

PERSONAL INSOLVENCY, FINANCIAL REHABILITATION AND
ENTREPRENEURIAL RESCUE BILL 2025
(BILL NO. 40 OF 2025)

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BILL NO. 40 OF 2025**A BILL****FOR AN ACT TO REGULATE PERSONAL INSOLVENCY AND PROVIDE FOR
BANKRUPTCY PROCEDURES AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Personal Insolvency, Financial Rehabilitation and Entrepreneurial Rescue Act 2025.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

“affidavit” includes statutory declaration, affirmation or attestation on honour;

“after-acquired property” has the meaning given in section 96;

“Bankruptcy Contingency Fund” means the account referred to in section 135;

“bankrupt debtor” in relation to a bankruptcy procedure, means the debtor in respect of whom a Bankruptcy Order has been made;

“books” means—

- (a) a register;
- (b) financial statements or financial records, however compiled, recorded or stored;
- (c) a document; or
- (d) any other record of information.

“carrying on business” has the meaning given under section 3 of the Companies Act 2015;

“court” means the court having jurisdiction in bankruptcy under this Act;

“creditor” means a person to whom an individual owes a debt or is under liability, whether present or future, whether certain or contingent, and whether ascertained or sounding in damages;

“debt” includes all debts and liabilities, present or future, certain or contingent, and whether ascertained or sounding in damages;

“debt provable in bankruptcy” or “provable debt” means any debt or liability by this Act made provable in bankruptcy;

“debtor” in relation to a personal insolvency procedure means—

- (a) before a personal insolvency order has been made, the individual in respect of whom an application, petition, or proposal has been made or is being prepared; and
- (b) after a personal insolvency order has been made, the individual in respect of whom an order has been made.

“essential good or service” means—

- (a) electricity;
- (b) relevant information technology;
- (c) telecommunications services; and
- (d) water;

“financial records” has the meaning given under section 3 of the Companies Act 2015;

“goods” means tangible movable property of every kind;

“guarantor” includes surety;

“hire purchase agreement” means a conditional sale agreement, chattel leasing arrangement and retention of title agreement;

“income” has the meaning given in section 9;

“individual” means a natural person and does not include a company;

“insolvency-related term” means a provision of an agreement for the supply of an essential good or service to a debtor under which—

- (a) the agreement or the supply would terminate, or any other thing would take place, because the personal insolvency procedure commences; or
- (b) the supplier would be entitled to terminate the agreement or the supply, or to do any other thing, because a personal insolvency procedure commences;

“insolvent” in relation to a person, means that the person is unable to pay the person’s debts as they become due, and “insolvency” has the related meaning;

“Minister” means the minister responsible for personal insolvency;

“notify” means give written notice;

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

“Permanent Secretary” means the permanent secretary responsible for personal insolvency;

“personal insolvency administrator” means a person performing the functions of a personal insolvency administrator under section 39;

“personal insolvency proposer” means a person performing the functions of a personal insolvency proposer under section 38;

“personal insolvency official” means a bankruptcy trustee, authorised intermediary, personal insolvency administrator, personal insolvency proposer or the Official Receiver;

“property” means any legal or equitable estate or interest, whether present or future and whether vested or contingent, in real or personal property of any description and includes a thing in action wherever it is situated;

“relevant information technology” means—

- (a) computer hardware and software;
- (b) data storage and processing, including in relation to cloud services;
- (c) information, advice and technical assistance in relation to the use of information technology;
- (d) point-of-sale terminals; and
- (e) website hosting;

“rules” includes forms;

“secured creditor” means a person holding security in respect of a debt due to person from a debtor;

“secured debt” means a debt due to a person in respect of which the person holds security;

“security” means —

- (a) a security interest as defined under section 2 of the Personal Property Security Act 2017; or
- (b) a mortgage, charge, lien or other legal interest in real property created or provided for by a transaction that in substance secures payment or performance of a debt or an obligation;

“sheriff” includes any person charged with the execution of any process;

“telecommunications services” means the conveyance from one device to another by a line, radio frequency, satellite transmission or other medium of a sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device;

“unfair preference” has the meaning given in section 5; and

“working day” means a day other than Saturday, Sunday or a public holiday.

(2) This Act is interpreted and applied so as to secure that a reference to an event or thing includes its virtual or digital equivalent so that —

- (a) references to a book, document, record, data and information held in electronic form;
- (b) references to “delivery” or “making available” books, documents, records, property include affording access to and transmission of the same;
- (c) references to “writing” include graphical communication by any electronic means;
- (d) references to “advertisement” or “notice” include publication on a dedicated website, including one provided for that purpose by the Authority, notified (where necessary to be effective) in writing; and
- (e) other equivalents may from time to time be prescribed by regulations.

Objectives

3. The objectives of this Act are to —

- (a) promote economic activity and to reduce social costs of insolvency by relieving the honest individual debtor from oppressive indebtedness and permitting debtor to start afresh;

- (b) encourage entrepreneurship and support the rehabilitation of micro, small, and medium enterprises, including sole proprietorships, partnerships, and other unincorporated businesses, by restructuring the debts of viable businesses and offering a second chance to entrepreneurs;
- (c) support credit markets by enhancing the efficient recovery of debts by creditors to the extent that the means of debtors, and the objectives specified in paragraphs (a) and (b), reasonably permit;
- (d) to enhance predictability and reduce unnecessary losses of value by encouraging creditors to cooperate in producing outcomes beneficial to the interests of creditors as a whole and the public interest;
- (e) support credit markets by providing safeguards against misconduct in credit transactions; and
- (f) support the integrity of the legal process by providing safeguards against inappropriate use of insolvency protections and by providing for good conduct in insolvency practice.

PART 2—PERSONAL INSOLVENCY PRINCIPLES

Personal insolvency procedures and personal insolvency order

4.—(1) For the purposes of this Act, a personal insolvency order includes—

- (a) a debt protection moratorium order;
- (b) an order confirming the coming into effect of a debt restructuring arrangement;
- (c) a debt rehabilitation order; or
- (d) a Bankruptcy Order.

(2) For the purposes of this Act, a personal insolvency procedure includes—

- (a) the personal debt protection moratorium procedure under Part 3;
- (b) the debt restructuring arrangement procedure under Part 4;
- (c) the debt rehabilitation order procedure under Part 5; or
- (d) the bankruptcy procedure under Part 6.

Unfair preferences and undervalued transactions

5.—(1) A transaction is an unfair preference given by a debtor to a creditor if—

- (a) the debtor enters into the transaction at a time when the debtor is insolvent;
- (b) the debtor does not enter into the transaction in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor; and

- (c) the transaction results in the creditor receiving from the debtor, in respect of a debt that the debtor owes to the creditor, significantly more than the creditor would receive from the debtor in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a bankruptcy of debtor.

(2) A transaction is an unfair preference given by a debtor to a guarantor if—

- (a) the debtor enters into the transaction at a time when the debtor is insolvent;
- (b) the debtor does not enter into the transaction in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor; and
- (c) the transaction results in the guarantor receiving from the debtor, in respect of a debt guaranteed by the guarantor, significantly more than the guarantor would receive from the debtor in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a bankruptcy of debtor.

(3) A debtor enters into an undervalued transaction with another person if—

- (a) the debtor either enters into the transaction at a time when the debtor is insolvent, or the debtor becomes insolvent because it enters into the transaction;
- (b) the debtor does not enter into the transaction in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor; and
- (c) the transaction is either—
 - (i) on terms that provide for the debtor to receive no consideration; or
 - (ii) for consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.

(4) For the purposes of subsections (1) and (2), the words “significantly more” mean an amount of at least \$5,000 or any other amount as may be prescribed by regulations.

(5) For the purposes of subsection (3)(c)(ii), the words “significantly less” mean an amount of at least \$5,000 or any other amount as may be prescribed by regulations.

Protected property

6.—(1) The categories of property of a debtor listed under subsection (5) are protected property for the purposes of—

- (a) determining the debtor's eligibility for a debt rehabilitation order under section 43;
- (b) establishing terms of a debt restructuring arrangement under section 23; and

- (c) determining the composition of the bankruptcy estate under section 94.
- (2) Protected property as established under this section—
 - (a) does not form part of the bankruptcy estate under section 94; and
 - (b) is excluded from the calculation of property under section 43.
- (3) Under section 23, the terms of debt restructuring arrangement must not provide for the sale of any protected property of the debtor.
- (4) In addition to the protection of a debtor's reasonable income under section 9, the categories of protected property are—
 - (a) the debtor's necessary tools of trade;
 - (b) the debtor's necessary household furniture and effects, including clothing, for the debtor and the debtor's relatives and dependents;
 - (c) contributions, entitlements, and interests of the debtor under the Fiji National Provident Fund, to the extent specified in section 7;
 - (d) the debtor's tenancy under a short-term residential rental accommodation agreement; and
 - (e) property held by a debtor on trust for any other person.
- (5) Where a debtor is using or has possession of goods falling within subsections 4(a) and (b) under an agreement creating or providing for a security, the interest of the debtor under the agreement constitutes protected property and is not available for the benefit of general creditors. .
- (6) Under this Act, it is not appropriate to contemplate the potential sale of any protected property of the debtor for the purposes of determining whether the debtor is unable to pay the debtor's debts as they become due.
- (7) The Minister may make regulations to modify the categories of protected property, including to create additional categories of protected property, where the Minister considers it necessary to update the categories in accordance with changes in reasonable domestic needs and practices of trade and business, since the coming into force of this Act.

Contributions and entitlements under the Fiji National Provident Fund

- 7.—**(1) Contributions, entitlements, or amounts payable under the Fiji National Provident Fund are—
- (a) protected property; and
 - (b) not after-acquired property under this Act.
- (2) When a debtor who is a party to a personal insolvency procedure receives a lump sum payment, an “entitlement pay-out”, from the Fiji National Provident Fund, the payment received is not after-acquired property under this Act.

(3) For the purposes of this Act, an amount paid as contribution under the Fiji National Provident Fund Act 2011 in respect of a debtor by an employer of the debtor—

- (a) is not after-acquired property under this Act; and
- (b) is not income of the debtor.

(4) Where a debtor who is a party to a personal insolvency procedure is in receipt of regular payments from the Fiji National Provident Fund, the payments are not after-acquired property under this Act, but is considered income for the purposes of—

- (a) determining the debtor’s eligibility for a debt rehabilitation order under section 43;
- (b) establishing terms of a debt restructuring arrangement under section 23; and
- (c) the making of a—
 - (i) debt repayment order under sections 106; or
 - (ii) debt repayment agreement under section 107.

(5) Nothing in this section removes the obligation of a debtor under a personal insolvency procedure to make full disclosure of the debtor’s property in a statement of the debtor’s financial affairs.

Included and excluded debts

8.—(1) Unless otherwise provided in this Act, an “included debt” means a debt which meets the conditions of subsection (2), and is not an excluded debt.

(2) The category of included debts includes all debts and liabilities, present or future, certain or contingent, whether ascertained or sounding in damages, to which the debtor is subject to at the date of the—

- (a) debt protection moratorium order;
- (b) order confirming the coming into effect of a debt restructuring arrangement;
- (c) debt rehabilitation order; or
- (d) Bankruptcy Order.

(3) The category of included debts also includes any debt or liability to which the debtor became subject to after the making of any of the orders specified in subsection (2), by reason of any obligation incurred by the debtor before the making of any of the orders specified in subsection (2).

(4) The following debts are excluded 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 obligation to pay maintenance or contribution, and all maintenance, contribution and costs ordered in any action under the Family Law Act 2003;
 - (d) any liability in respect of a fine imposed for an offence except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Ministry responsible for finance;
 - (c) a liability to pay damages in respect of any tortious act committed by the debtor knowingly or recklessly; and
 - (d) any obligation arising under a forfeiture order or pecuniary penalty order under the Proceeds of Crime Act 1997.
- (5) Excluded debts are not provable in bankruptcy.
- (6) For the purposes of determining a debtor's eligibility for a debt rehabilitation order under section 43, the calculation of the amount of the debtor's total debts must not include excluded debts.
- (7) The moratorium under a debt protection moratorium order under section 15 must not apply to an excluded debt.
- (8) A debt restructuring arrangement does not apply to an excluded debt, except where the relevant creditor consents to the inclusion of its debt under the arrangement.
- (9) A debt rehabilitation order does not apply to an excluded debt.
- (10) The discharge under sections 50 and 122 does not discharge the debtor from liability in respect of excluded debts.
- (11) The completion of a debt restructuring arrangement under section 36 does not release the debtor from liability under an excluded debt, except where the relevant creditor has consented to the discharge of its debt under the terms of the arrangement.

Protection of a reasonable income

9.—(1) Under any personal insolvency procedure, a debtor must not be required to make contributions from the debtor's protected income, which for the purposes of this Act means the income of the debtor necessary for meeting the reasonable domestic needs of the debtor and the debtor's dependents.

(2) For the purposes of this Act, the debtor's monthly surplus income is the amount by which a debtor's monthly income exceeds the debtor's protected income.

(3) For the purposes of this Act, the debtor's income comprises every payment in the nature of income which is from time to time made to him or her or to which he or she from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment, and, subject to section 7, any payment under a pension scheme.

(4) Guidelines as to the calculation of the level of income necessary to meet the reasonable domestic needs of a debtor and the debtor's dependents may be prescribed by regulations.

Preferential debts

10.—(1) Except as otherwise provided by this Act—

- (a) all debts provable in bankruptcy or included in a debt restructuring arrangement rank equally; and
- (b) if a debtor's income and property, excluding protected income and protected property, are insufficient to meet these debts in full, the debts must be paid proportionately.

(2) A reference in this Act to the preferential debts of an individual is to the debts listed in this section.

(3) Subject to the provisions of this Act, the expenses of a bankruptcy, or the expenses of the personal insolvency administrator of a debt restructuring arrangement under Part 4, must be paid in priority to preferential debts.

(4) Preferential debts must be paid in priority—

- (a) in a bankruptcy, to other provable debts; and
- (b) in a debt restructuring arrangement, to other included debts.

(5) Preferential debts rank equally among themselves after the expenses of the bankruptcy, or the expenses of the personal insolvency administrator under Part 4, and must be paid in full, unless—

- (a) the debtor's income and property, excluding protected income and protected property, are insufficient to meet them in full, in which case they must be paid proportionately; or
- (b) under the terms of a debt restructuring arrangement, a creditor in respect of a preferential debt agrees otherwise.

(6) Preferential debts include the following expenses and claims—

- (a) all Government taxes and local rates due from the debtor at the date of the personal insolvency order and having become due and payable within 12 months next before that date, not exceeding in the whole one year's assessment and all Government taxes legal withheld by the company from payments made by it to employees, members, and others;
- (b) all Government issued rents not more than one year in arrears;
- (c) all wages or salary, whether or not earned wholly or in part by way of commission, of any employee, clerk, servant, workman or labourer in respect of services provided to the debtor during the 4 months before the personal insolvency order;

- (d) all amounts due in respect of any compensation or liability for compensation under the Accident Compensation Act 2017, being amounts which have accrued before the date of the personal insolvency order; and
- (e) all amounts due in respect of contributions payable during the period of 12 months immediately preceding the date of the personal insolvency order by the debtor as the employer of any person under the Fiji National Provident Fund Act 2011.

Obligation of debtors under personal insolvency procedures

11.—(1) For the purposes of this section, an insolvency official includes—

- (a) the Official Receiver;
- (b) an authorised intermediary;
- (c) a personal insolvency proposer;
- (d) a personal insolvency administrator; or
- (e) a bankruptcy trustee.

(2) Subject to the provisions of this Act, a debtor who is a party to a personal insolvency procedure is under the obligations specified in this section.

(3) A debtor who participates in any personal insolvency procedure is under an obligation—

- (a) to provide to a relevant insolvency official and to the court, in accordance with section 12 and any other provision of this Act, a full statement of the debtor's financial affairs, including the disclosure of the debtor's income, property, and liabilities;
- (b) to supply to the relevant insolvency official any information as the official may require regarding the debtor's expenditure and sources of income; and
- (c) to provide any records, accounts and documents reasonably required by the insolvency official.

(4) A debtor who participates in any personal insolvency procedure must cooperate fully in the procedure, and must comply with any reasonable request from the insolvency official to provide assistance, documents, and information necessary for—

- (a) the application of the procedure to the debtor's case; or
- (b) the carrying out of the insolvency official's functions.

(5) Where at any time after the commencement of a personal insolvency procedure, and other than in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor,—

- (a) any property of significant value is acquired by the debtor; or

- (b) there is any other material and unexpected change in the debtor's financial circumstances,

the debtor must, as soon as is reasonably practicable, give the relevant insolvency official notice of the acquisition of the property or material change in the debtor's financial circumstances.

(6) Where at any time after the commencement of a personal insolvency procedure there is a material change in the debtor's address, employment, name, or other material personal information, the debtor must, as soon as is reasonably practicable, give the relevant insolvency official notice of the change of details.

(7) A debtor who is a party to a personal insolvency procedure must give notice to the relevant insolvency official, as soon as reasonably practicable, after becoming aware of any material inaccuracy or omission in the statement of the debtor's financial affairs.

(8) A debtor must take all the steps in relation to the debtor's property and income that are—

- (a) reasonably required by the relevant insolvency official;
- (b) prescribed by regulations made under this Act;
- (c) directed to be done by the court by an order made in reference to a particular insolvency procedure; or
- (d) directed to be done by the court on an application by an insolvency official or a creditor.

(9) A debtor who is a party to a personal insolvency procedure—

- (a) must not pay to creditors any additional payments above a value of \$5,000, or other value as may be prescribed by regulations, other than those paid through an insolvency official under the terms of the procedure; and
- (b) must not transfer, lease, grant security over, or otherwise dispose of any interest in property above a value of \$5,000, or other value as may be prescribed by regulations, otherwise than through the insolvency official under the terms of the procedure.

(10) A debtor who is a party to a personal insolvency procedure must not, either alone or with any other person, obtain credit in an amount above a value of \$2,000, or other value as may be prescribed by regulations, from any person without informing that person that debtor is a party to a personal insolvency procedure.

(11) Where a debtor who is a party to a personal insolvency procedure wishes to leave Fiji—

- (a) the debtor must first obtain the consent of the relevant personal insolvency official;
- (b) the official must not unreasonably refuse consent; and

- (c) the official may impose reasonable conditions upon the grant of consent for the debtor to leave Fiji.

Statement of debtor's financial affairs

12.—(1) A form, comprising a standardised financial statement, to be used where it is required under this Act to prepare a statement of the debtor's financial affairs, may be prescribed by regulations.

(2) Subject to any additional details as may be prescribed by regulations under subsection (1), and unless otherwise required by a provision of this Act or an order of court, a statement of debtor's financial affairs must include—

- (a) a list of creditors;
- (b) a schedule of property and liabilities;
- (c) a schedule of current income and current expenditure;
- (d) a statement of the amount of monthly net income, itemised to show how the amount is calculated;
- (e) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12 month period following the date of the making of an application, or preparation of a proposal, under a procedure under this Act;
- (f) any guarantees given by the debtor in respect of the debts of another person; and
- (g) the security, if any, held by each creditor in respect of its debt.

(3) A statement of financial affairs made by a debtor under this Act must be verified by means of an affidavit.

PART 3—DEBT PROTECTION MORATORIUM ORDER

Debt protection moratorium application

13.—(1) Subject to this Part, a debtor, who intends to prepare a proposal for a debt restructuring arrangement, apply for a debt rehabilitation order, or apply for a Bankruptcy Order, may present to the court a debt protection moratorium application, in a form which complies with subsections (2) and (3) and any requirements as may be prescribed by regulations.

(2) The debt protection moratorium application of the debtor must include the following information—

- (a) the full name, date of birth and residential address of the debtor;
- (b) any trading names and names and addresses of any business carried on by the debtor;
- (c) the written consent of the debtor to the making of any enquiries relating to the debtor by the Official Receiver; and

- (d) the written consent of the debtor to the disclosure and processing of personal data of the debtor, by the Official Receiver, to the extent necessary.

(3) The application must include the following information to the extent that the information is known by the debtor, and is relevant to the case—

- (a) details of the creditors of the debtor and the relevant debts owed to each creditor;
- (b) details as to any security held by any creditor, and the nature of the security held by a creditor;
- (c) details of any debt collection agent or other third party instructed by a creditor of the debtor for the purposes of collection or enforcement of a debt; and
- (d) details of any advisor, agent, or representative who has been instructed by the debtor to act on the debtor's behalf.

(4) Any person who makes a debt protection moratorium application must—

- (a) take reasonable care to ensure the accuracy of any information provided; and
- (b) not deliberately withhold relevant information from the application.

Criteria for making debt protection moratorium order

14.—(1) On receipt of a debt protection application, the court must consider whether to make a debt protection moratorium order in relation to the debtor applicant.

(2) In considering a debt protection moratorium application, the court may—

- (a) request that the Official Receiver make enquiries as it considers necessary to assist the court in considering whether the debtor meets the eligibility criteria specified in subsection (4); and
- (b) stay consideration of the application until the Official Receiver has received satisfactory answers to the enquiries.

(3) In considering a debt protection moratorium application, the court should presume that the criteria in subsection (4) is met if that appears to the court to be the case at the application date from the information supplied in the application, and the court has no reason to believe that the information supplied is incomplete or inaccurate.

(4) A debtor will be eligible for a debt protection moratorium order only if the debtor—

- (a) is unable, or is unlikely to be able, to repay some or all of the debtor's debts as they become due;

- (b) is domiciled in Fiji, or at any time within 3 years before the date of the debt protection moratorium application—
 - (i) was ordinarily resident, or had a place of residence in Fiji; or
 - (ii) carried on business in Fiji;
- (c) is not currently a bankrupt debtor;
- (d) is not subject to a debt restructuring arrangement under Part 4;
- (e) has not been subject to a debt rehabilitation order under Part 5 within 3 years prior to the date of the debt protection moratorium application;
- (f) has not been subject to a Bankruptcy Order under Part 6 within 5 years prior to the date of the debt protection moratorium application; and
- (g) has not been subject to a debt protection moratorium order under Part 5 within 12 months prior to the date of the debt protection moratorium application.

(5) Having considered a debt protection application, the court must make a debt protection moratorium order in relation to the debtor if the court considers that—

- (a) the debtor meets the eligibility criteria in subsection (4);
- (b) the court has no reason to believe that the debtor has made any false representation or omission in making the application; and
- (c) the debts to be covered by the debt protection moratorium order are included debts in accordance with section 8.

(6) On the making a debt protection moratorium order, the court must direct the Official Receiver to record in the Personal Insolvency Register, in addition to other details as may be prescribed by regulations—

- (a) details of the debtor;
- (b) the date of issue of the order;
- (c) the date on which the moratorium period is due to cease; and
- (d) any extension of the moratorium period, including the date on which an extended moratorium period is due to cease.

(7) Having considered a debt protection moratorium application, the court must refuse an application to make a debt protection moratorium order in relation to the debtor if the court considers that—

- (a) the debtor does not meet the eligibility criteria in subsection (4);
- (b) the debts to be covered by the debt protection moratorium order are not included debts for the purposes of section 8; or

- (c) the debtor has made any false representation or omission in making the application or on supplying any accompanying information.

Effect of debt protection moratorium order

15.—(1) A moratorium commences on the date of a debt protection moratorium order in relation to each included debt owed by the debtor.

(2) Subject to subsection (3), during the moratorium period, a creditor of the debtor to whom an included debt is owed—

- (a) has no remedy in respect of the debt; and
- (b) must not take any actions to—
 - (i) require a debtor to pay interest that accrues on an included debt during a moratorium period;
 - (ii) require a debtor to pay fees, penalties, or charges in relation to an included debt that accrue during a moratorium period;
 - (iii) require an accelerated payment by the debtor to the creditor;
 - (iv) record on a credit information file or database any default on the part of the debtor in making payments that would have fallen due during the moratorium period, but for the existence of the debt protection moratorium order;
 - (v) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor;
 - (vi) initiate or continue any legal proceedings against the debtor in relation to an included debt;
 - (vii) collect, secure, recover, or demand payment of an included debt;
 - (viii) execute or enforce a judgment or order of a court or tribunal against the debtor;
 - (ix) obtain a warrant;
 - (x) recover goods in the possession of the debtor;
 - (xi) enforce security held in respect of an included debt;
 - (xii) terminate, on the grounds of the debtor’s default or insolvency, any agreement for the provision of services to the debtor;
 - (xiii) take steps to disconnect an insolvent individual’s premises from an energy supply;
 - (xiv) obtain possession of a premises in which the debtor is residing under a tenancy agreement into which the debtor has entered with a relevant creditor;

- (xv) take any of the actions in this subsection against another person who is jointly liable with the debtor to whom the moratorium relates;
- (xvi) take any of the actions in this subsection against another person who has guaranteed the debts of the debtor to whom the moratorium relates; or
- (xvii) instruct an agent to take any of the actions mentioned in paragraphs (i) to (xvi).

(3) Notwithstanding subsection (2), the court may, while a debt protection moratorium order remains in force, exceptionally give permission for a creditor to take an action listed in paragraphs (2)(b)(v) to (xvii), where the court considers that—

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the action; and
- (b) the action will not—
 - (i) cause undue detriment to the debtor to whom the moratorium relates;
 - (ii) unfairly prejudice any other creditor; or
 - (iii) significantly undermine the protections of the moratorium.

(4) A debt protection moratorium order does not prevent the commencement or continuation of any criminal proceedings against a debtor.

(5) Any action taken contrary to this section is null and void.

(6) Nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor where the execution or other legal process or distress was completed before the making of the debt protection moratorium order, where—

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or a person charged with execution, and a completed sale; and
- (b) an attachment of a debtor is completed by satisfaction of the debt.

(7) At the end of the moratorium period, neither a creditor nor its agent is entitled to—

- (a) require a debtor to pay fees, penalties, or charges referred to in subsection (2)(b)(ii) to (iii) that accrued during the moratorium period;
- (b) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties, or charges as a default or breach by the debtor under the agreement between the creditor and the debtor; or
- (c) record on a credit information file or database any non-payment during the moratorium period by the debtor of interest, fees, penalties or charges.

(8) Subject to subsection (7), and where the debtor has not entered a personal insolvency procedure, after the end of the moratorium period, a creditor or its agent is entitled to require a debtor to pay all other payments that would have fallen due during the moratorium period, but for the existence of the debt protection moratorium order.

Duration of debt protection moratorium order

16.—(1) A debt protection moratorium commences on the day on which a court makes a debt protection moratorium order.

(2) Subject to subsection (3), a debt protection moratorium continues for 60 days from the date on which it commenced under subsection (1), unless—

- (a) the moratorium is cancelled in accordance with section 18; or
- (b) the moratorium ends with the death of the debtor under subsection (4).

(3) On application by the debtor, the court may extend the moratorium period by an additional period not exceeding 21 days, where—

- (a) the court is satisfied that the debtor has acted in good faith and with reasonable expedition; and
- (b) the court is satisfied that the extension of the moratorium period will serve the objectives of this Act, including by allowing the debtor time to prepare an application for an appropriate personal insolvency procedure under Part 4, 5, or 6.

(4) Where a debtor dies during a moratorium period, the moratorium ends on the day after the day on which the debtor died.

(5) At the expiry of a period of 60 days from the date on which the moratorium period ends in accordance with subsections (2), (3), or (4), the Official Receiver must cause all information relating to the moratorium to be removed from the Personal Insolvency Register.

Obligations of debtors during debt protection moratorium

17.—(1) During a debt protection moratorium, a debtor must—

- (a) inform the Official Receiver if there is any material change in the debtor's circumstances or financial position, other than in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor;
- (b) make any payment due in relation to an ongoing liability as it falls due to be paid during the moratorium period;
- (c) not obtain additional credit, either alone or jointly with any other person, that at any one point in time collectively exceeds \$2000;
- (d) not dispose of any property other than in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor; and

(e) cooperate with the Official Receiver in a reasonable manner.

(2) In addition to the obligations specified in subsection (1), during a debt protection moratorium, a debtor is subject to any relevant obligations of debtors specified in section 11 which may reasonably apply to the circumstances of a debt protection moratorium.

Creditor objection to debt protection moratorium

18.—(1) A creditor who receives notice of a debt protection moratorium under this Part may apply to the court to object to the moratorium.

(2) A creditor's application to object to a debt protection moratorium must be based on one or more of the following grounds, namely that—

- (a) the debtor does not meet the eligibility criteria in section 14;
- (b) the debts to be covered by the debt protection moratorium are not included debts for the purposes of section 8;
- (c) the debtor has made any false representation or omission in making the application or on supplying any accompanying information;
- (d) the debtor has failed, in a material respect, to comply with any obligations specified in section 17; or
- (e) the debt protection moratorium order causes irreparable harm to the interests of the creditor.

(3) A creditor's application to court to object to a debt protection moratorium must be made within the period of 14 days beginning with the day on which the debt protection moratorium commences.

(4) A creditor must provide notice to the debtor of an application to object to a debt protection moratorium, including the grounds on which the application is based.

(5) Where on an application under this section the court is satisfied as to any of the grounds specified in subsection (2), the court may do either or both of the following, namely—

- (a) where to do so would not unfairly prejudice any other creditor, make an order directing that the debt protection moratorium must not apply to the creditor who made the application to court; or
- (b) make an order cancelling the debt protection moratorium in respect of any other included debt or creditor.

(6) Where a court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of an included debt.

(7) In any case where a court makes an order under subsection (5), the court must notify the debtor, the Official Receiver, and any creditors to whom the order under subsection (5) applies.

(8) Where a court notifies the Official Receiver under subsection (7), the Official Receiver must, within a period of 10 days —

- (a) cause an entry to be made in the Personal Insolvency Register; and
- (b) send a notice of the court order made under subsection (5), and any requirements made under subsection (6), to any affected creditor.

