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as at 7 July 2010**



Insolvency Act 2006

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Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Economic Development.

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1 Title

This Act is the Insolvency Act 2006.

2 Commencement

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

Section 2: Insolvency Act 2006 brought into force, on 3 December 2007, by the Insolvency Act 2006 Commencement Order 2007 (SR 2007/332).

Part 1

Interpretation and scope

3 Interpretation

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

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

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

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

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

- (a) a building society within the meaning of the Building Societies Act 1965;
- (b) a society incorporated under the Incorporated Societies Act 1908;
- (c) a registered society within the meaning of the Industrial and Provident Societies Act 1908;
- (d) a society incorporated or registered overseas that is similar to any society in paragraphs (a) to (c)

court means the High Court

current summary instalment order has the meaning set out in section 355

document means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be

capable (with or without the aid of equipment) of being reproduced

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

Judge means a Judge of the High Court

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

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

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

overseas company means a company that is incorporated outside New Zealand

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

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

provable debt has the meaning given to it in section 231(1)

Registrar means a Registrar of the court; and includes a Deputy Registrar

relative, in relation to any person (A), means—

- (a) A's parent, spouse, child, brother, or sister; or
- (b) the parent, child, brother, or sister of A's spouse; or
- (c) a nominee or trustee for any of them

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

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

shares includes stock

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

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

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

student loan balance means a loan balance under the student loan scheme established by the Student Loan Scheme Act 1992

supervisor means a person who is appointed under section 345.

Compare: 1967 No 54 s 2

4 **Rights and powers under other Acts not affected**

This Act does not affect—

- (a) a local authority's rights under any statute relating to rates and recovery of rates—
 - (i) to obtain a judgment of unpaid rates:
 - (ii) to enforce payment of rates by selling or leasing the land for which the rates are payable:
- (b) the provisions of the Joint Family Homes Act 1964:
- (c) except where this Act expressly provides, a secured creditor's power to realise or otherwise deal with the charge as if this Act had not been passed.

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

5 **Act binds the Crown**

This Act binds the Crown.

Compare: 1967 No 54 s 4

6 **Corporations and other entities not subject to Act**

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

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

Compare: 1967 No 54 s 168

Part 2

Nature of bankruptcy, and process of being made bankrupt

Subpart 1—Bankruptcy and its alternatives

7 Nature of bankruptcy

- (1) Bankruptcy affects the legal status of a person and has important consequences. These include—
 - (a) the bankrupt's property vests in the Official Assignee;
 - (b) the bankrupt is limited in the business activities he or she can undertake;
 - (c) the Official Assignee may be entitled to recover assets that the bankrupt has transferred before bankruptcy.
- (2) This section is intended only as a guide to the consequences of bankruptcy.

8 Alternatives to bankruptcy

- (1) A debtor who is insolvent may have an alternative to bankruptcy, such as—
 - (a) making a proposal to creditors (*see* subpart 2 of Part 5);
or
 - (b) paying creditors in instalments under a summary instalment order (*see* subpart 3 of Part 5); or
 - (c) entry to the no asset procedure (*see* subpart 4 of Part 5).
- (2) This section is intended only as a guide to the alternatives to bankruptcy.

Subpart 2—Process of being made bankrupt

9 Introduction to subpart 2

- (1) This subpart describes how a person is adjudicated bankrupt.
- (2) In this subpart, the person who is adjudicated bankrupt is called the **debtor**.

Adjudication

10 Adjudication

- (1) Adjudication occurs when a debtor is adjudicated bankrupt.
- (2) A debtor is adjudicated bankrupt if either—

- (a) a creditor of the debtor applies to the court for an order of adjudication, and the court makes the order; or
- (b) the debtor files an application with the Assignee for adjudication.

11 Adjudication by court

- (1) A court may adjudicate the debtor bankrupt if—
 - (a) a creditor of the debtor has applied under section 13 for the debtor's adjudication; and
 - (b) the debtor has committed an act of bankruptcy.
- (2) The court's options in dealing with a creditor's application are set out in sections 36 to 44.
- (3) What is an **act of bankruptcy** is set out in sections 17 to 28.

12 Adjudication on debtor's initiative

- (1) A debtor may be adjudicated bankrupt by filing an application for adjudication with the Assignee.
- (2) The requirements for a debtor's application are set out in sections 45 and 46.
- (3) The procedure for filing a debtor's application is set out in section 49.

Court adjudication on creditor's application

13 When creditor may apply for debtor's adjudication

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

- (a) the debtor owes the creditor \$1,000 or more or, if 2 or more creditors join in the application, the debtor owes a total of \$1,000 or more to those creditors between them; and
- (b) the debtor has committed an act of bankruptcy within the period of 3 months before the filing of the application; and
- (c) the debt is a certain amount; and
- (d) the debt is payable either immediately or at a date in the future that is certain.

Compare: 1967 No 54 s 23

14 Application by secured creditor

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

Compare: 1967 No 54 s 25

15 Court's permission required for withdrawal of application

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

Compare: 1967 No 54 s 26(10)

Acts of bankruptcy

16 Requirement of act of bankruptcy

- (1) A debtor must not be adjudicated bankrupt on a creditor's application unless the debtor has committed an act of bankruptcy within the period of 3 months before the creditor files the application.
- (2) The acts of bankruptcy are set out in sections 17 to 28.

17 Failure to comply with bankruptcy notice

- (1) A debtor commits an act of bankruptcy if—
 - (a) a creditor has obtained a final judgment or a final order against the debtor for any amount; and
 - (b) execution of the judgment or order has not been halted by a court; and
 - (c) the debtor has been served with a bankruptcy notice; and
 - (d) the debtor has not, within the time limit specified in subsection (4),—
 - (i) complied with the requirements of the notice; or
 - (ii) satisfied the court that he or she has a cross claim against the creditor.
- (2) The form that the bankruptcy notice must take is set out in section 29.
- (3) The debtor must have been served with the bankruptcy notice in New Zealand, unless the court gave permission for the service of the notice on the debtor outside New Zealand.

- (4) The **time limit** referred to in subsection (1)(d) is,—
- (a) if the debtor is served with the bankruptcy notice in New Zealand, 10 working days after service; or
 - (b) if the debtor is served outside New Zealand, the time specified in the order of the court permitting service outside New Zealand.
- (5) In this section, a creditor who has obtained a final judgment or a final order includes a person who is for the time being entitled to enforce a final judgment or final order.
- (6) In this section, if a court has given permission for enforcing an arbitration award that the debtor pay money to the creditor,—
- (a) **final order** includes the arbitration award; and
 - (b) **proceedings** includes the arbitration proceedings in which the award was made.
- (7) In subsection (1)(d)(ii), **cross claim** means a counterclaim, set-off, or cross demand that—
- (a) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and
 - (b) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

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

18 Disposition of property to trustee for benefit of creditors

- (1) A debtor commits an act of bankruptcy if, in New Zealand or elsewhere, the debtor disposes of all, or substantially all, of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors.
- (2) This section is subject to section 41(3)(a).

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

19 Fraud or intent to prefer a creditor

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

- (a) disposes of his or her property, or part of it;
- (b) creates a charge on his or her property or gives any security in it:

- (c) makes any payment:
- (d) incurs any obligation.

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

20 Departure from New Zealand

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

- (a) departs, attempts to depart, or prepares to depart, from New Zealand:
- (b) if the debtor is already outside New Zealand, remains there.

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

21 Avoidance of creditors

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

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

22 Notice of suspension of debts

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

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

23 Admission to creditors of insolvency

- (1) A debtor commits an act of bankruptcy if the debtor admits at a meeting of creditors that he or she is insolvent and—
 - (a) a majority of the creditors present at the meeting requires the debtor to file an application for adjudication; or
 - (b) the debtor agrees to file an application for adjudication and does not do so within 2 working days after the meeting.
- (2) In subsection (1)(a), **majority** means a majority by number of creditors present and the value of their combined debts.

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

24 Possession under execution process

- (1) A debtor commits an act of bankruptcy if—
- (a) an execution process has been issued against the debtor or property of the debtor; and
 - (b) property of the debtor has been taken into possession under the execution process; and
 - (c) the judgment or order for which the execution process has been issued is not satisfied within 5 working days after possession has been taken.
- (2) In this section, **execution process** means—
- (a) a writ of sale; or
 - (b) a writ of possession; or
 - (c) a writ of arrest; or
 - (d) a writ of sequestration.
- (3) The period of 5 working days in subsection (1)(c) is qualified if an interpleader application has been made in respect of the debtor's property that has been taken into possession. In that case the period of 5 working days does not include the days that elapse between—
- (a) the date when the application is made; and
 - (b) the date when the application is finally determined, withdrawn, abandoned, or otherwise resolved.

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

25 Writ of sale

- (1) A debtor commits an act of bankruptcy if—
- (a) a writ of sale directed against any land of the debtor, or any interest in that land, has been delivered to a sheriff; and
 - (b) as part of the execution process, the land or interest has been advertised for sale in at least 1 newspaper published or circulating in the town or district in which the land is situated.
- (2) However, subsection (1) does not apply, and an act of bankruptcy is not committed, if the judgment or the order under which the writ of sale has been issued is satisfied within 5 working days after the writ of sale has been both delivered to the sheriff and advertised.

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

26 Return that sufficient goods not found under execution process

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

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

27 Removal or concealment of property

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

- (a) removes or attempts to remove any of the debtor's property from any place;
- (b) conceals or attempts to conceal any of his or her property.

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

28 Unsatisfied judgment for non-payment of trust money

A debtor commits an act of bankruptcy if—

- (a) the debtor is required by law to keep a trust account; and
- (b) judgment has been given against the debtor for non-payment of trust money; and
- (c) the judgment is not satisfied within 5 working days after the date of the judgment.

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

Bankruptcy notice

29 Form of bankruptcy notice

(1) The bankruptcy notice must—

- (a) be in the prescribed form; and
- (b) require the debtor, in relation to the judgment debt or the sum ordered to be paid under a final order,—
 - (i) to pay the amount owing, plus costs; or
 - (ii) to give security for the amount owing that satisfies the court or the creditor; or
 - (iii) to compromise the amount owing on terms that satisfy the court or the creditor; and

- (c) state what are the consequences if the debtor does not comply with the notice; and
 - (d) be served on the debtor in the prescribed manner.
- (2) The bankruptcy notice may name an agent to act on behalf of the creditor in so far as the notice requires—
- (a) any payment to be made to the creditor; or
 - (b) any other step to be taken that involves the creditor.
- (3) In this section,—
- (a) **creditor** includes a person entitled to enforce a final judgment or final order; and
 - (b) **final order** includes an arbitration award that the debtor pay money to the creditor, if the court has given permission to enforce the award.

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

30 Effect of overstatement of amount owing

- (1) Overstatement in a bankruptcy notice of the amount owing by the debtor does not invalidate the notice, unless—
- (a) the debtor notifies the creditor that the debtor disputes the validity of the notice because it overstates the amount owing; and
 - (b) the debtor makes that notification within the time specified in the notice for the debtor to comply with the notice.
- (2) A debtor complies with a notice that overstates the amount owing by—
- (a) taking steps that would have been compliance with the notice had it stated the correct amount owing (for example, by paying the creditor the correct amount owing plus costs); and
 - (b) taking those steps within the time specified in the notice for the debtor to comply.

Compare: 1967 No 54 s 20(b)

Effect on execution process of filing creditor's application

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

- (1) A creditor who applies for a debtor to be adjudicated bankrupt must not issue an execution process against the debtor in respect of the debtor's property or person to recover a debt on which the application is based.
- (2) If the creditor has already issued the execution process, the creditor must not continue it.
- (3) However, the creditor may apply to the court for permission to issue or continue the execution process, as the case may be.
Compare: 1967 No 54 s 24(1)

32 Execution processes by other creditors

- (1) After a creditor's application for adjudication has been filed, the debtor or any creditor may apply to the court for an order halting the issue or continuance of an execution process against the debtor in respect of the debtor's property or person by any other creditor.
- (2) On an application under subsection (1), the court may—
 - (a) halt the execution process, on the terms and conditions (if any) that the court thinks appropriate; or
 - (b) allow the execution process to continue, on the terms and conditions (if any) that the court thinks appropriate.Compare: 1967 No 54 s 24(2)

33 Execution process issued by another court

- (1) This section applies if an execution process has been issued out of a court (**Court 1**) other than the court (**Court 2**) where the application for adjudication was filed.
- (2) If it is proved to Court 1 that an application for the adjudication of the debtor has been filed in Court 2, Court 1 may—
 - (a) halt the execution process, subject to the terms and conditions (if any) that Court 1 thinks appropriate; or

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

Compare: 1967 No 54 s 24(2)

34 No restriction on execution process if application for adjudication withdrawn or dismissed

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

Compare: 1967 No 54 s 24(5)

35 Meaning of execution process

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

- (a) issuing or proceeding with any of the following writs or warrants under a judgment or order obtained against the debtor in any court in its civil jurisdiction (except a judgment or order for possession of any land or building obtained on the ground that the debtor is a trespasser or that the debtor's tenancy has expired):
 - (i) a writ or warrant for the possession, seizure, or sale of any property:
 - (ii) a writ of attachment:
- (b) obtaining a garnishee order in favour of a judgment creditor under rule 638 of the District Courts Rules 1992:
- (c) obtaining an order that a judgment creditor may sue a subdebtor under rule 639(2)(c) of the District Courts Rules 1992:
- (d) having an interim charging order made final under rule 17.59 of the High Court Rules:
- (e) beginning or continuing proceedings in any court for the appointment of a receiver of any property, except an application for the appointment of the Assignee as receiver and manager under section 50:
- (f) exercising any power of re-entry under a lease, or any power terminating a lease:

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

Compare: 1967 No 54 s 24(4)

Section 35(b): amended, on 3 December 2007, pursuant to rule 676 of the District Courts Rules 1992 (SR 1992/109).

Section 35(c): amended, on 3 December 2007, pursuant to rule 676 of the District Courts Rules 1992 (SR 1992/109).

Section 35(d): substituted, on 7 July 2010, by section 4 of the Insolvency Amendment Act 2010 (2010 No 69).

Court's options when hearing creditor's application

36 Court may adjudicate debtor bankrupt

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

Compare: 1967 No 54 s 26(1)

37 Court may refuse adjudication

The court may, at its discretion, refuse to adjudicate the debtor bankrupt if—

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

Compare: 1967 No 54 s 26(2)

38 Court may halt application

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

Compare: 1967 No 54 s 26(7)

39 Orders if more than 1 application

- (1) If there is more than 1 application for adjudication, and 1 application has been halted by a court order, the court may, if there is a good reason, make an order of adjudication on the application that has not been halted.
- (2) If the court makes an order of adjudication under subsection (1), the court must dismiss the application that has been halted, on the terms and conditions (if any) that the court thinks appropriate.

Compare: 1967 No 54 s 26(6)

40 Orders if more than 1 debtor

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

Compare: 1967 No 54 s 26(8)

41 Order that disposition or proposal not act of bankruptcy

- (1) This section applies if the debtor—
 - (a) has made a disposition of all, or substantially all, of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors; or
 - (b) has made a proposal under Part 5; or
 - (c) has applied for a summary instalment order under Part 5.
- (2) The debtor or the trustee or any creditor may apply for an order under this section.
- (3) On the application, the court may make any of the following orders:
 - (a) order that the disposition or proposal is not an act of bankruptcy;
 - (b) halt or refuse the application for adjudication;
 - (c) order that any other application for adjudication must not be filed;
 - (d) make any order as to costs that the court thinks appropriate;

- (e) if it orders that costs must be paid to the creditor who has applied for adjudication, order that the costs must be paid out of the debtor's estate.
- (4) This section does not limit the powers of the court under section 37.
Compare: 1967 No 54 s 26(3)

42 Halt or refusal of application when judgment under appeal

- (1) This section applies if the creditor's application for adjudication relies on one of the following acts of bankruptcy:
 - (a) the debtor failed to comply with a bankruptcy notice (*see* section 17):
 - (b) a judgment against the debtor for non-payment of trust money is not satisfied within 5 working days after the date of the judgment (*see* section 28).
- (2) If the debtor has appealed against the judgment or order underlying the bankruptcy notice or the judgment for nonpayment of trust money, as the case may be, and the appeal is still to be decided, then the court may—
 - (a) halt the creditor's application for adjudication; or
 - (b) refuse the application.Compare: 1967 No 54 s 26(4)

43 Court may halt application while underlying debt determined

- (1) This section applies if the debtor appears in opposition to a creditor's application and the debtor says either—
 - (a) that he or she does not owe a debt to the creditor; or
 - (b) that he or she does owe a debt to the creditor, but the debt is less than \$1,000.
- (2) The court may, instead of refusing the application, halt the application so that the question of whether the debt is owed, or how much of the debt is owed, can be resolved at a trial.
- (3) As a condition of halting the application, the court may require the debtor to give security to the creditor for any debt that may be established as owing by the debtor to the creditor, and for the costs of establishing the debt.
Compare: 1967 No 54 s 26(5)

44 Substitution of creditor

- (1) The court may substitute another creditor (**Creditor 2**) for the creditor making the application for adjudication (**Creditor 1**), if—
 - (a) Creditor 1 has not proceeded with due diligence or at the hearing of the application offers no evidence; and
 - (b) the debtor owes Creditor 2 \$1,000 or more.
- (2) In that case, Creditor 2 must file another application for adjudication, but can rely on the act of bankruptcy to which Creditor 1's application related.

Compare: 1967 No 54 s 26(9)

*Debtor's application***45 When debtor may file application**

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

46 Debtor must first file statement of affairs

- (1) A debtor may not file an application for adjudication unless the debtor has first filed with the Assignee a statement of the debtor's affairs in the prescribed form.
- (2) The Assignee may reject a statement of affairs that in the Assignee's opinion is incorrect or incomplete.

47 Debtor automatically adjudicated bankrupt

- (1) A debtor who files an application with the Assignee to have himself or herself adjudicated bankrupt is automatically adjudicated bankrupt when the application is filed.
- (2) That adjudication has the same consequences as if the debtor had been adjudicated bankrupt by the court.

Compare: 1967 No 54 s 21

48 Debtors' joint application

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

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

Compare: 1967 No 54 s 22

49 Steps for filing debtor's application

- (1) To file an application for adjudication, a debtor must—
- (a) complete the prescribed application form; and
 - (b) lodge it with the Assignee in accordance with the prescribed procedure.
- (2) The debtor files the application when it is endorsed by the Assignee as having been received.

Subpart 3—Appointment of receiver

Power of court to appoint Assignee as receiver

50 Application for appointment of Assignee as receiver

- (1) After a creditor's application for adjudication has been filed, a creditor of the debtor may apply to the court for an order appointing the Assignee as receiver and manager of all or part of the debtor's property.
- (2) The court may make the order at any time before it makes an order of adjudication.
- (3) As part of the order, the court may authorise the Assignee to take all or any of the following steps:
- (a) take possession of any property;
 - (b) sell any perishable property or property that is likely to fall rapidly in value;
 - (c) control the debtor's business or property as directed by the court.
- (4) An order for the Assignee's control of the debtor's business must be confined to what is necessary, in the court's opinion, for conserving the debtor's property.

Compare: 1967 No 54 s 27

51 Additional orders after receiver's appointment

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

Compare: 1967 No 54 s 27(2)

52 Appointment of Assignee as receiver and manager must be advertised

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

53 Execution process halted

- (1) A creditor of the debtor must not issue an execution process of the kind referred to in section 35 after the appointment of the Assignee as receiver and manager has been advertised.
- (2) A creditor must not continue an execution process already issued before the advertisement.
- (3) However, a creditor or any other person interested may apply to the court for an order allowing the issue or continuation of an execution process, and the court may make an order on the terms and conditions that it thinks appropriate.

Compare: 1967 No 54 s 27(3)

54 Effect when execution process halted

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

Compare: 1967 No 54 s 24(3)

Subpart 4—Adjudication

Adjudication

55 Bankruptcy commences on adjudication

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

56 Date of adjudication

In this Act, **date of adjudication** means,—

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

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

Compare: 1967 No 54 s 28

57 Date and time of adjudication must be recorded

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

Compare: 1967 No 54 s 28A

58 Registrar must notify Assignee of adjudication by court

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

59 Official Assignee must nominate Assignee

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

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

- (1) This section applies if there is doubt whether an act was done, or a transaction entered into or effected, before or after the date of adjudication.
- (2) The presumption is that the act was done, or the transaction entered into or effected, after the date of adjudication, but the presumption does not apply if the contrary is proved.

61 Adjudication final and binding

Unless an adjudication is appealed under this Act,—

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

(b) the adjudication is binding on all persons.

Compare: 1967 No 54 s 30

62 Public register of discharged and undischarged bankrupts

- (1) The Assignee must maintain a public register of discharged and undischarged bankrupts.
- (2) The register must be maintained in accordance with subpart 5 of Part 7.

