bankrupt must---

(a) deliver to the Assignee, at the Assignee's office, relevant documents that are in the bankrupt's possession or control; and

(b) notify the Assignee of relevant documents that are in the possession

or control of any other person.

(2) In subsection (1), relevant documents means all accounting records, papers, deeds, instruments, and other documents relating to the bankrupt's estate.

Compare: 1967 No 54 s 61(1)

141 Bankrupt must give Assignee information relating to property

The bankrupt must,---

(a) as soon as practicable after adjudication, give the Assignee a complete and accurate list of the bankrupt's property and of the bankrupt's creditors and debtors, and update the lists as necessary; and

(b) give the Assignee any other information relating to the bankrupt's property that the Assignee requires; and

(c) attend before the Assignee when required by the Assignee; and

(d) verify any statement by statutory declaration when required by the Assignee.

Compare: 1967 No 54 s 60(a)

142 Bankrupt must give Assignee information relating to income and expenditure

When the Assignee requires it, the bankrupt must provide the Assignee with details of his or her income and expenditure since adjudication.

Compare: 1967 No 54 s 60(c)

143 Bankrupt must notify Assignee of change in personal information

The bankrupt must immediately notify the Assignee of any change in the bankrupt's---

(a) address; or

(b) employment; or

(c) name; or

New (unanimous)

(d) income.

Compare: 1967 No 54 s 60(g)

144 Bankrupt must give Assignee financial information

(1) The bankrupt must give the Assignee (or any person employed by the Assignee) the information and details that are necessary to prepare a statement of financial position of the bankrupt's estate.

(2) If required by the Assignee, the bankrupt must, within a reasonable time of adjudication, prepare and deliver to the Assignee full, true, and detailed accounts and statements of financial position that show---

(a) details of the bankrupt's trading and stocktaking; and

(b) details of the bankrupt's profit and losses during any period in the 3 years before the adjudication.

(3) For the bankrupt to prepare the accounts and statements of financial position referred to in subsection (2),---

(a) the Assignee must give the bankrupt full access to the bankrupt's books and papers in the Assignee's possession; and

(b) if the Assignee thinks it necessary, the bankrupt must be assisted by an accountant at the estate's expense.

Compare: 1967 No 54 s 61

Subpart 3---Control over bankrupt during bankruptcy

145 Bankrupt may be required to contribute to payment of debts

(1) If required by the Assignee, the bankrupt must pay an amount or periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts.

(2) The Assignee may impose conditions in respect of the payments.

(3) Before the Assignee may require the bankrupt to make the payment or payments, the Assignee must---

(a) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities, and prospects; and

(b) make reasonable allowance for the maintenance of the bankrupt and his or her relatives and dependants.

(4) The Court may, on the application of the Assignee, order the bankrupt to pay the amount or amounts required by the Assignee.

(5) The Court may, on the application of the Assignee, the bankrupt, or any creditor,---

(a) vary, suspend, or cancel the bankrupt's obligations to make the payments under this section:

(b) vary, suspend, or discharge any order made under subsection (4):

(c) remit any arrears owing by the bankrupt.

Compare: 1967 No 54 s 45

146 Onus of proof if bankrupt defaults in making payment

If the bankrupt defaults in making a payment required under section 145, the onus is on the bankrupt in any proceedings arising out of the default to show that the default was not wilful.

Compare: 1967 No 54 s 46

147 Prohibition of bankrupt entering business

(1) An undischarged bankrupt must not, without the consent of the Assignee or the Court, either directly or indirectly,---

(a) enter into, carry on, or take part in the management or control of any business:

(b) be employed by a relative of the bankrupt:

(c) be employed by a company, trust, trustee, or incorporated society that is owned, managed, or controlled by a relative of the bankrupt.

(2) Nothing in this section restricts section 151 of the Companies Act 1993.

Compare: 1967 No 54 s 62

148 Warrant to search for and seize bankrupt's property

(1) The Court may issue a search warrant to the Assignee or any other person if there is reason to believe that any relevant property is concealed in a locality.

(2) The warrant may authorise the Assignee or other person named in the warrant, together with any assistants that may be necessary, to---

(a) enter and search the locality; and

(b) seize and take possession of any relevant property; and

(c) if necessary, use force to enter the locality, whether by breaking open doors or otherwise; and

(d) break open any box or receptacle at the locality, by force if necessary.

(3) In this section and in section 149,---

locality means any building, aircraft, ship, carriage, vehicle, premises, or place

relevant property means---

(a) any property of the bankrupt; or

(b) any document relating to the bankrupt's property, conduct, or dealings.

Compare: 1967 No 54 s 65(2)

149 Seizure of bankrupt's property

(1) If authorised by a warrant issued by the Court, the Assignee or any other person, together with any assistants that may be necessary,---

(a) may seize any part of the bankrupt's property in the custody or possession of the bankrupt or of any other person; and

(b) with a view to seizing the bankrupt's property, may---

(i) break open any building or room of the bankrupt where the bankrupt is believed to be; and

(ii) break open any building, room, or receptacle of the bankrupt where the bankrupt's property is believed to be; and

(iii) seize and take possession of the bankrupt's property found in the building, room, or receptacle.

(2) For the purposes of this section and section 148, if the execution of a warrant takes place without the bankrupt being present, the person executing the warrant must leave in a prominent place at the locality searched a notice that---

(a) states the date and time when the warrant was executed; and

(b) states the name of the person who executed it.

(3) For the purposes of this section and section 148, the person executing the warrant must leave with the bankrupt, or leave in a prominent place at the locality searched if the bankrupt is not present, a list of any property seized during the course of the search.

(4) Subsection (3) does not apply if it is impractical to leave a list of property seized or if the bankrupt consents to receiving a list sent in accordance with subsection (5).

(5) If subsection (4) applies, the person executing the search must leave with the notice referred to in subsection (2), or with the bankrupt if the bankrupt is present, a notice stating that---

(a) relevant property has been seized in the course of the search; and

(b) within 5 working days after the execution of the warrant, a list of the property seized will be delivered or sent to the bankrupt or left in a prominent position at the place searched.

(6) If subsection (4) applies, the person executing the warrant must ensure that within 5 working days after the execution of the warrant there is delivered or sent to the bankrupt, or left in a prominent position at the place searched, a notice listing the property seized and identifying the place where the property was seized.

Compare: 1967 No 54 s 65(1)

150 Bankrupt must vacate land or buildings if required to do so

(1) The Assignee may require the bankrupt and any of his or her relatives to vacate any land or building that is part of the property vested in the Assignee under the bankruptcy.

(2) If the Assignee's demand is not complied with, the Assignee may apply to a District Court for an order for possession of the land or building.

Compare: 1967 No 54 s 66

151 Bankrupt's right to inspect documents

(1) The bankrupt may at any reasonable time inspect, and take extracts or copies of,---

(a) the bankrupt's accounting records:

(b) the bankrupt's answers to questions under section 87:

(c) the bankrupt's statement of affairs:

- (d) all proofs of debt:
- (e) the minutes of any creditors' meeting:
- (f) the record of any examination of the bankrupt.

(2) The bankrupt's right of inspection under subsection (1) is in addition to any rights that the bankrupt has under the Privacy Act 1993.

Compare: 1967 No 54 s 131

Restrictions on bankrupt dealing with property

152 No power to recover property or give release or discharge

(1) After adjudication, the bankrupt, and any person (other than the Assignee) who claims through or under the bankrupt, has no power to---

- (a) recover any property that is part of the bankrupt's estate; or
- (b) give a release or discharge in relation to that property.

(2) Subsection (1) applies subject to the provisions of sections 113 and 114.

(3) Subsection (1) applies whether or not the Assignee has intervened.

Compare: 1967 No 54 s 44(a)

153 No steps to defeat beneficial interest

(1) After adjudication, the bankrupt must not execute a power of appointment, or any other power vested in the bankrupt, if the result is to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be beneficially entitled at any time before his or her discharge.

(2) The restriction on the bankrupt in subsection (1) applies---

- (a) both before and after the bankrupt obtains a discharge; and

(b) subject to the provisions of sections 113 and 114.

Compare: 1967 No 54 s 44(b)

Bankrupt's bank accounts

154 Bank must notify Assignee of bankrupt's account

(1) A bank that ascertains or has reason to believe that a customer of the bank is an undischarged bankrupt must,---

(a) as soon as possible, notify the Assignee of any account that the customer holds with the bank; and

(b) not pay any money out of the account, unless subsection (2) applies.

(2) The bank may pay money out of the account if---

(a) the bank is authorised by an order of the Court or instructed by the Assignee to do so; or

(b) the bank has notified the Assignee of the account and has not, within 1 month of notification, received any instructions from the Assignee.

(3) At the same time that the bank notifies the Assignee under subsection (1)(a), the bank must as soon as possible notify the customer that it has notified the Assignee.

Compare: 1967 No 54 s 49(5)

155 Assignee may require bank to search account records

(1) The Assignee may, by written notice, require a bank to search its account records by comparing the names of its customers with the names (including any aliases) of undischarged bankrupts contained in or annexed to the notice.

(2) The bank must search its account records within 5 working days after receipt of the notice.

Subpart 4---Provision for bankrupt during bankruptcy

Provision for bankrupt

156 Bankrupt may retain certain assets

- (1) The bankrupt may choose and retain as the bankrupt's own property certain assets up to a maximum value.
- (2) In this section, and in section 157, maximum value means the maximum value of the assets specified in subsection (3) that the bankrupt may retain.
- (3) The assets and their maximum value are---
 - (a) the bankrupt's necessary tools of trade---the maximum value is fixed in the Assignee's discretion:
 - (b) necessary household furniture and effects, including clothing, for the bankrupt and his or her relatives and dependants---the maximum value is fixed in the Assignee's discretion:
 - (c) motor vehicle---\$5,000.
- (4) For the purposes of this section, the value of an asset is the value that the Assignee in his or her discretion places on it.
- (5) The Governor-General may, by Order in Council, amend subsection (3)(c) by increasing the maximum value, to take account of any rise in the all groups index number of the Consumer Price Index.

Compare: 1967 No 54 s 52(1)

157 Bankrupt may retain certain assets with consent of creditors

The bankrupt may retain necessary tools of trade and necessary household furniture and effects that are worth more than the maximum value, if the creditors consent by an ordinary resolution.

Compare: 1967 No 54 s 52(2)

158 Retention of assets does not affect rights under {security} [charge] or

hire purchase agreement

The retention of an asset by the bankrupt under section 156 or section 157 does not affect any rights under a valid {security} [charge] or hire purchase agreement in respect of the asset.

Compare: 1967 No 54 s 52(1)

159 Retention provisions do not confer rights to other assets

The fact that the net value of the assets that the bankrupt retains is less than the maximum values specified in section 156 does not give the bankrupt rights in relation to other assets in the bankrupt's estate.

Compare: 1967 No 54 s 52(1)

160 Relative or dependant may exercise bankrupt's right to retain assets

If the bankrupt has died, a relative or dependant of the bankrupt, who has been approved by the Assignee or the Court for this purpose, may exercise the right to retain assets under section 156 or section 157 for the benefit of the bankrupt's relatives and dependants.

Compare: 1967 No 54 s 52(3)

161 Assignee may make allowance to bankrupt

The Assignee may make an allowance out of the property of the bankrupt to the bankrupt or any relative or dependant of the bankrupt for the support of the bankrupt and his or her relatives and dependants.

Compare: 1967 No 54 s 53(1)

162 Assignee may allow bankrupt to retain money

(1) The Assignee may allow the bankrupt to retain, for the immediate maintenance of the bankrupt and his or her relatives and dependants, any money up to a maximum of \$1,000 that the bankrupt has in the bankrupt's possession or in a bank account at the time of adjudication.

(2) The Governor-General may, by Order in Council, amend subsection (1) by increasing the maximum amount that the Assignee may allow the bankrupt to retain, to take account of any rise in the Consumer Price Index.

Compare: 1967 No 54 s 53(2), (3)

Subpart 5---Powers of Assignee and Court to examine bankrupt and others

Examination of persons summoned by Assignee

163 Assignee may summon bankrupt and others to be examined

(1) The Assignee may at any time, before or after a bankrupt's discharge,---

(a) summon any of the persons listed in subsection (2) to appear before the Assignee, another Assignee, or a District Court Judge to be examined on oath in relation to the bankrupt's property, conduct, or dealings; and

(b) require that person to produce and surrender to the Assignee or District Court Judge before whom that person appears any document in that person's possession or control that relates to the bankrupt's property, conduct, or dealings.

(2) The persons referred to in subsection (1) are---

(a) the bankrupt;

(b) the bankrupt's spouse;

(c) a person known or suspected to possess any of the bankrupt's property or any document relating to the bankrupt's property, conduct, or dealings;

(d) a person believed to owe the bankrupt money;

(e) a person believed by the Assignee to be able to give information regarding---

(i) the bankrupt; or

(ii) the bankrupt's property, conduct, or dealings:

(f) a trustee of a trust of which the bankrupt is a settlor or of which the bankrupt is or has been a trustee.

Compare: 1967 No 54 s 68(1), (2)

164 Conduct of examination of person summoned by Assignee

(1) The Assignee or District Court Judge before whom a person (A) is summoned to appear under section 163 may examine A on oath.

(2) The examination must be recorded in writing, and A must sign the written record if required to do so.

(3) If A does not appear at the appointed time and has no reasonable excuse,---

(a) the District Court Judge or the Court may, on the Assignee's application, by warrant, have A arrested and brought for examination by the Court; and

(b) the Court may order A to pay all the expenses arising out of A's arrest and examination before the Court, if the Court thinks that A's evidence was necessary for the purposes of the bankrupt's estate.

Compare: 1967 No 54 s 68(3)-(5)

165 Expenses of person summoned by Assignee

A person who is summoned by the Assignee for examination---

(a) is entitled to be paid the prescribed expenses of attending the examination; and

(b) does not default in attending if those expenses have not been paid or tendered to him or her before the examination.

Compare: 1967 No 54 s 68(6)

166 Creditor may inspect record of examination

A creditor or his or her {solicitor} [lawyer] may at any reasonable time inspect the record of the examination of a person [by a District Court Judge or by the Court] under section 164.

167 Report of examination must not be published unless Court consents

(1) A person must not, without the Court's permission under subsection (2), publish a report of---

(a) any examination of a person summoned by the Assignee; or

(b) any matter arising in the course of that examination.

(2) On the Assignee's application, the Court may permit publication of a report under the conditions that the Court imposes.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 68(7)

168 Examination provisions also apply when Assignee appointed receiver and manager of debtor's property

Sections 163 to 167 also apply when the Assignee has been appointed a receiver and manager of all or part of a debtor's property under section 50, and references in sections 163 to 167 to the bankrupt must be read with all necessary modifications as if they were references to the debtor.

Compare: 1967 No 54 s 68(8)

169 Assignee may obtain documents

In addition to the power contained in section 163(1)(b), the Assignee may, by notice in writing, require the bankrupt, the bankrupt's spouse, or any other person to deliver to the Assignee any document relating to the bankrupt's property, conduct, or dealings in that person's possession or under that

person's control.

Compare: 1967 No 54 s 68A

170 No lien over bankrupt's documents and other records

(1) A person is not entitled as against the Assignee to withhold possession of, or claim a lien over,---

(a) a deed or instrument that belongs to the bankrupt; or

(b) business records (which include accounting records, accounts, receipts, bills, invoices, or any other documents relating to the bankrupt's accounts, trade dealings, or business).

(2) However, a person (A) may claim as a preferential creditor under section 272(2)(f) if---

(a) A has performed services in connection with the bankrupt's business records or a deed or instrument belonging to the bankrupt; and

(b) A has not been paid, or has not been paid in full, for those services; and

(c) A would, but for subsection (1), ordinarily have had a lien over the business records, deed, or instrument, as the case may be.

(3) The limit to which A may claim as a preferential creditor under section 272(2)(f) is 10% of the total value of the services stated in subsection (2), up to a maximum amount of \$2,000.

Compare: 1967 No 54 s 73

Bankrupt's public examination

171 Court must hold public examination if Assignee or creditors require

(1) The Court must hold a public examination of the bankrupt if, before an absolute order for the bankrupt's discharge is made, there is filed with the Court either a statement by the Assignee, or a copy of a creditors' ordinary resolution, that the bankrupt should be publicly examined.

(2) The copy of the resolution must be certified by the Assignee or the chairperson of the meeting at which it was passed.

Compare: 1967 No 54 s 69(1)

172 Notice of examination

(1) If a public examination of the bankrupt is required, the Assignee must serve the bankrupt with a notice that states---

(a) that the Assignee's statement or the creditors' resolution has been filed with the Court; and

(b) that the bankrupt is required to be publicly examined; and

(c) the time and place of the examination.

(2) At least 5 working days before the examination, the Assignee must---

(a) advertise the examination in the prescribed manner; and

(b) send a notice of the examination to each creditor.

Compare: 1967 No 54 s 69(1), (2)

173 Time for holding examination

The Court must hold the public examination of the bankrupt as soon as practicable, but not before 5 working days have elapsed after the Assignee has sent the bankrupt a notice under section 172.

Compare: 1967 No 54 s 69(1)

174 Assignee must file report before examination

Before the public examination of the bankrupt, the Assignee must file in the Court a report on---

(a) the bankrupt's estate; and

(b) the bankrupt's conduct; and

(c) all other matters of which the Court should be informed.

Compare: 1967 No 54 s 69(3)

175 Conduct of examination

(1) The bankrupt must attend the examination, and may be examined as to the bankrupt's conduct, dealings, and property.

(2) The bankrupt must be examined on oath and must answer all questions that the Court asks the bankrupt, or allows the bankrupt to be asked.

(3) The following persons may examine the bankrupt:

(a) the Assignee, or counsel for the Assignee:

(b) any creditor who has proved a claim, or counsel for that creditor.

(4) The bankrupt is not entitled to notice beforehand of who will ask the questions or what the questions will be.

Compare: 1967 No 54 s 69(4), (5)

176 Record of examination

(1) The examination must be recorded in writing as the Court directs.

(2) The record of the examination must be---

(a) read over to, and signed by, the bankrupt; and

(b) available for inspection by any creditor or that creditor's {solicitor} [lawyer] at all reasonable times.

Compare: 1967 No 54 s 69(6)

177 When examination ends

(1) The public examination of a bankrupt ends when the Court makes an order that the examination is ended.

(2) The Court must not make an order that the examination is ended unless it is satisfied that the bankrupt's conduct, dealings, and property have been sufficiently investigated and that the investigation is finished.

Compare: 1967 No 54 s 69(7)

178 Bankrupt's failure to attend examination

If the bankrupt does not appear for the examination at the appointed time and has no reasonable excuse,---

(a) a District Court Judge or the Court may, on the Assignee's application, by warrant, cause the bankrupt to be arrested and brought up for examination by the Court; and

(b) the Court may order the bankrupt to pay all the expenses arising out of the arrest and examination before the Court, if the Court thinks that the bankrupt's evidence was necessary for the purposes of the bankrupt's estate.

Compare: 1967 No 54 ss 68(4), (5), 69(8)

179 Bankrupt's expenses in attending examination

(1) A bankrupt who attends a public examination is entitled to be paid the prescribed expenses of attending.

(2) A bankrupt does not default in attending a public examination if the prescribed expenses of attending have not been paid or tendered to him or her before the examination.

Compare: 1967 No 54 ss 68(6), 69(8)

Investigation of company controlled by bankrupt and associate

180 Assignee may examine company documents, personnel, and shareholders

(1) If authorised by the Court, the Assignee or a person appointed by the

Assignee may exercise the powers set out in subsection (2) in relation to a company that is deemed to be controlled by the bankrupt and an associate or associates according to the criteria listed in section OD 1 of the Income Tax Act 2004.

(2) The Assignee may---

(a) examine the documents of the company:

(b) examine any past or present director, employee, or shareholder of the company on oath about the company's affairs.

(3) The examination of a person under subsection (2)(b) must be recorded in writing, and the person examined must sign the written record if required to do so by the Assignee.

Compare: 1967 No 54 s 74(4)

181 Meaning of associate

In section 180, associate means any of the following:

(a) the bankrupt's spouse:

(b) a lineal ancestor or descendant of the bankrupt:

(c) the spouse of a lineal ancestor or descendant of the bankrupt:

(d) a brother or sister of the bankrupt:

(e) the spouse of a brother or sister of the bankrupt.

Compare: 1967 No 54 s 74(4)

Privilege and representation of persons examined

182 No privilege against self-incrimination

(1) A person who is examined or questioned under any power under this Act must answer all questions relating to the bankrupt's conduct, dealings, and property.

(2) A person is not excused from answering a question because the question may incriminate or tend to incriminate that person.

Compare: 1967 No 54 s 70(1)

183 Statement made by person examined or questioned not generally admissible in criminal proceedings against that person

(1) A statement made by a person examined or questioned under this Act in response to a question is not admissible in criminal proceedings against that person.

(2) However, the statement is admissible if---

(a) the person was examined or questioned under oath and is charged with perjury in relation to the statement; or

(b) in the case of the bankrupt, the bankrupt is charged with an offence under section 434(1)(b).

Compare: 1967 No 54 s 70(2)

184 Representation

(1) A person who is examined under this Act may be represented by a lawyer.

(2) The person may be questioned by his or her lawyer, and any answers form part of the examination.

Compare: 1967 No 54 s 70(3)

Subpart 6---Status of bankrupt's contracts

Bankrupt's contracts entered into before adjudication

185 Assignee may continue or disclaim bankrupt's contract
If the bankrupt is a party to a contract, the Assignee may---

(a) continue the contract, subject to the terms of the contract and all

relevant rules of law; or

(b) if the contract is onerous property for the purposes of section 117, disclaim it under that section.

Compare: 1967 No 54 s 76

186 Contract terminated by other contracting party

(1) This section applies if a contract to which the bankrupt is a party is terminated on the bankrupt's adjudication by the other contracting party in accordance with the contract.

(2) Whatever the contract may say, the Assignee may recover an amount from the other contracting party that the Court thinks is just and equitable in all the circumstances, but the amount must not be greater than the amount set out in subsection (3).

(3) The amount that the Assignee may recover must not be greater than C under the formula $A - B = C$, where---

(a) A is the amount payable to the bankrupt under the contract; and

(b) B is the total of---

(i) the amount paid to the bankrupt; and

(ii) the cost to complete the contract; and

(iii) a reasonable penalty for delay in completion of the contract.

Compare: 1967 No 54 s 77

Transaction with bankrupt in ignorance of adjudication

187 Payment of money or delivery of property is good discharge

(1) This section applies if a person (A) pays money or delivers property---

(a) to a person who is a bankrupt (B); or

(b) to a person who is subsequently adjudicated bankrupt (C); or

(c) to the order of B or C; or

(d) to an assignee from B or C; or

(e) to the order of an assignee from B or C.

(2) The payment or delivery is a good discharge to A if---

(a) the payment or delivery was made before the adjudication of B or C, as the case may be, was advertised; and

(b) A satisfies the Court that---

(i) A had no knowledge of the adjudication or that an application for adjudication had been filed; and

(ii) the payment or delivery was made in the ordinary course of business or was otherwise made in good faith.

Compare: 1967 No 54 s 48

Joint contractual liability

188 Bankrupt's co-contractor may sue and be sued

If the bankrupt is jointly liable under a contract with another person, that other person may sue and be sued on the contract without the bankrupt being joined as a party to the proceeding.

Compare: 1967 No 54 s 130

{Solicitors'} [Lawyers'] costs

189 {Solicitors'} [Lawyers'] costs

The Assignee may recover money paid by a bankrupt, whether before or after adjudication, to his or her {solicitor} [lawyer] for costs in obtaining an order of adjudication, except for prescribed costs and expenses.

Compare: 1967 No 54 s 12

Subpart 7---Irregular transactions before adjudication

190 Overview of subpart 7

(1) This subpart applies to the following irregular transactions by the bankrupt before adjudication:

(a) an insolvent transaction:

(b) an insolvent {security} [charge]:

(c) an insolvent gift:

(d) an alienation of property with intent to defraud creditors to which section 60 of the Property Law Act 1952 applies:

(e) a transaction at undervalue:

(f) a contribution by the bankrupt to the property of another person.

(2) Broadly, the effect of this subpart is that the irregular transactions listed in subsection (1)(a) to (d) may be cancelled on the Assignee's initiative, and that, in appropriate cases, the Assignee may recover property or money from a party to an irregular transaction with the bankrupt.

191 Extension of 2 years and 6 months periods

A reference in this subpart to "2 years" or to "6 months" means 2 years or 6 months (as the case may be) extended as follows:

(a) in the case of adjudication on a creditor's application, extended by the period between the time when the application was served on the bankrupt and the time of adjudication:

(b) in the case of adjudication on the bankrupt's own application, while a creditor's application is awaiting a hearing, extended by the period between the time when the creditor's application was served on the bankrupt and the

time of adjudication.

Insolvent transactions

192 Insolvent transaction may be cancelled

A transaction by the bankrupt may be cancelled on the Assignee's initiative if it---

(a) is an insolvent transaction; and

(b) was made within 2 years immediately before the bankrupt's adjudication.

193 Meaning of insolvent transaction

(1) An insolvent transaction is a transaction by the bankrupt that---

(a) is {made} [entered into] at a time when the bankrupt is unable to pay his or her due debts; and

(b) enables a creditor to receive more towards satisfaction of a debt by the bankrupt than that person would receive, or would be likely to receive, in the bankruptcy.

(2) Transaction, as used in the term insolvent transaction, means any of the following steps by the bankrupt:

(a) conveying or transferring the bankrupt's property:

(b) giving a {security in} [charge over] the bankrupt's property:

(c) incurring an obligation:

(d) undergoing an execution process:

(e) paying money (including money paid in accordance with a judgment or an order of a court):

(f) anything done or omitted to be done for the purpose of entering into the transaction [or giving effect to it].

Compare: 1967 No 54 s 56(1), (2)

194 Insolvent transaction presumed

For the purposes of section 192, a transaction that is made within 6 months immediately before the bankrupt's adjudication is presumed, unless the contrary is proved, to be made at a time when the bankrupt is unable to pay his or her due debts.

Struck out (unanimous)

195 When series of transactions must be regarded as single transaction

For the purposes of section 193, a series of transactions by the bankrupt must be treated as a single transaction if---

(a) each transaction in the series is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between the bankrupt and the creditor; and

(b) in the course of the relationship, the level of the bankrupt's net indebtedness to the creditor is increased or reduced from time to time as a result of each transaction.

New (unanimous)

195 When series of transactions must be regarded as single transaction

Where---

(a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between the bankrupt and a creditor (including a relationship to which other persons are parties); and

(b) in the course of the relationship, the level of the bankrupt's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship; then---

(c) section 192 applies in relation to all the transactions forming part

of the relationship as if they together constituted a single transaction; and

(d) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction that may be cancelled by the Assignee if the effect of applying subsection (1) in accordance with paragraph (c) is that the single transaction referred to in paragraph (c) is taken to be an insolvent transaction that may be cancelled by the Assignee.

Insolvent {securities} [charges]

196 Insolvent {security} [charge] may be cancelled

A {security in} [charge over] any property of a bankrupt may be cancelled on the Assignee's initiative if---

(a) the {security} [charge] was given within 2 years immediately before the bankrupt's adjudication; and

(b) immediately after the {security} [charge] was given, the bankrupt was unable to pay his or her due debts.

Compare: 1967 No 54 s 57(1)

197 {Security} [Charge] for new consideration or {security} [charge] in substitution not affected

(1) A {security} [charge] may not be cancelled under section 196 if the {security} [charge] secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the {security holder} [secured creditor] to the bankrupt at the time when, or at any time after, the bankrupt gave the {security} [charge].

(2) A {security} [charge] may not be cancelled under section 196 if the {security} [charge] is a substitute for an existing {security} [charge] that was given by the bankrupt more than 2 years before adjudication, except to the extent that---

(a) the amount secured by the substituted {security} [charge] is greater than the amount that was secured by the existing {security} [charge];
or

(b) the value of the property subject to the substituted {security} [charge] at the date of substitution was greater than the value of the property subject to the existing {security} [charge] at that date.

Compare: 1967 No 54 s 57(2)(a)

198 Presumption that bankrupt unable to pay due debts

A bankrupt who gives a {security} [charge] within 6 months immediately before adjudication is presumed, unless the contrary is proved, to have been unable to pay his or her due debts immediately after giving the {security} [charge].

199 {Security} [Charge] for unpaid purchase price given after sale of property

(1) This section applies if the bankrupt, after purchasing property, has within 2 years immediately before adjudication given the seller a {security in} [charge over] the property.

(2) Section 196 does not affect the {security} [charge] to the extent that it secures unpaid purchase money, whether it is unpaid in relation to the property over which the {security} [charge] is given or some other property, if the {security} [charge] was given not more than 15 working days after the date of the sale of the property to the bankrupt.

Compare: 1967 No 54 s 57(2)(b)

200 Appropriation of payments by bankrupt to {security holder} [secured creditor]

(1) This section applies if the bankrupt has made a payment or payments to a {security holder} [secured creditor] after the bankrupt has given a {security} [charge] to which section 197 or section 199 applies.

(2) The bankrupt's payment or payments must be credited (as far as is necessary) towards---

(a) repayment of the money actually advanced or paid by the {security holder} [secured creditor] to the bankrupt when or after the bankrupt gave the

{security} [charge]; or

(b) payment of the actual price or value of property sold or supplied by the {security holder} [secured creditor] to the bankrupt when or after the bankrupt gave the {security} [charge]; or

(c) payment of any other liability of the bankrupt to the {security holder} [secured creditor] in respect of any other valuable consideration given in good faith when or after the bankrupt gave the {security} [charge].

(3) Nothing in this section applies to any payments received by any registered bank within the meaning of the Reserve Bank of New Zealand Act 1989 in good faith in the ordinary course of business and without negligence.

Compare: 1967 No 54 s 57(3)

201 {Security} [Charge] agreed before specified period may not be cancelled

A {security} [charge] given by the bankrupt under an agreement to give the {security} [charge] that was made before the period of 2 years immediately before adjudication may not be cancelled under section 196.

Compare: 1967 No 54 s 57(4)(a)

Insolvent gifts

202 Insolvent gift may be cancelled

A gift by a bankrupt to another person may be cancelled on the Assignee's initiative if---

(a) the bankrupt made the gift within 5 years immediately before adjudication; and

(b) the bankrupt was unable to pay his or her due debts immediately after making the gift.

203 Presumption of insolvent gift

A gift that is made within 2 years immediately before the bankrupt's

adjudication is presumed, unless the contrary is proved, to be made at a time when the bankrupt is unable to pay his or her due debts.

Procedure for cancelling irregular transactions

204 Procedure for cancelling irregular transactions

(1) The procedure set out in this section applies to the following irregular transactions:

(a) an insolvent transaction:

(b) an insolvent {security} [charge]:

(c) an insolvent gift:

(d) an alienation of property with intent to defraud a creditor to which section 60 of the Property Law Act 1952 applies.

(2) The Assignee who wishes to cancel an irregular transaction to which this section applies must---

(a) file a notice with the Court that meets the requirements set out in subsection (3); and

(b) serve the notice on---

(i) the other party to the transaction; and

(ii) any other party from whom the Assignee intends to recover.

(3) The notice must---

(a) be in writing; and

(b) state the Assignee's postal, email, and street addresses; and

(c) specify the irregular transaction to be cancelled; and

(d) describe the property or state the amount that the Assignee wishes to recover; and

(e) state that the person named in the notice may object to the cancellation of the transaction by sending to the Assignee a written notice of objection that is received by the Assignee at his or her postal, email, or street address within 20 working days after the Assignee's notice has been served on that person; and

(f) state that the written notice of objection must contain the reasons for objecting; and

(g) state that the transaction will be cancelled as against the person named in the notice if that person does not object; and

(h) state that if the person named in the notice does object, the Assignee may apply to the Court for the transaction to be cancelled.

(4) The irregular transaction is automatically cancelled as against the person on whom the Assignee has served the Assignee's notice, if that person has not objected by sending to the Assignee a written notice of objection that is received by the Assignee at his or her postal, email, or street address within 20 working days after the Assignee's notice has been served on that person.

(5) The notice of objection must state the reasons for objecting.

(6) An irregular transaction that is not automatically cancelled may still be cancelled by the Court on the Assignee's application.

Compare: 1967 No 54 s 58(1)

205 Court may order retransfer of property or payment of value

(1) On the cancellation of an irregular transaction under which property of the bankrupt, or an interest in property of the bankrupt, was transferred the Court may make an order for---

(a) the retransfer to the Assignee of the property or interest in the property; or

(b) payment to the Assignee of a sum of money that the Court thinks appropriate, but the sum must not be greater than the value of the property or interest in the property when the transaction was cancelled.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) is in addition to any other rights and remedies available to the Assignee, and this section does not restrict those rights.

Compare: 1967 No 54 s 58(2)-(4)

206 Limits on recovery

The Court must not make an order under section 205 against a person (A) if A proves that when A received the property or interest in the property---

(a) A acted in good faith; and

(b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the bankrupt was, or would become, unable to pay his or her due debts; and

(c) A gave value for the property or interest in the property or altered A's position in the reasonably held belief that the transfer of the property or interest in the property to A was valid and would not be cancelled.

Compare: 1967 No 54 s 58(6)

207 Recovery by appointee

The provisions of sections 204 to 206 apply to the recovery of property or its value by an appointee under Part 6 as if each reference to the Assignee were a reference to the appointee acting under Part 6.

208 Land Transfer Act 1952 does not limit sections 204 to 207

The Land Transfer Act 1952 does not limit sections 204 to 207.

Compare: 1967 No 54 s 58(7)

Transactions at undervalue

209 Assignee may recover difference in value

(1) Under section 210, the Assignee may recover from a person (X), who is a party to a transaction with the bankrupt, the amount C in the formula $A - B = C$, where---

(a) A is the value that X received from the bankrupt under the transaction; and

(b) B is the value (if any) that the bankrupt received from X under the transaction.

(2) In this section and in section 210, transaction includes the giving of a guarantee by the bankrupt.

Compare: 1993 No 105 s 297(1)

210 When Assignee may recover difference

The Assignee may recover the difference in value (that is, C in the formula in section 209(1)) from X if---

(a) the bankrupt entered into the transaction with X within 2 years immediately before adjudication; and

(b) either---

(i) the bankrupt was unable to pay his or her due debts when the bankrupt entered into the transaction; or

(ii) the bankrupt became unable to pay his or her due debts as a result of entering into the transaction.

Compare: 1993 No 105 s 297(1)

Bankrupt's contribution to another person's property

211 Court may order recipient to pay value to Assignee

(1) On the application of the Assignee, the Court may order the recipient of

a contribution by the bankrupt to the recipient's property to pay the value of the contribution to the Assignee.

(2) The Court may make the order if---

(a) the bankrupt was not paid an adequate amount in money or money's worth for the contribution; and

(b) the value of the bankrupt's assets was reduced by the contribution; and

(c) the bankrupt made the contribution---

(i) within 2 years immediately before adjudication; or

(ii) within 5 years immediately before adjudication, and the recipient is not able to prove that the bankrupt, either at the time of the contribution or at any later time before adjudication, was able to pay the bankrupt's debts without the aid of the contribution.

(3) For the purposes of this section and section 212, a bankrupt has made a contribution to the recipient's property if the bankrupt has---

(a) erected buildings on, or otherwise improved, land or any other property of the recipient; or

(b) bought land or any other property in the recipient's name; or

(c) provided money to buy land or any other property in the recipient's name or on the recipient's behalf; or

(d) paid instalments for the purchase of, or towards the purchase of, land or any other property in the recipient's name or on the recipient's behalf.

Compare: 1967 No 54 s 55(1), (2)

212 Court's powers in relation to bankrupt's contribution to recipient's property

(1) The Court may ascertain the value of the bankrupt's contribution (including any payments of legal expenses, interest, rates, and other expenses

or charges) for the purposes of section 211, and order the recipient to pay it to the Assignee.

(2) The Court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, if---

(a) the recipient acted in good faith and has altered the recipient's position in the reasonably held belief that the bankrupt's contribution was valid and that the recipient would not be liable to repay it in full or in part; or

(b) in the Court's opinion, it is unfair that the recipient should repay all or part of the contribution.

(3) If the Court orders that the recipient must repay the bankrupt's contribution, the Court may also (in the same or a subsequent order)---

(a) direct the Assignee to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and

(b) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

Compare: 1967 No 54 s 55(2)(a), (b)

213 How Assignee must use repayment of bankrupt's contribution to property

The Assignee must use the money repaid under section 211 by the recipient of a contribution by the bankrupt to property, or the proceeds of the sale of the property, as the case may be, by taking the following steps in order:

(a) first, the Assignee must keep as much of the proceeds as the Assignee needs, when added to the other assets in the bankrupt's estate, to pay the creditors in full (including interest) under section 272 (Step 1); and

(b) secondly, if there is a surplus after the creditors have been paid in full, the Assignee must pay as much of the surplus to the recipient of the property to which the bankrupt has contributed as {the Assignee first retained} [was repaid under section 211] (Step 2); and

(c) thirdly, the Assignee must not pay anything to the bankrupt before the Assignee has taken Step 1 and Step 2.

Compare: 1967 No 54 s 55(2)(c)

214 Land Transfer Act 1952 does not limit sections 211 to 213

The Land Transfer Act 1952 does not limit sections 211 to 213.

Compare: 1967 No 54 s 55(4)

Subpart 8---Role and powers of Assignee

Powers of Assignee

215 Assignee's general powers

(1) The Assignee has the powers---

(a) necessary to carry out the functions and duties of the Assignee under this Act; and

(b) conferred on the Assignee by this Act.

(2) In particular, the Assignee has the powers set out in Schedule 1.

Compare: 1967 No 54 s 71

216 Assignee must not sell bankrupt's property before first creditors' meeting

The Assignee must not sell any of the bankrupt's property before the first creditors' meeting, unless---

(a) the property is perishable property or is likely to fall rapidly in value; or

(b) in the Assignee's opinion, the sale of the property might be prejudiced by delay; or

(c) expenses will be incurred by the delay, and before selling the

Assignee consults a creditor or creditors.

Compare: 1967 No 54 s 72(4)

217 Title of purchaser from Assignee

The title of a purchaser of the bankrupt's property from the Assignee under a document that is made in the exercise of the Assignee's power of sale in Schedule 1---

(a) cannot be challenged except on the ground of fraud; and

(b) is not affected by an absence of authority to sell, or the improper or irregular exercise of the power of sale.

Compare: 1967 No 54 s 72(5)

218 Obligation to bank and power to invest money

(1) The Assignee must have a bank account and, as may be prescribed by regulations made under this Act, must pay into that account all money that the Assignee receives in that capacity.

(2) The Assignee may invest money that is not immediately required to be paid out in the administration of a particular estate in an investment of a type approved by the Auditor-General, and must credit to that estate the interest or dividends that accrue on the investment.

Compare: 1967 No 54 s 81

219 Assignee may assign right to sue under this Act

(1) The Assignee may, if the Court has first approved it, assign any right to sue that is conferred on the Assignee by this Act.

(2) The application for approval may be---

(a) made by the Assignee or the person to whom it is proposed to assign the right to sue; and

(b) opposed by a person who is a defendant to the Assignee's action, if already begun, or a proposed defendant.