(9) Where a court makes an order under subsection (5), the order takes effect on the day following the day on which the court order is made.

Debt protection moratorium order and Personal Insolvency Register

19. Matters relating to the recording of information relating to debt protection moratorium orders in the Personal Insolvency Register may be prescribed by regulations.

PART 4—DEBT RESTRUCTURING ARRANGEMENTS

Debt restructuring arrangements

20. This part establishes a debt restructuring arrangement procedure, under which a debtor, with the assistance of a personal insolvency proposer or a personal insolvency administrator, can negotiate a flexible repayment arrangement with the debtor’s creditors, in satisfaction of the debtor’s outstanding liabilities.

General conditions

21.—(1) Subject to the provisions of this Act, a debtor who satisfies the eligibility criteria specified in section 22 may make a proposal to creditors for a debt restructuring arrangement in respect of the satisfaction, or restructuring of the debtor’s debts.

(2) A proposal for a debt restructuring arrangement may be made and submitted by a debtor, or on behalf of a debtor by a personal insolvency proposer, in accordance with the provisions of this Part and any regulations.

(3) A personal insolvency proposer may also act, after the coming into effect of a debt restructuring arrangement, as a personal insolvency administrator.

(4) In accordance with sections 38 and 39, rules, standards, practice directions or guidelines regarding the performance of the functions of personal insolvency proposers and personal insolvency administrators under this Part may be prescribed by regulations.

(5) Two or more proposals for a debt restructuring arrangement may be dealt with as one proposal where—

- (a) the personal insolvency proposer considers that they could reasonably be dealt with together because of the financial relationship of the debtors involved; and
- (b) the terms of each of the proposals specify details of how the arrangements should be administered together, including—
 - (i) the treatment of joint and individual property and the treatment of joint and individual debts;

- (ii) whether the approval of each of the arrangements is to be contingent on the approval of another arrangement;
- (iii) the effect of the failure or early termination of one arrangement on any other arrangement; and
- (iv) how any joint payments, made by 2 or more debtors, should be apportioned between the creditors.

Eligibility for a debt restructuring arrangement

22.—(1) A debtor will be eligible to enter into a debt restructuring arrangement when the debtor meets all of the following criteria—

- (a) the debtor is unable, or is likely to be unable to pay some or all of the debtor's debts as they become due;
 - (b) the debtor has monthly surplus income, in accordance with section 9, of at least \$200;
 - (c) the debtor is domiciled in Fiji; or at any time within 3 years before the date of the making of a proposal for a debt restructuring arrangement—
 - (i) was ordinarily resident, or had a place of residence in Fiji; or
 - (ii) carried on business in Fiji;
 - (d) the debtor is not currently a bankrupt debtor; and
 - (e) is not subject to a debt rehabilitation order under Part 5;
- (2) The monetary amount specified in subsection (1)(b) may be varied by regulations.

Mandatory provisions

23.—(1) A debt restructuring arrangement must authorise a person, firm, or body to act as a personal insolvency administrator in relation to the arrangement.

(2) A debt restructuring arrangement may authorise or require the personal insolvency administrator to—

- (a) carry on the debtor's business, or trade on the debtor's behalf or in the debtor's name;
- (b) realise the property of the debtor; or
- (c) administer or dispose of any funds of the debtor.

(3) A debt restructuring arrangement must not provide for the debtor to make payments under the arrangement, in respect of included debts, for a period of a longer duration than—

- (a) 3 years; or
- (b) if the value of the debtor's included debts exceed \$50,000, 5 years.

(4) A debt restructuring arrangement must provide for the payment, before any other debts are paid, of—

- (a) the fees and expenses of the personal insolvency proposer and personal insolvency administrator, that are properly incurred in respect of the arrangement; and
- (b) those debts specified as having priority under section 10, unless the holder of a particular priority debt claim agrees to a different treatment of such claim.

(5) For the purposes of subsection (4)(a) and section 10, the charges incurred by a personal insolvency proposer or personal insolvency administrator for the supply of an essential good or service are an expense of the debt restructuring arrangement.

(6) A debt restructuring arrangement must not require the debtor to sell or dispose of any protected property as specified in section 6.

(7) In accordance with section 9, a debt restructuring arrangement must not require the debtor to make payments, the effect of which would be to reduce the debtor's income below the debtor's protected income.

(8) A debt restructuring arrangement must provide that the circumstances of the debtor be reviewed by the personal insolvency administrator at regular intervals, not exceeding intervals of 12 months.

(9) Notwithstanding subsection (3), a debt restructuring arrangement may provide for the continuance of payments, after the completion of the Arrangement under section 36, on any debt on which the last payment is due, under the original terms of the debt, after the time of completion of the debt restructuring arrangement under section 36.

(10) Where there are mutual debts or other mutual dealings between a debtor and any creditor who is party to a debt restructuring arrangement, arrangement must apply, with necessary modifications, the provisions of section 88 of this Act, unless the creditor expressly agrees to a different treatment of its claim and mutual dealings.

Secured creditors and property rights

24.—(1) Without limiting the ability of parties to agree to terms of a debt restructuring arrangement, an arrangement may include terms providing for the payment, satisfaction, or restructuring of both unsecured and secured debts.

(2) Subject to the provisions on creditors' approval of a debtor's proposal under section 28, a debt restructuring arrangement may provide for the treatment of security, which may include—

- (a) the sale or disposition of the property that is the subject of the security;
- (b) the surrender of the security to the debtor; or
- (c) the retention by the secured creditor of the security.

(3) Subject to the provisions on creditors' approval of a debtor's proposal under section 28, a debt restructuring arrangement may include terms—

- (a) modifying the rights of a secured creditor;
- (b) providing that a secured creditor will not realise its security while the arrangement is in force.

(4) Subject to the provisions on creditors' approval of a debtor's proposal under section 28, a debt restructuring arrangement may include terms providing for the reduction of the principal sum due in respect of a secured debt, only where the arrangement specifies that the amount of the reduced principal sum is not less than the value of the security.

(5) Subject to the provisions on creditors' approval of a debtor's proposal under section 28, a debt restructuring arrangement may provide for—

- (a) the curing, within a reasonable time, of any default; and
- (b) maintenance of payments while the debt restructuring arrangement is in effect,

on any secured debt on which the last payment is due after the completion of the debt restructuring arrangement.

(6) Where a secured creditor realises its security while the arrangement is in force, or where the debt restructuring arrangement provides for the sale or disposal of the property subject to security, the secured creditor will be considered to be a creditor under the arrangement only to the extent of any balance due to the creditor after deducting the net amount realised.

(7) Subject to the provisions on creditors' approval of a debtor's proposal under section 28, a debt restructuring arrangement may provide for the—

- (a) curing, within a reasonable time, of any default in respect of rent arrears; and
- (b) maintenance of rent payments while the arrangement is in effect,

arising under a tenancy agreement into which the debtor has entered with a relevant creditor.

Appointment of personal insolvency proposer

25.—(1) Where a debtor wishes to make a proposal for a debt restructuring arrangement, the debtor must appoint a person, firm, or body, to act as a personal insolvency proposer.

(2) If the debtor and the personal insolvency proposer agree, the person, firm, or body appointed to act as a personal insolvency proposer may also act as a personal insolvency administrator in respect of the proposed debt restructuring arrangement under section 23.

(3) On being appointed under subsection (2), the personal insolvency proposer must—

- (a) confirm in writing to the debtor that the personal insolvency proposer has consented to act in the role of personal insolvency proposer in respect of the debtor's debt restructuring arrangement proposal;

- (b) if he or she consents to act as personal insolvency administrator on the coming into effect of the debt restructuring arrangement, confirm this consent in writing to the debtor; and
- (c) notify the Official Receiver of the proposer's appointment to act as a personal insolvency proposer, and, where relevant, a personal insolvency administrator.

(4) A personal insolvency proposer who agrees to assist a debtor in preparing a debt restructuring arrangement must—

- (a) make reasonable enquiries into the debtor's property and financial affairs so as to be able to assess with reasonable accuracy the debtor's financial situation; and
- (b) prepare a debt restructuring arrangement in the manner specified by this Part, and in the form which may be prescribed by regulations.

(5) For the purpose of enabling the personal insolvency proposer to assist in the preparation of a proposal for a debt restructuring arrangement, the debtor must submit to the personal insolvency proposer a statement disclosing fully, to the best of the debtor's knowledge, all of the debtor's financial affairs, in accordance with section 12.

(6) Regulations may prescribe that, on his or her appointment, a personal insolvency proposer must provide certain information or advice to the debtor regarding the appropriateness of a debt restructuring arrangement.

(7) Regulations may prescribe details regarding the functions of personal insolvency proposers in assisting a debtor in the preparation and submission of a proposal for a debt rehabilitation order.

Preparation of debtor proposal

26.—(1) A debtor who meets the criteria in section 22 may prepare, with the assistance of a personal insolvency proposer, a proposal for a debt restructuring arrangement.

(2) Details regarding the form of a proposal for a debt restructuring arrangement may be prescribed by regulations.

(3) The proposal for a debt restructuring arrangement must—

- (a) be signed by the debtor;
- (b) have endorsed on it the name of—
 - (i) the person, firm, or body who is acting as a personal insolvency proposer; and
 - (ii) the person, firm, or body who is willing to act as a personal insolvency administrator on the coming into effect of the debt restructuring arrangement.

(4) The proposal for a debt restructuring arrangement must include a statement of the personal insolvency proposer confirming that he or she is of the opinion that —

- (a) the debtor satisfies the eligibility requirements of section 22;
- (b) to the best of the personal insolvency proposer's knowledge, the information contained in the debtor's statement of financial affairs is complete and accurate;
- (c) the proposal has a reasonable prospect of being approved and implemented; and
- (d) the proposal offers a reasonable means of facilitating the economic rehabilitation of the debtor while allowing fair contributions to creditors from the debtor's available resources.

(5) The proposal for a debt restructuring arrangement must include, in addition to any requirements prescribed by regulations, a statement of the debtor's financial affairs.

(6) The statement of the debtor's financial affairs, as required by subsection (5), must set out the information specified in section 12.

(7) The proposal for a debt restructuring arrangement must include a statement of the debtor's consent to —

- (a) the Official Receiver making enquiries as it considers necessary to determine whether the debtor meets the eligibility criteria specified in section 22;
- (b) the postponement of the consideration of the debt restructuring arrangement proposal by the Official Receiver until the Official Receiver has received satisfactory answers to such enquiries;
- (c) the disclosure by the Official Receiver of personal data of the debtor to creditors and other third parties to the extent necessary for the making and consideration of a debt rehabilitation order application; and
- (d) the disclosure to the Official Receiver, by creditors, government agencies, or any other relevant third parties, of personal data of the debtor, to the extent necessary for the making and consideration of a debt rehabilitation order application.

(8) The proposal for a debt restructuring arrangement must include a statement of the debtor's acknowledgement that, on making a proposal for an arrangement, the debtor becomes subject to any relevant obligations of debtors specified in section 11 which may reasonably apply to the circumstances of a proposal for a debt restructuring arrangement.

(9) On the preparation by the debtor, with the assistance of the personal insolvency proposer, of a proposal that satisfies the requirements of this section, the personal insolvency proposer must submit the proposal to the Official Receiver.

Negotiation meeting

27.—(1) After submitting the proposal to the Official Receiver under section 26(9), the personal insolvency proposer must seek a decision from the debtor’s creditors as to whether they approve the proposal for a debt restructuring arrangement.

(2) The decision by the debtor’s creditors to approve or reject the proposal must be made by a debt restructuring arrangement negotiation meeting.

(3) The personal insolvency proposer must consider the convenience of creditors and the debtor in fixing the date and venue for the negotiation meeting, which may take place in person or via digital communication means.

(4) The personal insolvency proposer must send to every known creditor, who is a creditor in respect of an included debt—

- (a) notice of the negotiation meeting;
- (b) a copy of the proposal for a debt restructuring arrangement, including all of the requirements specified in section 26;
- (c) a creditor’s claim form;
- (d) a postal vote form and electronic mail vote template;
- (e) a statement asking each creditor to decide whether it approves or rejects the proposed debt restructuring arrangement;
- (f) a statement of the date on which the negotiation meeting will be held, that date being at least 7 days after the sending of the statement; and
- (g) a statement to the effect that a creditor who does not attend the negotiation meeting, or does not cast a postal vote or electronic mail vote, is deemed to have accepted the proposal for a debt restructuring arrangement.

(5) A creditor who has submitted a creditor’s claim form, in a manner satisfying any requirements which may be prescribed by regulations, may vote on the proposal by—

- (a) sending a postal vote that reaches the personal insolvency proposer before or at the negotiation meeting; or
- (b) sending an electronic mail vote that reaches the personal insolvency proposer before or at the negotiation meeting.

(6) If the personal insolvency proposer receives a postal vote, or other communication of assent or dissent as may be prescribed by regulations, before or at the meeting, this vote or communication has effect as if the creditor had been present and voted at the meeting.

Creditor approval of debt restructuring arrangement

28.—(1) The personal insolvency proposer must facilitate and chair the debt restructuring arrangement negotiation meeting.

(2) At the negotiation meeting, the creditors may —

- (a) conduct examination of the debtor as is reasonable to clarify the debtor's financial circumstances;
- (b) adjourn the meeting for a maximum period of 14 days to allow further investigation of the debtor's affairs, by passing a resolution of a majority of creditors in value;
- (c) approve the proposal, by passing a resolution, in accordance with subsection (3) or (4), that sets out the final terms of the debt restructuring arrangement;
- (d) with the consent of the debtor, modify or amend the proposal, by passing a resolution, in accordance with subsection (3) or (4), that sets out the final terms of the debt restructuring arrangement;
- (e) appoint the personal insolvency proposer as personal insolvency administrator of the debt restructuring arrangement, or appoint another person, firm, or body who is willing to act as personal insolvency administrator; and
- (f) with the consent of the debtor, include terms in the debt restructuring arrangement with respect to the supervision of the affairs of the debtor as they may deem advisable.

(3) A proposal is approved where the claims of those creditors voting in favour of the proposal represent by a majority in value of the claims of all creditors entitled to vote.

(4) Where the proposal includes terms modifying or limiting the rights of secured creditors, in a manner specified in section 24 or otherwise, the proposal is approved where the claims of those secured creditors voting in favour of the proposal represent more than two-thirds of the value of the claims of all secured creditors entitled to vote.

(5) Where the proposal —

- (a) does not include terms modifying or limiting the rights of a secured creditor to realise its security; or
- (b) provides for the sale or disposal of the property subject to security for the benefit of the relevant secured creditor,

the relevant secured creditor may vote, as an unsecured creditor, only to the extent of any balance due to the creditor after deducting the value of the security from the amount of the debt owed to the relevant secured creditor, unless the arrangement modifies other terms of the secured loan.

(6) Where, in the case of a secured debt —

- (a) the value of security held by a secured creditor is less than the amount of the secured debt due to the creditor on the date of the submission of the proposal; and

- (b) the proposal provides for the reduction of the principal sum due in respect of the secured debt to the value of the security,

then, the secured creditor may vote—

- (i) as a secured creditor in respect of the value of the security; and
- (ii) as an unsecured creditor in respect of the remaining balance of the debt.

(7) A creditor who, having received notice, does not—

- (a) attend the negotiation meeting;
- (b) cast a postal vote; or
- (c) cast an electronic mail vote,

is deemed to have accepted the proposal for a debt restructuring arrangement.

(8) Where no creditor votes, the proposed personal insolvency arrangement is deemed to have been approved under this section.

(9) Where the creditors at a negotiation meeting do not accept the proposal—

- (a) the personal insolvency proposer must endorse the proposal “not accepted by creditors” and return it to the Official Receiver; and
- (b) the debt restructuring arrangement procedure terminates.

(10) For the avoidance of doubt, a creditor who, having been given notice in accordance with the provisions of this Part, does not—

- (a) submit a creditor’s claim form under section 27;
- (b) attend the negotiation meeting under this section; or
- (c) cast a vote opposing the proposal under this section,

is not entitled to bring an application to object to a court order confirming the coming into effect of the debt restructuring arrangement under section 33.

Submission of approved debt restructuring arrangement to Official Receiver

29.—(1) After the proposal for a debt restructuring arrangement has been accepted by the creditors, the personal insolvency proposer must, within 7 days or other time as may be prescribed by regulations, submit to the Official Receiver—

- (a) a notice of the result of the creditor vote at the debt restructuring arrangement negotiation meeting; and
- (b) the final terms of the debt restructuring arrangement.

(2) On receiving the documents set out in subsection (1), the Official Receiver must confirm that the terms of the debt restructuring arrangement satisfy the provisions of this Part.

(3) On confirming that the terms of the debt restructuring arrangement satisfy the provisions of this Part, the Official Receiver must issue a certificate recommending a debt restructuring arrangement.

(4) On issuing a certificate recommending a debt restructuring arrangement, the Official Receiver must—

- (a) present this certificate, together with notice of the result of the creditor vote at the negotiation meeting and the final terms of the debt restructuring arrangement, to the court; and
- (b) notify the debtor, the personal insolvency proposer, and all creditors listed in the arrangement, of the issuance of the certificate.

(5) The Official Receiver may only refuse to issue a certificate recommending a debt restructuring arrangement if—

- (a) the arrangement does not satisfy the provisions of this Part;
- (b) the Official Receiver becomes aware of a material inaccuracy in the debtor's statement of financial affairs or accompanying documents;
- (c) the Official Receiver becomes aware of a material change in the debtor's circumstances that was not foreshadowed in the debtor's statement of financial affairs or accompanying documents; or
- (d) the Official Receiver is of the opinion that the terms of the debt restructuring arrangement are not reasonable or are not fair to the debtor and the creditors.

(6) If the Official Receiver refuses to issue a certificate recommending a debt restructuring arrangement, the Official Receiver must—

- (a) provide reasons for this refusal to the debtor, personal insolvency proposer, and creditors of this refusal; and
- (b) notify the court of its recommendation that the court not confirm the coming into effect of the debt restructuring arrangement.

Court confirmation of debt restructuring arrangement

30.—(1) Where the court receives a recommendation from the Official Receiver with respect to a debt restructuring arrangement under section 29, the court must consider the recommendation, together with any accompanying documentation.

(2) When considering a recommendation under this section, the court is entitled to treat a certificate issued by the Official Receiver under section 29 as evidence of the matters certified therein.

(3) The court must, when considering a recommendation under this section, hear any objection to the recommendation that is made by a creditor, the debtor, or the personal insolvency proposer.

(4) The court, where an objection has been made under subsection (3), or where it requires further information or evidence for the purpose of its arriving at a decision, may hold a hearing, which hearing must be on notice to the Official Receiver, the personal insolvency proposer, the debtor, and the creditors.

(5) Having considered the recommendation, the court must make an order confirming the coming into effect of the debt restructuring arrangement if it considers that—

- (a) the debt restructuring arrangement satisfies the criteria in this Part; and
- (b) the making of the debt restructuring arrangement has complied with the procedural requirements of this Part.

(6) On confirming the coming into effect of the debt restructuring arrangement, the court must direct the Official Receiver to record in the Personal Insolvency Register, in addition to other details as may be prescribed by regulations—

- (a) details of the debtor;
- (b) the date of issue of the Order; and
- (c) a statement of the rights of creditors to object to the debt restructuring arrangement under section 33.

(7) On the making an order confirming the debt restructuring arrangement, the court must direct the Official Receiver to—

- (a) give notice to the debtor, personal insolvency proposer, and personal insolvency administrator of the issue of order and the coming into effect of the debt restructuring arrangement;
- (b) give notice to the debtor of the obligations of debtors under section 11 of this Act, to the extent that these obligations apply for the duration of the debt restructuring arrangement;
- (c) inform each creditor of the debtor of the issue of the order and the coming into effect of the debt restructuring arrangement; and
- (d) give notice to each creditor of the rights of creditors to object to the debt restructuring arrangement under section 33.

Effect of court confirmation of debt restructuring arrangement

31.—(1) A debt restructuring arrangement that is approved by the court is binding on all the creditors who hold included debts and are affected by the terms of the arrangement.

(2) The court order confirming the coming into effect of the debt restructuring arrangement is conclusive as to the validity of the debt restructuring arrangement.

(3) Following the court order confirming the coming into effect of the debt restructuring arrangement, the arrangement remains in effect according to its terms until—

- (a) it is completed in accordance with its terms and section 36; or

(b) it is terminated under section 35.

(4) While a debt restructuring arrangement is in effect, a creditor who holds an included debt—

(a) must not take any actions to recover or enforce the debt, and

(b) in particular, must not take any actions to—

- (i) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor or the personal insolvency administrator, or in accordance with the terms of the debt restructuring arrangement;
- (ii) initiate or continue any legal proceedings against the debtor in relation to an included debt;
- (iii) collect, secure, recover, or demand payment of an included debt;
- (iv) subject to subsection (7), execute or enforce a judgment or order of a court or tribunal against the debtor;
- (v) obtain a warrant;
- (vi) subject to subsection (14), recover goods of the type specified in section 6(4)(a) and (b) that are used by or in the possession of the debtor;
- (vii) obtain possession of a premises in which the debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, unless the requirements of subsection (6) are met;
- (viii) unless the terms of the debt restructuring arrangement provide otherwise, take any of the actions in this subsection against another person who is jointly liable with the debtor to whom the debt restructuring arrangement relates;
- (ix) unless the terms of the debt restructuring arrangement provides otherwise, take any of the actions in this subsection against another person who has guaranteed the debts of the debtor to whom the debt restructuring arrangement relates; or
- (x) instruct an agent to take any of the actions mentioned in paragraphs (i) to (ix).

(5) While a debt restructuring arrangement is in effect, a court may permit a creditor to take a step listed in subsection (4), where the court considers that—

(a) exceptional circumstances mean that it is reasonable to allow the creditor to take the step; and

(b) the step will not—

- (i) cause undue detriment to the debtor to whom the arrangement relates;

- (ii) case unfair prejudice to any other creditor; or
- (iii) significantly undermine the objectives of the arrangement.

(6) While a debt restructuring arrangement is in effect in respect of a debtor, a court may exceptionally give permission for an owner of a premises in which the debtor is residing under a tenancy agreement to obtain possession of the premises, only if—

- (a) the duration of the tenancy contract has expired during the course of the debt restructuring arrangement;
- (b) the debtor owes arrears of rent to relevant creditor of an amount of more than 3 months of rent; and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing rent payments over the course of the debt restructuring arrangement; or
- (c) an application of an owner to obtain possession of the premises is based on grounds other than the debtor's non-payment of rent.

(7) Nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor where the execution or other legal process or distress was completed at least 180 days before the court order confirming the coming into effect of the debt restructuring arrangement, where—

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(8) While the debt restructuring arrangement is in effect, a supplier of an essential good or service must not—

- (a) refuse to supply the good or service to a debtor, by reason of the debtor's default in paying charges due for the good or service in relation to a period before the coming into effect of the debt restructuring arrangement;
- (b) make it a condition of the supply of the good or service to a debtor, that payment be made of outstanding charges due for the good or service in relation to a period before the coming into effect of the debt restructuring arrangement; or
- (c) rely on an insolvency-related term of the agreement for the supply of the good or service, except with the prior, written consent of the personal insolvency administrator.

(9) The personal insolvency administrator may give consent under subsection (8) (c) where it is satisfied that the reliance on the insolvency-related term is necessary to put the debt restructuring arrangement into effect and to serve the objectives of the debt restructuring arrangement as specified in section 20.

(10) The personal insolvency administrator is not liable in damages for declining to give consent under subsection (8)(c).

(11) A debt restructuring arrangement does not prevent the commencement or continuation of any criminal proceedings against a debtor.

(12) Any action taken contrary to this section is null and void.

(13) Where a person has acquired an interest in property or any other right under a transaction with a creditor which arose from an action taken by a creditor or creditor's agent which was contrary to this section, the nullity of that action does not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

(14) Where a debt restructuring arrangement does not include terms modifying or limiting the rights of a secured creditor, nothing in this section affects the right of a secured creditor to enforce its security.

(15) Where a debt restructuring arrangement includes terms modifying or limiting the rights of a secured creditor, in a manner specified in section 24 or otherwise, a secured creditor may only enforce its security in accordance with the terms of the arrangement.

Obligations of debtor under debt restructuring arrangement

32.—(1) While the debt restructuring arrangement is in effect, the debtor must satisfy any obligations of debtors under section 11 which reasonably apply throughout the duration of the arrangement.

(2) In addition to any obligations specified in section 11 above, the debtor must do everything that is necessary to put the debt restructuring arrangement into effect.

Challenge to debt restructuring arrangement

33.—(1) A creditor who is bound by a debt restructuring arrangement may apply to the court to object to a court order confirming the coming into effect of the arrangement.

(2) A creditor's application to object to a court order confirming the coming into effect of the arrangement under subsection (1) must be based on one or more of the following grounds, namely that—

- (a) the debtor does not meet the eligibility criteria in section 22;
- (b) the debt restructuring arrangement does not comply with the mandatory provisions specified in section 23;
- (c) the making and confirmation of the debt restructuring arrangement has not complied with the procedural requirements of this Part;
- (d) a debt proposed to be covered by the debt restructuring arrangement is an excluded debt under section 8,
- (e) the debtor has made any false representation or omission in making a statement of financial affairs, or on supplying any accompanying information; or

- (f) the debt restructuring arrangement causes unfair prejudice to the interests of the creditor.

(3) A creditor's application to court to object to a debt restructuring arrangement must be made within the period of 28 days beginning with the day on which the debt restructuring arrangement comes into effect.

(4) A creditor must provide notice to the debtor, and the personal insolvency administrator, of an application to object to a debt restructuring arrangement, including the grounds on which the application is based.

(5) Where on an application under this section the court is satisfied as to any of the grounds specified in subsection (2), the court may do either or both of the following—

- (a) where to do so would not unfairly prejudice any other creditor, make an order directing that the debt restructuring arrangement does not apply to the creditor who made the application to court;
- (b) direct the personal insolvency administrator to seek a decision from creditors as to whether they approve a revised proposal; or
- (c) make an order cancelling the debt restructuring arrangement in respect of any other included debt or creditor.

(6) Where a court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the debt restructuring arrangement was in effect.

(7) In any case where a court makes an order under subsection (5), the court must notify the debtor and the personal insolvency administrator, the Official Receiver, and any creditors to whom the order under subsection (5) applies.

(8) Where a court notifies the Official Receiver under subsection (7), the Official Receiver must, within a period of 10 days—

- (a) cause an entry to be made in the Personal Insolvency Register; and
- (b) send a notice of the court order made under subsection (5), and any requirements made under subsection (6), to any affected creditor.

(9) Where a court has made an order under subsection (5)(c) with the effect of cancelling the debt restructuring arrangement in respect of all included debts and all creditors, the court must also make an order establishing a temporary moratorium on creditor remedies, which endures for a period of 60 days and has the same effect on creditor remedies as if a debt protection moratorium order had been made in respect of the debtor under section 15.

Variation of debt restructuring arrangement

34.—(1) Where a court has made an order confirming the coming into effect of the debt restructuring arrangement under section 30, the arrangement may be varied in accordance with its terms and subject to this section.

(2) A personal insolvency administrator, whether on the administrator's own initiative or the request of a debtor or creditor, may propose a variation of a debt restructuring arrangement where—

- (a) it appears to the personal insolvency administrator that there has been a material change in the debtor's circumstances; and
- (b) the personal insolvency administrator is satisfied that there is a reasonable prospect that a variation that addresses the circumstances would be approved by the debtor's creditors.

(3) Where the personal insolvency administrator proposes a variation under subsection (2), the personal insolvency administrator must, as soon as is reasonably practicable—

- (a) require the debtor to complete an updated statement of the debtor's financial affairs, in accordance with section 12;
- (b) assist the debtor in preparing a proposal for a variation of the debt restructuring arrangement;
- (c) seek the consent of the debtor to the proposal and to the seeking of creditor approval of the proposal; and
- (d) write to each affected creditor to ask them to indicate whether the proposal should be accepted.

(4) When writing to each affected creditor under subsection (3) in respect of a proposal to vary a debt restructuring arrangement, the personal insolvency administrator must—

- (a) provide the creditor with a copy of—
 - (i) the proposal; and
 - (ii) the updated statement of the debtor's financial affairs;
- (b) provide the creditor with a statement to the effect that—
 - (i) the debtor satisfies the eligibility requirements of section 22;
 - (ii) to the best of the personal insolvency proposer's knowledge, the information contained in the debtor's updated statement of financial affairs is complete and accurate;
 - (iii) the proposal is a reasonable means of addressing the relevant change in the debtor's circumstances; and
 - (iv) the proposal has a reasonable prospect of being approved and implemented;
- (c) ask the creditor to provide a written response, via physical or electronic mail, setting out whether or not the proposal should be approved; and

- (d) give written notice to the creditor of the deemed notice provision in subsection (6) and the need to provide this response to the personal insolvency practitioner in advance of the stated deadline, which must be 14 days after written notice of the proposal has been provided to each creditor.

(5) A proposal to vary a debt restructuring arrangement is approved if—

- (a) the debtor provides consent in writing to the variation of the arrangement;
- (b) the personal insolvency administrator writes to affected creditors of a debtor under this section;
- (c) subject to paragraph (d), replies accepting the proposal are provided, before the deadline stated in subsection (4), by creditors whose claims represent a majority in value of the claims of all creditors bound by the arrangement; and
- (d) where the proposal includes terms modifying or limiting the rights of secured creditors, replies accepting the proposal are provided, before the deadline stated in subsection (4), by secured creditors whose claims represent more than two-thirds of the value of the claims of secured debts bound by the arrangement.

(6) For the purposes of subsection (5), a creditor who does not provide a response to the personal insolvency administrator before a deadline of 14 days after written notice of the proposal has been given to each creditor under subsection (4), is deemed to have stated that the proposal to vary the debt restructuring arrangement should be accepted.