Subpart 5—What happens on adjudication

63 Debtor adjudicated bankrupt called the bankrupt

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

64 Outline of what happens on adjudication

- (1) On adjudication—
 - (a) the Assignee must advertise the adjudication; and
 - (b) the bankrupt must file with the Assignee a statement of his or her affairs, if the bankrupt has not already done so; and
 - (c) the Assignee may call a meeting of the bankrupt's creditors; and
 - (d) proceedings to recover certain debts must be halted; and
 - (e) the property of the bankrupt vests in the Assignee.
- (2) This section is a guide only to the immediate consequences of adjudication.

Assignee must advertise adjudication

65 Assignee must advertise adjudication

- (1) The Assignee must advertise the adjudication of the bankrupt as soon as practicable after it has occurred.
- (2) The Assignee must advertise the adjudication in the prescribed manner.
- (3) Subsection (1) is subject to section 66.

Compare: 1967 No 54 s 31

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

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

Bankrupt's statement of affairs

67 Bankrupt must file statement of affairs with Assignee

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

Compare: 1967 No 54 s 33

68 Notice that bankrupt must file statement of affairs

- (1) As soon as practicable after adjudication, the Assignee must send the bankrupt a notice in the prescribed form stating—
 - (a) that the bankrupt has been adjudicated bankrupt; and
 - (b) that the bankrupt must file a statement of the bankrupt's affairs in the prescribed form; and
 - (c) the time when the statement must be filed.
- (2) The Assignee must send the notice to the address of the bankrupt given in the application for adjudication or the bankrupt's last known address.
- (3) This section does not apply if the bankrupt has already filed a statement under section 46.

Compare: 1967 No 54 s 33(1)

69 Time for filing statement of affairs

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

70 Bankrupt may file additional or amended statements or answers

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

*Assignee must call meeting of creditors***71 Assignee must call meeting of creditors**

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

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

72 Time when meeting must be held

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

Compare: 1967 No 54 s 34(1)

73 Assignee may dispense with first creditors' meeting

- (1) The Assignee need not call a first creditors' meeting if the Assignee—
 - (a) decides that the meeting should not be called; and

- (b) sends each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Assignee, a notice that complies with section 74; and
 - (c) does not receive, within 10 working days after the Assignee's notice was sent, written notice from a creditor requiring the Assignee to call the meeting.
- (2) In deciding whether the meeting should not be called, the Assignee must consider—
- (a) the bankrupt's assets and liabilities; and
 - (b) the likely result of the bankruptcy; and
 - (c) any other relevant matters.

Compare: 1967 No 54 s 34A

74 Notice that first creditors' meeting should not be called

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

- (a) state that the Assignee considers that the first creditors' meeting should not be called; and
- (b) give the reasons for not calling the meeting; and
- (c) state that the Assignee will not call the meeting unless a creditor gives the Assignee written notice, within 10 working days after the Assignee's notice was sent, requiring the Assignee to call the meeting.

Compare: 1967 No 54 s 34A

75 Documents to be sent with notice of meeting

- (1) The Assignee must send the following documents with the notice of the first creditors' meeting:
- (a) a summary of the bankrupt's statement of assets and liabilities; and
 - (b) extracts from, or a summary of, the bankrupt's explanation of the causes of the bankruptcy; and
 - (c) any comments on the bankruptcy that the Assignee chooses to make.
- (2) However, subsection (1) does not apply if the Assignee has not received the bankrupt's statement of affairs when the notice is sent.

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

Compare: 1967 No 54 s 35

Court proceedings are halted

76 Effect of adjudication on court proceedings

- (1) On adjudication, all proceedings to recover any debt provable in the bankruptcy are halted.
- (2) However, on the application by any creditor or other person interested in the bankruptcy, the court may allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the court thinks appropriate.

Compare: 1967 No 54 s 32

Execution process

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

- (1) A creditor must not begin or continue an execution, attachment, or other process in respect of the bankrupt's property or person, for the recovery of a debt provable in the bankruptcy, after—
- (a) the Assignee has advertised the bankrupt's adjudication; or
 - (b) the Assignee has given notice of the adjudication to the creditor.
- (2) After advertisement of the adjudication or notice by the Assignee to the creditor, a creditor must not seize or sell any property by way of distress for rent due and owing by the bankrupt, but the creditor may continue with the distress procedure if already begun.

Compare: 1967 No 54 s 50(5)

Bankrupt's death

78 Effect of bankrupt's death after adjudication

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

Compare: 1967 No 54 s 137

Subpart 6—Role of creditors

79 Overview of creditors' role in bankruptcy

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

- (a) attend meetings of the creditors; and
- (b) submit proofs of the debts of the bankrupt.

Creditors' meetings

80 Types of creditors' meetings

- (1) There are 2 types of creditors' meetings:
 - (a) the first creditors' meeting; and
 - (b) subsequent meetings.
- (2) The rules for calling the first creditors' meeting are set out in sections 71 to 75.

81 Subsequent meetings

- (1) The Assignee may call subsequent meetings of creditors.
- (2) The Assignee must call a subsequent meeting if required to do so by one-quarter in number and value of the creditors who have proved their debts.
- (3) The Assignee must call the meeting by taking the steps set out in section 71(2) and (3).

Compare: 1967 No 54 s 36

82 Meeting and resolution not defective for lack of notice

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

Compare: 1967 No 54 s 40(6)

*Conduct of creditors' meetings***83 Chairperson**

- (1) The chairperson of a creditors' meeting is the Assignee or a person appointed by the Assignee to be the chairperson.
- (2) However, if neither the Assignee nor the person (if any) appointed by the Assignee to be the chairperson attends the meeting, the creditor or creditors may elect one of themselves to act as chairperson for the purpose of the meeting, but only if that person is entitled to vote at the meeting.
- (3) A person appointed by the Assignee or elected by the creditors to act as chairperson may administer any oath that the Assignee could have administered if the Assignee had attended the meeting.

Compare: 1967 No 54 s 37(1)

84 Chairperson may adjourn meeting

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

Compare: 1967 No 54 s 37(3)

85 Assignee must report to meeting

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

- (a) must report on the administration of the bankrupt's estate; and
- (b) must give any creditor any further information that the creditor may properly require; and
- (c) must, if reasonably required, produce for the meeting (or its adjournment) all accounting records, deeds, and papers in the Assignee's possession that relate to the bankrupt's property.

Compare: 1967 No 54 s 37(4)

86 Attending creditors' meeting

- (1) A person may attend a creditors' meeting—
 - (a) by being physically present at the time and place appointed for the meeting; or

- (b) if the Assignee makes it available, by means of an audio or audio-visual link, so that all those participating in the meeting can hear and be heard by each other.
- (2) A creditor may also attend by voting by postal or electronic vote under section 93 or by proxy on any resolution to be put to the meeting.

87 Bankrupt may be required to attend and be questioned

- (1) The bankrupt must, if required by the Assignee, attend all creditors' meetings by being physically present or present by an audio or audio-visual link.
- (2) The Assignee, the chairperson of a creditors' meeting, a creditor, or a representative of a creditor may question the bankrupt as to his or her property, conduct, or dealings. The chairperson of the meeting must allow only questions that relate to the bankrupt's property, conduct, or dealings.
- (3) The questioning may be on oath.
- (4) The bankrupt must sign a statement of the bankrupt's evidence given under the questioning, if required to do so by the Assignee or the chairperson of the meeting.

Compare: 1967 No 54 s 37(2)

88 Attendance by non-creditors

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

- (a) the Assignee; or
- (b) the creditors attending the meeting, voting by ordinary resolution.

Compare: 1967 No 54 s 37(5)

89 Minutes and record of meeting

- (1) The Assignee must ensure that minutes are kept of every creditors' meeting.
- (2) The Assignee or the chairperson must sign the minutes.
- (3) The Assignee may record the meeting, but only with the consent of each person attending the meeting.

Compare: 1967 No 54 s 37(6)

90 Number of persons for valid meeting

- (1) For a valid creditors' meeting, at least the following persons must attend:
- (a) the Assignee or a person who represents the Assignee; and
 - (b) a creditor or a person who represents a creditor.
- (2) The meeting lapses if those persons do not attend, and the Assignee may call another meeting.

Compare: 1967 No 54 s 38

91 Who may represent creditor or bankrupt

- (1) At a creditors' meeting, any of the following persons may represent a creditor and, if the bankrupt attends, any of the following persons except the person in paragraph (d) may represent the bankrupt:
- (a) a lawyer;
 - (b) an accountant;
 - (c) a person who keeps the creditor's or bankrupt's accounts;
 - (d) in the case of a creditor, a person who is the creditor's authorised agent under a power of attorney;
 - (e) a person who satisfies the Assignee that he or she represents the creditor or bankrupt;
 - (f) in the case of a partnership, a partner.
- (2) In addition to the persons listed in subsection (1), a creditor may be represented,—
- (a) in the case of the Crown, by any officer of the appropriate government department;
 - (b) in the case of a public body, by an officer of that body;
 - (c) in the case of a company, by a director, or its general manager or accountant, or by a person authorised in writing by one of those persons.

Compare: 1967 No 54 s 39

92 Voting at meetings

- (1) For a creditors' meeting to pass—
- (a) an ordinary resolution, a majority in number and value of the creditors (or their representatives) who attend and who vote on the resolution must vote in favour of it:

- (b) a special resolution, three-quarters in number and value of the creditors (or their representatives) who attend and who vote on the resolution must vote in favour of it.
- (2) For the purposes only of determining whether the requisite majority by value has voted in favour of a resolution,—
- (a) the Assignee may admit or reject proofs of debt; and
 - (b) the Assignee may adjourn the meeting in order to admit or reject proofs of debt; and
 - (c) a person whose debt has been admitted is a creditor.
- Compare: 1967 No 54 s 40(1)

93 Postal and electronic votes

- (1) A creditor who is entitled to vote at a creditors' meeting may vote on a resolution to be put to the meeting—
- (a) by postal vote; or
 - (b) by electronic vote, if the voting paper for the resolution allows it, in accordance with the procedure specified in the voting paper.
- (2) A postal or electronic vote must reach the Assignee at least 2 working days before the meeting begins if it is to be counted at the meeting.
- (3) A voting paper for each resolution to be put to a creditors' meeting must accompany the notice of the meeting, together with instructions for returning the voting paper or electronic vote (if allowed by the voting paper under section 93(1)(b)) to the Assignee at least 2 working days before the meeting begins.

94 Who may vote at creditors' meeting

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

95 When secured creditor may vote

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

- (a) surrendered the charge; or

- (b) valued the charge; or
- (c) realised the charge.

Compare: 1967 No 54 s 40(2)

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

- (1) A debt on, or secured by, a current bill of exchange or promissory note does not entitle the creditor to vote unless the creditor is willing to take the following steps:
 - (a) treat a qualifying liability (which is defined in subsection (2)) as a charge in the creditor's hands; and
 - (b) estimate the value of the charge; and
 - (c) deduct the value of the charge from the creditor's claim for the purposes of voting (but not for the purposes of distribution under subpart 10 of Part 3); and
 - (d) show the bill or note to the Assignee when the Assignee requires it.
- (2) In this section, **qualifying liability** means the liability to the creditor on the bill or note of every person who—
 - (a) is liable on the bill or note antecedently to the debtor; and
 - (b) is not a bankrupt.

Compare: 1967 No 54 s 40(3)

97 Person disqualified from voting through preferential effect

- (1) A person (A) must not vote in favour of a resolution that would directly or indirectly enable any of the persons listed in subsection (2) to receive any remuneration out of the bankrupt's estate other than as a creditor sharing rateably with the other creditors.
- (2) The persons referred to in subsection (1) are—
 - (a) A;
 - (b) A's business partner, employer, or employee;
 - (c) a creditor that A represents;
 - (d) the business partner, employer, or employee of a creditor that A represents.

Compare: 1967 No 54 s 40(4)

98 Creditor of partner

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

Compare: 1967 No 54 s 40(5)

99 Creditors may appoint expert or committee to assist Assignee

- (1) A creditors' meeting may pass an ordinary resolution—
 - (a) appointing an expert to assist the Assignee in the administration of the bankrupt's estate; and
 - (b) providing for the expert's remuneration out of the estate.
- (2) A creditors' meeting may pass an ordinary resolution appointing a committee of any persons to assist the Assignee in the administration of the bankrupt's estate, but in that case the court must approve any remuneration of the members of the committee out of the estate.

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

Documents

100 Creditor's right to inspect documents

A creditor, or a lawyer or accountant acting for that creditor, who has lodged a creditor's claim form may at any reasonable time inspect and take extracts or copies of—

- (a) the bankrupt's accounting records;
- (b) the bankrupt's answers to questions under section 87;
- (c) the bankrupt's statement of affairs;
- (d) all proofs of debt;
- (e) the minutes of any creditors' meeting.

Compare: 1967 No 54 s 131

Part 3
Dealing with bankrupt and bankrupt's
property

Subpart 1—Status of bankrupt's property

General

101 Status of bankrupt's property on adjudication

- (1) On adjudication,—
- (a) all property (whether in or outside New Zealand) belonging to the bankrupt or vested in the bankrupt vests in the Assignee without the Assignee having to intervene or take any other step in relation to the property, and any rights of the bankrupt in the property are extinguished; and
 - (b) the powers that the bankrupt could have exercised in, over, or in respect of any property (whether in or outside New Zealand) for the bankrupt's own benefit vest in the Assignee.
- (2) This section is subject to section 104.
Compare: 1967 No 54 s 42(1), (2)

102 Status of property acquired during bankruptcy

- (1) Between the commencement of bankruptcy and discharge of the bankrupt,—
- (a) all property (whether in or outside New Zealand) that the bankrupt acquires or that passes to the bankrupt vests in the Assignee without the Assignee having to intervene or take any other step in relation to the property, and any rights of the bankrupt in the property are extinguished; and
 - (b) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's own benefit vest in the Assignee.
- (2) This section is subject to section 104 and section 123.
- (3) This section does not apply to property that is vested in the bankrupt under an order made under section 119(3).
Compare: 1967 No 54 s 42(2)

103 Property vests in replacement Assignee

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

Compare: 1967 No 54 s 42(1)

104 Property held in trust by bankrupt

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

Compare: 1967 No 54 s 42(3)

105 Effect of other laws

- (1) Nothing in the Land Transfer Act 1952 restricts the operation of sections 101 to 104.
- (2) Sections 101 to 104 do not affect the operation of any other law that prevents any property from vesting in the Assignee.

Compare: 1967 No 54 s 42(5)

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

- (1) The court may, on the application of the Assignee, order that any money due to the bankrupt, or any money to become due or payable to the bankrupt, is assigned or charged to, or in favour of, the Assignee.
- (2) The assignment or charge is a discharge to the person who pays the Assignee.

Compare: 1967 No 54 s 45A

107 Application of section 274 to payments by bankrupt or assignments by court

The Assignee must apply the following payments in accordance with section 274:

- (a) any amount paid by the bankrupt under section 147:
- (b) any amount paid to the Assignee under an order made under section 106.

Compare: 1967 No 54 s 45B

*Bankrupt's property subject to execution process***108 When execution creditor may retain execution proceeds**

- (1) This section applies to a creditor who has, before adjudication,—
 - (a) issued execution against the bankrupt's property; or
 - (b) attached a debt due by the bankrupt.
- (2) The creditor may retain the benefit of the execution or attachment (including the proceeds) only if the creditor completed the execution or attachment—
 - (a) before adjudication; and
 - (b) before the creditor had notice that an application for adjudication had been filed or that the bankrupt had committed an act of bankruptcy (other than an act of bankruptcy arising out of the creditor's execution or attachment).
- (3) The creditor may retain as against the Assignee a payment made by the bankrupt in the course of the execution or attachment to avoid the execution or attachment as if—
 - (a) the payment was the proceeds of the execution or attachment; and
 - (b) the execution or attachment was completed when the payment was made.
- (4) The right of a creditor under this section to retain the benefit of an execution or attachment is subject to sections 194 to 197.
Compare: 1967 No 54 s 50(1), (2), (6)

109 Effect of notice to sheriff of adjudication

- (1) This section applies if the sheriff has taken the property of a debtor in execution and is served with notice of the debtor's adjudication before the property is sold or before the execution is completed by the receipt or recovery of the full amount of the levy of execution.
- (2) If the Assignee requires it, the sheriff must deliver to the Assignee any goods and money seized or received in part satisfaction of the execution.

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

Compare: 1967 No 54 s 50(3)

110 Sheriff must retain proceeds of execution for 10 working days

- (1) This section applies if, under execution of a judgment for a sum of more than \$100, the sheriff sells property of the debtor or is paid money in order to avoid a sale.
- (2) The sheriff must deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 10 working days (which in this section is called the **10-day period**), to be applied in accordance with subsection (3) or subsection (4).
- (3) If the sheriff is served with notice within the 10-day period that the debtor has filed an application for adjudication, the sheriff must pay the balance to the Assignee, who is entitled to retain it as against the execution creditor.
- (4) If the sheriff is served with notice within the 10-day period that a creditor has filed an application for the adjudication of the debtor, subject to subsection (3),—
- (a) the sheriff must retain the balance until the application (and any other application of which notice is served on the sheriff pending disposal of the first application) has been disposed of; and
 - (b) the sheriff must,—
 - (i) if adjudication results, pay the balance to the Assignee; or
 - (ii) if adjudication does not result, pay the balance to the execution creditor, who is entitled to retain it as against the Assignee (subject to section 112).
- (5) If the sheriff is not served with notice within the 10-day period that an application for the adjudication of the debtor has been filed, the sheriff must pay the balance to the execution creditor, who is entitled to retain it as against the Assignee.

Compare: 1967 No 54 s 50(4)

111 Purchaser under sale by sheriff acquires good title

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

Compare: 1967 No 54 s 50(7)

112 Court may set aside rights conferred on Assignee

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

Compare: 1967 No 54 s 50(8)

*Validity of property transactions with bankrupt***113 Transaction in good faith and for value after adjudication**

- (1) This section applies to a transaction between a person (A) and the bankrupt in relation to property that the bankrupt has acquired, or that has passed to the bankrupt, after adjudication.
- (2) The transaction is valid as against the Assignee if—
 - (a) A deals with the bankrupt in good faith and for value; and
 - (b) the transaction is completed without an intervention by the Assignee.
- (3) If A is the bankrupt's bank, a transaction by A dealing with the bankrupt for value includes—
 - (a) the receipt by A of any money, charge, or negotiable instrument from the bankrupt or by the bankrupt's order or direction; and
 - (b) a payment by A to the bankrupt or by the bankrupt's order or direction; and
 - (c) the delivery by A of a charge or negotiable instrument to the bankrupt or by the bankrupt's order or direction.
- (4) A payment of money or delivery of property by a legal personal representative to, or by the direction of, the bankrupt is a transaction for value.

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

114 Executions and attachments in good faith

- (1) This section applies to property that the bankrupt has acquired, or that has passed to the bankrupt, after adjudication.
- (2) An execution or attachment against the property is valid as against the Assignee if it is—
 - (a) in good faith; and
 - (b) in respect of a debt or liability incurred by the bankrupt after adjudication; and
 - (c) completed before an intervention by the Assignee.

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

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

For the purposes of section 108 or 114—

- (a) an execution against goods is completed by seizure and sale;
- (b) an attachment of a debt is completed by receipt of the debt;
- (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Compare: 1967 No 54 s 50(2)

116 Assignee's interest in property passes

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

Compare: 1967 No 54 s 49(2)

Disclaimer of onerous property

117 Assignee may disclaim onerous property

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

- (2) Subsection (1) applies even if the Assignee has taken possession of the property, tried to sell it, or otherwise exercised rights of ownership in relation to it.
- (3) The Assignee must, within 10 working days after the disclaimer, send a written notice of the disclaimer to every person whose rights are, to the Assignee's knowledge, affected by it.
- (4) For the purposes of this section and section 120, **onerous property**—
 - (a) means—
 - (i) an unprofitable contract; or
 - (ii) property of the bankrupt that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act; or
 - (iii) a litigation right that, in the opinion of the Assignee, has no reasonable prospect of success or cannot reasonably be funded from the assets of the bankrupt's estate; but
 - (b) does not include—
 - (i) a netting agreement to which sections 255 to 263 apply; or
 - (ii) any contract of the bankrupt that constitutes a transaction under that netting agreement.

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

118 Effect of disclaimer

A disclaimer by the Assignee—

- (a) brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the Assignee and the bankrupt in relation to the property disclaimed:
- (b) does not affect the rights, interests, or liabilities of any other person, except in so far as is necessary to release the Assignee or the bankrupt from a liability.