220 Proceedings by Assignee when bankrupt is partner in business partnership

(1) If a member of a business partnership is adjudicated bankrupt, the Court may authorise the Assignee to bring a proceeding in the names of the Assignee and the bankrupt's partner (P).

(2) The Assignee must serve notice on P of the application for authority to bring the proceeding, and P may oppose the application.

(3) P may apply to the Court for a direction that---

(a) P must be paid P's proper share of the proceeds of the proceeding;

or

(b) P must be indemnified by the Assignee against any costs incurred in the proceeding, on the condition that P does not claim any benefit from the proceeding.

(4) Any release by P of the debt or demand to which the proceeding relates is void.

Compare: 1967 No 54 s 82(2)

Notice by Assignee

221 Means of giving notice to creditors

Any requirement under this Act that the Assignee give notice to a creditor is satisfied,---

(a) in the case of a natural person, if the notice is---

(i) delivered to that person; or

(ii) posted to that person's address or delivered to a box at a document exchange that that person is using at the time; or

(iii) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile:

(b) in the case of a company, if the notice is sent in accordance with section 388 of the Companies Act 1993:

(c) in the case of an overseas company, if the notice is sent in accordance with section 390 of the Companies Act 1993:

(d) in the case of a body corporate that is not a company or an overseas company, if the notice is sent in accordance with section 391(3) of the Companies Act 1993.

Assignee's decisions

222 Assignee's discretion

(1) The Assignee may use his or her own discretion in the administration of the bankrupt's property, but must have regard to the resolutions of the creditors at creditors' meetings.

(2) The Assignee or a creditor may apply to the Court for directions if the Assignee or creditor believes that a resolution of the creditors---

(a) conflicts with this Act or any legal rule; or

(b) is unjust or unfair.

Compare: 1967 No 54 s 84

223 Assignee may apply for directions by Court

(1) The Assignee may apply to the Court for directions on any question concerning the operation of this Act.

(2) An Assignee who acts under a direction of the Court discharges his or her duty in relation to the question for which a direction was sought, and it does not matter that subsequently the direction is invalidated, overruled, or set aside or becomes ineffective.

(3) However, the Assignee is not protected by subsection (2) if, in

obtaining or following the Court's direction, the Assignee was guilty of---

- (a) fraud; or
- (b) deliberate concealment or misrepresentation.

Compare: 1967 No 54 s 85

224 Appeal from Assignee's decision

(1) A person (including the bankrupt or a creditor) whose interests, monetary or otherwise, are detrimentally affected by an act or decision to which this section applies may apply to the Court to reverse or modify the act or decision.

(2) This section applies to---

(a) an act or decision of the Assignee; or

(b) a decision of a District Court Judge in carrying out an examination under section 163.

(3) The application must be made---

(a) within 15 working days of the act or decision; or

(b) within the additional time that the Court allows.

(4) The Court may confirm, reverse, or modify the act or decision.

(5) A creditor who is aggrieved by a decision of the Assignee rejecting the {creditor's proof of debt} [creditor's claim] may make an application under section 237.

Compare: 1967 No 54 s 86

Assignee's accounting records

225 Assignee must keep proper accounting records

(1) Every Assignee must---

(a) keep proper accounting records for each bankruptcy, in the prescribed form; and

(b) verify those records by statutory declaration, when required by the Court.

(2) A creditor or any person who has an interest may inspect the Assignee's accounting records for a particular bankruptcy.

Compare: 1967 No 54 s 132(1), (2)

226 Assignee's final statement of {accounts and statement of financial position} [receipts and payments]

(1) The Assignee must prepare a final statement of {accounts and statement of financial position} [receipts and payments]---

(a) as soon as practicable after the distribution of the final dividend has been determined; or

(b) when the whole of the bankrupt's property has been realised, if there are insufficient assets to pay all the proofs of debt.

(2) The final statement of {accounts and statement of financial position} [receipts and payments] must---

(a) show in detail the receipts and payments in respect of the bankrupt's estate; and

(b) be able to be inspected without fee by any creditor or other person who has an interest.

Struck out (unanimous)

=====
(3) The Assignee must file the final statement of accounts and statement of financial position in the Court, and advertise in the prescribed manner that they have been filed.
=====

New (unanimous)

(3) The Assignee must publish the final statement of receipts and payments in the prescribed manner, and advertise in the prescribed manner that it has been published.

Compare: 1967 No 54 s 132(2)-(5)

227 Auditor-General may audit Assignee's accounts

The Auditor-General may, at the Auditor-General's discretion, audit---

(a) the Assignee's accounting records for any bankruptcy:

(b) any statement of accounts and statement of financial position prepared by the Assignee under section 226:

(c) any account maintained by the Assignee for the purposes of this Act.

Compare: 1967 No 54 s 132A

228 Assignee may return or destroy accounting records

After 1 year after the discharge of the bankrupt, the Assignee may dispose of the accounting records deposited with the Assignee for the purposes of the bankruptcy by---

(a) delivering them to the bankrupt or the bankrupt's personal representative, if requested; or

(b) destroying or otherwise disposing of them.

Compare: 1967 No 54 s 136

Subpart 9---{Proofs of debt} [Creditors' claims]

Provable debts

229 Meaning of provable debt {and proof of debt}

(1) A provable debt is a debt or liability that a creditor of the bankrupt

may prove in the bankruptcy.

(2) A {proof of debt} [creditor's claim form] is the document that a creditor submits to the Assignee for the purpose of proving the debt.

(3) A debt is proved when it is admitted by the Assignee.

230 What debts are provable debts

(1) A provable debt is a debt or liability that the bankrupt owes---

(a) at the time of adjudication; or

(b) after adjudication but before discharge, by reason of an obligation incurred by the bankrupt before adjudication.

(2) A fine, penalty, sentence of reparation, or other order for the payment of money that has been made following any conviction or order made under section 106 of the Sentencing Act 2002---

(a) is not a provable debt; and

(b) is not discharged when the bankrupt is discharged from bankruptcy.

Compare: 1967 No 54 s 87

Procedure for proving debt

231 Creditor must submit {proof of debt} [creditor's claim form]

(1) A creditor, including a creditor who has a preferential claim, who wishes to {submit a proof of debt must submit a proof} [claim in the bankruptcy must submit a creditor's claim form] to the Assignee within the specified time.

(2) In subsection (1), specified time means the time for submitting the {proof} [claim form] that is specified by the Assignee by notice to the creditor or that is specified by the Assignee by advertisement in the prescribed manner.

(3) The {proof} [claim form] must comply with the prescribed formalities.

(4) A creditor must submit the {proof} [claim form] in accordance with the prescribed procedure.

(5) The creditor must bear the costs of proving the debt, unless the Court makes an order as to the creditor's costs under section 240.

(6) The creditor may amend or withdraw the {proof of debt} [claim form], but an amended {proof} [form] must comply with the formalities prescribed for the original {proof} [claim form].

Compare: 1967 No 54 s 88(1), (2), (3), (5)

Role of Assignee in examining {proofs of debt} [creditor's claim form]

232 Assignee must examine {proofs of debt} [creditor's claim form]

(1) The Assignee must examine each {proof of debt} [creditor's claim form] and the grounds of the debt, unless the Assignee considers it likely that no dividend will be paid to creditors.

(2) After examining the {proof of debt} [claim form], the Assignee must, as soon as practicable, do {any one} [1] or more of the following:

- (a) admit {it} [the claim], in whole or in part:
- (b) reject {it} [the claim], in whole or in part:
- (c) require further evidence in support of {it} [the claim].

Compare: 1967 No 54 s 89(1)

233 Assignee must give creditor notice of grounds of rejection

If the Assignee rejects a {proof of debt} [creditor's claim], or part of it, the Assignee must as soon as practicable give the creditor notice of the Assignee's grounds for rejecting the {proof} [claim].

Compare: 1967 No 54 s 89(3)

234 Assignee's power to obtain evidence of debt

(1) The Assignee may summon for examination, and examine (on oath or otherwise), any of the following persons:

(a) a person who has submitted {or made a proof of debt} [a creditor's claim]:

(b) a person who has made a declaration or statement as part of a {proof of debt} [creditor's claim]:

(c) a person who is capable of giving evidence concerning a {proof of debt} [creditor's claim] or the debt to which the {proof} [claim] relates.

(2) If a person (A) who has been summoned under this section fails to attend, or attends but refuses to be sworn or give evidence, and has no reasonable excuse, the Court may---

(a) on the Assignee's application, by warrant have A arrested and brought for examination by the Court; and

(b) order A to pay all the expenses arising out of A's arrest and examination, if the Court thinks that A's evidence was necessary for deciding whether the {proof of debt} [creditor's claim] in question should be admitted or rejected.

Compare: 1967 No 54 s 89(2)

235 Notice to Assignee to admit or reject {proof of debt} [creditor's claim]

(1) The bankrupt or any creditor may give the Assignee notice to admit or reject a {proof of debt} [creditor's claim].

(2) If, after 10 working days after receiving the notice, the Assignee has not made a decision admitting or rejecting the {proof of debt} [creditor's claim], on the application of the bankrupt or the creditor the court may---

(a) admit or reject the {proof} [claim]; or

(b) make any other order that it thinks appropriate.

Compare: 1967 No 54 s 89(6)

236 Court may cancel {proof of debt} [creditor's claim]

(1) The court may make an order cancelling an admitted {proof of debt} [creditor's claim] or reducing {it's} [the] amount [claimed], if it considers that the {proof} [claim] was improperly admitted.

(2) The court may make the order on the application of the Assignee, the bankrupt, or any creditor.

(3) The court must not make an order under subsection (1) unless the creditor who submitted the {proof} [claim] has been served with the application.

Compare: 1967 No 54 s 89(5)

237 Court may reverse or modify Assignee's decision rejecting {proof of debt} [creditor's claim]

(1) A creditor whose {proof of debt} [claim] has been rejected by the Assignee may apply to the court for an order modifying or reversing the Assignee's decision.

(2) The creditor must apply within 15 working days after the creditor receives the Assignee's notice of rejection of the {proof} [claim], or within the additional time that the court allows.

(3) The court may---

(a) reverse or modify the Assignee's decision in whole or in part; or

(b) confirm it.

(4) A creditor has no right to prove for a debt or liability that has been rejected by the Assignee, unless the creditor has made an application under this section.

Compare: 1967 No 54 s 89(4)

238 Parties to application to court in relation to {proof of debt}
[creditor's claim]

(1) This section applies to an application that is made under section 235, section 236, or section 237.

(2) If the applicant is not the Assignee, the applicant must name and serve the Assignee as a party to the proceeding.

(3) The bankrupt and any creditor may give notice to the court hearing the application, and, on doing so, become parties to the proceeding.

Compare: 1967 No 54 s 89(7)

239 Which court may hear application to {proof of debt} [creditor's claim]

(1) If the {proof of debt} [creditor's claim] is for a sum of not more than \$200,000, an application under section 235, section 236, or section 237 may be made to the District Court.

(2) In that case, the provisions of the District Courts Act 1947 as to appeals and the transfer of proceedings to the High Court apply as if the application were an action and the amount of the {proof} [creditor's claim] in dispute were the amount of a claim [in the action].

(3) If the {proof of debt} [creditor's claim] is for a sum of more than \$200,000, an application under section 235, section 236, or section 237 may be made to the High Court.

(4) In that case, the decision of the High Court may be taken on appeal to the Court of Appeal by---

(a) any party to the proceeding, if the High Court gives that party leave to appeal:

(b) any aggrieved person.

Compare: 1967 No 54 s 89(8), (9)

240 Court may make order as to costs

On an application under section 235, section 236, or section 237, the court hearing the application may, if it thinks it appropriate, order that---

(a) any costs of a creditor be added to the creditor's {proof of debt} [claim]:

(b) any costs of any party to the proceeding be paid out of the bankrupt's estate:

(c) any costs be paid by any party to the proceedings, except the Assignee.

Compare: 1967 No 54 s 89(10)

Secured creditors

241 Secured creditor's options in relation to property subject to {security} [charge]

(1) A secured creditor may---

(a) realise property subject to a {security} [charge], if entitled to do so (Option 1); or

(b) value the property subject to the {security} [charge] and prove in the bankruptcy as an unsecured creditor for the balance due (if any) after deducting the amount of the valuation (Option 2); or

(c) surrender the {security} [charge] to the Assignee for the general benefit of the creditors and prove in the bankruptcy as an unsecured creditor for the whole debt (Option 3).

(2) Despite subsection (1), a secured creditor may exercise Option 1 whether or not the creditor has exercised Option 2.

Compare: 1993 No 105 s 305(1), (2)

242 Assignee may require secured creditor to choose option

(1) The Assignee may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to---

(a) choose 1 of the options in section 241(1); and

(b) if the creditor chooses Option 2 or Option 3, exercise that option within the 20-working day period.

(2) A secured creditor who has been served with a notice under subsection (1) and fails to comply---

(a) is treated as having surrendered the {security} [charge] to the Assignee under Option 3 in section 241(1) for the general benefit of the creditors; and

(b) may prove as an unsecured creditor for the whole debt.

Compare: 1993 No 105 s 305(8), (9)

243 Assignee not required to act in relation to certain property subject to {security} [charge]

The Assignee may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a {security} [charge], except property subject to a {security} [charge] that has been surrendered under section 241(1)(c) or section 242(2)(a).

Compare: 1993 No 105 s 254(a)

244 Realisation of property subject to security

(1) A secured creditor who realises property subject to a {security} [charge] may prove as an unsecured creditor for any balance due after deducting the net amount realised.

(2) However, subsection (1) does not apply if the Assignee has accepted a valuation and {proof of debt} [creditor's claim] under section 247.

(3) A secured creditor who realises property subject to a {security} [charge] must account to the Assignee for any surplus remaining after the following amounts have been paid:

(a) the amount of the debt:

(b) interest payable on the debt up to the time when it is paid:

(c) any proper payments to the holder of any other {security in} [charge over] the property.

Compare: 1993 No 105 s 305(3)

245 Valuation of {security} [charge] and proof for balance due

(1) This section applies if a secured creditor values the property subject to the {security} [charge] and seeks to prove as an unsecured creditor for the balance due after deducting the amount of the valuation.

(2) The valuation and the {proof of debt} [claim for the balance] must---

(a) be made in the prescribed [creditor's claim] form; and

(b) contain full particulars of the valuation and the debt; and

(c) contain full particulars of the {security} [charge], including the date when it was given; and

(d) identify any documents that substantiate the debt and the {security} [charge].

(3) The creditor must produce any document identified under subsection (2)(d) if required by the Assignee.

Compare: 1993 No 105 s 305(4), (5)

246 False claim by secured creditor

(1) A person commits an offence if that person---

(a) makes, or authorises the making of, a claim under section 245(1) that is false or misleading in a material particular knowing that it is false or misleading; or

(b) omits, or authorises the omission of, any matter from a claim under section 245(1) knowing that the omission makes the claim false or misleading.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or both.

Compare: 1993 No 105 s 305(11)

247 Assignee's powers when secured creditor values property subject to {security} [charge] and proves for balance

(1) If a secured creditor values the property subject to the {security} [charge] and seeks to prove for the balance due, the Assignee must---

(a) accept the valuation and the {proof of debt} [creditor's claim]; or

(b) reject the valuation and {proof of debt} [creditor's claim] in whole or in part.

(2) If the Assignee rejects the valuation and {proof of debt} [creditor's claim], the creditor may submit a revised valuation and {proof of debt} [creditor's claim form] within 10 working days after receiving notice of the rejection.

(3) The Assignee may revoke or amend a decision rejecting a valuation and {proof of debt} [creditor's claim], if the Assignee subsequently thinks that the decision was wrong.

(4) If the Assignee accepts the valuation and {proof of debt} [creditor's claim], the Assignee may, at any time before the creditor realises the property, redeem the {security} [charge] by paying the amount of the valuation to the creditor.

(5) In subsection (4), the Assignee accepts the valuation and {proof of debt} [creditor's claim] if the Assignee---

(a) accepts the original or an amended valuation and {proof of debt} [creditor's claim]:

(b) accepts a valuation and {proof of debt} [creditor's claim] after amending or revoking a decision to reject a valuation and {proof of debt} [creditor's claim].

Compare: 1993 No 105 s 305(6), (7)

248 Secured creditor who surrenders {security} [charge] may withdraw surrender or submit new {proof of debt} [creditor's claim]

(1) This section applies to a secured creditor who has surrendered a {security} [charge] under Option 3 in section 241(1)(c) or under section 242(2).

(2) The creditor may, with the leave of the Court or the Assignee and subject to the terms and conditions that the Court or the Assignee imposes,---

(a) withdraw the surrender and rely on the {security} [charge]; or

(b) submit a new {proof of debt} [creditor's claim] under section 241(1)(c) or section 242(2)(b).

(3) Subsection (2) does not apply if the Assignee has already realised the property subject to the {security} [charge].

Compare: 1993 No 105 s 305(10)

{Proofs of debt} [Creditors' claims] subject to uncertainty

249 Assignee may estimate amount of uncertain {proof of debt} [creditor's claim]

If a {proof of debt} [creditor's claim] is subject to a contingency or is for damages, or if, for some other reason, the amount of the {proof of debt} [claim] is uncertain, the Assignee may estimate the amount of the {proof of debt} [claim].

Compare: 1993 No 105 s 307(1); 1967 No 54 s 98

250 Application to Court to determine amount of uncertain {proof of debt} [creditor's claim]

The Court must determine the amount of an uncertain {proof of debt} [creditor's claim] on the application of---

(a) the Assignee, if the Assignee chooses not to estimate the amount:

(b) a creditor, if the Assignee has estimated the amount and the creditor is aggrieved by the estimate.

Compare: 1993 No 105 s 307(2); 1967 No 54 s 99

{Proofs of debt} [Creditors' claims] payable after adjudication

251 {Proof of debt} [Creditor's claim] payable 6 months or more after adjudication

(1) A {proof of a debt} [creditor's claim] that would, but for the bankruptcy, be payable 6 months or more after the date of adjudication is treated as a {proof} [claim] for the present value of the debt.

(2) The present value of the debt is calculated by deducting interest at the rate prescribed under section 87(3) of the Judicature Act 1908 for the period from the date of adjudication to the date when the debt would be payable.

Compare: 1993 No 105 s 309; 1967 No 54 s 95

Set-off

252 Mutual credit and set-off

(1) If there have been mutual credits, mutual debts, or other mutual dealings between a bankrupt and another person,---

(a) an account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and

(b) an amount due from one party to the other must be set off against an amount due from the other party; and

(c) only the balance of the account may be proved in the bankruptcy, or is payable to the Assignee, as the case may be.

(2) However, a person (A) may not claim the benefit of any set-off against an amount due by the bankrupt if, when A gave credit to the bankrupt, A had notice of an available act of bankruptcy by the bankrupt.

(3) A creditor of the bankrupt who claims a set-off must declare in {the creditor's proof of debt} [that person's creditor's claim form] that, when the creditor gave the bankrupt credit, the creditor did not have notice of an available act of bankruptcy by the bankrupt.

Compare: 1993 No 105 s 310(1); 1967 No 54 s 93

Set-off under netting agreement

253 Definitions relating to set-off under netting agreement

In this section and in sections 254 to 261, unless the context otherwise requires,---

Bank means the Reserve Bank of New Zealand

bilateral netting agreement means an agreement that provides in respect of 2 transactions between 2 persons to which the agreement applies---

(a) that on the occurrence of an event specified in the agreement, all or any of those transactions must (or may, at the option of a party) be terminated and---

(i) an account must be taken of all money due between the parties in respect of the terminated transactions; and

(ii) all obligations in respect of that money must be satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit; or

(b) that each transaction is to be debited or credited to an account with the effect that the rights and obligations of each party that existed in respect of the relevant account before the transaction are extinguished and replaced by rights and obligations in respect of the net debit due on the relevant account after taking into account that transaction; or

(c) that amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net credit,---

but does not include any bilateral netting agreement that is part of a multilateral netting agreement

clearing house means a person that provides clearing or settlement services in respect of financial transactions between parties to a multilateral netting agreement

multilateral netting agreement means an agreement that provides for the settlement between more than 2 persons of payment obligations arising under transactions that are subject to the agreement, and that provides, in respect of transactions to which it relates, that debits and credits arising between the parties are to be brought into account so that amounts payable to each party are satisfied by---

(a) payment by or on behalf of each party having a net debit to or on behalf of a clearing house (whether as agent or as principal) or a party having a net credit; and

(b) receipt by or on behalf of each party having a net credit from or on behalf of a clearing house (whether as agent or as principal) or a party having a net debit

netted balance means any amount calculated under a netting agreement as the net debit payable by or on behalf of a party to the agreement to or on behalf of another party to the agreement in respect of all transactions or any transaction to which the netting agreement applies

netting agreement means a bilateral netting agreement or a recognised multilateral netting agreement

recognised clearing house means a clearing house declared under section 310K of the Companies Act 1993 to be a recognised clearing house

recognised multilateral netting agreement means a multilateral netting agreement that is contained in, or is subject to, the rules of a recognised clearing house.

Compare: 1967 No 54 s 93A

254 Application of set-off under netting agreement

(1) Sections 253 to 261 apply---

(a) to a netting agreement---

(i) made in or evidenced by writing; and

(ii) in respect of which the application of sections 253 to 261 has not been expressly excluded; and

(iii) whether made before or after the commencement of this section; and

(b) to all obligations under a netting agreement (whether those obligations are payable in New Zealand currency or in some other currency).

(2) Sections 253 to 261 apply despite---

(a) any disposal of rights under a transaction that is subject to a netting agreement in contravention of a prohibition in the netting agreement; or

(b) the creation of a {security} [charge] or other interest in respect of the rights referred to in paragraph (a) in contravention of a prohibition in the netting agreement.

Compare: 1967 No 54 s 93B

255 Calculation of netted balance

If a person who is a party to a netting agreement is bankrupt,---

(a) any netted balance payable by or to the bankrupt must be calculated in accordance with the netting agreement; and

(b) that netted balance constitutes the amount that may be claimed in the bankruptcy or is payable to the bankrupt, as the case may be, in respect of the transactions that are included in the calculation.

Compare: 1967 No 54 s 93C

256 Mutuality required for transactions under bilateral netting agreements

Sections 253 to 261 apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits or

mutual debts.

Compare: 1967 No 54 s 93D

257 When mutuality required for transactions under recognised multilateral netting agreements

(1) Sections 253 to 261 apply to transactions that are subject to a recognised multilateral netting agreement, whether or not those transactions constitute mutual credits or mutual debts.

(2) Despite subsection (1), sections 253 to 261 do not apply to transactions that are subject to a recognised multilateral netting agreement if---

(a) those transactions do not constitute mutual credits or mutual debts; and

(b) a party to any of those transactions is acting as a trustee for another person; and

(c) the party acting as trustee is not authorised by the terms of the trust of which the party is a trustee to enter into the transaction.

Compare: 1967 No 54 s 93E

258 Application of set-off under section 252 to transaction subject to netting agreements

(1) Section 252 does not apply to transactions that are subject to a netting agreement to which sections 253 to 261 apply.

(2) However, a netted balance is to be treated as an amount to which section 252 applies if the bankrupt and the other party to the netting agreement have mutual credits or mutual debts between them that are not subject to the netting agreement.

Compare: 1967 No 54 s 93F

259 Transactions under netting agreement and insolvent transactions

(1) Nothing in sections 253 to 261 prevents the operation of section 192 in relation to any transaction to which a netting agreement applies.

(2) For the purposes of section 192, the following are obligations incurred:

(a) a transaction entered into by a bankrupt under a netting agreement if the effect of the transaction is to reduce any netted balance payable by or to the bankrupt:

(b) a netting agreement entered into by a bankrupt to the extent that the effect of entering into the netting agreement is to reduce any amount that was owing by or to the bankrupt at the time the bankrupt entered into the agreement.

Compare: 1967 No 54 s 93G

260 Set-off under netting agreement not affected by notice under section 204(2)

The filing of a notice under section 204(2) in respect of a transaction that is subject to a netting agreement does not affect the operation of section 255 in respect of the transaction, and that section continues to apply to the transaction until the transaction is cancelled under section 204.

Compare: 1967 No 54 s 93H

261 Disclaimer of onerous property and termination of netting agreement not permitted

The Assignee must not---

(a) disclaim, under section 117 or section 125, any property of a bankrupt that relates to a transaction under a netting agreement:

(b) terminate, under section 185, a netting agreement or any contract of a bankrupt that constitutes a transaction under a netting agreement.

Compare: 1967 No 54 s 93I

Interest

262 Pre-adjudication interest

A creditor may claim interest up to the date of adjudication,---

(a) in the case of contract debt interest, at the rate specified in the contract that provides for interest on the debt; or

(b) in the case of judgment debt interest, at the rate payable on the debt.

Compare: 1993 No 105 s 311(1)

263 Post-adjudication interest at prescribed rate if surplus remains

(1) The Assignee must pay interest on all admitted {proofs of debt} [creditors' claims] at the prescribed rate if there are surplus assets left after the Assignee has paid the {proofs} [claims].

(2) The Assignee must pay interest from the date of adjudication to the date when each debt is paid.

(3) If the surplus is not enough to pay interest in full on all debts, payment of interest must abate rateably among them all.

Example

A and B are the only creditors of the bankrupt, C. A's contract with C provided for interest of 20%, but B's contract did not provide for interest. C's bankruptcy commenced on 1 April 2002. At that date---(1) C owed A \$1,000 plus \$100 contractual debt interest; and (2) C owed B \$2,000 but no interest. A can prove in the bankruptcy for \$1,100 and B for \$2,000. The Assignee pays their claims in full on 1 April 2003, 1 year after the commencement of the bankruptcy. If there are surplus assets after the Assignee has paid the claims of A and B in full, the Assignee must use the surplus to pay interest on both debts for the period from 1 April 2002 to 1 April 2003. If there is enough, and assuming that the prescribed rate is 10%, the Assignee must pay A \$110 and B \$200 in post-adjudication interest. Assume that the Assignee has a surplus of only \$155. In that case A and B share pro rata, so that A is paid \$55 in post-adjudication interest, and B is paid \$100.

Compare: 1993 No 105 s 311(2)

264 Additional post-adjudication interest on contract or judgment debt if surplus remains

(1) If there is a surplus after the Assignee has paid post-adjudication interest at the prescribed rate under section 263, the Assignee must pay additional post-adjudication interest on admitted proofs for a contract debt or judgment debt, by making up,---

(a) in the case of a contract debt, the difference between the prescribed rate and the rate specified in the contract:

(b) in the case of a judgment debt, the difference between the prescribed rate and the rate payable on the debt.

(2) The Assignee must pay interest from the date of adjudication to the date when each {proof of debt} [creditor's claim] is paid.

(3) If the surplus is not enough to pay additional post-adjudication interest in full on the {proofs} [creditors' claims] eligible for that interest, payment of interest must abate rateably among them all.

Compare: 1993 No 105 s 311(3); 1967 No 54 s 94

265 Meaning of prescribed rate

In sections 263 and 264, prescribed rate means the rate of interest prescribed from time to time under section 87(3) of the Judicature Act 1908.

Compare: 1993 No 105 s 311(4)

Miscellaneous provisions relating to
{proofs of debt} [creditors' claims]

266 Creditor must deduct trade discounts

A creditor must deduct from the creditor's {proof of debt} [claim] any trade discount that the creditor would have given a debtor if the debtor had not become bankrupt.

Compare: 1967 No 54 s 92

267 Proof when {security} [charge] void

If a creditor's {security} [charge] is wholly or partly void under the provisions of this or any other Act, the creditor may prove as an unsecured creditor,---

(a) if the {security} [charge] is wholly void, for the whole of the debt; or

(b) if the {security} [charge] is partly void, to the extent that the debt is unsecured.

Compare: 1967 No 54 s 96

268 Judgment creditor may prove for costs

A person who obtained an order for costs against the bankrupt before adjudication may prove for the amount of the costs when the costs are fixed, even if the amount is fixed only after adjudication.

Compare: 1967 No 54 s 100

269 Company may prove for unpaid calls

(1) This section applies if the bankrupt, at the time of adjudication, is a shareholder of a company that has not been put into liquidation.

(2) The company may prove for---

(a) the amount of unpaid calls on the bankrupt made before adjudication in respect of the bankrupt's shares; and

(b) the value of the liability to calls to be made in the period of 1 year after adjudication.

(3) The value referred to in subsection (2)(b) must be estimated---

(a) as agreed by the Assignee and the company; or

(b) if the Assignee and the company cannot agree, as directed by the Court.

(4) This section does not affect the provisions of sections 103 and 268 of the Companies Act 1993 in the event that the company is put into liquidation.

Compare: 1967 No 54 ss 101(1), 102

270 When guarantor for bankrupt may prove

(1) This section applies if a person (A)---

(a) is, at the time of adjudication, guarantor of, or liable for a debt or liability of, the bankrupt; and

(b) discharges the debt or liability, even after adjudication.

(2) A has the benefit of the rules in subsections (3) and (4).

(3) If the creditor in question has submitted a {proof of debt} [creditor's claim form] for the debt or liability, A may stand in the creditor's place in respect of the {proof} [claim].

(4) If the creditor in question has not submitted a {proof of debt} [creditor's claim form] for the debt or liability, A may---

(a) prove for the payment that A has made as if the payment were a debt, without disturbing dividends already paid to the creditor in the bankruptcy; and

(b) receive dividends paid subsequently.

Compare: 1967 No 54 s 103

Subpart 10---Distribution of assets

271 Priority of payments for distribution of bankrupt's assets

(1) The Assignee must pay, out of the money received by him or her by the realisation of the property of the bankrupt, the preferential claims set out in

section 272 to the extent and in the order of priority specified in that section and sections 273 to 277.

(2) After paying the preferential claims in accordance with subsection (1), the Assignee must pay any remaining money to the general creditors in accordance with section 278.

(3) After paying the general creditors in accordance with subsection (2), the Assignee must pay any remaining money to the bankrupt in accordance with section 279.

(4) Any money received by the Assignee by the realisation of the property of the bankrupt that is not able to be paid in accordance with subsections (1) to (3), must be paid to Public Trust in accordance with section 281.

(5) Other than as set out in section 273(1)(b) and (3), subsection (1) is subject to---

- (a) the powers of secured creditors referred to in section 4(c); and
- (b) any other enactment.

Compare: 1993 No 105 ss 312, 313

Preferential claims

272 Priority of payments to preferential creditors

(1) The Assignee must first pay, in the order of priority in which they are listed,---

(a) the fees and expenses properly incurred by the Assignee in carrying out the duties and exercising the powers of the Assignee, and the remuneration of the Assignee; and

(b) the reasonable costs of a creditor in procuring the order of adjudication, including the reasonable costs incurred between {solicitor} [lawyer] and client in procuring the order, inclusive of and subsequent to the preparation and filing of the creditor's application for adjudication; and

(c) to any creditor who protects, preserves the value of, or recovers property of the bankrupt for the benefit of the bankrupt's creditors by the

payment of money or the giving of an indemnity,---

(i) the amount received by the Assignee by the realisation of that property, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering that property.

(2) After paying the claims referred to in subsection (1), the Assignee must next pay, to the extent that they remain unpaid, the following claims:

(a) subject to section 274(1), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services provided to the bankrupt during the 4 months before the adjudication:

(b) subject to section 274(1), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the adjudication:

(c) subject to section 274(1), any compensation for redundancy owed to an employee that accrues before, or because of, the adjudication:

(d) subject to section 274(1), amounts deducted by the bankrupt from the wages or salary of an employee in order to satisfy obligations of the employee (including amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991 and section 167(2) of the Tax Administration Act 1994 as applied by section 25 of the Student Loan Scheme Act 1992):

(e) subject to section 274(1), any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(1)(b) or section 128 of the Employment Relations Act 2000, to the extent that the reimbursement or payment does not relate to any matter set out in section 123(1)(c) of the Employment Relations Act 2000, in respect of wages or other money or remuneration lost during the 4 months before the adjudication:

(f) amounts that are preferential claims under section 170(2) and (3):

(g) all sums that, by any other enactment, are required to be paid in accordance with the priority established by this subsection.

(3) After paying the claims referred to in subsection (2), the Assignee must next pay all sums, for which a buyer is a creditor in the bankruptcy under section 11 of the Layby Sales Act 1971,---

(a) paid by the buyer to a seller on account of the purchase price of goods; or

(b) to which the buyer is or becomes entitled to receive from a seller under section 9 of the Layby Sales Act 1971.

(4) After paying the claims referred to in subsection (3), the Assignee must next pay the amount of any costs referred to in section 331(4)(c).

(5) After paying the claims referred to in subsection (4), the Assignee must next pay, to the extent that it remains unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require, the amount of---

(a) tax payable by the bankrupt in the manner required by Part 3 of the Goods and Services Tax Act 1985; and

(b) tax deductions made by the bankrupt under the PAYE rules of the Income Tax Act 2004; and

(c) non-resident withholding tax deducted by the bankrupt under the NRWT rules of the Income Tax Act 2004; and

(d) resident withholding tax deducted by the bankrupt under the RWT rules of the Income Tax Act 2004; and

(e) duty payable within the meaning of section 2(1) of the Customs and Excise Act 1996.

Compare: 1967 No 54 s 104(1); 1993 No 105 Sch 7 cls 1 to 5

273 Conditions to priority of payments to preferential creditors

(1) The claims listed in each of subsections (2), (3), (4), and (5) of section 272---

(a) rank equally among themselves and, subject to any maximum payment level specified in any Act or regulations, must be paid in full, unless the

property of the bankrupt is insufficient to meet them, in which case they abate in equal proportions; and

(b) in so far as the property of the bankrupt available for payment of those claims is insufficient to meet them,---

(i) have priority over the claims of any person under a security interest to the extent that the security interest---

(A) is over all or any part of the bankrupt's accounts receivable and inventory or all or any part of either of them; and

(B) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and

(C) [is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the date of adjudication and that arises] {does not arise} from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).

(2) For the purposes of subsection (1)(b), the terms account receivable, inventory, new value, proceeds, purchase money security interest, and security interest have the same meanings as in the Personal Property Securities Act 1999.

(3) To the extent that the claims to which subsection (1) applies are paid out of property referred to in paragraph (b) of that subsection, the amount so paid is an unsecured debt due by the bankrupt to the secured party.

Compare: 1993 No 105 Sch 7 cls 9, 10

274 Provisions concerning preferential payments to employees

(1) The total sum to which priority is to be given under any, or all, of paragraphs (a) to (e) of section 272(2) must not, in the case of any one employee, exceed \$15,000 or any greater amount that is prescribed under

subsection (2) at the date of adjudication.

(2) The sum stated in subsection (1) must be adjusted as follows:

(a) subject to paragraph (d), an adjustment must be made, by the Governor-General by Order in Council, after the 3-year period starting on 1 July 2003 and ending on 30 June 2006 and after every 3-year period following that (an adjustment period):

(b) subject to paragraph (d), the Order in Council must be made within 3 months of the end of an adjustment period:

(c) each adjustment must reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Quarterly Employment Survey published by Statistics New Zealand (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period:

(d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, no adjustment may be made for that adjustment period:

(e) if, in accordance with paragraph (d), no adjustment is made, the next adjustment made for any succeeding adjustment period must reflect any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the relevant adjustment period for which the adjustment is to be made:

(f) all adjustments are cumulative and must be rounded to the nearest \$20:

(g) any correction to the Quarterly Employment Survey on which an adjustment is based must be disregarded until the adjustment that takes effect in the following adjustment period, which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subsection.

(3) The sum stated in subsection (1), or any greater amount prescribed under subsection (2) that applies on the date on which a debtor is adjudicated bankrupt, continues to apply to that bankruptcy regardless of any change to that sum that is prescribed after the date on which the debtor is adjudicated

bankrupt.

(4) For the purposes of this section and section 272,---

(a) remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is to be treated as wages in respect of services rendered to the bankrupt during that period:

(b) employee means any person of any age employed by an employer to do any work for hire or reward under a contract of service (including a homeworker as defined in section 5 of the Employment Relations Act 2000):

(c) holiday pay, in relation to a person, means all sums payable to that person by the bankrupt under subpart 1 of Part 2 of the Holidays Act 2003, and includes all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the bankrupt as holiday pay.

Compare: 1967 No 54 s 104(1A), (1B), (3); 1993 No 105 Sch 7 cls 6, 6A, 12

275 Subrogation of persons if payment has been made

If a payment has been made to a person (A) on account of any preferential claim set out in section 272 out of money advanced by another person (B) for that purpose, then B has, in the bankruptcy, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.

Compare: 1993 No 105 Sch 7 cl 7

276 Priority given to person who distrains on goods

If a landlord or other person has distrained on goods or effects of the bankrupt during the 20 working days before the adjudication, the preferential claims set out in section 272 are a first charge on the goods or effects so distrained, or the proceeds from their sale; but if any money is paid to a claimant under that charge, the landlord or other person has the same rights of priority as that claimant.

Compare: 1993 No 105 Sch 7 cl 11

277 Creditors to have priority over creditors of joint bankrupt

If a person (A) is a partner of a firm and is adjudicated bankrupt, any creditors to whom A is indebted jointly with the other partners of the firm must not receive any money obtained from the realisation of the separate property of A until all the separate creditors have had their claims paid in full.

Compare: 1967 No 54 s 106

Payments to general creditors and to bankrupt

278 Payment of remaining money to general creditors

(1) After paying preferential claims in accordance with sections 272 to 277, the Assignee must apply the money received by him or her by the realisation of the property of the bankrupt in satisfaction of all other claims.

(2) The claims referred to in subsection (1) rank equally among themselves and must be paid in full, unless the money is insufficient to meet them, in which case they abate in equal proportions.

(3) If, before the date of adjudication, a creditor agrees to accept a lower priority in respect of a debt than it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.

Compare: 1993 No 105 s 313(1)-(3)

279 Payment of surplus to bankrupt

(1) After paying interest under section 263 and the claims referred to in section 278, the Assignee must pay any surplus to the bankrupt.

(2) This section is subject to section 213.

Compare: 1993 No 105 s 313(4)

Undistributed money paid to Public Trust

280 Definition of undistributed money

In sections 281 to 287, undistributed money means any money that---

(a) was received by the Assignee by the realisation of the property of the bankrupt; and

(b) remains after the Assignee deducts the costs of obtaining his or her release under sections 402 to 404, if applicable; and

(c) is required to be paid to any person under sections 272 to 279, but is not able to be distributed for any reason.

Compare: 1967 No 54 s 134(1)

281 Undistributed money to be paid to Public Trust

The Assignee must pay any undistributed money to Public Trust.

Compare: 1967 No 54 s 134(1)

282 Public Trust to hold undistributed money

(1) Public Trust must hold any undistributed money paid to it subject to the claim of any person who appears to be entitled to that money.

(2) Undistributed money paid to Public Trust is held by Public Trust subject to---

(a) this Act; and

(b) the Public Trust Act 2001; and

(c) any other enactment relating to Public Trust.

(3) If there is any inconsistency between the provisions of this Act and any provisions of the Public Trust Act 2001 or any other enactment relating to Public Trust, this Act prevails.

Compare: 1967 No 54 s 134(1), (2), (7)

283 Public Trust to pay undistributed money to bankruptcy surplus account

(1) After the expiry of 12 months from the date on which undistributed money is paid to Public Trust, Public Trust must transfer any undistributed money that has not been claimed by a person into a bankruptcy surplus account.

(2) Undistributed money transferred into a bankruptcy surplus account---

(a) is deemed to be one common and general fund; and

(b) may be applied without discrimination in accordance with section 284.

