

**ACT 708**  
**INSOLVENCY ACT, 2006**

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**ACT 708**  
**INSOLVENCY ACT, 2006(1)**

**AN ACT to amend and consolidate the law to provide for the protection of creditors and debtors in cases of insolvency and for related matters.**

*The Official Trustee*

**1. Official Trustee**

- (1) There shall be a public office under the title of Official Trustee.
- (2) The President may, in accordance with article 195 of the Constitution, and within six months after the coming into force of this Act, appoint the Official Trustee.
- (3) Until the appointment is made under subsection (2), the Registrar-General is the Official Trustee.
- (4) A person shall not be appointed the Official Trustee unless that person is a legal practitioner of not less than ten years standing.
- (5) An act required or authorised to be done by, or in relation to, the Official Trustee may instead be done by, or in relation to a public officer authorised in that behalf by the Official Trustee or under an enactment.
- (6) For the purposes of subsection (5), a public officer is presumed to be so authorised unless the contrary is shown.
- (7) In the performance of the functions of the office, the Official Trustee
  - (a) may seek the services of a person who is not a public officer, and
  - (b) may make appropriate payments for the services of that person.

**2. Powers of the High Court**

- (1) A person aggrieved by an act done by the Official Trustee in the performance of a function under this Act may appeal to the High Court, which shall make an appropriate order.
- (2) Where a person refuses or fails to comply with a requirement made by the Official Trustee under

this Act, the Official Trustee may apply to the High Court, and the Court may order the requirement to be carried out.

(3) The Official Trustee may, where in doubt as to a matter arising in connection with the performance of a function under this Act, apply to the High Court for directions.

### **3. Insolvent Estates Fund**

(1) There is hereby established a public fund to be known as the Insolvent Estates Fund, to which shall be credited the sums of money received by the Official Trustee under this Act and to which the Official Trustee shall debit the sums of money disbursed under this Act.

(2) There is hereby established an account within the Insolvent Estates Fund to which shall be credited the sums of money received by the Official Trustee by way of fees and any other charges.

(3) The payments required or authorised by this Act to be met out of the Insolvent Estates Fund are hereby charged on that Fund.

### **4. Insolvency register**

(1) The Official Trustee shall make and keep an insolvency register, in respect of a debtor in relation to whom a protection order is made.

(2) The Official Trustee shall record in the register within seven days, as it becomes available,

- (a) the name and address of the debtor, the previous names of the debtor, and a change in the debtor's name or address which is notified to the Official Trustee;
- (b) the date of the making of the protection order;
- (c) the date on which the protection order ceases to have effect, and the reason for its ceasing to have effect;
- (d) where an insolvency order is made, the date of the making of the order, the date on which the debtor is discharged and the date on which the insolvency proceedings are terminated;
- (e) where the debtor is adjudged bankrupt, the date of the adjudication, the appointed discharge date, and an alteration in that date;
- (f) where a participation order is made, the date of the making of the order and where the debtor's discharge is revoked by virtue of the order, a statement to that effect.

(3) Where an administration order is made in respect of a deceased debtor, the Official Trustee shall, within seven days, record in the insolvency register as it becomes available,

- (a) the name and last known address of the debtor, and the previous names of the debtor,
- (b) the date of the making of the administration order, and
- (c) the date of the termination of the administration.

(4) The insolvency register shall be open, during working hours, for public inspection on payment of the prescribed fee.

(5) The Official Trustee shall, on an application made by a person in the prescribed form, and on payment of the prescribed fee, provide copies of an entry in the insolvency register.

### **5. Notices in the *Gazette***

(1) Where an information is required to be recorded in the insolvency register, the Official Trustee, in addition to recording the information in the register, shall publish the information in the *Gazette* within fourteen days after it becomes available to the Official Trustee.

(2) Within fourteen days after the end of each June and December, the Official Trustee shall publish in the *Gazette* the names, including former names, and addresses of the bankrupts, together with the dates on which they were adjudged bankrupt and their appointed discharge dates.

## **6. Liability for default**

(1) A liability does not attach to the Official Trustee in respect of a breach of a duty imposed on the Official Trustee by or under this Act, and, except in so far as may result from an order made under subsection (3) of section 42, a liability does not attach to the Republic in respect of that breach.

(2) Subsection (1) does not affect the institution against a public officer of criminal proceedings or of disciplinary proceedings under the Civil Service Act, 1960 (C.A. 5).

## **7. Annual report**

Within three months after the end of each December, the Official Trustee shall prepare and lay before Parliament, a report giving details of the operation of this Act during the previous year.

### *Insolvency Proceedings*

#### *Petitions*

## **8. Commencement of proceedings**

(1) Insolvency proceedings in respect of a debtor shall be initiated by the presentation of a petition to the Official Trustee in the prescribed manner, and accompanied by the prescribed fee, for the making of a protection order, enabling the debtor's assets to be conserved for the protection of the creditors until the affairs of the debtor have been considered by the High Court.

(2) A petition shall not be presented

(a) in respect of a body corporate, or

(b) in respect of two or more debtors except where the debts are owed by those debtors jointly.

(3) Where a petition is presented, the High Court may, on an application made by the Official Trustee, restrain the institution or continuance of civil proceedings by or against the debtor.

(4) Civil proceedings under subsection (3) do not include proceedings by a secured creditor for the realisation of the security of the secured creditor.

(5) A petition may be withdrawn or amended, with the prior consent in writing of the Official Trustee, before a protection order is made.

## **9. Creditor's petition**

(1) A petition may be presented in respect of a debtor by any one or more of the creditors, if the indebtedness of the debtor to the petitioner, or the petitioners collectively, in liquidated sums of money payable immediately amounts to at least one hundred million cedis and if,

- (a) the debtor has, within the preceding three months, suspended payment or given notice to a creditor that the debtor has suspended, or is about to suspend, payment of the debts; or
  - (b) the sheriff has, within the preceding three months, and in pursuance of a writ of *fieri facias* issued in the Republic in respect of the debtor, taken possession of a property of the debtor and sold the property or retained it for at least twenty-one days; or
  - (c) a creditor is entitled to proceed with the execution, by means of a writ of *fieri facias* issued or issuable in the Republic, of a judgement or order obtained against the debtor not less than seven days previously.
- (2) Where a petitioner is a secured creditor,
- (a) the value and description of the security shall be specified in the petition; and
  - (b) for the purpose of applying the one hundred million cedis limit under subsection (1), the amount of the secured debt shall be reduced by the value of the security as specified.

## **10. Debtor's petition**

(1) A petition may be presented by a debtor in respect of the affairs of that debtor if the debtor is insolvent and the indebtedness in liquidated sums of money payable immediately amounts to at least one hundred million cedis.

(2) Where an indebtedness referred to in subsection (1) is to a secured creditor then, unless the total of the unsecured debts amounts to at least fifty million cedis in liquidated sums of money payable immediately, the debtor shall specify in the petition the value and description of the security.

(3) For the purpose of applying the one hundred million cedis limit under subsection (1), the amount of the secured debt shall be reduced by the value of the security as specified.

## **11. Procedure on petitions**

(1) A copy of a creditor's petition shall be served on the debtor by the petitioner two clear days before the day on which it is presented.

(2) After seven days have elapsed following the presentation of a petition, the Official Trustee shall consider the petition and evidence in support of the petition together, in the case of a creditor's petition, with the representations made by the debtor and evidence in support of the petition.

(3) Where a duly presented petition is not withdrawn the Official Trustee shall make a protection order in respect of the petition.

(4) The Official Trustee shall not make a protection order under subsection (3), if it appears that, owing to payments by the debtor or other change of circumstances, the debtor's total indebtedness in liquidated sums of money payable immediately, including indebtedness to persons who are not parties to the petition, has, after deduction of the value of securities held in respect of the indebtedness, fallen below one hundred million cedis.

(5) The Official Trustee

- (a) may, where a petition was not duly presented or the indebtedness of the debtor has been reduced,
- (b) shall, if the petition has not been withdrawn,

give notice to the petitioner and, in the case of a creditor's petition, to the debtor that the petition is

dismissed.

(6) Where two or more petitions are presented in respect of a debtor, a protection order made on any of the petitions shall be deemed to have been made on all of them.

(7) After a protection order is made a further petition shall not be presented in respect of the debtor before the termination of the insolvency proceedings.

### *Protection Orders*

## **12. Effect of protection order**

While a protection order has effect,

- (a) existing and after-acquired property of the debtor shall vest in the Official Trustee in accordance with sections 37 and 38, and shall be conserved in accordance with section 43;
- (b) the debtor is subject to the duties and disabilities specified in sections 25, 26, 28 and 29;
- (c) civil proceedings by or against the debtor shall not be instituted or continued without the leave of the High Court.

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

(1) Within seven days after the making of a protection order, or a longer period which the Official Trustee may allow, the debtor shall, lodge with the Official Trustee a statement of affairs conforming to subsection (2), unless a statement of affairs has been lodged previously.

(2) The statement of affairs shall contain

- (a) particulars of the debtor's existing and potential assets and of any other property in the possession or control of the debtor,
- (b) a list of creditors, showing the amounts and due dates of debts and particulars of securities held,
- (c) particulars of the debtor's transactions during a period which the Official Trustee may specify,
- (d) a statement of the reasons for the debtor's insolvency, unless the debtor denies the insolvency, and
- (e) any other additional information required by the Rules or by the Official Trustee.

## **14. Debtor's proposal for arrangement with creditors**

Within seven days after the making of a protection order, or a longer period, which the Official Trustee may allow, the debtor may make a proposal for an arrangement with creditors, and lodge the details of the proposal with the Official Trustee.

## **15. Creditors' proof of debts**

(1) In this Act "**provable debt**" means an obligation the value of which is capable of assessment in money, being

- (a) an obligation which, apart from this Act, would have been enforceable by the creditor against

the debtor at the date on which the protection order was made, or

- (b) an existing or a future obligation, which, by reason of a transaction which took place before the date on which the protection order was made might, apart from this Act, have become enforceable by the creditor against the debtor after that date,

and references in this Act to the value of a provable debt are references to its value apart from this Act on the date on which the protection order was made.

(2) An existing or a future obligation referred to in paragraph (a) of subsection (1) does not include an obligation unenforceable by virtue of a law relating to limitation of actions.

(3) While a protection order has effect, a creditor may lodge with the Official Trustee a proof of debts, in accordance with subsection (4).

(4) A proof of debts shall be in two parts, the first part containing brief particulars of,

- (a) the values and due dates of provable debts alleged by the creditor to be outstanding in favour of the creditor against the debtor, and the nature and value of the securities held by the creditor in respect of those debts,
- (b) the values and due dates of the obligations outstanding in the debtor's favour against the creditor, being obligations which would be provable debts if a protection order had been made against the creditor on the date on which the protection order was made against the debtor,
- (c) the nature and value of securities held by the debtor in respect of the obligations mentioned in paragraph (b), and
- (d) the total values of the debts, obligations and securities,

and the second part containing details of the transactions from which the debts and obligations arose.

(5) A copy of the first part of a proof of debts lodged under subsection (3) shall be given by the Official Trustee to the debtor and to each creditor who is mentioned in the debtor's statement of affairs or who, not being so mentioned, lodges a proof of debts.

(6) Where the debtor knows or believes that the proof of debts is false in a material particular, the debtor shall inform the Official Trustee of the falsity within fourteen days of the receipt of the proof of debts.

(7) The Official Trustee shall examine the proof of debts lodged under this section and if, after considering the representations made by the debtor or any other creditor, it appears

- (a) that an item is improperly included or a value is incorrectly stated, or
- (b) that the proof of debts is otherwise incorrect,

the Official Trustee shall give notice of the objection to the creditor, who may lodge an amended proof of debts within the period specified in the notice or the extended period that the Official Trustee may allow.

(8) Where it appears that a proof of debts is correct, the Official Trustee shall give notice to the creditor admitting the proof of debts subject to verification under section 45.

(9) Where the creditor fails to lodge an amended proof of debts or a further amended proof of debts, within the period allowed under subsection (7), and the Official Trustee is still of the opinion that the previous proof of debts is incorrect, the Official Trustee shall give notice to the creditor of the rejection of the proof of debts.