Compare: 1993 No 105 s 269(3)

119 Position of person who suffers loss as result of disclaimer

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

- (a) claim as a creditor in the bankruptcy for the amount of the loss or damage, taking account of the effect of an order made by the court under paragraph (b):
 - (b) apply to the court for an order that the disclaimed property be delivered to, or vested in, that person.
- (2) The bankrupt may also apply for an order that the disclaimed property be delivered to, or vested in, the bankrupt.
- (3) The court may make an order under subsection (1)(b) or (2) if it is satisfied that it is fair that the property should be delivered to, or vested in, the applicant.
- Compare: 1993 No 105 s 269(5), (6)

120 Assignee may be required to elect whether to disclaim

The Assignee loses the right to disclaim if—

- (a) a person whose rights would be affected by the disclaimer has sent the Assignee a written notice requiring the Assignee to elect whether to disclaim the onerous property in question; and
- (b) the notice specifies a date to disclaim that is not less than 20 working days after the Assignee has received the notice; and
- (c) the Assignee does not disclaim the onerous property before the close of that date.

Compare: 1993 No 105 s 270

121 Liability for rentcharge on bankrupt's land after disclaimer

- (1) The vesting of land subject to a rentcharge after disclaimer by the Assignee in the Crown, any other person, or their successors in title does not make any of those persons personally liable for the rentcharge.
- (2) However, this section does not affect the liability of a person in subsection (1) for rentcharge accruing after that person has taken possession or control of the land or has entered into possession of it.

Compare: 1967 No 54 s 79

*Land subject to mortgage***122 Transmission of interest in land**

- (1) This section applies to an interest in land that—
 - (a) is owned by the bankrupt; and
 - (b) is subject to a mortgage or a charge; and
 - (c) is not disclaimed by the Assignee.
- (2) The Assignee must—
 - (a) register, under the Land Transfer Act 1952, the transmission of the interest in the land to the Assignee; or
 - (b) give notice to the mortgagee or other person entitled under the charge that the Assignee cannot, or does not intend to, register transmission of the interest in the land.
- (3) Notice under subsection (2)(b) is notice that the interest has vested in the Assignee, and the mortgagee or person entitled under the charge is, in the event of entering into possession or selling, liable to account to the Assignee as if the Assignee were the registered proprietor of the interest.

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

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

- (1) The Assignee cannot, after the bankrupt's discharge, claim an interest in land to which section 122(1) applies and for which the Assignee has not registered a transmission if the bankrupt—
 - (a) was in possession of the interest at the time of adjudication; and
 - (b) remained in possession until discharge from bankruptcy.
- (2) Subsection (1) applies whether or not the Assignee gave a notice under section 122(2)(b).
- (3) However, the Assignee may apply to the court for an order that the Assignee is entitled, after discharge, to claim the bankrupt's interest in the land, and the court must have regard to—
 - (a) the good faith of the bankrupt; and
 - (b) the time that has elapsed since adjudication; and

- (c) the value of any improvements made by the bankrupt;
and
- (d) all other relevant matters.

Compare: 1967 No 54 s 80(3)

Shares and other securities

124 Assignee may transfer shares and other securities

- (1) The Assignee may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it if the bankrupt had not been adjudicated bankrupt:
 - (a) securities in a company:
 - (b) securities of the New Zealand Government:
 - (c) securities issued by a local authority:
 - (d) shares in ships:
 - (e) any other property transferable in the records of a company, office, or person.
 - (2) A person whose act or consent is necessary for the transfer of the property must, on the Assignee's request, do whatever is necessary for the transfer to be completed.
 - (3) In the case of the transfer by the Assignee of securities in a company, a shareholder to whom the securities must be offered for sale under the constitution and who agrees to purchase must pay a reasonable price for the securities, whether or not the constitution provides a procedure for fixing the price.
- Compare: 1967 No 54 s 74(1), (2), (3)

125 Assignee may disclaim liability under shares

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

Compare: 1967 No 54 s 78(1)

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

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

- (a) the company or a person who has an interest in the shares has sent the Assignee a written notice requiring the Assignee to elect whether to disclaim liability under the shares; and
- (b) the notice specifies a date to disclaim that is not less than 20 working days after the Assignee has received the notice; and
- (c) the Assignee does not disclaim liability under the shares before the close of that date.

Compare: 1967 No 54 s 78(3)

127 Transfer of shares after disclaimer

- (1) After disclaimer, the Assignee may, subject to the rules of any other Act and to the constitution of the company, transfer the shares in question to any person who has an interest in them.
- (2) If that person refuses to accept the transfer or if no person has an interest in them, the Assignee may transfer the shares to the bankrupt if the bankrupt consents, and in that case the bankrupt is entitled as against the Assignee to retain the shares and the proceeds if the bankrupt sells them.
- (3) If the Assignee does not transfer the shares to a person who has an interest in them or to the bankrupt, the board of the company may—
 - (a) sell the shares; or
 - (b) with the court's approval and whatever any other Act may say, cancel the shares as it thinks appropriate.
- (4) The Assignee is a director of the company for the purposes of transferring, selling, or cancelling the shares under this section if—
 - (a) immediately before adjudication the bankrupt was a director of the company; and
 - (b) the number of directors is less than the minimum number of directors required by law or the company's con-

stitution as a result of the bankrupt's disqualification as a director.

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

128 Company may prove for unpaid calls

- (1) This section applies if the Assignee has disclaimed liability under shares and the company has not been put into liquidation.
- (2) The company may prove in the bankruptcy for—
 - (a) the amount of unpaid calls made before adjudication in respect of the bankrupt's shares; and
 - (b) the value of calls to be made in respect of the bankrupt's shares within 1 year after adjudication.
- (3) The court must determine the value of the calls to be made if the Assignee and the company cannot agree.

Compare: 1967 No 54 s 78(7)

Consumer goods on hire purchase

129 Meaning of hire purchase terms used in this subpart

In sections 130 to 133,—

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

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

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

Compare: 1967 No 54 s 91(1)

130 Restrictions on creditor dealing with consumer goods

- (1) This section applies if—
 - (a) the bankrupt purchased consumer goods under a hire purchase agreement before adjudication; and

- (b) the creditor either—
 - (i) took possession of the goods within 21 days before adjudication, and after adjudication still possesses them; or
 - (ii) takes possession of the goods after adjudication.
- (2) The creditor must not sell or dispose of the consumer goods or part with possession of them (except for storage or repair) until 1 month after the date when the creditor serves a post-possession notice on the Assignee (which in this section and section 131 is called the **1-month period**).
- (3) However, subsection (2) does not apply if the Assignee consents in writing to the creditor selling or disposing of or parting with possession of the consumer goods before the expiry of the 1-month period.

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

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

- (1) The Assignee may,—
 - (a) within the 1-month period, exercise the right under section 30 of the Credit (Repossession) Act 1997 to introduce a buyer for consumer goods; or
 - (b) at any time before the creditor sells or agrees to sell consumer goods under section 25 of the Credit (Repossession) Act 1997, settle the bankrupt's obligations as debtor in accordance with section 31 of that Act.
- (2) This section applies no matter what the Credit (Repossession) Act 1997 says.

Compare: 1967 No 54 s 91(4)

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

- (1) This section applies if—
 - (a) a creditor has taken possession of consumer goods purchased under a hire purchase agreement, whether before or after the adjudication of the debtor; and
 - (b) the Assignee has not acted under section 131 in relation to the goods.

- (2) The creditor may prove in the bankruptcy for the amount (which is subject to the limit in section 35 of the Credit (Repossession) Act 1997) that the creditor was entitled to recover from the bankrupt as debtor.
- (3) If the creditor does prove in the bankruptcy under subsection (2),—
 - (a) the creditor must submit the following documents with the creditor's claim form:
 - (i) the relevant post-possession notice; and
 - (ii) the statement of account mentioned in section 33 of the Credit (Repossession) Act 1997; and
 - (b) the Assignee has the rights conferred on a debtor by sections 20 to 36 of the Credit (Repossession) Act 1997.

Compare: 1967 No 54 s 91(5)

133 Creditor may assign consumer goods to Assignee

- (1) This section applies if—
 - (a) the bankrupt purchased consumer goods under a hire purchase agreement before adjudication; and
 - (b) at the time of adjudication the creditor either—
 - (i) has not taken possession of the goods; or
 - (ii) has taken possession of them and has not sold or disposed of or parted with possession of them.
- (2) The creditor may assign the consumer goods to the Assignee, and, if the creditor does so, may prove in the bankruptcy for the net balance due to the creditor under the agreement.

Compare: 1967 No 54 s 91(6)

Second bankruptcy

134 Status of bankrupt's property on second bankruptcy

- (1) Notwithstanding section 102, the rules in subsections (2) to (4) apply if a bankrupt, before discharge, is adjudicated bankrupt for a second time.
- (2) Property that is acquired by, or has passed to, the bankrupt since the first adjudication, including property acquired or that has passed since the second adjudication, vests in the Assignee in the second bankruptcy.

- (3) However, the court may, if it thinks it appropriate, order that all or part of the following assets or their proceeds vest in the Assignee in the first bankruptcy:
- (a) assets in the second bankruptcy that, in the court's opinion, were acquired independently of the creditors in the second bankruptcy;
 - (b) assets in the second bankruptcy that devolved upon the bankrupt.
- (4) A surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and must be paid to the Assignee in the first bankruptcy.

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

135 Effect of notice to Assignee of application for adjudication

- (1) This section applies if the Assignee in a bankruptcy receives notice that a creditor has filed an application for a second adjudication.
- (2) The Assignee must hold property in his or her possession that has been acquired by, or passed to, the bankrupt since the first adjudication until the application for a second adjudication has been dealt with.
- (3) The Assignee must transfer the property and its proceeds, less any deduction for the Assignee's costs and expenses, to the Assignee in second bankruptcy if the creditor's application results in a second adjudication, or if the bankrupt is automatically adjudicated bankrupt on his or her own application.

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

Persons jointly adjudicated bankrupt

136 Separate accounts

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

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

Compare: 1967 No 54 s 82(1)

137 How joint and separate estates must be applied

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

Compare: 1967 No 54 s 82(1)

Subpart 2—Duties of bankrupt

138 General duty of bankrupt

- (1) The bankrupt must, to the best of the bankrupt's ability, assist in the realisation of the bankrupt's property and the distribution of the proceeds among the creditors.
- (2) This duty is in addition to any other duty imposed on the bankrupt by this Act or by any other enactment or law.

Compare: 1967 No 54 s 60

Duties in relation to property

139 Bankrupt must disclose property acquired before discharge

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

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

Compare: 1967 No 54 s 60(b)

140 Bankrupt must deliver property to Assignee on demand

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

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

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

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

- (1) The bankrupt must take all the steps (including the steps specified in subsection (2)) in relation to the bankrupt's property, and the distribution of the proceeds to the creditors, that are—
- (a) required by the Assignee; or
 - (b) prescribed by rules or regulations made under this Act; or
 - (c) directed to be done by the court by an order made in reference to a particular bankruptcy; or
 - (d) directed to be done by the court on an application by the Assignee or a creditor.
- (2) The steps referred to in subsection (1) include the execution by the bankrupt of powers of attorney, conveyances, transfers, deeds, assurances, and instruments.

Compare: 1967 No 54 s 60(d)

Duties to provide information

142 Bankrupt must give Assignee accounting records and other documents

- (1) As soon as practicable after adjudication, the bankrupt must—
- (a) deliver to the Assignee, at the Assignee's office, relevant documents that are in the bankrupt's possession or control; and
 - (b) notify the Assignee of relevant documents that are in the possession or control of any other person.
- (2) In subsection (1), **relevant documents** means all accounting records, papers, deeds, instruments, and other documents relating to the bankrupt's estate.

Compare: 1967 No 54 s 61(1)

143 Bankrupt must give Assignee information relating to property

The bankrupt must,—

- (a) as soon as practicable after adjudication, give the Assignee a complete and accurate list of the bankrupt's property and of the bankrupt's creditors and debtors, and update the lists as necessary; and
- (b) give the Assignee any other information relating to the bankrupt's property that the Assignee requires; and
- (c) attend before the Assignee when required by the Assignee; and
- (d) verify any statement by statutory declaration when required by the Assignee.

Compare: 1967 No 54 s 60(a)

144 Bankrupt must give Assignee information relating to income and expenditure

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

Compare: 1967 No 54 s 60(c)

145 Bankrupt must notify Assignee of change in personal information

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

- (a) address; or
- (b) employment; or
- (c) name; or
- (d) income.

Compare: 1967 No 54 s 60(g)

146 Bankrupt must give Assignee financial information

- (1) The bankrupt must give the Assignee (or any person employed by the Assignee) the information and details that are necessary to prepare a statement of financial position of the bankrupt's estate.
- (2) If required by the Assignee, the bankrupt must, within a reasonable time of adjudication, prepare and deliver to the As-

signee full, true, and detailed accounts and statements of financial position that show—

- (a) details of the bankrupt's trading and stocktaking; and
 - (b) details of the bankrupt's profit and losses during any period in the 3 years before the adjudication.
- (3) For the bankrupt to prepare the accounts and statements of financial position referred to in subsection (2),—
- (a) the Assignee must give the bankrupt full access to the bankrupt's books and papers in the Assignee's possession; and
 - (b) if the Assignee thinks it necessary, the bankrupt must be assisted by an accountant at the estate's expense.

Compare: 1967 No 54 s 61

Subpart 3—Control over bankrupt during bankruptcy

147 Bankrupt may be required to contribute to payment of debts

- (1) If required by the Assignee, the bankrupt must pay an amount or periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts.
- (2) The Assignee may impose conditions in respect of the payments.
- (3) Before the Assignee may require the bankrupt to make the payment or payments, the Assignee must—
 - (a) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities, and prospects; and
 - (b) make reasonable allowance for the maintenance of the bankrupt and his or her relatives and dependants.
- (4) The court may, on the application of the Assignee, order the bankrupt to pay the amount or amounts required by the Assignee.
- (5) The court may, on the application of the Assignee, the bankrupt, or any creditor,—
 - (a) vary, suspend, or cancel the bankrupt's obligations to make the payments under this section:

- (b) vary, suspend, or discharge any order made under subsection (4):
- (c) remit any arrears owing by the bankrupt.

Compare: 1967 No 54 s 45

148 Onus of proof if bankrupt defaults in making payment

If the bankrupt defaults in making a payment required under section 147, the onus is on the bankrupt in any proceedings arising out of the default to show that the default was not wilful.

Compare: 1967 No 54 s 46

149 Prohibition of bankrupt entering business

- (1) An undischarged bankrupt must not, without the consent of the Assignee or the court, either directly or indirectly,—
 - (a) enter into, carry on, or take part in the management or control of any business:
 - (b) be employed by a relative of the bankrupt:
 - (c) be employed by a company, trust, trustee, or incorporated society that is owned, managed, or controlled by a relative of the bankrupt.

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

Compare: 1967 No 54 s 62

150 Warrant to search for and seize bankrupt's property

- (1) The court may issue a search warrant to the Assignee or any other person if there is reason to believe that any relevant property is concealed in a locality.
- (2) The warrant may authorise the Assignee or other person named in the warrant, together with any assistants that may be necessary, to—
 - (a) enter and search the locality; and
 - (b) seize and take possession of any relevant property; and
 - (c) if necessary, use force to enter the locality, whether by breaking open doors or otherwise; and
 - (d) break open any box or receptacle at the locality, by force if necessary.

- (3) In this section and in section 151,—
- locality** means any building, aircraft, ship, carriage, vehicle, premises, or place
- relevant property** means—
- (a) any property of the bankrupt; or
 - (b) any document relating to the bankrupt's property, conduct, or dealings.
- Compare: 1967 No 54 s 65(2)

151 Seizure of bankrupt's property

- (1) If authorised by a warrant issued by the court, the Assignee or any other person, together with any assistants that may be necessary,—
- (a) may seize any part of the bankrupt's property in the custody or possession of the bankrupt or of any other person; and
 - (b) with a view to seizing the bankrupt's property, may—
 - (i) break open any building or room of the bankrupt where the bankrupt is believed to be; and
 - (ii) break open any building, room, or receptacle of the bankrupt where the bankrupt's property is believed to be; and
 - (iii) seize and take possession of the bankrupt's property found in the building, room, or receptacle.
- (2) For the purposes of this section and section 150, if the execution of a warrant takes place without the bankrupt being present, the person executing the warrant must leave in a prominent place at the locality searched a notice that—
- (a) states the date and time when the warrant was executed; and
 - (b) states the name of the person who executed it.
- (3) For the purposes of this section and section 150, the person executing the warrant must leave with the bankrupt, or leave in a prominent place at the locality searched if the bankrupt is not present, a list of any property seized during the course of the search.

- (4) Subsection (3) does not apply if it is impractical to leave a list of property seized or if the bankrupt consents to receiving a list sent in accordance with subsection (5).
- (5) If subsection (4) applies, the person executing the search must leave with the notice referred to in subsection (2), or with the bankrupt if the bankrupt is present, a notice stating that—
 - (a) relevant property has been seized in the course of the search; and
 - (b) within 5 working days after the execution of the warrant, a list of the property seized will be delivered or sent to the bankrupt or left in a prominent position at the place searched.
- (6) If subsection (4) applies, the person executing the warrant must ensure that within 5 working days after the execution of the warrant there is delivered or sent to the bankrupt, or left in a prominent position at the place searched, a notice listing the property seized and identifying the place where the property was seized.

Compare: 1967 No 54 s 65(1)

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

- (1) The Assignee may require the bankrupt and any of his or her relatives to vacate any land or building that is part of the property vested in the Assignee under the bankruptcy.
- (2) If the Assignee's demand is not complied with, the Assignee may apply to a District Court for an order for possession of the land or building.

Compare: 1967 No 54 s 66

153 Bankrupt's right to inspect documents

- (1) The bankrupt may at any reasonable time inspect, and take extracts or copies of,—
 - (a) the bankrupt's accounting records;
 - (b) the bankrupt's answers to questions under section 87;
 - (c) the bankrupt's statement of affairs;
 - (d) all proofs of debt;
 - (e) the minutes of any creditors' meeting;
 - (f) the record of any examination of the bankrupt.

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

Compare: 1967 No 54 s 131

Restrictions on bankrupt dealing with property

154 No power to recover property or give release or discharge

- (1) After adjudication, the bankrupt, and any person (other than the Assignee) who claims through or under the bankrupt, has no power to—
- (a) recover any property that is part of the bankrupt's estate; or
 - (b) give a release or discharge in relation to that property.
- (2) Subsection (1) applies subject to the provisions of sections 113 and 114.
- (3) Subsection (1) applies whether or not the Assignee has intervened.

Compare: 1967 No 54 s 44(a)

155 No steps to defeat beneficial interest

- (1) After adjudication, the bankrupt must not execute a power of appointment, or any other power vested in the bankrupt, if the result is to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be beneficially entitled at any time before his or her discharge.
- (2) The restriction on the bankrupt in subsection (1) applies—
- (a) both before and after the bankrupt obtains a discharge; and
 - (b) subject to the provisions of sections 113 and 114.

Compare: 1967 No 54 s 44(b)

Bankrupt's bank accounts

156 Bank must notify Assignee of bankrupt's account

- (1) A bank that ascertains or has reason to believe that a customer of the bank is an undischarged bankrupt must,—
- (a) as soon as possible, notify the Assignee of any account that the customer holds with the bank; and

- (b) not pay any money out of the account, unless subsection (2) applies.
- (2) The bank may pay money out of the account if—
 - (a) the bank is authorised by an order of the court or instructed by the Assignee to do so; or
 - (b) the bank has notified the Assignee of the account and has not, within 1 month of notification, received any instructions from the Assignee.
- (3) At the same time that the bank notifies the Assignee under subsection (1)(a), the bank must as soon as possible notify the customer that it has notified the Assignee.

Compare: 1967 No 54 s 49(5)

157 Assignee may require bank to search account records

- (1) The Assignee may, by written notice, require a bank to search its account records by comparing the names of its customers with the names (including any aliases) of undischarged bankrupts contained in or annexed to the notice.
- (2) The bank must search its account records within 5 working days after receipt of the notice.

Subpart 4—Provision for bankrupt during
bankruptcy

Provision for bankrupt

158 Bankrupt may retain certain assets

- (1) The bankrupt may choose and retain as the bankrupt's own property certain assets up to a maximum value.
- (2) In this section, and in section 159, **maximum value** means the maximum value of the assets specified in subsection (3) that the bankrupt may retain.
- (3) The assets and their maximum value are—
 - (a) the bankrupt's necessary tools of trade—the maximum value is fixed in the Assignee's discretion:
 - (b) necessary household furniture and effects, including clothing, for the bankrupt and his or her relatives and dependants—the maximum value is fixed in the Assignee's discretion:

- (c) motor vehicle—\$5,000.
- (4) For the purposes of this section, the value of an asset is the value that the Assignee in his or her discretion places on it.
- (5) The Governor-General may, by Order in Council, amend subsection (3)(c) by increasing the maximum value, to take account of any rise in the all groups index number of the Consumer Price Index.
- Compare: 1967 No 54 s 52(1)

159 Bankrupt may retain certain assets with consent of creditors

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

Compare: 1967 No 54 s 52(2)

160 Retention of assets does not affect rights under charge or hire purchase agreement

The retention of an asset by the bankrupt under section 158 or 159 does not affect any rights under a valid charge or hire purchase agreement in respect of the asset.