(7) When a proposal to vary a debt restructuring arrangement has been approved, the personal insolvency administrator must, as soon as is reasonably practicable, submit to the Official Receiver—

- (a) notice of the creditor responses approving the variation to the debt restructuring arrangement; and
- (b) the final terms of the varied debt restructuring arrangement.

(8) On receiving the documents set out in subsection (7), the Official Receiver must issue a certificate recommending the confirmation of the varied debt restructuring arrangement.

(9) On issuing a certificate recommending the confirmation of a varied debt restructuring arrangement, the Official Receiver must—

- (a) present this certificate, together with notice of the creditor approval of the proposal to vary the debt restructuring arrangement, and the final terms of the varied Arrangement, to the court; and
- (b) give notice of the issuance of the certificate to—
 - (i) the debtor;

- (ii) the personal insolvency administrator; and
- (iii) and all creditors listed in the debt restructuring arrangement.

(10) Where the court receives a recommendation from the Official Receiver with respect to a variation of a debt restructuring arrangement under subsection (9), the court must consider the recommendation, and make an order confirming the coming into effect of the varied arrangement.

(11) Where the court makes an order confirming the coming into effect of the varied arrangement under subsection (10), the provisions of this Part apply to the varied arrangement as if the varied arrangement were an arrangement confirmed under section 30.

Termination of debt restructuring arrangement

35.—(1) A proposal by the debtor, acting with the personal insolvency administrator, or a creditor may at any time terminate a debt restructuring arrangement where, in any other manner as may be prescribed by regulations—

- (a) the claims of those creditors voting in favour of the proposal represent a majority in value of the claims of all creditors entitled to vote; or
- (b) the proposal includes terms modifying or limiting the rights of secured creditors, the claims of those secured creditors voting in favour of the proposal represent more than two thirds of the value of the claims of secured creditors entitled to vote.

(2) Any of the following persons may apply to the court for an order terminating a debt restructuring arrangement—

- (a) the debtor;
- (b) a creditor;
- (c) the personal insolvency administrator; or
- (d) the Official Receiver.

(3) An application under subsection (2) must be based on one of the following grounds—

- (a) a material inaccuracy or omission has been found in the statement of the debtor's financial affairs, which causes a material detriment to a creditor;
- (b) the debtor, when the debt restructuring arrangement was proposed, did not satisfy the eligibility criteria under section 22;
- (c) the debtor did not comply with the obligations imposed on the debtor under the debt restructuring arrangement;
- (d) since the coming into effect of the debt restructuring arrangement, the debtor has been convicted of an offence under this Act;
- (e) the debtor is in arrears in respect of payments under the debt restructuring arrangement of an amount corresponding to a period of not less than 3 months;

- (f) the debtor has failed to carry out any action reasonably necessary to put the debt restructuring arrangement into effect; or
- (g) the debtor has unreasonably refused to consent to a variation of the debt restructuring arrangement.

(4) On hearing an application under subsection (2), the court may —

- (a) dismiss the application;
- (b) terminate the debt restructuring arrangement; or
- (c) order that the personal insolvency administrator prepare a proposal for a variation of the debt restructuring arrangement under section 34.

(5) Where a court has made an order under subsection (5), the court may require the debtor to pay any interest, fees or charges that accrued in respect of an included debt during the period in which the debt restructuring arrangement was in effect.

(6) In any case where a court makes an order under subsections (5) or (6), the court must give notice to —

- (a) the debtor;
- (b) the personal insolvency administrator;
- (c) the Official Receiver; and
- (d) any creditors to whom the order under subsection (5) or (6) applies.

(7) Where a court notifies the Official Receiver under subsection (7), the Official Receiver must, within a period of 14 days, cause an entry to be made in the Personal Insolvency Register recording the fact of the termination.

Completion of debt restructuring arrangement

36.—(1) A debt restructuring arrangement is completed when all of the obligations that it created have been discharged, unless the arrangement has been terminated earlier under section 35.

(2) When an arrangement is completed under subsection (1), the personal insolvency administrator must, within 14 days of the completion —

- (a) provide the debtor with a certificate of completion; and
- (b) give notice to the Official Receiver of the certificate of completion.

(3) certificate of completion is *prima facie* evidence of the facts stated in it.

(4) When a debt restructuring arrangement is completed under subsection (1), the debtor's included debts are cancelled, and the debtor is not liable to pay any part of the debts, including any penalties, interest, fees, charges, and other sums which may have become payable in relation to those debts.

(5) The completion of a debt restructuring arrangement does not release the debtor from any excluded debts.

(6) The completion of a debt restructuring arrangement does not, except to the extent provided in the terms of the arrangement—

- (a) release anyone else from a debt that he or she owes jointly with the debtor; or
- (b) release a guarantor from the guarantee that the guarantor gave for the debtor's debt.

(7) The completion of a debt restructuring arrangement does not, except to the extent provided in the terms of the arrangement, release the debtor from liability under any secured debts or from liability in respect of any portion of a secured debt.

(8) When the Official Receiver receives the certificate of completion specified in subsection (2), the Official Receiver must—

- (a) record the successful completion of the debt restructuring arrangement in the Personal Insolvency Register; and
- (b) within 14 days of receipt, remove from the Personal Insolvency Register, all information recorded in it in respect of the completed arrangement.

(9) For the avoidance of doubt, when a debt restructuring arrangement is completed under subsection (1), the debt restructuring arrangement is no longer in effect, and the stay on creditor remedies under section 31(4) ceases to apply.

(10) For the avoidance of doubt, debts to which section 23(9) applies

- (a) continue to be payable after the completion of the debt restructuring arrangement, in accordance with their treatment under the terms of the debt restructuring arrangement, and
- (b) are not cancelled under subsection (4) of this section,

unless the terms of the arrangement expressly provide for their cancellation.

Duties of personal insolvency administrator under debt restructuring arrangement

37.—(1) The duties of the personal insolvency administrator under a debt restructuring arrangement include—

- (a) generally giving effect to the debt restructuring arrangement;
- (b) dealing with the debtor's property in the manner specified in the debt restructuring arrangement;
- (c) giving information about the administration of the debt restructuring arrangement to the debtor when the debtor makes a reasonable request for the information;
- (d) giving information about the administration of the debt restructuring arrangement to a creditor who—
 - (i) is a party to the debt restructuring arrangement; and

- (ii) makes a reasonable request for the information;
- (e) giving information about the administration of the debt restructuring arrangement to the Official Receiver;
- (f) considering whether the debtor has committed an offence under this Act; and
- (g) referring to the Official Receiver or to relevant law enforcement authorities any evidence of any offence by the debtor under this Act.

(2) The personal insolvency administrator must not be reimbursed for expenses incurred in administering the arrangement unless those expenses are of a kind specified in the relevant proposal for a debt restructuring arrangement.

(3) The personal insolvency administrator must maintain a separate bank account for receiving all monies paid by debtors under debt restructuring arrangements, and must not pay any money out of the account otherwise than—

- (a) for purposes related to the administration of debt restructuring arrangements;
- (b) in accordance with this Act; or
- (c) in accordance with a direction of the court.

(4) The personal insolvency administrator must transmit monies paid by debtors under debt restructuring arrangements to creditors in the agreed proportion on a timely basis.

(5) The personal insolvency administrator must maintain complete and accurate records of the account of monies received from the debtor and the monies disbursed to creditors under a debt restructuring arrangement.

(6) The personal insolvency administrator must maintain regular contact with the debtor and conduct a review of the debt restructuring arrangement—

- (a) at least once every 12 months; and
- (b) at such other times as may be required by the circumstances of the operation of the debt restructuring arrangement.

(7) Where the circumstances of the debtor have changed in a material respect, the personal insolvency administrator, in consultation with the debtor, must give due consideration as to whether the procedure for varying the debt restructuring arrangement under section 34 should be commenced.

Personal insolvency proposers

38.—(1) A personal insolvency proposer, when performing the functions of a personal insolvency proposer under this Part—

- (a) is not an agent of the debtor;
- (b) is not an agent of any creditor or creditors;

- (c) must engage in the personal insolvency proposer's professional capacity with the debtor and creditors to seek, if possible, to achieve a solution which is satisfactory to both the debtor and to creditors; and
 - (d) must exercise professional independent judgment, having regard to the provisions of this Act and any, rules, standards, practice directions or guidelines prescribed by regulations.
- (2) The following may be prescribed by regulations—
 - (a) rules, standards, practice directions or guidelines regarding the functions of personal insolvency proposers in the operation of the debt restructuring arrangement procedure;
 - (b) matters relating to the authorisation, by the Minister or other government body, of a person, class of person, or organisation, to perform the functions of personal insolvency proposers under this Part;
 - (c) any of the following for the purposes of the authorisation, regulation, and supervision of personal insolvency proposers, and the protection of debtors and creditors—
 - (i) requirements applicable to—
 - (A) the authorisation of persons, associations, councils, or organisations as personal insolvency proposers; and
 - (B) the dealings of a personal insolvency proposer with the Ministry, the Official Receiver, and any other State or regulatory bodies.
 - (ii) requirements to be met by personal insolvency proposers in the performance of their functions, in relation to, among others—
 - (A) the duty to serve the public interest;
 - (B) the duties owed to debtors and creditors under the debt restructuring arrangement procedure;
 - (C) the professional and ethical conduct of personal insolvency proposers;
 - (D) the duty of confidentiality owed to debtors and creditors;
 - (E) the duty to manage cases efficiently, justly, and proportionately;
 - (F) the duty to avoid conflicts of interest;
 - (iii) requirements as to qualifications of personal insolvency proposers;
 - (iv) requirements as to record-keeping;
 - (v) requirements as to the handling of complaints made against personal insolvency proposers; and

- (vi) any other requirements relating to the authorisation, supervision, or regulation of personal insolvency proposers.

Personal insolvency administrators

39.—(1) A personal insolvency administrator, when performing the functions of a personal insolvency administrator under this Part—

- (a) is not an agent of the debtor;
- (b) is not an agent of any creditor or creditors;
- (c) must engage in the personal insolvency administrator’s professional capacity with the debtor and creditors to put the debt restructuring arrangement into effect; and
- (d) must exercise professional independent judgment, having regard to the provisions of this Act and any, rules, standards, practice directions or guidelines prescribed by regulations.

(2) The following may be prescribed by regulations—

- (a) rules, standards, practice directions or guidelines regarding the functions of personal insolvency administrators in the operation of the debt restructuring arrangement procedure;
- (b) matters relating to the authorisation, by the Minister or other government body, of a person, class of person, or organisation, to perform the functions of personal insolvency administrators under this Part;
- (c) any of the following for the purposes of the authorisation, regulation, and supervision of personal insolvency administrators, and the protection of debtors and creditors—
 - (i) requirements applicable to—
 - (A) the authorisation of persons, associations, councils, or organisations as personal insolvency administrators;
 - (B) the dealings of a personal insolvency administrator with the Minister, the Official Receiver, and any other State or regulatory bodies;
 - (ii) requirements to be met by personal insolvency administrators in the performance of their functions, in relation to, among others—
 - (A) the duty to serve the public interest;
 - (B) the duties owed to debtors and creditors under the debt restructuring arrangement procedure;
 - (C) the professional and ethical conduct of personal insolvency administrators;

- (D) the duty of confidentiality owed to debtors and creditors;
- (E) the duty to manage cases efficiently, justly, and proportionately;
- (F) the duty to avoid conflicts of interest.
- (iii) requirements as to qualifications of personal insolvency administrators;
- (iv) requirements as to record-keeping;
- (v) requirements as to the handling of complaints made against personal insolvency administrators; and
- (vi) any other requirements relating to the authorisation, supervision, or regulation of personal insolvency administrators.

Debt restructuring arrangements and Personal Insolvency Register

40. Matters relating to the recording of information relation to debt restructuring arrangements in the Personal Insolvency Register may be prescribed by regulations.

Court directions

41.—(1) The Official Receiver, or a personal insolvency administrator, may make an application to the court for directions or an order in relation to any matter arising in connection with a debt restructuring arrangement.

(2) On an application under subsection (1), the court may—

- (a) give the Official Receiver or personal insolvency administrator directions as the court deems appropriate;
- (b) make an order for the enforcement of any duty of the debtor arising under sections 11 and 32;
- (c) treat the application as an application for termination of the debt restructuring arrangement under section 35; or
- (d) order the personal insolvency administrator to commence the procedure for the variation of the debt restructuring arrangement under section 34.

PART 5—DEBT REHABILITATION ORDER

Debt rehabilitation order

42. This Part establishes an alternative procedure to bankruptcy, the goals of which procedure include—

- (a) to provide urgent economic rehabilitation and relief from over-indebtedness to debtors who hold insufficient property and income to have any reasonable prospect of making repayments to creditors; and
- (b) to resolve in a timely, efficient, and impartial manner, with minimal procedural complexity and expense, cases of insolvency in which the levels of outstanding debt and resources of the debtor do not justify the use of a formal Bankruptcy procedure.

(2) The debt rehabilitation order procedure does not affect the rights of secured creditors.

Eligibility for a debt rehabilitation order

43.—(1) A debtor is eligible for a debt rehabilitation order when the debtor meets all of the following criteria—

- (a) the debtor has total debts, apart from any excluded debt, that amount to less than \$10,000;
- (b) the debtor has monthly surplus income, in accordance with section 9, of \$200 or less;
- (c) the debtor has property, excluding protected property in accordance with sections 6 and 7, worth \$10,000 or less;
- (d) the debtor is unable to pay the debts as they become due;
- (e) the debtor is domiciled in Fiji, or at any time within three years before the date of debt rehabilitation order application—
 - (i) was ordinarily resident, or had a place of residence in Fiji; or
 - (ii) carried on business in Fiji;
- (f) the debtor is not currently a bankrupt debtor;
- (g) the debtor is not subject to a debt restructuring arrangement under Part 4;
- (h) the debtor has not been subject to a debt rehabilitation order within 3 years prior to the date of the debt rehabilitation order Application; and
- (i) the debtor has not been subject to a Bankruptcy Order within 5 years prior to the date of the debt rehabilitation order application;

(2) The monetary amounts specified in subsection (1) may be varied by regulations.

Application for a debt rehabilitation order

44.—(1) A debtor who meets the criteria in section 43 may apply, on her or his own initiative or through an authorised intermediary, to the Official Receiver for a debt rehabilitation order.

(2) The form of an application for a debt rehabilitation order may be prescribed by regulations.

(3) An application for a debt rehabilitation order must be accompanied by such fee, if any, as may be prescribed by regulations, where the fee is set at an amount consistent with the goals specified in section 42.

(4) An application for a debt rehabilitation order must include, in addition to any requirements prescribed by regulations, a statement of the debtor's financial affairs, in accordance with section 12.

(5) In making an application for a debt rehabilitation order, the debtor consents to—

- (a) the Official Receiver making enquiries as it considers necessary to determine whether the debtor meets the eligibility criteria specified in section 43;
- (b) the postponement of the consideration of the debt rehabilitation order application by the Official Receiver until the Official Receiver has received satisfactory answers to its enquiries;
- (c) the disclosure by the Official Receiver of personal data of the debtor to creditors and other third parties to the extent necessary for the making and consideration of a debt rehabilitation order application; and
- (d) the disclosure to the Official Receiver, by creditors, government agencies, or any other relevant third parties, of personal data of the debtor, to the extent necessary for the making and consideration of a debt rehabilitation order application.

(6) On submitting an application for a debt rehabilitation order, the debtor becomes subject to any relevant obligations of debtors specified in section 11 which may reasonably apply to the circumstances of a debt rehabilitation order application.

(7) Rules, standards, practice directions or guidelines regarding the authorisation and the performance of functions of authorised intermediaries in assisting a debtor in the preparation and submission of an application for a debt rehabilitation order may be prescribed by regulations.

Criteria for making a debt rehabilitation order

45.—(1) For the purposes of determining a debt rehabilitation order application, the Official Receiver must apply the presumptions stated in subsections (2) and (3).

(2) The Official Receiver must presume that the debtor is unable to pay the debtor's debts at the time of determining the application if—

- (a) that appears to the Official receiver to be the case at the application date from the information supplied in the application and the Official Receiver has no reason to believe that the information supplied is incomplete or inaccurate; and
- (b) the Official Receiver has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.

(3) The Official Receiver must presume that all other conditions specified in section 43 are satisfied if—

- (a) that appears to the Official Receiver to be the case at the application date from the information supplied in the application and the Official Receiver has no reason to believe that the information supplied is incomplete or inaccurate;

- (b) any requirements prescribed by regulations have been satisfied; and
- (c) the Official Receiver has no reason to believe that, by virtue of a change in the debtor's circumstances since the application date, any condition may no longer be satisfied.

(4) References in this section to information supplied in the application includes information provided to the Official Receiver in support of the application, or in response to any enquiries of the Official Receiver.

Official Receiver's recommendation for debt rehabilitation order

46.—(1) This section applies where an application for a debt rehabilitation order has been made.

(2) The Official Receiver may postpone consideration and determination of an application for a debt rehabilitation order until the time as the debtor has provided satisfactory responses to any enquiries made by the Official Receiver in relation to the debtor's application.

(3) The Official Receiver must determine the debt rehabilitation order application by—

- (a) refusing the application; or
- (b) issuing a certificate recommending a debt rehabilitation order.

(4) On issuing a certificate recommending a debt rehabilitation order, the Official Receiver must—

- (a) present this certificate, together with the debt rehabilitation order application and any supporting documentation, to the court; and
- (b) give notice to the debtor, and any authorised intermediary assisting the debtor, of the issuance of the certificate.

(5) The Official Receiver may only refuse the application if the Official Receiver considers that—

- (a) the application does not meet all of the requirements imposed under section 44;
- (b) the conditions specified under section 43 have not been satisfied;
- (c) the debtor has not responded satisfactorily to any enquiries of the Official Receiver within time periods established by the Official Receiver when making enquiries; or
- (d) the debtor has made any false representation or false omission in making the application or in supplying an additional information to support the application.

(6) If the Official Receiver refuses an application, the Official Receiver must give reasons for this refusal.

Court determination of debt rehabilitation order application

47.—(1) Where the court receives a recommendation for a debt rehabilitation order under section 46, the court must consider the recommendation, together with any accompanying documentation.

(2) When considering an application under this section, the court is entitled to treat a certificate issued by the Official Receiver under section 46 as evidence of the matters certified therein.

(3) Having considered a recommendation for a debt rehabilitation order, the court must make a debt rehabilitation order in relation to the debtor if the court considers that—

- (a) the debtor meets the eligibility criteria in section 43; and
- (b) the court has no reason to believe that the debtor has made any false representation or omission in making the application.

(4) Having considered a recommendation for a debt rehabilitation order, the court must refuse an application to make a debt rehabilitation order in relation to the debtor if the court considers that—

- (a) the debtor does not meet the eligibility criteria in section 43; or
- (b) the debtor has made any false representation or omission in making the application or on supplying any accompanying information.

(5) On the making a debt rehabilitation order, the court must direct the Official Receiver to record in the Personal Insolvency Register, in addition to any other details as may be prescribed by regulations—

- (a) details of the debtor;
- (b) the date of issue of the Order; and
- (c) the date on which the Order is due to cease.

(6) On the making a debt rehabilitation order, the court must direct the Official Receiver to—

- (a) give notice to the debtor of the issue of the debt rehabilitation order;
- (b) give notice to the debtor of the obligations of debtors under section 11, to the extent that these obligations apply for the duration of the debt rehabilitation order;
- (c) give notice to each known creditor of the debtor of the issue of the debt rehabilitation order and the inclusion of each known creditor's debt; and
- (d) give notice to each known creditor of the debtor of the rights of creditors to object to the debt rehabilitation order under section 52.

Effect of debt rehabilitation order

48.—(1) While a debt rehabilitation order is in effect in respect of a debtor, a creditor of the debtor to whom an included debt is owed—

- (a) has no remedy in respect of the debt;
- (b) must not take any actions to recover or enforce the debt; and
- (c) in particular, must not take any actions to—
 - (i) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor or the debtor’s representative;
 - (ii) contact a debtor regarding payment of an included debt, otherwise than at the request of the debtor or the debtor’s representative;
 - (iii) initiate or continue any legal proceedings against the debtor in relation to an included debt;
 - (iv) collect, secure, recover, or demand payment of an included debt;
 - (v) execute or enforce a judgment or order of a court or tribunal against the debtor;
 - (vi) obtain a warrant;
 - (vii) subject to subsection (4), recover goods of the type specified in section 6(4)(a) to (c) that are used by or in possession of the debtor;
 - (viii) obtain possession of a premises in which the debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, unless the requirements of subsection (2) are met; or
 - (ix) instruct an agent to take any of the actions mentioned in paragraphs (i) to (viii) above.

(2) While a debt rehabilitation order is in effect in respect of a debtor, a court may exceptionally give permission for a relevant creditor to obtain possession of a premise in which the debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, only if—

- (a) the duration of the tenancy contract has expired during the course of the debt rehabilitation order;
- (b) the debtor owes arrears of rent to relevant creditor of an amount of more than 3 months of rent and the court considers that it is more likely than not that the debtor will be unable to repay the amount of these arrears over the duration of the debt rehabilitation order; or
- (c) an application of a relevant creditor to obtain possession of the premises is based on grounds other than the debtor’s non-payment of rent.

(3) While a debt rehabilitation order is in effect, a court may exceptionally give permission for a creditor to take a step listed in subsection (1)(c), where the court considers that—

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the step; and
- (b) the step will not—
 - (i) cause detriment to the debtor to whom the Order relates;
 - (ii) cause unfair prejudice to any other creditor; or
 - (iii) significantly undermine the protections of the Order.

(4) While a debt rehabilitation order is in effect in respect of a debtor, a court may exceptionally give permission for a lessor or owner of goods to terminate an agreement, including a hire-purchase agreement, by means of which a debtor is using or has possession of goods of the type specified in section 6(4)(a) to (c), where—

- (a) the debtor owes arrears under the agreement of an amount more than 3 monthly repayments, and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing repayments while the debt rehabilitation order is in force; or
- (b) an application of a lessor or owner to terminate such agreement, and to obtain possession of, or otherwise recover, the goods subject to the agreement, is based on grounds other than the debtor's default in making repayments under the agreement.

(5) While a debt rehabilitation order is in effect in respect of a debtor, a supplier of an essential good or service must not—

- (a) refuse to supply the good or service to a debtor, by reason of the debtor's default in paying charges due for the good or service in relation to a period before the making of the order;
- (b) make it a condition of the supply of the good or service to a debtor, that payment be made of outstanding charges due for the good or service in relation to a period before the making of the order; or
- (c) rely on an insolvency related term of the agreement for the supply of the good or service.

(6) A debt rehabilitation order does not prevent the commencement or continuation of any criminal proceedings against a debtor.

(7) Any action taken contrary to this section is null and void.

(8) Nothing in this section affects the right of a secured creditor to enforce or otherwise deal with the secured creditor's security.

(9) While the debt rehabilitation order is in effect, the debtor must satisfy any obligations of debtors under section 11 which reasonably apply.

(10) Where, under subsection (5), a creditor has continued to supply a debtor with essential goods or services, the debtor must continue to make payment to the relevant creditor in respect of such continued supply.

(11) Where a person has acquired an interest in property or any other right under a transaction with a creditor which arose from an action taken by a creditor or creditor's agent which was contrary to this section, the nullity of that action does not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

(12) Nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a debtor or property of the debtor where the execution or other legal process or distress was completed at least 180 days before the making of the debt rehabilitation order, where—

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

Duration of debt rehabilitation order

49.—(1) The debt rehabilitation order continues in effect for a period of one year from the date of the order.

(2) However, the debt rehabilitation order can continue for a period longer than one year if the court extends the order under sections 53 or section 54, for the purposes of properly considering whether the debt rehabilitation order should be terminated or converted.

(3) When the court extends an Order under subsection (2)(b), the court must specify an alternative date for discharge, which must be no later than 28 days after the expiry of the initial one year period.

Discharge of debts

50.—(1) In advance of the expiry of a period of one year from the date of the debt rehabilitation order, the Official Receiver must make an application to court for an order confirming the discharge of the debtor.

(2) If the Official Receiver has not yet made an application under subsection (1) within a period of 30 days after the expiry of a period of one year from the date of the debt rehabilitation order, the debtor may bring an application to court for an order confirming the discharge of the debtor.

(3) On receiving an application under subsection (1) or (2), the court must, as soon as reasonably practicable, make an order of discharge, unless an application to terminate or convert the debt rehabilitation order has been made under sections 53 or 54.

(4) The court order made under subsection (3) must provide that the debtor is discharged from the debt rehabilitation order on the expiry of a period of one year from the date of the debt rehabilitation order.

(5) On discharge from the debt rehabilitation order, the debtor's included debts are cancelled, and the debtor is not liable to pay any part of the debts, including any penalties, interest, fees, charges and other sums which may have become payable in relation to those debts.

(6) The discharge of debts under this section does not release the debtor from any debt or liability specified as an excluded debt under section 8.

(7) A discharge under this section does not release from any liability any person who, at the date of the discharge, was —

- (a) a business partner of the discharged debtor;
- (b) a co-trustee with the discharged debtor;
- (c) jointly bound or contracted with the discharged debtor; or
- (d) a guarantor or in the nature of a guarantor of the discharged debtor.

Official Receiver to supervise debt rehabilitation order

51.—(1) While a debt rehabilitation order is in effect, the Official Receiver must manage the case and supervise the financial affairs of the debtor, in furtherance of the legislative objectives of the debt rehabilitation order procedure, including the goals specified in section 42.

(2) In addition to remaining subject to the obligations of debtors specified in section 11, at any time following an application for a debt rehabilitation order and until a debt rehabilitation order ceases to have effect, a debtor must —

- (a) disclose to the Official Receiver relevant information as to her or his financial affairs;
- (b) upon request, attend meetings with the Official Receiver;
- (c) notify the Official Receiver as soon as reasonably practicable if he or she becomes aware of any material error in her or his application, or any material change in her or his circumstances; and
- (d) do all such other things,
- (e) as the Official Receiver may reasonably require for the purpose of carrying out the functions of the Official Receiver under this section.

(3) The Official Receiver may carry out an investigation of any matter that appears to the Official Receiver to be relevant for the purpose of carrying out the functions of the Official Receiver under this section.

(4) The Official Receiver may require any person to provide such information and assistance as the Official Receiver may reasonably require in carrying out the functions of the Official Receiver under this section.

(5) The Official Receiver must exercise powers under this section in accordance with such manner as may be prescribed by regulations.

(6) The Official Receiver may make an application to the court for directions or an order in relation to any matter arising in connection with a debt rehabilitation order.

(7) On an application under subsection (6), the court may—

- (a) give the Official Receiver directions as the court deems appropriate;
- (b) make an order for the enforcement of any duty of the debtor arising under section 11;
- (c) treat the application as an application for termination of the debt rehabilitation order under section 53;
- (d) treat the application as an application for conversion of the debt rehabilitation order under section 54; or
- (e) make an order extending the duration of the debt rehabilitation order , provided that—
 - (i) such extension should not exceed a period of 28 days beyond the initial duration of the order; and
 - (ii) the court has due regard to any unfairness to the debtor which might result from the extension of the Order period; and the extent to which an extension will further the objectives of the debt rehabilitation order procedure.

(8) On the hearing of an application to object to the debt order rehabilitation order, if the court finds that the ground referred to in subsection (3) have not been established, the court must—

- (i) dismiss the objection; and
- (ii) require the objecting creditor to pay incurred costs to the debtor, or such other amount as the court finds necessary.

Creditor objection to debt rehabilitation order

52.—(1) A creditor to whom an included debt is owed may apply to the court to object to—

- (a) the making of the debt rehabilitation order ; or
- (b) the inclusion under the debt rehabilitation order of the creditor's debt.

(2) An objection under subsection (1) must—

- (a) be made no later 14 days after the date at which the Official Receiver gave notice to creditors of their right to object to the order under section 47(6);

- (b) be made by the lodging by the creditor of a notice of objection with the court, on notice to the debtor and the Official Receiver; and
- (c) be based on based on grounds referred to in subsection (3).

(3) The grounds on which an objection to debt rehabilitation order must be based include the following—

- (a) the debtor did not satisfy the eligibility criteria under section 43 at the time of the making of a debt rehabilitation order application; or
- (b) there is a material inaccuracy in the debt rehabilitation order application, or in any material provided by the debtor in support of the application, which has caused a material detriment to the applicant.

(4) On receiving an application to object to the order, the court must fix a date for a hearing of this application, to take place within 60 days of the receipt of the application.

(5) The court must provide notice to the debtor, creditors and the Official Receiver of the hearing of the application to object to the order in such manner as may be prescribed by regulations.

(6) On receiving an application to object to the order, the court may require the Official Receiver to—

- (a) provide information to the court which may assist the court in reaching a determination; or
- (b) conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to object to the order, the court may extend the duration of the Order for the purposes of properly considering the matter, provided that—

- (a) such extension should not exceed a period of 28 days beyond the initial duration of the Order; and
- (b) the court has due regard to—
 - (i) any unfairness to the debtor which might result from the extension of the order period; and
 - (ii) the extent to which an extension will further the legislative objectives of the debt rehabilitation order procedure, including the goals specified in section 42.

(8) On the hearing of an application to object to the Order, the court must dismiss the objection if it finds that the grounds referred to in subsection (3) have not been established.

(9) On the hearing of an application to object to the Order, if the court finds that any of the grounds referred to in subsection (3) have been established, the court may—

- (a) terminate the debt rehabilitation order ; or

- (b) make an order amending the debt rehabilitation order, including by removing the debt that was the subject of the objection under this section.