## **16. First meeting of creditors**

(1) The Official Trustee shall call a first meeting of creditors for a date not later than four weeks after the publication of a protection order, and shall give a notice of the meeting which is practicable to each creditor who is mentioned in the debtor's statement of affairs or who, if not mentioned, has lodged a proof of debts.

(2) Within seven days of giving the notice under subsection (1), the Official Trustee shall give to each creditor a copy of the debtor's statement of affairs and of the proposals for an arrangement with creditors lodged by the debtor together with the observations on the statement that the Official Trustee may wish to make.

(3) The Official Trustee shall put appropriate questions to the meeting, but where the debtor has proposed an arrangement with creditors, the meeting shall be asked to approve or reject the proposal.

(4) An arrangement with creditors is not approved unless it has secured at least three-quarters of the votes cast, which represent three-quarters of the total amount of moneys owed by the debtor.

(5) The meeting shall be closed not later than six weeks after the publication of the protection order.

(6) The Schedule shall apply in relation to the meeting.

### *Judicial Consideration*

## **17. Application to the High Court**

(1) Within fourteen days after the closing of the first meeting of creditors, the Official Trustee shall make an application for judicial consideration to the High Court, for the Court to consider the debtor's affairs and give its decision as to the future course of the insolvency proceedings.

(2) On an application for judicial consideration, the Court may make

(a) an insolvency order, or

(b) an order confirming an arrangement with creditors, or

(c) an order rescinding the protection order.

(3) On the making of an order under subsection (2), the protection order shall cease to have effect, but the debtor's assets shall remain vested in the Official Trustee except as otherwise provided by section 50.

## **18. Hearing of application**

(1) At the hearing of an application for judicial consideration, the debtor and a creditor who has lodged a proof of debts may appear and be heard in person or by counsel, and the Official Trustee shall submit to the High Court a report on the circumstances of the case.

(2) A copy of the report of the Official Trustee to the Court shall be served on a creditor who has lodged a proof of debts two clear days before the hearing of the application under subsection (1).

(3) The Official Trustee's report shall include, together with any other information which may assist the Court, a statement of

(a) the grounds on which the protection order was made,

(b) the assets of the debtor which have become vested in the Official Trustee,

- (c) the liabilities of the debtor,
- (d) the conduct of the debtor before and since the presentation of the petition, and
- (e) the decisions taken at the first meeting of creditors.

(4) The Official Trustee and any other person entitled to appear may adduce oral or written evidence and cross-examine a witness called before the Court.

(5) The Official Trustee shall give the assistance that the Court may require for the Court to reach a conclusion.

## **19. Insolvency order**

(1) The High Court shall make an insolvency order where it does not, under section 20 or 21, confirm an arrangement with creditors or rescind the protection order.

(2) Where an insolvency order is made, the Official Trustee shall proceed to realise and distribute the debtor's assets in accordance with sections 37 to 56.

(3) While the insolvency order has effect,

- (a) the debtor is subject to the duties and disabilities specified in sections 25 to 29; and
- (b) civil proceedings by or against the debtor shall not be instituted or continued without the leave of the Court.

## **20. Confirmation of arrangement with creditors**

(1) Where an arrangement with creditors was approved by the first meeting of creditors and it does not appear that grounds for bankruptcy exist or that it is likely that they exist, the High Court shall make an order confirming the arrangement if,

- (a) its terms are fair and reasonable,
- (b) it provides for an order of priority of payments corresponding to that laid down by section 54, and
- (c) it provides for payment in full of the fees and outgoings due to the Official Trustee in respect of the insolvency proceedings.

(2) Where the conditions specified in paragraphs (a) to (c) of subsection (1) are not satisfied, the Court may adjourn the hearing of the application for judicial consideration and direct the first meeting of creditors to be reopened with a view to the submission by the debtor of proposals for a modified arrangement.

(3) On confirmation by the Court, an arrangement with creditors in respect of every provable debt owed by the debtor, becomes binding on the debtor and on each creditor who was entitled to lodge a proof of debts, whether or not that creditor voted in favour of the arrangement.

(4) The Official Trustee shall supervise the carrying into effect of an arrangement with creditors confirmed by the Court; and the Court may, on the application of the Official Trustee or a person interested, give the directions that may be expedient for carrying it into effect.

(5) Where it appears to the Court, on the application of the Official Trustee or a person interested,

- (a) that default has been made in carrying into effect an arrangement with creditors confirmed by the Court, or

- (b) that for a reason it is impracticable or would be unjust to proceed with the arrangement, or
- (c) that confirmation of the arrangement was procured by fraud,

the Court may annul the arrangement but without prejudice to anything previously done under the arrangement.

(6) Where an arrangement is annulled, the Court may make a protection order against the debtor, and this Act shall apply as if the protection order had been then made by the Official Trustee on a creditor's petition.

## **21. Rescission of protection order**

(1) The High Court shall rescind the protection order if it appears,

- (a) that having regard to new evidence and to the circumstances generally, the order should not have been made; or
- (b) that due to payments made on behalf of the debtor or other change of circumstances, payment in full has been achieved.

(2) On information given by the Official Trustee that the assets vested in the Official Trustee are likely to be sufficient to provide for payment in full, the Court may

- (a) adjourn the hearing of the application for judicial consideration, and
- (b) authorise the Official Trustee to realise and distribute the assets as if an insolvency order had been made.

(3) Where the hearing is adjourned under subsection (2), the Official Trustee shall apply to the High Court for the hearing to be resumed,

- (a) when payment in full has been achieved, or
- (b) if at any time it appears to the Official Trustee that the assets are not sufficient to provide for payment in full,

and where it is satisfied that payment in full has been achieved the Court shall rescind the protection order.

## *Bankruptcy*

## **22. Public examination of debtor**

(1) Where, at the time when an insolvency order is made, or on an application made by the Official Trustee at a subsequent time before the debtor's discharge from the insolvency order, it appears to the High Court that grounds for bankruptcy exist or that it is likely that they exist, the Court shall direct the debtor to undergo an examination at a public sitting of the Court in respect of the conduct and affairs of the debtor.

(2) Subject to section 8 of the Oaths Decree, 1972 (N.R.C.D. 6) (by which a person is permitted to give evidence on affirmation in certain cases), the debtor shall be examined on oath and shall answer the questions put by the Court or allowed by the Court to be put to the debtor by or on behalf of the Official Trustee or a creditor who has lodged a proof of debts.

(3) A transcript of the examination shall be made and read to or by the debtor and signed by the

debtor; and the signed transcript may be used as evidence in any subsequent civil or criminal proceedings affecting the debtor, whether instituted under this Act or not.

### **23. Adjudication of bankruptcy**

(1) Where a public examination is held under section 22, the High Court shall make an order adjudging the debtor a bankrupt if one or more of the following have been established, namely,

- (a) that for an aggregate period of twelve months within the three years preceding the making of the protection order, the debtor continued to carry on the trade or business of the debtor in the knowledge that the debtor was insolvent;
- (b) that the debtor contributed to the insolvency by rash speculations or culpable neglect of the business affairs of the debtor, or by gambling or extravagance;
- (c) that a provable debt was contracted by the debtor with the intention that it should not be met or without a reasonable expectation of being able to meet it;
- (d) that the debtor has failed to account satisfactorily for assets of the debtor which have disappeared since the date of the making of the protection order or during the year previous to that date;
- (e) that the debtor has persistently and without adequate excuse failed to carry out the duties of the debtor in the insolvency proceedings;
- (f) that the debtor is a former bankrupt;
- (g) that within the preceding three years the debtor has been convicted of an offence involving dishonesty in relation to property and has been sentenced to a term of imprisonment of not less than three months;
- (h) that within the preceding three years the debtor has been convicted of an offence under section 7 or 8 of the Registration of Business Names Act, 1962 (Act 151).

(2) The order shall specify a date, at least two years after the making of the order, for the discharge of the bankrupt.

(3) Where the Court has directed the debtor to undergo a public examination under section 22, but the examination cannot be held because the debtor has absconded, or is medically unfit to appear, or for any other sufficient reason, the Court may proceed under this section as if the examination had been held.

### **24. Additional duties and disabilities of bankrupt**

(1) In addition to the duties and disabilities imposed on a bankrupt by virtue of an insolvency order made against the bankrupt, the bankrupt shall not

- (a) carry on, or take part in the management or direction of, a trade or business,
- (b) operate an account with a bank, or any other financial institution,
- (c) obtain credit exceeding ten million cedis, or
- (d) enter into a hire-purchase agreement,

except with the prior consent in writing of the Official Trustee and in accordance with the directions that may be given to the bankrupt by the Official Trustee.

(2) A bankrupt shall, in the form approved by the Official Trustee,

- (a) keep a record of the income, expenditure and any other financial dealings of the bankrupt, and
- (b) lodge with the Official Trustee at intervals of not more than four months an income and expenditure account.

(3) For the purposes of paragraph (d) of subsection (1), “**hire-purchase agreement**” means an agreement by which a person agrees to bail goods to a bailee on the terms that the property in the goods may or will pass to the bailee after payment of two or more instalments.

### *General Duties and Disabilities of Debtor*

#### **25. Duty to co-operate with Official Trustee**

(1) In addition to the specific duties imposed on the debtor by or under this Act, the debtor shall, during the period between the making of a protection order and the termination of the insolvency proceedings, comply within seven days with a direction given by the Official Trustee in connection with the debtor’s affairs.

(2) During the period specified in subsection (1), the debtor

- (a) shall attend every meeting of creditors called by the Official Trustee and give the information to the meeting that may be required by the Official Trustee;
- (b) shall, within seven days, give notice to the Official Trustee of a change in the name or address of the debtor;
- (c) shall not destroy, alter, conceal or dispose of an account book or any other record of the financial affairs of the debtor.

#### **26. Duty to disclose after-acquired property**

(1) The debtor shall, on becoming entitled to an after-acquired property, give notice of that property to the Official Trustee.

(2) For the purposes of subsection (1), “**after-acquired property**” includes movable and immovable property, and income, which becomes, or but for this Act would become, vested in the debtor during the period between the making of the protection order and the discharge of the debtor or earlier termination of the insolvency proceedings.

#### **27. Duty of disclosure when obtaining credit**

Where a bankrupt or any other debtor who has not been discharged intends, whether personally or jointly with another person to obtain credit exceeding ten million cedis from a person, the debtor shall disclose to that person, before seeking to obtain the credit, that the bankrupt or any other debtor is a bankrupt or is undischarged from an insolvency order.

#### **28. Liability to arrest and seizure of property**

(1) Where insolvency proceedings are in progress against a debtor, and it appears to the High Court that the proceedings are or may be impeded because the debtor,

- (a) has absconded, or is likely to do so,

- (b) has removed, concealed, destroyed or damaged any property, or is likely to do so, or
- (c) is likely to fail to attend as required before the Court, the Official Trustee or a meeting of creditors,

the Court may, without prejudice to its powers in relation to contempt of court, issue a warrant for the arrest of the debtor, or the seizure of the property in question, or for both the arrest and the seizure.

(2) Where a warrant of arrest is issued under subsection (1), the provisions of the Criminal Procedure Act, 1960 (Act 30) relating to arrest shall apply in the same way as they apply to the arrest for a criminal offence; and a debtor arrested under that warrant may, for the purposes of the insolvency proceedings, be conveyed in custody to a hearing by the Court or the Official Trustee, or to a meeting of creditors.

(3) Property seized under subsection (1) shall be dealt with as the Court may direct, but property which does not belong to the debtor and is not likely to be subject to the powers of the Official Trustee under sections 37 to 56 shall be returned to its owner within twenty-eight days.

## **29. Liability to interception of letters**

(1) Where, during the period between the making of a protection order and the termination of the insolvency proceedings, it appears to the High Court that the proceedings may be impeded unless the Official Trustee is enabled to inspect the debtor's incoming correspondence, the Court may make an order directed to the Minister responsible for Communications requiring the Minister to cause a postal article or any other article in print or electronic or any other form in course of transmission to the debtor during the period, not exceeding six months, specified in the order, to be readdressed to the Official Trustee.