Compare: 1967 No 54 s 52(1)

161 Retention provisions do not confer rights to other assets

The fact that the net value of the assets that the bankrupt retains is less than the maximum values specified in section 158 does not give the bankrupt rights in relation to other assets in the bankrupt's estate.

Compare: 1967 No 54 s 52(1)

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

If the bankrupt has died, a relative or dependant of the bankrupt, who has been approved by the Assignee or the court for this purpose, may exercise the right to retain assets under section 158 or 159 for the benefit of the bankrupt's relatives and dependants.

Compare: 1967 No 54 s 52(3)

163 Assignee may make allowance to bankrupt

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

Compare: 1967 No 54 s 53(1)

164 Assignee may allow bankrupt to retain money

- (1) The Assignee may allow the bankrupt to retain, for the immediate maintenance of the bankrupt and his or her relatives and dependants, any money up to a maximum of \$1,000 that the bankrupt has in the bankrupt's possession or in a bank account at the time of adjudication.
- (2) The Governor-General may, by Order in Council, amend subsection (1) by increasing the maximum amount that the Assignee may allow the bankrupt to retain, to take account of any rise in the Consumer Price Index.

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

**Subpart 5—Powers of Assignee and court to
examine bankrupt and others**

Examination of persons summoned by Assignee

165 Assignee may summon bankrupt and others to be examined

- (1) The Assignee may at any time, before or after a bankrupt's discharge,—
 - (a) summon any of the persons listed in subsection (2) to appear before the Assignee, another Assignee, or a District Court Judge to be examined on oath in relation to the bankrupt's property, conduct, or dealings; and
 - (b) require that person to produce and surrender to the Assignee or District Court Judge before whom that person appears any document in that person's possession or control that relates to the bankrupt's property, conduct, or dealings.
- (2) The persons referred to in subsection (1) are—
 - (a) the bankrupt;
 - (b) the bankrupt's spouse;

- (c) a person known or suspected to possess any of the bankrupt's property or any document relating to the bankrupt's property, conduct, or dealings:
- (d) a person believed to owe the bankrupt money:
- (e) a person believed by the Assignee to be able to give information regarding—
 - (i) the bankrupt; or
 - (ii) the bankrupt's property, conduct, or dealings:
- (f) a trustee of a trust of which the bankrupt is a settlor or of which the bankrupt is or has been a trustee.

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

166 Conduct of examination of person summoned by Assignee

- (1) The Assignee or District Court Judge before whom a person (A) is summoned to appear under section 165 may examine A on oath.
- (2) The examination must be recorded in writing, and A must sign the written record if required to do so.
- (3) If A does not appear at the appointed time and has no reasonable excuse,—
 - (a) the District Court Judge or the court may, on the Assignee's application, by warrant, have A arrested and brought for examination by the court; and
 - (b) the court may order A to pay all the expenses arising out of A's arrest and examination before the court, if the court thinks that A's evidence was necessary for the purposes of the bankrupt's estate.

Compare: 1967 No 54 s 68(3)–(5)

167 Expenses of person summoned by Assignee

A person who is summoned by the Assignee for examination—

- (a) is entitled to be paid the prescribed expenses of attending the examination; and
- (b) does not default in attending if those expenses have not been paid or tendered to him or her before the examination.

Compare: 1967 No 54 s 68(6)

168 Creditor may inspect record of examination

A creditor or his or her lawyer may at any reasonable time inspect the record of the examination of a person by a District Court Judge or by the court under section 166.

169 Report of examination must not be published unless court consents

- (1) A person must not, without the court's permission under subsection (2), publish a report of—
 - (a) any examination of a person summoned by the Assignee; or
 - (b) any matter arising in the course of that examination.
- (2) On the Assignee's application, the court may permit publication of a report under the conditions that the court imposes.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 68(7)

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

Sections 165 to 169 also apply when the Assignee has been appointed a receiver and manager of all or part of a debtor's property under section 50, and references in sections 165 to 169 to the bankrupt must be read with all necessary modifications as if they were references to the debtor.

Compare: 1967 No 54 s 68(8)

171 Assignee may obtain documents

In addition to the power contained in section 165(1)(b), the Assignee may, by notice in writing, require the bankrupt, the bankrupt's spouse, or any other person to deliver to the Assignee any document relating to the bankrupt's property, conduct, or dealings in that person's possession or under that person's control.

Compare: 1967 No 54 s 68A

172 No lien over bankrupt's documents and other records

- (1) A person is not entitled as against the Assignee to withhold possession of, or claim a lien over,—
- (a) a deed or instrument that belongs to the bankrupt; or
 - (b) business records (which include accounting records, accounts, receipts, bills, invoices, or any other documents relating to the bankrupt's accounts, trade dealings, or business).
- (2) However, a person (A) may claim as a preferential creditor under section 274(2)(f) if—
- (a) A has performed services in connection with the bankrupt's business records or a deed or instrument belonging to the bankrupt; and
 - (b) A has not been paid, or has not been paid in full, for those services; and
 - (c) A would, but for subsection (1), ordinarily have had a lien over the business records, deed, or instrument, as the case may be.
- (3) The limit to which A may claim as a preferential creditor under section 274(2)(f) is 10% of the total value of the services stated in subsection (2), up to a maximum amount of \$2,000.

Compare: 1967 No 54 s 73

*Bankrupt's public examination***173 Court must hold public examination if Assignee or creditors require**

- (1) The court must hold a public examination of the bankrupt if, before an absolute order for the bankrupt's discharge is made, there is filed with the court either a statement by the Assignee, or a copy of a creditors' ordinary resolution, that the bankrupt should be publicly examined.
- (2) The copy of the resolution must be certified by the Assignee or the chairperson of the meeting at which it was passed.

Compare: 1967 No 54 s 69(1)

174 Notice of examination

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

- (a) that the Assignee's statement or the creditors' resolution has been filed with the court; and
 - (b) that the bankrupt is required to be publicly examined; and
 - (c) the time and place of the examination.
- (2) At least 5 working days before the examination, the Assignee must—
- (a) advertise the examination in the prescribed manner; and
 - (b) send a notice of the examination to each creditor.
- Compare: 1967 No 54 s 69(1), (2)

175 Time for holding examination

The court must hold the public examination of the bankrupt as soon as practicable, but not before 5 working days have elapsed after the Assignee has sent the bankrupt a notice under section 174.

Compare: 1967 No 54 s 69(1)

176 Assignee must file report before examination

Before the public examination of the bankrupt, the Assignee must file in the court a report on—

- (a) the bankrupt's estate; and
- (b) the bankrupt's conduct; and
- (c) all other matters of which the court should be informed.

Compare: 1967 No 54 s 69(3)

177 Conduct of examination

- (1) The bankrupt must attend the examination, and may be examined as to the bankrupt's conduct, dealings, and property.
- (2) The bankrupt must be examined on oath and must answer all questions that the court asks the bankrupt, or allows the bankrupt to be asked.
- (3) The following persons may examine the bankrupt:
 - (a) the Assignee, or counsel for the Assignee;
 - (b) any creditor who has proved a claim, or counsel for that creditor.

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

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

178 Record of examination

- (1) The examination must be recorded in writing as the court directs.
- (2) The record of the examination must be—
- (a) read over to, and signed by, the bankrupt; and
 - (b) available for inspection by any creditor or that creditor's lawyer at all reasonable times.

Compare: 1967 No 54 s 69(6)

179 When examination ends

- (1) The public examination of a bankrupt ends when the court makes an order that the examination is ended.
- (2) The court must not make an order that the examination is ended unless it is satisfied that the bankrupt's conduct, dealings, and property have been sufficiently investigated and that the investigation is finished.

Compare: 1967 No 54 s 69(7)

180 Bankrupt's failure to attend examination

If the bankrupt does not appear for the examination at the appointed time and has no reasonable excuse,—

- (a) a District Court Judge or the court may, on the Assignee's application, by warrant, cause the bankrupt to be arrested and brought up for examination by the court; and
- (b) the court may order the bankrupt to pay all the expenses arising out of the arrest and examination before the court, if the court thinks that the bankrupt's evidence was necessary for the purposes of the bankrupt's estate.

Compare: 1967 No 54 ss 68(4), (5), 69(8)

181 Bankrupt's expenses in attending examination

- (1) A bankrupt who attends a public examination is entitled to be paid the prescribed expenses of attending.

- (2) A bankrupt does not default in attending a public examination if the prescribed expenses of attending have not been paid or tendered to him or her before the examination.

Compare: 1967 No 54 ss 68(6), 69(8)

*Investigation of company controlled by bankrupt
and associate*

**182 Assignee may examine company documents, personnel,
and shareholders**

- (1) If authorised by the court, the assignee or a person appointed by the assignee may exercise the power set out in subsection (2) in relation to a company that is associated with the bankrupt under subpart YB of the Income Tax Act 2007.
- (2) The Assignee may—
- (a) examine the documents of the company:
 - (b) examine any past or present director, employee, or shareholder of the company on oath about the company's affairs.
- (3) The examination of a person under subsection (2)(b) must be recorded in writing, and the person examined must sign the written record if required to do so by the Assignee.

Compare: 1967 No 54 s 74(4)

Section 182(1): substituted, on 1 April 2010, by section 861 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

183 Meaning of associate

In section 182, **associate** means any of the following:

- (a) the bankrupt's spouse:
- (b) a lineal ancestor or descendant of the bankrupt:
- (c) the spouse of a lineal ancestor or descendant of the bankrupt:
- (d) a brother or sister of the bankrupt:
- (e) the spouse of a brother or sister of the bankrupt.

Compare: 1967 No 54 s 74(4)

*Privilege and representation of persons
examined*

184 No privilege against self-incrimination

- (1) A person who is examined or questioned under any power under this Act must answer all questions relating to the bankrupt's conduct, dealings, and property.
- (2) A person is not excused from answering a question because the question may incriminate or tend to incriminate that person.
Compare: 1967 No 54 s 70(1)

185 Statement made by person examined or questioned not generally admissible in criminal proceedings against that person

- (1) A statement made by a person examined or questioned under this Act in response to a question is not admissible in criminal proceedings against that person.
- (2) However, the statement is admissible if—
 - (a) the person was examined or questioned under oath and is charged with perjury in relation to the statement; or
 - (b) in the case of the bankrupt, the bankrupt is charged with an offence under section 440(1)(b).

Compare: 1967 No 54 s 70(2)

186 Representation

- (1) A person who is examined under this Act may be represented by a lawyer.
- (2) The person may be questioned by his or her lawyer, and any answers form part of the examination.
Compare: 1967 No 54 s 70(3)

Subpart 6—Status of bankrupt's contracts

*Bankrupt's contracts entered into before
adjudication*

187 Assignee may continue or disclaim bankrupt's contract

- If the bankrupt is a party to a contract, the Assignee may—
- (a) continue the contract, subject to the terms of the contract and all relevant rules of law; or

- (b) if the contract is onerous property for the purposes of section 117, disclaim it under that section.

Compare: 1967 No 54 s 76

188 Contract terminated by other contracting party

- (1) This section applies if a contract to which the bankrupt is a party is terminated on the bankrupt's adjudication by the other contracting party in accordance with the contract.
- (2) Whatever the contract may say, the Assignee may recover an amount from the other contracting party that the court thinks is just and equitable in all the circumstances, but the amount must not be greater than the amount set out in subsection (3).
- (3) The amount that the Assignee may recover must not be greater than C under the formula $A - B = C$, where—
 - (a) A is the amount payable to the bankrupt under the contract; and
 - (b) B is the total of—
 - (i) the amount paid to the bankrupt; and
 - (ii) the cost to complete the contract; and
 - (iii) a reasonable penalty for delay in completion of the contract.

Compare: 1967 No 54 s 77

*Transaction with bankrupt in ignorance of
adjudication*

189 Payment of money or delivery of property is good discharge

- (1) This section applies if a person (A) pays money or delivers property—
 - (a) to a person who is a bankrupt (B); or
 - (b) to a person who is subsequently adjudicated bankrupt (C); or
 - (c) to the order of B or C; or
 - (d) to an assignee from B or C; or
 - (e) to the order of an assignee from B or C.
- (2) The payment or delivery is a good discharge to A if—
 - (a) the payment or delivery was made before the adjudication of B or C, as the case may be, was advertised; and

- (b) A satisfies the court that—
 - (i) A had no knowledge of the adjudication or that an application for adjudication had been filed; and
 - (ii) the payment or delivery was made in the ordinary course of business or was otherwise made in good faith.

Compare: 1967 No 54 s 48

Joint contractual liability

190 Bankrupt's co-contractor may sue and be sued

If the bankrupt is jointly liable under a contract with another person, that other person may sue and be sued on the contract without the bankrupt being joined as a party to the proceeding.

Compare: 1967 No 54 s 130

Lawyers' costs

191 Lawyers' costs

The Assignee may recover money paid by a bankrupt, whether before or after adjudication, to his or her lawyer for costs in obtaining an order of adjudication, except for prescribed costs and expenses.

Compare: 1967 No 54 s 12

Subpart 7—Irregular transactions before adjudication

192 Overview of subpart 7

- (1) This subpart applies to the following irregular transactions by the bankrupt before adjudication:
 - (a) an insolvent transaction:
 - (b) an insolvent charge:
 - (c) an insolvent gift:
 - (d) a disposition of property to which subpart 6 of Part 6 (setting aside of dispositions that prejudice creditors) of the Property Law Act 2007 applies:
 - (e) a transaction at undervalue:
 - (f) a contribution by the bankrupt to the property of another person.

- (2) Broadly, the effect of this subpart is that the irregular transactions listed in subsection (1)(a) to (d) may be cancelled on the Assignee's initiative, and that, in appropriate cases, the Assignee may recover property or money from a party to an irregular transaction with the bankrupt.

Section 192(1)(d): substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

193 Extension of 2 years and 6 months periods

A reference in this subpart to **2 years** or to **6 months** means 2 years or 6 months (as the case may be) extended as follows:

- (a) in the case of adjudication on a creditor's application, extended by the period between the time when the application was served on the bankrupt and the time of adjudication:
- (b) in the case of adjudication on the bankrupt's own application, while a creditor's application is awaiting a hearing, extended by the period between the time when the creditor's application was served on the bankrupt and the time of adjudication.

Insolvent transactions

194 Insolvent transaction may be cancelled

A transaction by the bankrupt may be cancelled on the Assignee's initiative if it—

- (a) is an insolvent transaction; and
- (b) was made within 2 years immediately before the bankrupt's adjudication.

195 Meaning of insolvent transaction

- (1) An **insolvent transaction** is a transaction by the bankrupt that—
- (a) is entered into at a time when the bankrupt is unable to pay his or her due debts; and
 - (b) enables a creditor to receive more towards satisfaction of a debt by the bankrupt than that person would receive, or would be likely to receive, in the bankruptcy.

- (2) **Transaction**, as used in the term **insolvent transaction**, means any of the following steps by the bankrupt:
- (a) conveying or transferring the bankrupt's property:
 - (b) giving a charge over the bankrupt's property:
 - (c) incurring an obligation:
 - (d) undergoing an execution process:
 - (e) paying money (including money paid in accordance with a judgment or an order of a court):
 - (f) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

Compare: 1967 No 54 s 56(1), (2)

196 Insolvent transaction presumed

For the purposes of section 194, a transaction that is made within 6 months immediately before the bankrupt's adjudication is presumed, unless the contrary is proved, to be made at a time when the bankrupt is unable to pay his or her due debts.

197 When series of transactions must be regarded as single transaction

Where—

- (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between the bankrupt and a creditor (including a relationship to which other persons are parties); and
- (b) in the course of the relationship, the level of the bankrupt's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship;

then—

- (c) section 194 applies in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and
- (d) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction that may be cancelled by the Assignee if the effect of applying section 194 in accordance with paragraph (c) is that the single transaction referred to in paragraph (c) is taken

to be an insolvent transaction that may be cancelled by the Assignee.

Insolvent charges

198 Insolvent charge may be cancelled

A charge over any property of a bankrupt may be cancelled on the Assignee's initiative if—

- (a) the charge was given within 2 years immediately before the bankrupt's adjudication; and
- (b) immediately after the charge was given, the bankrupt was unable to pay his or her due debts.

Compare: 1967 No 54 s 57(1)

199 Charge for new consideration or charge in substitution not affected

- (1) A charge may not be cancelled under section 198 if the charge secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the secured creditor to the bankrupt at the time when, or at any time after, the bankrupt gave the charge.
- (2) A charge may not be cancelled under section 198 if the charge is a substitute for an existing charge that was given by the bankrupt more than 2 years before adjudication, except to the extent that—
 - (a) the amount secured by the substituted charge is greater than the amount that was secured by the existing charge; or
 - (b) the value of the property subject to the substituted charge at the date of substitution was greater than the value of the property subject to the existing charge at that date.

Compare: 1967 No 54 s 57(2)(a)

200 Presumption that bankrupt unable to pay due debts

A bankrupt who gives a charge within 6 months immediately before adjudication is presumed, unless the contrary is proved,

to have been unable to pay his or her due debts immediately after giving the charge.

201 Charge for unpaid purchase price given after sale of property

- (1) This section applies if the bankrupt, after purchasing property, has within 2 years immediately before adjudication given the seller a charge over the property.
- (2) Section 198 does not affect the charge to the extent that it secures unpaid purchase money, whether it is unpaid in relation to the property over which the charge is given or some other property, if the charge was given not more than 15 working days after the date of the sale of the property to the bankrupt.
Compare: 1967 No 54 s 57(2)(b)

202 Appropriation of payments by bankrupt to secured creditor

- (1) This section applies if the bankrupt has made a payment or payments to a secured creditor after the bankrupt has given a charge to which section 199 or 201 applies.
- (2) The bankrupt's payment or payments must be credited (as far as is necessary) towards—
 - (a) repayment of the money actually advanced or paid by the secured creditor to the bankrupt when or after the bankrupt gave the charge; or
 - (b) payment of the actual price or value of property sold or supplied by the secured creditor to the bankrupt when or after the bankrupt gave the charge; or
 - (c) payment of any other liability of the bankrupt to the secured creditor in respect of any other valuable consideration given in good faith when or after the bankrupt gave the charge.
- (3) Nothing in this section applies to any payments received by any registered bank within the meaning of the Reserve Bank of New Zealand Act 1989 in good faith in the ordinary course of business and without negligence.
Compare: 1967 No 54 s 57(3)

203 Charge agreed before specified period may not be cancelled

A charge given by the bankrupt under an agreement to give the charge that was made before the period of 2 years immediately before adjudication may not be cancelled under section 198.

Compare: 1967 No 54 s 57(4)(a)

Insolvent gifts

204 Insolvent gift within 2 years may be cancelled

A gift by a bankrupt to another person may be cancelled on the Assignee's initiative if the bankrupt made the gift within 2 years immediately before adjudication.

Section 204: substituted, on 17 November 2009, by section 4 of the Insolvency Amendment Act 2009 (2009 No 52).

205 Insolvent gift within 2 to 5 years may be cancelled if bankrupt unable to pay debts

- (1) A gift by a bankrupt to another person may be cancelled on the Assignee's initiative if—
 - (a) the bankrupt made the gift within the period beginning 2 years immediately before adjudication and ending 5 years immediately before adjudication; and
 - (b) the bankrupt was unable to pay his or her debts.
- (2) A bankrupt is presumed to have been unable to pay his or her debts for the purpose of subsection (1)(b) unless the party claiming under the gift proves that the bankrupt was immediately after the making of the gift, or at any time after that up to his or her adjudication, able to pay his or her debts without the aid of the property that the gift is composed of.

Section 205: substituted, on 17 November 2009, by section 4 of the Insolvency Amendment Act 2009 (2009 No 52).

Procedure for cancelling irregular transactions

206 Procedure for cancelling irregular transactions

- (1) The procedure set out in this section applies to the following irregular transactions:
 - (a) an insolvent transaction;
 - (b) an insolvent charge;

- (c) an insolvent gift;
 - (d) a disposition of property to which subpart 6 of Part 6 (setting aside of dispositions that prejudice creditors) of the Property Law Act 2007 applies.
- (2) The Assignee who wishes to cancel an irregular transaction to which this section applies must—
- (a) file a notice with the court that meets the requirements set out in subsection (3); and
 - (b) serve the notice on—
 - (i) the other party to the transaction; and
 - (ii) any other party from whom the Assignee intends to recover.
- (3) The notice must—
- (a) be in writing; and
 - (b) state the Assignee's postal, email, and street addresses; and
 - (c) specify the irregular transaction to be cancelled; and
 - (d) describe the property or state the amount that the Assignee wishes to recover; and
 - (e) state that the person named in the notice may object to the cancellation of the transaction by sending to the Assignee a written notice of objection that is received by the Assignee at his or her postal, email, or street address within 20 working days after the Assignee's notice has been served on that person; and
 - (f) state that the written notice of objection must contain the reasons for objecting; and
 - (g) state that the transaction will be cancelled as against the person named in the notice if that person does not object; and
 - (h) state that if the person named in the notice does object, the Assignee may apply to the court for the transaction to be cancelled.
- (4) The irregular transaction is automatically cancelled as against the person on whom the Assignee has served the Assignee's notice, if that person has not objected by sending to the Assignee a written notice of objection that is received by the Assignee at his or her postal, email, or street address within 20

working days after the Assignee's notice has been served on that person.