Compare: 1967 No 54 s 134(3)

284 Application of undistributed money held in bankruptcy surplus account

Undistributed money held in the bankruptcy surplus account may be used as follows:

(a) for distribution, in relation to the bankruptcy from which the undistributed money came, to any person who remains to be paid as set out in section 280(c); and

(b) for the purposes of this Act, to the extent and in the manner allowed by this Act; and

(c) subject to section 285, to replace, to the extent of the deficiency, any money misappropriated by an Assignee or any person employed under the provisions of this Act (other than under sections 323 to 356); and

(d) subject to section 286, to meet the costs of court proceedings, obtaining legal advice, or employing an accountant or other experts in circumstances where the creditors of a bankrupt are unable to pay those costs, or it would be unfair or inequitable that they should do so.

Compare: 1967 No 54 s 134(4)-(6)

285 Requisition of Minister required for payment under section 284(c)

Public Trust may pay undistributed money out of the bankruptcy surplus account under section 284(c) only on the requisition of the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Compare: 1967 No 54 s 134(5)

286 Approval of Official Assignee required for payment under section 284(d)

Public Trust may pay undistributed money out of the bankruptcy surplus account under section 284(d) only with the approval of the Official Assignee and subject to any conditions he or she may impose.

Compare: 1967 No 54 s 134(6)

287 Matters concerning bankruptcy surplus account

(1) Subject to sections 283 to 286, the investment, realisation, and disposition of undistributed money held in the bankruptcy surplus account, and any profits accruing from that money, are subject to the provisions of the Public Trust Act 2001.

(2) Undistributed money may be paid out of the bankruptcy surplus account under section 284(c) or section 284(d) without further appropriation than this Act.

(3) Public Trust may make a payment out of the bankruptcy surplus account without being concerned to see or inquire whether Public Trust received any undistributed money or sufficient undistributed money on account of the bankrupt in respect of whom the application for payment relates whenever an application for a payment out of that account is made to Public Trust under section 284---

(a) by requisition of the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or

(b) with the approval of the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or

(c) by an Official Assignee.

Compare: 1967 No 54 s 134(7), (8)

Part 4 End of bankruptcy

Subpart 1---Discharge from bankruptcy

Automatic discharge from bankruptcy

288 Automatic discharge 3 years after {adjudication} [bankrupt files statement of affairs]

(1) A bankrupt is automatically discharged from bankruptcy 3 years after {adjudication} [the bankrupt files a statement of affairs under section 46 or section 67], but may apply to be discharged earlier.

(2) However, a bankrupt is not automatically discharged if---

(a) the Assignee or a creditor has objected under section 290 and the objection has not been withdrawn by the end of the 3-year period referred to in subsection (1); or

(b) the bankrupt has to be publicly examined under section 171 and has not completed that examination; or

(c) the bankrupt is undischarged from an earlier bankruptcy.

Compare: 1967 No 54 s 107(1), (2), (6)

289 Effect of automatic discharge

The automatic discharge of the bankrupt has the same effect as if the Court made an order for the bankrupt's discharge.

Compare: 1967 No 54 s 107(7)

290 Objection to automatic discharge

(1) The Assignee or, with the permission of the Court, a creditor may object to the bankrupt's automatic discharge.

(2) The objection must be made in the prescribed manner.

Compare: 1967 No 54 s 107(3)

291 Objection may be withdrawn

(1) An objection to the automatic discharge of the bankrupt may be withdrawn in the prescribed manner.

(2) The bankrupt is automatically discharged on the withdrawal of the objection if---

Struck out (unanimous)

=====
(a) a period of 3 years has elapsed after adjudication; and
=====

New (unanimous)

(a) the 3-year period referred to in section 288(1) has elapsed; and

(b) there is no other objection to the discharge that has not been withdrawn; and

(c) neither section 288(2)(b) nor (c) applies.

Compare: 1967 No 54 s 107(4), (5)

Application for discharge from bankruptcy

292 Bankrupt may apply for discharge

(1) The bankrupt may at any time apply to the Court for an order of discharge from bankruptcy.

(2) However, if the Court has previously refused an application by the bankrupt for a discharge, and has specified the earliest date when the bankrupt

may again apply, the bankrupt must not apply before that date.

(3) The hearing of the application must be in accordance with section 175.

Compare: 1967 No 54 s 108

Examination concerning discharge from bankruptcy

293 When bankrupt must be examined concerning discharge

(1) The Assignee must summon the bankrupt to be publicly examined by the Court concerning his or her discharge, and the Court must conduct the examination, if---

(a) the Assignee or a creditor has objected to the bankrupt's automatic discharge [and the objection has not been withdrawn]; or

(b) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or

(c) the bankrupt has been required to be publicly examined under section 171 and has not completed that examination.

(2) The Assignee must summon the bankrupt as soon as practicable after the expiry of {3 years from the date of adjudication} [the 3-year period referred to in section 288(1)].

(3) Sections 171 to 179, so far as they are applicable and with the necessary modifications, apply to a public examination under this section.

Compare: 1967 No 54 s 109(1), (3)

294 Assignee's report

(1) The Assignee must prepare a report and file it in the Court when---

(a) the bankrupt has applied under section 292 for a discharge; or

(b) the Assignee has summoned the bankrupt to be examined under section 293.

(2) The Assignee must report as to---

- (a) the bankrupt's affairs; and
- (b) the causes of the bankruptcy; and
- (c) the bankrupt's performance of his or her duties under this Act; and
- (d) the manner in which the bankrupt has obeyed orders of the Court; and
- (e) the bankrupt's conduct before and after adjudication; and
- (f) any other matter that would assist the Court in making a decision as to the bankrupt's discharge.

Compare: 1967 No 54 s 109(2)

295 When creditor must give notice of opposition to discharge

(1) A creditor must give notice to the Assignee and the bankrupt if the creditor intends to oppose the bankrupt's discharge on a ground that is not mentioned in the Assignee's report.

(2) The notice must---

- (a) set out the ground or grounds for opposing the discharge; and
- (b) be given within the prescribed time.

Compare: 1967 No 54 s 109(4)

296 Court may grant or refuse discharge

(1) When the Court hears an application under section 292 for discharge, or conducts the examination of the bankrupt under section 293, the Court may, having regard to all the circumstances of the case,---

- (a) immediately discharge the bankrupt; or
- (b) discharge the bankrupt on conditions (which may include a condition that the bankrupt consents to any judgment or order for the payment of any sum

of money); or

(c) discharge the bankrupt but suspend the order for a period; or

(d) discharge the bankrupt, with or without conditions, at a specified future date; or

(e) refuse an order of discharge, in which case the Court may specify the earliest date when the bankrupt may apply again for discharge.

(2) If the Court discharges the bankrupt on the condition that the bankrupt consents to any judgment, and the bankrupt does consent, the Court may vary the judgment as it thinks appropriate.

Compare: 1967 No 54 s 110(1), (3)

297 Court may restrict bankrupt from engaging in business after discharge

(1) The Court, when it makes an order of discharge or at any earlier time, may prohibit the bankrupt after discharge from doing any or all of the following things without the Court's permission:

(a) entering into, carrying on, or taking part in the management or control of any business or class of business:

(b) being a director of any company:

(c) directly or indirectly being concerned, or taking part, in the management of any company:

(d) being employed by a relative of the bankrupt:

(e) being employed by a company, trust, trustee, or incorporated society that is managed or controlled by a relative of the bankrupt.

(2) The Court may---

(a) prohibit the bankrupt for a specified period, or without a time limit:

(b) at any time vary or cancel the prohibition.

Compare: 1967 No 54 s 111

298 Court may reverse order of discharge

(1) The Court may, on the application of the Assignee or a creditor, reverse the discharge of a bankrupt at any time before---

(a) 2 years after the discharge, in the case of an absolute discharge;
or

(b) 2 years after the discharge takes effect, in the case of a discharge that is conditional or suspended.

(2) When the Court reverses a discharge, the Court may then, or at any time after, make a new order of discharge, whether absolute, suspended, or conditional.

Compare: 1967 No 54 s 112(1), (4)

299 Grounds for reversing discharge

(1) The Court may reverse a discharge if---

(a) the bankrupt has been given notice of the application (including the grounds relied on by the applicant); and

(b) the Court is satisfied that facts have been established that---

(i) were not known to the Court when it made the order of discharge; and

(ii) had the Court known of them, would have justified the Court in refusing a discharge or discharging the bankrupt on conditions.

(2) The Court must not reverse a discharge if the facts relied on by the applicant, at the time when the Court made an order discharging the bankrupt,---

(a) were known to the applicant; or

(b) could have been known if the applicant had inquired with reasonable

diligence.

Compare: 1967 No 54 s 112(1), (2)

300 Effect of reversal of discharge

(1) The reversal of a discharge does not prejudice or affect the rights or remedies that any person other than the bankrupt would have had if the discharge had not been reversed.

(2) Property that has been acquired by the bankrupt after discharge and that is vested in the bankrupt at the date of the reversal---

(a) vests in the Assignee subject to any encumbrances; and

(b) must be applied by the Assignee to pay debts that the bankrupt has incurred since the date of discharge.

Compare: 1967 No 54 s 112(3)

301 Bankrupt may apply for absolute discharge if conditions of discharge too onerous

(1) A bankrupt who cannot comply with any or all of the conditions of his or her discharge may apply to the Court for an absolute discharge.

(2) The Court may discharge the bankrupt absolutely if the Court is satisfied that the bankrupt's inability is due to circumstances for which the bankrupt should not reasonably be held responsible.

Compare: 1967 No 54 s 113

302 Debts from which bankrupt is released on discharge

(1) On discharge, the bankrupt is released from all debts provable in the bankruptcy except those listed in subsection (2).

(2) The bankrupt is not released from the following debts:

(a) any debt or liability incurred by fraud or fraudulent breach of

trust to which the bankrupt was a party:

(b) any debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party:

(c) any judgment debt or amount payable under any order for which the bankrupt is liable under section 145 or section 296:

(d) any amount payable under a maintenance order under the Family Proceedings Act 1980:

(e) any amount payable under the Child Support Act 1991.

Compare: 1967 No 54 s 114

303 Discharge conclusive evidence of bankruptcy

A discharge is conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

Compare: 1967 No 54 s 115

304 Discharge does not release partners and others

A discharge does not release any person who, at the date of adjudication, was---

- (a) a business partner of the bankrupt; or
- (b) a co-trustee with the bankrupt; or
- (c) jointly bound or had made any contract with the bankrupt; or
- (d) a guarantor or in the nature of a guarantor of the bankrupt.

Compare: 1967 No 54 s 116

305 Discharged bankrupt must assist Assignee

A discharged bankrupt must assist the Assignee, as required by the Court or the

Assignee, in the realisation and distribution of the bankrupt's property that is vested in the Assignee.

Compare: 1967 No 54 s 117

306 Information regarding bankrupt's discharge must be contained in public register maintained under section 62

If the Court has refused a bankrupt a discharge or discharged the bankrupt but suspended the discharge, that information must be contained in the public register maintained under section 62.

Compare: 1967 No 54 s 118

Subpart 2---Annulment

307 Court may annul adjudication

(1) The Court may, on the application of the Assignee or any person interested, annul the adjudication if---

(a) the Court considers that the bankrupt should not have been adjudicated bankrupt; or

(b) the Court is satisfied that the bankrupt's debts have been fully paid or satisfied [and that the Assignee's fees and costs incurred in the bankruptcy have been paid]; or

(c) the Court considers that the liability of the bankrupt to pay his or her debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or

(d) the Court has approved a composition under subpart 1 of Part 5.

(2) In the case of an application on one of the grounds specified in subsection (1)(a) to (c) by an applicant who is not the Assignee,---

(a) a copy of the application must be served on the Assignee in the manner and within the time that the Court directs; and

(b) the Assignee may appear on the hearing of the application as if the

Assignee were a party to the proceeding.

(3) The adjudication is annulled---

(a) from the date of adjudication, in the case of an application on the ground specified in subsection (1)(a):

(b) from the date of the Court's order of annulment, in the case of an application on one of the grounds specified in subsection (1)(b) to (d).

(4) In the case of an application for annulment on the ground that the adjudication should not have been made because of a defect in form or procedure, the Court may, in addition to annulling the adjudication, exercise its powers under section 412 to correct the defect and order that the application for adjudication be reheard as if no adjudication had been made.

(5) If the Court annuls the adjudication on one of the grounds specified in subsection (1)(a) to (c),---

(a) the Court may, on the Assignee's application, fix an amount as reasonable remuneration for the Assignee's services and order that it be paid, in addition to any costs that may be awarded:

(b) that amount must be paid into a Crown Bank Account:

(c) the Assignee is not entitled to remuneration under section 400 for those services.

Compare: 1967 No 54 s 119

308 When Assignee may annul adjudication

(1) The Assignee may annul an adjudication on any of the grounds specified in subsection (2) if the adjudication was made on a debtor's application.

(2) The grounds for annulment by the Assignee are---

(a) the Assignee considers that the bankrupt should not have been adjudicated bankrupt; or

(b) the Assignee is satisfied that the bankrupt's debts have been fully paid or satisfied [and that the Assignee's fees and costs incurred in the

bankruptcy have been paid]; or

(c) the Assignee considers that the liability of the bankrupt to pay his or her debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or

(d) the Court has approved a composition under subpart 1 of Part 5.

(3) The Assignee may annul the adjudication on the application of any person interested or on the Assignee's own initiative.

(4) The adjudication is annulled---

(a) from the date of adjudication, in the case of an application on the ground specified in subsection (2)(a):

(b) from the date of the Assignee's order of annulment, in the case of an application on one of the grounds specified in subsection (2)(b) to (d).

309 Effect of annulment

(1) On annulment of the adjudication, all property of the bankrupt vested in the Assignee on bankruptcy and not sold or disposed of by the Assignee reverts in the bankrupt without the necessity for any conveyance, transfer, or assignment.

(2) Any contract, sale, disposition, or payment duly made or anything duly done by the Assignee before the annulment---

(a) is not prejudiced or affected as to validity by the annulment; and

(b) has effect as if it had been made or done by the bankrupt while no adjudication was in force.

Compare: 1967 No 54 s 120

Part 5

Compositions, proposals, summary instalment orders,
and no asset procedure

Subpart 1---Composition during bankruptcy

310 Creditors may accept composition by passing preliminary resolution

(1) The creditors of a bankrupt may accept a composition in satisfaction of the debts due to them from the bankrupt by passing a special resolution (the preliminary resolution) that contains the terms of the composition.

(2) If there is more than 1 class of creditor, the delay of 1 class in accepting, or the failure of 1 class to accept, does not prevent any other of the classes from accepting the composition.

Compare: 1967 No 54 ss 121(1), 125(3)

311 Confirming resolution

(1) The composition is ineffective unless the creditors confirm the composition by passing a special resolution (the confirming resolution).

(2) The creditors may confirm the composition on terms that vary from the terms contained in the preliminary resolution, if the final terms are at least as favourable to the creditors as the terms set out in the preliminary resolution.

(3) The notice of the meeting to pass the confirming resolution must---

(a) state generally the terms of the proposal for composition; and

(b) be accompanied by a report by the Assignee on the proposal.

(4) 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 must not be counted either in number or value for the purpose of counting the requisite majority of creditors for passing the confirming resolution.

Compare: 1967 No 54 s 121(2), (3), (4)

312 Compositions with members of partnership

(1) If the members of a partnership have been adjudicated bankrupt, the joint creditors and each class of separate creditors may make separate

compositions.

(2) In that case, the majorities of creditors required for passing the confirming resolution are the separate majorities of each class, but otherwise the joint and separate creditors must be counted as 1 body for voting.

Compare: 1967 No 54 125(2)

313 Court must approve composition

(1) The Court must approve the composition if it is to be binding.

(2) The composition approved by the Court binds all the creditors in respect of provable debts due to them by the bankrupt.

(3) The Court may refuse to approve the composition if it considers that---

(a) section 310 or section 311 has not been complied with; or

(b) the terms of the composition are not reasonable or are not calculated to benefit the general body of creditors; or

(c) the bankrupt is guilty of misconduct that justifies the Court in refusing, qualifying, or suspending the bankrupt's discharge; or

(d) for any other reason it should not approve the composition.

(4) The Court must not approve the composition if the composition does not provide for the payment, before any other debts are paid, of those debts that have priority under subpart 10 of Part 3.

(5) The Court's approval is conclusive as to the validity of the composition.

Compare: 1967 No 54 s 122(3), (4), (5), (7)

314 Procedure for Court approval of composition

(1) The bankrupt or the Assignee may apply to the Court to approve the composition.

(2) Notice of the application must be given to each creditor.

(3) Before approving the composition, the Court must---

(a) receive a report by the Assignee as to the terms of the composition and the bankrupt's conduct; and

(b) hear any objection by or on behalf of a creditor.

(4) When it approves the composition, the Court may correct any formal or accidental error or omission, but must not alter the substance of the composition.

Compare: 1967 No 54 s 122(1), (2), (6)

315 Deed of composition

(1) As soon as practicable after the Court has approved a composition,---

(a) the bankrupt and the Assignee must execute a deed of composition for putting the proposal into effect; and

(b) the Assignee must apply to the Court for confirmation of the deed.

(2) If it is satisfied that the deed conforms with the composition that it has earlier approved, the Court must---

(a) direct that the deed is entered and filed in the Court; and

(b) annul the adjudication.

(3) The deed must not be entered and filed in the Court unless the prescribed commission has been paid to the Assignee.

(4) The annulment under subsection (2) does not revert the bankrupt's property in the bankrupt in accordance with section 309(1).

Compare: 1967 No 54 ss 123(1), (2), 125(5)

316 Effect of deed

When the Court has confirmed the deed and annulled the adjudication,---

(a) the deed binds all the creditors in all respects as if they had each executed the deed; and

(b) subject to the provisions of the Land Transfer Act 1952, the bankrupt's property to which the deed relates vests and must be dealt with as provided in the deed.

Compare: 1967 No 54 s 123(2)

317 Bankrupt remains liable for unpaid balances of certain debts

(1) A bankrupt who makes a composition with his or her creditors remains liable for the unpaid balance of a debt if---

(a) the bankrupt, by means of fraud,---

(i) incurred or increased the debt; or

(ii) on or before the date of the composition, obtained forbearance on the debt; and

(b) the creditor who has been defrauded has not agreed to the composition.

(2) For the purposes of subsection (1)(b) a creditor does not agree to the composition merely by proving the debt and accepting payment of a distribution of the assets in the estate.

Compare: 1967 No 54 s 125(4)

318 Deadlines for steps to approve composition and execute deed

(1) The deadlines for steps to approve the composition and execute the deed are---

(a) the confirming resolution must be passed within 1 month after the preliminary resolution is passed; and

(b) the Court must approve the composition within 1 month after the

confirming resolution is passed; and

(c) the bankrupt must execute the deed of composition within 5 working days after the Court approves the composition or, if the Court allows the bankrupt additional time, within that time.

(2) If any of the deadlines is not kept,---

(a) immediately on the expiry of the deadline, the proceedings in the bankruptcy resume as if there had been no confirming resolution; and

(b) none of the periods specified in subsection (1) counts in the calculation of a period of time for any purpose of this Act.

Compare: 1967 No 54 s 125(1)

319 Procedure following Court approval of composition

(1) The Registrar of the Court must, after entering the deed of composition,---

(a) endorse on the deed that it has been entered and filed in the Court; and

(b) if requested by the Assignee, deliver the deed to the Assignee.

(2) The Assignee, as soon as practicable after the deed has been entered,---

(a) must take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate registry or office, and must then return the deed to the file of the Court; and

(b) must, subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition, as the case may be, of---

(i) the bankrupt's property; or

(ii) so much of the bankrupt's property as the Assignee possesses and that under the composition reverts in the bankrupt or the trustee.

Compare: 1967 No 54 s 123(3), (4)

320 Enforcement of composition

The Court may,---

(a) on the application of an aggrieved person, order that any default in payment of any composition approved by the Court be remedied:

(b) on the application of a person interested, enforce the provisions of any composition approved by the Court.

Compare: 1967 No 54 s 124(1), (2)

321 Court's exclusive jurisdiction

(1) After the preliminary resolution has been passed, the Court continues to have exclusive jurisdiction in relation to the composition and the deed of composition, and their administration.

(2) On an application in relation to the composition, the deed of composition, or their administration, the Court may,---

(a) for the purpose of summoning and examining the bankrupt and witnesses, direct the proceeding as if it were a proceeding under subpart 5 of Part 3:

(b) make the order or orders that it thinks appropriate, including an order as to the costs of the application.

Compare: 1967 No 54 s 124(3), (4)

322 Law and practice in bankruptcy applies to deed

The Court must decide a question arising under the deed of composition according to the law and practice of bankruptcy, if the law and practice of bankruptcy is relevant.

Compare: 1967 No 54 s 124(5)

Subpart 2---Proposals

323 Meaning of debt, etc

(1) In this subpart, unless the context otherwise requires,---
debt means a debt that would be provable in the insolvent's bankruptcy
insolvent means a person who is not a bankrupt, but who is unable to pay his
or her debts as they become due.

(2) The debt of an insolvent is provable under this subpart.

Compare: 1967 No 54 s 139

324 Insolvent may make proposal

(1) An insolvent may make a proposal to creditors for the payment or
satisfaction of the insolvent's debts.

(2) The proposal may include all or any of the following:

(a) an offer to assign all or any of the insolvent's property to a
trustee for the benefit of the creditors:

(b) an offer to pay the insolvent's debts by instalments:

(c) an offer to compromise the insolvent's debts at less than 100 cents
in the dollar:

(d) an offer to pay the insolvent's debts at some time in the future:

(e) any other offer for an arrangement for the satisfaction of the
insolvent's debts.

(3) The proposal may include any other conditions for the benefit of the
creditors and may be accompanied by a {security} [charge] or guarantee.

Compare: 1967 No 54 s 140(1), (2), (3)

325 Form of proposal

(1) The proposal must be---

(a) in the prescribed form; and

(b) accompanied by a statement of affairs that is in the prescribed form and verified by affidavit.

(2) The statement of affairs must set out the following information:

(a) the insolvent's assets, debts, and liabilities:

(b) the name, address, and occupation of each of the insolvent's creditors:

(c) the securities (if any) held by each creditor.

(3) The proposal must---

(a) be signed by the insolvent; and

(b) have endorsed on it the name of a person (A) who is willing to act as a trustee for the creditors; and

(c) include a statement by A that A is willing to act.

Compare: 1967 No 54 s 140(4), (5)

326 Proposal must be filed in Court

(1) The proposal must be filed in the office of the Court nearest to where the insolvent lives.

(2) The insolvent may not, while waiting for the decision of the creditors and the Court, withdraw the proposal or any {security} [charge] or guarantee tendered with it, unless the insolvent obtains the permission of the Court.

(3) The time when the proposal is filed in Court is the time when the claims of creditors are determined.

(4) If the creditors at a meeting under section 329 do not accept the proposal,---

(a) the chairperson of the meeting must return the proposal to the Court with his or her signed endorsement "Not accepted by creditors"; and

(b) the registrar must cancel the proposal.

Compare: 1967 No 54 s 140(5)-(8)

327 Provisional trustee

The trustee named in the proposal becomes the provisional trustee when the proposal is filed.

Compare: 1967 No 54 s 141(1)

328 Provisional trustee must call meeting of creditors

(1) The provisional trustee must, as soon as practicable after the proposal is filed, call a meeting of creditors by posting to every known creditor at the creditor's last known address---

(a) a notice of the date, time, and place of the meeting:

(b) a summary of the insolvent's assets and liabilities:

(c) a copy of the proposal and particulars of any {security} [charge] or guarantee:

Struck out (unanimous)

(d) a form of proof of debt:

New (unanimous)

(d) a creditor's claim form:

(e) a postal vote in the prescribed form.

(2) A creditor who has proved a claim in the prescribed manner may vote on the proposal by sending a postal vote that reaches the provisional trustee before or at the meeting.

(3) If the provisional trustee receives a postal vote before or at the meeting, the postal vote has effect as if the creditor had been present and voted at the meeting.

Compare: 1967 No 54 s 141(2), (3)

329 Procedure at meeting of creditors

(1) The provisional trustee is the chairperson of the meeting of creditors, unless the creditors elect their own chairperson.

(2) The creditors may---

(a) examine the insolvent:

(b) accept the proposal with or without amendments or modification, by passing a resolution that sets out the proposal in its final form:

(c) confirm the provisional trustee as trustee, or appoint another person who is willing to act as trustee, in which case that person becomes the trustee.

(3) The resolution accepting the proposal must be decided by a majority in number and three-quarters in value of the creditors who---

(a) vote; and

(b) are personally present or are represented at the meeting by a person specified in section 330 or have voted by postal vote.

(4) If the insolvent consents, the creditors may include in the proposal terms for the supervision of the insolvent's affairs.

Compare: 1967 No 54 s 142

330 Who may represent creditors

A person who may represent a creditor under section 91 may represent a creditor at a meeting to consider a proposal.

331 Court must approve proposal

(1) After the proposal has been accepted by the creditors, the trustee must, as soon as practicable,---

(a) apply to the Court for approval of the proposal; and

(b) send notice of the hearing of the application in the prescribed form to the insolvent and to each known creditor.

(2) The Court must, before approving a proposal, hear any objection that is made by or on behalf of a creditor.

(3) The Court may refuse to approve the proposal if it considers that---

(a) the provisions of this subpart have not been complied with; or

(b) the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors; or

(c) for any reason it is not expedient that the proposal be approved.

(4) The Court must not approve a proposal if it does not provide for the payment, before any other debts are paid, of---

(a) those debts that would have priority under this Act if the insolvent was adjudicated bankrupt; and

(b) the trustee's fees and expenses that are properly incurred by the trustee in respect of the proposal; and

(c) costs incurred by a person other than the insolvent in organising and conducting a meeting of creditors for the purpose of voting on a proposal.

New (unanimous)

(4A) Subsection (4)(a) does not apply to the extent that a creditor waives the priority that the debt of that person would otherwise have had.

(5) When it approves the proposal, the Court may correct any formal or accidental error or omission, but must not alter the substance of the proposal.

Compare: 1967 No 54 s 143(1)-(4), (6); 1993 No 105 s 234(c)

332 Effect of Court approval

(1) A proposal that is approved by the Court is binding on all the creditors whose debts are provable under this subpart and are affected by the terms of the proposal.

(2) The Court's approval is conclusive as to the validity of the proposal.
Compare: 1967 No 54 s 143(5), (7)

333 Creditor must not take enforcement steps without Court's permission

(1) A creditor whose debt is provable under this subpart must not take any of the steps listed in subsection (2) in respect of the debt---

- (a) after the Court has approved the proposal; and
- (b) while the proposal remains in force.

(2) The steps referred to in subsection (1) are---

- (a) filing a creditor's application for the insolvent's adjudication:
- (b) proceeding with a creditor's application for the insolvent's adjudication that was filed before the proposal was filed:
- (c) enforcing any civil remedy against the insolvent's person or property:
- (d) beginning any legal proceedings in respect of the debt.

(3) However, a creditor may take any of the steps listed in subsection (2) with the permission of the Court given on the terms that the Court thinks appropriate.

Compare: 1967 No 54 s 144(1)

334 Duty of insolvent

After the Court has approved the proposal, the insolvent must do everything that is necessary to put the proposal into effect.

Compare: 1967 No 54 s 143(8)

335 Duties of trustee

(1) After the Court has approved the proposal, the trustee must---

(a) take control of the property that is the subject of the proposal; and

(b) administer and distribute that property according to the terms of the proposal; and

(c) generally give effect to the proposal.

(2) The trustee may sell the property---

(a) according to the terms of the proposal, if it specifies the method of sale; or

(b) in accordance with Schedule 1, if the proposal does not specify the method of sale.

Compare: 1967 No 54 s 144(2)

336 Trustee must file 6-monthly summary of receipts and payments

(1) The trustee must file with the registrar a summary of receipts and payments.

(2) The trustee must file the summary---

(a) for each 6-month period following Court approval of the proposal, within 1 month after the end of the period; and

(b) for the period between the end of the last 6-month period and the date when the trustee stops acting as trustee, within 1 month after the trustee has stopped acting.

(3) The summary must---

(a) be in the prescribed form; and

(b) show the trustee's receipts and payments during the period to which it relates; and

(c) show the total amount of the trustee's receipts and payments for all the preceding 6-month periods after the trustee's appointment.

Compare: 1967 No 54 s 144(3)

337 Cancellation or variation of proposal

(1) At any time after it has approved the proposal, the Court may, if it is satisfied that 1 or more of the grounds listed in subsection (2) apply,---

(a) on the application of the trustee or any creditor, vary or cancel the proposal:

(b) if asked to do so by the applicant or any other creditor, adjudicate the insolvent bankrupt.

(2) The grounds referred to in subsection (1) are---

(a) the insolvent's statement of affairs accompanying the proposal did not substantially set out the true position or the insolvent gave wrong or misleading replies at his or her examination, and it was unlikely that the proposal would have been accepted if the insolvent had disclosed the true facts:

(b) the insolvent has failed to carry out or comply with the terms of the proposal:

(c) the creditors generally will suffer injustice or undue delay if the proposal proceeds:

(d) for any other reason the proposal ought to be varied or cancelled.

(3) On cancellation of the proposal, unless the Court orders otherwise, all property of the insolvent vested in the trustee and not sold or disposed of by the trustee vests, without the necessity for any conveyance, transfer, or assignment,---

(a) in the insolvent; or

(b) if the Court cancels the proposal and adjudicates the insolvent bankrupt, in the Assignee.

(4) An order cancelling the proposal, or cancelling the proposal and adjudicating the insolvent bankrupt, does not prejudice or affect the validity of any contract, sale, disposition, or payment duly made or anything duly done under the proposal while it was in force.

(5) If the insolvent files an application for his or her own adjudication, the proposal is cancelled as if it was cancelled by the Court.

Compare: 1967 No 54 s 145

Subpart 3---Summary instalment orders

338 Summary instalment order

A summary instalment order is an order by the Assignee that the debtor pay his or her debts---

(a) in instalments or otherwise; and

(b) in full or to the extent that the Assignee considers practicable in the circumstances of the case.

Compare: 1967 No 54 s 146(4)

339 Who may apply for order

The Assignee may make a summary instalment order on the application of---

(a) the debtor; or

(b) a creditor, with the debtor's consent.

Compare: 1967 No 54 s 146(1)

340 Form of application

(1) An application for a summary instalment order must be in the prescribed form.

(2) An application by the debtor---

(a) must state---

(i) that the debtor proposes to pay the creditors in full; or

(ii) the amount in the dollar that the debtor proposes to pay; and

(b) must state the total amount of the weekly or other instalments that the debtor proposes to pay; and

(c) must---

(i) state the name and address of the debtor's proposed supervisor and annex the written consent of that person to be supervisor; or

(ii) if the debtor considers that a supervisor is not necessary, state the debtor's reasons; and

(d) must contain the following information:

New (unanimous)

(iaa) the debtor's full name and address:

(i) details of the debtor's property:

(ii) the names and addresses of each creditor:

(iii) the amount and nature of each of the creditors' debts:

(iv) whether any of the debts are secured and the value of the {security} [charge]:

(v) whether any of the debts are guaranteed by any person:

(vi) the amount of the debtor's earnings:

(vii) the name and address of the debtor's employer, if any:

(viii) any other matter that may be prescribed.

Compare: 1967 No 54 s 146(2)

341 Assignee may make summary instalment order

(1) The Assignee may make a summary instalment order if the Assignee is satisfied that---

(a) the debtor's total unsecured debts that would be provable in the debtor's bankruptcy are not more than \$40,000; and

(b) the debtor is unable immediately to pay those debts.

(2) Before making the order, the Assignee must allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.

(3) A summary instalment order is not invalid if the total amount of the debts proved is more than the amount specified in subsection (1)(a), but in that case---

(a) the supervisor appointed under section 343 may refer the matter to the Assignee; and

(b) the Assignee may, if the Assignee thinks appropriate, cancel the order.

(4) The amount in subsection (1)(a) may be varied by the Governor-General by Order in Council to take account of increases in the all groups index number of the Consumer Price Index.

Compare: 1967 No 54 s 146(4), (13)

342 Additional orders

In addition to an order for the payment of the debts in instalments, the Assignee may make orders---

- (a) regarding the debtor's future earnings or income:
- (b) regarding the disposal of goods that the debtor owns or possesses:
- (c) giving the supervisor appointed under section 343 power to---
 - (i) direct the debtor's employer to pay all or part of the debtor's earnings to the supervisor; and
 - (ii) supervise payment, out of the debtor's earnings or income, of the reasonable living expenses of the debtor and his or her relatives and dependants.

Compare: 1967 No 54 s 146(8), (9)

343 Appointment of supervisor

- (1) A summary instalment order must appoint a suitable and willing person to supervise compliance by the debtor with the terms of the order.
- (2) The Assignee may dispense with the appointment of a supervisor if the Assignee thinks it appropriate, and in that case---
 - (a) the provisions of this subpart apply as if the debtor was the supervisor, except for section 344; and
 - (b) section 344 applies as if the Assignee was the supervisor.
- (3) The Assignee may, if the Assignee thinks appropriate, require the supervisor to provide a bond to secure the supervisor's performance of his or her obligations under the Act, and must specify the amount of the bond and the person to whom it must be given.

Compare: 1967 No 54 s 146(5)-(7)

344 Role of supervisor

- (1) The supervisor must supervise the debtor's compliance with the terms of the summary instalment order and any other orders made under section 342.
- (2) The supervisor may charge the debtor remuneration for carrying out his

or her duties as supervisor at the amount or rates fixed or prescribed under subsection (3).

(3) The Governor-General may, by Order in Council, make regulations that fix or prescribe the amount or rates of remuneration chargeable under subsection (2).

New (unanimous)

344A Assignee may require supervisor or past supervisor to provide documents

The Assignee may, by written notice, require the supervisor or a past supervisor to provide the Assignee within a reasonable period with any document relating to the debtor's property, conduct, or dealings in the supervisor's or past supervisor's possession or under his or her control.

345 Termination of appointment for failure to supervise adequately

The Assignee may terminate the supervisor's appointment if the Assignee considers that the supervisor has failed to supervise the debtor's compliance adequately, and may appoint a replacement supervisor.

346 Period of instalments

The payment of instalments under a summary instalment order may be spread over a period of---

(a) up to 3 years; or

(b) up to 5 years, if justified by special circumstances.

Compare: 1967 No 54 s 146(12)

347 Variation or discharge of order

The debtor or any creditor or the supervisor may at any time apply to the Assignee to vary or discharge a summary instalment order, and the Assignee may make an order as the Assignee thinks appropriate.

Compare: 1967 No 54 s 146(14)

348 Effect of order

All instalments payable under a summary instalment order must be paid in the prescribed manner.

Compare: 1967 No 54 s 146(11)

349 Proceedings against debtor

(1) In this section, proceeding means any proceeding against the person or property of the debtor in respect of a debt that has been---

(a) shown in the debtor's application for the summary instalment order;
or

(b) included in the summary instalment order; or

(c) notified to the supervisor.

(2) After the summary instalment order has been made, a person must not begin or continue a proceeding unless---

(a) the Assignee gives permission for a creditor to begin or continue the proceeding (in which case the Assignee may impose any conditions that the Assignee thinks appropriate); or

(b) the debtor is in default under the order.

(3) In the case of a proceeding in a District Court, unless subsection (2) applies, the court---

(a) must halt the proceeding on receiving notice of the order; and

(b) may award all or part of the creditor's costs incurred up to the time of the court's notification, and may certify accordingly for the purpose of the creditor proving the debt under this subpart.

Compare: 1967 No 54 s 148

350 Supervisor must give notice of summary instalment order to creditors

The supervisor must send a notice of the summary instalment order to every creditor---

- (a) known to the supervisor; or
- (b) whose name is shown on the debtor's application for the order; or
- (c) who has proved a debt under section 351.

Compare: 1967 No 54 s 147(a)

New (unanimous)

350A Public register of debtors subject to current summary instalment order

- (1) The Assignee must maintain a public register of persons who are subject to a current summary instalment order.
 - (2) The register must be maintained in accordance with subpart 5 of Part 7.
-

New (unanimous)

350B Meaning of current summary instalment order

A summary instalment order is not current if it has been discharged or all the instalments required to be paid under the order have been paid in accordance with the order.

351 {Proof of debt} [Creditor's claim]

- (1) A creditor who has proved his or her debt to the satisfaction of the supervisor is entitled to be included as a creditor in the administration of the debtor's estate under the summary instalment order for the amount of the debt.

(2) A creditor may object to the supervisor's acceptance or rejection of { a proof of debt } [any creditor's claim] by applying to the Assignee.

(3) If a creditor objects under subsection (2), the Assignee may give any directions the Assignee thinks appropriate as to the acceptance or rejection of the {proof} [claim].

(4) A person who becomes a creditor of the debtor after the order has been made, and who proves a debt before the supervisor,---

(a) may elect to be included in the administration of the debtor's estate; and

(b) in that case, may be paid a dividend under the order only after creditors who became creditors of the debtor before the order was made and who have been included as a creditor in the administration have been paid under the order.

Compare: 1967 No 54 s 147(b)-(d)

352 Payment of debtor's earnings to supervisor

(1) This section applies if the supervisor, under a power given by a summary instalment order made by the Assignee, directs the debtor's employer to pay the debtor's earnings, or part of them, to the supervisor.

(2) The amounts that the employer must pay to the supervisor are recoverable as a debt from the employer, and the supervisor's receipt is a complete discharge to the employer for the debt.

(3) Payment by the employer in contravention of the supervisor's direction to pay the supervisor discharges the liability of the employer to the supervisor for the amount of the payment only if it is made---

(a) with the consent of the supervisor or the Assignee; or

(b) to a person who is not the debtor and who has a better legal claim to it than the debtor.

Compare: 1967 No 54 s 146(10)

353 Distribution of money paid by debtor

(1) The supervisor must distribute the money paid by the debtor under the summary instalment order in the following order:

(a) first, payment of the costs of administration (including the supervisor's remuneration) in accordance with the prescribed scale:

New (unanimous)

(ab) secondly, the Assignee's costs and fees:

(b) {secondly,} [thirdly,] payment of the debts in accordance with the order:

(c) {thirdly,} [fourthly,] payment of any surplus to the debtor.

(2) The debtor is discharged from the unsecured debts to which the order relates if the supervisor pays, from the money received under the order, the amounts in subsection (1)(a) to (c) in full.

Compare: 1967 No 54 s 149

354 Default by debtor

(1) A debtor who defaults in paying any sum due under a summary instalment order is presumed, unless the contrary is proved, to have---

(a) been able to pay the sum from the date of the order; and

(b) refused or neglected to pay it.

(2) If the debtor defaults in making payment in accordance with the order, unless a District Court orders otherwise,---

(a) a proceeding that has been halted under section 349 may begin or continue:

(b) any period during which a proceeding was halted under section 349 must be added to any period of limitation that applies to the proceeding.

New (unanimous)

(3) The supervisor must notify the Assignee as soon as practicable of a default by the debtor in making payment in accordance with the order.