(2) Subsection (1) is subject to the operation of clause (2) of article 18 of the Constitution.

(3) After taking the copies and retaining the articles that the Official Trustee considers expedient for the purposes of the proceedings, the Official Trustee shall transmit the remaining articles to the debtor within seven days.

## *Discharge*

## **30. Date of discharge**

(1) The date of discharge from an insolvency order of a debtor who is not a bankrupt shall be the earliest of the following dates, namely,

- (a) the date two years after the insolvency order was made;
- (b) the date on which payment in full is achieved;
- (c) the date specified in a proposal for additional payment approved by the High Court under section 31.

(2) The date of discharge from an insolvency order and from bankruptcy of a debtor who is a bankrupt shall be the date fixed under section 23 at the time when the debtor was adjudged bankrupt, or if that date has been altered by the Court under section 31 or 32 shall be the date as altered.

(3) The date which will be the date of discharge unless an event occurs to alter it, is in this Act referred to as the appointed discharge date.

## **31. Earlier discharge where additional payment made**

- (1) Where before the appointed discharge date of a bankrupt or any other debtor,
  - (a) a person other than the debtor gives notice to the Official Trustee of a proposal to pay to the Official Trustee a sum of money specified in the notice for distribution to the creditors if the debtor's discharge is fixed for an earlier date specified in the notice, in this section referred to as the specified date, and
  - (b) it appears to the Official Trustee that the proposal is made in good faith and could be carried out,

the Official Trustee shall call a meeting of creditors, to which the Schedule shall apply, and shall report to the meeting the views of the Official Trustee on the proposal and also, if the debtor is a bankrupt on the debtor's conduct since the debtor was adjudged a bankrupt together with an account of any new facts which have since come to light as to the conduct and affairs of the debtor before the debtor was adjudged bankrupt.

(2) After hearing the Official Trustee's report and the observations made by or on behalf of the debtor, the meeting shall vote on the proposal.

(3) If the meeting approves the proposal the Official Trustee shall apply to the High Court for its decision on the proposal and shall submit to the Court a report dealing with the matters required to be dealt with in the report to the meeting and including the decision of the meeting.

(4) Where the Court is satisfied that it would be proper to discharge the debtor on the specified date it shall make an order,

- (a) fixing that date as the appointed discharge date, and
- (b) requiring the person making the proposal to pay the sum of money specified in the order to the Official Trustee within the period specified in the order.

(5) The specified date

- (a) shall not be less than two months after the date on which notice of the proposal is given to the Official Trustee, and
- (b) in the case of a bankrupt shall not be less than two years after the date on which the bankrupt was adjudged bankrupt,

and the Official Trustee shall carry out the requirements of this section in sufficient time to enable the Court to give its decision before the specified date.

(6) A sum of money paid under this section is, for the purposes of this section, paid by way of gift to the debtor unless the proposal states that it is to be paid by way of loan.

### **32. Alteration of bankrupt's discharge date**

(1) Where, before the appointed discharge date of a bankrupt, it appears to the Official Trustee that the date shall be altered to an earlier or later date by reason of,

- (a) the conduct of the bankrupt since the bankrupt was adjudged a bankrupt, or
- (b) new facts which have come to light as to the conduct or affairs before the bankrupt was so adjudged,

the Official Trustee shall call a meeting of creditors, to which the Schedule shall apply, and shall report to the meeting the view of the Official Trustee as to the appropriate new discharge date and as to the

debtor's conduct since the debtor was adjudged a bankrupt, together with an account of the new facts.

(2) After hearing the Official Trustee's report and the observations made by or on behalf of the debtor, the meeting shall vote on whether the discharge date should be altered and if so what the new date should be.

(3) Where after the meeting the Official Trustee remains of the opinion that the discharge date should be altered, the Official Trustee shall apply to the High Court for its decision, and shall submit to the Court a report dealing with the matters required to be dealt with in the report to the meeting, including the decision of the meeting.

(4) Where the Court is satisfied that the date should be altered, it shall make an order fixing as the appointed discharge date a new date it considers appropriate.

(5) The same meeting of creditors may, at the instance of the Official Trustee, consider a proposal made under section 31 and matters brought before it under this section, and the Court may deal in the same proceedings with applications under section 31 and under this section.

### **33. Certificate of discharge**

A bankrupt or any other debtor is discharged on the arrival of the appointed discharge date of the bankrupt or the other debtor, and the Official Trustee shall issue a certificate of discharge within seven days to the bankrupt or the debtor.

### **34. Effect of discharge**

(1) The discharge of a bankrupt or any other debtor

- (a) shall release that person from the provable debts whether or not included in a proof of debts, and
- (b) shall relieve that person for the future from the duties and liabilities under sections 24, 26 and 27.

(2) The discharge of a bankrupt or any other debtor

- (a) shall not release a person who at the date when the insolvency order was made was a partner or co-trustee of the bankrupt or the debtor, or was jointly bound with the bankrupt or the debtor under a contract or otherwise, or was a surety or in the nature of a surety for the bankrupt or the debtor, and
- (b) shall not bring the insolvency proceedings to an end.

### *Termination of Proceedings*

### **35. When proceedings come to an end**

(1) Where an insolvency order is not made, insolvency proceedings shall come to an end on

- (a) the withdrawal or dismissal of the petition by which the proceedings were initiated, or
- (b) the confirmation of an arrangement with creditors under section 20, or
- (c) the rescission of the protection order under section 21.

(2) Where an insolvency order is made the insolvency proceedings shall come to an end on the making by the High Court of an order under section 36.

### **36. Order terminating proceedings**

- (1) Where a bankrupt or any other debtor is discharged, and,
  - (a) the Official Trustee has completed the distribution of the debtor's assets under sections 37 to 56, and
  - (b) the Official Trustee's final accounts in the insolvency have been drawn up, and have been passed by the Auditor-General,

the Official Trustee shall apply to the High Court for an order terminating the insolvency proceedings.

(2) The Official Trustee shall give notice of the application, together with a summary of the final accounts, to the debtor and to every creditor with an admitted proof.

(3) The Court shall grant the application if satisfied that it is duly made.

#### *Administration of Debtor's Property*

#### *Assets passing to Official Trustee*

### **37. Vesting on making of protection order**

(1) On and by virtue of the making of a protection order, the movable and immovable property vested in the debtor immediately before the order was made, shall vest in the Official Trustee to the same extent, and, subject to subsection (3), with the same incidents.

(2) The property in the possession of the debtor at any time within six months before the protection order was made shall be presumed to be vested in the debtor unless the contrary is shown.

(3) Property which has become vested in the Official Trustee under this section shall not be subject to attachment, distress or any other proceedings for the enforcement of an obligation against the debtor, whether founded on a judgement or not.

(4) Subsection (3) does not apply to proceedings for the enforcement of a security.

### **38. After-acquired property**

(1) The Official Trustee shall bring about the vesting in the Official Trustee to the same extent and, subject to subsection (3), with the same incidents, of the after-acquired property of the debtor except property exempted by subsection (2) or as determined by the Official Trustee.

(2) The following after-acquired property shall be exempted, namely,

- (a) property necessary for the reasonable current maintenance of the debtor, the spouse and children of the debtor;
- (b) money paid or payable to the debtor, as compensation for the diminished earning capacity of the debtor, by way of damages for personal injury or other lump sum;
- (c) money paid or payable to the debtor by way of loan;
- (d) movable property bought by the debtor and not paid for in full;
- (e) property in which a property mentioned in paragraph (b), (c) or (d) has been directly or indirectly invested, or which otherwise represents that property.

(3) Property which has become vested in the Official Trustee under this section are not subject to attachment, distress or any other proceedings for the enforcement of an obligation against the debtor, whether founded on a judgement or not.

(4) Subsection (3) does not apply to proceedings for the enforcement of a security.

(5) Where the debtor has, with respect to after-acquired property which is not exempted, entered into a transaction by which the whole or a part of the value of the property is lost to the creditors, the Official Trustee may apply to the High Court for an order setting aside the transaction and requiring the property or its value, or that part of the property that was lost to the creditors, to be transferred to the Official Trustee.

(6) The Official Trustee may give notice to an employer, a banker or any other person who but for this section would be under an obligation to transfer after-acquired property which is not exempted to, or to the order of, the debtor to transfer the property instead to the Official Trustee, whose receipt shall be a sufficient discharge.

(7) A person who fails to comply with a notice under subsection (6) shall pay to the Official Trustee a sum of money necessary to make good a loss to the creditors arising from the failure.

### **39. Repayments by preferred creditors**

(1) Where, between the making of an insolvency order and the debtor's discharge, it appears to the Official Trustee that, during the six months ending with the making of the protection order and at a time when the debtor was insolvent, the debtor

- (a) made a payment or any other transfer of property, or
- (b) created a mortgage or any other charge, or suffered a judgement or incurred any other obligation,

with the dominant intent that any of the creditors of the debtor should benefit at the expense of others, the Official Trustee shall give notice to the creditor so preferred requiring that creditor, within the period specified in the notice, to restore to the Official Trustee, whether by payment of money, transfer of property or surrender of rights, the benefit which has accrued to the creditor by reason of that preferment.

(2) Where an insolvency order is made against a debtor, a person who, during the relevant period, received a payment of money, or any other transfer of property, in respect of a debt owed to that person by the debtor, shall, on receipt of a notice given in that behalf by the Official Trustee, restore the property or its value to the Official Trustee.

(3) Subsection (2) does not apply to a payment or any other transfer of property,

- (a) made by the debtor to the debtor's banker, in so far as it has been subsequently disbursed by the banker in meeting cheques drawn by the debtor;
- (b) made in respect of a debt incurred during the relevant period;
- (c) made in respect of a secured debt; or
- (d) made on the enforcement against a third party of a guarantee or indemnity, or of a mortgage, charge or lien on that party's property.

(4) Where an insolvency order is made against a debtor, the property in the possession of the sheriff at the time of the making of the protection order, being property of which possession was taken under an execution issued by a creditor of the debtor or the proceeds of that property, shall, after deduction of the

sheriff's and bailiff's charges in the execution, be transferred to the Official Trustee.

(5) Where a person complies with a notice given under subsection (1) or (2), that person may, within one month after the notice was given, lodge a proof of debts, or require the Official Trustee to amend that proof, so as to enable the debt in respect of which the notice was given to rank for dividend at the value which is appropriate in view of the compliance.

(6) For the purposes of this section, “**relevant period**” means the period beginning twenty-one days before the presentation of the petition on which the protection order was made, or, if the protection order was made on two or more petitions, before the presentation of the first petition, and ending with the making of the protection order.

#### **40. Repayment of gifts**

(1) Where, between the making of an insolvency order and the debtor's discharge, it appears to the Official Trustee that the debtor made a disposition of the debtor's property otherwise than for full value or in settlement of a due debt, or incurred an obligation otherwise than for full value, and was not made for the purpose of defeating creditors,

- (a) during the two years ending with the making of the protection order, or
- (b) more than two years but less than ten years before the making of the protection order and at a time when the debtor was insolvent,

the Official Trustee shall give notice to the person to whom the disposition was made or for whose benefit the obligation was incurred requiring that person within the period specified in the notice, to restore to the Official Trustee, whether by payment of money, transfer of property or surrender of rights, the excess of the benefit which had accrued to that person above the value of the consideration provided.

(2) Excess benefit restored under subsection (1) shall be treated as a provable debt in respect of which a proof of debts may be lodged within one month after it was restored.

(3) This section does not apply to a disposition made in consideration of marriage unless the High Court is of the opinion that the disposition was made for the purpose of defeating creditors.

#### **41. Repayments by money-lenders**

(1) Where it appears to the Official Trustee that, during the ten years ending with the making of the protection order, a sum of money was paid or allowed by the debtor, the Official Trustee may give notice to the lender requiring the lender, within the period specified in the notice, to make a similar repayment to the Official Trustee.

(2) Subsection (1) is applicable

- (a) at any time between the making of an insolvency order and the debtor's discharge, and
- (b) in respect of a loan in circumstances which the High Court would have ordered the lender to make repayment to the debtor, if proceedings had been brought under the applicable law.