Termination of debt rehabilitation order

53.—(1) The Official Receiver may, while the debt rehabilitation order remains in effect, apply to the court to request the termination of the debt rehabilitation order .

(2) An application to terminate an order under subsection (1) must —

- (a) be made at least 28 days before the date at which discharge would otherwise occur under section 50 but for this application;
- (b) be made by the lodging by the Official Receiver of a request for termination with the court, on notice to the debtor and all known creditors; and
- (c) be based on grounds referred to in subsection (3).

(3) The grounds on which an application to terminate an Order must be based include the following —

- (a) the debtor did not satisfy the eligibility criteria under section 43 at the time of the making of a debt rehabilitation order application;
- (b) there is a material inaccuracy in the debt rehabilitation order application, or in any material provided by the debtor in support of the application; or
- (c) the debtor has not complied, to the satisfaction of the Official Receiver, with the obligations of debtors set out in sections 11 and 51.

(4) On receiving an application to terminate to the Order, the court must fix a date for a hearing of this application.

(5) The court must provide notice to the debtor, creditors, and Official Receiver of the hearing of the application to terminate to the order, in such manner as may be prescribed by regulations

(6) On receiving an application to terminate the order, the court may require the Official Receiver —

- (a) to provide information to the court which may assist the court in reaching a determination; or
- (b) to conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to terminate the order, the court may extend the duration of the order for the purposes of properly considering the matter, provided that —

- (a) such extension should not exceed a period of 28 days beyond the initial duration of the order; and
- (b) the court has due regard to —
 - (i) any unfairness to the debtor which might result from the extension of the order period; and

- (ii) the extent to which an extension will further the legislative objectives of the debt rehabilitation order procedure, including the goals specified in section 42

(8) On the hearing of an application to terminate the order, the court must dismiss the application to terminate if it finds that the grounds referred to in subsection (3) have not been established.

(9) On the hearing of an application to terminate the order, if the court finds that any of the grounds referred to in subsection (3) have been established, the court may —

- (a) terminate the debt rehabilitation order;
- (b) provide for the termination of the debt rehabilitation order to take effect on such terms and at such time as the court may specify;
- (c) convert the debt rehabilitation order into a Bankruptcy Order under section 54;
- (d) make an order for enforcement of a duty of the debtor as specified in sections 11 and 51; or
- (e) make an order extending the duration of the debt rehabilitation order, provided that—
 - (i) such extension should not exceed a period of 28 days beyond the initial duration of the order; and
 - (ii) the court has due regard to—
 - (A) any unfairness to the debtor which might result from the extension of the order period; and
 - (B) the extent to which an extension will further the legislative objectives of the debt rehabilitation order procedure, including the goals specified in section 42

(10) On termination of the debt rehabilitation order under subsection (9)—

- (a) the debts that became unenforceable under section 50 on the making of the order become enforceable; and
- (b) the debtor becomes liable to pay any interest, fees and charges that may have accrued.

Conversion into bankruptcy order

54.—(1) The Official Receiver may, while the debt rehabilitation order remains in effect, apply to the court to request the conversion of the debt rehabilitation order into a bankruptcy order.

(2) An application to convert an order under subsection (1) must—

- (a) be made at least 28 days before the date at which discharge would otherwise occur under section 50 but for this application;

- (b) be made by the lodging by the Official Receiver of a request for termination with the court, on notice to the debtor and all known creditors; and
- (c) be based on based on grounds referred to in subsection (3).

(3) The Official Receiver may apply to the court to convert an order on the grounds that the debtor, due to a change of financial circumstances, no longer satisfies the eligibility criteria under section 43.

(4) On receiving an application to convert the order, the court must fix a date for a hearing of this application, to take place within 14 days of the receipt of the application.

(5) The court must provide notice to the debtor, creditors, and Official Receiver of the hearing of the application to convert the order, in such manner as may be prescribed by regulations

(6) On receiving an application to convert the order, the court may require the Official Receiver—

- (a) to provide information to the court which may assist the court in reaching a determination; or
- (b) to conduct an investigation into any matter that appears to the court to be relevant to the making of a determination.

(7) On receiving an application to convert the order, the court may extend the duration of the order for the purposes of properly considering the matter, provided that—

- (a) such extension should not exceed a period of 28 days beyond the initial duration of the order; and
- (b) the court has due regard to—
 - (i) any unfairness to the debtor which might result from the extension of the order period; and
 - (ii) the extent to which an extension will further the legislative objectives of the debt rehabilitation order procedure, including the goals specified in section 42.

(8) On the hearing of an application to convert the order, the court must dismiss the application to convert the order if it finds that the grounds referred to in subsection (3) have not been established.

(9) On the hearing of an application to convert the order, if the court finds that the grounds referred to in subsection (3) have been established, the court may—

- (a) convert the debt rehabilitation order into a Bankruptcy Order; or
- (b) if the court considers that the debtor ought to be given the opportunity to make arrangements for making payments towards her or his debts, convert the order into a debt protection moratorium order under Part 3.

(10) When a debt rehabilitation order is converted into a Bankruptcy Order under subsection (9), the waiting period for discharge from bankruptcy under section 121 is deemed to have begun on the date of the making of the debt rehabilitation order under section 47.

Official Receiver may apply for preservation order

55.—(1) This section applies if—

- (a) the Official Receiver intends to apply for termination of the debt rehabilitation order under section 53;
- (b) the Official Receiver intends to apply for conversion under section 54; or
- (c) the Official Receiver intends to apply for revocation of discharge under section 56,

and the Official Receiver has formed the view that the debtor has concealed assets or misled the Official Receiver.

(2) On the application of the Official Receiver, the court may make an order for the preservation of the debtor's assets pending the making of a court order under sections 53, 54, or 56.

(3) An order to preserve the debtor's assets—

- (a) may be on the terms and conditions that the court thinks fit; and
- (b) is effective, unless the court states otherwise, from the time that the order is made.

Revocation of discharge

56.—(1) The court may, on the application of the Official Receiver or a creditor, and after notice to the debtor and a hearing, revoke a discharge under section 50.

(2) An application under subsection 56(1) must be made within one year after the discharge.

(3) The court may only revoke a discharge under this section if the court is satisfied that—

- (a) the discharge was obtained through the fraud of the debtor; or
- (b) the debtor knowingly or fraudulently failed to disclose income or property to the Official Receiver, where—
 - (i) such income was not protected income under section 9; or
 - (ii) such property was not protected property under sections 6 and 7,

and the applicant did not know of such fraud, or such fraudulent or knowing failure to disclose, until after discharge.

(4) The revocation of a discharge does not prejudice or affect the rights or remedies that any person other than the debtor would have had if the discharge had not been revoked.

(5) On revocation of a discharge under this section—

- (a) the debts that were cancelled under section 50 become again enforceable; and
- (b) the debtor becomes liable to pay any interest, fees and charges that may have accrued while the debt rehabilitation order was in effect, or after the debtor was discharged.

(6) On the hearing of an application to revoke a discharge, if the court finds that the grounds referred to in subsection (3) have not been established, the court must—

- (a) dismiss the objection; and
- (b) require the objecting creditor to pay incurred costs to the debtor, or such other amount as the court finds necessary.

Authorised intermediaries

57.—(1) The following may be prescribed by regulations—

- (a) rules, standards and guidelines regarding the carrying out of the role of authorised intermediaries in the operation of the debt rehabilitation order procedure;
- (b) matters relating to the authorisation, by the Minister or other government body, of a person, class of person, or organisation, to perform the functions of authorised intermediaries under this Part;
- (c) any of the following for the purposes of the authorisation, regulation, and supervision of authorised intermediaries, and the protection of debtors and creditors—
 - (i) requirements applicable to—
 - (A) the authorisation of persons, associations, councils, or organisations as authorised intermediaries; or
 - (B) the dealings of an authorised intermediary with the Ministry responsible for justice, the Official Receiver, and any other State or regulatory bodies.
 - (ii) requirements to be met by authorised intermediaries in the performance of their functions, in relation to, among others—
 - (A) the duty to serve the public interest;
 - (B) the duties owed to debtors and creditors under the debt rehabilitation order procedure;
 - (C) the professional and ethical conduct of authorised intermediaries;
 - (D) the duty of confidentiality owed to debtors and creditors;
 - (E) the duty to manage cases efficiently, justly, and proportionately;

- (F) the duty to avoid conflicts of interest.
- (iii) requirements as to qualifications of authorised intermediaries;
- (iv) requirements as to record-keeping;
- (v) requirements as to the handling of complaints made against authorised intermediaries; and
- (vi) any other requirements relating to the authorisation, supervision, or regulation of authorised intermediaries.

Debt rehabilitation order and Personal Insolvency Register

58. Matters relating to the recording of information relating to debt restructuring arrangements in the Personal Insolvency Register may be prescribed by regulations.

PART 6—BANKRUPTCY

Division 1—Bankruptcy Applications and Bankruptcy Orders

Debtor application for bankruptcy order

59.—(1) A debtor may make an application to court in accordance with this Division for a Bankruptcy Order to be made in respect of him or her.

(2) A debtor may make an application for a Bankruptcy Order only on the ground that the individual is unable to pay such debtor's debts as they become due.

Eligibility for debtor application for bankruptcy order

60.—(1) A debtor will be eligible for a Bankruptcy Order only when such debtor is domiciled in Fiji, or at any time within 3 years before the date of the making of the application for a Bankruptcy Order—

- (a) was ordinarily resident, or had a place of residence in Fiji; or
- (b) carried on business in Fiji, including through membership of a partnership or firm.

(2) A debtor will be eligible for a Bankruptcy Order only when such debtor has not made an application for a previous Bankruptcy Order at any time within 6 months before the date of the subsequent application.

(3) A debtor will be eligible for a Bankruptcy Order only when such debtor has not been discharged from a previous Bankruptcy Order at any time within 5 years before the date of the subsequent application.

Criteria for bankruptcy order on debtor application

61.—(1) A debtor's application for a Bankruptcy Order must include—

- (a) a statement of the debtor's financial affairs in accordance with section 12, in such form as may be prescribed by regulations; and
- (b) such other information as may be requested by the court.

(2) A debtor must notify the court if, at any time between the presentation of an application for a Bankruptcy Order and the court's decision regarding the making of a Bankruptcy Order—

- (a) the debtor becomes able to pay such debtor's debts as they become due; or
- (b) the debtor becomes aware that a bankruptcy petition has been presented to the court in relation to the debtor.

Making of bankruptcy order on debtor application

62.—(1) After receiving an application for a Bankruptcy Order, a court must decide within a period of 28 days whether—

- (a) the eligibility criteria of section 60 is met;
- (b) the debtor is unable to pay the debtor's debts as they become due;
- (c) a bankruptcy petition is pending in relation to the debtor at the date of the court decision; and
- (d) a Bankruptcy Order has been made in respect of any of the debts which are the subject of the application at the date of the court decision.

(2) After receiving an application for a Bankruptcy Order, a court may at any time request from the debtor any information that the court considers necessary for the purpose of deciding whether a Bankruptcy Order should be made.

(3) If the court is satisfied that the requirements of subsection (1) are met, the court must make a Bankruptcy Order in respect of the debtor.

(4) If the court is not satisfied that the requirements of subsection (1) are met, the court must refuse to make a Bankruptcy Order in respect of the debtor, and must give notice to the debtor—

- (a) of the reasons for the refusal; and
- (b) of the possibility of reviewing the decision under subsection (5).

(5) Where the court has refused to make a Bankruptcy Order, the debtor may request that the court review the decision, and on this review the court must—

- (a) confirm the refusal to make a Bankruptcy Order; or
- (b) make a Bankruptcy Order in respect of the debtor.

(6) Where the court makes a Bankruptcy Order, it must, as soon as reasonably practicable—

- (a) provide a copy of the Order to the debtor;
- (b) provide a copy of the Order to the Official Receiver; and
- (c) provide notice of the Order to each known creditor of the debtor.

(7) Where the court makes a Bankruptcy Order, the Official Receiver must cause such details of the Bankruptcy Order as may be prescribed by regulations, including the name, address and description of the bankrupt debtor, and the date of the order, to be—

- (a) published in the Personal Insolvency Register;
- (b) published in the Gazette; and
- (c) advertised in a newspaper published and circulating in Fiji.

(8) The date of the Bankruptcy Order, for the purposes of this Act, is the date of the commencement of the bankruptcy.

Petition for bankruptcy order

63.—(1) A party may apply for a Bankruptcy Order against a debtor in accordance with the provisions of this Part.

(2) A petition for a Bankruptcy Order against a debtor under this Part may be presented by—

- (a) a creditor;
- (b) creditors jointly where there are 2 or more creditors; or
- (c) the Official Receiver.

(3) The Official Receiver may petition for a Bankruptcy Order against a debtor—

- (a) where the court has made an order terminating a debt restructuring arrangement under section 35; or
- (b) through a request for the conversion of a debt rehabilitation order into a Bankruptcy Order under section 54.

Debtor conditions

64.—(1) A petition for a Bankruptcy Order against a debtor under section 63 may only be brought when such debtor meets the following criteria—

- (a) the debtor has monthly surplus income, in accordance with section 9, of at least \$1,000; and
- (b) the debtor has available property, excluding protected property in accordance with sections 6 and 7, worth at least \$10,000.

(2) A petition for a Bankruptcy Order against a debtor may only be brought when such debtor is domiciled in Fiji, or at any time within 3 years before the date of the making of the application for a Bankruptcy Order—

- (a) was ordinarily resident, or had a place of residence in Fiji; or
- (b) carried on business in Fiji, including through membership of a partnership or firm.

(3) The monetary amounts specified in subsection (1) may be varied by regulations.

Court powers for withdrawal, stay, or dismissal of bankruptcy petition

65.—(1) A bankruptcy petition must not be withdrawn without the leave of the court.

(2) When a bankruptcy petition is presented to the court, the court has a general power, if it appears to be appropriate to do so on the grounds that there has been a procedural irregularity or for any other reason —

- (a) to dismiss a bankruptcy petition; or
- (b) to stay proceedings on a bankruptcy petition, on such terms and conditions as it thinks fit.

(3) When a bankruptcy petition is presented to the court, and the court considers that it would be appropriate to allow the debtor to make a proposal for a debt restructuring arrangement, the court may —

- (a) stay proceedings on the bankruptcy petition; and
- (b) invite the debtor to present a debt protection application under Part 3.

(4) At any time after the presentation of a bankruptcy petition and before the making of a Bankruptcy Order —

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

(5) Where there is more than one petition for a Bankruptcy Order, and one petition has been stayed or adjourned by the court, the court may, if there is a good reason —

- (a) make a Bankruptcy Order on the application that has not been stayed or adjourned; and
- (b) dismiss the petition that has been stayed or adjourned on terms that the court thinks appropriate.

(6) Where a creditor's petition for a Bankruptcy Order relates to more than one debtor, the court may refuse to make an order in relation to one or more of the debtors without affecting the petition in relation to the remaining debtor or debtors.

Grounds of creditor petition

66.—(1) A creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented —

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds \$5,000;
- (b) the debt is for a liquidated sum;
- (c) the debt is payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain future time;

- (d) the debt, or each of the debts, is a debt in respect of which a pre-bankruptcy default has occurred; and
- (e) there is no outstanding application to set aside a bankruptcy notice in respect of the debt or any of the debts.

(2) The court may not make a Bankruptcy Order on the petition of a secured creditor unless the creditor has established that the amount of the debt exceeds the value of the charge by \$5,000 and—

- (a) the petition contains a statement by the secured creditor that it is willing, in the event of a Bankruptcy Order being made, to give up its security for the benefit of all the bankrupt debtors' creditors; or
- (b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by the secured creditor of the estimated value of the security at the date of the petition.

Bankruptcy notice and inability to pay

67.—(1) A bankruptcy notice under this Act must be in the form as may be prescribed by regulations, and must—

- (a) require the debtor, in relation to a debt owed to a petitioning creditor—
 - (i) to pay the debt, including any payable interest and costs;
 - (ii) to give security for the amount owing to the satisfaction of the petitioning creditor; or
 - (iii) to compound the debt to the satisfaction of the petitioning creditor;
- (b) must state the consequences of non-compliance with the notice; and
- (c) must be served on the debtor in Fiji, or with the court's permission, outside Fiji.

(2) A bankruptcy notice is not invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless—

- (a) the debtor notifies the creditor in writing that he disputes the validity of the notice because it overstates the amount actually owing; and
- (b) the debtor makes that notification within the time specified in the notice for the debtor to comply with the notice.

(3) For the purposes of section 66(1)(d), a pre-bankruptcy default has occurred in respect of a debt if, but only if, the conditions of subsections (4) or (5) are satisfied.

(4) The requirements of this subsection are that, where a debtor owes an included debt of an amount of \$5,000 or more to a petitioning creditor—

- (a) the petitioning creditor to whom the debt is owed has served on the debtor a bankruptcy notice;

- (b) at least 21 days have elapsed since the date on which the bankruptcy notice was served; and
 - (c) the bankruptcy notice has been neither—
 - (i) complied with; or
 - (ii) set aside in such manner as may be prescribed by regulations.
- (5) The requirements of this subsection are that—
- (a) a creditor has obtained a final judgment or final order against the debtor for an amount of \$5,000 or more; and
 - (b) execution or other process issued in respect of the debt has been returned unsatisfied in whole or in part.

Court decision on petition for bankruptcy order

68.—(1) On receiving a petition for a Bankruptcy Order, the court may make a Bankruptcy Order if it is satisfied that conditions under sections 63, 66 and 67 have been met.

(2) The court may dismiss the petition if it is satisfied that the debtor is able to pay all of such debtor's debts as they become due, or is satisfied that—

- (a) the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented;
- (b) the acceptance of that offer would have required the dismissal of the petition; and
- (c) the offer has been unreasonably refused.

(3) In determining for the purposes of subsection (2) whether the debtor is able to pay all of such debtor's debts as they become due, the court must take into account such debtor's contingent and prospective liabilities.

(4) Where the court makes a Bankruptcy Order, it must, as soon as reasonably practicable—

- (a) provide a copy of the order to the debtor;
- (b) provide a copy of the order to the Official Receiver; and
- (c) provide notice of the order to each known creditor of the debtor.

(5) Where the court makes a Bankruptcy Order, the Official Receiver must cause such details of the Bankruptcy Order as may be prescribed by regulations, including the name, address and description of the bankrupt debtor, the date of the Order, to be—

- (a) published in the Personal Insolvency Register;
- (b) published in the Gazette; and
- (c) advertised in a newspaper published and circulating in Fiji.

(6) The date of the Bankruptcy Order, for the purposes of this Act, is the date of the commencement of the bankruptcy.

Interim receiver

69.—(1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a petition and before the making of a Bankruptcy Order, appoint the Official Receiver to be interim receiver of the debtor's property.

(2) The court may make an order under subsection (1) at any time before it makes a Bankruptcy Order.

(3) As part of the order or, on the application of a creditor or the Official Receiver, subsequently, the court may authorise the Official Receiver to—

- (a) take possession of any property;
- (b) sell any perishable property or property the value of which is likely to significantly diminish if it is not immediately disposed of;
- (c) control the debtor's business or property as directed by the court; or
- (d) exercise, in relation to the debtor, any of the powers vested in the bankruptcy trustee by section 80 in relation to a debtor in respect of whom a Bankruptcy Order has been made.

(4) The court must confine the effect of an order for the Official Receiver's control of the debtor's property or business to what is necessary, in the court's opinion, for conserving the debtor's property.

(5) Where the court makes an order appointing an interim receiver, the Official Receiver must cause such details of the Order as may be prescribed by regulations to be—

- (a) published in the Personal Insolvency Register;
- (b) published in the Gazette; and
- (c) advertised in a newspaper published and circulating in Fiji.

(6) Where an interim receiver is appointed, section 71 applies for the period between the appointment and the making of a Bankruptcy Order on the petition, or the dismissal of the petition, as if the appointment were after the making of such an Order.

(7) Where an interim receiver is appointed, sections 121 and 122 must apply as if a Bankruptcy Order had been made against the debtor.

Division 2—Effect of Bankruptcy Order

Commencement of bankruptcy

70.—(1) The bankruptcy of a debtor in respect of whom a Bankruptcy Order has been made—

- (a) commences with the day on which the order is made; and
- (b) continues until the individual is discharged under this Part.

(2) Unless a Bankruptcy Order is the subject of an appeal—

- (a) no one may later assert that the making of the Bankruptcy Order was not valid or that a prerequisite for commencement was absent; and
- (b) the Bankruptcy Order is binding on every person.

Stay of proceedings and remedies

71.—(1) Subject to this section, after the making of a Bankruptcy Order, a creditor of the bankrupt debtor to whom a debt provable in the bankruptcy is owed—

- (a) has no remedy in respect of the debt; and
- (b) must not take any actions to—
 - (i) contact a bankrupt debtor regarding payment of a provable debt, otherwise than at the request of the debtor;
 - (ii) initiate or continue any legal proceedings against the bankrupt debtor in relation to a provable debt;
 - (iii) collect, secure, recover, or demand payment of a provable debt;
 - (iv) execute or enforce a judgment or order of a court or tribunal against the bankrupt debtor;
 - (v) obtain a warrant;
 - (vi) subject to subsection (4), recover goods of the type specified in section 6(4)(a) to (c) that are used by or in the possession of the bankrupt debtor;
 - (vii) obtain possession of a premises in which the bankrupt debtor is residing under a tenancy agreement into which the bankrupt debtor has entered with a relevant creditor, unless the requirements of subsection (3) are met; or
 - (viii) instruct an agent to take any of the actions mentioned in paragraphs (i) to (vii).

(2) During a bankruptcy, a court may exceptionally give permission for a creditor to take an action listed in subsection (1), where the court considers that—

- (a) exceptional circumstances mean that it is reasonable to allow the creditor to take the action; and
- (b) the action will not—
 - (i) cause undue detriment to the bankrupt debtor;
 - (ii) cause unfair prejudice to any other creditor; or
 - (iii) significantly undermine the objectives of the bankruptcy process.

(3) While a Bankruptcy Order is in effect in respect of a bankrupt debtor, a court may exceptionally give permission for a relevant creditor to obtain possession of a premise in which the bankrupt debtor is residing under a tenancy agreement into which the debtor has entered with the relevant creditor, only if—

- (a) the duration of the tenancy contract expires during the course of the bankruptcy;
- (b) the debtor owes arrears of rent to relevant creditor of an amount of more than 3 months of rent and the court considers that it is more likely than not that the debtor will be unable to repay the amount of these arrears over the duration of the debt rehabilitation order; and
- (c) an application of a relevant creditor to obtain possession of the premises is based on grounds other than the debtor's non-payment of rent.

(4) While a Bankruptcy Order is in effect in respect of a debtor, a court may exceptionally give permission for a lessor or owner of goods to terminate an agreement, including a hire-purchase agreement, by means of which a debtor has possession of goods of the type specified in section 6 (4)(a) to (c), where—

- (a) the debtor owes arrears under such agreement of an amount more than 3 monthly repayments, and the court considers that it is more likely than not that the debtor will be unable to maintain ongoing repayments over the course of the bankruptcy; or
- (b) an application of such lessor or owner to terminate such agreement, and to obtain possession of, or otherwise recover, the goods subject to the agreement, is based on grounds other than the debtor's default in making repayments under the agreement.

(5) While a Bankruptcy Order is in effect in respect of a debtor, a supplier of an essential good or service must not—

- (a) refuse to supply the good or service to a debtor, by reason of the debtor's default in paying charges due for the good or service in relation to a period before the commencement of the bankruptcy;
- (b) make it a condition of the supply of the good or service to a debtor, that payment be made of outstanding charges due for the good or service in relation to a period before the commencement of the bankruptcy; or
- (c) rely on an insolvency-related term of the agreement for the supply of the good or service, except with the prior, written consent of the bankruptcy trustee.

(6) The bankruptcy trustee may give consent under subsection (5)(c) where it is satisfied that the reliance on the insolvency related term serves the interests of the bankrupt debtor and creditors as a whole.

(7) The bankruptcy trustee is not liable in damages for declining to give consent under subsection (5)(c).

(8) Where, under subsections (5) and (6), a creditor has continued to supply a debtor with essential goods or services, the bankruptcy trustee must provide for payment to be made to the relevant creditor in respect of such continued supply, from the bankruptcy estate or the income of the bankrupt debtor.

(9) Subsection (1) does not affect the right of a secured creditor of the bankrupt debtor to enforce its security.

(10) Where any goods of a bankrupt debtor are held by any person by way of security —

- (a) the Official Receiver may, after giving notice in writing of the Official Receiver's intention to do so, inspect the goods; and
- (b) where such a notice has been given to any person, that person is not entitled, without leave of the court, to realise such person's security unless such person has given the bankruptcy trustee a reasonable opportunity of inspecting the goods and of exercising the bankrupt debtor's right of redemption.

(11) Subject to subsection (12), during the bankruptcy of a bankrupt debtor, no person may enforce a security over property of the bankrupt debtor, unless such person has first provided written notice to the bankruptcy trustee.

(12) Where, before the commencement of a bankruptcy, and by way of enforcement of a security a person entered into possession, assumed control of, held or exercised any other power in relation to property of the bankrupt debtor, nothing in subsection (1) and Division 7 prevents such person from performing or exercising a function or power in relation to the property.

(13) In accordance with sections 114 and 115, nothing in this section affects a creditor's entitlement to the benefit of any execution or other legal process or distress against a bankrupt debtor or property of the bankrupt debtor where the execution or other legal process or distress was completed at least 180 days before the making of the Bankruptcy Order, where —

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(14) Any action taken contrary to this section is null and void.

(15) Where a person has acquired an interest in property or any other right under a transaction with a creditor which arose from an action taken by a creditor or creditor's agent which was contrary to this section, the nullity of that action does not prejudice the rights of that person, where that person dealt with the creditor in good faith and for value.

Statement of financial affairs

72.—(1) After commencement of the bankruptcy, the bankrupt debtor must file with the Official Receiver a statement of the debtor's financial affairs in accordance with section 12, unless he or she has already filed a statement under section 61.

(2) Where no statement or, in the Official Receiver's view, no sufficient statement of financial affairs has been filed under section 61, the Official Receiver must, as soon as practicable after commencement of the bankruptcy, send to the bankrupt debtor a notice stating—

- (a) that the bankrupt debtor must file a statement in the prescribed form of the debtor's financial affairs; and
- (b) the time when the statement must be filed.

(3) The Official Receiver must send the notice to the address of the bankrupt debtor given in the petition for a Bankruptcy Order or the bankrupt debtor's last known address and the debtor's last known electronic mail address, if any.

(4) The bankrupt debtor must file the statement of the debtor's financial affairs with the Official Receiver within—

- (a) 21 days of commencement of the bankruptcy; or
- (b) after receiving the Official Receiver's notice under subsection (2).

(5) At any time after filing a statement of financial affairs with the Official Receiver, the bankrupt debtor may file additional or amended statements.

Meeting of creditors in exceptional cases

73.—(1) The Official Receiver may, after commencement of the bankruptcy, call a meeting of the bankrupt debtor's creditors, where the Official Receiver considers it appropriate—

- (a) in light of the exceptionally high value of assets potentially available for distribution to creditors in the case; or
- (b) due to the existence of any other circumstances that mean that the holding of a creditor's meeting will serve the proportionate and just resolution of the case.

(2) If the Official Receiver elects to call a meeting of creditors, the meeting must be called as soon as practicable after commencement of the bankruptcy and, unless there are special circumstances, not less than 5 weeks thereafter, by sending a notice of the time and place of the meeting by ordinary post and, if practicable, electronic mail to—

- (a) the debtor, at the debtor's last known physical and electronic mail address;
- (b) each creditor named in the statement of the debtor's financial affairs, at the physical and electronic mail address given in the statement of financial affairs or at any other address that the Official Receiver believes is the creditor's address; and
- (c) any other creditor known to the Official Receiver.

(3) A meeting of creditors must be conducted in accordance with the procedures set out in Schedule 1.

(4) The Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

(5) The Official Receiver must call a meeting if required to do so by majority in number and a majority of two thirds in value of the creditors who have proved their debts.

(6) A meeting of creditors and the resolutions passed at the meeting are valid even if some creditors did not receive the notice of the meeting, unless the court orders otherwise.

(7) For the purposes of subsection 6, a failure by the Official Receiver to satisfy the notice requirements in subsection (2) may constitute grounds for invalidating a resolution of the creditors' meeting.

Public examination of bankrupt in exceptional cases

74.—(1) Where a Bankruptcy Order has been made, the Official Receiver or bankruptcy trustee may at any time before the discharge of the bankrupt debtor apply to the court for the public examination of the bankrupt, where the Official Receiver or bankruptcy trustee considers it necessary due to the exceptionally high value of assets potentially available for distribution to creditors in the case, and—

- (a) there is a material inaccuracy in the statement of the debtor's financial affairs, which ought to be questioned in public; or
- (b) the bankrupt debtor has knowingly or fraudulently failed to comply, in a material respect, with the obligations of debtors under sections 11, 72, 92 or 93, or any other relevant provision of this Act.

(2) On an application under subsection (1), the court must direct that a public examination of the bankrupt debtor must be held on a day appointed by the court; and the bankrupt debtor must attend on that day and be publicly examined as to such debtor's financial affairs, dealings and property.

(3) The following persons may take part in the public examination of the bankrupt debtor and may question such debtor concerning such debtor's financial affairs, dealings and property, namely—

- (a) the Official Receiver;
- (b) the bankruptcy trustee, if such trustee's appointment has taken effect; and
- (c) any creditor of the bankrupt debtor who has submitted a proof in the bankruptcy.

(4) If a bankrupt debtor without reasonable excuse fails at any time to attend such debtor's public examination under this section, the court may, for the purpose of bringing that person and anything in such debtor's possession before the court, cause a warrant to be issued to a police officer or relevant officer of the court—

- (a) for the arrest of the bankrupt debtor to attend before the court, which must occur as soon as possible; and

(b) for the seizure of any books, money, or goods in the bankrupt debtor's possession.