Compare: 1967 No 54 s 150

355 Offence of obtaining credit

(1) A person (A) commits an offence if---

(a) A is a debtor in respect of whom a summary instalment order has been made; and

(b) before all creditors have been paid all amounts to which they are entitled under the order, A,---

(i) alone or jointly with another person, obtains for the time being credit of \$1,000 or more; or

(ii) incurs liability for the time being to any person of \$1,000 or more for the purpose of obtaining credit for another person; or

(iii) enters into a hire purchase agreement under which A is liable to pay \$1,000 or more.

(2) It is a defence if A proves,---

(a) in a case to which subsection (1)(b)(i) applies, that before obtaining the credit of \$1,000 A informed the person giving the credit that A was affected by a summary instalment order:

(b) in a case to which subsection (1)(b)(ii) applies, that before A incurred the liability of \$1,000 the person giving the credit was informed that A was affected by a summary instalment order.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.

(4) No matter what section 14 of the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid at any time within 2 years after the time when the matter of the information arose.

Compare: 1967 No 54 s 151

356 Rules for summary instalment orders

The Governor-General may, by Order in Council, make rules providing for any matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

Compare: 1967 No 54 s 152

Subpart 4---No asset procedure

357 Introduction to this subpart

This subpart sets out a procedure for dealing with a debtor who has no realisable assets.

Entry to no asset procedure

358 Application for entry to no asset procedure

(1) A debtor who meets the criteria set out in section 359 may apply to the Assignee for entry to the no asset procedure.

(2) A debtor applies for entry to the no asset procedure by completing and filing with the Assignee the following documents:

- (a) an application in the prescribed form; and
- (b) a statement in the prescribed form of the debtor's affairs.

(3) The Assignee may reject the debtor's application if the application or statement of the debtor's affairs is, in the Assignee's opinion, incorrect or incomplete.

359 Criteria for entry to no asset procedure

(1) The Assignee may admit a debtor to the no asset procedure if the Assignee is satisfied on reasonable grounds that---

(a) the debtor has no realisable assets; and

(b) the debtor has not previously been admitted to the no asset procedure; and

(c) the debtor has not previously been adjudicated bankrupt; and

(d) the debtor has total debts that are not less than \$1,000 and not more than \$40,000; and

(e) under a prescribed means test, the debtor does not have the means of repaying any amount towards those debts.

(2) In this section, realisable assets does not include the assets that a bankrupt is allowed to retain under section 156.

(3) The amounts in subsection (1)(d) may be varied by the Governor-General by Order in Council to take account of increases in the all groups index number of the Consumer Price Index.

360 Debtor disqualified from entry to no asset procedure in certain cases

The Assignee must not admit a debtor to the no asset procedure if the Assignee is satisfied, on reasonable grounds, that---

(a) the debtor has concealed assets with the intention of defrauding his or her creditors, for example, by transferring property to a trust; or

(b) the debtor has engaged in conduct that would, if the bankrupt were adjudicated bankrupt, constitute an offence under this Act; or

(c) the debtor has incurred a debt or debts knowing that the debtor does not have the means to repay them; or

(d) a creditor intends applying for the debtor's adjudication as a bankrupt and it is likely that the outcome for the creditor if the debtor is adjudicated bankrupt will be materially better than if the debtor is admitted

to the no asset procedure.

Struck out (majority)

361 Assignee must advertise application and notify creditors

If a debtor has applied to the Assignee for entry to the no asset procedure, the Assignee must as soon as practicable---

- (a) advertise the application in the prescribed manner; and
 - (b) send a summary of the debtor's assets and liabilities to each known creditor of the debtor.
-
-

New (majority)

361 Assignee must notify creditors

If a debtor has applied to the Assignee for entry to the no asset procedure, the Assignee must as soon as practicable send a summary of the debtor's assets and liabilities to each known creditor of the debtor.

Struck out (majority)

362 Creditor may object to debtor's entry to no asset procedure

(1) A creditor may object to the debtor's entry to the no asset procedure on the ground that---

- (a) the debtor does not meet the criteria for entry; or
- (b) there are reasonable grounds for the Assignee to conclude that the debtor is disqualified under section 360.

(2) A creditor must object within 20 working days after the Assignee first sent a summary of the debtor's assets and liabilities to creditors.

(3) The Assignee must investigate the ground or grounds for the creditor's

objection, and must refer the creditor's objection to the debtor for a response, unless it is not practicable to do so.

(4) The Assignee must---

(a) decide within 20 working days after receiving the creditor's objection whether to uphold it or not; and

(b) notify the debtor and creditor of the decision as soon as practicable.

=====

363 Restrictions on debtor obtaining credit after application made

A debtor who has applied for entry to the no asset procedure must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than \$100 without first informing the credit provider that the debtor has applied for entry to the no asset procedure.

364 When debtor admitted to no asset procedure

(1) A debtor is admitted to the no asset procedure when the Assignee sends the debtor a written notice in the prescribed form.

Struck out (majority)

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(2) The Assignee must not send that notice to the debtor---

(a) before the time for a creditor to object has elapsed; or

(b) if a creditor has objected, before the Assignee has notified the creditor that the Assignee has not upheld the objection.

=====

New (majority)

(2) The Assignee must as soon as practicable notify creditors and advertise in the prescribed manner that the debtor has been admitted to the no asset procedure.

365 Public register of persons admitted to no asset procedure

- (1) The Assignee must maintain a public register of persons admitted to the no asset procedure.
- (2) The register must be maintained in accordance with subpart 5 of Part 7.

Effect of entry to no asset procedure

366 Creditors may not enforce debts

(1) A creditor (C) of a debtor (D) must not, after D has been admitted to the no asset procedure, begin or continue any step to recover or enforce a debt---

(a) that D owes C at the time when D applies for entry to the no asset procedure; and

(b) that would be provable in D's bankruptcy if D were adjudicated bankrupt.

(2) However, subsection (1) does not apply to the following debts, which remain enforceable:

(a) any amount payable under a maintenance order under the Family Proceedings Act 1980:

(b) any amount payable under the Child Support Act 1991:

(c) a loan balance under the student loan scheme established by the Student Loan Scheme Act 1992.

367 Debtor's duties after entry to no asset procedure

(1) The Assignee may require the debtor, and the debtor must comply with any reasonable request, to provide assistance, documents, and information necessary for applying the no asset procedure to the debtor.

(2) The debtor must notify the Assignee as soon as practicable of any change in the debtor's circumstances that would allow the debtor to repay an amount

towards the debts referred to in section 366(1).

(3) The debtor must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than {\$100} [\$1,000] without first informing the credit provider that the debtor is subject to the no asset procedure.

New (majority)

367A Offence of obtaining credit

(1) A person (A) commits an offence if A, while admitted to the no asset procedure,---

(a) alone or jointly with another person, obtains for the time being credit of \$1,000 or more; or

(b) incurs liability for the time being to any person of \$1,000 or more for the purpose of obtaining credit for another person; or

(c) enters into a hire purchase agreement under which A is liable to pay \$1,000 or more.

(2) It is a defence if A proves,---

(a) in a case to which subsection (1)(a) applies, that before obtaining the credit of \$1,000 A informed the person giving the credit that A was admitted to the no asset procedure:

(b) in a case to which subsection (1)(b) applies, that before A incurred the liability of \$1,000 the person giving the credit was informed that A was admitted to the no asset procedure.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.

(4) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid at any time within 2 years after the date of the offence.

Compare: 1967 No 54 s 151

Termination and discharge

368 Termination

A debtor's participation in the no asset procedure terminates when---

- (a) the Assignee terminates the debtor's participation under section 369; or
- (b) the debtor is discharged under section 371; or
- (c) the debtor applies for his or her own adjudication; or
- (d) a creditor who is entitled to do so (for example, because the creditor's debt is enforceable as a debt specified in section 366(2)) applies for the debtor's adjudication and the debtor is adjudicated bankrupt.

369 When Assignee may terminate

- (1) The Assignee may terminate a debtor's participation in the no asset procedure if---
 - (a) the debtor was wrongly admitted to the no asset procedure, for example, because the debtor concealed assets or misled the Assignee; or
 - (b) the Assignee is satisfied that the debtor's financial circumstances have changed, enabling the debtor to repay an amount towards his or her debts.
- (2) The Assignee terminates a debtor's participation in the no asset procedure by sending the debtor a written notice in the prescribed form to the debtor's last known address, and the termination is effective when the notice is sent, whether or not the debtor receives it.
- (3) The Assignee must as soon as practicable send a written notice of the termination to each creditor of the debtor known to the Assignee.

New (majority)

369A Assignee may apply for preservation order

(1) If the Assignee terminates a debtor's participation in the no asset procedure on the ground that the debtor has concealed assets or misled the Assignee, the Court on the application of the Assignee may make an order for the preservation of the debtor's assets pending an application for the debtor's adjudication.

(2) The Court may make an order under subsection (1) on the terms and conditions that it sees fit.

370 Effect of termination

Except in the case of termination by discharge under section 371, the debtor's debts that became unenforceable on the debtor's entry to the no asset procedure become again enforceable on termination of the debtor's participation in the no asset procedure.

New (majority)

370A Creditor may apply to Assignee for termination

(1) A creditor who objects on a ground set out in subsection (2) to the admission of the debtor to the no asset procedure may apply to the Assignee for termination.

(2) The grounds for objection are---

(a) the debtor did not meet the criteria for entry to the no asset procedure; or

(b) there are reasonable grounds for the Assignee to conclude that the debtor was disqualified under section 360.

371 Discharge

(1) The debtor is automatically discharged from the no asset procedure 12 months after the date when the debtor was admitted to it.

(2) On discharge, the debtor's debts that became unenforceable on the debtor's entry to the no asset procedure are cancelled, and the debtor is not liable to repay any part of the debts, including any penalties and interest that may have accrued.

Part 6
Insolvent deceased estates

372 Interpretation

(1) In this Part, unless the context otherwise requires,---

administration, in relation to the will or estate of a deceased person, has the same meaning as in the Administration Act 1969

administrator means an administrator within the meaning of the Administration Act 1969

appointee means an appointee under section 381(2)

beneficiary means a person who is beneficially interested in the deceased's estate

estate, in relation to a deceased debtor, means that part of the debtor's estate that is available for distribution under section 387.

(2) This subpart does not affect---

(a) any property of a deceased person that does not form part of his or her estate as defined in subsection (1); or

(b) the administration of that property.

(3) The administrator of the property of a deceased person (D) that does not form part of D's estate as defined in subsection (1) is, and (whether or not there is an administrator) the appointee is not,---

(a) D's executor or administrator for the purposes of section 6 of the Deaths by Accidents Compensation Act 1952:

(b) D's personal representative for the purposes of section 48 of the

Trustee Act 1956.

Compare: 1967 No 54 s 153

Application and order that estate be administered
under this Part

373 Court may order that estate be administered under this Part

(1) The Court may order that the estate of a deceased debtor be administered under this Part on the application,---

(a) under section 374, of the administrator or a person who is applying to the Court for a grant of administration:

(b) under section 375, of---

(i) a creditor who has produced evidence establishing a debt due to the creditor; or

(ii) a beneficiary.

(2) The Court may refuse to make the order if it is satisfied that---

(a) there is a reasonable probability that the estate will be enough for payment of the deceased's debts; and

(b) the creditors will not be prejudiced by the estate being administered in the normal way.

374 Application by administrator, etc

(1) The administrator, or a person who is applying to the Court for a grant of administration, may apply to the Court for an order that the estate be administered under this Part if the administrator or person applying ascertains that the money in the estate, together with the proceeds of any assets in the estate that can conveniently be converted into money, will not be, or is not likely to be, enough to meet the several claims on the estate.

(2) The application may be---

(a) joined with an application for a grant of administration in respect of the deceased's will or of the deceased's property that does not form part of his or her estate; or

(b) made at any time after that grant of administration.

(3) An applicant under this section, in addition to the application, must file in the Court an account that shows the assets, debts, and liabilities of the deceased, to the extent that the applicant knows what they are.

(4) The account---

(a) must be verified by affidavit; and

(b) may be amended from time to time; and

(c) must be filed---

(i) when the application is filed; or

(ii) within the prescribed time after the application is filed; or

(iii) within the additional time that the Court allows.

Compare: 1967 No 54 s 154

375 Application by creditor or beneficiary for order under this Part

(1) The following persons may also apply to the Court for an order under this Part:

(a) a creditor of the deceased's estate, if the creditor's debt has reached the threshold for a creditor's application for adjudication:

(b) a beneficiary.

(2) A creditor or beneficiary may apply for an order if---

(a) the administrator has not applied under this Part, and after being requested in writing to apply, fails to apply within 15 working days after receiving the request; or

(b) after 4 months from the date of the debtor's death, no administrator has been appointed and no application has been filed in the Court under section 374.

(3) In the case of an application under subsection (2)(a) for an order that the estate be administered under this Part, the Court must not make the order before 2 months have expired after the date when the administration was granted, but this restriction does not apply if---

(a) the administrator has consented; or

(b) the applicant proves that---

(i) the deceased committed an act of bankruptcy within 3 months before his or her death; or

(ii) the administrator has favoured or is about to favour any creditor; or

(c) in the Court's opinion the administrator is not properly administering the estate.

(4) The Court may allow an application under subsection (2)(b) to be filed before 4 months after the date of the debtor's death have expired if the Court is satisfied that---

(a) the deceased committed an act of bankruptcy within 3 months before his or her death; or

(b) the estate that should have been available for the deceased's creditors is reducing.

Compare: 1967 No 54 s 155

376 Notice of application by creditor or beneficiary

If an application has been filed by a creditor or beneficiary under section 375, the applicant must give notice of the application in the prescribed manner to---

(a) the administrator; or

(b) if there is no administrator, to the person specified by the Court.

Compare: 1967 No 54 s 156

377 When Registrar may hear application

(1) A Registrar may hear an application for administration of the estate of a deceased person under this Part if---

(a) the Registrar has jurisdiction to grant administration of the estate of any deceased person; and

(b) the application is joined with an application for a grant of administration in respect of the estate or will of the deceased.

(2) A Registrar may hear the application even if a Judge is available to hear it.

Compare: 1967 No 54 s 157(2)

378 Costs of application

The Court, on hearing an application under this Part, may---

(a) make the order or refuse the application with or without costs; and

(b) in either case, order costs to be paid by one party to another, or out of the estate.

Compare: 1967 No 54 s 157(1)

379 Court may order administration by Assignee or Public Trust

(1) This section applies if an application has been filed for an order to administer an estate under this Part, and the Court thinks that the estate is likely to be better administered by one of the persons mentioned in subsection (2)(b) than by the person who is or may become the administrator.

(2) The Court may, as part of its original order on the application or by any subsequent order, order that---

(a) the administrator (if there is one) must no longer administer the estate; and

(b) the Assignee, Public Trust, or some other person, as the Court thinks appropriate, must administer the estate.

Compare: 1967 No 54 s 158

380 Certificate filed by Public Trust or Maori Trustee has effect as application and order

(1) Public Trust or the Maori Trustee may file a certificate under this section if Public Trust or the Maori Trustee (as the case may be) is the administrator of, or would be entitled to obtain a grant of administration for, an apparently insolvent estate.

(2) The filing of the certificate in the prescribed form has the effect both of an application and an order that the estate be administered under this Part.

(3) The certificate must be filed in the registry of---

(a) the Court out of which the grant of administration issued; or

(b) the Court in which Public Trust or the Maori Trustee has filed an election to administer under---

(i) Part 4 of the Public Trust Office Act 1957 or Part 6 of the Public Trust Act 2001, in the case of Public Trust; or

(ii) section 12A or section 12B of the Maori Trustee Act 1953, in the case of the Maori Trustee; or

(c) if no grant of administration has been issued or no election to administer has been filed, the Court that Public Trust or the Maori Trustee thinks appropriate.

(4) An election to administer an estate under this Part may be combined with an election to administer the estate under Part 6 of the Public Trust Act 2001 or section 12A or section 12B of the Maori Trustee Act 1953.

(5) Powers conferred on Public Trust or the Maori Trustee under this Part

are in addition to the powers conferred on either of them by any other enactment or law.

Compare: 1967 No 54 s 160

Effect of order that estate be administered under this Part

381 Estate vests in appointee

(1) The whole of the estate at the date when the application for the order under this Part was filed vests in the person appointed by the Court to administer it (the appointee).

(2) The Court, in its order that the estate be administered under this Part or in a subsequent order, may appoint as appointee---

(a) the administrator; or

(b) the Assignee; or

(c) Public Trust; or

(d) any other person.

Compare: 1967 No 54 s 159(1)

382 Appointee must realise, administer, and distribute estate

The appointee must, as soon as practicable after the estate vests in the appointee, realise, administer, and distribute the assets in accordance with the law and practice of bankruptcy, subject to any modifications in this Part.

Compare: 1967 No 54 s 159(1)

383 Entitlement of surviving spouse to household furniture and effects

(1) This section applies if the estate that vests in the appointee includes any of the deceased's necessary household furniture and effects that would have passed to the deceased's surviving spouse (S) if the estate had not been insolvent.

(2) S may select and retain as his or her own property so much of the furniture and effects referred to in subsection (1) that the appointee determines.

(3) S must make the selection within the time that the appointee allows.

(4) S's selection does not affect any rights under a valid {security} [charge] or hire purchase agreement in respect of the goods selected.

(5) The fact that the goods available for selection are subject to a {security} [charge] or hire purchase agreement does not give S any rights to any other part of the deceased's property.

Compare: 1967 No 54 s 159(2)

384 Appointee may make allowance to surviving spouse

(1) The appointee may make an allowance out of the estate to the surviving spouse or to any of the relatives or dependants of the deceased or the surviving spouse for the support of any of them.

(2) However, the appointee must first obtain the consent of the creditors, which must be expressed in the form of {a} [an ordinary] resolution.

Compare: 1967 No 54 s 159(4)

Administration of estate under this Part

385 Sections 386 to 392 apply in respect of estate administered under this Part

Sections 386 to 392 apply when an order has been made that the estate be administered under this Part.

Compare: 1967 No 54 s 162(1)

386 Appointee's authority, powers, and functions

The appointee has, in relation to the estate, the same authority, powers, and

functions as the Assignee has in relation to the property of a bankrupt.

Compare: 1967 No 54 s 162(1)

387 Distribution of estate

(1) The estate must be distributed in the following order:

(a) first, payment of all proper costs, charges, debts, and expenses of the due administration of the estate, whether incurred before or after the order is made:

(b) secondly, payment of the deceased's reasonable funeral expenses:

(c) thirdly, payment of the following expenses of the deceased incurred during the 3 months immediately before the deceased's death:

(i) medical expenses:

(ii) reasonable expenses for hospital care (as defined in section 4(1) of the Health and Disability Services (Safety) Act 2001) provided for the deceased, so far as those expenses are lawfully recoverable:

(d) fourthly, payment of other claims and interest in accordance with section 272:

(e) all other claims, which rank equally and abate in proportion if there is insufficient to pay them in full.

(2) For the purposes of subsection (1)(d), a reference in section 272 to the date of adjudication must be read as a reference to the date of the deceased's death.

Compare: 1967 No 54 s 162(1)(b), (2)

388 Payment of surplus

(1) In this section, surplus means the surplus of assets that remains with the appointee after the appointee has paid in full---

(a) the debts due by the deceased debtor; and

(b) the costs of the administration under this Part; and

(c) any other money that would be payable in a case of bankruptcy.

(2) The surplus must be---

(a) paid to, or retained by, the administrator of the deceased's property that does not form part of the deceased's estate under this Part, if there is one; or

(b) if there is no administrator of the deceased's property that does not form part of the deceased's estate under this Part, distributed as approved by the Court, having regard to the persons who are entitled to it.

(3) The Court may make an order approving the distribution of the surplus as part of the order that the estate be administered under this Part, or at any time after, and the order may be varied in respect of the surplus that remains in the appointee's hands at the date of each variation.

Compare: 1967 No 54 s 162(1)(c), (3)

389 Creditor's notice to administrator

(1) If a creditor applies for an order that the deceased's estate be administered under this Part, and the order is made, notice to the deceased's administrator that the application has been filed is treated as an act of bankruptcy.

(2) After receipt of the notice, the administrator does not obtain a discharge for any payment of money or disposition of property by the administrator, unless it is done pursuant to the order.

Compare: 1967 No 54 s 162(1)(d)

390 Appointee may act in relation to deceased's irregular transactions

(1) An appointee may take a step that the Assignee could have taken under subpart 7 of Part 3 (for example, the cancellation of an irregular transaction) as if the deceased had been bankrupt at the time of death.

(2) However, there are 2 additional restrictions when an appointee takes a step under subpart 7 of Part 3:

(a) the appointee must not issue a notice cancelling a gift or voluntary settlement without first obtaining the permission of the Court; and the Court must not give permission unless it appears that recovery of the gift or settlement is necessary to pay the debts of the estate in full (including interest); and

(b) the Court must not make an order under section 211 unless it is satisfied that recovery of the deceased's contribution to the property of another is necessary to pay the debts of the estate in full (including interest).

Compare: 1967 No 54 s 162(1)(e), (f)

391 Appointee may cancel execution

The appointee may cancel an execution against the deceased debtor's estate unless it was completed more than 3 months before the date of the order that the estate be administered under this Part.

Compare: 1967 No 54 s 162(1)(g)

392 Administrator's acts valid before notice

Nothing in this Act invalidates any payment made, or any act or thing done, in good faith by the administrator before the administrator had notice of an intention to apply for an order that the estate be administered under this Part.

Compare: 1967 No 54 s 163

Part 7

Offences and miscellaneous provisions

Subpart 1---The Assignee

393 Appointment of Official Assignee for New Zealand and others

(1) Suitable persons must be appointed under the State Sector Act 1988 to the following positions under this Act:

(a) the Official Assignee for New Zealand:

(b) the Deputy Official Assignee for New Zealand:

(c) Official Assignees:

(d) as required, Deputy Assignees to help in the administration of estates.

(2) Assignees and Deputy Assignees are officers of the Court.

(3) The Deputy Official Assignee must discharge his or her duties and exercise his or her powers under the control and direction of the Official Assignee for New Zealand.

(4) Assignees and Deputy Assignees must discharge their duties under the control and direction of the Official Assignee for New Zealand and the Deputy Official Assignee for New Zealand.

(5) Nothing in this section affects section 59 or section 398(3).

Compare: 1967 No 54 s 15

394 Assignee may act on behalf of another Assignee

An Assignee or Deputy Assignee may act for, or in the place of, another Assignee or Deputy Assignee, and in that capacity has all the authority and powers of the Assignee or Deputy Assignee for whom, or in whose place, he or she acts.

Compare: 1967 No 54 s 16

395 Assignee's use of name, seal, etc

(1) An Assignee may sue and be sued in the name of "The Official Assignee in Bankruptcy of the property of [bankrupt's name inserted]", and in that name may do anything that must be done or should be done as part of his or her functions as Assignee.

(2) An Assignee may---

- (a) administer oaths and take statutory declarations; and
- (b) appear in Court and examine the bankrupt in any proceedings.

(3) An Assignee must have a seal of office, which the Assignee must keep and use when required in the administration of the estates in the Assignee's charge.

(4) An Assignee may execute all documents by signing the Assignee's own name over the official name, and need not affix a seal to any document, although he or she may do so.

Compare: 1967 No 54 s 17

396 Assignee's additional rights and remedies

The Assignee, in addition to rights and remedies under this Act, has the rights and remedies provided by any other Act or rule of law.

397 Disqualification of Assignee

(1) An Assignee (A) is disqualified from acting in a bankrupt estate if A is a creditor of the estate and the creditors resolve that A must not act as Assignee.

(2) Subsection (1) does not apply if A is a creditor of the estate only in the capacity of---

- (a) the Assignee of the property of another bankrupt; or
- (b) the liquidator of a company; or
- (c) an appointee under Part 6.

Compare: 1967 No 54 s 18(1)

398 Vacation of office by Assignee

(1) An Assignee must vacate his or her office if he or she is adjudicated bankrupt.

(2) An Assignee is eligible, subject to the provisions of the State Sector Act 1988, to be reappointed an Assignee when discharged from bankruptcy.

(3) This section does not affect the question of the employment of an Assignee who is adjudicated bankrupt whilst in any other position in the Public Service.

Compare: 1967 No 54 s 18(3)

399 Protection of Assignee

An Assignee is not liable in any action or proceeding for any thing the Assignee may have done or omitted to do by reason only that the bankrupt is discharged or the bankruptcy is annulled.

Compare: 1967 No 54 s 138

400 Assignee's remuneration

(1) The Assignee may charge remuneration for carrying out his or her duties and exercising his or her powers as Assignee at the amount or rates fixed or prescribed under section 401 or charged according to rates prescribed under that section.

(2) Remuneration that has been charged under subsection (1) and paid to the Assignee must be paid into a Crown Bank Account.

Compare: 1967 No 54 s 166

401 Rates of Assignee's remuneration

(1) The Governor-General may, by Order in Council, make regulations that fix or prescribe the amount or rates of remuneration chargeable under section 400.

(2) The regulations may, for example, prescribe---

(a) hourly or other rates:

(b) different rates for work done in the bankruptcy by different classes of persons:

(c) rates by reference to the net value of the assets realised by the Assignee together with other amounts as may be specified:

(d) rates for the exercise of particular functions or powers:

(e) rates by reference to any other criteria that may be specified.

Compare: 1967 No 54 s 166A

402 Assignee must apply for order of release

(1) After advertising the filing of the final statement of accounts and statement of financial position for the estate of a bankrupt (see section 226), the Assignee must apply to the Court for an order releasing the Assignee from the administration of that estate.

(2) The Assignee must advertise his or her intention to apply for an order of release, and the time when the application will be heard.

(3) The Court must hear the application not earlier than 10 working days before, and not later than 20 working days after, the Assignee advertises the application under subsection (2).

(4) On hearing the application, the Court---

(a) must take into account any objection to the Assignee's release by any creditor or other person interested in the bankruptcy; and

(b) if the Court refuses the order, may, on the application of any creditor or other person interested in the bankruptcy, make any order it thinks fit to remedy any breach of duty by the Assignee.

Compare: 1967 No 54 s 133

403 Effect of order

(1) An order of release made under section 402 discharges the Assignee, from

the date of the order, from all liability for any act or omission by the Assignee---

(a) in the administration of the bankrupt's affairs:

(b) in relation to the Assignee's conduct as Assignee of the bankrupt up to the date of the order.

(2) The order must not be revoked except if it was obtained by fraud.

Compare: 1967 No 54 s 133(5), (6)

404 Subsequent order of release

(1) This section applies if the Assignee receives further property of the bankrupt after the date of an order of release.

(2) The Assignee must, after realising or otherwise dealing with that property, apply for an order of release in respect of the Assignee's administration of it.

(3) Sections 402 and 403 apply to an application for a subsequent order of release.

Compare: 1967 No 54 s 133(7)

Subpart 2---The Court

405 Jurisdiction and powers of Court

(1) A Judge may exercise all the powers and jurisdiction given to the Court under this Act.

(2) A Judge may hear a proceeding under this Act, or any aspect of it, in Chambers or in open Court, except that the following must be heard and dealt with in open Court:

(a) the public examination of a bankrupt:

(b) an application for annulment of a bankruptcy or the discharge of a bankrupt.

Compare: 1967 No 54 s 5(1)

406 Court may look at real nature of transaction

In considering a transaction, the Court may look at its real nature, and it does not matter that the transaction appears to be, or is described by the parties to it as being, something different.

Compare: 1967 No 54 s 5(2)

407 When Registrar or District Court Judge may exercise powers and jurisdiction of Court

(1) A Registrar or a District Court Judge has, with the exception of the powers listed in subsection (2), all the powers and jurisdiction of the Court under this Act during---

(a) a Court vacation; or

(b) the illness of a Judge; or

(c) any period when there is no Judge at the place where the office of the Court is situated.

(2) A Registrar or a District Court Judge does not have the power under subsection (1) to---

(a) make an order of discharge or annulment; or

(b) commit for contempt of Court; or

(c) exercise any jurisdiction conferred by subpart 3 of Part 7; or

(d) conduct a public examination under subpart 5 of Part 3.

(3) A Registrar or a District Court Judge may, if in doubt as to the proper order to be made on an application, refer it to a Judge at the next convenient opportunity, and a Judge may hear and decide the application.

(4) A Judge may vary or discharge any decision by a Registrar or District

Court Judge, and the decision of the Judge under this subsection can be reviewed, rescinded, or varied by the Court under section 408.

(5) There is no appeal directly to the Court of Appeal from the decision of a Registrar or a District Court Judge.

(6) Nothing in this section affects the specific powers of a District Court Judge under this Act, for example, in section 163.

Compare: 1967 No 54 s 6

408 Rehearings and appeals

(1) The Court may review, rescind, or vary any decision of the Court or a Judge under this Act.

(2) An aggrieved person may appeal to the Court of Appeal from a decision of the Court or a Judge under this Act.

Compare: 1967 No 54 s 8

409 Proceedings not halted pending appeal

A notice of appeal does not halt proceedings under the decision under appeal unless the Court or the Court of Appeal makes an order halting the proceedings.

Compare: 1967 No 54 s 9(1)

410 Suspension of adjudication pending appeal

(1) If an appeal has been filed against an order of adjudication, the bankrupt or any other interested person may apply to the Court or the Court of Appeal for an order suspending the adjudication until the appeal is decided.

(2) The Court or Court of Appeal may suspend the adjudication on the conditions that it thinks appropriate, including conditions as to anything done or decided, or that ought to have been done or decided, by any person in the period between the adjudication and the order suspending adjudication.

(3) The Court or the Court of Appeal may at any time make an order as it

thinks appropriate as to anything done or decided, or that ought to have been done or decided, by any person in the period between the adjudication and the date when the appeal is decided if---

- (a) the adjudication has been suspended and the appeal fails; or
- (b) the adjudication has not been suspended and the appeal succeeds.

Compare: 1967 No 54 s 9(2)-(4)

411 Court may extend time

(1) The Court may extend any time limit imposed by this Act, or by rules or regulations made under this Act, for doing any act or thing.

(2) The Court may extend the time limit---

- (a) before or after the time limit has expired:
- (b) on the conditions it thinks appropriate.

Compare: 1967 No 54 s 10

412 Defects in proceedings

(1) A proceeding under this Act must not be invalidated or set aside for a defect (which includes misdescription, misnomer, or omission) in a step that must be taken as part of, or in connection with, the proceeding, unless a person is prejudiced by the defect.

(2) The Court may order the defect to be corrected, and may order the proceeding to continue, on the conditions that the Court thinks appropriate in the interests of everyone who has an interest in the proceeding.

Compare: 1967 No 54 s 11

Subpart 3---Offences by bankrupt

Indictable offences

413 Offences in relation to debts

(1) A bankrupt (B) commits an offence if B did not, when contracting a debt, expect to be able to pay the debt when it fell due for payment, as well as pay all B's other debts (including future and contingent debts).

(2) A bankrupt (B) commits an offence if B has materially contributed to, or increased the extent of, B's insolvency by gambling or by rash and hazardous speculations or by unjustifiable spending or by extravagance in living.

(3) For the purposes of subsection (1), B is rebuttably presumed to have committed the offence if B, when contracting the debt, had no reasonable ground for expecting that B would be able to pay the debt when it fell due for payment as well as pay all B's other debts (including future and contingent debts).

Compare: 1967 No 54 s 126(1)(a), (c)

414 Offences in relation to property

(1) A bankrupt (B) commits an offence if B---

(a) conceals or removes any part of B's property---

(i) within 2 months immediately before any unsatisfied judgment or order for payment of money is obtained against B; or

(ii) at any time after an unsatisfied judgment or order for payment of money is obtained against B; or

(b) with intent to defraud B's creditors or any of them, makes, or causes to be made, any gift, delivery, or transfer of, or {security interest in} [charge over], B's property.

(2) A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed, or within 2 years immediately before the application is filed, B---

(a) conceals any part of B's property to the value of \$500 or more; or

(b) conceals any debt due to B or due from B; or

(c) fraudulently removes any part of B's property to the value of \$500

or more.

Compare: 1967 No 54 s 126(1)(b), (g)

415 Offence in relation to written statement to creditor, etc

A bankrupt (B) commits an offence if, within 3 years immediately before B's adjudication,---

(a) B makes or produces any written statement to a person who---

(i) is at the time B's creditor; or

(ii) becomes B's creditor as a result of the statement being made or produced to that person; and

(b) the statement is not a true and fair statement of B's affairs.

Compare: 1967 No 54 s 126(1)(e)

416 Offence in relation to documents, etc

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed, or within 2 years immediately before the application is filed, B---

(a) conceals, destroys, mutilates, or falsifies, or is a party to the concealment, destruction, mutilation, or falsification of, any document affecting, or relating to, B's property, conduct, or dealings; or

(b) makes, or is a party to the making of, any false entry in any document affecting, or relating to, B's property, conduct, or dealings; or

(c) fraudulently parts with, alters, or makes any omission in, or is a party to fraudulently parting with, altering, or making any omission in, any document affecting, or relating to, B's property, conduct, or dealings; or

(d) prevents the production of any document affecting, or relating to, B's property, conduct, or dealings to any person to whom B has an obligation under this Act to produce it.

Compare: 1967 No 54 s 126(1)(f)(i)-(iv)

417 Offence in relation to fictitious losses or expenses

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed, or within 12 months immediately before the application is filed, B attempts to account for any part of B's property by fictitious losses or expenses.

Compare: 1967 No 54 s 126(1)(h)

418 Offences in relation to credit, etc

(1) A bankrupt (B) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed,---

(a) B obtains property on credit and has not paid for the property; and

(b) B obtains the property on credit---

(i) by a false representation or other fraud; or

(ii) by a false statement of financial position or other false statement of B's affairs; or

(iii) under the false pretence of carrying on business and dealing in the ordinary course of trade.

(2) A bankrupt (B) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed, B pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary course of trade, any property that B has obtained and has not paid for.

Compare: 1967 No 54 s 126(1)(i)

419 Offences in relation to obtaining consent of creditors

A bankrupt (B) commits an offence if B makes a false representation for, or is

guilty of any other fraud for, the purpose of obtaining the consent of any 1 or more of B's creditors to any agreement with reference to B's affairs or B's bankruptcy.

Compare: 1967 No 54 s 126(1)(j)

420 Offence in relation to leaving New Zealand

A bankrupt (B) commits an offence if, after an application for B's adjudication has been filed or within 12 months immediately before the application is filed, B---

(a) leaves New Zealand (either temporarily or permanently) and takes with him or her any part of any property to the value of \$1,000 or more that ought, by law, to be divided among B's creditors; or

(b) attempts to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property; or

(c) prepares to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property.

Compare: 1967 No 54 s 126(1)(k)

421 Defence of absence of intent

(1) A bankrupt (B) does not commit an offence under section 414(1)(a) if B proves that at the material time he or she had no intent to defraud any of B's creditors.

(2) A bankrupt (B) does not commit an offence under any of the following provisions if B proves that at the material time B had no intent to defraud:

(a) section 414(2)(a) or (b):

(b) section 418(1):

(c) section 418(2):

(d) section 420.

(3) A bankrupt (B) does not commit an offence under section 415 if B proves that at the material time B had no intention to deceive.

(4) A bankrupt (B) does not commit an offence under section 416(a), (b), or (d) if B proves that at the material time B had no intent to conceal the state of his or her affairs or to defeat the law.

422 Penalties for indictable offences by bankrupt

A bankrupt who commits an offence under any of sections 413 to 420 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

Offences in relation to record of transactions

423 Failure to keep and preserve proper record of transactions

(1) A bankrupt (B) commits an offence if, for any period during the 3 years immediately before B's adjudication,---

(a) B might reasonably be expected, because of B's occupation or transactions for the period, to keep a record of those transactions; and

(b) B failed to keep and preserve a proper record of the transactions.

(2) Despite anything that the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid against a bankrupt at any time within 2 years after the date of his or her adjudication.

Compare: 1967 No 54 s 127(1)

424 Failure to keep proper records with intent to conceal

A bankrupt (B) commits an offence if, with intent to conceal the true state of his or her affairs, B has failed to keep and preserve a proper record of B's transactions.

Compare: 1967 No 54 s 127(2)

425 Penalties for offences relating to records

(1) A person who commits an offence under section 423 is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

(2) A person who commits an offence under section 424 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

426 When bankrupt deemed not to have kept or preserved proper record

(1) For the purposes of sections 423 and 424, a bankrupt (B) is deemed not to have kept a proper record of his or her transactions if, being engaged in any trade or business, B has not kept the necessary books and accounts.

(2) In subsection (1), necessary books and accounts means the books and accounts that are necessary to explain B's transactions and financial position in B's trade or business, and includes---

(a) a book or books containing entries from day to day in sufficient detail of all cash received and cash paid; and

(b) if B's trade or business has involved dealing in goods,---

(i) a record of all goods sold and purchased; and

(ii) detailed stock sheets of annual and other stock takings showing the quantity and the valuation made of each item of stock on hand; and

(c) if B's trade or business has involved B's services, details of those services.

(3) For the purposes of sections 423 and 424, B is deemed not to have preserved a proper record of his or her transactions if B has not preserved---

(a) the records listed in subsection (2), if applicable:

(b) a record of all goods purchased in the course of B's business, with the original invoices:

(c) a daily record of all goods sold on credit.

Compare: 1967 No 54 s 127(3), (4)

Summary offences

427 Summary offences

(1) A bankrupt (B) commits an offence if B---

(a) fails without reasonable excuse to do any of the things required of B by section 67 or section 87 or subpart 2 of Part 3 or subpart 5 of Part 3 or to comply with any of the provisions of section 297 or section 305; or

(b) refuses or neglects to answer fully and truthfully all proper questions put to B at any examination held under this Act; or

(c) wilfully misleads the Assignee in any statement made to him or her in the course of the administration of B's affairs, whether orally or in writing or in any answer to any question put to B; or

(d) after becoming aware that any person has filed a false proof in the bankruptcy, failed to disclose that fact immediately to the Assignee; or

(e) has within 2 years before B's adjudication, at a time when B was unable to pay B's debts as they became due, given, with intent to defraud B's creditors, any undue preference to any of B's creditors; or

(f) while a bankrupt {(even if the bankruptcy is later annulled), within 3 years after B's adjudication} and without having first obtained the consent of the Assignee,---

(i) leaves, or attempts to leave, New Zealand, temporarily or permanently; or

(ii) makes preparations for leaving New Zealand, temporarily or permanently; or

(g) before B obtains a final order or discharge, or before a suspended order of discharge takes effect under this Act,---

(i) alone, or jointly with another person, obtains credit of \$1,000 or more; or

(ii) incurs liability to any person of \$1,000 or more for the purpose of obtaining credit for another person.

(2) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for any of the offences in subsection (1) may be laid against a bankrupt at any time within 2 years after the {time when the matter of the information arose} [date of the offence].

Compare: 1967 No 54 s 128(1), (2)

428 Defences to summary offences of obtaining credit

(1) A bankrupt (B) does not commit an offence under section 427(1)(g)(i) if B proves that, before obtaining the credit of \$1,000 or more, B informed the person giving the credit that B was an undischarged bankrupt.

(2) A bankrupt (B) does not commit an offence under section 427(1)(g)(ii) if B proves that, before incurring the liability of \$1,000 or more, the person giving the credit was informed that the person incurring the liability was an undischarged bankrupt.

Compare: 1967 No 54 s 128(1)(g)

429 Penalty for summary offences by bankrupt

A person who commits an offence under section 427(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 128(1)

Offences in relation to management of companies

430 Offence by bankrupt in relation to management of companies

(1) A bankrupt commits an offence if he or she---

(a) acts as a director of a company; or

(b) fails without reasonable excuse to comply with section 147.