#### **42. Sums to be credited to debtor's official account**

(1) The Official Trustee shall open a debtor's official account, within the insolvent estates fund for each debtor in respect of whom a protection order is made.

(2) The Official Trustee shall credit the debtor's official account with

- (a) the moneys received by the Official Trustee in respect of the debtor by virtue of sections 37 to 41,
- (b) the payments made to the Official Trustee in respect of the debtor under an order for early discharge made under section 31 or otherwise for the purpose of increasing the assets available for dividend, and
- (c) the repayments in respect of excess dividends made under subsection (2) of section 54.

(3) Where on the application of the debtor or a creditor, it appears to the High Court before the termination of the insolvency proceedings that assets have been lost to the estate by reason of a default by the Official Trustee, the Court may order that the debtor's official account be credited with the sum of money that may appear to the Court to be just, and that an equivalent sum of money be debited to the fees account.

### *General Functions of Official Trustee*

#### **43. Duty to protect assets**

(1) On the making of a protection order the Official Trustee

- (a) shall take possession of the property which has passed to the Official Trustee under section 37;
- (b) shall take the steps that are expedient to procure, in relation to stocks and shares and any other property transferable in the books of a body corporate or any other person which have passed to the Official Trustee under section 37, the transfer of the property into the name of the Official Trustee;
- (c) shall make the arrangements that are expedient to secure the carrying on of a trade or business the continuance of which would be likely to benefit the creditors;
- (d) shall secure the payment to the Official Trustee or any other discharge of the debts and any other obligations, the right to which has passed to the Official Trustee under section 37;
- (e) shall take any other steps that are expedient to ensure the protection of the debtor's assets for the benefit of the creditors.

(2) Until an insolvency order is made the Official Trustee shall not dispose of, or encumber, a property, otherwise than in the course of a trade or business, without the consent of the debtor or the authority of the High Court.

(3) A restriction on the transferability of the property as is mentioned in paragraph (b) of subsection (1) of this section is not operative in the case of a transfer to the Official Trustee.

(4) The Official Trustee may, on suspecting that property is concealed, offer a reward, to a person who is not the debtor personally, who produces the property or gives information leading to its discovery.

(5) The reward shall not exceed one-twentieth of the value of the property recovered by the action of that person.

#### **44. Duty to realise assets**

(1) On the making of an insolvency order the Official Trustee shall realise as soon as practicable the assets not held as cash by the means and for the return that will produce for distribution to the creditors

sums of money representing the full value of the assets.

(2) Subsection (1) does not require the realisation of an asset which cannot be readily or advantageously disposed of.

#### **45. Duty to verify debts ranking for dividend**

(1) On the making of an insolvency order the Official Trustee shall take the steps that are practicable to verify the correctness of every admitted proof.

(2) Where an insolvency order is made, and the creditor's obligations that are mentioned in paragraph (b) of subsection (3) of section 15 are included in the creditor's admitted proof,

- (a) the obligations are cancelled on the making of the insolvency order, and the values of the debts shall be proportionally reduced, in a case where the total value of the obligations as shown in the proof is less than the total value of debts owed to the creditor as shown;
- (b) the obligations are proportionally reduced on the making of the insolvency order by the total value of the debts in any other case, and the proof shall be expunged.

(3) The Official Trustee may give notice to a creditor holding a security that, if the security is not realised within the period specified in the notice, which shall not be less than six months, it will be treated as surrendered.

(4) All securities are held subject to a judicial order.

(5) Subject to sections 31 to 56, a debt shall rank for dividend at any time if, but only if, it is at that time included in an admitted proof; and the value of the debt shall be taken to be the value shown at that time in the proof.

#### **46. Duty to amend admitted proofs**

(1) Where the value of a debt or security included in an admitted proof has changed otherwise than in respect of interest accruing after the protection order was made, the proof is subject to amendment for the purpose of altering the value shown in the proof to give effect to the change.

(2) Where a debt or security is incorrectly included in an admitted proof, or the value of a debt or security at the date of the making of the protection order is incorrectly stated, the proof is subject to amendment for the purpose of rectifying the incorrectness.

(3) Where a creditor desires to withdraw a claim to the whole or a part of a debt included in an admitted proof, the proof is subject to amendment for the purpose of deleting the debt or reducing its value accordingly.

(4) Where an admitted proof is subject to amendment under this section,

- (a) the Official Trustee may, except in the case of an amendment under subsection (3), give notice to the creditor specifying the proposed amendment and inviting the creditor to consent to it within the period specified in the notice; or
- (b) the creditor may, if the Official Trustee has not given the creditor notice under paragraph (a), give notice to the Official Trustee specifying the proposed amendment and, except in the case of an amendment under subsection (3), inviting the Official Trustee to consent to it within the period specified in the notice.

(5) Where notice of a proposed amendment is given under subsection (4), the Official Trustee shall

amend the proof accordingly if,

- (a) the party to whom the notice is given consents to the amendment,
- (b) consent is not given but, on an appeal by the creditor or on an application by the Official Trustee, the High Court orders the amendment to be made, or
- (c) the amendment is proposed by the creditor under subsection (3).

#### **47. Duty to ascertain priority of debts**

(1) On the making of an insolvency order the Official Trustee shall, in relation to each debt which ranks for dividend, ascertain into which of the following classes the whole or a part of the debt falls:

*Class A* – A debt or part of a debt which answers either of the following descriptions, namely,

- (a) remuneration not exceeding the official minimum wage prevailing at the time, owed to an employee of the debtor, who is not a near relative, in respect of employment during the whole or a part of the four months preceding the making of the protection order; or
- (b) rates, taxes or similar payments owed to the Republic or a local authority which have become due and payable within the year preceding the making of the protection order.

*Class B* – A debt or part of a debt which does not fall into any other class.

*Class C* – A debt or part of a debt which does not fall within Class D and is, or was at any time within the year preceding the making of the protection order, owed to a near relative of the debtor.

*Class D* – A debt or part of a debt which answers either of the following descriptions, namely,

- (a) excess benefit restored to the Official Trustee under section 40, or
- (b) excess interest, that is, a portion of a debt which, whether it is stated to do so or not, represents interest at a yearly rate in excess of seven percent.

(2) For the purposes of subsection (1), the following are near relatives of the debtor, namely,

- (a) the spouse, parents and issue of the debtor, and
- (b) brothers, sisters, uncles, aunts, nephews and nieces of the debtor, whether of the whole or the half blood.

#### **48. Duty to consult creditors**

(1) Subject to this Act, the Official Trustee,

- (a) shall report to the creditors, at intervals not greater than six months, on the progress of the insolvency proceedings;
- (b) shall consult the creditors on a matter arising in the proceedings which substantially affects their interests; and
- (c) shall give effect, so far as may be practicable, to the views expressed by the creditors in relation to the realisation and distribution of assets.

(2) For the purpose of complying with subsection (1), the Official Trustee may call a meeting of creditors at any time, and shall call a meeting if required to do so by a notice in writing signed by creditors whose votes exceed one-fifth of the total number of votes which could be cast at the meeting.

(3) The Schedule shall apply in relation to a meeting of creditors called under this section.

#### **49. Enquiries by the High Court**

(1) Where the Official Trustee is of the opinion that it is necessary, in order to enable the Official Trustee to carry out a function in relation to a debtor, for the debtor, a creditor or any other person to be brought before and examined by the High Court, the Official Trustee may order the debtor, that creditor or that other person to attend for that purpose before the Court.

(2) In proceedings under subsection (1), the Court

- (a) may examine on oath or otherwise a person brought before it,
- (b) may order the delivery up by that person of assets to which the Official Trustee is entitled under this Act, and
- (c) may make any other appropriate order.

#### *Assets passing from Official Trustee*

#### **50. Cases where insolvency order not made**

(1) Within fourteen days after an arrangement with creditors is confirmed under section 20, the Official Trustee shall, unless the Official Trustee is to act as trustee under the arrangement, transfer the property which has become vested in the Official Trustee under section 37 or 38 in respect of the debtor to the person entitled to the property under the arrangement.

(2) Within fourteen days after a protection order is rescinded under section 21, the Official Trustee shall transfer the property which has become vested in the Official Trustee under section 37 or 38 in respect of the debtor back to the debtor.

(3) Despite subsections (1) and (2), the Official Trustee is entitled to retain assets sufficient to reimburse the Official Trustee for fees and outgoings due to the Official Trustee from the debtor in respect of the insolvency proceedings.

(4) This section does not apply to property which has already passed from the Official Trustee, but applies to the proceeds of property which has been realised as it applies to property which has been retained in its original form.

#### **51. Disclaimer**

(1) Within one year after a property has become vested in the Official Trustee under section 37, the Official Trustee, if of the opinion that the property will not be of benefit to the creditors, may by notice published in the *Gazette* disclaim the property.

(2) A person interested in property vested in the Official Trustee under section 37 may by application in writing require the Official Trustee to elect whether to disclaim the property or not to disclaim the property.

(3) Subsection (2) does not apply where the Official Trustee fails to disclaim the property within one month after the making of the application, or within a longer period that the High Court may allow.

(4) The Court may, on the application of a person interested, give a relief and make any other appropriate provision in consequence of a disclaimer under this section.

(5) Subject to an order made by the Court, the effect of a disclaimer is as follows:

- (a) where the property consists of rights under a lease, share, contract or any other interest, those rights or interests are void to the extent that the property affects the Official Trustee or the debtor;
- (b) where the property consists of the absolute ownership of land or chattels that ownership shall revert to the debtor.

## **52. Fees and outgoings**

(1) The Official Trustee is entitled to withdraw from the property of the debtor which has become vested in the Official Trustee sums of money sufficient to satisfy the fees of the prescribed amount charged in respect of the costs of the administration.

(2) When fees become due to the Official Trustee in respect of a debtor, the Official Trustee shall pay them by transferring the necessary sum of money from the debtor's official account to the fees account.

(3) When the rent, rates, charges or any other outgoings fall to be met by the Official Trustee in respect of the debtor, the Official Trustee shall pay them out of the debtor's official account.

## **53. Return of personal effects to debtor**

Within fourteen days after the debtor's property has vested in the Official Trustee under section 37, the Official Trustee shall restore to the debtor any of the following that the debtor may select, which is not of a total value exceeding five million cedis, namely,

- (a) property used personally by the debtor for the purposes of the employment of the debtor, or
- (b) furniture, clothing and any other household effects used by the debtor or any of the dependents of the debtor.

## **54. Dividends to creditors**

(1) Subject to sections 52 and 53, the Official Trustee may as early as is practicable, declare and distribute dividends to creditors in accordance with the following rules:

- (a) provision shall be made for the payment in full of the Class A debts before a dividend is declared in respect of Class B debts, and so on throughout the classes;
- (b) the debts within one class shall rank at the same rate;
- (c) payments shall be made only in respect of debts which rank for dividend and shall not exceed the values of the debts;
- (d) where a security held by a creditor has not yet been realised or surrendered, the value of the debt against which the security is held shall be treated as reduced by the value of the security;
- (e) interest shall not be allowed after the making of the protection order.

(2) Where a dividend is paid under this section in respect of a debt which is subsequently struck out or reduced in value by an amendment of the admitted proof, the creditor shall repay to the Official Trustee the difference between the amount of the dividend and the amount which, in the light of the amendment, should have been paid.

(3) Where a dividend is paid under this section in respect of a debt which is subsequently increased in value by an amendment of the admitted proof, the Official Trustee shall, so far as may be practicable

without disturbing dividends already declared, pay to the creditor the difference between the amount of the dividend and the amount of money which, in the light of the amendment, should have been paid.

(4) Where a creditor has omitted to lodge a proof of debts during the period allowed by this Act, or has omitted a provable debt from that proof, the creditor may at any time during the insolvency proceedings apply to the High Court for relief, and the Court, on the ground that the omission was excusable, shall make an order requiring the Official Trustee, so far as may be practicable without disturbing dividends already declared, to pay to the creditor the sums of money that would have been payable to the creditor under this section if the omission had not occurred.