- (5) The notice of objection must state the reasons for objecting.
- (6) An irregular transaction that is not automatically cancelled may still be cancelled by the court on the Assignee's application.

Compare: 1967 No 54 s 58(1)

Section 206(1)(d): substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

207 Court may order retransfer of property or payment of value

- (1) On the cancellation of an irregular transaction under which property of the bankrupt, or an interest in property of the bankrupt, was transferred the court may make an order for—
 - (a) the retransfer to the Assignee of the property or interest in the property; or
 - (b) payment to the Assignee of a sum of money that the court thinks appropriate, but the sum must not be greater than the value of the property or interest in the property when the transaction was cancelled.
- (2) The court may make any other order for the purpose of giving effect to an order under subsection (1).
- (3) An order under subsection (1) is in addition to any other rights and remedies available to the Assignee, and this section does not restrict those rights.

Compare: 1967 No 54 s 58(2)–(4)

208 Limits on recovery

The court must not make an order under section 207 against a person (A) if A proves that when A received the property or interest in the property—

- (a) A acted in good faith; and
- (b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that,—
 - (i) in the case of an insolvent gift, the bankrupt was, or would become, unable to pay his or her debts

- without the aid of the property that the gift is composed of; or
- (ii) in the case of any other irregular transaction referred to in section 206(1), the bankrupt was, or would become, unable to pay his or her due debts; and
- (c) A gave value for the property or interest in the property or altered A's position in the reasonably held belief that the transfer of the property or interest in the property to A was valid and would not be cancelled.

Compare: 1967 No 54 s 58(6)

Section 208(b): substituted, on 17 November 2009, by section 5 of the Insolvency Amendment Act 2009 (2009 No 52).

209 Recovery by appointee

The provisions of sections 206 to 208 apply to the recovery of property or its value by an appointee under Part 6 as if each reference to the Assignee were a reference to the appointee acting under Part 6.

210 Land Transfer Act 1952 does not limit sections 206 to 209

The Land Transfer Act 1952 does not limit sections 206 to 209.

Compare: 1967 No 54 s 58(7)

Transactions at undervalue

211 Assignee may recover difference in value

- (1) Under section 212, the Assignee may recover from a person (X), who is a party to a transaction with the bankrupt, the amount C in the formula $A - B = C$, where—
- (a) A is the value that X received from the bankrupt under the transaction; and
- (b) B is the value (if any) that the bankrupt received from X under the transaction.
- (2) In this section and in section 212, **transaction** includes the giving of a guarantee by the bankrupt.

Compare: 1993 No 105 s 297(1)

212 When Assignee may recover difference

The Assignee may recover the difference in value (that is, C in the formula in section 211(1)) from X if—

- (a) the bankrupt entered into the transaction with X within 2 years immediately before adjudication; and
- (b) either—
 - (i) the bankrupt was unable to pay his or her debts when the bankrupt entered into the transaction; or
 - (ii) the bankrupt became unable to pay his or her debts as a result of entering into the transaction.

Compare: 1993 No 105 s 297(1)

Section 212(b)(i): amended, on 17 November 2009, by section 6 of the Insolvency Amendment Act 2009 (2009 No 52).

Section 212(b)(ii): amended, on 17 November 2009, by section 6 of the Insolvency Amendment Act 2009 (2009 No 52).

Bankrupt's contribution to another person's property

213 Court may order recipient to pay value to Assignee

- (1) On the application of the Assignee, the court may order the recipient of a contribution by the bankrupt to the recipient's property to pay the value of the contribution to the Assignee.
- (2) The court may make the order if—
 - (a) the bankrupt was not paid an adequate amount in money or money's worth for the contribution; and
 - (b) the value of the bankrupt's assets was reduced by the contribution; and
 - (c) the bankrupt made the contribution—
 - (i) within 2 years immediately before adjudication; or
 - (ii) within 5 years immediately before adjudication, and the recipient is not able to prove that the bankrupt, either at the time of the contribution or at any later time before adjudication, was able to pay the bankrupt's debts without the aid of the contribution.

- (3) For the purposes of this section and section 214, a bankrupt has made a contribution to the recipient's property if the bankrupt has—
- (a) erected buildings on, or otherwise improved, land or any other property of the recipient; or
 - (b) bought land or any other property in the recipient's name; or
 - (c) provided money to buy land or any other property in the recipient's name or on the recipient's behalf; or
 - (d) paid instalments for the purchase of, or towards the purchase of, land or any other property in the recipient's name or on the recipient's behalf.

Compare: 1967 No 54 s 55(1), (2)

214 Court's powers in relation to bankrupt's contribution to recipient's property

- (1) The court may ascertain the value of the bankrupt's contribution (including any payments of legal expenses, interest, rates, and other expenses or charges) for the purposes of section 213, and order the recipient to pay it to the Assignee.
- (2) The court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, if—
- (a) the recipient acted in good faith and has altered the recipient's position in the reasonably held belief that the bankrupt's contribution was valid and that the recipient would not be liable to repay it in full or in part; or
 - (b) in the court's opinion, it is unfair that the recipient should repay all or part of the contribution.
- (3) If the court orders that the recipient must repay the bankrupt's contribution, the court may also (in the same or a subsequent order)—
- (a) direct the Assignee to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and
 - (b) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

Compare: 1967 No 54 s 55(2)(a), (b)

215 How Assignee must use repayment of bankrupt's contribution to property

The Assignee must use the money repaid under section 213 by the recipient of a contribution by the bankrupt to property, or the proceeds of the sale of the property, as the case may be, by taking the following steps in order:

- (a) first, the Assignee must keep as much of the proceeds as the Assignee needs, when added to the other assets in the bankrupt's estate, to pay the creditors in full (including interest) under section 274 (**Step 1**); and
- (b) secondly, if there is a surplus after the creditors have been paid in full, the Assignee must pay as much of the surplus to the recipient of the property to which the bankrupt has contributed as was repaid under section 213 (**Step 2**); and
- (c) thirdly, the Assignee must not pay anything to the bankrupt before the Assignee has taken Step 1 and Step 2.

Compare: 1967 No 54 s 55(2)(c)

216 Land Transfer Act 1952 does not limit sections 213 to 215

The Land Transfer Act 1952 does not limit sections 213 to 215.

Compare: 1967 No 54 s 55(4)

Subpart 8—Role and powers of Assignee

Powers of Assignee

217 Assignee's general powers

- (1) The Assignee has the powers—
 - (a) necessary to carry out the functions and duties of the Assignee under this Act; and
 - (b) conferred on the Assignee by this Act.
- (2) In particular, the Assignee has the powers set out in Schedule 1.

Compare: 1967 No 54 s 71

218 Assignee must not sell bankrupt's property before first creditors' meeting

The Assignee must not sell any of the bankrupt's property before the first creditors' meeting, unless—

- (a) the property is perishable property or is likely to fall rapidly in value; or
- (b) in the Assignee's opinion, the sale of the property might be prejudiced by delay; or
- (c) expenses will be incurred by the delay, and before selling the Assignee consults a creditor or creditors.

Compare: 1967 No 54 s 72(4)

219 Title of purchaser from Assignee

The title of a purchaser of the bankrupt's property from the Assignee under a document that is made in the exercise of the Assignee's power of sale in Schedule 1—

- (a) cannot be challenged except on the ground of fraud; and
- (b) is not affected by an absence of authority to sell, or the improper or irregular exercise of the power of sale.

Compare: 1967 No 54 s 72(5)

220 Obligation to bank and power to invest money

- (1) The Assignee must have a bank account and, as may be prescribed by regulations made under this Act, must pay into that account all money that the Assignee receives in that capacity.
- (2) The Assignee may invest money that is not immediately required to be paid out in the administration of a particular estate in an investment of a type approved by the Auditor-General, and must credit to that estate the interest or dividends that accrue on the investment.

Compare: 1967 No 54 s 81

221 Assignee may assign right to sue under this Act

- (1) The Assignee may, if the court has first approved it, assign any right to sue that is conferred on the Assignee by this Act.
- (2) The application for approval may be—
 - (a) made by the Assignee or the person to whom it is proposed to assign the right to sue; and

- (b) opposed by a person who is a defendant to the Assignee's action, if already begun, or a proposed defendant.

222 Proceedings by Assignee when bankrupt is partner in business partnership

- (1) If a member of a business partnership is adjudicated bankrupt, the court may authorise the Assignee to bring a proceeding in the names of the Assignee and the bankrupt's partner (**P**).
- (2) The Assignee must serve notice on P of the application for authority to bring the proceeding, and P may oppose the application.
- (3) P may apply to the court for a direction that—
 - (a) P must be paid P's proper share of the proceeds of the proceeding; or
 - (b) P must be indemnified by the Assignee against any costs incurred in the proceeding, on the condition that P does not claim any benefit from the proceeding.
- (4) Any release by P of the debt or demand to which the proceeding relates is void.

Compare: 1967 No 54 s 82(2)

Notice by Assignee

223 Means of giving notice to creditors

Any requirement under this Act that the Assignee give notice to a creditor is satisfied,—

- (a) in the case of a natural person, if the notice is—
 - (i) delivered to that person; or
 - (ii) posted to that person's address or delivered to a box at a document exchange that that person is using at the time; or
 - (iii) sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile:
- (b) in the case of a company, if the notice is sent in accordance with section 388 of the Companies Act 1993:

- (c) in the case of an overseas company, if the notice is sent in accordance with section 390 of the Companies Act 1993;
- (d) in the case of a body corporate that is not a company or an overseas company, if the notice is sent in accordance with section 391(3) of the Companies Act 1993.

Assignee's decisions

224 Assignee's discretion

- (1) The Assignee may use his or her own discretion in the administration of the bankrupt's property, but must have regard to the resolutions of the creditors at creditors' meetings.
- (2) The Assignee or a creditor may apply to the court for directions if the Assignee or creditor believes that a resolution of the creditors—
 - (a) conflicts with this Act or any legal rule; or
 - (b) is unjust or unfair.

Compare: 1967 No 54 s 84

225 Assignee may apply for directions by court

- (1) The Assignee may apply to the court for directions on any question concerning the operation of this Act.
- (2) An Assignee who acts under a direction of the court discharges his or her duty in relation to the question for which a direction was sought, and it does not matter that subsequently the direction is invalidated, overruled, or set aside or becomes ineffective.
- (3) However, the Assignee is not protected by subsection (2) if, in obtaining or following the court's direction, the Assignee was guilty of—
 - (a) fraud; or
 - (b) deliberate concealment or misrepresentation.

Compare: 1967 No 54 s 85

226 Appeal from Assignee's decision

- (1) A person (including the bankrupt or a creditor) whose interests, monetary or otherwise, are detrimentally affected by an

act or decision to which this section applies may apply to the court to reverse or modify the act or decision.

- (2) This section applies to—
 - (a) an act or decision of the Assignee; or
 - (b) a decision of a District Court Judge in carrying out an examination under section 165.
- (3) The application must be made—
 - (a) within 15 working days of the act or decision; or
 - (b) within the additional time that the court allows.
- (4) The court may confirm, reverse, or modify the act or decision.
- (5) A creditor who is aggrieved by a decision of the Assignee rejecting the creditor's claim may make an application under section 239.

Compare: 1967 No 54 s 86

Assignee's accounting records

227 Assignee must keep proper accounting records

- (1) Every Assignee must—
 - (a) keep proper accounting records for each bankruptcy, in the prescribed form; and
 - (b) verify those records by statutory declaration, when required by the court.
- (2) A creditor or any person who has an interest may inspect the Assignee's accounting records for a particular bankruptcy.

Compare: 1967 No 54 s 132(1), (2)

228 Assignee's final statement of receipts and payments

- (1) The Assignee must prepare a final statement of receipts and payments—
 - (a) as soon as practicable after the distribution of the final dividend has been determined; or
 - (b) when the whole of the bankrupt's property has been realised, if there are insufficient assets to pay all the proofs of debt.
- (2) The final statement of receipts and payments must—
 - (a) show in detail the receipts and payments in respect of the bankrupt's estate; and

- (b) be able to be inspected without fee by any creditor or other person who has an interest.
- (3) The Assignee must publish the final statement of receipts and payments in the prescribed manner, and advertise in the prescribed manner that it has been published.

Compare: 1967 No 54 s 132(2)–(5)

229 Auditor-General may audit Assignee's accounts

The Auditor-General may, at the Auditor-General's discretion, audit—

- (a) the Assignee's accounting records for any bankruptcy;
- (b) any statement of accounts and statement of financial position prepared by the Assignee under section 228;
- (c) any account maintained by the Assignee for the purposes of this Act.

Compare: 1967 No 54 s 132A

230 Assignee may return or destroy accounting records

After 1 year after the discharge of the bankrupt, the Assignee may dispose of the accounting records deposited with the Assignee for the purposes of the bankruptcy by—

- (a) delivering them to the bankrupt or the bankrupt's personal representative, if requested; or
- (b) destroying or otherwise disposing of them.

Compare: 1967 No 54 s 136

Subpart 9—Creditors' claims

Provable debts

231 Meaning of provable debt

- (1) A **provable debt** is a debt or liability that a creditor of the bankrupt may prove in the bankruptcy.
- (2) A **creditor's claim form** is the document that a creditor submits to the Assignee for the purpose of proving the debt.
- (3) A debt is proved when it is admitted by the Assignee.

232 What debts are provable debts

- (1) A provable debt is a debt or liability that the bankrupt owes—

- (a) at the time of adjudication; or
 - (b) after adjudication but before discharge, by reason of an obligation incurred by the bankrupt before adjudication.
- (2) A fine, penalty, sentence of reparation, or other order for the payment of money that has been made following any conviction or order made under section 106 of the Sentencing Act 2002—
- (a) is not a provable debt; and
 - (b) is not discharged when the bankrupt is discharged from bankruptcy.

Compare: 1967 No 54 s 87

Procedure for proving debt

233 Creditor must submit creditor's claim form

- (1) A creditor, including a creditor who has a preferential claim, who wishes to claim in the bankruptcy must submit a creditor's claim form to the Assignee within the specified time.
- (2) In subsection (1), **specified time** means the time for submitting the claim form that is specified by the Assignee by notice to the creditor or that is specified by the Assignee by advertisement in the prescribed manner.
- (3) The claim form must comply with the prescribed formalities.
- (4) A creditor must submit the claim form in accordance with the prescribed procedure.
- (5) The creditor must bear the costs of proving the debt, unless the court makes an order as to the creditor's costs under section 242.
- (6) The creditor may amend or withdraw the claim form, but an amended form must comply with the formalities prescribed for the original claim form.

Compare: 1967 No 54 s 88(1), (2), (3), (5)

Role of Assignee in examining creditor's claim form

234 Assignee must examine creditor's claim form

- (1) The Assignee must examine each creditor's claim form and the grounds of the debt, unless the Assignee considers it likely that no dividend will be paid to creditors.
- (2) After examining the claim form, the Assignee must, as soon as practicable, do 1 or more of the following:
 - (a) admit the claim, in whole or in part:
 - (b) reject the claim, in whole or in part:
 - (c) require further evidence in support of the claim.

Compare: 1967 No 54 s 89(1)

235 Assignee must give creditor notice of grounds of rejection

If the Assignee rejects a creditor's claim, or part of it, the Assignee must as soon as practicable give the creditor notice of the Assignee's grounds for rejecting the claim.

Compare: 1967 No 54 s 89(3)

236 Assignee's power to obtain evidence of debt

- (1) The Assignee may summon for examination, and examine (on oath or otherwise), any of the following persons:
 - (a) a person who has submitted a creditor's claim:
 - (b) a person who has made a declaration or statement as part of a creditor's claim:
 - (c) a person who is capable of giving evidence concerning a creditor's claim or the debt to which the claim relates.
- (2) If a person (A) who has been summoned under this section fails to attend, or attends but refuses to be sworn or give evidence, and has no reasonable excuse, the court may—
 - (a) on the Assignee's application, by warrant have A arrested and brought for examination by the court; and
 - (b) order A to pay all the expenses arising out of A's arrest and examination, if the court thinks that A's evidence was necessary for deciding whether the creditor's claim in question should be admitted or rejected.

Compare: 1967 No 54 s 89(2)

237 Notice to Assignee to admit or reject creditor's claim

- (1) The bankrupt or any creditor may give the Assignee notice to admit or reject a creditor's claim.
- (2) If, after 10 working days after receiving the notice, the Assignee has not made a decision admitting or rejecting the creditor's claim, on the application of the bankrupt or the creditor the court may—
 - (a) admit or reject the claim; or
 - (b) make any other order that it thinks appropriate.

Compare: 1967 No 54 s 89(6)

238 Court may cancel creditor's claim

- (1) The court may make an order cancelling an admitted creditor's claim or reducing the amount claimed, if it considers that the claim was improperly admitted.
- (2) The court may make the order on the application of the Assignee, the bankrupt, or any creditor.
- (3) The court must not make an order under subsection (1) unless the creditor who submitted the claim has been served with the application.

Compare: 1967 No 54 s 89(5)

239 Court may reverse or modify Assignee's decision rejecting creditor's claim

- (1) A creditor whose claim has been rejected by the Assignee may apply to the court for an order modifying or reversing the Assignee's decision.
- (2) The creditor must apply within 15 working days after the creditor receives the Assignee's notice of rejection of the claim, or within the additional time that the court allows.
- (3) The court may—
 - (a) reverse or modify the Assignee's decision in whole or in part; or
 - (b) confirm it.
- (4) A creditor has no right to prove for a debt or liability that has been rejected by the Assignee, unless the creditor has made an application under this section.

Compare: 1967 No 54 s 89(4)

240 Parties to application to court in relation to creditor's claim

- (1) This section applies to an application that is made under section 237, 238, or section 239.
- (2) If the applicant is not the Assignee, the applicant must name and serve the Assignee as a party to the proceeding.
- (3) The bankrupt and any creditor may give notice to the court hearing the application, and, on doing so, become parties to the proceeding.

Compare: 1967 No 54 s 89(7)

241 Which court may hear application in relation to creditor's claim

- (1) If the creditor's claim is for a sum of not more than \$200,000, an application under section 237, 238, or 239 may be made to the District Court.
- (2) In that case, the provisions of the District Courts Act 1947 as to appeals and the transfer of proceedings to the High Court apply as if the application were an action and the amount of the creditor's claim in dispute were the amount of a claim in the action.
- (3) If the creditor's claim is for a sum of more than \$200,000, an application under section 237, 238, or 239 may be made to the High Court.
- (4) In that case, the decision of the High Court may be taken on appeal to the Court of Appeal by—
 - (a) any party to the proceeding, if the High Court gives that party leave to appeal:
 - (b) any aggrieved person.

Compare: 1967 No 54 s 89(8), (9)

242 Court may make order as to costs

On an application under section 237, 238, or 239, the court hearing the application may, if it thinks it appropriate, order that—

- (a) any costs of a creditor be added to the creditor's claim:
- (b) any costs of any party to the proceeding be paid out of the bankrupt's estate:

- (c) any costs be paid by any party to the proceedings, except the Assignee.

Compare: 1967 No 54 s 89(10)

Secured creditors

243 Secured creditor's options in relation to property subject to charge

- (1) A secured creditor may—
 - (a) realise property subject to a charge, if entitled to do so (**Option 1**); or
 - (b) value the property subject to the charge and prove in the bankruptcy as an unsecured creditor for the balance due (if any) after deducting the amount of the valuation (**Option 2**); or
 - (c) surrender the charge to the Assignee for the general benefit of the creditors and prove in the bankruptcy as an unsecured creditor for the whole debt (**Option 3**).
- (2) Despite subsection (1), a secured creditor may exercise Option 1 whether or not the creditor has exercised Option 2.

Compare: 1993 No 105 s 305(1), (2)

244 Assignee may require secured creditor to choose option

- (1) The Assignee may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to—
 - (a) choose one of the options in section 243(1); and
 - (b) if the creditor chooses Option 2 or Option 3, exercise that option within the 20-working day period.
- (2) A secured creditor who has been served with a notice under subsection (1) and fails to comply—
 - (a) is treated as having surrendered the charge to the Assignee under Option 3 in section 243(1) for the general benefit of the creditors; and
 - (b) may prove as an unsecured creditor for the whole debt.