(2) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information in respect of an offence under subsection (1) may be laid at any time within 2 years after the date of the offence.

Compare: 1967 No 54 s 128A

431 Penalties for offence in relation to management of companies

A person who commits an offence under section 430 is liable,---

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years:

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

Assignee's discretion to prosecute

432 Assignee may prosecute if reasonable grounds certified by Crown Solicitor

(1) If the Assignee has reason to suspect that a person (X) has committed an offence under this Act, the Assignee may refer the case to the appropriate Crown Solicitor.

(2) The Assignee may lay an information against X if the Crown Solicitor certifies that there are reasonable grounds for prosecuting X.

Compare: 1967 No 54 s 129

433 Assignee has immunity for prosecution if certificate given by Crown Solicitor

No action may be taken against the Assignee for malicious prosecution in relation to a prosecution under this Act if the Crown Solicitor certified that there were reasonable grounds for bringing the prosecution.

Compare: 1967 No 54 s 129(2)

Subpart 4---Miscellaneous provisions

434 False or misleading statements or refusal to answer questions

(1) A person commits an offence if he or she---

(a) makes a statement to any Assignee or person concerned in the administration of this Act, knowing that the statement is false in a material particular; or

(b) wilfully misleads, or attempts to mislead, any Assignee or person concerned in the administration of this Act; or

(c) without reasonable excuse, fails or refuses to answer any question put to him or her by the Assignee.

(2) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 164

435 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing fees to be paid under this Act or regulations made under this Act:

New (unanimous)

(ab) prescribing the procedure for lodging a debtor's application for adjudication with the Assignee:

(b) prescribing how and when the debts and claims of creditors must be made and proved, and when a debt or claim may be allowed or disallowed:

(c) providing for the public examination of bankrupts:

(d) prescribing the expenses that may be paid to a bankrupt, or any other person, who is required to attend any examination by the Assignee:

(e) prescribing the steps an undischarged bankrupt must take to obtain the Assignee's consent to leaving New Zealand and the circumstances in which, and the conditions on which, the Assignee may consent:

(f) prescribing the accounts that must be kept by the Assignee, the audit of those accounts, and the fees payable for the audit:

New (unanimous)

(fa) prescribing the manner of publication of the Assignee's final statement of receipts and payments:

(g) prescribing the manner of advertising under this Act:

(h) providing for the appointment, retirement, removal, discharge, and control of trustees under subpart 2 of Part 5, and for the accounts that must be kept by them, and for the audit of those accounts:

(i) prescribing the scale of fees of the Court and the Court of Appeal for proceedings under this Act:

(j) prescribing the form of---

(i) a statement of affairs that is filed under section 46, 67, or 358:

(ii) an application that is made under section 49, 340, or 358:

(iii) a notice under section 364 or section 369:

(k) prescribing the steps that must be taken by the bankrupt under section 139 in relation to the bankrupt's property and the distribution of the proceeds to the creditors:

(l) regulating the payment by the Assignee of money into the Assignee's bank account under section 218(1):

(m) prescribing the time for giving a notice of opposition under section

295:

(n) prescribing how instalments under a summary instalment order must be paid:

New (unanimous)

(na) providing for the conduct of creditors' meetings under subparts 1 and 2 of Part 5:

(o) prescribing reasons for refusal by the Assignee under section 440(2) of access to a public register:

(p) prescribing any further information or documents that must be held under a public register under section 442(1):

(q) regulating the search of public registers (see section 445):

(r) prescribing any further search criteria under section 446(1):

(s) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1967 No 54 s 14

436 Rules

(1) Rules may be made from time to time under the Judicature Act 1908---

(a) relating to the procedure of the Court under this Act:

(b) relating to appeals to the Court of Appeal under this Act:

(c) to give effect to this Act.

(2) Matters that may be dealt with by the rules include the following:

(a) how proceedings are started and transferred from one registry of the Court to another:

(b) where proceedings may be started:

(c) the forms to be used in proceedings:

(d) the service of documents filed or issued in proceedings:

(e) the amendment of defects and errors in proceedings:

(f) how evidence may be given:

(g) how the identity of persons who are parties to, or involved in, proceedings must be proved:

(h) how witnesses are summoned and documents are discovered:

(i) the right of creditors and other persons to appear in proceedings, and the procedure to be followed in the absence of creditors or other persons:

(j) the notices that must be given in connection with proceedings, and who must give them and to whom:

(k) the manner of advertising:

(l) the consolidation of proceedings:

(m) the substitution of parties to proceedings:

(n) authorising the continuation of proceedings after the death of the debtor in question:

(o) authorising proceedings to be begun against 1 or more partners of a business partnership without including the others, and providing for the disclosure of the other partners:

(p) the scale of costs of {solicitors} [lawyers] and others in proceedings:

(q) the award of costs and when security for costs must be given:

(r) the execution of processes and the enforcement of orders under this Act:

(s) the time limit for appealing to the Court of Appeal and how the appeal must be brought:

(t) matters necessary for the administration of this Act or necessary for giving it full effect.

Compare: 1967 No 54 s 13

New (unanimous)

436A Repeal and revocation

(1) The Insolvency Act 1967 is repealed.

(2) The Insolvency Regulations 1970, the Insolvency (Priorities) Order 1988, and the Summary Instalment Orders (District Court) Rules 1970 are revoked.

437 Transitional provisions

(1) In this section,---

1967 Act means the Insolvency Act 1967 as if it had not been repealed by this Act, and any rules or regulations made under that Act

commencement means the commencement of Parts 1 to 7 of this Act

past event means any of the following that has occurred before commencement:

(a) issuing a bankruptcy notice:

(b) filing a petition for adjudication:

(c) filing an application for a summary instalment order:

(d) the making of a proposal:

(e) the making of a compromise:

(f) filing an application for an order for the administration of an insolvent deceased estate.

(2) The 1967 Act continues to apply, to the exclusion of this Act, to any

past event and to any step or proceeding preceding, following, or relating to that past event, even if it is a step or proceeding that is taken after commencement.

(3) For the avoidance of doubt, nothing in subpart 7 of Part 3 permits the cancellation of an irregular transaction that was completed before this section came into force, if that transaction could not have been cancelled if this section had not come into force.

438 Consequential amendments to other enactments

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

439 Subpart applies to public register maintained under section 62 [or section 350A] or section 365

This subpart applies to a public register maintained under section 62 [or section 350A] or section 365.

440 When public register must be accessible

(1) A public register must be available for access and searching by members of the public during business hours on a working day.

(2) However, the Assignee may refuse access to a public register or suspend the operation of a public register, in whole or in part,---

(a) if the Assignee considers that it is not practical to provide access to the register; or

(b) for any other reason that is prescribed by regulations made under this Act.

441 Purposes of public registers

(1) A public register maintained under section 62 has---

(a) the purpose of providing information about bankrupts and discharged

bankrupts; and

(b) the further purposes set out in subsection (3).

New (unanimous)

(1A) A public register maintained under section 350A has---

(a) the purpose of providing information about persons subject to a current summary instalment order; and

(b) the further purposes set out in subsection (3).

(2) A public register maintained under section 365 has---

(a) the purpose of providing information about persons currently admitted to the no asset procedure; and

(b) the further purposes set out in subsection (3).

(3) The further purposes of {both} [the] public registers are to---

(a) facilitate the compliance, audit, and other supporting and administrative functions of the Assignee, Ministry, the courts, or any other person under this Act or any other enactment; and

(b) facilitate the enforcement functions and the exercise of the powers of the Assignee, Ministry, the courts, or any other person under this Act or any other enactment; and

(c) provide statistical information and information for research purposes in relation to bankruptcy[, summary instalment orders,] and the no asset procedure.

442 General information that must be held in public registers

(1) The public registers must contain the following information in respect of a person (P) who is or has been bankrupt or who is [subject to a current summary instalment order or] currently admitted to the no asset procedure:

(a) P's full name:

(b) whether P is currently bankrupt, or has been discharged from bankruptcy, [or is subject to a current summary instalment order,] or is currently admitted to the no asset procedure, as the case may be:

(c) the bankruptcy[, summary instalment order,] or no asset procedure number[, as the case may be] :

(d) P's address as contained in P's statement of affairs, or application for adjudication, [or application for a summary instalment order,] or application for admission to the no asset procedure or, if P has notified the Assignee of a change of address, that address, or in the case of adjudication on a creditor's application, P's address contained in that application:

(e) P's occupation and current employment status, if known:

(f) in the case of an adjudication by the Court, which Court, and the time and date of the adjudication:

(g) in the case of an automatic adjudication, a statement that P was automatically adjudicated bankrupt under section 47, and the time and date of the adjudication:

(h) if P is admitted to the no asset procedure, the date of admission:

(i) if P is a discharged bankrupt, the date, type, and conditions (if any) of discharge:

(j) if the bankruptcy was annulled under section 307(1)(b) or (c) or section 308(2)(b) or (c), under which of those provisions it was annulled:

(k) if the Court has refused to discharge P from bankruptcy, that information:

(l) if the Court has suspended P's discharge from bankruptcy, that information:

(m) the place of the office of the Assignee dealing with P's bankruptcy or admission to the no asset procedure and that office's contact number for enquiries:

New (unanimous)

(ma) in the case of a person subject to a current summary instalment order, the full name and business postal address of the supervisor:

(n) any other prescribed information or documents.

(2) Subject to sections 440(2) and 444(1), the information listed in subsection (1) must be available to any member of the public.

(3) A public register must not contain any information in relation to a person whose bankruptcy was annulled under section 307(1)(a) or 308(2)(a).

(4) All information relating to a person who has been adjudicated bankrupt and discharged from bankruptcy must be removed from the public register maintained under section 62---

(a) 4 years after the date of discharge; but

(b) in the case of a conditional discharge, 4 years after the discharge becomes unconditional.

(5) All information relating to a person who has been adjudicated bankrupt but whose bankruptcy has been annulled under section 307(1)(b) or (c) or section 308(2)(b) or (c) must be removed 7 years after the date of adjudication from the public register maintained under section 62.

443 Restricted information that may be held in public register maintained under section 62

(1) The public register maintained under section 62 may contain any or all of the documents set out in section 100 in respect of a person (B) who is or has been bankrupt.

(2) A member of the public must not have access to the documents contained in the public register under subsection (1) in respect of B unless that person is entitled to inspect those documents under section 100.

444 When Assignee may omit, remove, restrict access to, or amend, information contained in public registers

(1) The Assignee may omit, remove, or restrict access to information

contained in a public register in respect of a person (P) if the Assignee considers, in his or her discretion, that the disclosure of the information via the public register would be prejudicial to P's safety or the safety of P's family.

(2) The Assignee may amend the information contained in a public register in order to update the information or correct any error in, or omission from, the information.

(3) The Assignee may refuse to provide access to any information in a public register if, in the Assignee's opinion, it is impractical to provide the volume of information requested.

445 Search of public registers

A person may only search the public registers in accordance with this Act or regulations made under this Act.

446 Search criteria

(1) The public registers may be searched only by reference to the following criteria:

(a) the bankruptcy number, [summary instalment order,] or {the} no asset procedure number:

(b) the name, or any part of the name of a person:

(c) the name of a Court:

(d) insolvency status:

(e) the date of adjudication, [summary instalment order,] admission to the no asset procedure, or discharge, by reference to a range of dates:

(f) any combination of the criteria in paragraphs (a) to (e):

(g) any other prescribed criteria.

(2) In subsection (1)(d), insolvency status means that a person (P)---

(a) is currently bankrupt; or

New (unanimous)

(ab) is subject to a current summary instalment order; or

(b) is currently admitted to the no asset procedure; or

(c) is a discharged bankrupt; or

(d) is a discharged bankrupt subject to conditions of discharge; or

(e) was adjudicated bankrupt but the adjudication was annulled under section 307(1)(b) or section 308(2)(b); or

(f) was adjudicated bankrupt but the adjudication was annulled under section 307(1)(c) or section 308(2)(c).

447 Search purposes

The public registers may be searched---

(a) by any individual, or by any person with the consent of that individual, for the purpose of searching for information about that individual:

(b) by any person for the purpose of ascertaining whether another person is bankrupt, is a discharged bankrupt, [is subject to a current summary instalment order,] or is currently admitted to the no asset procedure:

(c) by any person for any purpose related to the bankruptcy of a person[, the making of a current summary instalment order in respect of a person,] or the admission of a person to the no asset procedure:

(d) by any person for any of the purposes set out in section 441(3)(a) or (b).

448 Information contained in public registers may be used for statistical or research purposes

Nothing in this subpart prevents the use of information contained in the public

registers for statistical or research purposes if the information---

(a) does not identify any person; and

(b) is not published in any form that could reasonably be expected to identify any person.

449 When search breaches information privacy principle

A person who searches a public register for a purpose that is not a purpose set out in section 447 must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

450 Crown and Assignee not liable for act or omission

The Crown and the Assignee cannot be sued for any act or omission in relation to the maintenance of a public register under this subpart done or omitted to be done in good faith and with reasonable care.

Part 8 Companies Act 1993

451 Principal Act amended

This Part amends the Companies Act 1993.

452 Commencement of this Part

This Part comes into force on a date to be appointed by the Governor-General by Order in Council.

453 Interpretation

(1) Section 2(1) is amended by inserting the following definition after the definition of property:

"receiver has the same meaning as in section 2(1) of the Receiverships Act

1993".

(2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

"spouse, in relation to a person (A), includes a person with whom A has a de facto relationship (whether that person is of the same or a different sex) and a civil union partner".

Voluntary administration

454 New Part 15A inserted

The following Part is inserted after Part 15:

"Part 15A

"Voluntary administration

"Subpart 1---Preliminary

"239A Objects of this Part

The objects of this Part are to provide for the business, property, and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that---

"(a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

"(b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

Compare: Corporations Act 2001 (Australia) s 435A

"239B Interpretation of some key terms

The following are some key terms used in this Part and their meanings:

"administrator means the person who is appointed the administrator of the company in administration

"deed administrator, who may or may not be the same person as the administrator, is the person who is appointed the administrator of the deed of company arrangement

"deed of company arrangement means the deed that is executed by the company and its creditors providing for payments towards the creditors' debts

"watershed meeting means the creditors' meeting called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

"239C Interpretation of other terms

In this Part, unless the context otherwise requires,---

"convening period has the meaning given to it in section 239AT(2)

"creditor includes---

"(a) a person who, in a liquidation, would be entitled to claim in accordance with section 303 that a debt is owing to that person by the company; and

"(b) a secured creditor

"enforcement process, in relation to property, means---

"(a) execution against that property; or

"(b) any other enforcement process in relation to that property that involves a court or a sheriff

"insolvent means, in relation to a company, that the company is unable to pay its debts

"sheriff includes a person charged with the execution of a writ or other enforcement process.

"239D When administration begins

The administration of a company begins when an administrator is appointed under

this Part.

Compare: Corporations Act 2001 (Australia), s 435C(1)

"239E When administration ends

"(1) The administration of a company ends when---

"(a) a deed of company arrangement is executed by both the company and the deed administrator; or

"(b) the company's creditors resolve that the administration should end;
or

"(c) the company's creditors appoint a liquidator by a resolution passed at the watershed meeting.

"(2) However, the administration of a company may also end in the following instances:

"(a) if the Court orders that the administration end, for example because the Court is satisfied that the company is solvent, the administration ends on the date specified in the order or, if no date is specified, when the order is made; or

"(b) if the convening period expires without the watershed meeting having been convened or without an application having been made to extend the convening period, the administration ends at the end of that period; or

"(c) if an application has been made to extend the convening period, which has expired after the application was made, the administration ends when the application is refused or otherwise disposed of without the convening period being extended; or

"(d) if the watershed meeting ends without a resolution that the company execute a deed of company arrangement, the administration ends at the end of that meeting; or

"(e) if the company fails to execute a proposed deed of company arrangement within the time allowed by section 239ACO [or section 239ACP], the administration ends when that time expires; or

"(f) if the Court appoints a liquidator or an interim liquidator, the

administration ends at the time when the order is made.

Compare: Corporations Act 2001 (Australia) s 435C(2), (3)

"Subpart 2---Appointment of administrator

"239F Who may be appointed administrator

"(1) A natural person who is not disqualified under subsection (2) may be appointed an administrator of a company.

"(2) Unless the Court orders otherwise, a person is disqualified from appointment as an administrator if that person---

"(a) is disqualified under section 280(1) from being appointed or acting as a liquidator of the company; or

"(b) is prohibited from being an administrator by an order made under section 239ADV.

"239G Administrator must consent in writing

A person must not be appointed the administrator of a company unless that person has consented in writing and has not withdrawn the consent at the time of appointment.

Compare: Corporations Act 2001 (Australia) s 448A

"239H Who may appoint administrator

"(1) An administrator may be appointed to a company by---

"(a) the company (see section 239I); or

"(b) if the company is in liquidation, the liquidator (see section 239J);
or

"(c) if an interim liquidator has been appointed, the interim liquidator (see section 239J); or

"(d) a secured creditor holding a charge over the whole, or substantially the whole, of the company's property (see section 239K); or

"(e) the Court (see section 239L).

"(2) If the company is already in administration, an administrator may be appointed only by---

"(a) the Court; or

"(b) the creditors, as a replacement administrator for an administrator that the creditors have removed; or

"(c) the appointor of the first administrator, if that administrator has died, resigned, or become disqualified.

Compare: Corporations Act 2001 (Australia) s 436D

"239I Appointment by company

"(1) A company may appoint an administrator if the board of the company has resolved that,---

"(a) in the opinion of the directors voting for the resolution, the company is insolvent or may become insolvent; and

"(b) an administrator of the company should be appointed.

"(2) The appointment must be in writing and must state the date of the appointment.

"(3) The company must not appoint an administrator if the company is already in liquidation.

New (majority)

"(4) If an application has been filed for the appointment of a liquidator of the company by the Court under section 241(2)(c), the company may only appoint an administrator if the administrator is appointed within 10 working days after service on the company of the application.

Compare: Corporations Act 2001 (Australia) s 436A

"239J Appointment by liquidator or interim liquidator

"(1) The liquidator or interim liquidator of a company may appoint an administrator if he or she thinks that the company is insolvent or is likely to become insolvent.

"(2) The appointment must be in writing and must state the date of the appointment.

"(3) The liquidator or interim liquidator may appoint himself or herself administrator if he or she first obtains---

"(a) the permission of the Court; or

"(b) in the case of a liquidator but not an interim liquidator, the approval of the company's creditors in the form of a resolution passed at a meeting of the creditors.

"(4) A liquidator or interim liquidator must not appoint as administrator a person who is the liquidator's or interim liquidator's business or professional partner, employer, or employee, unless the appointment has been approved by the company's creditors in the form of a resolution passed at a creditors' meeting.

"(5) An administrator who is appointed to a company already in liquidation may apply to the Court for an order under section 250 terminating the liquidation.

Compare: Corporations Act 2001 (Australia) s 436B

"239K Appointment by secured creditor

"(1) A person who holds a charge over the whole, or substantially the whole, of a company's property may appoint an administrator if the charge has become, and is still, enforceable.

"(2) The appointment must be in writing and must state the date of the appointment.

"(3) A secured creditor must not appoint an administrator if the company is already in liquidation.

Compare: Corporations Act 2001 (Australia) s 436C

"239L Appointment by Court

"(1) The Court may appoint an administrator on the application of a creditor, the liquidator (if the company is in liquidation), or the Registrar.

"(2) The Court may appoint an administrator if---

"(a) the Court is satisfied that the company is or may become insolvent and that an administration is likely to result in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company; or

"(b) it is just and equitable to do so.

"239M Appointment must not be revoked

"(1) The appointment of an administrator must not be revoked.

"(2) This does not apply to removal by the Court or by the creditors.

Compare: Corporations Act 2001 (Australia) s 449A

"239N Appointment of 2 or more administrators

"(1) Two or more persons may be appointed administrators in any case where this Act provides for the appointment of an administrator.

"(2) If 2 or more persons are appointed administrators of a company,---

"(a) an administrator's function or power may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the order, instrument, or resolution appointing them provides otherwise; and

"(b) a reference in this Act to an administrator or the administrator refers to whichever 1 or more of the administrators the case requires.

Compare: Corporations Act 2001 (Australia) s 451A

"239O Remuneration of administrator

"(1) The administrator is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as administrator.

"(2) The Court may, on the application of the administrator, {an} [a director or] officer of the company, [a] creditor, or [a] shareholder, review or fix the administrator's remuneration at a level that is reasonable in the circumstances.

"(3) A creditor or shareholder may make an application under subsection (2) only with the leave of the Court.

Compare: 1993 No 105 ss 276(1), 284(1)(e)

"Subpart 3---Resignation and removal of administrator

"239P When office of administrator is vacant

The office of administrator is vacant if the administrator---

"(a) resigns; or

New (majority)

"(ab) dies; or

"(b) becomes disqualified from appointment as an administrator (see section 239F(2)); or

"(c) is removed by the Court.

Compare: Corporations Act 2001 (Australia) s 449C(1)

"239Q Administrator may resign

"(1) The administrator may resign by giving written notice to the company and to his or her appointor.

"(2) The administrator must---

"(a) give written notice of the resignation to as many of the company's creditors as practicable; and

Struck out (majority)

=====
"(b) publish a notice of the resignation in a national newspaper.

New (majority)

"(b) advertise the resignation in accordance with section 3(1)(b).

Compare: Corporations Act 2001 (Australia) s 449C(1)(c)

"239R Removal of administrator

"(1) The administrator may be removed---

"(a) by the Court, on the application of a creditor, the liquidator (if the company is in liquidation), or the Registrar; or

"(b) by a resolution of creditors passed at the first creditors' meeting;
or

"(c) by a resolution of creditors at a meeting convened under section 239T(1) to consider whether to remove a replacement administrator.

"(2) The creditors may not remove the administrator by a resolution passed at a creditors' meeting unless---

"(a) the same resolution also appoints as administrator another person who is not disqualified; and

"(b) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting---

"(i) a signed, written consent to act as administrator; and

Struck out (majority)

"(ii) a statement of interest.

New (majority)

"(ii) an interests statement.

Compare: Corporations Act 2001 (Australia) ss 436E(4), 449B

"239S Appointor may appoint new administrator to fill vacancy

"(1) The appointor of an administrator may appoint a replacement to fill the vacancy that occurs if the administrator---

"(a) resigns; or

New (majority)

"(ab) dies; or

"(b) becomes disqualified.

"(2) The appointment of a replacement administrator by a company must be made by a resolution of the board of the company.

Compare: Corporations Act 2001 (Australia) s 449C

"239T Creditors must consider appointment of replacement administrator

"(1) A replacement administrator, unless appointed by the Court or by the creditors under section 239R(1)(b), must convene a meeting of the creditors at which the creditors may vote to remove the replacement administrator and appoint another person in his or her place.

"(2) The meeting must be held not more than 5 working days after the date on which the replacement administrator is appointed.

"(3) The replacement administrator must convene the meeting by---

"(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

Struck out (majority)

=====
"(b) publishing a notice of the meeting in a national newspaper.
=====

New (majority)

"(b) advertising the meeting in accordance with section 3(1)(b).

"(4) The replacement administrator must take the steps in subsection (3) not less than 2 working days before the meeting.

Compare: Corporations Act 2001 (Australia) s 449C(4), (5)

"Subpart 4---Effect of appointment of administrator

"239U Outline of administrator's role

While a company is in administration, the administrator---

"(a) has control of the company's business, property, and affairs; and

"(b) may carry on that business and manage that property and those affairs; and

"(c) may terminate or dispose of all or part of that business, and may dispose of any of that property; and

"(d) may perform any function, and exercise any power, that the company or any of its officers could perform or exercise if the company were not in administration.

Compare: Corporations Act 2001 (Australia) s 437A(1)

"239V Administrator's powers

"(1) The administrator has the powers---

"(a) to carry out the functions and duties of an administrator under this Act; and

"(b) conferred on an administrator under this Act.

"(2) An administrator's powers include the powers to---

"(a) begin, continue, discontinue, and defend legal proceedings; and

"(b) carry on, to the extent necessary for the administration of the company, the business of the company; and

"(c) appoint an agent to do anything that the administrator {is unable} [has power] to do.

Compare: 1993 No 105 s 260(1)

"239W Administrator is company's agent

The administrator of a company, when performing a function or exercising a power in that capacity, is the company's agent.

Compare: Corporations Act 2001 (Australia) s 437B

"239X Effect on directors

"(1) The appointment of an administrator does not remove the directors of the company from office.

"(2) However, a director of a company that is in administration must not exercise or perform, or purport to exercise or perform, a function or power as a director of the company except---

"(a) with the prior, written approval of the administrator; or

"(b) as expressly permitted by this Part.

Compare: Corporations Act 2001 (Australia) s 437C

"239Y Effect on employees

"(1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.

"(2) The administrator is not personally liable for any obligation of the company under an employment agreement to which the company is a party, unless---

"(a) the administrator expressly adopts the agreement in writing; or

"(b) subsection (3) applies.

"(3) The administrator is personally liable for payment of wages or salary that, during the administration of the company, accrue under a contract of employment with the company that was entered into before the administrator's

appointment, unless the administrator has lawfully given notice of the termination of the contract within 14 days of appointment.

"(4) The Court may, on the administrator's application, extend the period of 14 days in subsection (3) within which notice of termination must be given, and may extend it on the terms and conditions, if any, that the Court thinks appropriate.

"(5) From the date of the appointment of the administrator, the duty of good faith set out in section 4 of the Employment Relations Act 2000 continues to apply between each employee of the company and his or her employer (who may be the administrator if the administrator has adopted the employment agreement under subsection (2)).

"239Z Effect on dealing with company property

"(1) A transaction or dealing by a company in administration, or by a person on behalf of the company, that affects the company's property is void unless the transaction or dealing was entered into---

"(a) by the administrator, on the company's behalf; or

"(b) with the administrator's prior written consent; or

"(c) under an order of the Court.

"(2) The Court may validate a transaction or dealing that is void under subsection (1).

"(3) Subsection (1) does not apply to a payment made by a registered bank---

"(a) out of an account kept by the company with the bank; and

"(b) in good faith and in the ordinary course of the bank's banking business; and

"(c) on or before the day on which the bank was notified in writing by the administrator that the administration had begun, or before the bank had reason to believe that the company was in administration, whichever was earlier.

"(4) A {company officer} [director or officer of the company] commits an offence if he or she---

"(a) purported, on the company's behalf, to enter into a transaction or dealing that is void under subsection (1); or

"(b) was in any other way knowingly concerned in, or party to, the void transaction or dealing, whether---

"(i) by act or omission; or

"(ii) directly or indirectly.

Compare: Corporations Act 2001 (Australia) s 437D

"239AA Company officer's liability for compensation for void transaction or dealing

The Court may order a {company officer} [director or officer of a company] who is convicted of an offence under section 239Z(4) to compensate any person, including the company, who has suffered loss as a result of the act or omission constituting the offence.

Compare: Corporations Act 2001 (Australia) s 437E(1)

"239AB Effect on transfer of shares

"(1) A share in a company in administration must not be transferred and the rights or liabilities of a shareholder of the company must not be altered.

"(2) However, the administrator may consent to the transfer of a share in a company in administration if the administrator is satisfied that the transfer is in the best interests of the company's creditors.

"(3) Also, despite subsection (1), the Court may make an order---

"(a) for the transfer of a share in a company in administration, but only after the administrator has been asked to consent to the transfer and has refused or failed to respond in a reasonable time; or

"(b) altering the rights and liabilities of a shareholder in a company in administration.

Compare: Corporations Act 2001 (Australia) s 437F

"239AC Effect on liquidation

"(1) The appointment of an administrator to a company in liquidation suspends the liquidation, including the powers of the liquidator to act on the company's behalf, but does not remove the liquidator from office.

"(2) The liquidator may apply to the Court for any orders that may be necessary in relation to the suspension of the liquidation.

"(3) In this section, liquidator includes a liquidator or interim liquidator appointed before the administration began.

"239AD Effect on receivership

The appointment of an administrator to a company in receivership does not remove the receiver from office.

"Subpart 5---Administrator's investigation of company's affairs

"239AE Administrator must investigate company's affairs and consider possible courses of action

As soon as practicable after the administration of a company begins, the administrator must---

"(a) investigate the company's business, property, affairs, and financial circumstances; and

"(b) form an opinion about each of the following matters:

"(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement:

"(ii) whether it would be in the creditors' interests for the administration to end:

"(iii) whether it would be in the creditors' interests for a liquidator to be appointed.

Compare: Corporations Act 2001 (Australia) s 438A

"239AF Directors' statement of company's position

"(1) Within 5 working days after the administration of a company begins, the directors must give to the administrator a statement about the company's business, property, affairs, and financial circumstances.

"(2) The administrator may extend the time for compliance with subsection (1).

"(3) The administrator must table the directors' statement---

"(a) at the first creditors' meeting; or

"(b) if the administrator has extended the time for compliance by the directors, at the watershed meeting.

Compare: Corporations Act 2001 (Australia) s 438B(2)

"239AG Administrator's right to documents, etc

Sections 261 and 263 to 267 apply with all necessary modifications as if every reference to liquidator and liquidation was a reference to administrator and administration.

"239AH Administrator may lodge report with Registrar

The administrator may lodge a report with the Registrar specifying any matter that, in his or her opinion, should be brought to the Registrar's notice.

Compare: Corporations Act 2001 (Australia) s 438D(2)

"239AI Administrator must report misconduct

"(1) The administrator must as soon as practicable report the matter to the Registrar if the administrator believes that---

"(a) a past or present [director,] officer[,] or shareholder of the company { may have } [has] committed an offence in relation to the company; or

New (majority)

"(ab) an offence material to the administration has been committed by the company or any director, officer, or shareholder of the company under this Act or any of the following Acts:

"(i) the Crimes Act 1961:

"(ii) the Securities Act 1978:

"(iii) the Securities Markets Act 1988:

"(iv) the Financial Reporting Act 1993:

"(v) the Takeovers Act 1993; or

"(b) a person who has taken part in the formation, promotion, administration, management, or liquidation of the company---

"(i) may have misapplied or retained or become liable or accountable for the company's money or property (whether in New Zealand or elsewhere); or

"(ii) may have been guilty of negligence, default, or breach of duty or trust in relation to the company.

"(2) In any case where the administrator makes a report under subsection (1), the administrator must give the Registrar assistance that the Registrar may reasonably require by way of---

"(a) provision of information; and

"(b) access to documents; and

"(c) facilities for inspecting and copying documents.

"(3) In any case where the Court is satisfied that the administrator should make a report under subsection (1) and has not done so, the Court may, on the application of an interested person, direct the administrator to make a report.

Compare: Corporations Act 2001 (Australia) s 438D

"Subpart 6---Creditors' meetings generally

"239AJ Administrator must call creditors' meetings

The administrator must call---

"(a) the first creditors' meeting, for the appointment (if any) of a committee of creditors; and

"(b) the watershed meeting (see section 239AS); and

"(c) other creditors' meetings as required (for example, because an administrator has been replaced).

"239AK Conduct of creditors' meetings

"(1) The following clauses of Schedule 5 apply to creditors' meetings called under this Part as if references to the liquidator were references to the administrator:

"(a) subject to section 239AZ, clause 4; and

"(b) clauses 6 to 11.

"(2) At any meeting of creditors or class of creditor held under this Part, a resolution is adopted if a majority in number representing 75% in value of the creditors or class of creditors voting in person, or by proxy vote or by postal vote, vote in favour of the resolution.

"(3) The administrator or the administrator's nominee must chair a creditors' meeting, and has a casting vote.

New (majority)

"(4) For the purposes of voting at a creditors' meeting, the administrator may estimate the amount of a creditor's claim that is for any reason uncertain.

"(5) On the application of the administrator, or of a creditor who is aggrieved by an estimate made by the administrator, the Court must determine the amount of the claim as it sees fit.

"239AL Joint meetings of creditors of related companies in administration

"(1) The administrators of related companies may call meetings of creditors of their respective companies to be held at the same time and place, but only with the consent of all the creditors.

"(2) In the case of a joint meeting, a creditor of a company in

administration may vote only on a resolution that relates to the administration of the company of which that person is a creditor.

"(3) For the purposes of subsection (1), a creditor is taken to have consented to the joint meeting if---

"(a) a written notice that complies with subsection (4) accompanies the notice of meeting; and

"(b) the creditor has not objected to the joint meeting within the time, and in the manner, specified in the written notice.

"(4) The notice must---

"(a) be in writing; and

"(b) state the administrator's postal, email, and street addresses; and

"(c) state the names of the related companies in respect of which the joint meeting is to be held; and

"(d) state that the creditor to whom it is sent may object to the joint meeting by sending a written objection to the administrator at the administrator's postal, email, or street address for receipt by the administrator within the time specified in the notice; and

"(e) state that, unless the creditor objects in accordance with the notice, the creditor will be taken to have agreed to the joint meeting.

"(5) For the purposes of subsection (4)(d), the administrator may in his or her discretion determine the time for receipt of an objection, but must specify a time that is reasonably practicable in the circumstances.

"239AM Power of Court where outcome of voting at creditors' meeting determined by related entity

"(1) This section applies if the Court is satisfied that---

"(a) a resolution at a creditors' meeting under this Part was passed, defeated, or required to be decided by a casting vote; and

"(b) the resolution would not have been passed, defeated, or required to be decided by a casting vote if the vote or votes cast by a particular related

creditor or particular related creditors were disregarded; and

"(c) the passing of the resolution, or the failure to pass it,---

"(i) is contrary to the interests of the creditors, or a class of creditors, as a whole; and

"(ii) has prejudiced, or is reasonably likely to prejudice, the interest of the creditor[s] who voted against the resolution, or for it, as the case may be, to an extent that is unreasonable having regard to---

"(A) the benefits accruing to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the resolution; and

"(B) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and

"(C) any other related matter.

"(2) The Court may, on the application of a creditor or the administrator,---

"(a) order that the resolution be set aside:

"(b) order that a new meeting be held to consider and vote on the resolution:

"(c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it:

"(d) make any other orders that the Court thinks necessary.

"(3) In this section,---

"promoter has the same meaning as in section 2(1) of the Securities Act 1978

"related creditor means a creditor who is a related entity of the company in administration

"related entity means, in relation to the company in administration,---

"(a) a promoter; or

"(b) a relative or spouse of a promoter; or

"(c) a relative of a spouse of a promoter; or

"(d) a director or shareholder; or

"(e) a relative or spouse of a director or shareholder; or

"(f) a relative of a spouse of a director or shareholder; or

"(g) a related company; or

"(h) a beneficiary under a trust of which the company in administration is or has at any time been a trustee; or

"(i) a relative or spouse of that beneficiary; or

"(j) a relative of a spouse of that beneficiary; or

"(k) a company one of whose directors is also a director of the company in administration; or

"(l) a trustee of a trust under which a person (A) is a beneficiary, if A is a related entity of the company in administration under this subsection.

Compare: Corporations Act 2001 (Australia) s 600A

"Subpart 7---First creditors' meeting to appoint
creditors' committee

"239AN Administrator must call first creditors' meeting

"(1) The administrator must call the first creditors' meeting to---

"(a) decide whether to appoint a creditors' committee and, if so, to appoint its members; and

"(b) decide whether to replace the administrator.

"(2) The meeting must be held within 8 working days after the date on which the administration began.

Compare: Corporations Act 2001 (Australia) s 436E(1), (2)

"239AO Notice of first and subsequent creditors' meetings

"(1) The administrator must call the first and subsequent creditors' meetings by---

"(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

"(b) advertising the meeting in accordance with section 3(1)(b).

"(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

Compare: Corporations Act 2001 (Australia) s 436E(3)

"239AP Administrator must table interests statement

"(1) The administrator must table at the first creditors' meeting an interests statement that complies with subsection (2).

"(2) The interests statement must disclose whether the administrator, or a firm of which the administrator is a partner, has a relationship (whether professional, business, or personal) with the company in administration, or any of its officers, shareholders, or creditors.

"(3) The administrator must, before tabling the interests statement, make the inquiries that are reasonably necessary for ensuring that the interests statement is complete.

"239AQ Functions of creditors' committee

"(1) The functions of the creditors' committee of a company in administration are---

"(a) to consult with the administrator about matters relating to the administration; and

"(b) to receive and consider reports by the administrator.

"(2) The committee must not give directions to the administrator, but the

administrator must report to the committee about matters relating to the administration as and when the committee reasonably requires.

Compare: Corporations Act 2001 (Australia) s 436F

"239AR Membership of creditors' committee

A person may be a member of the creditors' committee only if he or she is---

"(a) a creditor of the company; or

"(b) the agent of a creditor under a general power of attorney; or

"(c) authorised in writing by a creditor to be a member.

Compare: Corporations Act 2001 (Australia) s 436G

"Subpart 8---Watershed meeting

"239AS What watershed meeting is

The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

"239AT Administrator must convene watershed meeting

"(1) The administrator must convene the watershed meeting within the convening period.

"(2) The convening period is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

"(3) The Court may, on the administrator's application, extend the convening period{, but only if the application is filed with the Court before the convening period has expired}.

New (majority)

"(4) The application to extend may be made before or after the convening period has expired.

"239AU Notice of watershed meeting

"(1) The administrator must convene the watershed meeting by---

"(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

"(b) advertising the meeting in accordance with section 3(1)(b).

"(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

"(3) The following documents must accompany the notice of the watershed meeting that is sent to the company's creditors:

"(a) a report by the administrator about---

"(i) the company's business, property, affairs, and financial circumstances; and

"(ii) any other matter material to the creditors' decisions to be considered at the meeting; and

"(b) a statement setting out the administrator's opinion, with reasons for that opinion, about each of the following matters:

"(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement:

"(ii) whether it would be in the creditors' interests for the administration to end:

"(iii) whether it would be in the creditors' interests for the company to be placed in liquidation; and

"(c) if a deed of company arrangement is proposed, a statement setting out the details of the proposed deed.

Compare: Corporations Act 2001 (Australia) s 439A(3), (4)

"239AV When watershed meeting must be held

The watershed meeting must be held within 5 working days after the end of the

convening period or extended convening period, as the case may be.

Compare: Corporations Act 2001 (Australia) s 439A(2)

"239AW Directors must attend watershed meeting

"(1) The directors of the company must attend the watershed meeting, including any occasion to which the meeting is adjourned, but cannot be required to answer questions at the meeting.

"(2) A director need not attend the watershed meeting if---

"(a) the director has a valid reason for not attending; or

"(b) the administrator or the creditors by resolution have excused the director from attending.

"(3) A director attending the watershed meeting must leave for all or part of the remainder of the meeting if required by a resolution of the creditors to do so.

"(4) A director who contravenes subsection (1) commits an offence, unless subsection (2) applies, and is liable on conviction to the penalty set out in section 373(1).

"239AX Disclosure of voting arrangements

The administrator and the directors of the company under administration must, before the meeting votes on any resolution, inform the meeting of any voting arrangement of which the administrator or a director, as the case may be, is aware that requires 1 or more creditors to vote in a particular way on any resolution that will or may be voted on by the meeting.

"239AY Court may order that pooled property owners are separate class

"(1) On the application of the administrator, the Court may order that, for the limited purposes of this section only, pooled property owners are a separate class.