(5) The court may authorise anything seized under such a warrant to be held, until the bankrupt debtor is brought before the court under the warrant or until such other time as the court may order.

(6) Under this section, the court may also, on the application of the Official Receiver or the bankruptcy trustee, summon to appear before it —

- (a) the spouse or former spouse of the bankrupt debtor;
- (b) any person known or believed to have any property comprised in the bankruptcy estate in such person's possession;
- (c) any person known or believed to be indebted to the bankrupt debtor; and
- (d) any person appearing to the court to be able to give information concerning the bankrupt debtor or the dealings, affairs, or property of the bankrupt debtor.

(7) Where the court has summoned a person to appear before it under subsection (6), the provisions of this section apply to such person as if such person is a bankrupt debtor.

(8) Where it appears to the court, on consideration of any evidence obtained under this section, that any person has in such person's possession any property comprised in the bankruptcy estate, the court may, on the application of the Official Receiver or the bankruptcy trustee, order that person to deliver such property to the Official Receiver or the bankruptcy trustee at such time, in such manner, and on such conditions as the court sees fit.

(9) Where it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the bankrupt debtor, the court may, on the application of the Official Receiver or the bankruptcy trustee, order that person to pay to the Official Receiver or the bankruptcy trustee at such time, in such manner, and on such conditions as the court sees fit, the whole or part of the amount due.

Division 3—Appointment of Official Receiver and bankruptcy trustee

Official Receiver becomes bankruptcy trustee

75.—(1) On the making of a Bankruptcy Order, the Official Receiver becomes trustee of the property of the bankrupt debtor (the “bankruptcy trustee”), unless the court appoints another person under subsection (2).

(2) If, when the Bankruptcy Order is made, there is a personal insolvency administrator of a debt restructuring arrangement in respect of the debtor under Part 4, the court may on making the Bankruptcy Order appoint the personal insolvency administrator of the arrangement as bankruptcy trustee.

(3) Matters relating to the authorisation, by the Minister or other government body, of a person or class of persons, to perform the functions of bankruptcy trustee under this Part may be prescribed by regulations.

(4) On an application to court by a creditor of the bankrupt debtor, the court must confirm the appointment of the bankruptcy trustee unless the court considers that—

- (a) the appointment has not been made in by a majority in value of the creditors voting;
- (b) the person appointed is not fit to act as trustee;
- (c) the person does not satisfy such qualifications as may be prescribed by regulations; or
- (d) the relationship between the person and the bankrupt debtor, the property of the bankrupt debtor, or the creditor makes it difficult for the person to act with impartiality and in furtherance of the goals of the bankruptcy process.

(5) On approving an application for the appointment of a person as bankruptcy trustee under subsection (4), the court must issue a certificate confirming this person's appointment.

(6) The appointment of a bankruptcy trustee must take effect as from the date of the certificate.

Removal of trustee and vacation of office

77.—(1) Under this section, a person other than the Official Receiver who has been appointed as bankruptcy trustee may be removed from office.

(2) A bankruptcy trustee may be removed only by—

- (a) an order of the court; or
- (b) by a resolution of a majority in value of creditors specially for the purpose of removing a trustee.

(3) Where the creditors of the bankrupt debtor decide to remove a bankruptcy trustee, they may appoint another person as Trustee in his or her place, in accordance with section 76.

(4) Where the decision to remove a bankruptcy trustee is made under subsection (3), the decision does not take effect until the creditors of the bankrupt debtor appoint another person as trustee in his or her place.

(5) Where the bankruptcy trustee is a person other than the Official Receiver, the bankruptcy trustee must vacate office if such trustee—

- (a) ceases to be a fit person in accordance with section 76; or
- (b) ceases to satisfy any qualifications prescribed by regulations.

(6) On an application by a bankrupt debtor, a creditor, or the Official Receiver, the court can remove a trustee on the grounds of misconduct or neglect of duty.

(7) The bankruptcy trustee may resign the trustee's office by giving notice of his or her resignation to the court and the Official Receiver.

(8) The bankruptcy trustee must vacate office if the Bankruptcy Order is annulled.

(9) During any vacancy in the office of bankruptcy trustee, the Official Receiver must act as bankruptcy trustee.

Release of trustee

78.—(1) Where the Official Receiver has ceased to be the bankruptcy trustee and a person is appointed in his or her stead, the Official Receiver is released from the functions and duties of bankruptcy trustee with effect from the time at which the court issues a certificate of the appointment of a bankruptcy trustee under section 76.

(2) If the Official Receiver while being the trustee gives notice to the court that the administration of the bankruptcy estate is for practical purposes complete, the Official Receiver is released from the functions and duties of the bankruptcy trustee with effect from such time as the court may determine.

(3) A person other than the Official Receiver who has ceased to be the bankruptcy trustee is released from the functions and duties of the bankruptcy trustee with effect from the following time, that is to say—

(a) in the following cases, the time at which notice is given to the court and Official Receiver that that person has ceased to hold office—

- (i) the person has been removed from office by a decision of the bankrupt's creditors under section 77 and the creditors have not decided against such person's release;
- (ii) the person has resigned under section 77(7); or
- (iii) the person has died; and

(b) in the following cases, such time as the court may, on an application by the person, determine—

- (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have decided against such person's release;
- (ii) the person has vacated office under section 77(5); or
- (iii) the person has been removed from office by the court.

(4) Where the person is removed from office by a decision of the bankrupt debtor's creditors, any decision of the bankrupt debtor's creditors as to whether the person should be released from the functions and duties of the bankruptcy trustee must be made by a resolution of a majority in value of creditors.

(5) Where a Bankruptcy Order is annulled, the bankruptcy trustee at the time of the annulment is released from the functions and duties of the bankruptcy trustee with effect from such time as the court may determine.

(6) Where the Official Receiver or the bankruptcy trustee is released from the functions and duties of the bankruptcy trustee under this section, such person is, with effect from the time specified in the preceding provisions of this section, discharged from all liability.

Division 4—Functions and Duties of bankruptcy trustee

General functions and official title of bankruptcy trustee

79.—(1) This Division applies in relation to any bankruptcy where either—

- (a) the appointment of a person as bankruptcy trustee takes effect; or
- (b) the Official Receiver becomes bankruptcy trustee.

(2) The function of the bankruptcy trustee is to get in, realise and distribute the bankruptcy estate in accordance with the following provisions of this Part, and in the carrying out of that function and in the management of the bankruptcy estate the bankruptcy trustee is entitled, subject to those provisions, to use his or her own discretion.

(3) It is the duty of the bankruptcy trustee, if he or she is not the Official Receiver—

- (a) to furnish the Official Receiver with such information;
- (b) to produce to the Official Receiver, and permit inspection by the Official Receiver of, such books; and
- (c) to give the Official Receiver such other assistance,

as the Official Receiver may reasonably require for the purpose of enabling the Official Receiver to carry out the Official Receiver’s functions and duties in relation to the bankruptcy.

(4) The official name of a bankruptcy trustee is “The trustee of the property of (inserting the name of the bankrupt debtor)”, and by that name the bankruptcy trustee may, in any part of Fiji or elsewhere—

- (a) hold property of every description;
- (b) make contracts;
- (c) sue and be sued;
- (d) enter into any engagements binding on such trustee, and such trustee’s successors in office;
- (e) employ an agent;
- (f) execute any power of attorney, deed or other instrument; and
- (g) do all other acts necessary or expedient to be done in the execution of such trustee’s office.

Powers of bankruptcy trustee

80. The bankruptcy trustee may exercise any of the powers specified in this section—

- (a) power to carry on any business of the bankrupt debtor so far as may be necessary for winding it up beneficially and so far as the bankruptcy trustee is able to do so without contravening any requirement imposed by or under any enactment;
- (b) power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankruptcy estate;
- (c) power to accept as the consideration for the sale of any property comprised in the bankruptcy estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit;
- (d) power to mortgage or pledge any part of the property comprised in the bankruptcy estate for the purpose of raising money for the payment of the bankrupt debtor's debts;
- (e) power, where any right, option or other power forms part of the bankruptcy estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power;
- (f) power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy;
- (g) power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankruptcy estate made or capable of being made on the bankruptcy trustee by any person;
- (h) power to sell any part of the property for the time being comprised in the bankruptcy estate, including the goodwill and book debts of any business;
- (i) power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt debtor and any person who may have incurred any liability to the bankrupt debtor;
- (j) power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankruptcy estate made or capable of being made by the bankruptcy trustee on any person;
- (k) power to give receipts for any money received by the bankruptcy trustee, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application;

- (l) power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt debtor as are comprised in his estate; and
- (m) power to exercise in relation to any property comprised in the bankruptcy estate any powers which is vested in the bankruptcy trustee under this Part.

Creditors' committee in cases where the Official Receiver is not the bankruptcy trustee

81.—(1) Subject to subsection (2), a bankrupt debtor's creditors may, in accordance with Schedule 2 and as may be prescribed by regulations, establish a committee (known as "the creditors' committee") to exercise the functions conferred on it by or under this Act.

(2) The bankrupt debtor's creditors must not establish such a committee, or confer any functions on such a committee, at any time when the Official Receiver is the bankruptcy trustee.

Court review of action of bankruptcy trustee

82.—(1) If a bankrupt debtor or any of such debtor's creditors or any other person is dissatisfied by any act, omission or decision of a bankruptcy trustee, he or she may apply to the court.

(2) On an application under subsection (1) the court may —

- (a) confirm, reverse or modify any act or decision of the bankruptcy trustee;
- (b) may give the bankruptcy trustee directions; or
- (c) may make such other order as it thinks fit.

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

Trustee remuneration, expenses, and costs

83.—(1) The bankruptcy trustee may charge remuneration for carrying out functions and duties and exercising powers as bankruptcy trustee at the amount or rates —

- (a) fixed by the court;
- (b) prescribed by regulations; or
- (c) charged according to rates prescribed by regulation.

(2) All bills and charges of legal practitioners, managers, accountants, auctioneers, brokers, and other persons, not being trustees, must be taxed by such officer as may be prescribed by regulations, and no payments may be allowed in the trustee's accounts without proof of such taxation having been made.

(3) Subject to such procedure as may be prescribed by regulations, before passing such bills and charges, the taxing officer must be satisfied that the employment of such legal practitioners and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(4) The sanction referred to in subsection (3) must be obtained before the employment, except in case of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Trustee to maintain accounts and provide information

84.—(1) Whenever required by any creditor to do so, the bankruptcy trustee—

- (a) must provide the creditor with a list of the creditors in the bankruptcy showing the amount of the debt due to each creditor; and
- (b) is entitled to charge for such list the sum of \$11.50, or such other sum as may be prescribed by regulations.

(2) Whenever requested by a resolution of the majority in value of creditors, the bankruptcy trustee—

- (a) must provide any requesting creditor with a statement of the accounts up to the date of such request; and
- (b) is entitled to charge for the provision of such accounts the sum of \$11.50, or such other sum as may be prescribed by regulations, which may be repaid to any requesting creditor from the bankruptcy estate if the court so directs.

(3) The bankruptcy trustee must maintain proper books in such manner as may be prescribed by regulations.

(4) Any creditor of the bankrupt debtor, subject to the control of the court, may inspect any books maintained under subsection (3).

(5) Where the bankruptcy trustee is a person other than the Official Receiver, the bankruptcy trustee must from time to time, as may be prescribed by regulations, and not less than once in every period of 90 days during the continuance of the bankruptcy, transmit to the Official Receiver a statement showing the proceedings in the bankruptcy up to the date of the statement.

(6) Particulars to be included in the bankruptcy trustee's statement under subsection (5), and the form of such statement may be prescribed by regulations.

(7) The Official Receiver—

- (a) must examine the statements transmitted under subsection (5);
- (b) must call the bankruptcy trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his or her accounts or otherwise; and
- (c) may require the bankruptcy trustee to make good any loss which the bankruptcy estate may have sustained by the misfeasance, neglect or omission.

Audit of bankruptcy trustee accounts

85.—(1) Where the bankruptcy trustee is a person other than the Official Receiver, such trustee must, at such times as may be prescribed by regulations or ordered by a court, but not less than twice in each year during such trustee's tenure of office, send to the Official Receiver an account of his or her receipts and payments as trustee.

(2) The account must—

- (a) be in a form prescribed by regulations or ordered by a court; and
- (b) be verified by affidavit in such manner as may be prescribed by regulations.

(3) The Official Receiver may cause the accounts so sent to be audited, if considered necessary for the proportionate and just resolution of the case.

(4) For the purposes of an audit under subsection (3), the bankruptcy trustee must furnish the auditor with such information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

(5) When any such account has been audited, a copy must be filed and kept by the Official Receiver, and another copy must be filed with the court, and each copy must be open to the inspection by a creditor, the bankrupt debtor, or any person interested.

(6) The costs of any auditing of accounts under subsection (3) constitute expenses of the bankruptcy for the purposes of section 10.

Trustee bank account

86.—(1) The bankruptcy trustee must have a bank account and pay into that account all money that such trustee receives in that capacity.

(2) Matters regarding the payment of funds into a bank account by the bankruptcy trustee may be prescribed by regulations.

(3) The bankruptcy trustee may invest money that is not immediately required to be paid out in the administration of an estate in an investment of a type approved by the Permanent Secretary, and must credit to that estate the interest or dividends that accrue on the investment.

(4) The bankruptcy trustee must not pay any sums received by him or her as bankruptcy trustee into such trustee's private banking account.

(5) Where a final distribution of proceeds of realisation of property is made in a bankruptcy, and any such proceeds remain unclaimed—

- (a) for more than 6 months from the date on which the distribution is made; or
- (b) if earlier, at the time at which an order of discharge is made under section 121 in respect of the bankruptcy,

the bankruptcy trustee, must surrender those proceeds to the Official Receiver.

(6) A bankruptcy trustee is entitled to a certificate issued by the Official Receiver in respect of a surrender under subsection (5), which is an effectual discharge to the bankruptcy trustee.

Division 5—Debts in Bankruptcy

Debts provable in bankruptcy

87.—(1) Subject to subsections (2) and (3), a provable debt is any debt that a creditor may prove in a bankruptcy and that a bankrupt debtor owes—

- (a) at the commencement of the bankruptcy; or

(b) after commencement but before discharge,

by reason of an obligation incurred by the bankrupt debtor before commencement of the bankruptcy.

(2) Only debts defined as included debts under section 8 are provable in a bankruptcy.

(3) A debt defined as an excluded debt under section 8 is not provable in a bankruptcy.

(4) In determining for the purposes of any provision in this Part whether any liability in tort is a provable debt, the bankrupt debtor is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(5) In this Part, except in so far as the context otherwise requires, “liability” means, subject to subsection (1), a liability to pay money or money’s worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution.

Mutual credit and set-off

88.—(1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt debtor and any creditor of the bankrupt debtor proving or claiming to prove for a debt provable in bankruptcy.

(2) An account must be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party must be set off against the sums due from the other.

(3) Sums due from the bankrupt debtor to another party must not be included in the account taken under subsection (2) if that other party had notice at the time they became due that proceedings on a Bankruptcy application relating to the bankrupt debtor were ongoing or that a Bankruptcy petition relating to the bankrupt debtor was pending.

(4) Only the balance, if any, of the account taken under subsection (2) is—

(a) provable as a debt in the bankruptcy; or

(b) to be paid to the bankruptcy trustee as part of the bankruptcy estate.

Proof of debt

89.—(1) A creditor wishing to vote or claim a distribution in respect of a debt, or for such other purposes as may be prescribed by regulations, must submit a proof of debt unless this Act or any regulation made thereunder provides otherwise, or a court orders otherwise.

(2) Where a debt provable in bankruptcy bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The bankruptcy trustee must estimate the value of any debt provable in bankruptcy which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a debt provable in bankruptcy is estimated by the bankruptcy trustee under subsection (3), the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

(5) Interest up to, but excluding, the commencement of bankruptcy, on debts referred to in section 87(1), is provable, and is calculated in such manner as may be prescribed by regulations.

(6) A proof of debt —

- (a) is to be invited in such manner and at such times or on such occasions as may be prescribed by regulations;
- (b) is, in such circumstances as may be prescribed by regulations, to be deemed to have been submitted;
- (c) is to be submitted in such manner and within such period as may be prescribed by regulations; and
- (d) must comply with such other requirements, including as to its content, as may be prescribed by regulations.

(7) A secured creditor holding a fixed security over property of the bankruptcy estate may —

- (a) rely on the security, while leaving the property in the possession or control of the bankruptcy trustee;
- (b) enforce the security, where the secured creditor is entitled to do so;
- (c) surrender the property subject to the security to the bankruptcy trustee for the benefit of the creditors as a whole and prove a claim as an unsecured creditor for the whole debt; or
- (d) prove a claim under which the secured creditor expresses that its proof of claim is made in respect of the unsecured part of the debt, provided that the secured creditor also provides, in such manner as may be prescribed by regulations, a statement of the estimated value of the secured part of the debt at the date of the petition or application for bankruptcy.

(8) A secured creditor who exercises the option referred to in subsection (6)(b) must account to the bankruptcy trustee for any surplus remaining from the net amount realised, after —

- (a) satisfaction of any debt owing to the grantee of any fixed security over any part of the property that ranks prior to the secured creditor's fixed security, determined as at the commencement of the Bankruptcy; and
- (b) satisfaction of the full amount of the debt, determined as at the commencement of the Bankruptcy.

(9) Where the bankruptcy trustee considers it necessary, a bankruptcy trustee may by written notice require a secured creditor within 20 working days after receiving the written notice—

- (a) to exercise the option referred to in subsections (6)(b) to (d); and
- (b) if the creditor elects to exercise the option referred to in subsection (6)(b), to do so within that period.

(10) A secured creditor on whom notice has been served under subsection (8) who fails to comply with the notice—

- (a) is to be taken as having surrendered the property subject to the security to the bankruptcy trustee for the benefit of the creditors as a whole; and
- (b) may claim as an unsecured creditor for the whole debt.

(11) In a case falling within subsection (6)(d), the secured and unsecured parts of the debt are to be treated as separate debts.

(12) Proofs of debt may be admitted or rejected, in whole or in part, in such manner, within such period and with such requirements for notice of admission or rejection as may be prescribed by regulations.

(13) A debt is proved when a decision is made to admit a proof of debt under subsection (5) with respect to it.

(14) Where an interested person is dissatisfied with a decision to admit or reject a proof of debt, in whole or in part, that person may appeal against the decision in such manner, within such period and with such requirements for notice of intention to appeal as may be prescribed by regulations.

(15) A creditor may be required to produce documents supporting a proof of debt, subject to such conditions and in such manner as may be prescribed by regulations.

(16) Inspection of proofs of debt may be allowed, by such persons, in such manner and at such times and places as may be prescribed by regulations.

(17) Unless the court orders otherwise, a creditor must bear the costs of proving its debt.

(18) Any person is guilty of an offence, who—

- (a) makes, or authorises the making of, a proof of debt that is false or misleading in a material respect, knowing it to be false or misleading; or
- (b) omits, or authorises an omission from, a proof of debt any fact or matter, knowing that the omission makes the proof of debt false or misleading in a material particular.

Priority of debts

90. The distribution of the bankruptcy estate must take place in accordance with the provisions of sections 115 to 120.

Division 6—Obligation of debtor in bankruptcy

Obligations of bankrupt debtor

91. A bankrupt debtor in respect of whom a Bankruptcy Order has been made is subject to the obligations of debtors under personal insolvency procedures under section 11.

Obligations of debtor as to discovery and realisation of property

92.—(1) In addition to the obligations specified in section 11, a bankrupt debtor in respect of whom a Bankruptcy Order has been made must, as is reasonably possible, aid in the realisation of the bankrupt debtor's property and the distribution of the proceeds amongst the bankrupt debtor's creditors and must—

- (a) attend before the bankruptcy trustee whenever called upon to do so, and, if required to do so by the bankruptcy trustee, verify any statement by affidavit;
- (b) execute such power of attorney, transfer or instrument, in relation to such debtor's property and the distribution of the proceeds amongst such debtor's creditors, as are required by the bankruptcy trustee;
- (c) deliver on demand any of such debtor's property that is divisible amongst such debtor's creditors and is under his or her possession or control to the bankruptcy trustee; and
- (d) deliver on demand to the bankruptcy trustee any property that is acquired by him or her before discharge.

(2) A bankrupt debtor must, even after discharge from bankruptcy, continue to cooperate with any request that the bankruptcy trustee may reasonably require for the purposes of carrying out the necessary functions and duties of the trustee under this Act.

Financial information

93.—(1) The bankrupt debtor must provide the bankruptcy trustee with the information and details that are reasonably necessary to prepare a statement of the financial position of the debtor's estate.

(2) Where the debtor had been carrying on business in the period immediately before the commencement, the bankruptcy trustee may, where the trustee considers it a necessary and proportionate use of resources, may require the bankrupt debtor to assist in the preparation of full, true, and detailed accounts and statements of the bankrupt debtor's financial position, showing details of—

- (a) the bankrupt debtor's trading and stocktaking; and
- (b) the bankrupt debtor's profit and losses during any period in the 3 years before the commencement.

(3) Where required by the bankruptcy trustee, the bankrupt debtor must, within a reasonable time following a request from the bankruptcy trustee, prepare and provide to the bankruptcy trustee, to the extent possible, details necessary to prepare the accounts and statements specified in subsection (2).

(4) For the bankrupt debtor to prepare the accounts and statements referred to in subsection (2)—

- (a) the bankruptcy trustee must give the debtor full access to the bankrupt debtor's books in the bankruptcy trustee's possession; and
- (b) where the bankruptcy trustee thinks it necessary, the bankrupt debtor must be assisted by an accountant at the expense of the bankruptcy estate.

Division 7—Property of Debtor in Bankruptcy

Description of bankruptcy estate

94.—(1) The property of the bankrupt debtor divisible amongst such debtor's creditors, and in this Act referred to as the bankruptcy estate, does not comprise any property specified as protected property in accordance with sections 6 and 7.

(2) Subject to subsection (1), the bankruptcy estate comprises—

- (a) all property belonging to or vested in the bankrupt debtor at the commencement of the Bankruptcy; and
- (b) any property which, by virtue of any of the following provisions of this Division, forms part of that estate or is treated as forming part of that estate.

(3) In this Division, property, in relation to the bankrupt debtor, includes reference to any power exercisable by the bankrupt debtor over or in respect of property in or outside Fiji for the bankrupt debtor's own benefit.

(4) For the purposes of this Division, property that forms part of the bankruptcy estate—

- (a) does so subject to the rights of any person other than the bankrupt debtor; and
- (b) subject to section 71, a secured creditor may take possession of and realise and otherwise deal with property over which such secured creditor has a security, disregarding any rights the secured creditor has given up under section 66 and any rights that have otherwise been given up in accordance with section 87 or in such manner as may be prescribed by regulations.

(5) This section applies to any other enactment under which any property is to be excluded from a bankrupt debtor's estate.

Vesting of property in bankruptcy trustee

95.—(1) Until a bankruptcy trustee is appointed—

- (a) the Official Receiver, in accordance with section 75, is the bankruptcy trustee for the purposes of this Act; and
- (b) immediately on a Bankruptcy Order being made, the bankruptcy estate vests in the Official Receiver.

(2) On the appointment of a person other than the Official Receiver as bankruptcy trustee—

- (a) the bankruptcy Estate vests immediately in the bankruptcy trustee appointed; and
- (b) the Official Receiver must transfer to the bankruptcy trustee a copy of all files, documents and records in its possession prepared or created in the course of the administration of the bankruptcy estate.

(3) Where any property which is, or is to be, comprised in the bankruptcy estate vests in the Official Receiver, whether under this section or under any other provision of this Division, it so vests without any conveyance, assignment or transfer.

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

After-acquired property

96.—(1) Subject to sections 6, 7, 94 and 109, between the commencement of the bankruptcy and the discharge of the debtor, all property, excluding protected property, that the bankrupt debtor acquires or that passes to the bankrupt debtor constitutes after-acquired property.

(2) All after-acquired property vests in the bankruptcy trustee.

(3) The powers that the bankrupt debtor could have exercised in, over, or in respect of after-acquired property for the bankrupt debtor's own benefit vest in the bankruptcy trustee.

(4) For the avoidance of doubt—

- (a) income of the bankrupt debtor does not constitute after-acquired property; and
- (b) income of the bankrupt debtor may only be claimed for the bankruptcy estate through a—
 - (i) debt repayment order in accordance with section 105; or
 - (ii) debt repayment agreement in accordance with section 106.

Possession of property by trustee

97.—(1) The bankruptcy trustee must, as soon as may be practicable, take possession of books which relate to the property or affairs of the bankrupt debtor, which—

- (a) belong to the bankrupt debtor; or
- (b) are in such debtor's possession or under such debtor's control.

(2) The bankruptcy trustee must, in relation to and for the purpose of acquiring or retaining possession of the bankruptcy state, be in the same position as if he or she were a receiver of the property appointed by the court, and the court may, on his or her application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankruptcy estate consists of stock or shares in a company, shares in a ship, or any other property transferable in the books of any company, office, or person, the bankruptcy trustee may exercise the right to transfer the property to the same extent as the bankrupt debtor might have exercised if he or she had not become bankrupt.

(4) Where any part of the bankruptcy estate consists of things in action—

- (a) such things are deemed to have been duly assigned to the bankruptcy trustee; and
- (b) notice of the deemed assignment need not be given except in so far as it is necessary, in case where the deemed assignment is from the bankrupt debtor, for protecting the priority of the bankruptcy trustee.

(5) Any banker or agent of the bankrupt debtor or any other person who holds any property to the account of, or for, the bankrupt debtor must pay or deliver to the trustee—

- (a) all property in the possession or under the control of such person that forms part of the bankruptcy estate; and
- (b) which such person is not by law entitled to retain as against the bankrupt debtor or bankruptcy trustee.

(6) If any of the following is in possession of any property or books of which the bankruptcy trustee is required to take possession, namely—

- (a) the Official Receiver;
- (b) a person who has ceased to be trustee of the bankruptcy estate; or
- (c) a person who has been the personal insolvency administrator of a debt restructuring arrangement approved in relation to the bankrupt debtor under Part 4,

that person must deliver possession of the property or books to the bankruptcy trustee.

(7) If any person without reasonable excuse fails to comply with any obligation imposed by this section, such person is guilty of a contempt of court and liable to be punished accordingly, in addition to any other punishment to which such person may be subject.

Seizure of property of bankrupt debtor

98.—(1)—At any time after a Bankruptcy Order has been made, the court may, on the application of the Official Receiver or the bankruptcy trustee, issue a warrant authorising the Official Receiver, the bankruptcy trustee, or an agent of such parties as authorised by the court, to seize any property comprised in the bankruptcy estate, or any books relating to the bankruptcy estate which are, in the possession or under the control of the bankrupt debtor or any other person who is required to deliver the property or books, to the bankruptcy trustee.

(2) A warrant issued under subsection (1) may direct that the bankruptcy trustee be provided with reasonable access to the physical and electronic mail of the bankrupt debtor, where required for the performance of the functions of the bankruptcy trustee and the administration of the bankruptcy estate.

(3) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankruptcy estate or any books relating to the bankruptcy estate, break open—

- (a) any premises where the bankrupt debtor or anything that may be seized under the warrant is or is believed to be; and
- (b) any receptacle of the bankrupt debtor that contains or is believed to contain anything that may be so seized.

(4) If, after a Bankruptcy Order has been made, the court is satisfied that any property comprised in the bankruptcy estate, or any books relating to the bankruptcy estate are concealed in any premises not belonging to the bankrupt debtor, it may issue a warrant authorising any police officer or officer of the court to assist the bankruptcy trustee to search those premises for the property or books, papers.

(5) A warrant under subsection (4) must not be executed except in accordance with its terms.

(6) Matters relating to the execution of a warrant issued under subsection (4) may be prescribed by regulations.

Disclaimer of onerous property

99.—(1) Subject to this section, the bankruptcy trustee may, by giving of notice, at any time within 12 months after the appointment of the trustee, disclaim any onerous property.

(2) The following is onerous property for the purposes of this section—

- (a) any unprofitable contract; and
- (b) any other property comprised in the bankruptcy estate that is unsaleable, or not readily saleable, or such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A court, where it is satisfied that the bankruptcy trustee has not acted with unreasonable delay, may extend beyond 12 months the period within which the bankruptcy trustee may give notice and disclaim onerous property under subsection (1).

(4) A disclaimer of onerous property under this section—

- (a) operates to determine, as from the date of the disclaimer, the rights, interests, and liabilities of the bankrupt debtor and the bankruptcy estate in or in respect of the property disclaimed; and
- (b) discharges the bankruptcy trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him or her.

(5) A disclaimer of onerous property under this section does not, except so far as is necessary for the purpose of releasing the bankrupt debtor and the bankruptcy estate and the bankruptcy trustee from liability, affect the rights or liabilities of any other person.

(6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt debtor to the extent of the loss or damage and accordingly may prove for the loss or damage as a debt provable in the bankruptcy.

(7) The bankruptcy trustee must not disclaim any property if—

- (a) a person interested in the property has applied in writing to a trustee requiring the trustee to decide whether he or she will disclaim the property or not; and
- (b) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given by the trustee in respect of that property.

(8) The bankruptcy trustee is deemed to have adopted any contract which by virtue of subsection (7) he or she is not entitled to disclaim.

(9) A bankruptcy trustee is not be entitled to disclaim a lease unless a copy of the disclaimer has been served on every person claiming under the bankrupt debtor as under lessee or mortgagee and either—

- (a) no application has been made for a court order vesting the lease in such person under section 100; or
- (b) where such application has been made, the court directs that the disclaimer is to take effect.