(5) Where, at the end of one year following the declaration of a dividend stated by the Official Trustee to be the final dividend, the payments under that or a previous dividend remain outstanding because the creditors in question cannot be found, the Official Trustee shall cancel the payments and, unless payment in full has been achieved, shall declare a further dividend in favour of the remainder of the creditors.

(6) In the case of a final dividend, or a further dividend declared under subsection (5), payment of less than ten thousand cedis shall not be made.

(7) Payments under this section shall be in money drawn from the debtor's official account.

(8) For the purposes of subsection (7), property which has not been converted into money may be transferred to a creditor in lieu of the equivalent amount of money if the creditor consents.

## **55. Return of surplus assets to debtor**

(1) Where, after provision has been made for the payments and transfers of property required to be made under sections 52, 53, and 54, a balance remains in the debtor's official account, the Official Trustee shall pay that balance to the debtor.

(2) Where, after the provision that is referred to in subsection (1) has been made, the Official Trustee retains property which has not been converted into money, the Official Trustee shall transfer that property to the debtor.

(3) Where the debtor cannot be found, the High Court may direct that balance to be transferred to the fees account, and may give directions for the disposal of that property.

## **56. Payments to be made out of debtor's property**

(1) A person is not entitled to a payment in respect of anything done by the Official Trustee in relation to a debtor except out of a balance in the debtor's official account or out of assets otherwise vested in the Official Trustee in respect of the debtor under this Part.

(2) For the purposes of subsection (1), where in the proceedings costs are given against the Official Trustee they shall be met out of the fees account.

(3) During the continuance of insolvency proceedings, a person shall not be required, under a contract entered into with the debtor before the protection order was made, to supply goods, render services or otherwise perform an obligation unless that person has received an assurance in writing from the Official Trustee that the debtor's estate is sufficient to enable the goods or services to be paid for, or the performance of the obligation otherwise recompensed, in accordance with the terms of the contract.

(4) Despite subsection (1), where an assurance given under subsection (3) proves incorrect the person to whom the assurance was given is entitled to be reimbursed out of the fees account, or by the State.

## *Arrangements with Creditors apart from Insolvency Proceedings*

### **57. Arrangements to which sections 58 to 61 apply**

This section and sections 58 to 61 apply to an arrangement with creditors made by an insolvent debtor, whether in writing or orally,

- (a) if the arrangement is made at a time when insolvency proceedings are not in progress against the debtor, and
- (b) if the debts subject to the arrangement amount to at least one hundred million cedis and constitute the whole, or substantially the whole of the debtor's indebtedness at the time when the arrangement is made.

### **58. Arrangements register**

(1) The Official Trustee shall make and keep an arrangements register in which shall be recorded the prescribed particulars of instruments lodged with the Official Trustee under section 59.

(2) Where the Official Trustee is satisfied that an arrangement recorded in the arrangements register has been fully carried out, or has otherwise ceased to have effect, the Official Trustee shall record the fact in the register.

(3) The arrangements register and copies of instruments recorded in that register shall be open during working hours for public inspection on payment of the prescribed fee.

(4) On an application made by a person in the prescribed form, and on payment of the prescribed fee, the Official Trustee shall provide copies of an entry in the arrangements register or an instrument recorded in that register.

### **59. Arrangements voidable unless registered**

(1) An arrangement to which a provision of sections 57 to 61 applies is voidable unless, within fourteen days after the arrangement has become binding on the debtor, two copies of the instrument embodying the arrangement, or, where the arrangement was oral, of an instrument recording the details of the arrangement, have been lodged with the Official Trustee for entry in the arrangements register.

(2) Where, on an application by the Official Trustee or a person interested, it appears to the High Court that an arrangement is voidable by virtue of subsection (1), the Court shall declare the arrangement to have been void from the beginning, or from a later date that may appear just, unless it considers that the failure to register was neither wilful nor negligent.

(3) An arrangement which is voidable by virtue of subsection (1) shall not on that ground be avoided otherwise than by the Court under subsection (2).

(4) Where an arrangement is declared void under this section the Court may make a protection order against the debtor and this Act shall apply as if the protection order had been then made on a creditor's petition by the Official Trustee.

### **60. Setting aside of arrangement**

(1) Where, on the application of a person interested, it appears to the High Court, as respects an arrangement to which a provision of sections 57 to 61 applies, and which is not an arrangement subject to

avoidance under section 59,

- (a) that default has been made in carrying the arrangement into effect, or
- (b) that for a reason it is impracticable or would be unjust to proceed with the arrangement,

the Court may set aside the arrangement but without prejudice to anything previously done under the arrangement.

(2) Where an arrangement is set aside under subsection (1), the Court may make a protection order against the debtor, and this Act shall apply as if the protection order had been then made on a creditor's petition by the Official Trustee.

### **61. Arrangement not to count as suspension of payments**

Where an arrangement is duly registered under a provision of sections 57 to 61, neither the arrangement itself nor an act done for the purpose of entering into the arrangement shall be treated as falling within paragraph (a) of subsection (1) of section 9 for the purpose of founding a petition for a protection order against the debtor.

#### *Modification in Special Cases*

### **62. Debtors not of full age and capacity**

(1) Subject to this section, this Act applies in relation to debtors who have not attained the age of twenty-one years as it applies in relation to debtors who have attained the age of twenty-one years.

(2) Where a debtor has not attained the age of twenty-one years or is of unsound mind the High Court may, on the application of the Official Trustee or a person interested, appoint a person to act as the debtor's guardian in the insolvency proceedings.

(3) In the case of a debtor who is of unsound mind this Act applies in relation to property vested in a person as committee of the debtor or otherwise on the debtor's behalf as it applies in relation to property vested in the debtor.

### **63. Joint debtors**

(1) Where insolvency proceedings are instituted in respect of two or more debtors jointly, debts not owed jointly by those debtors shall be disregarded for the purposes of section 9 or 10.

(2) Where a protection order is made in respect of two or more debtors jointly,

- (a) a petition pending against any of the debtors individually shall lapse;
- (b) subject to this section, the insolvency proceedings shall extend to debts owed by the debtors separately as well as to their joint debts, and assets of the debtors shall vest in the Official Trustee whether or not they are referable to the joint debts;
- (c) in addition to the joint official account opened under section 42, a separate official account shall be opened in respect of each debtor, in which shall be entered items referable to that debtor's separate estate and separate debts.

(3) Where an insolvency order is made in respect of two or more debtors jointly,

- (a) the joint estate shall be applicable in the first instance in payment of the joint debts, and if there is a surplus of the joint estate it shall be dealt with as part of the respective separate

estates in proportion to the interest of each debtor in the joint estate;

- (b) the separate estate of each debtor is applicable in the first instance in payment of that debtor's separate debts and if there is a surplus of a separate estate it shall be dealt with, so far as may be necessary for satisfying the joint debts, as part of the joint estate.

#### **64. Debtors who are trustees**

(1) Where a debtor in respect of whom an insolvency order is made, whether personally or jointly with any other person or persons, is a trustee of a property, and the debtor's interest in the property as trustee has become vested in the Official Trustee under this Act, then,

- (a) where the debtor had a beneficial interest in the property, the Official Trustee shall continue to act as trustee in place of the debtor until the beneficial interest has been realised;
- (b) subject to paragraph (a), the Official Trustee shall within twenty-one days take steps to secure the appointment of another trustee in place of the Official Trustee or, where there are two or more remaining trustees, to retire from the trust.

(2) This Act does not affect the beneficial interest of a person other than the debtor in trust property.

(3) For the purposes of this section “**trustee**” includes a personal representative or any other person holding property on a fiduciary basis, and “**trust property**” shall be construed accordingly.

#### **65. Participation in insolvency proceedings by subsequent creditors**

(1) Where an insolvency order is made but the insolvency proceedings have not yet come to an end, any one or more creditors of the debtor may, on payment of the prescribed fee, apply to the Official Trustee for the making of a participation order, enabling that creditor or those creditors to participate in the insolvency proceedings in respect of new debts.

(2) An application under subsection (1) shall not be made,

- (a) unless the debtor's indebtedness to the applicant, or to the applicants collectively, comprises new debts in liquidated sums of money payable immediately and amounting to at least two hundred and fifty thousand cedis; and
- (b) unless debts amounting to at least two hundred and fifty thousand cedis remain unpaid fourteen days after the service on the debtor of a written demand for payment.

(3) Sections 11, 13, 15, and 16 shall apply as nearly as may be in relation to an application under subsection (1) of this section subject to the following modifications, namely,

- (a) references to a petition shall be read as references to the application;
- (b) references to a protection order shall be read as references to a participation order,
- (c) sections 13 and 15 shall not apply to debts which are new debts, and the period within which a proof of debts may be lodged shall be limited to three months from the making of the participation order;
- (d) in section 16, the reference to an arrangement with creditors in subsection (2), subsection (3), and subsection (5) shall be omitted.

(4) Sections 37 to 56 shall apply as nearly as may be in relation to a participation order, subject to the following modifications, namely,

- (a) references to a protection order or an insolvency order shall be read as references to the

participation order;

- (b) the Official Trustee shall open a participation account within the debtor's official account, to which shall be credited the proceeds of the after-acquired property which becomes vested in the Official Trustee after the making of the participation order and before any other subsequent order is made, together with any other moneys which become vested in the Official Trustee by virtue of the participation order;
  - (c) subject to section 52, the participation account shall be used only for the payment of dividends in respect of debts ranking for dividend by virtue of the participation order, and dividends in respect of those debts shall be paid out of the participation account;
  - (d) where there is a surplus on the participation account and a deficiency on the debtor's main account, or a surplus on the main account and a deficiency on the participation account, the surplus shall be transferred to the credit of the main account or the participation account;
  - (e) where more than one participation order has been made, a surplus shall be dealt with on the principle that the main account is to be credited in preference to a participation account and an earlier participation account is to be credited in preference to a later participation account.
- (5) Where a participation order is made,
- (a) if the debtor is a bankrupt and the appointed discharge date is less than two years ahead, then, subject to sections 31 and 32, it shall be postponed to the date two years after the participation order is made;
  - (b) if the debtor is not a bankrupt and has not been discharged from the insolvency order, then, subject to sections 23 and 31, the appointed discharge date shall be postponed to the date two years after the participation order is made;
  - (c) if the debtor has been discharged from the insolvency order and, where applicable, from bankruptcy, the discharge shall be treated as revoked, and,
    - (i) subject to sections 23, 31 and 32, the appointed discharge date shall be the date two years after the participation order is made;
    - (ii) the debtor shall surrender the certificate of discharge to the Official Trustee;
    - (iii) the debtor shall not be treated as having contravened section 24, 26, or 27 because of an act done by the debtor between discharge and the revocation of the order.

(6) For the purposes of this section “**new debt**” means a debt incurred by the debtor after the making of the protection order or, if the participation order is a second or subsequent participation order, means a debt incurred by the debtor after the making of the last participation order.

#### *Administration of Estates of Deceased Insolvents*

### **66. Administration orders**

(1) Where the estate of a deceased debtor is insufficient to pay the debts of the deceased debtor, the representative or a creditor of the deceased may, on payment of the prescribed fee, apply to the Official Trustee for the making of an administration order, for the administration of the estate under this section and sections 67 to 73.

(2) Where an application under subsection (1) is made by a creditor, the applicant shall at the same time serve a copy of the application on the representative of the deceased.

(3) After seven days have elapsed following the making of the application, the Official Trustee shall consider the application and evidence in support of the application, together, in the case of a creditor's application, with the representations made by the representative of the deceased, and if the Official Trustee considers

- (a) that the application was duly made, the Official Trustee shall make an administration order on the application; or
- (b) that the application was not duly made, the Official Trustee shall give notice to the applicant and, in the case of a creditor's application, to the representative of the deceased that the application is dismissed.

(4) References in this section and sections 67 to 73 to the representative of a deceased debtor shall be construed as references to the personal representative of the deceased debtor or, if the deceased debtor does not have a personal representative and was subject to customary law, as references to the successor under customary law.

(5) Where there is no representative of the deceased, the provisions requiring anything to be done by or in relation to the representative shall not apply.