"(2) In this section---

"pooled property owners means all the owners or lessors of property that is pooled in a single enterprise forming part of the business of a company in

administration

"requisite majority means a majority in number representing 75% in value of the pooled property owners voting in person or by proxy vote or by postal vote

"resolution means a resolution that the company in administration execute the deed of company arrangement specified in the resolution.

"(3) Each pooled property owner is bound by the deed of company arrangement as if that person had voted in favour of the resolution at the watershed meeting if---

"(a) the Court has ordered that the pooled property owners are a separate class; and

"(b) at the watershed meeting the creditors (including the pooled property owners) approved the resolution; and

"(c) the requisite majority of the pooled property owners were included in the creditors who voted in favour of the resolution.

"(4) It is not necessary that a separate meeting of the pooled property owners be held for the purpose of voting on the resolution.

"(5) Subsection (3) applies no matter what sections 239ACS and 239ACT say.

"239AZ Adjournment of watershed meeting

"(1) The watershed meeting may be adjourned, but only to a day that is not more than 30 working days after the first day on which the meeting was held.

"(2) However, the Court may, on the administrator's application, order that the meeting be adjourned for more than 30 working days.

Compare: Corporations Act 2001 (Australia) s 439B(2)

"239ABA What creditors may decide at watershed meeting

At the watershed meeting, the creditors may---

"(a) resolve that the company execute a deed of company arrangement specified in the resolution (and it does not matter that the deed to be

executed differs from any proposed deed of which details were given in the notice of the meeting); or

"(b) resolve that the administration should end; or

"(c) unless the company is already in liquidation, by resolution appoint a liquidator.

Compare: Corporations Act 2001 (Australia) s 439C

"239ABB What happens if proposed deed not fully approved at watershed meeting

"(1) If, at the watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting, then the administrator must take the steps set out in section 239ACP (briefly, the administrator must draft a deed and circulate it to creditors).

"(2) The administrator must inform the creditors at the watershed meeting that---

"(a) they have the right to inspect and comment on the draft deed; and

"(b) the administrator has the ultimate responsibility for drafting the deed and the executed deed may differ from the draft.

"Subpart 9---Protection of company's property during administration

"239ABC Charge unenforceable

Subject to subpart 10, a person must not, during the administration of a company, enforce a charge over the property of the company, except---

"(a) with the administrator's written consent; or

"(b) with the permission of the Court.

Compare: Corporations Act 2001 (Australia) s 440B

"239ABD Owner or lessor must not recover property used by company

During the administration of a company, the owner or lessor of property that

was used or occupied by, or is in the possession of, the company must not take possession of the property or otherwise recover it, except---

"(a) with the administrator's written consent; or

"(b) with the permission of the Court.

Compare: Corporations Act 2001 (Australia) s 440C

"239ABE Proceeding must not be begun or continued

During the administration of a company, a proceeding in a court against the company or in relation to any of its property must not be begun or continued, except---

"(a) with the administrator's written consent; or

"(b) with the permission of the Court and in accordance with the terms that the Court imposes.

Compare: Corporations Act 2001 (Australia) s 440D

"239ABF Administrator not liable in damages for refusing consent

An administrator is not liable in damages for a refusal to give an approval or consent for the purposes of this subpart.

Compare: Corporations Act 2001 (Australia) s 440E

"239ABG Enforcement process halted

During the administration of a company, an enforcement process in relation to the company's property must not be begun or continued except with the permission of the Court and in accordance with the terms that the Court imposes.

Compare: Corporations Act 2001 (Australia) s 440F

"239ABH Duties of court officer in relation to company's property

"(1) This section applies to a court officer, that is, a sheriff or registrar or other appropriate officer of the court, who receives written notice that a company is in administration.

"(2) During the administration, the court officer must not---

"(a) take action to sell property of the company under an execution process; or

"(b) pay to a person (other than the administrator)---

"(i) proceeds of the sale of the company's property (at any time) under an execution process; or

"(ii) money of the company seized (at any time) under an execution process; or

"(iii) money paid (at any time) to avoid seizure or sale of property of the company under an execution process; or

"(c) take action in relation to the attachment of a debt due to the company; or

"(d) pay to any person (other than the administrator) money received because of the attachment of a debt due to the company.

"(3) The court officer must deliver to the administrator any property of the company that is in the court officer's possession under an execution process (whenever begun).

"(4) The court officer must pay to the administrator all proceeds or money of a kind referred to in subsection (2)(b) or (d) that---

"(a) are in the court officer's possession; or

"(b) have been paid into the court and have not since been paid out.

"(5) The costs of the execution or attachment are a first charge over property delivered under subsection (3) or proceeds or money paid under subsection (4).

"(6) In order to give effect to a charge under subsection (5) on proceeds or money the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds as the court officer thinks necessary.

"(7) The court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or make a payment, that subsection (2)

would otherwise prevent.

"(8) A person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the company and the administrator, despite anything else in this section.

Compare: Corporations Act 2001 (Australia) s 440G

"239ABI Lis pendens taken to exist

"(1) This section has effect only for the purposes of a law about the effect of a lis pendens on purchasers or mortgagees.

"(2) During the administration of a company, an application for the appointment of a liquidator to the company is taken to be pending.

"(3) An application that is taken because of subsection (2) to be pending constitutes a lis pendens.

Compare: Corporations Act 2001 (Australia) s 440H

"239ABJ Administration not to trigger enforcement of guarantee of liability of director or relative

"(1) During the administration of a company, except with the Court's permission and in accordance with the terms that the Court may impose, a guarantee of a liability of the company must not be enforced against---

"(a) a director of the company; or

"(b) that person's spouse or relative.

"(2) In this section, liability means a debt, liability, or other obligation.

Compare: Corporations Act 2001 (Australia) s 440J(1)

"Subpart 10---Rights of secured creditor, owner, or lessor

"239ABK Meaning of terms used in this subpart

In this subpart, unless the context otherwise requires,---

"decision period" means, in relation to a secured creditor holding a charge over property of a company in administration, the period that---

"(a) begins---

"(i) if notice of the appointment of the administrator must be given to the secured creditor under section 239AD{V} [W](1)(c), on the day when that notice is given; or

"(ii) in any other case, on the day when the administration begins; and

"(b) ends at the end of the tenth working day after the day when it begins

"enforce, in relation to a charge over property of a company in administration, includes---

"(a) to appoint a receiver of property of the company under a power contained in an instrument relating to the charge; or

"(b) to obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge; or

"(c) to enter into possession, or assume control, of that property for that purpose; or

"(d) to appoint a person to enter into possession or assume control (whether as agent for the secured creditor or for the company) for that purpose; or

"(e) to exercise, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under an instrument relating to the charge, under a written or unwritten law, or otherwise.

"239ABL If secured creditor acts before or during decision period

"(1) This section applies if---

"(a) the whole, or substantially the whole, of the property of a company in administration is subject to a charge; and

"(b) before or during the decision period, the secured creditor enforces the charge in relation to all property of the company subject to the charge,

whether or not the charge is enforced in the same way in relation to all that property.

"(2) This section also applies if---

"(a) a company is in administration; and

"(b) the same person is the secured creditor in relation to each of 2 or more charges over the property of the company; and

"(c) the property of the company (in this subsection called the charged property) subject to the respective charges together constitutes the whole, or substantially the whole, of the company's property---

"(i) whether or not the charges are enforced in the same way in relation to all the charged property; and

"(ii) whether or not any of the charges is enforced in the same way in relation to all the property of the company subject to that charge; and

"(iii) in so far as the charges are enforced in relation to property of the company in a way referred to in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK, whether or not the same person is appointed in respect of all of the last-mentioned property.

"(3) Nothing in {section 239X or} section 239ABC or in an order under section 239ABO{,} prevents any of the following persons from enforcing the charge:

"(a) the secured creditor:

"(b) a receiver or person appointed as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK as that definition applies in relation to the charge, or any of the charges (even if appointed after the decision period).

"(4) Section 239Z does not apply in relation to a transaction or dealing that affects property of the company and is entered into by the secured creditor or a receiver or person of a kind referred to in subsection (3)(b) in the performance or exercise of a function or power as that secured creditor, receiver, or person, as the case may be.

Compare: Corporations Act 2001 (Australia) s 441A

"239ABM If enforcement of charges begins before administration

"(1) This section applies if, before the beginning of the administration of a company, a secured creditor, receiver, or other person, for the purpose of enforcing a charge over the property,---

"(a) entered into possession, or assumed control, of the property of the company; or

"(b) entered into an agreement to sell the property; or

"(c) made arrangements for the property to be offered for sale by public auction; or

"(d) publicly invited tenders for the purchase of the property; or

"(e) exercised any other power in relation to the property.

"(2) Nothing in {section 239X or} section 239ABC prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property.

"(3) Section 239Z does not apply in relation to a transaction or dealing that affects the property and is entered into, as the case may be,---

"(a) in the exercise of a power of the secured creditor as secured creditor; or

"(b) in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 (Australia) s 441B

"239ABN Charge over perishable property

"(1) This section applies if perishable property of a company in administration is subject to a charge.

"(2) Nothing in {section 239X or} section 239ABC prevents the secured creditor, a receiver, or a person appointed (at any time) as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK from enforcing the charge, so far as it is a charge over perishable property.

"(3) Section 239Z does not apply in relation to a transaction or dealing that affects perishable property of the company and is entered into, as the case may be,---

"(a) in the exercise of a power of the secured creditor as secured creditor; or

"(b) in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 (Australia) s 441C

"239ABO Court may limit powers of secured creditor, etc, in relation to property subject to charge

"(1) This section---

"(a) applies if,---

"(i) for the purpose of enforcing a charge over property of a company, the secured creditor, a receiver, or other person does an act of a kind referred to in section 239ABM(1); and

"(ii) the company is in administration when the secured creditor, receiver, or other person does that act, or an administrator is later appointed to the company:

"(b) does not apply in a case where section 239ABL applies.

"(2) On an application by the administrator, the Court may order the secured creditor, receiver, or other person not to perform specified functions or exercise specified powers, except as permitted by the order.

"(3) The Court may make an order only if satisfied that what the administrator proposes to do during the administration will adequately protect the secured creditor's interests.

"(4) An order---

"(a) may be made only, and has effect only, during the administration; and

"(b) has effect despite section 239ABM and section 239ABN.

Compare: Corporations Act 2001 (Australia) s 441D

"239ABP Giving notice under security agreement

{Section 239X or} Section 239ABC does not prevent a person from giving a notice under the provisions of a security agreement.

Compare: Corporations Act 2001 (Australia) s 441E

"239ABQ If recovery of property begins before administration

"(1) This section applies if, before the beginning of the administration of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it,---

"(a) entered into possession of, or assumed control of, property used or occupied by, or in the possession of, the company; or

"(b) exercised any other power in relation to the property.

"(2) {Section 239X or} Section 239ABD does not prevent the receiver or other person from performing a function, or exercising a power, in relation to the property.

"(3) Section 239Z does not apply in relation to a transaction or dealing that affects the property and is entered into in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 (Australia) s 441F

"239ABR Recovering perishable property

"(1) {Neither section 239X nor} [Nothing in] section 239ABD prevents a person from taking possession of, or otherwise recovering, perishable property.

"(2) Section 239Z does not apply in relation to a transaction or dealing that affects perishable property and is entered into for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it.

Compare: Corporations Act 2001 (Australia) s 441G

"239ABS Court may limit powers of receiver, etc, in relation to property used by company

"(1) This section applies if,---

"(a) for the purpose of enforcing a right of the owner or lessor of property used or occupied by, or in the possession of, a company to take possession of the property or otherwise recover it, a person---

"(i) enters into possession, or assumes control, of the property; or

"(ii) exercises any other power in relation to the property; and

"(b) the company is in administration when the person does so, or an administrator is later appointed to the company.

"(2) On an application by the administrator, the Court may order the person not to perform specified functions, or exercise specified powers, in relation to the property, except as permitted by the order.

"(3) The Court may make an order only if satisfied that what the administrator proposes to do during the administration will adequately protect the interests of the owner or lessor.

"(4) An order---

"(a) may be made only, and has effect only, during the administration; and

"(b) has effect despite sections 239ABQ and 239ABR.

Compare: Corporations Act 2001 (Australia) s 441H

"239ABT Giving notice under agreement about property

Nothing in {section 239X or} section 239ABD prevents a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

Compare: Corporations Act 2001 (Australia) s 441J

"Subpart 11---Interface with liquidation

"239ABU When liquidator may be appointed to company in administration

A liquidator may be appointed to a company in administration---

"(a) by the Court, on an application for the appointment of a liquidator under section 241(2)(c); or

"(b) by resolution of the creditors at the watershed meeting or at a meeting convened under section 239ADF to consider the termination of the deed of company arrangement.

"239ABV Court may adjourn application for liquidation

The Court may adjourn an application under section 241(2)(c) for the appointment of a liquidator of a company in administration if the Court is satisfied that it is in the interests of the company's creditors for the company to continue in administration rather than be placed in liquidation.

Compare: Corporations Act 2001 (Australia) s 440A(2)

"239ABW Court must not appoint interim liquidator if administration in creditors' interests

The Court must not appoint an interim liquidator of a company in administration if the Court is satisfied that it is in the interests of the company's creditors for the company to continue in administration rather than have an interim liquidator appointed.

Compare: Corporations Act 2001 (Australia) s 440A(3)

"239ABX Effect of appointment of liquidator

The appointment of a liquidator to a company in administration ends the administration.

"239ABY Former administrator is default liquidator

In the case of the appointment of a liquidator to a company in administration by the creditors, the former administrator is the liquidator if---

"(a) the creditors' resolution does not nominate a person for appointment;
or

"(b) the person nominated is disqualified from acting as the liquidator or has not consented in writing; or

"(c) the person nominated is for any other reason unable or unwilling to act as liquidator.

"239ABZ Person in control of company must lodge revised report with Registrar

"(1) This section applies when a liquidator is appointed to a company that is in administration or under a deed of company arrangement.

"(2) The administrator or, if the company is under a deed of company arrangement, the deed administrator must as soon as practicable lodge the following documents with the Registrar:

"(a) a copy of the administrator's report that accompanied the notice to creditors of the watershed meeting; and

"(b) a further report updating the administrator's report with any matters of which the administrator or deed administrator is aware that---

"(i) are not referred to in the administrator's report, or have changed since that report; and

"(ii) affect the financial position of the company.

"(3) If there is no administrator or deed administrator acting when the company is placed in liquidation, the director or directors of the company at the date of liquidation must take the steps described in subsection (2) as if they were the administrator or deed administrator.

"239ACA Act of administrator in good faith must not be set aside in liquidation

A payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator of a company in administration, must not be set aside in a liquidation of the company.

Compare: Corporations Act 2001 (Australia) s 451C(b)

"239ACB Voidable transactions

"(1) The voidable transaction provisions do not apply to a transaction by a company in administration if the transaction is---

"(a) carried out by or with the authority of the administrator or deed administrator; or

"(b) specifically authorised by the deed of company arrangement and carried out by the deed administrator.

"(2) In this section, voidable transaction provisions means sections 292 to 296.

"Subpart 12---Deed administrator

"239ACC Who is deed administrator

The administrator of the company is the deed administrator, unless the creditors at the watershed meeting by resolution appoint someone else to be the deed administrator.

Compare: Corporations Act 2001 (Australia) s 444A(2)

"239ACD Who may be appointed deed administrator

"(1) A natural person who is not disqualified under subsection (2) may be appointed deed administrator.

"(2) Unless the Court orders otherwise, a person is disqualified from appointment as a deed administrator if that person is---

"(a) disqualified under section 280(1) from acting as a liquidator of the company; or

"(b) prohibited from being a deed administrator by an order made under section 239ADV.

"239ACE Deed administrator must consent in writing

A person must not be appointed deed administrator unless that person has consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed.

Compare: Corporations Act 2001 (Australia) s 448A

"239ACF Appointment of deed administrator must not be revoked

Except in the case of removal by the Court, the appointment of the deed administrator must not be revoked.

Compare: Corporations Act 2001 (Australia) s 449A

"239ACG Appointment of 2 or more deed administrators

"(1) Two or more persons may be appointed deed administrators in any case where this Act provides for the appointment of a deed administrator.

"(2) If 2 or more persons are appointed deed administrators jointly,---

"(a) a deed administrator's function or power may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the order, instrument, or resolution appointing them provides otherwise; and

"(b) a reference in this Act to a deed administrator or the deed administrator refers to whichever 1 or more of the deed administrators the case requires.

Compare: Corporations Act 2001 (Australia) s 451B

"239ACH When office of deed administrator vacant

The office of the deed administrator is vacant if the deed administrator---

"(a) resigns; or

"(b) becomes disqualified from appointment as a deed administrator (see section 239ACD(2)); or

"(c) is removed by the Court.

"239ACI Deed administrator may resign

The deed administrator may resign by giving written notice to the company.

"239ACJ Removal of deed administrator

"(1) The Court may---

"(a) remove the deed administrator, and appoint a person in his or her place; or

"(b) appoint a new deed administrator, if the deed of company arrangement has not yet terminated but for some reason no deed administrator is acting.

"(2) The Court may make an order under subsection (1) on the application of a creditor of the company, a shareholder, the liquidator (if the company is in liquidation), or the Registrar.

"239ACK Remuneration of deed administrator

"(1) The deed administrator is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as deed administrator.

"(2) The Court may, on the application of the deed administrator, a director [or officer] of the company, [a] creditor, or [a] shareholder, review or fix the deed administrator's remuneration at a level that is reasonable in the circumstances.

New (majority)

"(3) A creditor or shareholder may make an application under subsection (2) only with the leave of the Court.

Compare: 1993 No 105 ss 276(1), 284(1)(e)

"239ACL Deed administrator may sell shares in company

"(1) The deed administrator may sell existing shares in the company---

"(a) with the consent of the shareholder in question; or

"(b) if the shareholder does not consent, with the permission of the Court given on an application of the deed administrator.

"(2) The shareholder concerned, a creditor, or the Registrar may oppose an application by the administrator for the Court's permission.

"Subpart 13---Execution and effect of deed of company arrangement

"239ACM When this subpart applies

This subpart applies when the creditors, at the watershed meeting, have resolved that the company execute a deed of company arrangement.

Compare: Corporations Act 2001 (Australia) s 444A(1)

"239ACN Preparation and contents of deed

"(1) The deed administrator must prepare a document that sets out the terms of the deed.

"(2) The document must also specify the following:

"(a) who the deed administrator is:

"(b) the property of the company (whether or not it is already owned by the company when it executes the deed) that will be available to pay creditors:

"(c) the nature and duration of any moratorium period for which the deed provides:

"(d) to what extent the company will be released from its debts:

"(e) the conditions (if any) for the deed to come into operation:

"(f) the conditions (if any) for the deed to continue in operation:

"(g) the circumstances in which the deed terminates:

"(h) the order in which the proceeds of realisation of the property referred to in paragraph (b) will be distributed among creditors who are bound by the deed:

"(i) the day (which is called the cut-off day and which must not be later than the day when the administration began) on or before which creditors' claims must have arisen if they are to be admissible under the deed.

"(3) The document is treated as including [any prescribed] provisions {prescribed under this Act}, except those prescribed provisions that the document expressly excludes.

Compare: Corporations Act 2001 (Australia) s 444A(3)-(5)

"239ACO Execution of deed

"(1) The deed is a deed of company arrangement when it is executed by both the company in administration and the deed administrator.

"(2) The deadline for the execution of the deed by the company and the deed administrator is---

"(a) 15 working days after the watershed meeting has approved it; or

"(b) the further time that the Court allows, if the deed administrator has applied to the Court for an extension before the end of the initial period of 15 working days after approval.

"(3) The company may not execute the deed unless the board of the company has, by resolution, authorised the deed to be executed by the company or on its behalf.

"(4) Subsection (3) has effect despite section 239X, but does not limit the functions and powers of the administrator of the company.

Compare: Corporations Act 2001 (Australia) s 444B

"239ACP Procedure if deed not fully approved at watershed meeting

"(1) If, at the watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting, then---

"(a) the administrator must draft the complete deed and circulate it to the creditors within 10 working days after the meeting (called in this section the preparation period); and

"(b) the creditors have a period of 3 working days (called in this section the inspection period) after the end of the preparation period in which to inspect and comment on the deed; and

"(c) the company and the deed administrator must execute the deed within 2 working days (called in this section the execution period) after the end of the inspection period.

"(2) The Court may extend the preparation period by up to 10 working days, on an application by the administrator, but only if the application is made within the original preparation period.

"(3) The Court may extend the execution period by up to 2 working days, on an application by the administrator, but only if the application is made within the original execution period.

"239ACQ Creditor must not act inconsistently with deed, etc, before execution

"(1) In this section, interim period means the period between a resolution passed at the watershed meeting that the company execute a deed of company arrangement and the sooner of---

"(a) execution of the deed by the company and the deed administrator; or

"(b) expiry of the period during which the deed may be executed.

"(2) In the interim period, in so far as a person would be bound by the deed if it had already been executed, that person---

"(a) must not do anything inconsistent with the deed, except with the permission of the Court; and

"(b) must not take a step that is prohibited under section 239ACU.

Compare: Corporations Act 2001 (Australia) s 444C

"239ACR Company's failure to execute deed

If the creditors at the watershed meeting have passed a resolution that the company execute a deed of company arrangement, and the company fails to do so within the deadline for execution, [then, notwithstanding section 239E(2)(e),]---

"(a) the administrator must apply for the appointment of a liquidator to the company; or

"(b) if the company is already in liquidation, [the administrator must] apply for the liquidation to resume.

"239ACS Who is bound by deed

A deed of company arrangement binds---

"(a) the company's creditors, to the extent provided by section 239ACT;
and

"(b) the company; and

"(c) the company's [directors,] officers, and shareholders; and

"(d) the deed administrator.

Compare: Corporations Act 2001 (Australia) s 444G

"239ACT Extent to which deed binds creditors

"(1) A deed of company arrangement binds all creditors in respect of claims that arise on or before the cut-off day (see section 239ACN(2)(i)) specified in the deed.

"(2) This section does not prevent a secured creditor from enforcing or otherwise dealing with the charge, except so far as---

"(a) the deed provides otherwise in relation to a secured creditor who at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or

"(b) the Court orders otherwise under section 239ACV(1)(a).

"(3) This section does not affect a right that an owner or lessor of property has in relation to that property, except so far as---

"(a) the deed provides otherwise in relation to an owner or lessor of property who at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or

"(b) the Court orders otherwise under section 239ACV(1)(b).

Compare: Corporations Act 2001 (Australia) s 444D

"239ACU Person bound by deed must not take steps to liquidate, etc

"(1) A person who is bound by a deed of company arrangement must not,

while the deed is in force,---

"(a) apply, or continue with an application, to the Court for the appointment of a liquidator of the company:

"(b) except with the Court's permission, begin or continue a proceeding against the company or in relation to any of its property:

"(c) except with the Court's permission, begin or continue an enforcement process against the company's property.

"(2) In this section, property includes property used or occupied by the company, or in its possession.

Compare: Corporations Act 2001 (Australia) s 444E

"239ACV Court may restrain creditors and others from enforcing charge or recovering property

"(1) The Court may, at any time after creditors have resolved at the watershed meeting that a deed of company arrangement be executed, order that, except as permitted by the order,---

"(a) a secured creditor must not enforce or otherwise deal with the charge; or

"(b) the owner or lessor of property that is used or occupied by the company or is in the company's possession must not take possession of the property or otherwise recover it.

"(2) The Court may make the order only if---

"(a) it is satisfied that achieving the purposes of the deed would be materially adversely affected if the order was not made; and

"(b) having regard to the terms of the deed and the order, and any other relevant matter, it is satisfied that the interests of the person affected by the order, that is the creditor, property owner, or lessor, will be adequately protected.

"(3) An application for an order under this section may be made only,---

"(a) if the deed has not yet been executed, by the administrator; or

"(b) if the deed has been executed, by the deed administrator.

"(4) The Court's order may be made subject to conditions.

Compare: Corporations Act 2001 (Australia) s 444F

"239ACW Effect of deed on company's debts

"(1) A deed of company arrangement releases the company from a debt only in so far as---

"(a) the deed provides for the release; and

"(b) the creditor concerned is bound by the deed.

"(2) The release of the company from a debt under subsection (1) does not discharge or otherwise affect the liability of---

"(a) a guarantor of the debt; or

"(b) a person who has indemnified the creditor concerned against default by the company in relation to the debt.

Compare: Corporations Act 2001 (Australia) s 444H

"239ACX Court may rule on validity of deed

"(1) The Court may rule on the validity of a deed of company arrangement if there is doubt, on a specific ground, whether a deed of company arrangement---

"(a) was entered into in accordance with this Part; or

"(b) complies with this Part.

"(2) An application under this section may be made by---

"(a) the deed administrator; or

"(b) a shareholder or creditor of the company; or

"(c) the Registrar.

"(3) On an application under this section,---

"(a) the Court may declare the deed void or not void:

"(b) if the deed is void for contravention of a provision of this Part, the Court may validate the deed, or any part of it, provided the Court is satisfied that---

"(i) the provision was substantially complied with; and

"(ii) No injustice will result for anyone bound by the deed if the contravention is disregarded.

"(4) The Court may, if it declares that a provision of the deed is void, vary the deed, but only if the deed administrator consents.

Compare: Corporations Act 2001 (Australia) s 445G

"Subpart 14---Administrator's duty to file accounts

"239ACY Administrator includes deed administrator

In this subpart, unless the context otherwise requires, administrator includes a deed administrator.

"239ACZ Administrator must file accounts

"(1) Every administrator must file an account with the Registrar for each of the following periods:

"(a) the period of 6 months (or shorter, as the administrator decides) after the day on which the administrator was appointed; and

"(b) each subsequent period of 6 months during which the administrator holds office; and

"(c) the period between the last period of the kind referred to in paragraph (b) and the day on which the administrator vacates office.

"(2) The administrator must file the account within 20 working days after the end of the period in question.

"(3) The account must be in the prescribed form and must show,---

"(a) for each period, the administrator's receipts and payments; and

"(b) for each period except the first, the aggregates of the administrator's receipts and payments since the day on which the administrator was appointed.

Compare: Corporations Act 2001 (Australia) s 432(1), (1A)(a), (b)

"Subpart 15---Variation and termination of deed

"239ADA Creditors may vary deed

The creditors may vary a deed of company arrangement by a resolution passed at a meeting convened under section 239ADF, but the variation must not be materially different from the proposed variation set out in the notice of the meeting.

Compare: Corporations Act 2001 (Australia) s 445A

"239ADB Court may cancel creditors' variation

"(1) A creditor of a company in administration may apply to the Court for an order cancelling the variation of the deed of company arrangement by the creditors.

"(2) On the application, the Court may, if it is just and equitable to do so,---

"(a) cancel or confirm the variation, wholly or in part, on specified conditions (if any); and

"(b) make any other orders that the Court thinks appropriate.

Compare: Corporations Act 2001 (Australia) s 445B

"239ADC Termination of deed

A deed of company arrangement may be terminated---

"(a) by the Court under section 239ADD; or

"(b) by a resolution of the creditors under section 239ADE; or

"(c) automatically, if the deed specifies circumstances in which the deed will terminate, and those circumstances occur.

Compare: Corporations Act 2001 (Australia) s 445C

"239ADD Termination by Court

"(1) The Court may terminate a deed of company arrangement on the application of---

"(a) the company; or

"(b) a creditor; or

"(c) the deed administrator; or

"(d) any other interested person.

"(2) The Court may terminate a deed of company arrangement if it is satisfied that---

"(a) an information breach has occurred; or

"(b) there has been a material contravention of the deed by a person bound by it; or

"(c) effect cannot be given to the deed without injustice or undue delay;
or

"(d) the deed or a provision of it is, an act or omission done or made under the deed was, or an act or omission proposed to be done or made under the deed would be,---

"(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more of the creditors; or

"(ii) contrary to the interests of the company as a whole; or

"(e) the deed should be terminated for some other reason.

"(3) The Court must not terminate the deed without first taking into

account the rights of third parties.

"(4) In this section, an information breach has occurred if---

"(a) false or misleading information about the company's business, property, affairs, or financial circumstances---

"(i) was given to the administrator or the creditors; or

"(ii) was contained in a report or statement under section 239AU(3) that accompanied a notice of the watershed meeting at which a resolution that the company execute a deed of company arrangement was passed; or

"(b) there was an omission from the report or statement referred to in paragraph (a)(ii); and

"(c) the information or the omission, as the case may be, can reasonably have been expected to be material to the creditors in deciding whether to vote in favour of the resolution that the company execute the deed of company arrangement.

Compare: Corporations Act 2001 (Australia) s 445D

"239ADE Termination by creditors

"(1) The creditors, by a resolution passed at a meeting convened under section 239ADF, may terminate the deed if there has occurred a material breach of the deed that has not been rectified.

"(2) The creditors may also appoint a liquidator if the notice of the meeting sets out a proposed resolution that a liquidator be appointed to the company.

Compare: Corporations Act 2001 (Australia) s 445E

"239ADF Creditors' meeting to consider proposed variation or termination of deed

"(1) The deed administrator---

"(a) may at any time convene a meeting of the company's creditors to consider a variation to, or the termination of, the deed; and

"(b) must convene a meeting if requested to do so in writing by creditors whose claims against the company are not less than 10% in value of the total value of all creditors' claims.

"(2) The deed administrator must convene the meeting by---

"(a) giving written notice to as many of the company's creditors as reasonably practicable; and

"(b) advertising the meeting in accordance with section 3(1)(b).

"(3) The administrator must take the steps in subsection (2) not less than 5 working days before the meeting.

"(4) The notice given to the creditors must set out any resolution for varying or terminating the deed that is to be considered by the meeting.

"(5) The deed administrator must preside at the meeting.

"(6) The meeting may be adjourned from time to time.

Compare: Corporations Act 2001 (Australia) s 445F

"Subpart 16---Administrator's liability and indemnity
for debts of administration

"239ADG Administrator not liable for company's debts except as provided in this subpart and in section 239Y

The administrator is not liable for the debts of the company except as provided in this subpart and in section 239Y.

Compare: Corporations Act 2001 (Australia) s 443C

"239ADH Administrator liable for general debts

"(1) The administrator is liable for debts that he or she incurs in the performance or exercise, or purported performance or exercise, of any of his or her functions and powers as administrator, for---

"(a) the purpose of funding the company; or

"(b) any services rendered; or

"(c) any goods bought; or

"(d) any property hired, leased, or occupied.

"(2) Subsection (1) has effect despite any agreement to the contrary, but without prejudice to the administrator's rights against the company or anyone else.

Compare: Corporations Act 2001 (Australia) s 443A

"239ADI Administrator's liability for rent

"(1) The administrator is personally liable, to the extent specified in subsection (2), for rent and other payments becoming due by the company under an agreement---

"(a) made before the administration began; and

"(b) relating to the use, possession, or occupation of property by the company.

"(2) The administrator is liable for rent and other payments that accrue in the period---

"(a) beginning more than 7 days after the administration begins; and

"(b) throughout which---

"(i) the company continues to use or occupy, or be in possession of, the property; and

"(ii) the administration continues; and

"(c) ending on the earliest of the following:

"(i) the end of the administration; or

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"(ia) the administrator ceasing to hold office; or

"(ii) the appointment of a receiver of the property; or

"(iii) the appointment of an agent by a secured creditor of the property, under the provisions of a charge over the property, to enter into possession or to assume control of the property; or

"(iv) when a secured creditor takes possession or assumes control of the property under the provisions of a charge over the property.

"(3) The administrator is not taken, because of subsection (2),---

"(a) to have adopted the agreement; or

"(b) to be liable under the agreement except as set out in subsection (2).

"(4) This section does not affect the liability of the company for rent and other payments due under the agreement.

Compare: Corporations Act 2001 (Australia) s 443B(1), (2), (7), (9)

"239ADJ Administrator not liable for rental if non-use notice in force

"(1) The administrator is not liable under section 239ADI for any period for which a non-use notice is in force.

"(2) In this section, non-use notice means, in relation to the property to which it refers, a notice that---

"(a) is given by the administrator to the owner or the lessor of the property within 7 days after the administration begins; and

"(b) specifies the property to which it relates; and

"(c) states that the company does not propose to use the property or otherwise exercise any rights in relation to it.

"(3) A non-use notice ceases to have effect if---

"(a) the administrator revokes it by written notice to the owner or lessor; or

"(b) the company exercises, or purports to exercise, a right in relation to the property.

"(4) In subsection (3)(b), the company does not exercise, or purport to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company---

"(a) also uses the property; or

"(b) asserts a right, as against the owner or the lessor, to continue to occupy or be in possession.

"(5) A non-use notice does not affect the company's liability for rent and other payments.

Compare: Corporations Act 2001 (Australia) s 443B(3)-(6)

"239ADK Court may exempt administrator from liability for rent

The Court may exempt an administrator from liability for rent and other payments under section 239ADI, but the Court's order does not affect the company's liability.

Compare: Corporations Act 2001 (Australia) s 443B(8)

"239ADL Administrator's indemnity

The administrator is indemnified out of the company's property for---

"(a) a personal liability incurred in the due performance of his or her duties, but not a personal liability incurred in bad faith or negligently; and

"(b) the remuneration to which the administrator is entitled under section 239O.

Compare: Corporations Act 2001 (Australia) s 443D

"239ADM Administrator's right of indemnity has priority over other debts

Subject to section 312, the administrator's right of indemnity under this subpart has priority over---

"(a) all the company's unsecured debts; and

"(b) debts of the company secured by a charge of the kind described in clause 2(1)(b) of Schedule 7.

Compare: Corporations Act 2001 (Australia) s 443E

"239ADN Lien to secure indemnity

"(1) The administrator has a lien on the company's property to secure a right of indemnity under this subpart.

"(2) A lien under subsection (1) has priority over a charge to the same extent as the right of indemnity has priority over debts secured by the relevant charge.

Compare: Corporations Act 2001 (Australia) s 443F

"Subpart 17---Powers of Court

"239ADO Court's general power

"(1) The Court may make any order that it thinks appropriate about how this Part is to operate in relation to a particular company.

"(2) For example, the Court may terminate the administration under subsection (1) if the Court is satisfied that the administration should end---

"(a) because the company is solvent; or

"(b) because the provisions of this Part are being abused; or

"(c) for some other reason.

"(3) The Court's order may be made subject to conditions.

"(4) The Court may make an order under this section on the application of---

"(a) the company or a shareholder of the company; or

"(b) a creditor of the company; or

"(c) the administrator; or

"(d) the deed administrator; or

"(e) the Registrar; or

"(f) any other interested person.

Compare: Corporations Act 2001 (Australia) s 447A

"239ADP Orders to protect creditors during administration

"(1) On the application of the Registrar, the Court may make any order that it thinks necessary to protect the interests of the company's creditors while the company is in administration.

"(2) On the application of a creditor of a company, the Court may make any order that it thinks necessary to protect the interests of that creditor while the company is in administration.

"(3) An order may be made subject to conditions.

Compare: Corporations Act 2001 (Australia) s 447B

"239ADQ Court may rule on validity of administrator's appointment

"(1) If there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or deed administrator, any of the following persons may apply to the Court for a ruling on the validity of the appointment:

"(a) the person appointed; or

"(b) the company in question; or

"(c) any of the company's creditors.

"(2) In ruling that the appointment is invalid, the Court is not limited to the grounds specified in the application.

Compare: Corporations Act 2001 (Australia) s 447C

"239ADR Administrator may seek directions

"(1) The administrator or the deed administrator may apply to the Court

for directions in relation to the performance or exercise of any of the administrator's functions and powers.

"(2) The deed administrator may apply to the Court for directions in relation to the operation of, or giving effect to, the deed.

Compare: Corporations Act 2001 (Australia) s 447D

"239ADS Court may supervise administrator or deed administrator

"(1) The Court may make any order it thinks just if it is satisfied that---

"(a) the administrator's or the deed administrator's management of the company's business, property, or affairs is prejudicial to the interests of some or all of the company's creditors or shareholders; or

"(b) the administrator's or deed administrator's conduct or proposed conduct has been or is or will be prejudicial to those interests.

"(2) An application for an order under this section may be made by---

"(a) a creditor or shareholder of the company in question; or

"(b) the Registrar.

Compare: Corporations Act 2001 (Australia) s 447E(1)

"239ADT Court may order administrator or deed administrator to remedy default

"(1) The Court may order an administrator or deed administrator to remedy his or her default.

"(2) Examples of default include the following:

"(a) the administrator or deed administrator has failed, as required by this Act or otherwise by law, to make or file any return, account, or other document or to give a notice, and has not remedied the default within 10 working days after service on him or her of a notice by a shareholder or creditor of the company in administration requiring that the default be remedied:

"(b) the administrator or deed administrator has failed, after being required at any time by the liquidator of the company to do so,---

"(i) to render proper accounts of, and to vouch, his or her receipts and payments as administrator or deed administrator:

"(ii) to pay to the liquidator the amount properly payable to the liquidator.

"(3) An application for an order under this section may be made by---

"(a) a shareholder or creditor of the company, in the case of a default referred to in subsection (2)(a):

"(b) the liquidator, in the case of a default referred to in subsection (2)(b):

"(c) in any case, by the Registrar.

"239ADU Court's power when office of administrator or deed administrator vacant, etc

"(1) The Court may make any order it thinks just if it is satisfied that---

"(a) in the case of a company in administration, the office of the administrator is vacant or no administrator is acting; or

"(b) in the case of a deed of company arrangement that is still in force, the office of the deed administrator is vacant or no deed administrator is acting.

"(2) An application for an order under this section may be made by---

"(a) a creditor or shareholder of the company; or

"(b) if the company is in liquidation, the liquidator; or

"(c) the Registrar.

Compare: Corporations Act 2001 (Australia) s 447E(2)

"239ADV Prohibition order

"(1) The Court must make a prohibition order in relation to a person if it is shown to the satisfaction of the Court that that person is unfit to act as administrator or deed administrator by reason of persistent failures to comply or the seriousness of a failure to comply.

"(2) The period of the order is a matter for the discretion of the Court and the Court may make a prohibition period for an indefinite period.

"(3) A person to whom a prohibition order applies must not act as an administrator or deed administrator in a current or other administration.

"(4) The Court may make an order under this section in relation to a past or current administrator or deed administrator of a company in administration on the application of---

"(a) the company or a shareholder of the company; or

"(b) a creditor of the company; or

"(c) the administrator or deed administrator of the company; or

"(d) the Registrar; or

"(e) any other interested person.

"(5) In this section, failure to comply means a failure of an administrator or deed administrator to comply with a relevant duty arising---

"(a) under this or any other enactment or law or rules of court; or

"(b) under any order or direction of the Court made under this subpart.

"(6) In subsection (5), relevant duty includes the duty of a person in his or her capacity as liquidator of a company.

"(7) A copy of every order made under subsection (1) must, within 10 working days of the order being made, be delivered by the applicant to the Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the administrator or deed administrator concerned.

"Subpart 18---Notices about steps taken under this Part

"239ADW Administrator must give notice of appointment

"(1) An administrator appointed by the company under section 239I, by the liquidator or interim liquidator under section 239J, by a secured creditor under section 239K, by the Court under section 239L, or by the creditors under section 239R(2)(a) must---

"(a) before the end of the next working day after appointment, lodge a notice of the appointment with the Registrar; and

"(b) not later than 3 working days after appointment, advertise the appointment in accordance with section 3(1)(b); and

"(c) as soon as practicable, and in any event not later than the end of the next working day after appointment, give written notice of the appointment to---

"(i) each person who holds a charge over the whole, or substantially the whole, of the company's property; or

"(ii) each person who holds 2 or more charges in the property of the company if the property of the company subject to those charges together is the whole, or substantially the whole, of the company's property; and

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"(d) in the notice referred to in paragraph (c), set out the rights of the creditor to enforce the charge under section 239ABL.