(10) Where a court grants an order for the disclaimer of a lease under subsection (9)(b), the court may impose such terms, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

(11) A bankruptcy trustee is not entitled to disclaim any property in a dwelling house unless a copy of the disclaimer has been served on every person in occupation or claiming a right to occupy the dwelling house and either—

- (a) no application has been made for a court order vesting the lease in such person under section 100; or
- (b) where such application has been made, the court directs that the disclaimer is to take effect.

(12) A bankruptcy trustee may not disclaim onerous property where the onerous property presents an imminent and serious risk to public health or public safety, or involves an environmental liability.

Vesting orders for disclaimed property

100.—(1) This section applies where the bankruptcy trustee has disclaimed property under section 99.

(2) An application may be made to the court under this section by—

- (a) any person who claims an interest in the disclaimed property;

- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer; or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy application was made or, as the case may be, the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject to this section, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person;
- (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person; or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy application was made or, as the case may be, the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The court must not make an order by virtue of subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section must be taken into account in assessing for the purposes of section 99(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

(7) Provided that where the property disclaimed is of a leasehold nature, the court must not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

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

(8) Where subsection (7) applies and no person is willing to accept an order under this section on the terms required, the court may, by order—

- (a) vest the estate or interest of the bankrupt debtor in the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the bankrupt debtor, to perform the lessee's covenants in the lease; and

- (b) vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the bankrupt debtor.

Power to allow debtor to manage property

101.—(1) The bankruptcy trustee, with permission of the court or when a resolution of a majority in value of creditors so authorises, may appoint the bankrupt debtor himself or herself—

- (a) to superintend the management of the bankruptcy estate or of any part thereof; or
- (b) to carry on the trade, if any, of the bankrupt debtor for the benefit of creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the bankruptcy trustee may direct,

where the bankruptcy trustee considers that so doing does not harm the interest of the creditors as a whole.

(2) Where a bankruptcy trustee has sought the permission of the court under subsection (1), the court must grant such permission only where it is satisfied that so doing does not harm the interests of the creditors as a whole.

Goods on hire purchase

102.—(1) Where—

- (a) before commencement of the bankruptcy, the bankrupt debtor had use or possession of goods under an agreement, including hire purchase agreement; and
- (b) a creditor—
 - (i) took possession of the goods within 21 days before commencement of the Bankruptcy, and after commencement still possesses them; or
 - (ii) takes possession of the goods after commencement, subject to section 71,

the creditor must not sell or dispose of the goods or part with possession of them, except for storage or repair, until 28 days after the date of commencement of the Bankruptcy, unless the bankruptcy trustee consents in writing to the creditor selling or disposing or parting with possession of the goods before the expiry of that period.

(2) The bankruptcy trustee may, notwithstanding any provision of the hire purchase agreement—

- (a) within a period of 28 days from the date of the commencement of the Bankruptcy introduce a buyer for the goods and the bankrupt debtor's indebtedness to the creditor is reduced to the extent of the amount paid by the buyer to the creditor for the goods; or
- (b) at any time before the creditor sells or agrees to sell the goods following the expiry of that period, settle the bankrupt debtor's obligations as debtor and retain the goods as part of the debtor's estate.

(3) Where—

- (a) the possession of goods purchased under a hire purchase agreement, whether before or after the commencement of the bankrupt debtor's Bankruptcy; and
- (b) the bankruptcy trustee has not taken any action under subsection (2),

the creditor may prove in the Bankruptcy for the amount that the creditor was entitled to recover from the bankrupt debtor.

(4) Where—

- (a) the bankrupt debtor had use or possession of goods under an agreement, including a hire purchase agreement before commencement of the Bankruptcy; and
- (b) at the date of commencement of the Bankruptcy the creditor—
 - (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,

the creditor may assign the goods to the bankruptcy trustee, and, if it does so, may prove in the bankruptcy for the net balance due to the creditor under the agreement.

Protection of bankruptcy trustee from personal liability in certain cases

103.—(1) This section applies where the bankruptcy trustee—

- (a) has seized or disposed of any property in the possession or on the premises of a bankrupt debtor; and
- (b) had no notice of any claim by any person in respect of the property.

(2) Where, the bankruptcy trust has, without negligence, seized or disposed of property in the circumstances specified in subsection (1), and the bankruptcy trustee subsequently gains notice that the said property was not, at the date of the commencement of the bankruptcy, the property of the bankrupt debtor, the bankruptcy trustee—

- (a) is not personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property; and
- (b) is not personally liable for the costs of any proceedings taken to establish a claim in respect of such property.

Second bankruptcy

104.—(1) Where, before discharge, a Bankruptcy Order is made in respect of the bankrupt debtor for a second time—

- (a) subject to subsection (2), any property that is acquired by, or has passed to, the bankrupt debtor since the first bankruptcy, including property acquired or that has passed since the second bankruptcy, vests in the bankruptcy trustee in the second bankruptcy; and

- (b) any surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and must be paid to the bankruptcy trustee in the first bankruptcy.

(2) The court may, if it thinks appropriate, order that the following assets or their proceeds vest in the bankruptcy trustee in the first bankruptcy —

- (a) assets in the second bankruptcy that, in the court's opinion, were acquired independently of the creditor in the second bankruptcy; and
- (b) assets in the second bankruptcy that devolved on the bankrupt debtor.

(3) Where the bankruptcy trustee receives notice that a creditor has filed a petition for a second bankruptcy, such trustee must —

- (a) hold property in such trustee's possession that has been acquired by, or passed to, the bankrupt debtor since the first Bankruptcy until the application for a second Bankruptcy has been dealt with; and
- (b) transfer the property and its proceeds, less any deduction for the bankruptcy trustee's fees, costs, charges and expenses, to the bankruptcy trustee in the second bankruptcy where the creditor's petition results in a second bankruptcy, or if a Bankruptcy Order is made in respect of the debtor on the debtor's own application.

Debt repayment order

105.—(1) Under this section, a “Debt Repayment Order” means an order of the court claiming for the bankruptcy estate a portion of the income of the bankrupt debtor.

(2) The court may make a Debt Repayment Order claiming for the bankruptcy estate so much of the income of the bankrupt debtor during the period for which the order is in force as may be specified in the Order.

(3) In accordance with section 9, the court may not make a Debt Repayment Order the effect of which would be to reduce the income of bankrupt debtor below the protected income of the bankrupt debtor.

(4) A Debt Repayment Order, in respect of any payment of income to which it is to apply, either —

- (a) requires the bankrupt debtor to pay the bankruptcy trustee an amount equal to so much of that payment as is claimed by the Order; or
- (b) requires the person making the payment to pay so much of it as is so claimed to the bankruptcy trustee, instead of to the bankrupt debtor.

(5) Sums received by the bankruptcy trustee under a debt repayment order form part of the bankruptcy estate.

(6) A debt repayment order must specify the period during which it is to have effect, and that period may not end after the discharge of the bankrupt debtor.

(7) Subject to the provisions of this section, a Debt Repayment Order may be varied on the application of the bankruptcy trustee or the bankrupt debtor.

Debt repayment agreement

106.—(1) In this section “Debt Repayment Agreement” means a written agreement between a bankrupt debtor and the bankruptcy trustee under which—

- (a) the bankrupt debtor is to pay to the bankruptcy trustee an amount equal to a specified part or proportion of the bankrupt debtor’s income for a specified period; or
- (b) a third person is to pay to the bankruptcy trustee a specified proportion of money due to the bankrupt debtor by way of income for a specified period.

(2) A provision of debt repayment agreement of a kind specified in subsection (1) (a) or (b) may be enforced as if it were a provision of a debt repayment order.

(3) Sums received by the bankruptcy trustee under a debt repayment agreement form part of the bankruptcy estate.

(4) In accordance with section 9, the terms of a debt repayment arrangement must not have the effect of reducing the income of bankrupt debtor below the protected income of the debtor.

(5) A Debt Repayment Agreement must specify the period during which it is to have effect and that period may not end after the discharge of the bankrupt debtor.

(6) Subject to the provisions of this section, a debt repayment agreement may, be varied by—

- (a) written agreement between the parties; or
- (b) the court on an application made by the bankrupt debtor or the bankruptcy trustee.

(7) The court—

- (a) may not vary a Debt Repayment Agreement so as to include provisions of a kind that would have the effect of reducing the income of bankrupt debtor below the protected income of the bankrupt debtor; and
- (b) may grant an application to vary a Debt Repayment Agreement if and to the extent that the court thinks variation necessary to avoid the effect of reducing the income of bankrupt debtor below the protected income of the bankrupt debtor.

Division 8—Effect of Bankruptcy on certain transactions

Unfair preferences

107.—(1) For the purposes of this section, a debtor gives an unfair preference to a person in the circumstances specified in section 5.

(2) Where a Bankruptcy Order is made in respect of a debtor, and the debtor has, within a period of 2 years ending with the day of the Bankruptcy Order, gives an unfair preference to any person, the bankruptcy trustee may apply to the court for an order under this section.

(3) On such an application, if the court is satisfied that the debtor has given an unfair preference to any person within the relevant period, the court may make such order as it thinks fit for restoring the position to what it would have been if that debtor had not entered into that transaction.

(4) Without prejudice to the generality of subsection (3), an order under this section with respect to the giving of an unfair preference by a debtor in respect of whom a Bankruptcy Order is subsequently made may—

- (a) require any property transferred in connection with the giving of the unfair preference to be vested in the bankruptcy trustee as part of the bankruptcy estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge, in whole or in part, any security given by the debtor;
- (d) require any debtor to pay, in respect of benefits received by the debtor from the individual, such sums to the trustee of his estate as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, by the giving of the unfair preference to be under such new or revived obligations to that person as the court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged, in whole or in part, by the giving of the unfair preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the bankruptcy trustee, or on whom obligations are imposed by the order, is to be able to prove in the Bankruptcy for debts or other liabilities which arose from, or were released or discharged, in whole or in part, under or by, the giving of the unfair preference.

(5) An order under this section may affect the property of, or impose any obligation on, any person whether or not he or she is the person to whom the unfair preference was given, but such an order—

- (a) may not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

- (b) may not require a person who received a benefit from the unfair preference in good faith and for value to pay a sum to the bankruptcy trustee, except where the payment is to be in respect of a preference given to that person at a time when such person was a creditor of the debtor.

(6) Where a person—

- (a) has acquired an interest in property from a person other than the debtor, or has received a benefit from the unfair preference; and
- (b) at the time of that acquisition or receipt such person had notice of the relevant surrounding circumstances and of the relevant proceedings,

then, unless the contrary is shown, it is presumed for the purposes of subsection (5)(a) or (b) that the interest was acquired or the benefit was received otherwise than in good faith.

Undervalued transactions

108.—(1) For the purposes of this section, a debtor enters into an undervalued transaction with a person in the circumstances specified in section 5.

(2) Where a Bankruptcy Order is made in respect of a debtor, and he or she has, within a period of 2 years ending with the day of the Bankruptcy Order, entered into a transaction at an undervalue, the bankruptcy trustee may apply to the court for an order under this section.

(3) On such an application, if the court is satisfied that the debtor has entered into an undervalued transaction in the relevant period, the court may make such order as it thinks fit for restoring the position to what it would have been if that debtor had not entered into that transaction.

(4) Without prejudice to the generality of subsection (3), an order under this section with respect to an undervalued transaction by a debtor in respect of whom a Bankruptcy Order is subsequently made may—

- (a) require any property transferred as part of the transaction to be vested in the bankruptcy trustee as part of the bankruptcy estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge, in whole or in part, any security given by the debtor;
- (d) require any person to pay, in respect of benefits received by him or her from the debtor, such sums to the bankruptcy estate as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction to be under such new or revived obligations to that person as the court thinks appropriate;

- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged, in whole or in part, under the transaction; and
- (g) provide for the extent to which any person whose property is vested by the order in the bankruptcy trustee, or on whom obligations are imposed by the order, is to be able to prove in the Bankruptcy for debts or other liabilities which arose from, or were released or discharged, in whole or in part, under or by, the transaction.

(5) An order under this section may affect the property of, or impose any obligation on, any person whether or not he or she is the person with whom the individual in question entered into the transaction, but such an order—

- (a) may not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
- (b) may not require a person who received a benefit from the transaction in good faith and for value to pay a sum to the bankruptcy trustee, except where such person was a party to the transaction.

(6) Where a person—

- (a) has acquired an interest in property from a person other than the debtor in question, or has received a benefit from the transaction; and
- (b) at the time of that acquisition or receipt such person had notice of the relevant surrounding circumstances and of the relevant proceedings,

then, unless the contrary is shown, it is presumed for the purposes of subsection (5)(a) or (b) that the interest was acquired or the benefit was received otherwise than in good faith.

Protection of good faith transactions without notice

109.—(1) This section is subject to the provisions of this Act with respect to the effect of Bankruptcy on an execution or attachment under sections 113 and 114, and with respect to the provisions on unfair preferences and undervalued transactions under sections 107 and 108.

(2) A transaction between the bankrupt debtor and any other person under which, after commencement of the Bankruptcy, the bankrupt debtor acquires property, or property passes to the bankrupt debtor is be valid against the bankruptcy trustee where—

- (a) the other person deals with the bankrupt debtor in good faith and for value; and
- (b) the transaction is completed without an intervention by the bankruptcy trustee.

(3) Where the other person is the bankrupt debtor's bank, a transaction dealing with the bankrupt debtor for value includes —

- (a) the receipt by the bank of any money, security, or negotiable instrument from the bankrupt debtor or by the bankrupt debtor's order or direction;
- (b) a payment by the bank to the bankrupt debtor or by the debtor's order or direction; and
- (c) the delivery by the bank of a security or negotiable instrument to the bankrupt debtor or by the bankrupt debtor's order or direction.

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

Extortionate credit transactions

110.—(1) This section applies where a Bankruptcy Order has been made against a debtor who is or has been a party to a transaction for, or involving, the provision to the debtor of credit.

(2) The court may, on the application of the bankruptcy trustee, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 2 years before the commencement of the Bankruptcy.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made, whether unconditionally or in certain contingencies, in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it is presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks, fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was party to the transaction to pay to the bankruptcy trustee any sums paid to that person, by virtue of the transaction, by the bankrupt debtor;
- (d) provision requiring any person to surrender to the bankruptcy trustee any property held by him as security for the purposes of the transaction; and
- (e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the bankruptcy trustee in accordance with an order under this section vest in the bankruptcy estate.

(6) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

Validity of certain payments to bankrupt debtor and assignee

111.—(1) This section applies where a person makes a payment of money or delivery of property to a person in respect of whom a Bankruptcy Order is subsequently made, or to a person claiming by assignment from him or her.

(2) The payment of money or delivery of property constitutes a good discharge to the person paying the money or delivering the property, where the payment or delivery —

- (a) is made before the actual date on which the Bankruptcy Order is made and without notice of the presentation of a bankruptcy petition or application; and
- (b) is either in the ordinary course of business or is otherwise made in good faith.

General assignments of book debts

112.—(1) The following applies where a person engaged in any business makes a general assignment to another of such person’s existing or future book debts, or any class of them, and subsequently a Bankruptcy Order is made in respect of the person.

(2) The assignment of book debts by the bankrupt debtor is void against the bankruptcy trustee as regards any book debts which have not been paid at the commencement of the Bankruptcy, unless the assignment has been registered under the Personal Property Securities Act 2017.

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

(4) For the purposes of this section, a “general assignment” does not include—

- (a) any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts; or
- (b) any assignment of book debts included in a transfer of a business made in good faith and for value, or any assignment of assets for the benefit of creditors generally.

No benefit of execution unless completed before bankruptcy

113.—(1) Subject to subsection (2), a creditor is not entitled to the benefit of any execution or other legal process or distress against a bankrupt debtor or property of the bankrupt debtor unless the execution or other legal process or distress was completed at least 180 days before the commencement of the Bankruptcy, except with the permission of the court on such terms and conditions as necessary.

(2) For the purposes of subsection (1)—

- (a) an execution against movable or immovable property is completed by seizure, or the entry into possession of a receiver or appointee or a person charged with execution, and a completed sale; and
- (b) an attachment of a debt is completed by satisfaction of the debt.

(3) A person who acquires property of the bankrupt debtor in good faith and without notice—

- (a) from a Sheriff charged with an execution process; or
- (b) on which distress has been levied,

acquires good title as against the bankruptcy trustee and the bankrupt debtor.

(4) Nothing in subsection (3) affects the right of any claimant, who may prove that at the time of sale he or she had a title to such goods, to any remedy to which he or she may be entitled against any person other than such sheriff.

(5) Nothing in this section affects or limits the application of sections 107 and 108.

Duties of sheriff as to goods taken in execution

114.—(1) This section applies to an execution process against property of a bankrupt debtor that was levied but not completed within the meaning of section 113 at least 180 days before commencement of the Bankruptcy.

(2) Notwithstanding any other enactment, subject to subsection (3) and unless the court orders otherwise on the application of the execution creditor, the Sheriff must, as soon as practicable after the bankruptcy commences—

- (a) deliver to the bankruptcy trustee any property of the bankrupt debtor that is in or comes into the Sheriff's possession or custody or under the Sheriff's control as a result of the execution process; and
- (b) cause the bankruptcy trustee to be paid—
 - (i) any proceeds of realisation of property of the bankrupt debtor under the execution process;
 - (ii) any money of the bankrupt debtor received or seized under the execution process; and
 - (iii) any money paid to avoid seizure or sale of property of the bankrupt debtor under the execution process,

where such proceeds or money—

- (iii) are in or come into the Fiscal's possession or custody or under the fiscal's control; or
- (iv) are paid into court and have not already been paid out.

(3) The sheriff may retain or cause to be retained—

- (a) from property delivered under subsection (1)(a), the property of a value that the sheriff may reasonably determine to represent the costs of the execution process or attachment, as the case may be, incurred by the sheriff; or
- (b) from proceeds or money paid under subsection (1)(b), the costs of the execution process or attachment, as the case may be, incurred by the sheriff.

Division 9—Distribution of Property

Payment of preferential creditors

115.—(1) In the distribution of the bankruptcy estate, preferential debts must be paid in priority to other debts, in accordance with section 10.

(2) Subject to the provisions of this Act, the expenses of a Bankruptcy must be paid in priority to preferential debts.

(3) Preferential debts must be paid in priority to other provable debts.

(4) Preferential debts rank equally among themselves after the expenses of the Bankruptcy and must be paid in full, unless the proceeds of the realisation of the bankruptcy estate are insufficient to meet them in full, in which case they must be paid proportionately.

Payment of remaining money to general creditors

116.—(1) After paying preferential debts in accordance with sections 10 and 115, and retaining of such sums as may be necessary for the expenses of the Bankruptcy, the bankruptcy trustee must apply the money received by such trustee by the realisation of the bankruptcy estate, in satisfaction of all other claims.

(2) Whenever the bankruptcy trustee has sufficient funds in hands for the purpose, such trustee must, subject to the retention of such sums as may be necessary for the expenses of the Bankruptcy, declare and distribute dividends among the creditors in respect of the provable debts.

(3) The bankruptcy trustee must give notice of such trustee's intention to declare and distribute a dividend, in such manner as may be prescribed by regulations.

(4) When the bankruptcy trustee has declared a dividend, such trustee must give notice to each creditor who has proved a debt—

- (a) notice showing the amount of the dividend and how it is proposed to be distributed; and
- (b) a statement as to the particulars of the estate, in such manner as may be prescribed by regulations.

(5) In the calculation and distribution of a dividend the bankruptcy trustee must make provision—

- (a) for any provable debts which appear to such trustee to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

- (b) for any provable debts which are the subject of claims which have not yet been determined; and
- (c) for disputed proofs and claims.

Right of creditor who has proved debt late

117.—(1) Any creditor who has not proved a debt before the declaration of any dividend is not entitled to disturb, by reason that the creditor has not participated in it, the distribution of that dividend or any dividend declared before the debt was proved, but—

- (a) when the creditor has proved that debt the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends the creditor may have failed to receive; and
- (b) any dividend payable under paragraph (a) must be paid before that money is applied to the payment of any such further dividend.

No action for dividend

118.—(1) No action for dividend lies against the bankruptcy trustee but, if the bankruptcy trustee refuses to pay any dividend, the court may, if it thinks fit, order such trustee to to—

- (a) pay such dividend; and
- (b) pay out of such trustee's own money interest thereon for the time that it is withheld, and the costs of the application.

Final distribution

119.—(1) When the bankruptcy trustee has realised all the bankruptcy estate, or so much thereof as can, in the opinion of the bankruptcy trustee, be realised without needlessly protracting the trusteeship, such trustee must give notice, in accordance with such manner as may be prescribed by regulations, either—

- (a) of such trustee's intention to declare a final dividend; or
- (b) that no dividend, or further dividend, will be declared.

(2) The notice under subsection (1) must contain such particulars as may be prescribed by regulations, and must require claims against the bankruptcy estate to be established by a date ("the final date") specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the bankruptcy trustee must—

- (a) defray any outstanding expenses of the bankruptcy out of the bankruptcy estate; and
- (b) if the bankruptcy trustee intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the Bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt debtor's creditors and the payment of the expenses of the bankruptcy, the bankrupt debtor is entitled to the surplus.

Division 10—End of Bankruptcy

Duration of bankruptcy

120.—(1) The Bankruptcy continues in effect until an Order of Discharge has been made under section 121, which must be made on the expiry of a period of 3 years from the date of the Bankruptcy Order.

(2) Notwithstanding subsection (1), where the amount of the debtor's included debts exceeds \$50,000—

- (a) an order of discharge must be made on the expiry of a period of 5 years from the date of the Bankruptcy Order; and
- (b) the Bankruptcy continues in effect until such order of discharge has been made.

(3) A Bankruptcy can continue for a period longer than the periods specified in subsections (1) or (2) where the court suspends discharge under sections 123 or 125.

(4) When the court suspends discharge under subsection (3), the court must specify an alternative date for discharge, which must be no later than one year after the expiry of—

- (a) where subsection (1) applies, the period of 3 years; or
 - (b) where subsection (2) applies, the period of 5 years,
- from the date of the Bankruptcy Order.

Discharge of debtor

121.—(1) Where the value of the bankrupt debtor's included debts does not exceed \$50,000, at least 60 days before the expiry of a period of 3 years from the date of the Bankruptcy Order, the bankruptcy trustee must make an application to court for an order confirming the discharge of the bankrupt debtor.

(2) If the bankruptcy trustee has not yet made an application under subsection (1) at a time 30 days before the expiry of a period of 3 years from the date of the Bankruptcy Order, the bankrupt debtor may bring an application to court for an order confirming the discharge of the bankrupt debtor.

(3) On receiving an application under subsection (1) or (2), the court must, as soon as reasonably practicable and within a period of 90 days, make an order of discharge, unless an application to contest discharge has been made under section 123.

(4) The court order made under subsection (2) must provide that the bankrupt debtor is discharged from the Bankruptcy Order on the expiry of a period of 3 years from the date of the Bankruptcy Order.

(5) Where the value of the bankrupt debtor's included debts exceeds \$50,000, at least 60 days before the expiry of a period of 5 years from the date of the Bankruptcy Order, the bankruptcy trustee must make an application to court for an order confirming the discharge of the bankrupt debtor.

(6) If the bankruptcy trustee has not yet made an application under subsection (5) at a time 30 days before the expiry of a period of 5 years from the date of the Bankruptcy Order, the bankrupt debtor may bring an application to court for an order confirming the discharge of the bankrupt debtor.

(7) On receiving an application under subsection (5) or (6), the court must, as soon as reasonably practicable and within a period of 90 days, make an order of discharge, unless an application to contest discharge has been made under section 122.

(8) The court order made under subsection (7) must provide that the bankrupt debtor is discharged from the Bankruptcy Order on the expiry of a period of 5 years from the date of the Bankruptcy Order.

(9) On discharge from the Bankruptcy Order, the bankrupt debtor's included debts are cancelled, and the bankrupt debtor is not liable to pay any part of the included debts, including any penalties, interest, fees, charges and other sums which may have otherwise become payable in relation to those debts.

(10) The discharge of debts under this section does not release the bankrupt debtor from any debt or liability specified as an excluded debt under section 8.

(11) A discharge under this section does not release any person other than the bankrupt debtor from any liability, including any person who, at the date of the discharge, was —

- (a) a business partner of the discharged debtor;
- (b) a co-trustee with the discharged debtor;
- (c) jointly bound or contracted with the discharged debtor; or
- (d) a guarantor or in the nature of a guarantor of the discharged debtor.

Application to contest discharge

122.—(1) The trustee or a creditor may apply to the court to contest the bankrupt debtor's discharge.

(2) An application to the court to contest the bankrupt debtor's discharge must be made at least 180 days before the date at which discharge would otherwise occur but for this application.

(3) The applicant must provide notice to the bankrupt debtor of an application to contest discharge, including the grounds on which the application is based.

(4) Where the applicant is the bankruptcy trustee, the applicant must provide the creditors with notice of the application.

(5) Where the applicant is a creditor, the applicant must provide the bankruptcy trustee with notice of the application.

(6) An application to the court to contest discharge must be based on the grounds that the bankrupt debtor has knowingly or fraudulently failed, in a material respect, to comply with the obligations of the bankrupt debtor as specified in sections 11, 91, 92, and 93.

(7) On receiving an application to oppose the bankrupt debtor's discharge, the court must fix a date for a hearing of this application, to take place within 60 days of the receipt of the application.

(8) The court must provide notice to the bankrupt debtor and creditors of the hearing of the application to contest discharge in such manner as may be prescribed by regulations.

Interim suspension of discharge

123.—(1) On receiving an application to contest the bankrupt debtor's discharge, the court, if satisfied that there are reasonable grounds for concluding that an order suspending discharge would be made after a substantive hearing, may make an interim order provisionally suspending the bankrupt debtor's discharge until a hearing may take place.

(2) When making an interim order under subsection (1), the court may order the Bankrupt Trustee to investigate the extent to which the bankrupt debtor has complied with the obligations of the bankrupt debtor as specified in sections 11, 91, 92, and 93.

(3) Where an application to contest the bankrupt debtor's discharge has been presented by a trustee or creditor outside of the time period specified in section 122(2), a court may permit a late application to be submitted where the court is satisfied that—

- (a) the delay in submitting the application has been caused by exceptional circumstances beyond the control of the applicant; and
- (b) facts have been established that were not known to the applicant during the time period specified in section 123(2).

(4) Where the court is convinced that further investigation of the bankrupt debtor's affairs by the bankruptcy trustee is required prior to a hearing of the application to contest discharge, the court may issue a further interim order—

- (a) provisionally suspending the bankrupt debtor's discharge; and
- (b) postponing the hearing for a period reasonably necessary for such investigation to take place.

(5) When determining whether to make an interim order under subsection (1) and (4), or to permit a late application under subsection (3), the court must have due regard to any unfairness to the bankrupt debtor which might result from the extension of the bankruptcy period.

Bankruptcy report to be filed with application to contest discharge

124.—(1) The bankruptcy trustee must prepare a bankruptcy report and file it in the court when an application to contest discharge has been made under section 122.

(2) The bankruptcy trustee must report as to—

- (a) the affairs of the bankrupt debtor;
- (b) the manner in which the bankrupt debtor has performed the obligations imposed on debtors under this Act or obeyed orders of the court;
- (c) the trustee’s view as to whether a ground exists for denial of discharge; and
- (d) any other matter relating to the bankruptcy that the trustee has reason to consider would assist the court in making a decision as to the bankrupt debtor’s discharge.

(3) The bankruptcy trustee must provide the debtor and the creditors with a copy of the bankruptcy report at least 30 days in advance of the hearing of the application to contest discharge.

(4) If a creditor contests discharge on grounds other than those specified in the bankruptcy report, the creditor must give notice, to the bankruptcy trustee and the bankrupt debtor, not less than 14 days in advance of the hearing of the application to contest discharge.

Court determination of application to contest discharge

125.—(1) On the hearing of an application to contest discharge, the court may, having regard to the circumstances of the case—

- (a) immediately and unconditionally discharge the bankrupt debtor; or
- (b) discharge the bankrupt debtor but suspend the order for a fixed period.

(2) Where the court suspends a discharge order, the effect of the order must be that the bankrupt debtor is to be discharged no later than one year after the expiry of—

- (a) where section 120(1) applies, the period of 3 years; or
- (b) where section 120(2) applies, the period of 5 years,

from the date of the Bankruptcy Order.

Revocation of discharge

126.—(1) The court may, on the application of the bankruptcy trustee or a creditor, and after notice to the bankrupt debtor and a hearing, revoke a discharge granted under section 121 or 125.

(2) The court may only revoke a discharge under this section at a time before one year after the discharge.

(3) The court may only revoke a discharge under this section if the court is satisfied that—

- (a) the discharge was obtained through the fraud of the debtor; or

(a) the debtor knowingly and fraudulently failed to disclose income or property to the Official Receiver, where

(i) such income was not protected income under section 9; or

(ii) such property was not protected property under sections 6 and 7,

and the applicant did not know of such fraud, or such fraudulent or knowing failure to disclose, until after discharge.

(4) The revocation of a discharge does not prejudice or affect the rights or remedies that any person other than the bankrupt debtor would have had if the discharge had not been revoked.

(5) Property that has been acquired by the bankrupt debtor after discharge and that is vested in the bankrupt debtor at the date of the revocation —

(a) vests in the bankruptcy trustee subject to any encumbrances; and

(b) must be applied by the bankruptcy trustee to pay debts that the bankrupt debtor has incurred since the date of discharge.

Annulment of bankruptcy order

127.—(1) The court may annul a Bankruptcy Order if it at any time appears to the court —

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made; or

(b) that the provable debts and the expenses of the Bankruptcy have all, since the making of the Bankruptcy Order, either been paid or secured to the satisfaction of the court.