#### **67. Effect of administration order**

(1) On and by virtue of the making of an administration order there shall vest in the Official Trustee to the same extent and, subject to subsections (2), (3), (4) and (5), with the same incidents, the movable and immovable property which, immediately before the order was made, was vested for the purposes of the administration of the deceased's estate in the personal representative, or, by virtue of section 1 of the Administration of Estates Act, 1961 (Act 63), in the Chief Justice, and the representative shall not have a right of retainer in respect of debts owed to that representative.

(2) Property which has become vested in the Official Trustee under subsection (1) is not subject to attachment, distress or any other proceedings for the enforcement of an obligation against the debtor's estate, whether founded on a judgement or not.

(3) Subsection (2) does not apply to proceedings for the enforcement of a security.

(4) The administration order shall not affect the validity of a realisation or distribution of assets made by the representative or any other act of administration done by the representative before the receipt of notice of the making of the administration order.

(5) Within seven days after the making of an administration order, or a longer period allowed by the Official Trustee, the representative of the deceased shall lodge with the Official Trustee a copy of the will left by the deceased, whether or not it has been admitted to probate, and a statement containing,

- (a) particulars of the assets of the deceased,
- (b) a list of creditors, showing the amounts and due dates of debts and particulars of securities held,
- (c) a description of the steps already taken by the representative by way of realising and distributing the assets, and
- (d) a description of the funeral, testamentary or administration expenses incurred.

#### **68. Creditor's proof of debts**

(1) During the period of three months following the making of an administration order, a creditor of the deceased may lodge with the Official Trustee a proof of debts, in accordance with subsection (2).

(2) A proof of debts shall be in two parts, the first part containing brief particulars of

- (a) the amount outstanding of a debt owed to the creditor by the deceased's estate,
- (b) the amount outstanding of a debt owed by the creditor to the deceased's estate, and
- (c) the nature and value of the securities held by the creditor, or held on behalf of the deceased's estate, in respect of those debts,

and the second part containing details of the transactions from which the debts arose.

(3) The Official Trustee shall give a copy of the first part of a proof lodged under subsection (1) to the representative of the deceased and to each creditor who is mentioned in the statement lodged by the representative or who, not being so mentioned, lodges a proof; and if the representative knows or believes that the proof is false in a material particular the shall inform the Official Trustee of that particular within fourteen days.

(4) The Official Trustee shall examine the proof of debts lodged by a creditor and if, after considering the representations made by the representative or a creditor, it appears to the Official Trustee that an item is improperly included or a value incorrectly stated or that the proof is otherwise incorrect, the Official Trustee shall give notice of the objection to the creditor, who may lodge an amended proof within the period specified in the notice or an extended period allowed by the Official Trustee.

(5) Where it appears that a proof is correct the Official Trustee shall give notice to the creditor regarding the admission of the proof subject to verification under section 45.

(6) Where the creditor fails to lodge an amended proof or a further amended proof, within the period allowed under subsection (4) and the Official Trustee is still of the opinion that the previous proof is incorrect, the Official Trustee shall give notice to the creditor of the rejection of the proof.

## **69. First meeting of creditors**

(1) The Official Trustee shall call a first meeting of creditors for a date not less than six and not more than eight weeks after the publication of an administration order, and shall give notice of the meeting as may be practicable to each creditor who is mentioned in the representative's statement or who, not being so mentioned, had lodged a proof of debts.

(2) So far in advance as may be practicable, the Official Trustee shall give to a creditor a copy of the representative's statement, together with the observations on the statement that the Official Trustee may wish to make.

(3) The Schedule applies in relation to the meeting.

## **70. Duties of deceased's representative**

(1) In addition to the specific duties imposed on the representative of the deceased by or under this Act, the representative shall, as a general duty, during the period between the making of an administration order and the termination of the administration, comply as promptly and fully as is practicable with a direction given by the Official Trustee in connection with the performance of the functions of office as to the deceased's estate.

(2) During the period specified in subsection (1), the representative

- (a) shall attend every meeting of creditors called by the Official Trustee and give the information to the meeting that may be required by the Official Trustee;
- (b) shall as soon as is practicable, give notice to the Official Trustee of a change in the name or address of the representative;
- (c) shall not destroy, alter, conceal or dispose of an account-book or any other record of the deceased's financial affairs.

## **71. Application of sections 37 to 56**

(1) Where an administration order has effect, sections 37 to 56 shall apply as nearly as may be for the purposes of the administration, subject to the modifications set out in this section.

(2) The following provisions shall be omitted, namely,

- (a) sections 37 and 38 (which deal with vesting of property);
- (b) subsection (2) of section 43 (which restricts the disposition of property by the Official Trustee);
- (c) section 50 (which relates to divesting of assets where an insolvency order is not made);
- (d) section 53 (which provides for the return of personal effects to a debtor); and
- (e) section 55 (which requires surplus assets to be returned to the debtor).

(3) Except where the context otherwise requires, the following adaptations shall be made, namely,

- (a) references to the debtor shall be read as references to the representative of the deceased;
- (b) references to section 37 shall be read as references to section 67;
- (c) references to a protection order or an insolvency order shall be read as references to an administration order;
- (d) references to the debtor's discharge shall be read as references to the termination of the administration.

(4) The Official Trustee shall cause the funeral, testamentary and administration expenses incurred by the representative to be met out of the deceased's official account in priority to any other payments.

(5) Funeral expenses in excess of one million cedis shall rank as a Class D debt.

(6) Where, after provision has been made for payments and transfers of property required to be made by virtue of subsections (1), (2), (3), (4) and (5), a balance remains in the deceased's official account, the Official Trustee shall within fourteen days pay that balance,

- (a) to the representative of the deceased, who shall deal with it as property of the deceased's estate, or
- (b) to the Administrator-General, who shall deal with it as unrepresented estate if there is no representative of the deceased.

## **72. Order terminating administration**

(1) Where an estate is administered under sections 66 to 73 and,

- (a) the Official Trustee has duly completed the distribution of the assets of the deceased, and

- (b) the Official Trustee's accounts in the administration have been drawn up, and have been passed by the Auditor-General,

the Official Trustee shall apply to the High Court for an order terminating the administration.

(2) The Official Trustee shall give notice of the application, together with a summary of the accounts in the prescribed form, to the representative and to every creditor with an admitted proof.

(3) The Court shall grant the application if satisfied that it is duly made.

### **73. Death of debtor during insolvency proceedings**

(1) This section applies where a debtor in respect of whom insolvency proceedings have been instituted dies before the proceedings have come to an end.

(2) The proceedings shall lapse where the death occurs before a protection order is made or while a protection order has effect, and in the latter case property vested in the Official Trustee by virtue of the protection order shall devolve in accordance with section 1 of the Administration of Estates Act, 1961 (Act 63).

(3) Where the death occurs after an insolvency order is made, the proceedings shall continue except so far as they concern the debtor personally, as if a participation order is made immediately before the death, and,

- (a) an administration order shall not be made in respect of the deceased;
- (b) the deceased's representative shall be subject to subsection (5) of section 67 and to section 70, as if references in those provisions to the making of an administration order were references to the death;
- (c) in relation to the disposal of surplus assets, subsection (6) of section 71 shall apply in place of section 55;
- (d) in relation to the termination of the proceedings, section 72 shall apply in place of section 36;
- (e) in relation to funeral, testamentary and administration expenses incurred by the deceased's representative, subsections (4) and (5) of section 71 shall apply.

### *Supplementary Provisions*

### **74. Offences**

(1) A person who does an act in contravention of a duty imposed on that person as a debtor or as the representative of a deceased debtor by or under this Act commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units or to a term of imprisonment of not less than three years or to community service.

(2) Subsection (1) is without prejudice to the power of the High Court to issue a warrant in relation to a debtor under section 28 of this Act, or to punish a person for contempt of court or for an offence under the Criminal Code, 1960 (Act 29.)

### **75. Evidence**

A register kept, a notice published or a certificate given under this Act is prima facie evidence of the matters stated in that document.

## 76. Rules

(1) The Minister responsible for Justice may, by legislative instrument, make Rules, other than Rules of Court, providing for a matter which under this Act is to be prescribed or provided for by rules or which otherwise relates to procedure under this Act.

(2) Where it appears to the Minister that a monetary limit specified in sections 9, 10, 57 and 65 should be altered the Minister may, by legislative instrument, make the rules that are necessary for effecting the alteration.

## 77. Interpretation

In this Act, unless the context otherwise requires,

**“address”** includes place of residence, place of business, an electronic address and a post office box number habitually used;

**“admitted proof”** means a proof admitted under subsection (7) of section 15 or subsection (5) of section 68;

**“after-acquired property”** has the meaning assigned to it by subsection (2) of section 26;

**“application for judicial consideration”** means an application made by the Official Trustee under subsection (1) of section 17;

**“appointed discharge date”** has the meaning assigned to it by subsection (3) of section 30;

**“arrangement with creditors”** means a contract between a debtor and the creditors of the debtor under which, with a view to the payment of debts in whole or in part, the creditors agree not to exercise, or agree to defer or modify the exercise of, any of their rights in respect of the debtor;

**“bankrupt”** means a person who has been adjudged a bankrupt under section 23 and has not been discharged;

**“civil proceedings”** includes proceedings, other than criminal proceedings or proceedings under this Act, in or on the order of a Court, and the levying of distress, or the attachment of a debt, without a court order;

**“community service”** means community service as determined by the Court in consultation with the Minister responsible for Social Welfare;

**“fees account”** means the account established by subsection (2) of section 3;

**“Fund”** means the Insolvent Estates Fund established by section 3;

**“ground for bankruptcy”** means any one or more of the grounds specified in subsection (1) of section 23;

**“insolvency order”** means an order made under section 19;

**“insolvency proceedings”** means the procedural steps taken in respect of a petition to the Official Trustee for the making of a protection or any other order under this Act;

**“insolvency register”** means the register made and kept by virtue of subsection (1) of section 4;

**“insolvent”** means unable to pay debts as they fall due;

**“name”** in relation to a debtor includes a name under which the debtor carries on a business,

whether personally or with other persons;

“**official account**” in relation to a debtor means the account opened in respect of the debtor under section 42;

“**Official Trustee**” includes the person appointed as the Official Trustee under the Public Trustee Ordinance, 1952 (No. 24) and a public officer authorised in terms of subsection (2) of section 1;

“**payment in full**” means the making of provision for the payments and transfers of property which in the circumstances are required to be made under sections 52 to 54;

“**prescribed**” means prescribed or required to be provided for under this Act, or prescribed by Rules made under subsection (1) of section 76;

“**proof of debts**” means a statement lodged with the Official Trustee in accordance with subsections (3) and (4) of section 15;

“**protection order**” means an interim order made pursuant to subsection (1) of section 8;

“**provable debt**” has the meaning assigned to it by subsection (1) of section 15;

“**Rules**” means the Rules made under section 76;

“**security**” means a mortgage, charge or lien on the property of the debtor for securing payment of a debt, and “**secured creditor**” and “**secured debt**” shall be construed accordingly;

## 78. Repeal

The Insolvency Act, 1962 (Act 153) is hereby repealed.

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## SCHEDULE

[Section 16(6)]

### *Meetings of Creditors*

1. **A meeting of creditors is not competent to act for a purpose unless at least three creditors with admitted proofs, or those creditors if there are less than three, are present either in person or by representatives holding proxies.**

2. Where a quorum is not present within half an hour after the time appointed for a meeting of creditors, the Official Trustee shall adjourn the meeting to a date that the Official Trustee may determine, which is not less than seven and not more than fourteen days after that meeting; and if a quorum is still not present within half an hour after the time appointed for the adjourned meeting, the meeting is cancelled.

3. The cancellation of a meeting under paragraph 2 shall not prevent the High Court from considering and determining a matter as if the meeting had been held and closed on the day on which it was cancelled, but this paragraph does not authorise the Court to confirm an arrangement with creditors which has not been approved by the first meeting of creditors.

4. The Official Trustee shall preside at a meeting of creditors.

5. At a meeting of creditors each creditor with an admitted proof is entitled to be heard in person or by a

representative holding a proxy.