Compare: 1993 No 105 s 305(8), (9)

245 Assignee not required to act in relation to certain property subject to charge

The Assignee may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge, except property subject to a charge that has been surrendered under section 243(1)(c) or 244(2)(a).

Compare: 1993 No 105 s 254(a)

246 Realisation of property subject to security

- (1) A secured creditor who realises property subject to a charge may prove as an unsecured creditor for any balance due after deducting the net amount realised.
- (2) However, subsection (1) does not apply if the Assignee has accepted a valuation and creditor's claim under section 249.
- (3) A secured creditor who realises property subject to a charge must account to the Assignee for any surplus remaining after the following amounts have been paid:
 - (a) the amount of the debt;
 - (b) interest payable on the debt up to the time when it is paid;
 - (c) any proper payments to the holder of any other charge over the property.

Compare: 1993 No 105 s 305(3)

247 Valuation of charge and proof for balance due

- (1) This section applies if a secured creditor values the property subject to the charge and seeks to prove as an unsecured creditor for the balance due after deducting the amount of the valuation.
- (2) The valuation and the claim for the balance must—
 - (a) be made in the prescribed creditor's claim form; and
 - (b) contain full particulars of the valuation and the debt; and
 - (c) contain full particulars of the charge, including the date when it was given; and
 - (d) identify any documents that substantiate the debt and the charge.
- (3) The creditor must produce any document identified under subsection (2)(d) if required by the Assignee.

Compare: 1993 No 105 s 305(4), (5)

248 False claim by secured creditor

- (1) A person commits an offence if that person—
 - (a) makes, or authorises the making of, a claim under section 247(1) that is false or misleading in a material particular knowing that it is false or misleading; or
 - (b) omits, or authorises the omission of, any matter from a claim under section 247(1) knowing that the omission makes the claim false or misleading.
- (2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or both.
Compare: 1993 No 105 s 305(11)

249 Assignee's powers when secured creditor values property subject to charge and proves for balance

- (1) If a secured creditor values the property subject to the charge and seeks to prove for the balance due, the Assignee must—
 - (a) accept the valuation and the creditor's claim; or
 - (b) reject the valuation and creditor's claim in whole or in part.
- (2) If the Assignee rejects the valuation and creditor's claim, the creditor may submit a revised valuation and creditor's claim form within 10 working days after receiving notice of the rejection.
- (3) The Assignee may revoke or amend a decision rejecting a valuation and creditor's claim, if the Assignee subsequently thinks that the decision was wrong.
- (4) If the Assignee accepts the valuation and creditor's claim, the Assignee may, at any time before the creditor realises the property, redeem the charge by paying the amount of the valuation to the creditor.
- (5) In subsection (4), the Assignee accepts the valuation and creditor's claim if the Assignee—
 - (a) accepts the original or an amended valuation and creditor's claim;
 - (b) accepts a valuation and creditor's claim after amending or revoking a decision to reject a valuation and creditor's claim.

Compare: 1993 No 105 s 305(6), (7)

250 Secured creditor who surrenders charge may withdraw surrender or submit new creditor's claim

- (1) This section applies to a secured creditor who has surrendered a charge under Option 3 in section 243(1)(c) or under section 244(2).
- (2) The creditor may, with the leave of the court or the Assignee and subject to the terms and conditions that the court or the Assignee imposes,—
 - (a) withdraw the surrender and rely on the charge; or
 - (b) submit a new creditor's claim under section 243(1)(c) or 244(2)(b).
- (3) Subsection (2) does not apply if the Assignee has already realised the property subject to the charge.

Compare: 1993 No 105 s 305(10)

*Creditors' claims subject to uncertainty***251 Assignee may estimate amount of uncertain creditor's claim**

If a creditor's claim is subject to a contingency or is for damages, or if, for some other reason, the amount of the claim is uncertain, the Assignee may estimate the amount of the claim.

Compare: 1967 No 54 s 98; 1993 No 105 s 307(1)

252 Application to court to determine amount of uncertain creditor's claim

The court must determine the amount of an uncertain creditor's claim on the application of—

- (a) the Assignee, if the Assignee chooses not to estimate the amount;
- (b) a creditor, if the Assignee has estimated the amount and the creditor is aggrieved by the estimate.

Compare: 1967 No 54 s 99; 1993 No 105 s 307(2)

Creditors' claims payable after adjudication

253 Creditor's claim payable 6 months or more after adjudication

- (1) A creditor's claim that would, but for the bankruptcy, be payable 6 months or more after the date of adjudication is treated as a claim for the present value of the debt.
- (2) The present value of the debt is calculated by deducting interest at the rate prescribed under section 87(3) of the Judicature Act 1908 for the period from the date of adjudication to the date when the debt would be payable.

Compare: 1967 No 54 s 95; 1993 No 105 s 309

Set-off

254 Mutual credit and set-off

- (1) If there have been mutual credits, mutual debts, or other mutual dealings between a bankrupt and another person,—
 - (a) an account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and
 - (b) an amount due from one party to the other must be set off against an amount due from the other party; and
 - (c) only the balance of the account may be proved in the bankruptcy, or is payable to the Assignee, as the case may be.
- (2) However, a person (A) may not claim the benefit of any set-off against an amount due by the bankrupt if, when A gave credit to the bankrupt, A had notice of an available act of bankruptcy by the bankrupt.
- (3) A creditor of the bankrupt who claims a set-off must declare in that person's creditor's claim form that, when the creditor gave the bankrupt credit, the creditor did not have notice of an available act of bankruptcy by the bankrupt.

Compare: 1967 No 54 s 93; 1993 No 105 s 310(1)

*Set-off under netting agreement***255 Definitions relating to set-off under netting agreement**

In this section and in sections 256 to 263, unless the context otherwise requires,—

Bank means the Reserve Bank of New Zealand

bilateral netting agreement means an agreement that provides in respect of 2 transactions between 2 persons to which the agreement applies—

- (a) that on the occurrence of an event specified in the agreement, all or any of those transactions must (or may, at the option of a party) be terminated and—
 - (i) an account must be taken of all money due between the parties in respect of the terminated transactions; and
 - (ii) all obligations in respect of that money must be satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit; or
- (b) that each transaction is to be debited or credited to an account with the effect that the rights and obligations of each party that existed in respect of the relevant account before the transaction are extinguished and replaced by rights and obligations in respect of the net debit due on the relevant account after taking into account that transaction; or
- (c) that amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net credit,—

but does not include any bilateral netting agreement that is part of a multilateral netting agreement

clearing house means a person that provides clearing or settlement services in respect of financial transactions between parties to a multilateral netting agreement

multilateral netting agreement means an agreement that provides for the settlement between more than 2 persons of payment obligations arising under transactions that are subject to the agreement, and that provides, in respect of transactions to which it relates, that debits and credits arising between the par-

ties are to be brought into account so that amounts payable to each party are satisfied by—

- (a) payment by or on behalf of each party having a net debit to or on behalf of a clearing house (whether as agent or as principal) or a party having a net credit; and
- (b) receipt by or on behalf of each party having a net credit from or on behalf of a clearing house (whether as agent or as principal) or a party having a net debit

netted balance means any amount calculated under a netting agreement as the net debit payable by or on behalf of a party to the agreement to or on behalf of another party to the agreement in respect of all transactions or any transaction to which the netting agreement applies

netting agreement means a bilateral netting agreement or a recognised multilateral netting agreement

recognised clearing house means a clearing house declared under section 310K of the Companies Act 1993 to be a recognised clearing house

recognised multilateral netting agreement means a multilateral netting agreement that is contained in, or is subject to, the rules of a recognised clearing house.

Compare: 1967 No 54 s 93A

256 Application of set-off under netting agreement

- (1) Sections 255 to 263 apply—
 - (a) to a netting agreement—
 - (i) made in or evidenced by writing; and
 - (ii) in respect of which the application of sections 255 to 263 has not been expressly excluded; and
 - (iii) whether made before or after the commencement of this section; and
 - (b) to all obligations under a netting agreement (whether those obligations are payable in New Zealand currency or in some other currency).
- (2) Sections 255 to 263 apply despite—

- (a) any disposal of rights under a transaction that is subject to a netting agreement in contravention of a prohibition in the netting agreement; or
- (b) the creation of a charge or other interest in respect of the rights referred to in paragraph (a) in contravention of a prohibition in the netting agreement.

Compare: 1967 No 54 s 93B

257 Calculation of netted balance

If a person who is a party to a netting agreement is bankrupt,—

- (a) any netted balance payable by or to the bankrupt must be calculated in accordance with the netting agreement; and
- (b) that netted balance constitutes the amount that may be claimed in the bankruptcy or is payable to the bankrupt, as the case may be, in respect of the transactions that are included in the calculation.

Compare: 1967 No 54 s 93C

258 Mutuality required for transactions under bilateral netting agreements

Sections 255 to 263 apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits or mutual debts.

Compare: 1967 No 54 s 93D

259 When mutuality required for transactions under recognised multilateral netting agreements

- (1) Sections 255 to 263 apply to transactions that are subject to a recognised multilateral netting agreement, whether or not those transactions constitute mutual credits or mutual debts.
- (2) Despite subsection (1), sections 255 to 263 do not apply to transactions that are subject to a recognised multilateral netting agreement if—
 - (a) those transactions do not constitute mutual credits or mutual debts; and
 - (b) a party to any of those transactions is acting as a trustee for another person; and

- (c) the party acting as trustee is not authorised by the terms of the trust of which the party is a trustee to enter into the transaction.

Compare: 1967 No 54 s 93E

260 Application of set-off under section 254 to transaction subject to netting agreements

- (1) Section 254 does not apply to transactions that are subject to a netting agreement to which sections 255 to 263 apply.
- (2) However, a netted balance is to be treated as an amount to which section 254 applies if the bankrupt and the other party to the netting agreement have mutual credits or mutual debts between them that are not subject to the netting agreement.

Compare: 1967 No 54 s 93F

261 Transactions under netting agreement and insolvent transactions

- (1) Nothing in sections 255 to 263 prevents the operation of section 194 in relation to any transaction to which a netting agreement applies.
- (2) For the purposes of section 194, the following are obligations incurred:
 - (a) a transaction entered into by a bankrupt under a netting agreement if the effect of the transaction is to reduce any netted balance payable by or to the bankrupt;
 - (b) a netting agreement entered into by a bankrupt to the extent that the effect of entering into the netting agreement is to reduce any amount that was owing by or to the bankrupt at the time the bankrupt entered into the agreement.

Compare: 1967 No 54 s 93G

262 Set-off under netting agreement not affected by notice under section 206(2)

The filing of a notice under section 206(2) in respect of a transaction that is subject to a netting agreement does not affect the operation of section 257 in respect of the transaction, and that

section continues to apply to the transaction until the transaction is cancelled under section 206.

Compare: 1967 No 54 s 93H

263 Disclaimer of onerous property and termination of netting agreement not permitted

The Assignee must not—

- (a) disclaim, under section 117 or 125, any property of a bankrupt that relates to a transaction under a netting agreement:
- (b) terminate, under section 187, a netting agreement or any contract of a bankrupt that constitutes a transaction under a netting agreement.

Compare: 1967 No 54 s 93I

Interest

264 Pre-adjudication interest

A creditor may claim interest up to the date of adjudication,—

- (a) in the case of contract debt interest, at the rate specified in the contract that provides for interest on the debt; or
- (b) in the case of judgment debt interest, at the rate payable on the debt.

Compare: 1993 No 105 s 311(1)

265 Post-adjudication interest at prescribed rate if surplus remains

- (1) The Assignee must pay interest on all admitted creditors' claims at the prescribed rate if there are surplus assets left after the Assignee has paid the claims.
- (2) The Assignee must pay interest from the date of adjudication to the date when each debt is paid.
- (3) If the surplus is not enough to pay interest in full on all debts, payment of interest must abate rateably among them all.

Example

A and B are the only creditors of the bankrupt, C. A's contract with C provided for interest of 20%, but B's contract did not provide for interest. C's bankruptcy commenced on 1 April 2002. At that date—(1) C owed A \$1,000 plus \$100 contractual debt interest;

Example—*continued*

and (2) C owed B \$2,000 but no interest. A can prove in the bankruptcy for \$1,100 and B for \$2,000. The Assignee pays their claims in full on 1 April 2003, 1 year after the commencement of the bankruptcy. If there are surplus assets after the Assignee has paid the claims of A and B in full, the Assignee must use the surplus to pay interest on both debts for the period from 1 April 2002 to 1 April 2003. If there is enough, and assuming that the prescribed rate is 10%, the Assignee must pay A \$110 and B \$200 in post-adjudication interest. Assume that the Assignee has a surplus of only \$155. In that case A and B share pro rata, so that A is paid \$55 in post-adjudication interest, and B is paid \$100.

Compare: 1993 No 105 s 311(2)

266 Additional post-adjudication interest on contract or judgment debt if surplus remains

- (1) If there is a surplus after the Assignee has paid post-adjudication interest at the prescribed rate under section 265, the Assignee must pay additional post-adjudication interest on admitted proofs for a contract debt or judgment debt, by making up,—
 - (a) in the case of a contract debt, the difference between the prescribed rate and the rate specified in the contract;
 - (b) in the case of a judgment debt, the difference between the prescribed rate and the rate payable on the debt.
- (2) The Assignee must pay interest from the date of adjudication to the date when each creditor's claim is paid.
- (3) If the surplus is not enough to pay additional post-adjudication interest in full on the creditors' claims eligible for that interest, payment of interest must abate rateably among them all.

Compare: 1967 No 54 s 94; 1993 No 105 s 311(3)

267 Meaning of prescribed rate

In sections 265 and 266, **prescribed rate** means the rate of interest prescribed from time to time under section 87(3) of the Judicature Act 1908.

Compare: 1993 No 105 s 311(4)

*Miscellaneous provisions relating to creditors'
claims*

268 Creditor must deduct trade discounts

A creditor must deduct from the creditor's claim any trade discount that the creditor would have given a debtor if the debtor had not become bankrupt.

Compare: 1967 No 54 s 92

269 Proof when charge void

If a creditor's charge is wholly or partly void under the provisions of this or any other Act, the creditor may prove as an unsecured creditor,—

- (a) if the charge is wholly void, for the whole of the debt; or
- (b) if the charge is partly void, to the extent that the debt is unsecured.

Compare: 1967 No 54 s 96

270 Judgment creditor may prove for costs

A person who obtained an order for costs against the bankrupt before adjudication may prove for the amount of the costs when the costs are fixed, even if the amount is fixed only after adjudication.

Compare: 1967 No 54 s 100

271 Company may prove for unpaid calls

- (1) This section applies if the bankrupt, at the time of adjudication, is a shareholder of a company that has not been put into liquidation.
- (2) The company may prove for—
 - (a) the amount of unpaid calls on the bankrupt made before adjudication in respect of the bankrupt's shares; and
 - (b) the value of the liability to calls to be made in the period of 1 year after adjudication.
- (3) The value referred to in subsection (2)(b) must be estimated—
 - (a) as agreed by the Assignee and the company; or
 - (b) if the Assignee and the company cannot agree, as directed by the court.

- (4) This section does not affect the provisions of sections 103 and 268 of the Companies Act 1993 in the event that the company is put into liquidation.

Compare: 1967 No 54 ss 101(1), 102

272 When guarantor for bankrupt may prove

- (1) This section applies if a person (A)—
- (a) is, at the time of adjudication, guarantor of, or liable for a debt or liability of, the bankrupt; and
 - (b) discharges the debt or liability, even after adjudication.
- (2) A has the benefit of the rules in subsections (3) and (4).
- (3) If the creditor in question has submitted a creditor's claim form for the debt or liability, A may stand in the creditor's place in respect of the claim.
- (4) If the creditor in question has not submitted a creditor's claim form for the debt or liability, A may—
- (a) prove for the payment that A has made as if the payment were a debt, without disturbing dividends already paid to the creditor in the bankruptcy; and
 - (b) receive dividends paid subsequently.

Compare: 1967 No 54 s 103

Subpart 10—Distribution of assets

273 Priority of payments for distribution of bankrupt's assets

- (1) The Assignee must pay, out of the money received by him or her by the realisation of the property of the bankrupt, the preferential claims set out in section 274 to the extent and in the order of priority specified in that section and sections 275 to 279.
- (2) After paying the preferential claims in accordance with subsection (1), the Assignee must pay any remaining money to the general creditors in accordance with section 280.
- (3) After paying the general creditors in accordance with subsection (2), the Assignee must pay any remaining money to the bankrupt in accordance with section 281.
- (4) Any money received by the Assignee by the realisation of the property of the bankrupt that is not able to be paid in accord-

ance with subsections (1) to (3), must be paid to Public Trust in accordance with section 283.

- (5) Other than as set out in section 275(1)(b) and (3), subsection (1) is subject to—
- (a) the powers of secured creditors referred to in section 4(c); and
 - (b) any other enactment.

Compare: 1993 No 105 ss 312, 313

Preferential claims

274 Priority of payments to preferential creditors

- (1) The Assignee must first pay, in the order of priority in which they are listed,—
- (a) the fees and expenses properly incurred by the Assignee in carrying out the duties and exercising the powers of the Assignee, and the remuneration of the Assignee; and
 - (b) the reasonable costs of a creditor in procuring the order of adjudication, including the reasonable costs incurred between lawyer and client in procuring the order, inclusive of and subsequent to the preparation and filing of the creditor's application for adjudication; and
 - (c) to any creditor who protects, preserves the value of, or recovers property of the bankrupt for the benefit of the bankrupt's creditors by the payment of money or the giving of an indemnity,—
 - (i) the amount received by the Assignee by the realisation of that property, up to the value of that creditor's unsecured debt; and
 - (ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering that property.
- (2) After paying the claims referred to in subsection (1), the Assignee must next pay, to the extent that they remain unpaid, the following claims:
- (a) subject to section 276(1), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services provided to the bankrupt during the 4 months before the adjudication:

- (aa) subject to section 276(1), all untransferred amounts of an employee's payroll donations by an employer or PAYE intermediary under section 24Q of the Tax Administration Act 1994 during the 4 months before the adjudication:
- (b) subject to section 276(1), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the adjudication:
- (c) subject to section 276(1), any compensation for redundancy owed to an employee that accrues before, or because of, the adjudication:
- (d) subject to section 276(1), amounts deducted by the bankrupt from the wages or salary of an employee in order to satisfy obligations of the employee (including amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991 and section 167(2) of the Tax Administration Act 1994 as applied by section 25 of the Student Loan Scheme Act 1992):
- (e) subject to section 276(1), any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(1)(b) or section 128 of the Employment Relations Act 2000, to the extent that the reimbursement or payment does not relate to any matter set out in section 123(1)(c) of the Employment Relations Act 2000, in respect of wages or other money or remuneration lost during the 4 months before the adjudication:
- (f) amounts that are preferential claims under section 172(2) and (3):
- (g) all amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006:
- (h) all sums that, by any other enactment, are required to be paid in accordance with the priority established by this subsection.

- (3) After paying the claims referred to in subsection (2), the Assignee must next pay all sums, for which a buyer is a creditor in the bankruptcy under section 11 of the Layby Sales Act 1971,—
- (a) paid by the buyer to a seller on account of the purchase price of goods; or
 - (b) to which the buyer is or becomes entitled to receive from a seller under section 9 of the Layby Sales Act 1971.
- (4) After paying the claims referred to in subsection (3), the Assignee must next pay the amount of any costs referred to in section 333(4)(c).
- (5) After paying the claims referred to in subsection (4), the Assignee must next pay, to the extent that it remains unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require, the amount of—
- (a) tax payable by the bankrupt in the manner required by Part 3 of the Goods and Services Tax Act 1985; and
 - (b) tax deductions made by the bankrupt under the PAYE rules of the Income Tax Act 2007; and
 - (c) non-resident withholding tax deducted by the bankrupt under the NRWT rules of the Income Tax Act 2007; and
 - (d) resident withholding tax deducted by the bankrupt under the RWT rules of the Income Tax Act 2007; and
 - (e) duty payable within the meaning of section 2(1) of the Customs and Excise Act 1996.

Compare: 1967 No 54 s 104(1); 1993 No 105 Schedule 7 cls 1–5

Section 274(2)(aa): inserted, on 7 January 2010, by section 863 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 274(5)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 274(5)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 274(5)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

275 Conditions to priority of payments to preferential creditors

- (1) The claims listed in each of subsections (2), (3), (4), and (5) of section 274—
- (a) rank equally among themselves and, subject to any maximum payment level specified in any Act or regulations, must be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they abate in equal proportions; and
 - (b) in so far as the property of the bankrupt available for payment of those claims is insufficient to meet them,—
 - (i) have priority over the claims of any person under a security interest to the extent that the security interest—
 - (A) is over all or any part of the bankrupt's accounts receivable and inventory or all or any part of either of them; and
 - (B) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (C) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the date of adjudication and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
 - (ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).
- (2) For the purposes of subsection (1)(b), the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

- (3) To the extent that the claims to which subsection (1) applies are paid out of property referred to in paragraph (b) of that subsection, the amount so paid is an unsecured debt due by the bankrupt to the secured party.