(2) The court may annul a Bankruptcy Order whether or not the bankrupt debtor has been discharged from the bankruptcy.

(3) Where the court annuls a Bankruptcy Order —

(a) any sale or other disposition of property, payments made or other thing duly done, under any provision in this Part, by or under the authority of the Official Receiver, bankruptcy trustee, or the court, is valid; but

(b) if any of the bankruptcy estate is then vested, under any such provision, in such a bankruptcy trustee, it vests in such person as the court may appoint, or, in default of any such appointment, revert to the bankrupt debtor on such terms, if any, as the court may direct.

Application for debt restructuring arrangement during bankruptcy

128.—(1) A bankrupt debtor may apply to court for an order staying the administration of the bankruptcy for a limited period of 60 days, for the purpose of preparing a proposal for a debt restructuring arrangement under Part 4.

(2) Where a court has made an order under subsection (1), the debtor must prepare a proposal for a debt restructuring arrangement under the procedure specified in Part 4.

(3) Where a proposal for a debt restructuring arrangement in respect of a bankrupt debtor has been approved by creditors under section 28 and confirmed by the court under section 30—

- (a) the debt restructuring arrangement takes effect in accordance with its terms and the provisions of Part 4; and
- (b) the court order providing for the confirmation of the debt restructuring arrangement must also provide for the annulment of the Bankruptcy Order in accordance with section 127.

(4) Where a court has annulled a Bankruptcy Order under subsection (3), the annulment has the effects specified in section 127(3).

Division 11—Official Receiver

Appointment of Official Receiver and Deputy Official Receivers

129.—(1) The Minister must appoint as officers—

- (a) an Official Receiver; and
- (b) as many Deputy Official Receivers as may be required from time to time, to act on behalf of or stand in the place of the Official Receiver where this is necessary or expedient.

(2) The Official Receiver and the Deputy Official Receivers are—

- (a) appointed, removable and under the general authority and directions of the Permanent Secretary; and
- (b) officers of the court.

(3) A Deputy Official Receiver has the same powers, rights and duties within the area for which such Deputy Official Receiver is appointed as an Official Receiver under this Act.

(4) Deputy Official Receivers discharge their duties and exercise their powers subject to the control and direction of the Official Receiver.

Status of Official Receiver

130.—(1) The Official Receiver holds duties in respect of—

- (a) the conduct of the debtor; and
- (b) the administration of the bankruptcy estate.

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

(3) All provisions in this or any other Act, referring to the bankruptcy trustee or trustee in bankruptcy, unless the context otherwise requires, or the Act otherwise provides, include the Official Receiver when acting as bankruptcy trustee.

Duties of Official Receiver as regards debtor's conduct

131.—(1) Subject to subsection (2), the Official Receiver must investigate the conduct of the bankrupt debtor and report to the court, stating whether there is reason to believe that the bankrupt debtor has committed any act—

- (a) constituting an offence under this Act or any enactment repealed by this Act; or
- (b) that would justify the court in refusing or suspending the bankrupt debtor's discharge.

(2) The duty to investigate the conduct of the debtor and to report to the court under subsection (1) only applies to a case in which the Official Receiver considers that an investigation and report under that subsection are necessary, due to—

- (a) the exceptionally high value of assets potentially available for distribution to creditors in the case;
- (b) the identification of a material inaccuracy in the statement of the debtor's financial affairs, which ought to be investigated;
- (c) the knowing or fraudulent failure by the bankrupt debtor to comply with the obligations of debtors under sections 11, 72, 92 or 93, or any other relevant provision of this Act; or
- (d) the existence of any other exceptional circumstances that mean that an investigation and report serve the proportionate and just resolution of the case.

(3) The Official Receiver must make such other reports concerning the conduct of the bankrupt debtor as the court may direct.

(4) A report by the Official Receiver under this section is in any proceedings *prima facie* evidence of the facts stated in it.

(5) The Official Receiver must act in accordance with the provisions of section 74 regarding the Official Receiver's power to apply to court for a public examination of the bankrupt debtor.

(6) The Official Receiver may take such part as the Official Receiver may deem fit in the public examination of the bankrupt debtor under section 74.

(7) The Official Receiver must give such assistance as the Director of Public Prosecutions may direct in relation to the prosecution of any offence under this Act.

General duties of Official Receiver as to bankruptcy

132.—(1) The Official Receiver must act as bankruptcy trustee in the circumstances specified in section 75.

(2) The Official Receiver must act as Interim Receiver in the circumstances specified in section 69.

(3) The Official Receiver must advertise, and provide notice of, all such matters as he or she considers necessary to advertise, or provide notice of, under this Act.

Control of Official Receiver over bankruptcy trustee

133.—(1) Where the bankruptcy trustee is a person other than the Official Receiver, the Official Receiver must supervise the conduct of the bankruptcy trustee.

(2) The Official Receiver must inquire into the matter and take such action as may be deemed expedient—

- (a) where, in the opinion of the Official Receiver, the bankruptcy trustee has exercised such trustee's duties in a manner amounting to misconduct or neglect of duty; or
- (b) where a complaint has been made to the Official Receiver by a creditor or the bankrupt debtor, in respect of alleged misconduct or neglect of duty on the part of the bankruptcy trustee.

(3) The Official Receiver—

- (a) may, at any time, require any bankruptcy trustee to answer an inquiry made by the Official Receiver in relation to any bankruptcy in which the bankruptcy trustee is engaged; and
- (b) may, if the Official Receiver thinks fit, apply to the court to examine on oath the bankruptcy trustee or any other person concerning the bankruptcy.

Official Receiver to maintain bankruptcy estates account

134.—(1) A bankruptcy estates account must be kept by the Official Receiver with such bank as the Ministry responsible for finance may from time to time direct.

(2) All moneys received by the Official Receiver in respect of proceedings under the provisions of this Act must be paid to that account.

Investment of surplus funds

135.—(1) Whenever the cash balance standing to the credit of the bankruptcy estates account exceeds the amount which in the opinion of the Official Receiver is required for the time being to answer demands in respect of bankruptcy estates, the Official Receiver may place the same or any part thereof on fixed deposit with such bank as the Ministry of finance may from time to time direct.

(2) Whenever any money so placed on deposit is, in the opinion of the Official Receiver, required to answer any demands in respect of bankruptcy estates, the Official Receiver must withdraw such money from fixed deposit and repay the same to the credit of the cash balance of the bankruptcy estates account.

(3) All interest accruing from any money so placed on deposit under this section must be paid by the Official Receiver to the credit of a separate account entitled the Bankruptcy Contingency Fund at such bank as the Ministry of responsible for finance may direct.

(4) Where a final distribution of proceeds of realisation of property is made in a bankruptcy, and unclaimed proceeds are held by the Official Receiver, either being the bankruptcy trustee or having received such unclaimed proceeds under section 86(5), and such proceeds remain unclaimed—

- (a) for more than 18 months from the date on which the distribution is made; or
- (b) if earlier, for more than 12 months from the time at which an order of discharge is made under section 121 in respect of the bankruptcy,
the Official Receiver must place such unclaimed proceeds into the Bankruptcy Contingency Fund.

(5) The Official Receiver may, in compliance with such requirements as may be prescribed by regulations, invest any money paid to the credit of the Bankruptcy Contingency Fund, and the income received on any such investments must be paid promptly into the Bankruptcy Contingency Fund.

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

- (a) the costs of administration of personal insolvency proceedings in which the debtor's income and assets, excluding protected income and protected assets, are insufficient to cover such costs;
- (b) the institution of proceedings and the payment of expenses of witnesses, if any, for the discovery or recovery of property belonging to any debtor;
- (c) the institution of proceedings to set aside an alleged unfair preference;
- (d) the employment of a barrister and solicitor in matters connected with a bankruptcy estate which by reason of their difficulty or other good cause cannot be dealt with by the Official Receiver himself or herself;
- (e) the employment of interpreters in cases where the court is unable to provide an interpreter;
- (f) the payment of expenses involved in arresting a debtor and bringing him or her before the court; and
- (g) any other expenditure relating to the modernisation and efficient operations of the office of the Official Receiver to provide needed services to the public.

(7) The court may in its discretion order that the fund be reimbursed in whole or in part in the event of any money being recovered as a result of the expenditure authorised.

Division 12—Partnerships in Bankruptcy

Bankruptcy applications and bankruptcy petitions in cases of partnerships

136.—(1) Any creditor whose debt is sufficient to entitle the creditor to present a bankruptcy petition against all the partners of a firm may present a bankruptcy petition under section 63 against any one or more partners of the firm without including the others.

(2) Where all such debtors are eligible for a Bankruptcy Order under sections 60 and 61, 2 or more debtors who are partners in a business partnership may file a joint bankruptcy application under section 59.

(3) When a Bankruptcy Order is made under section 62 in respect of a joint bankruptcy application, the order applies both separately and jointly to the debtors.

Power to dismiss petition against some respondents only

137. Where there is more than one respondent than one to a bankruptcy petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition against any other respondent.

Property of partners to be vested in same trustee

138.—(1) Where a Bankruptcy Order has been made under section 68 in relation to a bankruptcy petition against one member of a partnership—

- (a) any other bankruptcy petition or application against or by a member of the same partnership must be filed with the first-mentioned petition;
- (b) unless the court directs otherwise, the same bankruptcy trustee must be appointed as may have been appointed in respect of the bankruptcy estate of the first-mentioned member of the partnership; and
- (c) the court may give such directions for consolidating the proceedings as it sees fit.

(2) Where a Bankruptcy Order has been made under section 62 in relation to a bankruptcy application made by one member of a partnership—

- (a) any other bankruptcy petition or application against or by a member of the same partnership must be filed with the first-mentioned application;
- (b) unless the court directs otherwise, the same bankruptcy trustee must be appointed as may have been appointed in respect of the bankruptcy estate of the first-mentioned member of the partnership; and
- (c) the court may give such directions for consolidating the proceedings as it sees fit.

Actions by bankruptcy trustee and bankrupt debtor's partners

139.—(1) Where a Bankruptcy Order has been made in respect of a member of a partnership, the court may authorise the bankruptcy trustee to commence and prosecute any action in the names of the bankruptcy trustee and the bankrupt debtor's partner.

(2) Where the court has authorised the bankruptcy trustee to commence and prosecute an action under subsection (1), any release by such bankrupt debtor's partner of the debt or demand to which the action relates is void.

(3) Where a bankruptcy trustee makes an application to court for authority to commence and prosecute an action under subsection (1), the bankruptcy trustee must provide notice of the application to the bankrupt debtor's partner.

(4) Where a bankruptcy trustee makes an application to court for authority to commence and prosecute an action under subsection (1), the bankrupt debtor's partner may contest the application on showing good cause.

(5) Where a bankrupt debtor's partner contests the application under subsection (4)—

- (a) the court may, if it thinks fit, direct that such partner receive such partner's proper share of the proceeds of the action; and
- (b) if such partner does not claim any benefit therefrom, such partner is indemnified against costs in respect thereof as the court directs.

Actions on joint contracts

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

Proceedings in partnership name

141.—(1) Any 2 or more persons, being partners, or any person carrying on business under a partnership name, may initiate proceedings or be proceeded against under this Act in the name of the firm.

(2) In the circumstances applicable in subsection (1) the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner and verified on oath or otherwise, as the court may direct.

PART 7—PROCEDURE AND COURTS

Division 1—Procedure and powers of court

Jurisdiction in personal insolvency procedures

142.—(1) Jurisdiction is conferred on the Magistrates Court with respect to all matters arising under this Act.

(2) Subject to rules, a magistrate may, where such magistrate considers it necessary to deal with a case justly and proportionately, and in furtherance of the objectives of this Act as specified in section 3, refer proceedings to the High Court.

(3) In relation to proceedings referred to the High Court under subsection (2), any reference in this Act—

- (a) to “court”, includes the High Court; and
- (b) to “magistrate”, includes a judge of the High Court.

Judge may exercise powers in chambers

143. Subject to the provisions of this Act, and to rules, a magistrate may exercise in chambers the whole or any part of such magistrate's or judge's powers.

Power of court in bankruptcy

144.—(1) Subject to the provisions of this Act, the court has full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact—

- (a) which may arise in any case of Bankruptcy coming within its cognizance, or
- (b) which the court may deem expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Without prejudice to any other provision in this Act, a bankrupt debtor or a discharged debtor whose bankruptcy estate is still being administered, must do all things as debtor may reasonably be directed to do by the court for the purposes of debtor's bankruptcy, or the administration of the bankruptcy estate.

(3) Where a debtor without reasonable excuse fails to comply with any obligation imposed by subsection (2), the debtor is liable on conviction of a contempt of court and liable to be punished accordingly.

(4) Where default is made by a bankruptcy trustee, debtor, or other person in obeying any order or direction given by the Official Receiver—

- (a) the court may on the application of the Official Receiver order such defaulting bankruptcy trustee, debtor, or person to comply with the order or directions so given; and
- (b) the court may, if any person without reasonable excuse fails to comply with a court order under this subsection, hold such person guilty of a contempt of court and liable to be punished accordingly.

(5) The power given by subsection (4) is in addition to, and not in substitution for, any other right or remedy in respect of such default.

(6) In the cases specified in the next subsection, the court may cause a warrant to be issued to require the bankrupt debtor to attend before the court, or such officer as the court may appoint, and to be orally examined.

(7) A court may exercise the powers in subsection (6) in relation to a bankrupt debtor if, at any time after the making of a bankruptcy application or the presentation of a bankruptcy petition relating to the debtor, it appears to the court that—

- (a) there are reasonable grounds for believing that the debtor is about to leave Fiji with intent to—
 - (i) avoid or delay the payment of any of such debtor's debts;

- (ii) avoid or delay such debtor's appearance to a bankruptcy petition; or
 - (iii) avoid, delay, or disrupt any proceedings in bankruptcy or any examination in respect of such debtor.
- (b) the debtor is about to remove such debtor's goods with the intent of preventing or delaying possession being taken by them by the Official Receiver or the bankruptcy trustee;
 - (c) there are reasonable grounds for believing that the debtor has knowingly or fraudulently concealed or destroyed, or is about to conceal or destroy, any of such debtor's goods or any books which might be of use in the course of the debtor's bankruptcy or in connection with the administration of the bankruptcy estate;
 - (d) the debtor has, without the permission of the Official Receiver or the bankruptcy trustee, fraudulently or knowingly removed any goods in the debtor's possession which exceed a value of \$5,000; or
 - (e) the debtor has knowingly failed, without reasonable excuse, to attend any examination ordered by the court.

Official Receiver and personal insolvency procedures

145.—(1) Any person may make an application to the court if such person is dissatisfied by any act, omission, or decision of the Official Receiver in connection with a personal insolvency procedure.

(2) The Official Receiver may make an application to the court for directions or for an order in relation to any matter arising in connection with a personal insolvency procedure, or any application for a personal insolvency procedure.

(3) Subject to such matters as may be prescribed by regulations, an application under this section must be made within 21 days of the act, omission, or decision of the Official Receiver.

(4) On an application under this section the court may dismiss the application or do one or more of the following—

- (a) quash the whole or part of any act or decision of the Official Receiver;
- (b) give the Official Receiver directions, including a direction that he or she reconsider any matter in relation to which his or her act or decision has been quashed under paragraph (a);
- (c) make an order for the enforcement of any obligation of the debtor arising under sections 11, 19, 32, 91, 92, 93 or any other provision of this Act;
- (d) make an order revoking or amending the personal insolvency order, on such terms as the court sees fit; or
- (e) make an order requiring an examination of the debtor and an inquiry into the debtor's affairs.

Appeals in personal insolvency procedures

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

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

Discretionary power of courts regarding proceedings

147.—(1) Subject to the provisions of this Act and to rules, the costs of and incidental to any proceeding in court under this Act are in the discretion of the court.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as the court thinks fit.

(3) The court may at any time amend any written process or proceeding under this Act upon such terms, if any, as the court thinks fit.

(4) Subject to rules, the court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or, out of Fiji, by commission.

Consolidation of petitions

148. Where 2 or more bankruptcy petitions are presented against the same bankrupt debtor or against joint bankrupt debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change carriage of proceedings

149. Where the petitioner does not proceed with due diligence on such petitioner's bankruptcy petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by section 66 in the case of the petitioning creditor.

Continuance of proceedings on death of bankrupt debtor

150. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter continue, unless the court otherwise orders, as if such debtor were alive.

Power to stay proceedings

151. The court may, at any time after a Bankruptcy Order, on the application of the bankruptcy trustee or the Official Receiver or any creditor, and on proof to the satisfaction of the court that all proceedings in relation to the bankruptcy ought to be stayed, make an order staying the bankruptcy proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Division 2—Regulations and Rules

Regulation making power

152.—(1) The Minister may make regulations which are not inconsistent with the provisions of this Act on any matter in respect of which regulations are —

(a) authorised to be made under this Act; or

(b) required or necessary to be made under this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may make regulations which are not inconsistent with the provisions of this Act prescribing—

- (a) the amount for fees and fines to be paid in accordance with this Act;
- (b) the maximum imprisonment term for a contravention of a provision of this Act;
- (c) the form, content, language, authentication, sending, receipt, amendment and withdrawal of, notices, reports and other documents, and copies of such notices, reports and other documents, including as regards electronic communications;
- (d) the forms to be used in accordance with this Act;
- (e) the amount or rates of fees, costs, charges and expenses that may be claimed by personal insolvency officials;
- (f) the conduct of persons who must comply with this Act;
- (g) matters relating to the maintenance and establishment of a Personal Insolvency Register, and the recording of, and access to, information in the Personal Insolvency Register;
- (h) rules, standards, practice directions or guidelines relating to the performance of the functions of personal insolvency officials under this Act;
- (i) requirements applicable to the authorisation, supervision or regulation of persons, associations, councils, or organisations as personal insolvency officials under this Act;
- (j) requirements applicable to the dealing of personal insolvency officials with the Minister, the Official Receiver, and any other public or regulatory bodies;
- (k) requirements relating to public notice and the advertisement of orders and notices.

Power to make rules

153. The Chief Justice may, from time to time, make rules for carrying into effect the objectives of this Act.

Fees

154. The Chief Justice may, from time to time, prescribe a scale of fees and percentages to be charged for or in respect of proceedings under the provisions of this Act.

Division 3—Evidence

Gazette to be evidence

155.—(1) A copy of the Gazette containing any notice in pursuance of this Act is evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of a personal insolvency order is conclusive evidence in all legal proceedings of the order having been made, and of its date.

Evidence of proceedings at meetings of creditors

156.—(1) A minute of proceedings at a meeting of creditors under the provisions of this Act, signed at the same or the next meeting, by a person describing oneself as, or appearing to be, chair of the meeting at which the minute is signed, may be received in evidence without further proof.

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

Evidence of proceedings in bankruptcy

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

Swearing of affidavits

158. Subject to rules, any affidavit to be used in the court may be sworn before—

- (a) any person authorised to administer oaths in the court;
- (b) a magistrate or a justice of the peace for the division where it is sworn; or
- (c) in the case of a person residing out of Fiji, before any person qualified to administer oaths in the country where the person resides, such person being certified to be qualified as aforesaid by an overseas representative of Fiji, or by a notary public.

Death of bankrupt debtor or witness

159. In the case of the death of the bankrupt debtor, or of a witness whose evidence has been received by the court in any proceeding under the provisions of this Act, the deposition of the deceased person, purporting to be sealed with the seal of the court, or a copy of it, may be admitted as evidence of the matters depose.

Certificate of appointment of bankruptcy trustee

160. A certificate of the court that a person has been appointed as a trustee under the provisions of this Act is conclusive evidence of the person's appointment.

Division 4—Miscellaneous

Computation of time

161.—(1) Where in this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same is taken as —

- (a) exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and
- (b) the act or proceeding must be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the offices of the court are closed, in which case any act or proceeding is considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where in this Act, the time limited for doing any act or thing is less than 6 days, a Sunday, a public holiday and any other day on which the offices of the court are closed is excluded in computing such time.

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

Requests, notices and other documents

162.—(1) Where this Act provides for the making of a request, but neither this Act nor any regulation made thereunder specifies the method by which the request is to be made, such request must be made in writing.

(2) Where this Act provides for the giving of notice or written notice, but neither this Act nor any regulation made thereunder specifies the method by which the notice is to be given, such notice must be given in writing.

(3) Where this Act provides for the giving of notice or written notice, or the service of other documents, but neither this Act nor any regulation made thereunder specifies the method by which the notice is to be given or the document to be served, such notices or documents may be sent by post to the last known postal address of the person to be served therewith.

Formal defect not to invalidate proceedings

163.—(1) A proceeding under this Act is not invalidated because of any procedural irregularity unless the court —

- (a) is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court; and
- (b) by order declares the proceeding to be invalid.

(2) No defect or irregularity in the appointment or election of a bankruptcy trustee or member of a Creditors' Committee vitiates any act done by such person in good faith.

(3) In this section, unless the contrary intention appears—

- (a) a reference to a proceeding under this Act is a reference to any proceeding, whether a legal proceeding or not; and
- (b) a reference to a procedural irregularity includes a reference to the absence of a quorum at a meeting of creditors and a defect, irregularity or deficiency of notice or time.

(4) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the court imposes—

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act is not invalid by reason of any contravention of a provision of this Act, provided that the court is satisfied that—
 - (i) such act, matter or thing, or proceeding, is essentially of a procedural nature;
 - (ii) the person or persons concerned in or party to the contravention or failure acted honestly; or
 - (iii) that it is just and equitable that the order be made;
- (b) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a), provided that such person has acted honestly; or
- (c) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation including an order extending a period where the period concerned ended before the application for the order was made or abridging the period for doing such an act, matter or thing, or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the court thinks fit.

Extension of time

164.—(1) Where the exercise of a right is subject to a stay, however described under any of sections 15, 31, 48 and 71, any time period for the exercise of that right is extended by the duration of the stay.

(2) Nothing in subsection (1) affects any restriction or limitation on the exercise of a right, or the termination of a right, under this Act.

Acting of corporations, partners, etc

165. For all or any of the purposes of this Act—

- (a) a corporation may act by any of its officers authorised in that behalf under the seal of the corporation;
- (b) a firm may act by any of its members; and
- (c) a person of unsound mind may act by his committee or the appointed manager of his estate.

Insolvent deceased estates

166. The administration in bankruptcy of the estate of a person dying insolvent takes place in accordance with Schedule 3.

PART 8—OFFENCES

Division 1—Offences

Defence of absence of intent

167. A person is not guilty of an offence under this Part unless it is proven that, at the time of the conduct constituting the offence, such person had intent to—

- (a) defraud;
- (b) deceive;
- (c) conceal the state of such person’s affairs; or
- (d) defeat the law.

Criminal liability after discharge

168.—(1) Without prejudice to a debtor’s liability in respect of a subsequent personal insolvency, such debtor is not guilty of an offence under this Part in respect of anything done after such debtor’s discharge from a personal insolvency procedure.

(2) Notwithstanding subsection (1), nothing in this Part prevents the institution of proceedings against a discharged debtor for an offence committed before such debtor’s discharge from a personal insolvency procedure.

(3) Division 3 applies whether or not the Bankruptcy Order is annulled, but proceedings for an offence under Division 3 may not be instituted after the annulment.

Division 2—Personal Insolvency Offences

False information

169.—(1) A debtor on whose behalf an application or proposal to which this section applies is made is guilty of an offence if such debtor, in respect of that application or proposal—

- (a) knowingly or fraudulently provides information which is false or misleading in a material respect; or
- (b) knowingly or fraudulently makes a material omission in any statement made under this Act in relation to such person’s financial affairs.

(2) This section applies to an application or proposal—

- (a) under section 13 for a debt protection moratorium order;
- (b) under section 26 for a debt restructuring arrangement;
- (c) under section 44 for a debt rehabilitation order; or
- (d) under section 59 for a Bankruptcy Order.

Non-compliance with obligations of debtors

170.—(1) A debtor who is party to a debt protection moratorium order under Part 3 is guilty of an offence if such debtor—

- (a) knowingly or fraudulently and without reasonable excuse fails to comply with an obligation under sections 11 and 17; or
- (b) provides information to the court or the Official Receiver in connection with such an obligation, knowing the information to be false or misleading in a material respect.

(2) A debtor who is party to a debt restructuring arrangement under Part 4 is guilty of an offence if such debtor—

- (a) knowingly or fraudulently and without reasonable excuse fails to comply with an obligation under sections 11 and 32; or
- (b) provides information to the court, personal insolvency proposer, personal insolvency administrator, or the Official Receiver in connection with such an obligation, knowing the information to be false or misleading in a material respect.

(3) A debtor who is party to a debt rehabilitation order under Part 5 is guilty of an offence if such debtor—

- (a) knowingly or fraudulently and without reasonable excuse fails, in a material respect, to comply with an obligation under sections 11 and 51; or
- (b) provides information to the court or the Official Receiver in connection with such an obligation, knowing the information to be false or misleading in a material respect.

Documents and records

171.—(1) A debtor to whom this section applies is guilty of an offence where such debtor commits an act referred to in subsection (2) for the purpose of—

- (a) obtaining a debt protection moratorium order;
- (b) avoiding an obligation under sections 11 and 17;
- (c) obtaining a debt restructuring arrangement;
- (d) avoiding an obligation under sections 11 and 32;
- (e) avoiding the termination of a debt restructuring arrangement;

- (f) obtaining a debt rehabilitation order;
- (g) avoiding an obligation under sections 11 and 51;
- (h) avoiding the termination or conversion of a debt rehabilitation order; or
- (i) avoiding any other obligation under this Act.

(2) A debtor commits an act referred to in this subsection where such debtor knowingly or fraudulently —

- (a) fails to provide, at the request of the court or Official Receiver, a relevant financial record which such debtor has possession or control;
- (b) prevents the production to the court or Official Receiver of a relevant financial record;
- (c) conceals, destroys or falsifies, or causes or permits the concealment, destruction, or falsification of a relevant financial record;
- (d) makes, or causes or permits the making of, any false entries in a relevant financial record; or
- (e) disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in a relevant financial record.

(3) This section applies to a person —

- (a) who has made an application or proposal under sections 13, 26, or 44; or
- (b) in respect of whom a debt protection moratorium order, debt rehabilitation order, or order confirming a debt restructuring arrangement has been made.

(4) This section applies to a debtor who has —

- (a) made an application for a debt protection moratorium order;
- (b) made a proposal for a debt restructuring arrangement;
- (c) made an application for a debt rehabilitation order;
- (d) become subject to a debt protection moratorium order;
- (e) become subject to an order confirming the coming into effect of a debt restructuring arrangement; or
- (f) become subject to a debt rehabilitation order.

(5) In this section “relevant financial record”, in relation to a debtor to whom this section applies, means a book, document or record relating directly to —

- (a) debts included in the application, proposal, or order, excluding any excluded debts; or property of the debtor, excluding protected property; and
- (b) either the period since the making of an application or proposal, or the period of 12 months ending with the making of the application or proposal.

Fraudulent disposal of property

172.—(1) A debtor to whom this section applies is guilty of an offence where such debtor commits an act referred to in subsection (2) for the purpose of—

- (a) obtaining a debt protection moratorium order;
- (b) avoiding an obligation under sections 11 and 17;
- (c) obtaining a debt restructuring arrangement;
- (d) avoiding an obligation under sections 11 and 32;
- (e) avoiding the termination of a debt restructuring arrangement;
- (f) obtaining a debt rehabilitation order;
- (g) avoiding an obligation under sections 11 and 51;
- (h) avoiding the termination or conversion of a debt rehabilitation order; or
- (i) avoiding any other obligation under this Act.

(2) Subject to subsection (3), a debtor commits an act referred to in this subsection where such person, other than in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor—

- (a) makes or causes to be made any transfer of any of such debtor's property, on terms that provide for such debtor to receive no consideration, to another party; or
- (b) enters into a transaction with another party involving the transfer of any of such debtor's property to that other person or to a third party, whether or not the third party is a party to the transaction, where the monetary value of the property concerned, is significantly greater than the value of the consideration provided by the other party.

(3) Subsection (2) does not apply to property of a value of less than \$5,000.

(4) This section applies to a debtor who has—

- (a) made an application for a debt protection moratorium order;
- (b) made a proposal for a debt restructuring arrangement;
- (c) made an application for a debt rehabilitation order;
- (d) becomes subject to a debt protection moratorium order;
- (e) become subject to an order confirming the coming into effect of a debt restructuring arrangement; or
- (f) become subject to a debt rehabilitation order.

Credit and business misconduct

173.—(1) A debtor is guilty of an offence if such debtor, either alone or with any other person, obtains credit in an amount of more than \$5,000 without informing the person from whom the credit is obtained of—

- (a) such debtor's name, as specified in the debt protection moratorium order, debt restructuring arrangement, or debt rehabilitation order concerned; and
- (b) the fact that such debtor is subject to a debt protection moratorium order, debt restructuring arrangement, or debt rehabilitation order.

(2) This section applies to a debtor in respect of whom—

- (a) a debt protection moratorium order has been made, as long as the debt protection moratorium order remains in effect;
- (b) an order has been made confirming a debt restructuring arrangement, for so long as the debt restructuring arrangement remains in effect; or
- (c) a debt rehabilitation order has been made, for so long as the debt rehabilitation order remains in effect.

(3) The reference in subsection (1) to a debtor obtaining credit includes the following cases—

- (a) where such debtor acquires possession of goods under a hire purchase agreement; and
- (b) where such debtor is paid in advance, in money or otherwise, for the supply of goods or services.