"(2) The administrator need not give notice under subsection (1) to the person who appointed him or her.

Compare: Corporations Act 2001 (Australia) s 450A(1), (3), (4)

"239ADX Secured creditor who appoints administrator must give notice to company

A secured creditor who appoints an administrator under section 239K must give written notice of the appointment to the company as soon as practicable and in any event before the end of the next working day.

Compare: Corporations Act 2001 (Australia) s 450A(2)

"239ADY Deed administrator must give notice of execution of deed of company arrangement

As soon as practicable after a deed of company arrangement is executed, the deed administrator must---

"(a) send to each creditor a written notice of the execution of the deed; and

"(b) advertise the execution of the deed in accordance with section 3(1)(b); and

"(c) file a copy of the deed with the Registrar.

Compare: Corporations Act 2001 (Australia) s 450B

"239ADZ Deed administrator must give notice of failure to execute deed of company arrangement

If a company does not meet the deadline under section 239ACO [or section 239ACP(1)(c)] for the execution of a deed of company arrangement, the deed administrator must as soon as practicable---

"(a) cause a notice of the failure to execute the deed to be {exercised} [advertised] in accordance with section 3(1)(b); and

"(b) file a copy of the notice with the Registrar.

Compare: Corporations Act 2001 (Australia) s 450C

239AEA Deed administrator must give notice of termination by creditors of deed of company arrangement

If the creditors terminate the deed of company arrangement, the deed administrator must as soon as practicable---

"(a) send a notice of the termination to each of the creditors; and

"(b) advertise the termination in accordance with section 3(1)(b); and

"(c) file a copy of the notice with the Registrar.

Compare: Corporations Act 2001 (Australia) s 450D

"239AEB Company must disclose fact of administration

"(1) A company must set out, in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company, after the company's name where it first appears,---

"(a) for as long as the company is in administration, the words `administrator appointed'; and

"(b) for as a long as a deed of company arrangement is in force, the words `subject to deed of company arrangement'.

"(2) The Court may, on an application by the company, exempt the company from the requirement in subsection (1)(b).

"(3) A company that fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(1).

Compare: Corporations Act 2001 (Australia) s 450E

"239AEC Notice of change of name

"(1) A company in administration that changed its name less than 6 months before the appointment of the administrator must, in any document of the company where its name appears, include also its former name.

"(2) If a company to which subsection (1) applies is, in the course of the administration, placed in liquidation, the liquidator must, in any document of the company where its name appears, include also its former name.

"239AED Effect of contravention of this subpart

A contravention of this subpart does not affect the validity of anything done or omitted under this Part, except so far as the Court orders otherwise.

Compare: Corporations Act 2001 (Australia) s 450F

"Subpart 19---Miscellaneous

"239AEE Effect of things done during administration of company

A payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator of a company in administration is valid and effective for the purposes of this Act.

Compare: Corporations Act 2001 (Australia) s 451C(a)

"239AEF Interruption of time for doing act

If there is a time before which, or a period during which, an act for any purpose may or must be done, and this Act prevents the act from being done in time, then the time or period in question is extended by the period during which this Act prevents the act from being done in time.

Compare: Corporations Act 2001 (Australia) s 451D

"Subpart 20---Set-off and netting agreements

"239AEG Mutual credit and set-off

Where there have been mutual credits, mutual debts, or other mutual dealings between a company and a person who seeks or, but for the operation of this section, would seek to have a claim admitted under a deed of company arrangement,---

"(a) an account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and

"(b) an amount due from one party must be set off against an amount due from the other party; and

"(c) only the balance of the account may be admitted under the deed of company arrangement, or is payable to the company, as the case may be.

"239AEH Application of set-off under netting agreement

"(1) Sections 239AEI to 239AEP apply---

"(a) to a netting agreement---

"(i) made in or evidenced by writing; and

"(ii) in which the application of sections 239AEI to 239AEP has not been expressly excluded; and

"(iii) whether made before or after the commencement of this section;
and

"(b) to all obligations under a netting agreement (whether those obligations are payable in New Zealand currency or in some other currency).

"(2) Sections 239AEI to 239AEP apply despite---

"(a) any disposal of rights under a transaction that is subject to a netting agreement, in contravention of a prohibition in the netting agreement;
or

"(b) the creation of a charge or other interest in respect of the rights referred to in paragraph (a) in contravention of a prohibition in the netting agreement.

"(3) Nothing in sections 239AEI to 239AEP applies to an amount paid or payable by a shareholder---

"(a) as the consideration, or part of the consideration, for the issue of a share; or

"(b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of the company or by the administrator.

"239AEI Calculation of netted balance

If a company in administration is a party to a netting agreement,---

"(a) any netted balance payable by or to the company must be calculated in accordance with the netting agreement; and

"(b) that netted balance constitutes, in respect of the transactions that are included in the calculation,---

"(i) the debt that is owed to the creditor and that may be admitted under the deed of company arrangement; or

"(ii) the amount that is payable to the company,---

as the case may be.

"239AEJ Mutuality required for transactions under bilateral netting agreements

Sections 239AEI to 239AEP apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits, mutual debts, or other mutual dealings.

"239AEK When mutuality required for transactions under recognised multilateral netting agreements

"(1) Sections 239AEI to 239AEP apply to transactions that are subject to a recognised multilateral netting agreement, whether or not those transactions constitute mutual credits, mutual debts, or other mutual dealings.

"(2) Despite subsection (1), sections 239AEI to 239AEP do not apply to transactions that are subject to a recognised multilateral netting agreement if---

"(a) those transactions do not constitute mutual credits, mutual debts, or other mutual dealings; and

"(b) a party to any of those transactions is acting as a trustee for another person; and

"(c) the party acting as trustee is not authorised by the terms of the trust of which the party is a trustee to enter into the transaction.

"239AEL Application of set-off under section 239AEG to transactions subject to netting agreements

"(1) Section 239AEG does not apply to transactions that are subject to a netting agreement to which sections 239AEI to 239AEP apply.

"(2) However, a netted balance is to be treated as an amount to which section 239AEG applies if the company in administration and the other party to the netting agreement also have mutual credits, mutual debts, or other mutual dealings between them that are not subject to the netting agreement.

"239AEM Transactions under netting agreement and effect on certain sections

"(1) Nothing in sections 239AEH to 239AEP prevents the operation of section 56 or, subject to section 239ACB, section 292 or section 297 or section 298 in respect of a transaction that is subject to a netting agreement.

"(2) However, nothing in section 292(3) applies to a transaction that is subject to a netting agreement.

"(3) For the purposes of sections 292 and 297, the term transaction, in relation to a company, does not include a netting agreement entered into by the company, except to the extent that the effect of entering into the netting agreement is to reduce any amount that was owing by or to the company at the time the company entered into the agreement.

"239AEN Rights under netting agreement not affected by commencement of administration

Nothing in section 239Z affects, in respect of a company in administration, the exercise of any of the following rights under a netting agreement:

"(a) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event specified in the netting agreement, being an event (including the appointment of an administrator) occurring not later than the commencement of the administration; or

"(b) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination.

"239AEO Effect of declaration of person as recognised clearing house under section 310K

A person who is declared a recognised clearing house under section 310K is deemed to be a recognised clearing house for the purposes of sections 239AEI to 239AEP also.

"239AEP Transactions under recognised multilateral netting agreement not affected by variation or revocation of declaration under section 310K

The variation or revocation of a declaration under section 310K does not affect the application of sections 239AEI to 239AEP to any transaction---

"(a) that is or was subject to a recognised multilateral netting agreement; and

"(b) that was entered into before the variation or revocation of the

declaration.

"Subpart 21---Single administration of related
companies in administration

"239AEQ Interpretation of terms for purposes of this subpart

"(1) In this subpart,---

"pool means a pool of related companies in a single administration under
a single administration order made under section 239AER

"pool administrator means the administrator of a pool

"pool company means a company in respect of which a single
administration order has been made under section 239AER.

"(2) For the purposes of the single administration of a pool, in this
Part, unless the context indicates otherwise,---

"administrator includes a pool administrator

"company includes a pool

"deed administrator includes the deed administrator of a deed of company
administration executed by a pool

"deed of company administration includes a deed of company
administration executed under section 239AEW.

"239AER Court may order single administration for related companies in
administration

"(1) If 2 or more related companies are in administration, the Court may,
if it is satisfied that it is just and equitable, order that the administration
in respect of each company must proceed together as if they were 1 company to
the extent that the Court orders and subject to the terms and conditions that
the Court imposes.

"(2) An application under subsection (1) may be made by the administrator
or a creditor of any of the companies in administration.

"(3) Notwithstanding anything in this Part, the Court may, on first making

the order and otherwise from time to time, make any other order, or give any direction to facilitate giving effect to an order, under subsection (1) as it sees fit.

"(4) The fact that creditors of the company in administration relied on the fact that another company was, or is, related to it is not a ground for making an order under this section.

Compare: 1993 No 105 s 271(b)

"239AES Notice that application filed must be given to administrators and creditors

"(1) Unless the Court orders otherwise, an applicant for an order under section 239AER must give notice that the application has been filed to---

"(a) the administrator of each company in administration; and

"(b) each creditor of each company in administration.

"(2) The notice must---

"(a) identify each company to which the proposed order relates; and

"(b) summarise all information known to the applicant that is material to whether the order should be made; and

"(c) state that a person to whom the notice must be given may oppose the application by filing a statement of defence in accordance with the High Court Rules.

"(3) The notice requirement in this section is in addition to anything required by the High Court Rules to be done.

"239AET Guidelines for single administration order

In deciding whether it is just and equitable to make an order under section 239AER, the Court must have regard to the following criteria:

"(a) the extent to which any of the companies took part in the management of any of the other companies in the proposed pool:

"(b) the conduct of any of the companies towards the creditors of any of

the other companies in the proposed pool:

"(c) the extent to which the circumstances that gave rise to any of the companies in the proposed pool being placed in administration are attributable to the actions of any of the other companies:

"(d) the extent to which the businesses of the companies in the proposed pool have been combined:

"(e) any other matters that the Court thinks fit.

Compare: 1993 No 105 s 272(2)

"239AEU Court may order that related company in administration be added to existing pool

"(1) The Court may order that a company in administration that is related to the companies in an existing pool be added to the pool for the purposes of administration.

"(2) An application under subsection (1) may be made by---

"(a) the administrator or any creditor of the company; or

"(b) the administrator or any creditors of the pool.

"(3) The Court may make the order if it is satisfied that it is just and equitable to do so having regard to any 1 or more of the criteria in section 239AET.

"(4) Sections 239AER and 239AES apply with all necessary modifications to an application under this section.

"(5) The Court must not make the order unless the pool administrator consents.

"239AEV Creditors' meetings in single administration of pool companies

"(1) The provisions of this Part in relation to creditors' meetings apply except that, subject to subsection (2), a creditor of a pool company may only vote on a matter related to the pool company of which that person is a creditor.

"(2) If separate voting by creditors is impracticable (because, for

example, the affairs of the pool companies are intermingled), the Court may, on the application of the pool administrator, give directions as to how voting at a creditors' meeting must proceed.

"239AEW Pool companies may execute single deed of company administration For the purposes of the single administration of a pool, the pool companies may execute a single deed of company arrangement."

Amendments to Companies Act 1993 consequential on new
voluntary administration provisions

455 Commencement of liquidation

Section 241 is amended by repealing subsection (2) and substituting the following subsection:

"(2) A liquidator may be appointed by---

"(a) special resolution of those shareholders entitled to vote and voting on the question; or

"(b) the board of the company on the occurrence of an event specified in the constitution; or

"(c) the Court, on the application of---

"(i) the company; or

"(ii) a director; or

"(iii) a shareholder or other entitled person; or

"(iv) a creditor (including any contingent or prospective creditor); or

"(v) if the company is in administration, the administrator; or

"(vi) the Registrar; or

"(d) a resolution of the creditors passed at the watershed meeting held under section 239AT."

456 Commencement of liquidation to be recorded

Section 241A(1) is amended by adding the following paragraph:

"(d) a liquidator is appointed under section 241(2)(d), the creditors must record in the resolution appointing the liquidator the date on which, and the time at which, the resolution was passed."

457 Liquidator to summon meeting of creditors

Section 243 is amended by adding the following subsection:

"(11) Except for subsection (5), this section does not apply if the liquidator is appointed under section 241(2)(d)."

458 Court may terminate liquidation

Section 250 is amended by repealing subsection (2) and substituting the following subsections:

"(2) An application under this section may be made by---

"(a) the liquidator; or

"(b) if the company has executed a deed of company arrangement, the deed administrator; or

"(c) a director or shareholder of the company; or

"(d) any other entitled person; or

"(e) a creditor of the company; or

"(f) the Registrar.

"(2A) On an application by a deed administrator, the Court must have regard to---

"(a) any misconduct by the company's officers reported by the deed administrator, the liquidator, or the Registrar; and

"(b) the commercial decision of the creditors in accepting the deed of company arrangement; and

"(c) whether the deed of company arrangement would leave the company insolvent; and

"(d) any other matters that the Court thinks fit."

459 Restrictions on rights of creditors to complete execution, distraint, or attachment

Section 251(1)(a) is amended by omitting "section 241(2)(a) of this Act" and substituting "section 241(2)(a) or a resolution under section 241(2)(d)".

460 Other duties of liquidator

Section 255(3)(a) is amended by omitting "under paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act" and substituting "under section 241(2)(a), (b), or (d)".

461 Restriction on enforcement of lien over documents

Section 263(2) is amended by omitting "to the extent of \$500 or such greater amount as may be prescribed at the commencement of the liquidation" and substituting "to the extent of 10% of the total value of the debt, up to a maximum amount of \$2,000".

462 Power of Court to require persons to repay money or return property

(1) Section 301(1) is amended by inserting "administrator," after "manager," wherever it appears.

(2) Section 301 is amended by adding the following subsection:

"(4) In making an order under subsection (1) against a past or present director, the Court must, where relevant, take into account any action that person took for the appointment of an administrator to the company under Part 15A."

Appointment of liquidator

463 New section 241AA inserted

The following section is inserted after section 241:

"241AA Restriction on appointment of liquidator by shareholders or board after application filed for Court appointment

"(1) This section applies if an application has been filed for the appointment of a liquidator of a company by the Court under section 241(2)(c).

"(2) A liquidator of the company may {not} [only] be appointed under section 241(2)(a) or (b) {before the application is disposed of, unless the written consent of the applicant or applicants has first been obtained} [if the liquidator is appointed within 10 working days after service on the company of the application].

New (unanimous)

"(3) If a liquidator is appointed under section 241(2)(a) or (b), the creditor who filed the application referred to in subsection (1) may apply to the Court under section 283(4) for the review of his or her appointment as if the words `successor to a liquidator' in section 283(4) read `liquidator'."

Liquidator's duty to report to creditors

464 Liquidator to summon meeting of creditors

Section 243 is amended by repealing subsection (2) and substituting the following subsection:

"(2) Notice in writing of a meeting of creditors---

"(a) must be given to every known creditor together with the report and notice referred to in section 255(2)(c); and

"(b) if the liquidator receives a notice under section 245(1)(b)(iii), must be given within 10 working days after receiving the notice."

465 Liquidator may dispense with meetings of creditors

Section 245 is amended by repealing subsection (2) and substituting the following subsection:

"(2) Notice under subsection (1)(b) must be given to every known creditor together with the report and notice referred to in section 255(2)(c)."

466 New section 245A inserted

The following section is inserted after section 245:

"245A Power of Court where outcome of voting at meeting of creditors determined by related entity

"(1) This section applies if the Court is satisfied that---

"(a) a resolution at a meeting of creditors was passed, defeated, or required to be decided by a casting vote; and

"(b) the resolution would not have been passed, defeated, or required to be decided by a casting vote if the vote or votes cast by a particular related creditor or particular related creditors were disregarded; and

"(c) the passing of the resolution, or the failure to pass it,---

"(i) is contrary to the interests of the creditors, or a class of creditors, as a whole; and

"(ii) has prejudiced, or is reasonably likely to prejudice, the interest of the creditor who voted against the resolution, or for it, as the case may be, to an extent that is unreasonable having regard to---

"(A) the benefits accruing to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the resolution; and

"(B) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and

"(C) any other related matter.

"(2) The Court may, on the application of the liquidator or a creditor,---

"(a) order that the resolution be set aside:

"(b) order that a new meeting be held to consider and vote on the resolution:

"(c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it:

"(d) make any other orders that the Court thinks necessary.

"(3) In this section,---

"promoter has the same meaning as in section 2(1) of the Securities Act 1978

"related creditor means a creditor who is a related entity of the company in liquidation

"related entity means, in relation to the company in liquidation,---

"(a) a promoter; or

"(b) a relative or spouse of a promoter; or

"(c) a relative of a spouse of a promoter; or

"(d) a director or shareholder; or

"(e) a relative or spouse of a director or shareholder; or

"(f) a relative of a spouse of a director or shareholder; or

"(g) a related company; or

"(h) a beneficiary under a trust of which the company in liquidation is or has at any time been a trustee; or

"(i) a relative or spouse of that beneficiary; or

"(j) a relative of a spouse of that beneficiary; or

"(k) a company one of whose directors is also a director of the company in liquidation; or

"(l) a trustee of a trust under which a person (A) is a beneficiary, if A is a related entity of the company in liquidation under this subsection.

Compare: Corporations Act 2001 (Australia) s 600A".

467 Other duties of liquidator

(1) Section 255(2)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:"

"(i) prepare a list of every known creditor of the company with each creditor's address (if known); and".

(2) Section 255(2)(c)(ii) is amended by adding the following subsubparagraph:

"(C) the list of creditors referred to in subparagraph (i); and".

(3) Section 255 is amended by repealing subsections (5) and (6).

Assignment of liquidator's statutory right to sue

468 New section 260A inserted

The following section is inserted after section 260:

"260A Liquidator may assign right to sue under this Act

"(1) The liquidator may, if the Court has first approved it, assign any right to sue that is conferred on the liquidator by this Act.

"(2) The application for approval may be---

"(a) made by the liquidator or the person to whom it is proposed to assign the right to sue; and

"(b) opposed by a person who is a defendant to the liquidator's action, if already begun, or a proposed defendant."

Liquidator's power of disclaimer

469 Power to disclaim onerous property

Section 269(2)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraphs:

"(ii) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act; or

"(iii) a litigation right that, in the opinion of the liquidator, has no reasonable prospect of success or cannot reasonably be funded from the assets of the company; but".

Pooling of assets of related companies

470 New section 271A inserted

The following section is inserted after section 271:

"271A Notice that application filed must be given to administrators and creditors

"(1) Unless the Court orders otherwise, an applicant for an order under section 271(1)(b) must give notice that the application has been filed to the liquidator and each creditor of each related company in liquidation.

"(2) An applicant need not give notice to himself or herself.

"(3) The notice must---

"(a) identify each company to which the proposed order relates; and

"(b) summarise all information known to the applicant that is material to whether the order should be made; and

"(c) state that a person to whom the notice must be given may oppose the

application by filing a statement of defence in accordance with the High Court Rules.

"(4) The notice requirement in this section is in addition to anything required to be done by the High Court Rules."

Qualifications and supervision of liquidators

471 Qualifications of liquidators

(1) Section 280(1) is amended by inserting the following paragraphs after paragraph (c):

"(ca) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation, provided {accounting} [professional] services to the company[, unless, within 20 working days before the appointment of the liquidator, the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration]:

"(cb) a person who has[, or whose firm has,] within the 2 years immediately before the commencement of the liquidation, had a continuing business relationship [(other than through the provision of banking or financial services)] with the company, its majority shareholder, [any of its directors,] or any of its secured creditors[, unless, within 20 working days before the appointment of the liquidator, the board of the company resolves that the company will, on the appointment of the liquidator, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration]:".

(2) Section 280(1) is amended by adding the following paragraph:

"(m) a person who is prohibited from being administrator or deed administrator under section 239ADV."

(3) Section 280 is amended by inserting the following subsection after subsection (1):

"(1A) Subsection (1)(ca) or (cb) does not apply if all the creditors consent to the appointment of the person in question."

(4) Section 280 is amended by adding the following subsection:

"(4) A person other than the Official Assignee must not be appointed a liquidator unless he or she has first certified in writing that he or she is not disqualified under subsection (1)."

(5) Nothing in this section affects the qualification of a liquidator in office when this section came into force.

472 Meaning of failure to comply

Section 285 is amended by adding the following subsection as subsection (2):

"(2) In subsection (1), relevant duty includes the duty of a person in his or her capacity as administrator or deed administrator of a company."

473 Orders to enforce liquidator's duties

(1) Section 286 is amended by repealing subsection (5) and substituting the following subsection:

"(5) If the Court is satisfied that a person is unfit to act as a liquidator by reason of persistent failures to comply or the seriousness of a failure to comply,---

"(a) the Court must make a prohibition order; and

"(b) the period of the order is a matter for the discretion of the Court but the Court may make a prohibition period for an indefinite period."

(2) Section 286(7) is amended by omitting "within the preceding 5 years".

Voidable transactions

474 Transactions having preferential effect

(1) The heading to section 292 is omitted and the heading "Insolvent transaction voidable" substituted.

(1A) Section 292 is amended by repealing subsections (1) to (4) and substituting the following subsections:

"(1) A transaction by a company is voidable by the liquidator if it---

"(a) is an insolvent transaction; and

"(b) { was } [is] entered into within the specified period.

"(2) An insolvent transaction is a transaction by a company that---

"(a) is entered into at a time when the company is unable to pay its due debts; and

"(b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company's liquidation.

"(3) In this section, transaction means any of the following steps by the company:

"(a) conveying or transferring the company's property:

"(b) creating a charge over the company's property:

"(c) incurring an obligation:

"(d) undergoing an execution process:

"(e) paying money (including paying money in accordance with a judgment or an order of a court):

"(f) anything done or omitted to be done for the purpose of entering into the transaction [or giving effect to it].

"(4) In this section, transaction includes a transaction by a receiver, except a transaction that discharges, whether in part or in full, a liability for which the receiver is personally liable under section 32(1) of the Receiverships Act 1993 or otherwise personally liable under a contract entered into by the receiver.

"(4A) A transaction that is entered into within the restricted period is presumed, unless the contrary is proved, to be entered into at a time when the company is unable to pay its due debts.

Struck out (unanimous)

"(4B) For the purposes of this section, a series of transactions must be treated as a single transaction if---

"(a) each transaction in the series is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between the company and the other party to the transaction; and

"(b) in the course of the relationship, the level of the company's net indebtedness to the other party is increased or reduced from time to time as a result of each transaction.

New (unanimous)

"(4B) Where---

"(a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between a company and a creditor of the company (including a relationship to which other persons are parties); and

"(b) in the course of the relationship, the level of the company's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship;

then---

"(c) subsection (1) applies in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

"(d) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction voidable by the liquidator if the effect of applying subsection (1) in accordance with paragraph (c) is that the single transaction referred to in paragraph (c) is taken to be an insolvent transaction voidable by the liquidator."

(2) Section 292(5) is amended by omitting "subsection (2)(a)(ii) of this section" and substituting "subsections (1) and (4B)".

(3) Section 292(6) is amended by omitting "(3) of this section" and substituting "(4A)".

(4) Nothing in this section makes voidable a transaction that was completed before this section came into force, if that transaction would not have been voidable if this section had not come into force.

475 Voidable charges

(1) Section 293 is amended by repealing subsection (1) and substituting the following subsections:

"(1) A charge over any property or undertaking of a company is voidable by the liquidator if---

"(a) the charge was given within the specified period; and

"(b) immediately after the charge was given, the company was unable to pay its due debts.

"(1A) Subsection (1) does not apply if---

"(a) the charge secures money actually advanced or paid, or the actual price or value of property sold or supplied to the company, or any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or

"(b) the charge is in substitution for a charge given before the specified period."

(2) Section 293(3) is amended by omitting "(1)(c) of this section" and substituting "(1A)(b)".

(3) Section 293(5) is amended by omitting "(1)(a)" and substituting "(1A)(b) [a)".

(4) Section 293(6) is amended by omitting "a year" wherever it appears and substituting in each case "2 years".

476 New section 294 substituted

Section 294 is repealed and the following section substituted:

"294 Procedure for setting aside transactions and charges

"(1) A liquidator who wishes to set aside a transaction or charge that is voidable under section 292 or 293 must---

"(a) file a notice with the Court that meets the requirements set out in subsection (2); and

"(b) serve the notice as soon as practicable on---

"(i) the other party to the transaction or the charge holder, as the case may be; and

"(ii) any other party from whom the liquidator intends to recover.

"(2) The liquidator's notice must---

"(a) be in writing; and

"(b) state the liquidator's postal, email, and street addresses; and

"(c) specify the transaction or charge to be set aside; and

"(d) describe the property or state the amount that the liquidator wishes to recover; and

"(e) state that the person named in the notice may object to the transaction or charge being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator's notice has been served on that person; and

"(f) state that the written notice of objection must contain [full particulars of] the reasons for objecting [and must identify any documents that evidence or substantiate the reasons for objecting]; and

"(g) state that the transaction or charge will be set aside as against the person named in the notice if that person does not object; and

"(h) state that if the person named in the notice does object, the liquidator may apply to the Court for the transaction or charge to be set

aside.

"(3) The transaction or charge is automatically set aside as against the person on whom the liquidator has served the liquidator's notice, if that person has not objected by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator's notice has been served on that person.

"(4) The notice of objection must contain [full particulars of] the reasons for objecting [and must identify documents that evidence or substantiate the reasons for objecting].

"(5) A transaction or charge that is not automatically set aside may still be set aside by the Court on the liquidator's application."

477 New section 295 substituted

Section 295 is repealed and the following section substituted:

"295 Other orders

If a transaction or charge is set aside under section 294, the Court may make 1 or more of the following orders:

"(a) an order that a person pay to the company an amount equal to some or all of the money that the company has paid under the transaction:

"(b) an order that a person transfer to the company property that the company has transferred under the transaction:

"(c) an order that a person pay to the company an amount that, in the Court's opinion, fairly represents some or all of the benefits that the person has received because of the transaction:

"(d) an order that a person transfer to the company property that, in the Court's opinion, fairly represents the application of either or both of the following:

"(i) money that the company has paid under the transaction:

"(ii) proceeds of property that the company has transferred under the

transaction:

"(e) an order releasing, in whole or in part, a charge given by the company:

"(f) an order requiring security to be given for the discharge of an order made under this section:

"(g) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this section is entitled to claim as a creditor in the liquidation.

Compare: Corporations Act 2001 (Australia) s 588FF(1)(a)-(d)".

478 Additional provisions relating to setting aside transactions and charges

Section 296 is amended by repealing subsection (3) and substituting the following subsection:

"(3) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property---

"(a) A acted in good faith; and

"(b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the company was, or would become, insolvent; and

"(c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside."

479 Transactions at undervalue

(1) Section 297 is amended by repealing subsections (1) and (2) and substituting the following subsections:

"(1) Under subsection (2) the liquidator may recover from a person (X) the amount C in the formula $A - B = C$, where---

"(a) A is the value that X received from a company under a transaction to which the company was or is a party; and

"(b) B is the value (if any) that the company received from X under the transaction.

"(2) The liquidator may recover the difference in value (that is, C in the formula in subsection (1)) from X if---

"(a) the company entered into the transaction within the specified period; and

"(b) either---

"(i) the company was unable to pay its due debts when it entered into the transaction; or

"(ii) the company became unable to pay its due debts as a result of entering into the transaction."

(2) Section 297(3) is amended by repealing paragraph (a) and substituting the following paragraph:

"(a) transaction has the same meaning as in section 292(3):".

(3) Section 297(3) is amended by omitting "a year" wherever it appears and substituting in each case "2 years".

New offence for directors

480 Carrying on business fraudulently

Section 380 is amended by adding the following subsection after subsection (2):

"(3) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4), who, with intent to defraud a creditor or creditors of the company, does any thing that causes material loss to any creditor."

Prohibition order

481 Registrar may prohibit persons from managing companies

Section 385(1) is amended by adding the following paragraph:

"(g) that is in voluntary administration under Part 15A."

Phoenix companies

482 New sections 386A to 386F inserted

The following sections are inserted after section 386:

"386A Director of failed company must not be director, etc, of phoenix company with same or substantially similar name

"(1) Except with the permission of the Court, or unless 1 of the exceptions in sections 386D to 386F applies, a director of a failed company must not, for a period of 5 years after the date of commencement of the liquidation of the failed company,---

"(a) be a director of a phoenix company; or

"(b) directly or indirectly be concerned in or take part in the promotion, formation, or management of a phoenix company; or

"(c) directly or indirectly be concerned in or take part in the carrying on of a business that has the same name as the failed company's pre-liquidation name or a similar name.

"(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to the penalty set out in section 373(4).
Compare: Insolvency Act 1986 (UK) s 216

"386B Definitions for purpose of phoenix company provisions

"(1) In sections 386A to 386F,---

"director of a failed company means a person who was a director of a failed company at any time in the period of 12 months before the commencement of its liquidation, and director of the failed company has a corresponding meaning

"failed company" means a company that was placed in liquidation at a time when it was unable to pay its due debts

"phoenix company" means, in relation to a failed company, a company that, at any time before, or within 5 years after, the commencement of the liquidation of the failed company, is known by a name that is also---

"(a) a pre-liquidation name of the failed company; or

"(b) a similar name

"pre-liquidation name" means any name (including any trading name) of a failed company in the 12 months before the commencement of that company's liquidation

"similar name" means a name that is so similar to a pre-liquidation name of a failed company as to suggest an association with that company.

"(2) For the purposes of sections 386A to 386F, a company is known by a name if that name is its registered name or if it carries on business, or carries on a part of its business, under that name.

Compare: Insolvency Act 1986 (UK) s 216(6)

"386C Liability for debts of phoenix company

"(1) A person who contravenes section 386A(1)(a) or (b) is personally liable for all of the relevant debts of the phoenix company.

"(2) A person (A) who is involved in the management of a phoenix company is personally liable for all of the relevant debts of the company if---

"(a) in the management of the company A acts or is willing to act on instructions given by another person (B); and

"(b) at that time A knows that B is contravening section 386A(1)(a) or (b) in relation to the company.

"(3) In this section, relevant debts---

"(a) in subsection (1), means the debts and liabilities incurred by the phoenix company during the period when the person liable was involved in the

management of the company and the phoenix company was known by a pre-liquidation name of the failed company or a similar name:

"(b) in subsection (2), means the debts and liabilities incurred by the phoenix company during the period when A was acting or was willing to act on the instructions of B and the phoenix company was known by a pre-liquidation name of the failed company or a similar name.

"(4) Liability under this section is joint and several.

"(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given by a person who he or she knew at the time to be in contravention of section 386A is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

Compare: Insolvency Act 1986 (UK) s 217

"386D Exception for person named in successor company notice

"(1) Section 386A does not apply to a person named in a successor company notice.

"(2) A successor company is a company that acquires the whole or substantially the whole of the business of a failed company under arrangements made by a liquidator or receiver or made under a deed of company arrangement under Part 15A.

"(3) A successor company notice is a notice by a successor company that---

"(a) is sent by the successor company to all creditors of the failed company for whom the successor company has an address; and

"(b) is sent to those creditors within 20 working days after the arrangements for the acquisition of the business are made under subsection (2); and

"(c) specifies---

"(i) the name and registered number of the failed company; and

"(ii) the circumstances in which the business has been acquired by the successor business; and

"(iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on that business; and

"(iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on that business; and

"(d) states, in respect of a person named in the notice,---

"(i) his or her full name; and

"(ii) the duration of his or her directorship of the failed company;
and

"(iii) the extent of his or her involvement in the management of the failed company.

Compare: Insolvency Rules 1986 (UK) rule 4.228

"386E Exception for temporary period while application for exemption is made

"(1) A person does not contravene a prohibition in section 386A for the temporary period set out in subsection (2) if that person applies to the Court within 5 working days after the commencement of the liquidation of the failed company for an order exempting that person from the prohibition in question.

"(2) The temporary period in subsection (1) is the period beginning on the date of the commencement of the liquidation of the failed company and ending on the earlier of---

"(a) the close of 6 weeks after the commencement of liquidation; and

"(b) the date on which the Court makes an order of exemption.

Compare: Insolvency Rules 1986 (UK) rule 4.229

"386F Exception in relation to non-dormant phoenix company known by pre-liquidation name of failed company for at least 12 months before liquidation

"(1) The prohibitions in section 386A(1)(a) and (b) do not apply in respect of a phoenix company that has been known by a name or names that are the same as the failed company's pre-liquidation name or are similar names if---

"(a) it has been known by that name or those names for not less than the period of 12 months before liquidation commences; and

"(b) it has not been dormant during those 12 months.

"(2) For the purposes of subsection (1), a company has not been dormant during the 12-month period if transactions that are required by section 194(2) to be recorded in its accounting records have occurred throughout that period.

Compare: Insolvency Rules 1986 (UK) rule 4.230".

483 Consequential amendments to section 126

(1) Section 126(1)(b) is amended by {inserting "and 386A to 386F" after "385,"} [omitting "and clause 12(ab)" and substituting "386A to 386F, and clause 3(4)(b)"].

(2) Section 126(1)(c) is amended by {inserting "and 386A to 386F," after "385,"} [omitting "and clause 12(ab)" and substituting "386A to 386F, and clause 3(4)(b)"].

New (unanimous)

(3) Section 126(1)(d) is amended by omitting "clause 12(ab)" and substituting "clause 3(4)(b)"

New (unanimous)

483A Consequential amendment to section 275

Section 275(4) is amended by omitting "paragraph (a) of clause 1" and substituting "clause 1(1)(a)".

New (unanimous)

483B Consequential amendment to section 312

Section 312(2) is amended by omitting "clause 9(b)" and substituting "clause 2(1)(b)".

484 Consequential amendments to section 373

(1) Section 373(1) is amended by inserting the following paragraphs after paragraph 27:

"(27A) section 239AEA(3) (which relates to the failure by a company in administration to disclose the fact of administration):

"(27B) section 239AW(4) (which relates to attendance by a director at a watershed meeting):".

(2) Section 373(4) is amended by adding the following paragraph:"

"(j) section 386A(2) (which relates to acting as a director of a phoenix company)."

Schedule 7

485 Schedule 7 substituted

(1) Schedule 7 is repealed and the Schedule 7 set out in Schedule 3 is substituted.

(2) If a liquidator is appointed to a company before this section comes into force, the property of the company must be applied in accordance with the priorities stated in Schedule 7 as if this section had not come into force.

Consequential amendments to other enactments

486 Consequential amendments to other enactments

The enactments specified in Schedule 4 are amended in the manner indicated in that schedule.

Part 9

Cross-border insolvency

487 Commencement

This Part comes into force on a date to be appointed by the Governor-General by Order in Council.

488 Purpose

The purpose of this Part is to---

(a) implement the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997, (amended and supplemented in order to apply to New Zealand) in New Zealand; and

(b) provide a framework for facilitating insolvency proceedings when---

(i) a person is subject to insolvency administration (whether personal or corporate) in 1 country, but has assets or debts in another country; or

(ii) more than 1 insolvency administration has commenced in more than 1 country in relation to a person.

489 Interpretation

In this Part,---

insolvency proceeding means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency (whether personal or corporate) in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise that proceeding, for the purpose of reorganisation or liquidation

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part.

490 Further provision relating to interpretation

(1) In interpreting this Part, reference may be made to---

(a) the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997; and

(b) any document that relates to the Model Law on Cross-Border Insolvency that originates from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law on Cross-Border Insolvency.

New (unanimous)

(2) Subsection (1) does not limit article 8 of Schedule 5.

491 Part binds the Crown

This Part binds the Crown.

492 Application of Model Law on Cross-Border Insolvency in New Zealand

Schedule 5 applies in the circumstances set out in article 1 of that schedule.

493 High Court to act in aid of overseas courts

(1) This section applies to a person referred to in article 1{(2)} [(1)] of Schedule 5.

(2) If a court of a {Commonwealth} country {()other than New Zealand{)} has jurisdiction in an insolvency proceeding and makes an order requesting the aid of the High Court in relation to the insolvency proceeding of a person to whom this section applies, the High Court {must} [may, if it thinks fit,] act in aid of and be auxiliary to that court in relation to that insolvency proceeding.

(3) In acting in aid of and being auxiliary to a court in accordance with subsection (2), the High Court may exercise the powers that it could exercise in respect of the matter if it had arisen within its own jurisdiction.

Struck out (unanimous)

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(4) The High Court may, if it thinks fit, exercise the powers specified in subsection (2) and (3) at the request of a court in any country that is not a Commonwealth country.
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494 Power to make rules

Rules may be made under section 51C of the Judicature Act 1908---

(a) relating to the procedure of the High Court under this Part; and

(b) relating to the manner in which an application under Schedule 5 must be made to the High Court; and

(c) to give effect to this Part.

495 Regulations may prescribe specified insolvency proceedings

(1) On the recommendation of the Minister, the Governor-General may, by Order in Council, make regulations designating a class of insolvency proceeding, in a designated country other than New Zealand (referred to in this section as the foreign country), to be a specified insolvency proceeding.

(2) The Minister must not recommend the making of regulations under subsection (1) unless the Minister is satisfied that---

(a) New Zealand and the foreign country are both parties to an agreement for the mutual recognition of insolvency proceedings; and

(b) the level of recognition given to the interests of New Zealand debtors and creditors in an insolvency proceeding in the foreign country and the terms of the agreement referred to in paragraph (a) provide appropriate protection for the interests of New Zealand debtors and creditors.

(3) A regulation made under subsection (1) may specifically modify or vary Schedule 5 in its application to a specified insolvency proceeding.

(4) Subsection (3) prevails over section 492.

496 Regulations

The Governor-General may, by Order in Council, make regulations prescribing forms to be used for the purposes of this Part, and the matters to be specified in the forms.

497 Transitional provisions for this Part

(1) If an insolvency proceeding has started before the commencement of this Part, the law governing that insolvency proceeding is the law that would have applied if this Part had not been passed.

(2) For the purposes of subsection (1), an insolvency proceeding is taken to have started on the date upon which the judicial manager, Official Assignee, statutory manager, receiver, liquidator, or administrator was appointed.

498 Consequential amendments to other enactments

The enactments specified in Schedule 6 are amended in the manner indicated in that schedule.