6. (1) Except where this Act otherwise provides, questions at a meeting of creditors shall be decided by a simple majority of the votes cast.

(2) Each creditor with an admitted proof is entitled to one vote for each complete ten thousand cedis of the net amount of the debt owed to that creditor as shown in the proof at the time when the meeting opens.

(3) For voting purposes the net amount of a debt shall be calculated by deducting the following amounts, from the total value of the debts owed to the creditor, namely,

- (a) the total value of securities held by the creditor;
- (b) the total value of obligations outstanding in the debtor's favour against the creditor;
- (c) the amount of every dividend to which the creditor has become entitled.

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### MEMORANDUM

This Bill is part of the processes of legal reform initiated by the Ministry of Justice, and aimed at improving the quality of the legal system. It is intended to strengthen the legal system to face up to the exciting challenges of our time, and, more importantly, help in ushering in the golden age of business.

Equally, it is in keeping with the philosophy of the Ministry of Justice to sustain a legal system which can resolve disputes quickly and cheaply, which can frame laws in clear comprehensible language, which can provide the legal support for a vigorous enterprise economy, which guarantees equal access to Justice and equal treatment before the law.

Insolvency legislation made its impact in the Gold Coast in 1856, 1857 and 1858. None of those pieces of legislation was brought into force. For some reason, the Bankruptcy Ordinance 1856 was repealed in 1893. In 1906 the Gold Coast Companies Ordinance was passed. It provided for the winding up of insolvent companies, but nothing about personal insolvency. In 1957 a Bankruptcy Bill was introduced to the Legislative Assembly. It was rejected on the ground that the formulation of the policy had not been endorsed by the people.

But, before 1858, the indigenous method of ensuring the payment of a debt was, according to John Mensah Sarbah, the system of panyarring of persons and of chattels, for the recovery of debts. Within an ethnic community panyarring did not take place. As between two different ethnic communities, a person from one ethnic community could be seized by the creditor from another ethnic community until the debt was settled. They did not go out of their way to seek capture. If the other person was seen within the area of the creditor's community, then the other person was detained until the debt was paid. This system operated effectively and the debts were promptly paid.

As regards chattels, the creditor seized the goods and any other property of the debtor where repeated demands had not resulted in the payment of the debt.

The debtor could be personally detained in custody or in the *Ohene's* prison or the village lock-up until the debt was paid, usually by the family or a good friend of the debtor. While in custody or in prison the debtor was responsible for his own upkeep.

The system of panyarring was abolished by the Bond of 1844. It was not until 14th March, 1918 that the Loans Recovery Ordinance was enacted to amend the law relating to the recovery of money loans.

And it was not until 1962 that, as part of the overhaul of the companies legislation, the Insolvency Act, 1962, was enacted to provide the legal framework for regulating personal bankruptcy. It was based on the Proposals of the Commissioners appointed under the Commission of Enquiry Ordinance (Cap. 249) on the 20th January, 1960 to inquire into the Insolvency Law. Sadly, it has never been brought into force. The power to make it operative has been in the hands of the Attorney-General of the day. That power has been removed in the present Bill. The commencement of the Bill as an Act is thus subject to the operation of clause (11) of article 106 of the Constitution. The 1962 Insolvency Act is older by a year than the Companies Code, 1963 (Act 179).

The Insolvency Act, 1962, was intended also to promote commercial morality, to put a fair playing field for both creditors and debtors, to minimise losses by creditors and open the broad speedway of progress for competent and impartial administration. The absence of legislation to deal with personal bankruptcy opens a yawning gap in our commercial laws. It is a drawback to our economic development.

A workshop on the Insolvency Act, 1962, was held in 2002 to which various interested organisations and other interested persons were invited. The deliberations of the workshop, considering the forty years dormancy of the 1962 legislation, are reflected in the present Bill which retains the bulk of the 1962 legislation. Its purely procedural parts are incorporated in the High Court Rules (C.I. 47). The substantive law remains unchanged. In August, 2004, the Parliamentary Committee on Constitutional, Legal and Parliamentary Affairs held a workshop on the Bill and its recommendations for amendments and its suggestions have been incorporated in the Bill.

The primary objective of the Bill is to raise the present standard of business ethics. In this connection there has been a remarkable change of sentiment in recent years. It is now widely recognised that the lack of insolvency legislation is a handicap to the expansion of indigenous enterprises and that it is not the external concern but the Ghanaian trader or businessman who is the chief sufferer as a result of the absence of insolvency legislation.

The Bill seeks to promote commercial morality in a number of ways. Firstly, by its very existence. As the Bill becomes law, those whose previous financial conduct has been questionable would want to exercise considerably more care in future lest, in the event of their insolvency, proceedings are taken against them. Secondly, the Bill singles out the especially bad type of debtor and subjects that debtor to stringent duties and disabilities: *Clause 24*.

The treatment accorded will depend on the present as well as on the past conduct of the debtor. Those prepared to turn over a new leaf will be dealt with more leniently. Those who remain unco-operative will be treated more severely: *Clause 32*. Thirdly, the law will make it possible, for the first time, to prevent the fraudulent disposal of assets: *Clause 28*; to investigate thoroughly the disappearance of assets: *Clauses 22 and 49*; and to secure their recovery without expensive and frequently abortive litigation: *Clauses 39 and 40*.

Although public opinion now supports effective sanctions against the dishonest and more reckless debtors, it is clear that the legislation, if it is to command general acceptance, must be made manifestly fair to both debtors and creditors. A law that is felt to be unduly weighted in favour of creditors would be just as out of place as one that dealt over-leniently with the debtor.

To make the legislation fair to both sides, provision is made in *Clause 10* for debtors petitions. This will enable debtors who get into financial difficulties to seek the protection of the law and, having passed over their assets and purged their fault, to get a discharge from their debts. Further to that impartial approach, is the setting out of definite grounds for bankruptcy and defining them so as to embrace only the more serious forms of financial irregularity: *Clause 23*; in providing that only where grounds for bankruptcy exist, or it is likely that they exist, shall the debtor undergo a public examination: *Clause 22*;

in creating offences for those arising from failure to discharge duties under the law: *Clause 74*; and in providing for an appeal to the High Court against an act or an omission of the Official Trustee: *Clause 2*.

One way in which the promotion of commercial morality and fairness to both debtors and creditors can best be achieved is by according different treatment to the different types of debtor. As a first step the Bill divides debtors into two broad categories, bankrupts and non-bankrupts: *Clause 23*; with additional duties and disabilities applying to the former: *Clause 24*. These additional duties and disabilities can, however, be adjusted by the Official Trustee to meet the circumstances of the case: *Clause 24*; so that those whose offence is comparatively minor escape relatively lightly, while those whose conduct has been particularly bad are treated with considerable severity.

Secondly, the discharge date which determines for bankrupts and non-bankrupts the period during which these duties and disabilities apply is fixed according to the type of debtor. Non-bankrupts get their discharge automatically at the end of two years, but may be discharged earlier if payment in full is achieved or if a proposal for additional payment is approved by the High Court: *Clause 30*. The discharge date of a bankrupt is fixed initially at the end of the public examination in the light of past conduct: *Clause 23*; but may later be altered if the debtor's conduct or an additional payment warrants it: *Clauses 31 and 32*. But except for good conduct a bankrupt cannot be discharged under two years from the adjudication: *Clauses 23 and 31*.

In commencing insolvency proceedings, one of the principal objectives of creditors is to keep to a minimum the losses they may suffer as a result of the insolvency of the debtor. The powers to prevent the disposal of assets, to investigate cases where assets have disappeared, and to recover assets will make for competent and impartial administration.

But to get the maximum benefit for the creditors, inducements are needed to encourage, wherever possible, the continuation of existing businesses since this will, it is hoped, provide surplus income for the creditors. Accordingly, the Official Trustee is under a duty to secure the carrying on of the trade or business which would be likely to benefit the creditors: *Clause 43*. Money paid by way of loan and goods obtained on credit are exempt from vesting in the Official Trustee as after-acquired property: *Clause 38*; and, provided grounds for bankruptcy do not exist, an arrangement can be made with the creditors to take the proceedings outside the ambit of the law: *Clauses 14 and 20*.

The Bill also attempts to encourage third parties and, particularly, the relatives to make cash payments in order to secure more favourable treatment for the debtor. A further source, and one that seems so likely to be used, lies in payments made to secure the earlier discharge of the debtor: *Clause 31*.

Insolvency legislation impinges very considerably on the existing law of property, both statutory and customary. It also bears on other branches of the law, civil and criminal. Considerable care has thus been taken to slot the Bill in with the existing law, and particularly with the customary law on family property.

Among the instances where the Bill affects the existing law are,

- (a) insolvency proceedings will halt civil proceedings by or against the debtor: *Clauses 12 and 19*; but a secured creditor is allowed to retain the right to realise the security until it is absolutely essential to curtail it: *Clause 45*;
- (b) although the provision for the recovery of payments made within the twenty-one days preceding the petition for a protection order: *Clause 39*, will affect executions, distress and the attachment of debts, it will not do so in a way that will disrupt the normal workings of these well established methods of debt recovery;
- (c) under *Clauses 66 to 73* of the Bill, the duties of the representative of a deceased insolvent are taken over by the Official Trustee, but the Official Trustee's job is confined to protecting the

interests of the creditors and is not concerned with distribution to the beneficiaries: Clause 71;

- (d) the Bill enables the Official Trustee to take over the debtor's rights against moneylenders under the Loans Recovery Ordinance, Clause 41, and defers an interest exceeding seven percent per annum until the other debts have been paid, Clause 47, thereby reinforcing the provisions of the Moneylenders legislation.

Because of its importance in our society, particular attention is paid to the customary law rights affecting family and stool property. Both family property and stool property are, for practical purposes, outside the scope of the Bill and do not pass for the benefit of creditors, while the usufruct of the property can only be distributed amongst the creditors with the tacit agreement of the family or the stool: *Clauses 37 and 38*.

But the Official Trustee has wide powers to recover payments made with intent to prefer creditors and to obtain restoration of gifts and other transfers of property for less than their full value: Clauses 39 and 40. Also the property in the possession of the debtor is presumed to be vested in the debtor unless the contrary is shown: Clause 37. This will safeguard family and stool property but will stop the loss to creditors resulting from the unjustified disposal of assets to members of the family or other persons.

One other link between the Bill and the existing law deserves mention. Despite the fact that the insolvency legislation is not in force, a number of enactments contain provisions disqualifying from office those who have been adjudged bankrupt. For example, under clause (2) of article 94 of the Constitution, a bankrupt is disqualified from becoming a Member of Parliament.

But whether proceedings under the insolvency legislation should disqualify a person from holding office in a particular organisation is a matter on which those responsible for setting up that organisation alone are able to decide. Accordingly, the Bill does not contain a provision on this point. Indeed, in all our laws the disqualification provided for Members of Parliament is made part of the yardstick for the disqualification for the holding of other public offices.

The Bill pays particular attention to ensuring that its administration is effective and impartial. To achieve this it places the administration in the hands of a public officer as the Official Trustee, specially trained for the job, and gives the Official Trustee a much wider discretion and initiative than the Official Receiver, the opposite number under the English Bankruptcy Act. Thus, under the Bill, the creditors and the Court come into the proceedings only where their participation seems absolutely essential.

It is the Official Trustee, and not the Court, who makes protection orders: Clause 11; participation orders: Clause 65; and administration orders, Clause 66. The Bill does not provide for a creditors' committee of inspection and the Official Trustee, while required to consult the creditors, is not obliged to follow their advice: Clause 48. The Official Trustee does not have to go to the High Court to obtain repayments from preferred creditors, Clause 39, or of gifts, Clause 40, but can make an order *suo motu*.

Nor need the Official Trustee obtain the prior agreement of the High Court before summoning persons to appear before the High Court for examination: Clause 49. On the other hand, should the need arise, the Official Trustee can always invoke the full power and authority of the High Court to secure compliance with the requirements of the law: Clause 2.

Although the initiative rests with the Official Trustee, the critical decisions, for example, the making of an insolvency order, the adjudication in bankruptcy and the fixing of the discharge date of the debtor, are reserved to the High Court. Furthermore, the High Court can, on appeal, overrule an act or remedy an omission of the Official Trustee: Clause 2.