Compare: 1993 No 105 Schedule 7 cls 9, 10

276 Provisions concerning preferential payments to employees

- (1) The total sum to which priority is to be given under any, or all, of paragraphs (a) to (e) of section 274(2) must not, in the case of any one employee, exceed \$18,700 or any greater amount that is prescribed under subsection (2) at the date of adjudication.
- (2) The sum stated in subsection (1) must be adjusted as follows:
- (a) subject to paragraph (d), an adjustment must be made, by the Governor-General by Order in Council, after the 3-year period starting on 1 July 2006 and ending on 30 June 2009 and after every 3-year period following that (an **adjustment period**):
 - (b) subject to paragraph (d), the Order in Council must be made within 3 months of the end of an adjustment period:
 - (c) each adjustment must reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Quarterly Employment Survey published by Statistics New Zealand (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period:
 - (d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, no adjustment may be made for that adjustment period:
 - (e) if, in accordance with paragraph (d), no adjustment is made, the next adjustment made for any succeeding adjustment period must reflect any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of

the relevant adjustment period for which the adjustment is to be made:

- (f) all adjustments are cumulative and must be rounded to the nearest \$20:
 - (g) any correction to the Quarterly Employment Survey on which an adjustment is based must be disregarded until the adjustment that takes effect in the following adjustment period, which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subsection.
- (3) The sum stated in subsection (1), or any greater amount prescribed under subsection (2) that applies on the date on which a debtor is adjudicated bankrupt, continues to apply to that bankruptcy regardless of any change to that sum that is prescribed after the date on which the debtor is adjudicated bankrupt.
- (4) For the purposes of this section and section 274,—
- (a) remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is to be treated as wages in respect of services rendered to the bankrupt during that period:
 - (b) **employee** means any person of any age employed by an employer to do any work for hire or reward under a contract of service (including a homemaker as defined in section 5 of the Employment Relations Act 2000):
 - (c) **holiday pay**, in relation to a person, means all sums payable to that person by the bankrupt under subpart 1 of Part 2 of the Holidays Act 2003, and includes all sums that by or under any other enactment or any award, agreement, or contract of service are payable to that person by the bankrupt as holiday pay.

Compare: 1967 No 54 s 104(1A), (1B), (3); 1993 No 105 Schedule 7 cls 6, 6A, 12

Section 276(1): amended, on 30 September 2009, pursuant to clause 3 of the Insolvency (Maximum Priority Amount) Order 2009 (SR 2009/228).

277 Subrogation of persons if payment has been made

If a payment has been made to a person (A) on account of any preferential claim set out in section 274 out of money ad-

vanced by another person (**B**) for that purpose, then B has, in the bankruptcy, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.

Compare: 1993 No 105 Schedule 7 cl 7

278 Priority given to person who distrains on goods

If a landlord or other person has distrained on goods or effects of the bankrupt during the 20 working days before the adjudication, the preferential claims set out in section 274 are a first charge on the goods or effects so distrained, or the proceeds from their sale; but if any money is paid to a claimant under that charge, the landlord or other person has the same rights of priority as that claimant.

Compare: 1993 No 105 Schedule 7 cl 11

279 Creditors to have priority over creditors of joint bankrupt

If a person (**A**) is a partner of a firm and is adjudicated bankrupt, any creditors to whom A is indebted jointly with the other partners of the firm must not receive any money obtained from the realisation of the separate property of A until all the separate creditors have had their claims paid in full.

Compare: 1967 No 54 s 106

Payments to general creditors and to bankrupt

280 Payment of remaining money to general creditors

- (1) After paying preferential claims in accordance with sections 274 to 279, the Assignee must apply the money received by him or her by the realisation of the property of the bankrupt in satisfaction of all other claims.
- (2) The claims referred to in subsection (1) rank equally among themselves and must be paid in full, unless the money is insufficient to meet them, in which case they abate in equal proportions.
- (3) If, before the date of adjudication, a creditor agrees to accept a lower priority in respect of a debt than it would otherwise

have under this section, nothing in this section prevents the agreement from having effect according to its terms.

Compare: 1993 No 105 s 313(1)–(3)

281 Payment of surplus to bankrupt

(1) After paying interest under section 265 and the claims referred to in section 280, the Assignee must pay any surplus to the bankrupt.

(2) This section is subject to section 215.

Compare: 1993 No 105 s 313(4)

Undistributed money paid to Public Trust

282 Definition of undistributed money

In sections 283 to 289, **undistributed money** means any money that—

- (a) was received by the Assignee by the realisation of the property of the bankrupt; and
- (b) remains after the Assignee deducts the costs of obtaining his or her release under sections 408 to 410, if applicable; and
- (c) is required to be paid to any person under sections 274 to 281, but is not able to be distributed for any reason.

Compare: 1967 No 54 s 134(1)

283 Undistributed money to be paid to Public Trust

The Assignee must pay any undistributed money to Public Trust.

Compare: 1967 No 54 s 134(1)

284 Public Trust to hold undistributed money

(1) Public Trust must hold any undistributed money paid to it subject to the claim of any person who appears to be entitled to that money.

(2) Undistributed money paid to Public Trust is held by Public Trust subject to—

- (a) this Act; and
- (b) the Public Trust Act 2001; and
- (c) any other enactment relating to Public Trust.

- (3) If there is any inconsistency between the provisions of this Act and any provisions of the Public Trust Act 2001 or any other enactment relating to Public Trust, this Act prevails.

Compare: 1967 No 54 s 134(1), (2), (7)

285 Public Trust to pay undistributed money to bankruptcy surplus account

- (1) After the expiry of 12 months from the date on which undistributed money is paid to Public Trust, Public Trust must transfer any undistributed money that has not been claimed by a person into a bankruptcy surplus account.
- (2) Undistributed money transferred into a bankruptcy surplus account—
- (a) is deemed to be one common and general fund; and
 - (b) may be applied without discrimination in accordance with section 286.

Compare: 1967 No 54 s 134(3)

286 Application of undistributed money held in bankruptcy surplus account

Undistributed money held in the bankruptcy surplus account may be used as follows:

- (a) for distribution, in relation to the bankruptcy from which the undistributed money came, to any person who remains to be paid as set out in section 282(c); and
- (b) for the purposes of this Act, to the extent and in the manner allowed by this Act; and
- (c) subject to section 287, to replace, to the extent of the deficiency, any money misappropriated by an Assignee or any person employed under the provisions of this Act (other than under sections 325 to 360); and
- (d) subject to section 288, to meet the costs of court proceedings, obtaining legal advice, or employing an accountant or other experts in circumstances where the creditors of a bankrupt are unable to pay those costs, or it would be unfair or inequitable that they should do so.

Compare: 1967 No 54 s 134(4)–(6)

287 Requisition of Minister required for payment under section 286(c)

Public Trust may pay undistributed money out of the bankruptcy surplus account under section 286(c) only on the requisition of the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

Compare: 1967 No 54 s 134(5)

288 Approval of Official Assignee required for payment under section 286(d)

Public Trust may pay undistributed money out of the bankruptcy surplus account under section 286(d) only with the approval of the Official Assignee and subject to any conditions he or she may impose.

Compare: 1967 No 54 s 134(6)

289 Matters concerning bankruptcy surplus account

- (1) Subject to sections 285 to 288, the investment, realisation, and disposition of undistributed money held in the bankruptcy surplus account, and any profits accruing from that money, are subject to the provisions of the Public Trust Act 2001.
- (2) Undistributed money may be paid out of the bankruptcy surplus account under section 286(c) or (d) without further appropriation than this Act.
- (3) Public Trust may make a payment out of the bankruptcy surplus account without being concerned to see or inquire whether Public Trust received any undistributed money or sufficient undistributed money on account of the bankrupt in respect of whom the application for payment relates whenever an application for a payment out of that account is made to Public Trust under section 286—
 - (a) by requisition of the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or
 - (b) with the approval of the chief executive of the department of State that, with the authority of the Prime Min-

- ister, is for the time being responsible for the administration of this Act; or
- (c) by an Official Assignee.
- Compare: 1967 No 54 s 134(7), (8)

Part 4

End of bankruptcy

Subpart 1—Discharge from bankruptcy

Automatic discharge from bankruptcy

290 Automatic discharge 3 years after bankrupt files statement of affairs

- (1) A bankrupt is automatically discharged from bankruptcy 3 years after the bankrupt files a statement of affairs under section 46 or section 67, but may apply to be discharged earlier.
- (2) However, a bankrupt is not automatically discharged if—
- (a) the Assignee or a creditor has objected under section 292 and the objection has not been withdrawn by the end of the 3-year period referred to in subsection (1); or
 - (b) the bankrupt has to be publicly examined under section 173 and has not completed that examination; or
 - (c) the bankrupt is undischarged from an earlier bankruptcy.

Compare: 1967 No 54 s 107(1), (2), (6)

291 Effect of automatic discharge

The automatic discharge of the bankrupt has the same effect as if the court made an order for the bankrupt's discharge.

Compare: 1967 No 54 s 107(7)

292 Objection to automatic discharge

- (1) The Assignee or, with the permission of the court, a creditor may object to the bankrupt's automatic discharge.
- (2) The objection must be made in the prescribed manner.

Compare: 1967 No 54 s 107(3)

293 Objection may be withdrawn

- (1) An objection to the automatic discharge of the bankrupt may be withdrawn in the prescribed manner.
- (2) The bankrupt is automatically discharged on the withdrawal of the objection if—
 - (a) the 3-year period referred to in section 290(1) has elapsed; and
 - (b) there is no other objection to the discharge that has not been withdrawn; and
 - (c) neither section 290(2)(b) nor (c) applies.

Compare: 1967 No 54 s 107(4), (5)

Application for discharge from bankruptcy

294 Bankrupt may apply for discharge

- (1) The bankrupt may at any time apply to the court for an order of discharge from bankruptcy.
- (2) However, if the court has previously refused an application by the bankrupt for a discharge, and has specified the earliest date when the bankrupt may again apply, the bankrupt must not apply before that date.
- (3) The hearing of the application must be in accordance with section 177.

Compare: 1967 No 54 s 108

Examination concerning discharge from bankruptcy

295 When bankrupt must be examined concerning discharge

- (1) The Assignee must summon the bankrupt to be publicly examined by the court concerning his or her discharge, and the court must conduct the examination, if—
 - (a) the Assignee or a creditor has objected to the bankrupt's automatic discharge and the objection has not been withdrawn; or
 - (b) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or
 - (c) the bankrupt has been required to be publicly examined under section 173 and has not completed that examination.

- (2) The Assignee must summon the bankrupt as soon as practicable after the expiry of the 3-year period referred to in section 290(1).
- (3) Sections 173 to 181, so far as they are applicable and with the necessary modifications, apply to a public examination under this section.

Compare: 1967 No 54 s 109(1), (3)

296 Assignee's report

- (1) The Assignee must prepare a report and file it in the court when—
 - (a) the bankrupt has applied under section 294 for a discharge; or
 - (b) the Assignee has summoned the bankrupt to be examined under section 295.
- (2) The Assignee must report as to—
 - (a) the bankrupt's affairs; and
 - (b) the causes of the bankruptcy; and
 - (c) the bankrupt's performance of his or her duties under this Act; and
 - (d) the manner in which the bankrupt has obeyed orders of the court; and
 - (e) the bankrupt's conduct before and after adjudication; and
 - (f) any other matter that would assist the court in making a decision as to the bankrupt's discharge.

Compare: 1967 No 54 s 109(2)

297 When creditor must give notice of opposition to discharge

- (1) A creditor must give notice to the Assignee and the bankrupt if the creditor intends to oppose the bankrupt's discharge on a ground that is not mentioned in the Assignee's report.
- (2) The notice must—
 - (a) set out the ground or grounds for opposing the discharge; and
 - (b) be given within the prescribed time.

Compare: 1967 No 54 s 109(4)

298 Court may grant or refuse discharge

- (1) When the court hears an application under section 294 for discharge, or conducts the examination of the bankrupt under section 295, the court may, having regard to all the circumstances of the case,—
 - (a) immediately discharge the bankrupt; or
 - (b) discharge the bankrupt on conditions (which may include a condition that the bankrupt consents to any judgment or order for the payment of any sum of money); or
 - (c) discharge the bankrupt but suspend the order for a period; or
 - (d) discharge the bankrupt, with or without conditions, at a specified future date; or
 - (e) refuse an order of discharge, in which case the court may specify the earliest date when the bankrupt may apply again for discharge.
- (2) If the court discharges the bankrupt on the condition that the bankrupt consents to any judgment, and the bankrupt does consent, the court may vary the judgment as it thinks appropriate.
Compare: 1967 No 54 s 110(1), (3)

299 Court may restrict bankrupt from engaging in business after discharge

- (1) The court, when it makes an order of discharge or at any earlier time, may prohibit the bankrupt after discharge from doing any or all of the following things without the court's permission:
 - (a) entering into, carrying on, or taking part in the management or control of any business or class of business;
 - (b) being a director of any company;
 - (c) directly or indirectly being concerned, or taking part, in the management of any company;
 - (d) being employed by a relative of the bankrupt;
 - (e) being employed by a company, trust, trustee, or incorporated society that is managed or controlled by a relative of the bankrupt.
- (2) The court may—
 - (a) prohibit the bankrupt for a specified period, or without a time limit:

(b) at any time vary or cancel the prohibition.

Compare: 1967 No 54 s 111

300 Court may reverse order of discharge

- (1) The court may, on the application of the Assignee or a creditor, reverse the discharge of a bankrupt at any time before—
- (a) 2 years after the discharge, in the case of an absolute discharge; or
 - (b) 2 years after the discharge takes effect, in the case of a discharge that is conditional or suspended.
- (2) When the court reverses a discharge, the court may then, or at any time after, make a new order of discharge, whether absolute, suspended, or conditional.

Compare: 1967 No 54 s 112(1), (4)

301 Grounds for reversing discharge

- (1) The court may reverse a discharge if—
- (a) the bankrupt has been given notice of the application (including the grounds relied on by the applicant); and
 - (b) the court is satisfied that facts have been established that—
 - (i) were not known to the court when it made the order of discharge; and
 - (ii) had the court known of them, would have justified the court in refusing a discharge or discharging the bankrupt on conditions.
- (2) The court must not reverse a discharge if the facts relied on by the applicant, at the time when the court made an order discharging the bankrupt,—
- (a) were known to the applicant; or
 - (b) could have been known if the applicant had inquired with reasonable diligence.

Compare: 1967 No 54 s 112(1), (2)

302 Effect of reversal of discharge

- (1) The reversal of a discharge does not prejudice or affect the rights or remedies that any person other than the bankrupt would have had if the discharge had not been reversed.

- (2) Property that has been acquired by the bankrupt after discharge and that is vested in the bankrupt at the date of the reversal—
- (a) vests in the Assignee subject to any encumbrances; and
 - (b) must be applied by the Assignee to pay debts that the bankrupt has incurred since the date of discharge.

Compare: 1967 No 54 s 112(3)

303 Bankrupt may apply for absolute discharge if conditions of discharge too onerous

- (1) A bankrupt who cannot comply with any or all of the conditions of his or her discharge may apply to the court for an absolute discharge.
- (2) The court may discharge the bankrupt absolutely if the court is satisfied that the bankrupt's inability is due to circumstances for which the bankrupt should not reasonably be held responsible.

Compare: 1967 No 54 s 113

304 Debts from which bankrupt is released on discharge

- (1) On discharge, the bankrupt is released from all debts provable in the bankruptcy except those listed in subsection (2).
- (2) The bankrupt is not released from the following debts:
- (a) any debt or liability incurred by fraud or fraudulent breach of trust to which the bankrupt was a party;
 - (b) any debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;
 - (c) any judgment debt or amount payable under any order for which the bankrupt is liable under section 147 or section 298;
 - (d) any amount payable under a maintenance order under the Family Proceedings Act 1980;
 - (e) any amount payable under the Child Support Act 1991.

Compare: 1967 No 54 s 114

305 Discharge conclusive evidence of bankruptcy

A discharge is conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

Compare: 1967 No 54 s 115

306 Discharge does not release partners and others

A discharge does not release any person who, at the date of adjudication, was—

- (a) a business partner of the bankrupt; or
- (b) a co-trustee with the bankrupt; or
- (c) jointly bound or had made any contract with the bankrupt; or
- (d) a guarantor or in the nature of a guarantor of the bankrupt.

Compare: 1967 No 54 s 116

307 Discharged bankrupt must assist Assignee

A discharged bankrupt must assist the Assignee, as required by the court or the Assignee, in the realisation and distribution of the bankrupt's property that is vested in the Assignee.

Compare: 1967 No 54 s 117

308 Information regarding bankrupt's discharge must be contained in public register maintained under section 62

If the court has refused a bankrupt a discharge or discharged the bankrupt but suspended the discharge, that information must be contained in the public register maintained under section 62.

Compare: 1967 No 54 s 118

Subpart 2—Annulment

309 Court may annul adjudication

- (1) The court may, on the application of the Assignee or any person interested, annul the adjudication if—
 - (a) the court considers that the bankrupt should not have been adjudicated bankrupt; or
 - (b) the court is satisfied that the bankrupt's debts have been fully paid or satisfied and that the Assignee's fees and costs incurred in the bankruptcy have been paid; or
 - (c) the court considers that the liability of the bankrupt to pay his or her debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or

- (d) the court has approved a composition under subpart 1 of Part 5.
- (2) In the case of an application on one of the grounds specified in subsection (1)(a) to (c) by an applicant who is not the Assignee,—
 - (a) a copy of the application must be served on the Assignee in the manner and within the time that the court directs; and
 - (b) the Assignee may appear on the hearing of the application as if the Assignee were a party to the proceeding.
- (3) The adjudication is annulled—
 - (a) from the date of adjudication, in the case of an application on the ground specified in subsection (1)(a):
 - (b) from the date of the court's order of annulment, in the case of an application on one of the grounds specified in subsection (1)(b) to (d).
- (4) In the case of an application for annulment on the ground that the adjudication should not have been made because of a defect in form or procedure, the court may, in addition to annulling the adjudication, exercise its powers under section 418 to correct the defect and order that the application for adjudication be reheard as if no adjudication had been made.
- (5) If the court annuls the adjudication on one of the grounds specified in subsection (1)(a) to (c),—
 - (a) the court may, on the Assignee's application, fix an amount as reasonable remuneration for the Assignee's services and order that it be paid, in addition to any costs that may be awarded:
 - (b) that amount must be paid into a Crown Bank Account:
 - (c) the Assignee is not entitled to remuneration under section 406 for those services.

Compare: 1967 No 54 s 119

310 When Assignee may annul adjudication

- (1) The Assignee may annul an adjudication on any of the grounds specified in subsection (2) if the adjudication was made on a debtor's application.
- (2) The grounds for annulment by the Assignee are—

- (a) the Assignee considers that the bankrupt should not have been adjudicated bankrupt; or
 - (b) the Assignee is satisfied that the bankrupt's debts have been fully paid or satisfied and that the Assignee's fees and costs incurred in the bankruptcy have been paid; or
 - (c) the Assignee considers that the liability of the bankrupt to pay his or her debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or
 - (d) the court has approved a composition under subpart 1 of Part 5.
- (3) The Assignee may annul the adjudication on the application of any person interested or on the Assignee's own initiative.
- (4) The adjudication is annulled—
- (a) from the date of adjudication, in the case of an application on the ground specified in subsection (2)(a):
 - (b) from the date of the Assignee's order of annulment, in the case of an application on one of the grounds specified in subsection (2)(b) to (d).

311 Effect of annulment

- (1) On annulment of the adjudication, all property of the bankrupt vested in the Assignee on bankruptcy and not sold or disposed of by the Assignee reverts in the bankrupt without the necessity for any conveyance, transfer, or assignment.
- (2) Any contract, sale, disposition, or payment duly made or anything duly done by the Assignee before the annulment—
- (a) is not prejudiced or affected as to validity by the annulment; and
 - (b) has effect as if it had been made or done by the bankrupt while no adjudication was in force.

Compare: 1967 No 54 s 120

Part 5

Compositions, proposals, summary instalment orders, and no asset procedure

Subpart 1—Composition during bankruptcy

312 Creditors may accept composition by passing preliminary resolution

- (1) The creditors of a bankrupt may accept a composition in satisfaction of the debts due to them from the bankrupt by passing a special resolution (the **preliminary resolution**) that contains the terms of the composition.
- (2) If there is more than 1 class of creditor, the delay of one class in accepting, or the failure of one class to accept, does not prevent any other of the classes from accepting the composition.