Division 3—Bankruptcy Offences

Non-disclosure and false representations

174.—(1) The bankrupt debtor is guilty of an offence if—

- (a) the bankrupt debtor does not, to the best of such debtor's knowledge and belief, disclose all the property comprised in such debtor's estate to the Official Receiver or the bankruptcy trustee; or
- (b) the bankrupt debtor does not inform the Official Receiver or the bankruptcy trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1)(b) does not apply to any disposal—

- (a) in the ordinary course of business carried on by the bankrupt debtor or to any payment in relation to the ordinary family affairs of the bankrupt debtor; or
- (b) of property of a value of an amount less than \$5,000.

(3) The bankrupt debtor is guilty of an offence if he or she makes a false representation for, or is guilty of any other fraud for, the purpose of obtaining the consent of creditors to any agreement with reference to the bankrupt debtor's property or financial affairs.

Improper dealing with property during bankruptcy

175.—(1) The bankrupt debtor is guilty of an offence if—

- (a) the bankrupt debtor does not deliver up possession to the Official Receiver or bankruptcy trustee, or as the Official Receiver or bankruptcy trustee may direct, of such part of such debtor's property as is in his or her possession or under his or her control and possession of which such debtor is required by law to deliver up; or
- (b) the bankrupt debtor conceals any debt due to or from him or her or conceals any property the value of which is not less than \$5,000 and possession of which such debtor is required to deliver up to the Official Receiver or bankruptcy trustee.

(2) The bankrupt debtor is guilty of an offence if he or she removes, any property the value of which was not less than \$5,000 and possession of which he or she has or would have been required to deliver up to the Official Receiver or the bankruptcy trustee.

(3) The bankrupt debtor is guilty of an offence if such debtor, with the intent to defraud creditors, makes or causes to be made, or has in the period of 2 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, such debtor's property, the value of which was not less than \$5,000.

Unlawful use or concealment of documents

176.—(1) The bankrupt debtor is guilty of an offence if the bankrupt debtor does not deliver up possession to the Official Receiver or the bankruptcy trustee, as the official receiver or bankruptcy trustee may direct, of any relevant financial record of which the bankrupt debtor has possession or control.

(2) The bankrupt debtor is guilty of an offence if the bankrupt debtor knowingly or fraudulently—

- (a) prevents the production of a relevant financial record;
- (b) conceals, destroys or falsifies, or knowingly or fraudulently causes or permits the concealment, destruction or falsification of, any relevant financial record;
- (c) makes, or causes or permits the making of, any false entries in any relevant financial record; or
- (d) attempts to account for any part of such debtor's property by fictitious losses or expenses.

(3) The bankrupt debtor is guilty of an offence if the bankrupt debtor knowingly or fraudulently disposes of, or alters or makes any omission in, or knowingly or fraudulently causes or permits the disposal, altering or making of any omission in, any relevant financial record.

(4) In this section “relevant financial record”, in relation to a debtor to whom this section applies, means a book, document or record relating directly to—

- (a) debts proved in the bankruptcy, or property forming part of the bankruptcy estate; and
- (b) either the period since the commencement of the bankruptcy, or the period of 12 months ending with the commencement of the bankruptcy.

Unlawful credit and borrowing transactions

177.—(1) The bankrupt debtor is guilty of an offence if—

- (a) either alone or jointly with any other person, the bankrupt debtor obtains credit from a creditor to the extent of \$5,000 or more without informing the creditor that a Bankruptcy Order is in effect in respect of the bankrupt debtor; or
- (b) the bankrupt debtor engages, whether directly or indirectly, in any business under a name other than that specified in the Bankruptcy Order without disclosing to all persons with whom he or she enters into any business transaction the name specified in the Bankruptcy Order.

(2) The bankrupt debtor is guilty of an offence if, after the commencement of bankruptcy, the bankrupt debtor—

- (a) obtains property on credit and has not paid for the property; and
- (b) obtains such property on credit—
 - (i) by a false representation or other fraud;
 - (ii) by a false statement of financial position or other false statement of the bankrupt debtor’s affairs; or
 - (iii) under the false pretence of carrying on business and dealing in the ordinary course of trade.

(3) The bankrupt debtor is guilty of an offence if, after the commencement of bankruptcy, the bankrupt debtor—

- (a) pawns;
- (b) mortgages;
- (c) pledges; or
- (d) disposes of,

otherwise than in the ordinary course of business carried on by the debtor or in the ordinary family affairs of the debtor, any property that the bankrupt debtor has obtained and has not paid for.

(4) The reference to the bankrupt debtor obtaining credit includes the following cases —

- (a) where the debtor acquires possession of goods under a hire purchase agreement; and
- (b) where the debtor is paid in advance, whether in money or otherwise, for the supply of goods or services.

Leaving Fiji without consent

178. The bankrupt debtor is guilty of an offence if such debtor leaves, or attempts or prepares to leave Fiji —

- (a) without first obtaining the consent of the bankruptcy trustee; and
- (b) with any property the value of which is not less \$5,000 and possession of which such debtor is required to deliver up to the Official Receiver or the bankruptcy trustee.

Non-compliance with obligations of debtors

179. A bankrupt debtor is guilty of an offence if such debtor —

- (a) knowingly or fraudulently and without reasonable excuse, fails, in a material respect, to comply with an obligation under sections 11, 91, 92, and 93;
- (b) provides information to the court, bankruptcy trustee, or the Official Receiver in connection with an obligation under sections 11, 91, 92, and 93, knowing the information to be false or misleading in a material respect; or
- (c) knowingly or fraudulently, and without reasonable excuse, refuses to answer fully and truthfully all proper questions put to the bankrupt debtor at any examination held under this Act.

Failure to keep proper records with intent to conceal

180. A bankrupt debtor is guilty of an offence if such debtor, with intent to conceal the true state of such debtor's financial affairs, has within the period of 2 years prior to the making of a bankruptcy application or presentation of a bankruptcy petition, failed to keep and preserve a proper record of his or her transactions.

Division 4—Penalties and Criminal Procedure

Trial and punishment of offences

181.—(1) A person is guilty of an offence and liable on conviction under this Act in respect of which no special penalty is imposed to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years, or both.

Form of charge

182. In a charge for an offence under the provisions of this Act, it is sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, trading, or any proceedings in, or order, warrant or document of, the court acting under this Act.

Evidence as to fraud by agents

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

PART 9—PERSONAL INSOLVENCY REGISTER

Official Receiver to maintain Personal Insolvency Register

184.—(1) The Official Receiver must establish and maintain a Personal Insolvency Register.

(2) The Personal Insolvency Register must be in electronic form and such other form (if any) as may be prescribed by regulations.

Purpose of Personal Insolvency Register

185.—(1) The Personal Insolvency Register has the purpose of maintaining records and information about debtors in respect of whom a Personal Insolvency Order is in effect.

(2) The Personal Insolvency Register has additional purposes to—

- (a) facilitate the compliance, audit, and other supporting and administrative functions of the Official Receiver, the court, personal insolvency officials, or any other person under this Act;
- (b) facilitate the exercise of the powers of the Official Receiver, the court, personal insolvency officials, or any other person under this Act; and
- (c) provide statistical information and information for research purposes in relation to personal insolvency procedures.

Information to be recorded in Personal Insolvency Register

186. The Personal Insolvency Register must contain the following information in respect of a debtor who is subject to a personal insolvency procedure, as well as any other information as may be prescribed by regulations—

- (a) the debtor's full name;
- (b) any other name, including any alias or trading name, used by the debtor and known to the Official Receiver or the Authority;
- (c) the debtor's address;
- (d) the fact of the existence of a Personal Insolvency Order in respect of the debtor;
- (e) the type of Personal Insolvency Order made in respect of the debtor;

- (f) the date on which a Personal Insolvency Order was made in respect of the debtor;
- (g) the scheduled date for discharge of the Personal Insolvency Order;
- (h) the court which made a Personal Insolvency Order in respect of the debtor;
- (i) the case number, if any, associated with the Personal Insolvency Order;
- (j) the name, address, and contact details of any authorised intermediary, personal insolvency proposer, personal insolvency administrator, and/or bankruptcy trustee who is acting in the debtor's case;
- (k) the address and contact details of the office of the Official Receiver dealing with the debtor's case;
- (l) any other information required to be entered in the Personal Insolvency Register under this Act; and
- (m) any other information as may be prescribed by regulations.

Removal of information from Personal Insolvency Register

187.—(1) On the discharge of the debtor from a personal insolvency procedure, the Official Receiver must remove all information relating to the debtor from the Personal Insolvency Register.

(2) On the removal of information relating to the debtor from the Personal Insolvency Register, the Official Receiver must retain all relevant records relating to the debtor's case on file for a period of 6 years.

(3) On the revocation of discharge under sections 56 or 126, the Official Receiver must—

- (a) republish in the Personal Insolvency Register the information relating to a debtor's case specified in section 186; and
- (b) record in the Personal Insolvency Register the making of a revocation order, and the date on which such revocation order was made.

(4) Where a Personal Insolvency Order has been made in respect of a debtor on 2 or more occasions, the Official Receiver must—

- (a) maintain information relating to the debtor on the Personal Insolvency Register for a period of 2 years after the debtor's discharge from a second or subsequent personal insolvency procedure, or such period as may be prescribed; and
- (b) ensure that the Personal Insolvency Register contains all of the information required by this Act about the debtor and each insolvency event.

Access to Personal Insolvency Register

188.—(1) A person may only search the Personal Insolvency Register in accordance with this Act and such requirements as may be prescribed by regulations.

(2) The Official Receiver may charge a fee to members of the public for inspection of the Personal Insolvency Register, in accordance with such requirements as may be prescribed by regulations.

(3) The Personal Insolvency Register may be searched by any person, or by any party acting with the consent of that person, for the purpose of searching for information about that person.

(4) The Personal Insolvency Register may be searched by any person —

- (a) for the purpose of ascertaining whether a Personal Insolvency Order is in effect in respect of another person, where such ascertainment is necessary in the course of a person's business for evaluating or ascertaining the creditworthiness or credit standing of another person or in connection with the investigation of title to property of any nature;
- (b) for any purpose related to the debtor's participation in a personal insolvency procedure;
- (c) for the purpose of facilitating the compliance, audit, and other supporting and administrative functions of the Official Receiver, the court, personal insolvency officials, or any other person under this Act;
- (d) for the purpose of facilitating the exercise of the powers and duties of the Official Receiver, the court, personal insolvency officials, or any other person under this Act; and
- (e) for the purpose of providing statistical information and information for research purposes in relation to personal insolvency procedures.

Official Receiver not liable for act or omission

189. The Official Receiver is not personally liable for any acts done or purported to be done or omitted to be done, or decisions made or purported to be made, in good faith in relation to the maintenance of a Personal Insolvency Register under this Part.

PART 10—MISCELLANEOUS

Repeal

190. The Bankruptcy Act 1944 is repealed.

Transitional

191.—(1) Subject to this section, but notwithstanding any other provisions of this Act, all proceedings commenced and that are pending, immediately before the coming into force of this Act continued as if this Act had not come into force, and the Bankruptcy Act 1944 continues to apply to such proceedings as if it had not been repealed by this Act.

(2) Where any regulations or rules made under an enactment referred to in subsection (2) are in force immediately before the coming into force of this Act, such regulations or rules continue to have effect in relation to any such proceedings as are mentioned in subsection (1).

(3) Until such date as the Minister makes an appointment under section 129(1), the holder of the office of the Official Receiver under the Bankruptcy Act 1944 immediately before the coming into force of this Act continues to hold office as the Official Receiver for the purposes of this Act.

(4) Until such date as the Minister makes an appointment under section 129(1), any holder of an office of Deputy Official Receiver under the Bankruptcy Act 1944 immediately before the coming into force of this Act continues to hold office as a Deputy Official Receiver for the purposes of this Act.

(5) All offices and bodies constituted, and appointments made, under the Bankruptcy Act 1944, and in existence immediately before the coming into force of this Act, continue as if constituted or made under this Act.

(6) Any accounts maintained and kept under the Bankruptcy Act 1944, and in operation immediately before the coming into force of this Act, continue in operation as if maintained and kept under this Act.

(7) The repeal of the Bankruptcy Act 1944 does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Bankruptcy Act 1944, except as expressly provided in this Act.

Rescission of receiving orders and discharge of bankrupts

192.—(1) Where a receiving order has been made in respect of a person more than 10 years prior to the coming into force of this Act, the Official Receiver must, within 3 months after the coming into force of this Act, bring an application to court for an order rescinding the receiving order.

(2) Where—

- (a) a receiving order has been made in respect of a person within the period of 10 years prior to the coming into force of this Act; and
- (b) the Official Receiver is satisfied that an arrangement or composition has already enabled creditors to recover debts to the extent that the means of the debtor reasonably permit,

the Official Receiver must, within 6 months after the coming into force of this Act, bring an application to court for an order rescinding the receiving order.

(3) On receiving an application under subsections (1) or (2), notwithstanding the terms of any composition or arrangement, the court must, as soon as reasonably practicable and within a period of 90 days, make an order rescinding the relevant receiving order.

(4) Where a debtor has been adjudicated bankrupt more than 10 years prior to the coming into force of this Act, the debtor must be discharged from bankruptcy 3 months after the coming into operation of this Act, unless the bankruptcy has otherwise been discharged or annulled.

(5) Where subsection (4) applies, the Official Receiver must, within a period of 6 months following the coming into force of this Act, bring an application to court for an order confirming the discharge of the debtor.

(6) Where—

(a) a debtor has been adjudicated bankrupt within the period of 10 years prior to the coming into force of this Act; and

(b) the Official Receiver is satisfied that distributions in the bankruptcy have already enabled creditors to recover debts to the extent that the means of the debtor reasonably permit,

the Official Receiver must, within 6 months after the coming into force of this Act, bring an application to court for an order requesting the discharge of the debtor.

(7) On receiving an application under subsections (5) or (6), the court must, as soon as reasonably practicable and within a period of 90 days, make an order of discharge.

Consequential amendments

193. All written laws and State documents of any nature whatsoever are amended by deleting “Bankruptcy Act 1944” wherever it appears and substituting “Personal Insolvency, Financial Rehabilitation and Entrepreneurial Rescue Act 2025” unless the context otherwise requires.

SCHEDULE 1
(Section 73)

MEETINGS OF CREDITORS

Methods of holding meetings

1. A meeting of creditors may be held—

- (a) by assembling together those creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting;
- (b) by means of audio or radio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting.

Notice of meeting

2.—(1) Written notice of—

- (a) the time and place of every meeting to be held under paragraph 1(a); or
- (b) the time and method of communication for every meeting to be held under paragraph 1(b); or
- (c) the time and address for the return of voting papers for every meeting to be held under paragraph 1(a) or (b),

must be sent to every creditor and other person entitled to attend the meeting not less than 5 days before the meeting.

(2) The notice must—

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it;
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each such resolution and voting and mailing instructions.

(3) An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors, where—

- (a) the irregularity or failure is not material;
- (b) all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
- (c) all such creditors agree to waive the irregularity or failure.

(4) Where the meeting of creditors agrees, the chair may adjourn the meeting from time to time and from place to place.

(5) An adjourned meeting is to be held in the same place unless another place is specified in the resolution for the adjournment.

(6) Where a meeting of creditors under clause 1(a) or (b) is adjourned for less than one month, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Chair

3. The bankruptcy trustee or his or her nominee is the chairperson of the meeting.

Quorum

4.—(1) A quorum for a meeting of creditors is present where—

- (a) 3 creditors who are entitled to vote or their proxies are present; or
- (b) where the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present.

(2) Where a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the chairperson may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

Voting

5.—(1) At any meeting of creditors or a class of creditors, not being a meeting held for the purposes of subparagraph (2), a resolution is passed where a majority in number and value of the creditors or the class of creditors voting in person or by proxy vote in favour of the resolution.

(2) At any meeting of creditors or a class of creditors required to be passed as a special resolution, a special resolution is passed where a majority in number representing 75% in value of the creditors or class of creditors voting in person or by proxy vote in favour of the resolution.

Proxies

6.—(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) Proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.

(3) A proxy is to be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding one year.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the bankruptcy trustee or his or her nominee, not later than 48 hours before the start of the meeting.

Official Receiver or liquidator to report to meeting

7. If the bankruptcy trustee attends a creditors' meeting or an adjournment of the meeting, the bankruptcy trustee—

- (a) must report on the administration of the bankruptcy estate;

- (b) must give any creditor any further information that the creditor may properly require; and
- (c) must produce for the meeting all relevant accounting records, deeds and papers in the bankruptcy trustee's possession that relate to the bankruptcy estate.

Attending a creditors' meeting

8.—(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 bankruptcy trustee 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 proxy on any resolution to be put to the meeting.

Debtor may be required to attend and be questioned

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

(2) The bankruptcy trustee may question the bankrupt debtor as to his or her property, conduct, or dealings.

(3) The chair of the meeting must allow only questions that relate to the bankrupt debtor's property, conduct, or dealings.

(4) The bankrupt debtor must sign a statement of the debtor's evidence given under the questioning if required to do so by the bankruptcy trustee.

Attendance by non-creditors

10. A person who is not a creditor of the bankrupt debtor may attend a creditors' meeting with the consent of —

- (a) the bankruptcy trustee; or
- (b) the creditors attending the meeting, voting by ordinary resolution.

Minutes

11.—(1) The person chairing a meeting of creditors must ensure that minutes are kept of all proceedings.

(2) Minutes which have been signed correct by the person chairing the meeting are *prima facie* evidence of the proceedings.

Corporations may act by representatives

12. A body corporate which is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

Other proceedings

13. Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

SCHEDULE 2
(Section 81)

CREDITORS' COMMITTEE

Appointment of committee

1. In the cases specified in section 81, the creditors qualified to vote may, by resolution, appoint a Creditors' Committee for the purpose of superintending the administration of the bankruptcy estate by the bankruptcy trustee.

Qualifications of committee

2. The Creditors' Committee consists of not more than 5 nor less than 3 persons, possessing one or other of the following qualifications—

- (a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, who has proved a debt and whose proof of debt has been admitted; or
- (b) that of being a person to whom a creditor, who has proved a debt and whose proof of debt has been admitted, intends to give a general proxy or general power of attorney.

Meetings of committee

3.—(1) The Creditors' Committee must meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month.

(2) The bankruptcy trustee or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.

Quorum

4. The committee may act by a majority of their members present at a meeting, but must not act unless a majority of the committee are present at the meeting.

Resignation of office

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

Vacation of office

6. If a member of the committee is absent from 5 consecutive meetings of the committee, his or her office will become vacant.

Removal

7. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which 7 days' notice has been given stating the object of the meeting.

Filling a vacancy

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

Continuing members may act

9. The continuing members of the committee, provided there be not less than 2 such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the Creditors' Committee is for the time being less than 5, the creditors may increase that number so that it does not exceed 5.

If no committee court gives consent

10. If there is no Creditors' Committee, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by—

- (a) the court on the application of the bankruptcy trustee; or
- (b) by the Official Receiver, except in the case where he or she is acting as Trustee.

SCHEDULE 3
(Section 172)

ADMINISTRATION IN BANKRUPTCY OF ESTATE OF PERSON DYING
INSOLVENT

Administration in bankruptcy of estate of person dying insolvent

1. Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

The order

2. Upon the prescribed notice being given to the personal representative of the deceased debtor, the court may, in the prescribed manner, on proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, on cause shown, dismiss the petition with or without costs.

Property to vest in Official Receiver

3.—(1) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor vest in the Official Receiver, as trustee thereof, and he or she must forthwith proceed to realise and distribute it in accordance with the provisions of this Act.

(2) Creditors must have the same powers as to appointment of bankruptcy trustees and Creditors' Committees as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act, relating to bankruptcy trustees and Creditor Committees, must apply to bankruptcy trustees and Creditors' Committees appointed under the power so conferred.

(3) If no Creditors' Committee is appointed, any act or thing or any direction or permission which might have been done or given by a Creditors' Committee may be done or given by the court.

Application of Act

4. With the modifications hereinafter mentioned, all the provisions of Division 2, 3, 4, 5, 7, 8, and 9 of Part 6, subject to any modifications that may be made therein by rules under paragraph 10, apply to the case of an administration order under this Schedule in like manner as to a Bankruptcy Order under this Act, and section 68 applies as if for the reference to a Bankruptcy Order there were substituted a reference to an administration order under this section.

Priority of claims

5.—(1) In the administration of the property of the deceased debtor under an order of administration, the Official Receiver or bankruptcy trustee must have regard to any claim by the personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him or her in and about the debtor's estate.

(2) Claims of the type specified in subparagraph (1) are deemed a preferential debt under the order and, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

Surplus

6. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Official Receiver or bankruptcy trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of Bankruptcy, such surplus is to be paid over to the personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

Effect of notice to personal representative of the presentation of the petition

7.—(1) Notice to the personal representative of a deceased debtor of the presentation by a creditor of a petition under this paragraph, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of bankruptcy petition.

(2) After such notice no payment or transfer of property made by the personal representative shall operate as a discharge to him as between himself and the Official Receiver or bankruptcy trustee.

(3) Nothing in this paragraph invalidates any payment made or any act or thing done in good faith by the personal representative before the date of the order for administration.

Personal representative may present petition

8. A petition for the administration of the estate of a deceased debtor under this Schedule may be presented by the personal representative of the debtor, and, where a petition is so presented by such a representative, this Schedule applies subject to such modifications as may be prescribed by rules made under paragraph 10 applies.

Creditor

9. Unless the context otherwise requires, "creditor", in this Schedule, means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

Rules

10. Rules for carrying into effect the provisions of this Schedule may be made in the same manner and to the like effect and extent as in bankruptcy.

November 2025

PERSONAL INSOLVENCY, FINANCIAL REHABILITATION AND ENTREPRENEURIAL RESCUE BILL 2025

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Personal Insolvency, Financial Rehabilitation and Entrepreneurial Rescue Bill 2025 (**‘Bill’**) represents a comprehensive modernisation of the personal insolvency law of Fiji, replacing the outdated Bankruptcy Act 1944 (**‘Act’**), a colonial-era law largely based on an English law passed over a hundred years ago, and updating the law in line with contemporary international best practices.
- 1.2 To achieve the above, the Bill aims to promote economic activity and to reduce the economic and social costs of insolvency by introducing the ‘fresh start’ principle. This idea provides that, by discharging unpayable debt, insolvency law can offer relief to honest individual debtors from the burden of over-indebtedness, permitting such debtors to return to economic productivity and social participation.
- 1.3 The Bill also seeks aims to encourage entrepreneurship in Fiji and to support the rehabilitation and rescue of micro, small, and medium enterprises, including sole proprietorships, partnerships and other unincorporated businesses, by restructuring the debts of viable businesses and offering a second chance to honest entrepreneurs. By ensuring that current financial problems do not trap individuals in debt indefinitely, the Bill aims to reduce the stigma and finality of financial failure. In these ways, the Bill aims to both stimulate economic growth, and safeguard individuals and the wider economy from future economic shocks and crises.
- 1.4 The Bill supports credit markets by adopting simplified and streamlined procedures to ensure efficient debt repayment in cases where this is possible. An effective bankruptcy process allows for the swift resolution of cases involving non-viable unincorporated businesses and partnerships. Situations of insolvency can result in losses of value and wasted costs when individual creditors compete with one another to claim the limited available assets and income of the debtor for each creditor’s individual benefit. The Bill aims to enhance predictability and efficiency

and in so doing reduce this unnecessary loss of value by encouraging creditors to cooperate in producing outcomes beneficial to the interests of creditors as a whole, and to the public interest.

2.0 CLAUSES

2.1 Part 1 of the Bill includes the long and short titles of the new legislation, as well as setting out definitions and objectives. Clause 3 contains a non-exhaustive list of objectives, which is intended to assist in the reading and interpretation of the new legislation.

2.2 Part 2 of the Bill establishes a set of key principles that are used and applied repeatedly across the range of personal insolvency procedures. This Part ensures that a consistent approach is taken to important concepts, which provides transparency and predictability while also assisting in addressing an important challenge for modern personal insolvency systems, sorting each case into an appropriate procedures by including provisions which provide for the following:

- (a) establishing the concepts of unfair preferences and undervalued transactions;
- (b) giving insolvency officials powers to reverse unfair preferences and undervalued transactions, so as to restore the availability of relevant assets or funds for the benefit of creditors as a whole;
- (c) protecting a minimum debtor income and provide that certain essential property of the debtor will not be available to creditors in a debtor's bankruptcy or Debt Restructuring Arrangement. Such property and income are also not considered for the purposes of calculating the debtor's eligibility for the 'no income, no assets' Debt Rehabilitation Order. The categories of protected property include property necessary for the debtor's trade or profession, necessary household items, contributions and entitlements under the Fiji National Provident Fund, a tenancy under a short-term rental accommodation agreement, and property held on trust for others;
- (d) establishing certain categories of preferential debts which largely mirror those already contained in the Companies Act 2015. These include a year's worth of tax debts and government rents, amounts payable to employees and amounts due in respect of pension contributions; and
- (e) establishing a range of non-exclusive obligations applicable across insolvency procedures, including responsibilities to provide financial information to insolvency officials, to inform insolvency officials of any important changes in the debtor's financial circumstances, and to inform any potential lenders of the debtor's participation in an insolvency procedure. Consequences for non-compliance with these obligations include the potential suspension or termination of an insolvency procedure without debt discharge.

- 2.3 Part 3 of the Bill provides for Debt Protection Moratorium which is a temporary stay of debt collection activity, to offer the debtor necessary time to work out the most appropriate insolvency option. The wide-ranging nature of the moratorium is balanced by its short-term duration. In this way it is the only provision of the Bill that restricts secured creditors' rights, but such restriction is strictly time limited. On the expiry of the 60-day period without a solution having been reached, enforcement activity can resume against the debtor. Safeguards are established to allow creditors to object to the making of a Debt Moratorium Order in the event of debtor misconduct or unfair prejudice to a creditor.
- 2.4 Part 4 of the Bill introduces the concept of Debt Restructuring Agreement ('DRA'). The DRA procedure allows a debtor, with the assistance of an intermediary, to negotiate a flexible repayment and restructuring plan with the debtor's creditors, in satisfaction of the debtor's outstanding liabilities. The DRA procedure is built on principles of negotiation and the agreement of creditors – a proposal becomes a DRA only when a majority of creditors have voted in favour. The approved arrangement is confirmed by court order, at which point creditors must observe its terms and cannot take individual debt collection action. While most terms of an arrangement are decided by the parties themselves through negotiation, certain mandatory terms must be included - for example, the maximum duration of a debt repayment plan must not exceed three years in 'normal' cases and five years in 'high value' cases. On the completion of such a repayment plan, the debtor's remaining included debts are discharged.
- 2.5 Part 5 of the Bill establishes the Debt Rehabilitation Order procedure which is a streamlined procedure for providing a rapid route to discharge for low-value cases in which there are no resources available for distribution to creditors. Eligibility conditions limit access to the procedure to debtors with low levels of debts, income and property. A Debt Rehabilitation Order suspends most creditor debt collection activity for a period of 12 months, at which point the debtor's included debts are discharged (provided that the debtor complies with all relevant obligations). The order does not, however, affect the rights of secured creditors.
- 2.6 Part 6 of the Bill establishes a modernised bankruptcy procedure, which applies to both individual debtors and partnerships. Bankruptcy can be initiated via a debtor's own application, or via a creditor's petition. A creditor's petition is possible only where a creditor is owed a debt of at least \$5,000, and where the debtor's surplus income and unprotected property exceed the eligibility limits of the Debt Rehabilitation Order procedure. On presentation of a bankruptcy notice to a debtor, the debtor will have a period of 28 days in which to respond, before a creditor's petition may be made.

- 2.7 Where a court makes a Bankruptcy Order, the Official Receiver (or a Deputy Official Receiver) immediately assumes the role of bankruptcy trustee, though creditors can appoint a private party as bankruptcy trustee if they so choose. On the making of a Bankruptcy Order, all unprotected property of the debtor vests in the Trustee (including any such property acquired by the debtor after commencement), who will distribute such property for the benefit of creditors. Most creditors are prevented from taking enforcement action against the debtor by a stay of proceedings. Secured creditors remain entitled to enforce their security but must give notice of such actions to the bankruptcy trustee. Where a debtor has surplus income, a Debt Repayment Order or Agreement can be made to require payments from the debtor's income to creditors. In cases in which the debtor has complied with relevant criteria, the debtor is discharged from bankruptcy and released from included debts on the expiry of a period of three years or, in 'high value' cases, five years.
- 2.8 Part 7 of the Bill outlines the jurisdiction, powers, and procedures of the courts in handling personal insolvency matters. It covers how judges may exercise powers, appeals processes, consolidation of petitions, and the ability of courts to stay or continue proceedings. It also includes provisions for regulation-making, rules, fees, and evidentiary matters such as affidavits and certificates. Essentially, it establishes the legal framework and authority of the courts in administering insolvency cases.
- 2.9 Part 8 of the Bill establishes a range of offences applicable to debtors participating in personal insolvency procedures. It specifies offences such as providing false information, fraudulent disposal of property, failure to comply with obligations, concealment of records, and fraudulent credit practices. It also sets out penalties, trial procedures, and evidentiary rules for prosecuting insolvency-related misconduct. The aim is to safeguard the integrity of the insolvency system by deterring fraud and non-compliance.
- 2.10 Part 9 of the Bill provides for the establishment and maintenance of a Personal Insolvency Register (**'Register'**). The Register will maintain information about debtors participating in insolvency procedures, to be used for purposes including the administration of the insolvency system and the undertaking of creditworthiness assessments by lenders. To balance the need for accurate information of this type with the aim of minimising the stigma of insolvency, access to the register is limited to only those persons who will search it for specified legitimate purposes. Information regarding a debtor will be removed from the Register on the debtor's discharge from an insolvency procedure.
- 2.11 Part 10 of the Bill repeals the Act and includes necessary transitional provisions and consequential amendments.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new legislation comes under the responsibility of the Minister responsible for personal insolvency.

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