In the interests of effective and impartial administration, the Official Trustee is limited in other ways.

Wherever possible a timetable is scheduled governing the various stages of proceedings: Clauses, 9, 13, 16, 17 and 31. The Official Trustee must keep an account in respect of each debtor's estate: Clause 42, which must be audited by the Auditor-General before the proceedings are terminated: Clause 36; and prepare an annual report on the operation of the law, to be laid before Parliament: Clause 7.

The third way, in which speedy and effective administration can be achieved, is that the principal steps to be taken at each stage in the proceedings are described adequately and in their correct order.

Clauses 1 to 7 contain general provisions relating to the Official Trustee. Clauses 8 to 36 and Clauses 37 to 56 contain detailed provisions laying down the course of insolvency proceedings from beginning to end and regulating the vesting, realisation and distribution of the assets of insolvent debtors.

Clauses 57 to 61 deal with arrangements made by debtors with their creditors in cases where insolvency proceedings have not been brought. Clauses 62 to 65 modify the earlier provisions of the Bill in cases where the debtor is not of full age and capacity, or is a partner or trustee. It also provides for the situation, where the debtor in respect of whom insolvency proceedings are in progress, again becomes insolvent. Clauses 66 to 73 lay down a procedure for the administration of the assets of deceased persons whose estates are found to be insolvent. It also deals with the case where a debtor dies during the course of insolvency proceedings. Clauses 74 to 78 contain supplemental provisions. The Schedule sets out the procedure applying to meetings of creditors.

Clause 1 creates the post of Official Trustee, and enables the Official Trustee's functions to be performed by other public officers. Clause 2 enables a person who is aggrieved by the conduct of the Official Trustee to appeal to the High Court. The Court may also enforce requirements given by the Official Trustee, and give directions to the Official Trustee where there is a doubt as to a matter relating to the functions of the Official Trustee.

Clauses 3 and 4 provide for the creation of an insolvent estates fund and an insolvency register. The fund will be subject to audit by the Auditor-General. Clause 5 requires information recorded in the insolvency register to be published in the Gazette.

Clause 6 makes it clear that personal liability does not attach to the Official Trustee or any other public officer in respect of default. Provision is made by Clause 42 for compensation. Clause 7 requires the Official Trustee to make an annual report to Parliament.

Clauses 8 to 36 lay down the course of insolvency proceedings. The progress is in five stages:

- (a) *proceedings are commenced by the presentation of a petition to the Official Trustee.* A petition may be presented by a creditor or creditors whose debts amount to at least fifty million cedis, if the debtor has suspended payment or is the subject of an actual or potential execution. The debtor personally may present a petition if the indebtedness amounts to at least one hundred million cedis: *Clauses 8 to 10;*
- (b) where the Official Trustee is satisfied that the petition was duly presented, the Official Trustee must make a protection order. The effect of the protection order is to vest the debtor's assets in the Official Trustee, to impose certain duties on the debtor, and to prevent Court proceedings being instituted or continued against the debtor without the leave of the High Court. Where a protection order is made, the debtor must lodge a statement of the debtor's affairs and the creditors may lodge proofs of debts. If the debtor wishes to come to an arrangement with the creditors, the debtor may submit proposals for this to the Official Trustee. A first meeting of creditors is held at which these matters are considered: Clauses 11 to 16;
- (c) the Official Trustee must now apply to the High Court for the decision of the High Court as

to the future course of the insolvency proceedings. There are three possibilities. If it was not properly made, or if the assets (together with the additional assets supplied by third parties) have proved sufficient to satisfy creditors, the protection order is rescinded. If it is not rescinded, the High Court may, if the creditors have approved proposals for an arrangement, confirm the arrangement. In any other case, the High Court must make an insolvency order. The effect of this is to enable the Official Trustee to begin realising and distributing by way of dividends to creditors the assets of the debtor. The debtor is required to co-operate with the Official Trustee and to notify the Official Trustee of after-acquired property. The debtor must also disclose the state of the debtor's affairs if the debtor seeks to obtain credit exceeding ten million cedis: Clauses 17 to 21 and 25 to 29;

- (d) except in the case of bankruptcy, the debtor will be discharged from the insolvency order after two years. An earlier discharge can be obtained on the making by a third party of an additional payment for the benefit of creditors. Discharge releases the debtor from the debts, and from various duties and liabilities, but does not bring the proceedings to an end: Clauses 30 to 34;
- (e) the proceedings do not come to an end until the administration of the debtor's assets has been completed and final accounts have been drawn up by the Official Trustee and passed by the Auditor-General. When this happens summaries of the accounts are presented to the creditors and the Official Trustee applies to the High Court for an order terminating the proceedings: Clauses 35 and 36.

The above is an outline of the normal course of proceedings. Where the debtor has been guilty of serious misconduct regarding commercial operations, or has failed to carry out the requisite duties in the insolvency proceedings, or has previously been made bankrupt or convicted of an offence involving dishonesty, the High Court may, at any time before the debtor is discharged, order the debtor to undergo a public examination and at the conclusion, the debtor may be adjudged a bankrupt.

As a bankrupt the debtor is subject to additional disabilities. The debtor must not without the consent of the Official Trustee manage or direct a trade or business, operate a bank account, obtain credit for more than ten million cedis or enter into a hire-purchase agreement. The debtor is also required to keep a record of the commercial dealings and lodge an income and expenditure account with the Official Trustee at frequent intervals. The discharge date of a bankrupt is fixed at the end of the public examination, but may be brought forward or postponed if circumstances justify this: *Clause 22 to 24, 31 and 32.*

*Clauses 37 to 56* deal with the administration of the debtor's property where proceedings have been brought under *Clauses 8 to 36*. The *first six Clauses* deal with the various ways in which the debtor's property may pass to the Official Trustee for distribution to the creditors. Apart from the automatic vesting of property on the making of a protection order, property acquired by the debtor after that time but before the discharge, including income, may also be claimed by the Official Trustee.

Certain after-acquired property is, however, exempted. This includes property required for the maintenance of the debtor and the immediate family, a gratuity or any other lump sum of money paid in respect of diminished earning capacity, and money supplied by way of loan and goods obtained on credit.

Provision is also made for the recovery of payments made during the period beginning twenty-one days before the presentation of a petition for a protection order, for the return of assets by creditors who have been unfairly preferred by the debtor, for the repayment of gifts and other payments not made for full consideration, and for the return of excessive interest payments made by the debtor to moneylenders. The Official Trustee is required to pay those sums of money into a special account: *Clauses 37 to 42.*

The next group of *Clauses* lays down the duties of the Official Trustee in the administration of the

assets. The Official Trustee is to take possession of land and chattels vested in the Official Trustee and take any other steps as may be expedient to ensure the protection of the debtor's assets for the benefit of the creditors. This may include the carrying on of a trade or business of the debtor. The Official Trustee must, when an insolvency order has been made, realise the assets as soon as practicable at their full value. The Official Trustee must check proofs of debts lodged by creditors and amend them where necessary, and arrange the debts in order of priority.

Debts are divided into four classes. Class A, which has the highest priority, consists of wages and salaries up to the official minimum wage prevailing at the time, and rates and taxes owed in respect of the previous financial year. Class B contains the ordinary debts which are not in any other class. Class C contains debts which are deferred because they are owed to near relatives of the debtor. Class D contains gifts and the like which have had to be refunded to the Official Trustee, and also a part of a debt which represents interest at a rate which exceeds seven per cent per annum. The Official Trustee is required to consult creditors during the course of administration, and provision is made for judicial enquiries where these are necessary to discover hidden assets or for any other purpose: *Clauses 43 to 49*.

*Clauses 50 to 56* deal with various ways in which the debtor's assets may pass from the Official Trustee. Where an insolvency order is not made, the assets must be returned to the debtor or, where an arrangement with creditors has been confirmed by the High Court, to the person who is to administer the assets under the arrangement. Onerous property may pass from the Official Trustee if disclaimed. Where this is done, a person interested may apply to the High Court for relief.

Certain property may be restored to the debtor. Since everything the debtor possesses will have vested automatically in the Official Trustee, *Clause 53* enables the debtor to claim back personal effects of a total value not exceeding five million cedis. Subject to the fees and outgoings of the Official Trustee, the remaining assets will be distributed by way of dividend to the creditors. The surplus assets that remain will be returned to the debtor.

*Clauses 57 to 61* requires the Official Trustee to keep a register in which are to be entered details of the arrangement made by a debtor with the creditors outside insolvency proceedings. If an arrangement is not registered, it is voidable. Even where the arrangement has been registered, it may be set aside by the High Court if default has been made in carrying it out, or it would be impracticable or unjust to proceed with it, or the agreement of creditors to the arrangement was obtained by fraud.

*Clause 62* provides that the law will apply to debtors even though they are not of full capacity. The High Court may appoint a guardian for an infant or person with mental disorder to safeguard the interests of the infant or person with mental disorder in the insolvency proceedings. In *Clause 63* are technical provisions to deal with partners and other joint debtors. Insolvency proceedings will cover both partnership debts and private debts, but in the first place partnership debts will be met out of partnership assets and private debts out of private assets. *Clause 64* deals with the debtor who is a trustee. Nothing in the Bill is to affect the beneficial interest of a person, other than the debtor under the trust and, except so far as may be necessary to realise the beneficial interest of the debtor, the Official Trustee is required to find a new trustee to replace the debtor.

*Clause 65* deals with the complex question of subsequent insolvency. It may be that, even though a debtor has not obtained discharge, the debtor will, perhaps with the aid of loans from relatives and friends, set up in business again. This venture may be unsuccessful and the debtor may incur new debts, which the debtor cannot meet out of business assets. *Clause 65* enables the new creditors to participate in the insolvency proceedings if their debts amount to two hundred and fifty thousand cedis.

Where a participation order is made, the debtor must lodge another statement of affairs dealing with the new debts, and creditors may prove their debts in the same way as in the case of a protection order.

After-acquired property vesting in the Official Trustee after the making of the participation order becomes available for the benefit of the new creditors, as also does property vesting in the Official Trustee under *Clause 37*. The other effect of the participation order is to delay the discharge of the debtor.

Under *Clauses 66 to 73*, where the estate of a deceased debtor is insufficient to pay the debts, the personal representatives or successor, or a creditor, may apply to have the estate administered by the Official Trustee. The effect of this is to vest the estate in the Official Trustee and to require the Official Trustee to realise the assets and distribute them to the creditors in the same manner as is done in the case of an insolvency order made against a living debtor.

*Clause 73* provides for the case where a debtor dies in the course of insolvency proceedings. Obviously the proceedings must lapse in so far as they affect the debtor personally, but the *Clause* provides that the estate will continue to be administered as if a participation order had been made immediately before the death. This enables new creditors to prove their debts and provides for the relative priorities of old and new creditors.

*Clause 74* provides that a debtor who contravenes a provision of the law commits an offence, and is liable to a fine of not less than seven hundred and fifty penalty units. *Clauses 75 to 78* contain supplemental provisions as to evidence, interpretation and other incidental matters.

The Schedule sets out the procedure applying at the meeting of creditors. Supplementary provisions, relating to particular types of meeting, are contained in the *Clauses* dealing with those meetings.

Currently, private gain should not be the only aim of our economic endeavour. By the processes of statute law revision we can fashion out a policy of the law in matters economic that takes account of the social development of the nation. Our economic and social progress should go hand in hand with our political achievements, in the search for the solutions to the questions posed by our failure to capture the commanding heights of the economy.

Forty years is but a short period in the total history of a nation. But the enactment of an insolvency legislation as envisaged by this Bill will help to promote a sane legal environment that will allow the market, business and enterprise to flourish. This is one of the surest ways to eradicate poverty in our generation.

The Bill is presented in accordance with section 3 of the Laws of Ghana (Revised Edition) Act, 1988 (Act 562).

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## Endnotes

### 1 (Popup - Footnote)

1. This Act was assented to on the 18th April, 2006 and notified in the *Gazette* on the 21st April, 2006.