Schedule 1 s 215(2) Assignee's general powers

The Assignee has the power to---

(a) hold property:

(b) begin, continue, discontinue, and defend legal proceedings relating to the property of the bankrupt:

(c) with the leave of the Court, continue in the Assignee's name legal proceedings begun by the bankrupt before adjudication:

(d) refer a dispute to arbitration:

(e) compromise debts, claims, and liabilities, present or future, actual or contingent, or ascertained or not, subsisting or believed to subsist between the bankrupt and any person, on whatever terms are agreed:

(f) make a compromise or an arrangement with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy:

(g) accept as consideration for the sale of any of the bankrupt's property money to be paid in the future, on terms (including terms as to security) that the Assignee thinks appropriate:

(h) make a compromise or an arrangement in respect of a claim that arises out of, or is incidental to, the bankrupt's property, whether it is a claim by the Assignee, or a claim by a person against the Assignee:

(i) carry on the bankrupt's business, if it is necessary or advantageous in order to dispose of it, and for that purpose may employ and pay any person, including the bankrupt:

(j) use money in the bankrupt's estate for the repair, maintenance, upkeep, or renovation of the bankrupt's property, whether or not the work is necessary to salvage the property:

(k) borrow money:

(l) mortgage any of the bankrupt's property:

(m) employ any person to do anything that must be done in the course of the administration of the bankruptcy, including the receipt and payment of money:

(n) prove and draw a dividend in respect of any debt due to the bankrupt:

(o) if any of the bankrupt's property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances, divide it in its existing form among the creditors according to its estimated value:

(p) give receipts and sign discharges and releases for any money that the Assignee receives, so that the person who pays the money is effectively discharged from any responsibility for how the money is

used:

(q) execute a power of attorney, deed, or any other document for the purpose of carrying into effect the provisions of this Act:

(r) exercise, in relation the bankrupt's property, any power conferred on a trustee under the Trustee Act 1956 or by the Court under that Act; and for the purposes of those powers the Assignee is a trustee of the bankrupt's property:

(s) exercise any authority or power or do any act in relation to the bankrupt's property that the bankrupt could have exercised or done if he or she was not bankrupt:

(t) in respect of any particular estate or estates,---

(i) appoint an agent to act for the Assignee:

(ii) delegate to that agent any or all of the powers conferred by this Schedule:

(iii) revoke the agent's appointment:

(iv) set the agent's remuneration, which must be paid out of the estate:

(u) exercise, on the terms the Assignee thinks appropriate, the following powers in relation to the sale of the bankrupt's property:

(i) sell the whole or a part of the bankrupt's property by public auction or public tender:

(ii) buy in at an auction of the bankrupt's property:

(iii) rescind or vary a contract for the sale of the bankrupt's property:

(v) surrender any shares of the bankrupt in a building society in accordance with the rules of the society:

(w) sell the following property of the bankrupt by private contract:

(i) perishable property or property that is likely to fall rapidly in value:

(ii) property that is unsold after being offered for sale by public auction or public tender:

(iii) property that the Assignee considers unnecessary or inadvisable to sell by public auction or public tender because of its nature, situation, value, or other special circumstance:

(iv) property authorised by a resolution of creditors to be sold by private contract, but in that case the Assignee must sell the property in accordance with the authority given by the creditors:

(v) company securities, New Zealand Government securities, and local authority securities, if sold on a securities market operated by a registered exchange registered under the Securities Markets Act 1988.

Compare: 1967 No 54 s 71

Schedule 2 s 438
Consequential amendments to other enactments

New (unanimous)

Part 1
Amendments to Acts

Administration Act 1969 (1969 No 52)

Section 31: omit "Part 17 of the Insolvency Act 1967" and substitute "Part 6 of the Insolvency Law Reform Act 2005".

Section 32(1): omit "Part 17 of the Insolvency Act 1967" and substitute "Part 6 of the Insolvency Law Reform Act 2005".

Section 82(1): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Carriage of Goods Act 1979 (1979 No 43)

Section 11(4): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Companies Act 1993 (1993 No 105)

Section 103(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Definition of Official Assignee in section 240[(1)]: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 280(1)(1): omit "section 111(1)(c) of the Insolvency Act 1967" and substitute "section 297(1)(c) of the Insolvency Law Reform Act 2005".

Section 300(5): omit "section 19(d) of the Insolvency Act 1967" and substitute "section 17(1)(a) of the Insolvency Law Reform Act 2005".

New (unanimous)

Section 301(3): omit "section 19(d) of the Insolvency Act 1967" and substitute "section 17(1)(a) of the Insolvency Law Reform Act 2005".

Section 302(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Construction Contracts Act 2002 (2002 No 46)

Section 71(2)(a): omit "section 32 of the Insolvency Act 1967" and substitute "section 76 of the Insolvency Law Reform Act 2005".

Contractual Mistakes Act 1977 (1977 No 54)

Definition of disposition in section 8(3): omit and substitute:

"disposition means---

"(a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:

"(b) the creation of a trust:

"(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:

"(d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:

"(e) the exercise of a general power of appointment in favour of any person other than the donee of the power:

"(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person's own estate and to increase the value of the estate of any other person".

Copyright Act 1994 (1994 No 143)

Section 208(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Struck out (unanimous)

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Corrections Act 2004 (2004 No 50)

Section 19(7)(c): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".
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Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 42(7): omit "sections 93A to 93I of the Insolvency Act 1967" and substitute "sections 253 to 261 of the Insolvency Law Reform Act 2005".

Section 44(4): omit "section 93C of the Insolvency Act 1967" and substitute "section 255 of the Insolvency Law Reform Act 2005".

New (unanimous)

Section 51(2)(b)(i) and (ii): repeal and substitute:

"(i) proceeds of an account receivable that is subject to a security interest that---

"(A) is not a purchase money security interest that has been

perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and

"(B) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises from the transfer of the account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); or

"(ii) proceeds of inventory that are subject to a security interest that is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999."

Section 51(6): omit "section" and substitute "subsection."

Section 51(6)(b): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 51(6)(c): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises".

Corrections Act 2004 (2004 No 50)

Section 19(7)(c): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Customs and Excise Act 1996 (1996 No 27)

Section 98(2): omit "section 90 of the Insolvency Act 1967" and substitute "sections 241, 242, and 244 to 248 of the Insolvency Law Reform Act 2005".

Section 101(2): omit "section 104 of the Insolvency Act 1967" and substitute "section 272(5) of the Insolvency Law Reform Act 2005".

District Courts Act 1947 (1947 No 16)

Section 90(3): omit "section 50 of the Insolvency Act 1967" and substitute "sections 108 to 112 of the Insolvency Law Reform Act 2005".

Employment Relations Act 2000 (2000 No 24)

Section 170(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Energy Companies Act 1992 (1992 No 52)

Section 6(1)(c): omit "section 111 of the Insolvency Act 1967" and substitute "section 297 of the Insolvency Law Reform Act 2005".

Fisheries Act 1996 (1996 No 88)

Section 270: repeal.

Forest and Rural Fires Act 1977 (1977 No 52)

Section 64(4)(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

New (unanimous)

Goods and Services Tax Act 1985 (1985 No 141)

Section 42(2)(c)(ii)(B): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 42(2)(c)(ii)(C): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time of the receiver's appointment and that arises".

Health and Disability Services (Safety) Act 2001 (2001 No 93)

Section 48(1)(b)(iii): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 49(1)(c)(iii): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Health Practitioners Competence Assurance Act 2003 (2003 No 48)

Section 55(3)(c): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 87(4)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 122(2)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Clause 3(2)(b) of Schedule 1: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Human Rights Act 1993 (1993 No 82)

Section 20G(c): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 101(3)(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 103(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Illegal Contracts Act 1970 (1970 No 129)

Section 6(2): omit and substitute:

"(2) In this section, disposition means---

"(a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:

"(b) the creation of a trust:

"(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:

"(d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:

"(e) the exercise of a general power of appointment in favour of any person other than the donee of the power:

"(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person's own estate and to increase the value of the estate of any other person."

Income Tax Act 2004 (2004 No 35)

Section CG 2(4)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section EW 29(10): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section EW 47(1)(b)(i): omit "114 of the Insolvency Act 1967" and substitute "302 of the Insolvency Law Reform Act 2005".

Section EZ 35(6)(a)(i): omit "114 of the Insolvency Act 1967" and substitute "302 of the Insolvency Law Reform Act 2005".

Section EZ 35(8)(d)(ii): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Industry Training Act 1992 (1992 No 55)

Section 16: omit ", 23," and ", and section 23,".

Insurance Intermediaries Act 1994 (1994 No 41)

Section 17(1)(c): omit "Part 17 of the Insolvency Act 1967" and substitute "Part 6 of the Insolvency Law Reform Act 2005".

Section 17(2): insert "or the Insolvency Law Reform Act 2005" after "Insolvency Act 1967".

Joint Family Homes Act 1964 (1964 No 45)

Section 9(2)(d): omit "Insolvency Act 1967" wherever it appears and in each case substitute "Insolvency Law Reform Act 2005".

Section 12A(6): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Judicature Act 1908 (1908 No 89)

Section 26I(1): insert after paragraph (c):

"(ca) a proceeding for recovery under---

"(i) section 297 or section 298 of the Companies Act 1993; or

"(ii) sections 209 and 210 of the Insolvency Law Reform Act 2005:".

Section 26I(2)(h): repeal and substitute:

"(h) sections 15, 36 to 44, 148, 164(3), 178, 234(2), Part 4, and subpart 2 of Part 5 of the Insolvency Law Reform Act 2005:".

Section 448(1)(g): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 651(1)(b): omit "section 154(3) of the Insolvency Act 1967" and substitute "section 374(4)(c)(iii) of the Insolvency Law Reform Act 2005".

Section 819(1): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 824(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

{ Clause } [Rule] 458D(1)(a)(vi) of Schedule 2: omit "294(2)" and substitute "294(5)".

{ Clause } [Rule] 458EA(1)(b) of Schedule 2: omit "294(2)" and substitute "294(5)".

{ Clause } [Rule] 458EA(2)(b) of Schedule 2: omit "294(2)" and substitute "294(5)".

{ Clause } [Rule] 458H(3)(b) of Schedule 2: omit "294(2)" and substitute "294(5)".

{ Clause } [Rule] 458I(1)(a)(ii)(B) of Schedule 2: omit "294(2)" and substitute "294(5)".

New (unanimous)

Lawyers and Conveyancers Act 2006 (2006 No 1)

Section 284(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Clause 2(2) of Schedule 3: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Clause 3(3) of Schedule 4: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Layby Sales Act 1971 (1971 No 80)

New (unanimous)

Section 11(1A)(b): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 11(1A)(c): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the commencement of the liquidation, or at the time of the receiver's appointment, or at the date of adjudication, as the case may be, and that arises".

Section 11(2): repeal and substitute:

"(2) Debts to which priority is given by subsection (1) must be paid in accordance with section 312 and Schedule 7 of the Companies Act 1993, or section 30 of the Receiverships Act 1993, or section 272(3) of the Insolvency Law Reform Act 2005, as the case may be."

Medicines Act 1981 (1981 No 118)

Section 55D(4): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Paragraph (b) of the definition of pharmacist in section 55E(3): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Motor Vehicles Sales Act 2003 (2003 No 12)

Section 85(1): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 88(4)(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Personal Property Securities Act 1999 (1999 No 126)

Section 17A(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Plumbers, Gasfitters, and Drainlayers Act 1976 (1976 No 69)

Section 6B(2)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Privacy Act 1993 (1993 No 28)

Item relating to the Insolvency Act 1967 in Part 1 of Schedule 2: omit and substitute:

Insolvency Law Reform Act 2005 Sections 62, 365

Proceeds of Crime Act 1991 (1991 No 120)

Section 27(4): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 60(1): omit "section 23 of the Insolvency Act 1967" and substitute "section 13 of the Insolvency Law Reform Act 2005".

Section 60(2): omit "section 42 of the Insolvency Act 1967" and substitute "section 101 of the Insolvency Law Reform Act 2005".

Section 60(3): omit "section 87(2) of the Insolvency Act 1967" and substitute "section 230(2) of the Insolvency Law Reform Act 2005".

Property Law Act 1952 (1952 No 51)

Definition of bankruptcy in section 2: omit "Part 17 of the Insolvency Act 1967" and substitute "Part 6 of the Insolvency Law Reform Act 2005".

New (unanimous)

Section 104PPA(1)(b): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 104PPA(1)(c): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the mortgagee became such a mortgagee and that arises".

Property (Relationships) Act 1976 (1976 No 166)

Section 58(1): repeal and substitute:

"(1) If, had this Act not been passed, any property would have become vested in an appointee (within the meaning of section 372(1) of the Insolvency Law Reform Act 2005) on an order being made under section 373 of that Act to administer the estate of a deceased spouse or partner under Part 6 of that Act, then that property (and no other property) becomes vested in an appointee as if this Act had not been passed."

Section 59(1)(a): repeal and substitute:

"(a) if, after the death of a spouse or partner, the family home (including a homestead) or, if section 11A applies, the proceeds of the sale of the family home vest in an appointee (within the meaning of section 372(1) of the Insolvency Law Reform Act 2005) on an order being made under section 373 of that Act to administer the estate of a deceased spouse or partner under Part 6 of that Act:".

Section 88(3)(c): repeal and substitute:

"(c) an appointee (within the meaning of section 372(1) of the Insolvency Law Reform Act 2005) in whom the estate of a deceased spouse or partner vests on an order being made under section 373 of that Act."

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Clause 1(a)(ii) of Schedule 1: omit "Part 16 of the Insolvency Act 1967" and substitute "subpart 3 of Part 5 of the Insolvency Law Reform Act 2005".

Radiocommunications Act 1989 (1989 No 148)

Section 183(3): omit "Subject to subsection (4) of this section, the" and substitute "The".

Section 183(4) to (6): repeal.

Receiverships Act 1993 (1993 No 122)

Definition of Official Assignee in section 2[(1)]: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 5(1)(l): omit "section 111(1)(c) of the Insolvency Act 1967" and substitute "section 297(1)(b) of the Insolvency Law Reform Act 2005".

Section 31(1)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 122(7): omit "sections 93A to 93I of the Insolvency Act 1967" and substitute "sections 253 to 261 of the Insolvency Law Reform Act 2005".

Section 127(4): omit "section 93C of the Insolvency Act 1967" and substitute "section 255 of the Insolvency Law Reform Act 2005".

New (unanimous)

Section 134(6)(b): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 134(6)(c): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the registered bank was declared to be subject to statutory management and that arises".

Section 136(1)(b): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Paragraph (b) of the definition of insolvency in section 156L: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

New (unanimous)

Heading to section 156S: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 156S(b): repeal and substitute:

"(b) sections 253 to 260 of the Insolvency Law Reform Act 2005."

Section 156T(1)(a): omit "section 56 of the Insolvency Act 1967" and substitute "section 192 of the Insolvency Law Reform Act 2005".

Section 156T(2): omit "section 56 of the Insolvency Act 1967" and substitute "section 192 of the Insolvency Law Reform Act 2005".

Retirement Villages Act 2003 (2003 No 112)

Section 22(1)(b): omit "section 75 of the Insolvency Act 1967" and substitute "section 117 of the Insolvency Law Reform Act 2005".

Ship Registration Act 1992 (1992 No 89)

Section 51(6)(c): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Social Workers Registration Act 2003 (2003 No 17)

Section 118(1)(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Clause 3(2)(a) of Schedule 2: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of Schedule 1: omit the item relating to the Insolvency Act 1967 and substitute:

Insolvency Law Reform Act 2005 413 to 422, 424 Offences by bankrupt

New (unanimous)

Te Ture Whenua Maori Act 1993 (1993 No 4)

Section 343(4): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 343(5): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

Section 48(4)(a): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Section 50(2): omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Treaty of Waitangi Act 1975 (1975 No 114)

Clause 2(2) of Schedule 2: omit "Insolvency Act 1967" and substitute "Insolvency Law Reform Act 2005".

Trustee Companies Act 1967 (1967 No 35)

Section 7(2)(t): omit "Part 15 of the Insolvency Act 1967" and substitute "subpart 2 of Part 5 of the Insolvency Law Reform Act 2005".

Unit Trusts Act 1960 (1960 No 99)

Section 27(3): omit "paragraph (d) of subsection (1) of section 19 of the Insolvency Act 1967" and substitute "section 17(1)(a) of the Insolvency Law Reform Act 2005".

Volunteers Employment Protection Act 1973 (1973 No 25)

Section 15: repeal.

Struck out (unanimous)

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Volunteers Employment Protection Amendment Act 2004
(2004 No 12)

Section 13: repeal.

Schedule 3: repeal the item relating to the Companies Act 1993 (1993 No 105).

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Weatheright Homes Resolution Services Act 2002
(2002 No 47)

Section 55(2)(a): omit "section 24 of the Insolvency Act 1967" and substitute
"sections 31 to 35 of the Insolvency Law Reform Act 2005".

Clause 4(2) of the Schedule: omit "Insolvency Act 1967" and substitute
"Insolvency Law Reform Act 2005".

Part 2

New (unanimous)

Amendments to Regulations

Domestic Violence (Public Registers) Regulations 1998
(SR 1998/342)

Schedule 1: omit the item relating to the Insolvency Act 1967 and substitute:

Insolvency Law Reform Act 2005 Section 62

Education (Early Childhood Centres) Regulations 1998
(SR 1998/85)

Regulation 3(4)(c): omit "Insolvency Act 1967" and substitute
"Insolvency Law Reform Act 2005".

Education (Hostels) Regulations 2005
(SR 2005/332)

Regulation 13(d): omit "Insolvency Act 1967" and substitute
"Insolvency Law Reform Act 2005".

Regulation 38(d): omit "Insolvency Act 1967" and substitute
"Insolvency Law Reform Act 2005".

Futures Industry (Client Funds) Regulations 1990
(SR 1990/227)

Regulation 21(1)(c): omit "Part 17 of the Insolvency Act 1967" and substitute "Part 6 of the Insolvency Law Reform Act 2005".

Weights and Measures Regulations 1999
(SR 1999/373)

Regulation 17(1)(b)(ii): omit "section 111 of the Insolvency Act 1967" and substitute "section 297 of the Insolvency Law Reform Act 2005".

Schedule 3 s 485
New Schedule 7 substituted

Schedule 7 s 312
Preferential claims

1 Priority of payments to preferential creditors

(1) The liquidator must first pay, in the order of priority in which they are listed,---

(a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator, and the remuneration of the liquidator; and

(b) the fees and expenses properly incurred by the administrator in carrying out the duties and exercising the powers of the administrator and the remuneration of the administrator; and

(c) the reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs incurred between {solicitor} [lawyer] and client in procuring the order; and

(d) the actual out-of-pocket expenses necessarily incurred by a liquidation committee; and

(e) to any creditor who protects, preserves the value of, or recovers assets of the company for the benefit of the company's creditors by the payment of money or the giving of an indemnity,---

(i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering those assets.

(2) After paying the claims referred to in subclause (1), the liquidator must next pay, to the extent that they remain unpaid, the following claims:

(a) subject to clause 3(1), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services provided to the company during the 4 months before the commencement of the liquidation:

(b) subject to clause 3(1), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the commencement of the liquidation:

(c) subject to clause 3(1), any compensation for redundancy owed to an employee that accrues before, or because of, the commencement of the liquidation:

(d) subject to clause 3(1), amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee (including amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991 and section 167(2) of the Tax Administration Act 1994 as applied by section 25 of the Student Loan Scheme Act 1992):

(e) subject to clause 3(1), any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(1)(b) or section 128 of the Employment Relations Act 2000, to the extent that the reimbursement or payment does not relate to any matter set out in section 123(1)(c) of the Employment Relations Act 2000, in respect of wages or other money or remuneration lost during the 4 months before the commencement of the liquidation:

(f) amounts that are preferential claims under section 263(2):

(g) all sums that, by any other enactment, are required to be paid in accordance with the priority established by this subclause.

(3) After paying the claims referred to in subclause (2), the liquidator must next pay all sums, for which a buyer is a creditor in the liquidation of the company under section 11 of the Layby Sales Act 1971,---

(a) paid by the buyer to a seller on account of the purchase price of goods; or

(b) to which the buyer is or becomes entitled to receive from a seller under section 9 of the Layby Sales Act 1971.

(4) After paying the claims referred to in subclause (3), the liquidator must next pay the amount of any costs referred to in section 234(c).

(5) After paying the claims referred to in subclause (4), the liquidator must next pay, to the extent that it remains unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require, the amount of---

(a) tax payable by the company in the manner required by Part 3 of the Goods and Services Tax Act 1985; and

(b) tax deductions made by the company under the PAYE rules of the Income Tax Act 2004; and

(c) non-resident withholding tax deducted by the company under the NRWT rules of the Income Tax Act 2004; and

(d) resident withholding tax deducted by the company under the RWT rules of the Income Tax Act 2004; and

(e) duty payable within the meaning of section 2(1) of the Customs and Excise Act 1996.

2 Conditions to priority of payments to preferential creditors

(1) The claims listed in each of subclauses (2), (3), (4), and (5) of clause 1---

(a) rank equally among themselves and, subject to any maximum payment level specified in any Act or regulations, must be paid in full, unless the assets of the company are insufficient to meet them, in which case they abate in equal proportions; and

(b) in so far as the assets of the company available for payment of those claims are insufficient to meet them,---

(i) have priority over the claims of any person under a security interest to the extent that the security interest---

(A) is over all or any part of the company's accounts receivable and inventory or all or any part of either of them; and

(B) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and

(C) [is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the commencement of the liquidation and] {does not arise} [that arises] from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).

(2) For the purposes of subclause (1)(b), the terms account receivable, inventory, new value, proceeds, purchase money security interest, and security interest have the same meanings as in the Personal Property Securities Act 1999.

(3) To the extent that the claims to which subclause (1) applies are paid out of assets referred to in paragraph (b) of that subclause, the amount so paid is an unsecured debt due by the company to the secured party.

(4) Clause 9 of this schedule, as was in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.

3 Provisions concerning preferential payments to employees

(1) The total sum to which priority is to be given under any, or all, of paragraphs (a) to (e) of clause 1(2) must not, in the case of any one employee, exceed \$15,000 or any greater amount that is prescribed under subclause (2) at the commencement of the liquidation.

(2) The sum stated in subclause (1) must be adjusted as follows:

(a) subject to paragraph (d), an adjustment must be made, by the Governor-General by Order in Council, after the 3-year period starting on 1 July 2003 and ending on 30 June 2006 and after every 3-year period following that (an adjustment period):

(b) subject to paragraph (d), the Order in Council must be made within 3 months of the end of an adjustment period:

(c) each adjustment must reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Quarterly Employment Survey published by Statistics New Zealand (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period:

(d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, no adjustment may be made for that adjustment period:

(e) if, in accordance with paragraph (d), no adjustment is made, the next adjustment made for any succeeding adjustment period must reflect any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the relevant adjustment period for which the adjustment is to be made:

(f) all adjustments are cumulative and must be rounded to the nearest \$20:

(g) any correction to the Quarterly Employment Survey on which an adjustment is based must be disregarded until the adjustment that takes effect in the following adjustment period, which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subclause.

(3) The sum stated in subclause (1), or any greater amount prescribed under subclause (2) that applies on the date of commencement of a liquidation, continues to apply to that liquidation regardless of any change to that sum that is prescribed after the date of commencement of the liquidation.

(4) For the purposes of this clause and clause 1,---

(a) remuneration in respect of a period of holiday or of absence from

work through sickness or other good cause is to be treated as wages in respect of services rendered to the company during that period:

(b) employee means any person of any age employed by an employer to do any work for hire or reward under a contract of service (including a homemaker as defined in section 5 of the Employment Relations Act 2000); but does not include a person who is, or was at any time during the 12 months before the commencement of the liquidation, a director of the company in liquidation, or a nominee or relative of, or a trustee for, a director of the company:

(c) holiday pay, in relation to a person, means all sums payable to that person by the company under subpart 1 of Part 2 of the Holidays Act 2003, and includes all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

4 Subrogation of persons if payment has been made

If a payment has been made to a person (A) on account of any preferential claim set out in this schedule out of money advanced by another person B for that purpose, then B has, in a liquidation, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.

5 Priority given to person who distrains on goods

If a landlord or other person has distrained on goods or effects of the company during the 20 working days before the commencement of the liquidation, the preferential claims set out in this schedule are a first charge on the goods or effects so distrained, or the proceeds from their sale; but if any money is paid to a claimant under that charge, the landlord or other person has the same rights of priority as that claimant.

6 Saving provision for liquidation that has commenced

If a liquidation of a company commenced before Part 8 of the Insolvency Law Reform Act 2005 came into force, that company's property must be applied in accordance with the priorities stated in this schedule on the date the liquidation commenced as if Part 8 of the Insolvency Law Reform Act 2005 had not come into force.

New (unanimous)

Corporations (Investigation and Management) Act 1989
(1989 No 11)

Section 42(1)(c): add "or voluntary administration" after "liquidation".

Industrial and Provident Societies Amendment Act 1952
(1952 No 45)

Section 13(1)(a)(i): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 13(1)(a)(ii): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time of the receiver's appointment, or at the time at which possession of the property was taken, as the case may be, and that arises".

Section 13(2): omit and substitute:

"(2) In the application of Schedule 7 of the Companies Act 1993, references to the commencement of the liquidation must be read as a reference to the appointment of the receiver or the taking possession of the property, as the case may be."

Property Law Act 1952 (1952 No 51)

Section 104PPA(2)(b): omit "clauses 1 and 9(b)" and substitute "clauses 1(1) and 2(1)(b)".

Receiverships Act 1993 (1993 No 122)

Definition of preferential claims in section 2(1): omit "clause 1" and substitute "clause 1(1)".

New (unanimous)

Section 30(1)(b): insert "that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999" after "interest".

Section 30(1)(c): omit "does not arise" and substitute "is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time of the receiver's appointment and that arises".

Section 30(2)(b): omit "clauses 1 and 9(b)" and substitute "clauses 1(1) and 2(1)(b)".

New (unanimous)

Section 30(2): omit "any claim of the person entitled to the" and substitute "the claims of any person under a".

Section 30(3): add:

New (unanimous)

"(d) the reference to a period of 4 months before the commencement of the liquidation in clause 1(2)(a) is to be read as a reference to a period beginning 4 months before the date of appointment of the receiver and ending either---

"(i) 14 days after the date of appointment of the receiver; or

"(ii) if notice of the termination of that employee's employment is lawfully given to the employee within 14 days after the date of appointment of the receiver or by any later date to which the period for giving notice is extended under section 32(3) of the Receiverships Act 1993, on the day on which the contract of employment is terminated:

"(e) the {words} [reference to] {` }before, or because of, the commencement of the liquidation{' } in clause 1(2)[(b) and] (c) {are} [is] to be read as [a reference to] {` }before the expiry of 14 days after the date of appointment of the receiver, or because notice of the termination of that employee's employment is lawfully given to the employee within 14 days after the date of appointment of the receiver or by any later date to which the period for giving notice is extended under section 32(3) of the Receiverships Act 1993{' }."

New (unanimous)

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Paragraph (b)(iii) of the definition of voting right in section 2(1): add "or

voluntary administration".

Paragraph (b)(v) of the definition of voting right in section 2(1): insert "voluntary administration," after "receivership,".

Section 122(1)(c): add "or voluntary administration".

Section 143(1): repeal and substitute:

"(1) Where a registered bank, or any subsidiary or associated person of a registered bank, becomes subject to statutory management, and that registered bank, subsidiary, or associated person is already being wound up or is already in liquidation, receivership, or voluntary administration,---

"(a) the winding up, liquidation, receivership, or voluntary administration of that registered bank, subsidiary, or associated person must, for so long as it continues to be subject to statutory management, cease; and

"(b) the person appointed as liquidator, receiver, or administrator must be discharged."

Section 143(2): insert "or voluntary administration" after "receivership".

Section 143(3): repeal and substitute:

"(3) Where any liquidation, receivership, or voluntary administration revives under subsection (2), the person specified in the order as such must be the liquidator, receiver, or administrator of that registered bank, subsidiary, or associated person for the time being."

Paragraph (a) of the definition of insolvency in section 156L: insert after subparagraph (i):

"(ia) voluntary administration under Part 15A of the Companies Act 1993; or".

Paragraph (a)(iv) of the definition of insolvency in section 156L: insert "voluntary administration," after "winding up,".

[The provisions of this schedule correspond, for the most part, to the provisions of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997 (General Assembly Resolution 52/158). Certain changes have been made to amend or supplement the provisions of the Model Law in its application to New Zealand.]

Preamble

The purpose of this Schedule is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) co-operation between the courts and other competent authorities of New Zealand and foreign States involved in cases of cross-border insolvency;
- (b) greater legal certainty for trade and investment;
- (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) protection and maximisation of the value of the debtor's assets; and
- (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Chapter I. General provisions

Article 1. Scope of application

(1) Except as provided in paragraph (2) of this article, this Schedule applies where:

- (a) assistance is sought in New Zealand by a foreign court or a foreign representative in connection with a foreign proceeding; or
- (b) assistance is sought in a foreign State in connection with a New Zealand insolvency proceeding; or
- (c) a foreign proceeding and a New

Zealand insolvency proceeding in respect of the same debtor are taking place concurrently; or

- (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participation in, a New Zealand insolvency proceeding.

(2) This Schedule does not apply to a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989 that is subject to statutory management under that Act.

Article 2. Definitions

For the purposes of this Schedule:

- (a) foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (b) foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;
- (d) foreign representative means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;
- (e) foreign court means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;
- (g) High Court or Court means the High Court of New Zealand;
- (h) insolvency administrator means---
- (i) a judicial manager appointed under section 40A of the Life Insurance Act 1908; or

(ii) the Official Assignee within the meaning of section 3 of the Insolvency Law Reform Act 2005; or

(iii) a statutory manager appointed under section 38 of the Corporations (Investigation and Management) Act 1989; or

(iv) a receiver within the meaning of section 2(1) of the Receiverships Act 1993; or

(v) a liquidator appointed under Part 16 of the Companies Act 1993 or under any other Act; or

(vi) an administrator within the meaning of section 239B of the Companies Act 1993;

(i) New Zealand insolvency proceeding means a collective judicial or administrative proceeding pursuant to the law in New Zealand relating to the bankruptcy, liquidation, receivership, judicial management, statutory management, or voluntary administration of a debtor, or the reorganisation of the debtor's affairs, under which the assets and affairs of the debtor are administered, or the assets of the debtor are or will be realised, for the benefit of secured or unsecured creditors.

Article 3. International obligations of New Zealand

No action may be taken under this Schedule that conflicts with an obligation of New Zealand arising out of any treaty or other form of agreement to which New Zealand is a party with one or more other States.

Article 4. High Court to have jurisdiction

The functions referred to in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the High Court.

Article 5. Authorisation of insolvency administrator to act in a foreign State

An insolvency administrator is authorised to act in a foreign State on behalf of a New Zealand insolvency proceeding, as permitted by the applicable foreign law.

Article 6. Public policy exception

(1) Nothing in this Schedule prevents the High Court from refusing to take an action governed by this Schedule if the action would be manifestly contrary to the public policy of New Zealand.

(2) Before the Court refuses to take an action under

paragraph (1) of this article, the Court shall consider whether it is necessary for the Solicitor-General to appear and be heard on the question of the public policy of New Zealand.

Article 7. Additional assistance under other laws
Nothing in this Schedule limits the power of a court or an insolvency administrator to provide additional assistance to a foreign representative under other laws of New Zealand.

Article 8. Interpretation

In the interpretation of this Schedule, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Chapter II. Access of foreign representatives and creditors to courts in New Zealand

Article 9. Right of direct access

A foreign representative is entitled to apply directly to the High Court.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Schedule is made to the High Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

Article 11. Application by a foreign representative to commence a New Zealand insolvency proceeding
A foreign representative is entitled to apply to commence a New Zealand insolvency proceeding if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a New Zealand insolvency proceeding

Upon recognition by the High Court of a foreign proceeding, the foreign representative is entitled to participate in a New Zealand insolvency proceeding regarding the debtor.

Article 13. Access of foreign creditors to a New Zealand

insolvency proceeding

- (1) Subject to paragraph (2) of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a New Zealand insolvency proceeding as creditors in New Zealand.
- (2) Paragraph (1) of this article does not affect the ranking of claims in a New Zealand insolvency proceeding or the exclusion of foreign tax and social security claims from such a proceeding.

Article 14. Notification to foreign creditors of a New Zealand insolvency proceeding

- (1) Whenever, under a New Zealand insolvency proceeding, notification is to be given to creditors in New Zealand, such notification shall also be given to the known creditors that do not have addresses in New Zealand. The High Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality are required.
- (3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:
 - (a) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) indicate whether secured creditors need to file their secured claims; and
 - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of New Zealand and the orders of the Court.

Chapter III. Recognition of a foreign proceeding and relief

Article 15. Application for recognition of a foreign proceeding

- (1) A foreign representative may apply to the High Court for recognition of the foreign proceeding in which the foreign

representative has been appointed.

(2) An application for recognition shall be accompanied by:

- (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) in the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of New Zealand.

Article 16. Presumptions concerning recognition

(1) If the decision or certificate referred to in paragraph (2) of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the High Court is entitled to so presume.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17. Decision to recognise a foreign proceeding

(1) Subject to article 6, a foreign proceeding shall be recognised if:

- (a) the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;
- (b) the foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
- (c) the application meets the requirements of paragraph (2) of article 15; and
- (d) the application has been submitted to the High Court.

(2) The foreign proceeding shall be recognised:

- (a) as a foreign main proceeding if it is taking place in the State

where the debtor has the centre of its main interests; or

(b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) As soon as practicable, after the Court recognises the foreign proceeding under paragraph (1) of this article, the foreign representative shall notify the debtor, in the prescribed form, that the application has been recognised.

(5) The provisions of articles 15, 16, 17, and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the High Court promptly of:

(a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

(1) From the time of filing an application for recognition until the application is decided upon, the High Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

(a) staying execution against the debtor's assets;

(b) entrusting the administration or realisation of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(c) any relief mentioned in paragraph (1)(c) and (d) of article 21.

(2) As soon as practicable, after the Court grants relief under paragraph (1) of this article, the foreign representative shall notify the debtor, in the prescribed form, of the relief that has been granted.

(3) Unless extended under paragraph (1)(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

(1) Upon recognition by the High Court of a foreign proceeding that is a foreign main proceeding,

(a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities is stayed;

(b) execution against the debtor's assets is stayed; and

(c) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended.

(2) Paragraph (1) of this article does not prevent the Court, on the application of any creditor or interested person, from making an order, subject to such conditions as the Court thinks fit, that the stay or suspension does not apply in respect of any particular action or proceeding, execution, or disposal of assets.

(3) Paragraph (1)(a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Paragraph (1) of this article does not affect the right to request the commencement of a New Zealand insolvency proceeding or the right to file claims in such a proceeding.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition by the High Court of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities, to the extent they have not been stayed under paragraph (1)(a) of article 20;

(b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of article 20;

(c) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not

been suspended under paragraph (1)(c) of article 20;

(d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's assets, affairs, rights, obligations, or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court; and

(f) extending relief granted under paragraph (1) of article 19.

(2) Upon recognition by the High Court of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in New Zealand are adequately protected.

(3) In granting relief under this article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 22. Protection of creditors and other interested persons

(1) In granting or denying relief under article 19 or article 21, or in modifying or terminating relief under paragraph (3) of this article, the High Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under article 19 or article 21 to conditions it considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under article 19 or article 21, or at its own motion, modify or terminate such relief.

(4) The Court must, on application of the statutory manager, terminate the relief granted under article 19 or article 21 if---

(a) an application for recognition has been made in respect of a debtor that is a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989;

(b) the Court has granted that application or the Court has granted relief under article 19; and

(c) the debtor is placed in statutory management after that application or relief has been granted.

Article 23. Actions to avoid acts detrimental to creditors

(1) Upon recognition by the High Court of a foreign proceeding, the foreign representative has standing to initiate any action that an insolvency administrator may take in respect of a New Zealand insolvency proceeding that relates to a transaction (including any gifts or improvement of property or otherwise), security, or charge that is voidable or may be set aside or altered.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding.

(3) To avoid any doubt, nothing in paragraph (1) of this article affects the doctrine of relation back as it is applied in New Zealand.

Article 24. Intervention by a foreign representative in New Zealand insolvency proceeding

Upon recognition by the High Court of a foreign proceeding, the foreign representative may, provided the requirements of the law of New Zealand are met, intervene in any proceeding in which the debtor is a party.

Chapter IV. Co-operation with foreign courts and foreign representatives

Article 25. Co-operation and direct communication between the High Court and foreign courts or foreign representatives

(1) In matters referred to in paragraph (1) of article 1, the High Court shall co-operate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Co-operation and direct communication between the insolvency administrator and foreign courts or foreign representatives

(1) In matters referred to in paragraph (1) of article 1, an insolvency administrator shall, in the exercise of its functions and subject to the supervision of the High Court, co-operate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency administrator is entitled, in the exercise of its

functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of co-operation

Co-operation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

- (a) appointment of a person or body to act at the direction of the High Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) co-ordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the co-ordination of proceedings; and
- (e) co-ordination of concurrent proceedings regarding the same debtor.

Chapter V. Concurrent proceedings

Article 28. Commencement of a New Zealand insolvency proceeding after recognition of a foreign main proceeding

After recognition by the High Court of a foreign main proceeding, a New Zealand insolvency proceeding may be commenced only if the debtor has assets in New Zealand; the effects of that proceeding shall be restricted to the assets of the debtor that are located in New Zealand and, to the extent necessary to implement co-operation and co-ordination under articles 25, 26, and 27, to other assets of the debtor that, under the law of New Zealand, should be administered in that proceeding.

Article 29. Co-ordination of a New Zealand insolvency proceeding and a foreign proceeding

Where a foreign proceeding and a New Zealand insolvency proceeding are taking place concurrently regarding the same debtor, the High Court shall seek co-operation and co-ordination under articles 25, 26, and 27, and the following shall apply:

- (a) when the New Zealand insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed,
 - (i) any relief granted under article 19 or article 21 must be consistent with the New Zealand insolvency proceeding;
 - (ii) if the foreign proceeding is recognised in New Zealand as a foreign main proceeding, article 20 does not apply;
- (b) when the New Zealand insolvency proceeding commences after

recognition, or after the filing of the application for recognition, of the foreign proceeding,

(i) any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the New Zealand insolvency proceeding; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of article 20 shall be modified or terminated pursuant to paragraph (2) of article 20 if inconsistent with the New Zealand insolvency proceeding;

(c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Co-ordination of more than one foreign proceeding

In matters referred to in paragraph (1) of article 1, in respect of more than one foreign proceeding regarding the same debtor, the High Court shall seek co-operation and co-ordination under articles 25, 26, and 27, and the following shall apply:

(a) any relief granted under article 19 or article 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding; and

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify, or terminate relief for the purpose of facilitating co-ordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a New Zealand insolvency proceeding, proof that the debtor is insolvent.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding

pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a New Zealand insolvency proceeding regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

Schedule 6 s 498
Consequential amendments

Companies Act 1993 (1993 No 105)

Heading to section 342: omit "assets in New Zealand" and substitute "overseas company".

Section 342(1): omit "the assets in New Zealand of".

Heading to Schedule 9: omit "of assets".

Clause 1 of Schedule 9: omit "the assets in New Zealand of".

Clause 1(a) and (e) of Schedule 9: repeal.

Clause 2 of Schedule 9: omit "the assets of".

Judicature Act 1908 (1908 No 89)

Section 26I(2): add:

"(1) the Model Law on Cross-Border Insolvency as set out in Schedule 5 of the Insolvency Law Reform Act 2005."

Schedule 2: insert after { clause } [rule] 458D(1)(a)(vii):

"(viiia) the Model Law on Cross-Border Insolvency as set out in Schedule 5 of the Insolvency Law Reform Act 2005:".

Legislative history

21 December 2005 Introduction (Bill 14-1)

21 February 2006 First reading and referral to Commerce Committee