Compare: 1967 No 54 ss 121(1), 125(3)

313 Confirming resolution

- (1) The composition is ineffective unless the creditors confirm the composition by passing a special resolution (the **confirming resolution**).
- (2) The creditors may confirm in the composition on terms that vary from the terms contained in the preliminary resolution, if the final terms are at least as favourable to the creditors as the terms set out in the preliminary resolution.
- (3) The notice of the meeting to pass the confirming resolution must—
 - (a) state generally the terms of the proposal for composition; and
 - (b) be accompanied by a report by the Assignee on the proposal.
- (4) If the proposal for composition provides for the payment in full of all creditors whose respective debts do not exceed a certain amount, that class of creditors must not be counted either in number or value for the purpose of counting the requisite majority of creditors for passing the confirming resolution.

Compare: 1967 No 54 s 121(2), (3), (4)

314 Compositions with members of partnership

- (1) If the members of a partnership have been adjudicated bankrupt, the joint creditors and each class of separate creditors may make separate compositions.
- (2) In that case, the majorities of creditors required for passing the confirming resolution are the separate majorities of each class, but otherwise the joint and separate creditors must be counted as one body for voting.

Compare: 1967 No 54 s 125(2)

315 Court must approve composition

- (1) The court must approve the composition if it is to be binding.
- (2) The composition approved by the court binds all the creditors in respect of provable debts due to them by the bankrupt.
- (3) The court may refuse to approve the composition if it considers that—
 - (a) section 312 or 313 has not been complied with; or
 - (b) the terms of the composition are not reasonable or are not calculated to benefit the general body of creditors; or
 - (c) the bankrupt is guilty of misconduct that justifies the court in refusing, qualifying, or suspending the bankrupt's discharge; or
 - (d) for any other reason it should not approve the composition.
- (4) The court must not approve the composition if the composition does not provide for the payment, before any other debts are paid, of those debts that have priority under subpart 10 of Part 3.
- (5) The court's approval is conclusive as to the validity of the composition.

Compare: 1967 No 54 s 122(3), (4), (5), (7)

316 Procedure for court approval of composition

- (1) The bankrupt or the Assignee may apply to the court to approve the composition.
- (2) Notice of the application must be given to each creditor.
- (3) Before approving the composition, the court must—

- (a) receive a report by the Assignee as to the terms of the composition and the bankrupt's conduct; and
 - (b) hear any objection by or on behalf of a creditor.
- (4) When it approves the composition, the court may correct any formal or accidental error or omission, but must not alter the substance of the composition.

Compare: 1967 No 54 s 122(1), (2), (6)

317 Deed of composition

- (1) As soon as practicable after the court has approved a composition,—
- (a) the bankrupt and the Assignee must execute a deed of composition for putting the proposal into effect; and
 - (b) the Assignee must apply to the court for confirmation of the deed.
- (2) If it is satisfied that the deed conforms with the composition that it has earlier approved, the court must—
- (a) direct that the deed is entered and filed in the court; and
 - (b) annul the adjudication.
- (3) The deed must not be entered and filed in the court unless the prescribed commission has been paid to the Assignee.
- (4) The annulment under subsection (2) does not revert the bankrupt's property in the bankrupt in accordance with section 311(1).

Compare: 1967 No 54 ss 123(1), (2), 125(5)

318 Effect of deed

When the court has confirmed the deed and annulled the adjudication,—

- (a) the deed binds all the creditors in all respects as if they had each executed the deed; and
- (b) subject to the provisions of the Land Transfer Act 1952, the bankrupt's property to which the deed relates vests and must be dealt with as provided in the deed.

Compare: 1967 No 54 s 123(2)

319 Bankrupt remains liable for unpaid balances of certain debts

- (1) A bankrupt who makes a composition with his or her creditors remains liable for the unpaid balance of a debt if—
 - (a) the bankrupt, by means of fraud,—
 - (i) incurred or increased the debt; or
 - (ii) on or before the date of the composition, obtained forbearance on the debt; and
 - (b) the creditor who has been defrauded has not agreed to the composition.
- (2) For the purposes of subsection (1)(b) a creditor does not agree to the composition merely by proving the debt and accepting payment of a distribution of the assets in the estate.

Compare: 1967 No 54 s 125(4)

320 Deadlines for steps to approve composition and execute deed

- (1) The deadlines for steps to approve the composition and execute the deed are—
 - (a) the confirming resolution must be passed within 1 month after the preliminary resolution is passed; and
 - (b) the court must approve the composition within 1 month after the confirming resolution is passed; and
 - (c) the bankrupt must execute the deed of composition within 5 working days after the court approves the composition or, if the court allows the bankrupt additional time, within that time.
- (2) If any of the deadlines is not kept,—
 - (a) immediately on the expiry of the deadline, the proceedings in the bankruptcy resume as if there had been no confirming resolution; and
 - (b) none of the periods specified in subsection (1) counts in the calculation of a period of time for any purpose of this Act.

Compare: 1967 No 54 s 125(1)

321 Procedure following court approval of composition

- (1) The Registrar of the court must, after entering the deed of composition,—

- (a) endorse on the deed that it has been entered and filed in the court; and
 - (b) if requested by the Assignee, deliver the deed to the Assignee.
- (2) The Assignee, as soon as practicable after the deed has been entered,—
 - (a) must take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate registry or office, and must then return the deed to the file of the court; and
 - (b) must, subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition, as the case may be, of—
 - (i) the bankrupt's property; or
 - (ii) so much of the bankrupt's property as the Assignee possesses and that under the composition reverts in the bankrupt or the trustee.

Compare: 1967 No 54 s 123(3), (4)

322 Enforcement of composition

The court may,—

- (a) on the application of an aggrieved person, order that any default in payment of any composition approved by the court be remedied:
- (b) on the application of a person interested, enforce the provisions of any composition approved by the court.

Compare: 1967 No 54 s 124(1), (2)

323 Court's exclusive jurisdiction

- (1) After the preliminary resolution has been passed, the court continues to have exclusive jurisdiction in relation to the composition and the deed of composition, and their administration.
- (2) On an application in relation to the composition, the deed of composition, or their administration, the court may,—
 - (a) for the purpose of summoning and examining the bankrupt and witnesses, direct the proceeding as if it were a proceeding under subpart 5 of Part 3:

- (b) make the order or orders that it thinks appropriate, including an order as to the costs of the application.

Compare: 1967 No 54 s 124(3), (4)

324 Law and practice in bankruptcy applies to deed

The court must decide a question arising under the deed of composition according to the law and practice of bankruptcy, if the law and practice of bankruptcy is relevant.

Compare: 1967 No 54 s 124(5)

Subpart 2—Proposals

325 Meaning of debt, etc

- (1) In this subpart, unless the context otherwise requires,—
debt means a debt that would be provable in the insolvent's bankruptcy
insolvent means a person who is not a bankrupt, but who is unable to pay his or her debts as they become due.
- (2) The debt of an insolvent is provable under this subpart.

Compare: 1967 No 54 s 139

326 Insolvent may make proposal

- (1) An insolvent may make a proposal to creditors for the payment or satisfaction of the insolvent's debts.
- (2) The proposal may include all or any of the following:
- (a) an offer to assign all or any of the insolvent's property to a trustee for the benefit of the creditors:
 - (b) an offer to pay the insolvent's debts by instalments:
 - (c) an offer to compromise the insolvent's debts at less than 100 cents in the dollar:
 - (d) an offer to pay the insolvent's debts at some time in the future:
 - (e) any other offer for an arrangement for the satisfaction of the insolvent's debts.
- (3) The proposal may include any other conditions for the benefit of the creditors and may be accompanied by a charge or guarantee.

Compare: 1967 No 54 s 140(1), (2), (3)

327 Form of proposal

- (1) The proposal must be—
 - (a) in the prescribed form; and
 - (b) accompanied by a statement of affairs that is in the prescribed form and verified by affidavit.
- (2) The statement of affairs must set out the following information:
 - (a) the insolvent's assets, debts, and liabilities;
 - (b) the name, address, and occupation of each of the insolvent's creditors;
 - (c) the securities (if any) held by each creditor.
- (3) The proposal must—
 - (a) be signed by the insolvent; and
 - (b) have endorsed on it the name of a person (A) who is willing to act as a trustee for the creditors; and
 - (c) include a statement by A that A is willing to act.

Compare: 1967 No 54 s 140(4), (5)

328 Proposal must be filed in court

- (1) The proposal must be filed in the office of the court nearest to where the insolvent lives.
- (2) The insolvent may not, while waiting for the decision of the creditors and the court, withdraw the proposal or any charge or guarantee tendered with it, unless the insolvent obtains the permission of the court.
- (3) The time when the proposal is filed in court is the time when the claims of creditors are determined.
- (4) If the creditors at a meeting under section 331 do not accept the proposal,—
 - (a) the chairperson of the meeting must return the proposal to the court with his or her signed endorsement "Not accepted by creditors"; and
 - (b) the Registrar must cancel the proposal.

Compare: 1967 No 54 s 140(5)–(8)

329 Provisional trustee

The trustee named in the proposal becomes the provisional trustee when the proposal is filed.

Compare: 1967 No 54 s 141(1)

330 Provisional trustee must call meeting of creditors

- (1) The provisional trustee must, as soon as practicable after the proposal is filed, call a meeting of creditors by posting to every known creditor at the creditor's last known address—
 - (a) a notice of the date, time, and place of the meeting;
 - (b) a summary of the insolvent's assets and liabilities;
 - (c) a copy of the proposal and particulars of any charge or guarantee;
 - (d) a creditor's claim form;
 - (e) a postal vote in the prescribed form.
- (2) A creditor who has proved a claim in the prescribed manner may vote on the proposal by sending a postal vote that reaches the provisional trustee before or at the meeting.
- (3) If the provisional trustee receives a postal vote before or at the meeting, the postal vote has effect as if the creditor had been present and voted at the meeting.

Compare: 1967 No 54 s 141(2), (3)

331 Procedure at meeting of creditors

- (1) The provisional trustee is the chairperson of the meeting of creditors, unless the creditors elect their own chairperson.
- (2) The creditors may—
 - (a) examine the insolvent;
 - (b) accept the proposal with or without amendments or modification, by passing a resolution that sets out the proposal in its final form;
 - (c) confirm the provisional trustee as trustee, or appoint another person who is willing to act as trustee, in which case that person becomes the trustee.
- (3) The resolution accepting the proposal must be decided by a majority in number and three-quarters in value of the creditors who—
 - (a) vote; and

- (b) are personally present or are represented at the meeting by a person specified in section 332 or have voted by postal vote.
- (4) If the insolvent consents, the creditors may include in the proposal terms for the supervision of the insolvent's affairs.
Compare: 1967 No 54 s 142

332 Who may represent creditors

A person who may represent a creditor under section 91 may represent a creditor at a meeting to consider a proposal.

333 Court must approve proposal

- (1) After the proposal has been accepted by the creditors, the trustee must, as soon as practicable,—
 - (a) apply to the court for approval of the proposal; and
 - (b) send notice of the hearing of the application in the prescribed form to the insolvent and to each known creditor.
- (2) The court must, before approving a proposal, hear any objection that is made by or on behalf of a creditor.
- (3) The court may refuse to approve the proposal if it considers that—
 - (a) the provisions of this subpart have not been complied with; or
 - (b) the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors; or
 - (c) for any reason it is not expedient that the proposal be approved.
- (4) The court must not approve a proposal if it does not provide for the payment, before any other debts are paid, of—
 - (a) those debts that would have priority under this Act if the insolvent was adjudicated bankrupt; and
 - (b) the trustee's fees and expenses that are properly incurred by the trustee in respect of the proposal; and
 - (c) costs incurred by a person other than the insolvent in organising and conducting a meeting of creditors for the purpose of voting on a proposal.

- (5) Subsection (4)(a) does not apply to the extent that a creditor waives the priority that the debt of that person would otherwise have had.
- (6) When it approves the proposal, the court may correct any formal or accidental error or omission, but must not alter the substance of the proposal.
Compare: 1967 No 54 s 143(1)–(4), (6); 1993 No 105 s 234(c)

334 Effect of court approval

- (1) A proposal that is approved by the court is binding on all the creditors whose debts are provable under this subpart and are affected by the terms of the proposal.
- (2) The court's approval is conclusive as to the validity of the proposal.
Compare: 1967 No 54 s 143(5), (7)

335 Creditor must not take enforcement steps without court's permission

- (1) A creditor whose debt is provable under this subpart must not take any of the steps listed in subsection (2) in respect of the debt—
 - (a) after the court has approved the proposal; and
 - (b) while the proposal remains in force.
- (2) The steps referred to in subsection (1) are—
 - (a) filing a creditor's application for the insolvent's adjudication;
 - (b) proceeding with a creditor's application for the insolvent's adjudication that was filed before the proposal was filed;
 - (c) enforcing any civil remedy against the insolvent's person or property;
 - (d) beginning any legal proceedings in respect of the debt.
- (3) However, a creditor may take any of the steps listed in subsection (2) with the permission of the court given on the terms that the court thinks appropriate.
Compare: 1967 No 54 s 144(1)

336 Duty of insolvent

After the court has approved the proposal, the insolvent must do everything that is necessary to put the proposal into effect.

Compare: 1967 No 54 s 143(8)

337 Duties of trustee

- (1) After the court has approved the proposal, the trustee must—
 - (a) take control of the property that is the subject of the proposal; and
 - (b) administer and distribute that property according to the terms of the proposal; and
 - (c) generally give effect to the proposal.
- (2) The trustee may sell the property—
 - (a) according to the terms of the proposal, if it specifies the method of sale; or
 - (b) in accordance with Schedule 1, if the proposal does not specify the method of sale.

Compare: 1967 No 54 s 144(2)

338 Trustee must file 6-monthly summary of receipts and payments

- (1) The trustee must file with the Registrar a summary of receipts and payments.
- (2) The trustee must file the summary,—
 - (a) for each 6-month period following court approval of the proposal, within 1 month after the end of the period; and
 - (b) for the period between the end of the last 6-month period and the date when the trustee stops acting as trustee, within 1 month after the trustee has stopped acting.
- (3) The summary must—
 - (a) be in the prescribed form; and
 - (b) show the trustee's receipts and payments during the period to which it relates; and
 - (c) show the total amount of the trustee's receipts and payments for all the preceding 6-month periods after the trustee's appointment.

Compare: 1967 No 54 s 144(3)

339 Cancellation or variation of proposal

- (1) At any time after it has approved the proposal, the court may, if it is satisfied that 1 or more of the grounds listed in subsection (2) apply,—
 - (a) on the application of the trustee or any creditor, vary or cancel the proposal:
 - (b) if asked to do so by the applicant or any other creditor, adjudicate the insolvent bankrupt.
- (2) The grounds referred to in subsection (1) are—
 - (a) the insolvent's statement of affairs accompanying the proposal did not substantially set out the true position or the insolvent gave wrong or misleading replies at his or her examination, and it was unlikely that the proposal would have been accepted if the insolvent had disclosed the true facts:
 - (b) the insolvent has failed to carry out or comply with the terms of the proposal:
 - (c) the creditors generally will suffer injustice or undue delay if the proposal proceeds:
 - (d) for any other reason the proposal ought to be varied or cancelled.
- (3) On cancellation of the proposal, unless the court orders otherwise, all property of the insolvent vested in the trustee and not sold or disposed of by the trustee vests, without the necessity for any conveyance, transfer, or assignment,—
 - (a) in the insolvent; or
 - (b) if the court cancels the proposal and adjudicates the insolvent bankrupt, in the Assignee.
- (4) An order cancelling the proposal, or cancelling the proposal and adjudicating the insolvent bankrupt, does not prejudice or affect the validity of any contract, sale, disposition, or payment duly made or anything duly done under the proposal while it was in force.
- (5) If the insolvent files an application for his or her own adjudication, the proposal is cancelled as if it was cancelled by the court.

Compare: 1967 No 54 s 145

Subpart 3—Summary instalment orders

340 Summary instalment order

A summary instalment order is an order by the Assignee that the debtor pay his or her debts—

- (a) in instalments or otherwise; and
- (b) in full or to the extent that the Assignee considers practicable in the circumstances of the case.

Compare: 1967 No 54 s 146(4)

341 Who may apply for order

The Assignee may make a summary instalment order on the application of—

- (a) the debtor; or
- (b) a creditor, with the debtor's consent.

Compare: 1967 No 54 s 146(1)

342 Form of application

- (1) An application for a summary instalment order must be in the prescribed form.
- (2) An application by the debtor—
 - (a) must state—
 - (i) that the debtor proposes to pay the creditors in full; or
 - (ii) the amount in the dollar that the debtor proposes to pay; and
 - (b) must state the total amount of the weekly or other instalments that the debtor proposes to pay; and
 - (c) must—
 - (i) state the name and address of the debtor's proposed supervisor and annex the written consent of that person to be supervisor; or
 - (ii) if the debtor considers that a supervisor is not necessary, state the debtor's reasons; and
 - (d) must contain the following information:
 - (i) the debtor's full name and address;
 - (ii) details of the debtor's property;
 - (iii) the names and addresses of each creditor;
 - (iv) the amount and nature of each of the creditors' debts;

- (v) whether any of the debts are secured and the value of the charge:
- (vi) whether any of the debts are guaranteed by any person:
- (vii) the amount of the debtor's earnings:
- (viii) the name and address of the debtor's employer, if any:
- (ix) any other matter that may be prescribed.

Compare: 1967 No 54 s 146(2)

343 Assignee may make summary instalment order

- (1) The Assignee may make a summary instalment order if the Assignee is satisfied that—
 - (a) the debtor's total unsecured debts (excluding any student loan balance) that would be provable in the debtor's bankruptcy are not more than \$40,000; and
 - (b) the debtor is unable immediately to pay those debts.
- (2) Before making the order, the Assignee must allow the debtor or a creditor to make representations, if the debtor or creditor wants to do so.
- (3) A summary instalment order is not invalid if the total amount of the debts proved is more than the amount specified in subsection (1)(a), but in that case—
 - (a) the supervisor appointed under section 345 may refer the matter to the Assignee; and
 - (b) the Assignee may, if the Assignee thinks appropriate, cancel the order.
- (4) The amount in subsection (1)(a) may be varied by the Governor-General by Order in Council to take account of increases in the all groups index number of the Consumer Price Index.

Compare: 1967 No 54 s 146(4), (13)

344 Additional orders

In addition to an order for the payment of the debts in instalments, the Assignee may make orders—

- (a) regarding the debtor's future earnings or income:
- (b) regarding the disposal of goods that the debtor owns or possesses:

- (c) giving the supervisor appointed under section 345 power to—
 - (i) direct the debtor's employer to pay all or part of the debtor's earnings to the supervisor; and
 - (ii) supervise payment, out of the debtor's earnings or income, of the reasonable living expenses of the debtor and his or her relatives and dependants.

Compare: 1967 No 54 s 146(8), (9)

345 Appointment of supervisor

- (1) A summary instalment order must appoint a suitable and willing person to supervise compliance by the debtor with the terms of the order.
- (2) The Assignee may dispense with the appointment of a supervisor if the Assignee thinks it appropriate, and in that case—
 - (a) the provisions of this subpart apply as if the debtor was the supervisor, except for section 346; and
 - (b) section 346 applies as if the Assignee was the supervisor.
- (3) The Assignee may, if the Assignee thinks appropriate, require the supervisor to provide a bond to secure the supervisor's performance of his or her obligations under the Act, and must specify the amount of the bond and the person to whom it must be given.

Compare: 1967 No 54 s 146(5)–(7)

346 Role of supervisor

- (1) The supervisor must supervise the debtor's compliance with the terms of the summary instalment order and any other orders made under section 344.
- (2) The supervisor may charge the debtor remuneration for carrying out his or her duties as supervisor at the amount or rates fixed or prescribed under subsection (3).
- (3) The Governor-General may, by Order in Council, make regulations that fix or prescribe the amount or rates of remuneration chargeable under subsection (2).

347 Assignee may require supervisor or past supervisor to provide documents

The Assignee may, by written notice, require the supervisor or a past supervisor to provide the Assignee within a reasonable period with any document relating to the debtor's property, conduct, or dealings in the supervisor's or past supervisor's possession or under his or her control.

348 Termination of appointment for failure to supervise adequately

The Assignee may terminate the supervisor's appointment if the Assignee considers that the supervisor has failed to supervise the debtor's compliance adequately, and may appoint a replacement supervisor.

349 Period of instalments

The payment of instalments under a summary instalment order may be spread over a period of—

- (a) up to 3 years; or
- (b) up to 5 years, if justified by special circumstances.

Compare: 1967 No 54 s 146(12)

350 Variation or discharge of order

The debtor or any creditor or the supervisor may at any time apply to the Assignee to vary or discharge a summary instalment order, and the Assignee may make an order as the Assignee thinks appropriate.

Compare: 1967 No 54 s 146(14)

351 Effect of order

All instalments payable under a summary instalment order must be paid in the prescribed manner.

Compare: 1967 No 54 s 146(11)

352 Proceedings against debtor

- (1) In this section, **proceeding** means any proceeding against the person or property of the debtor in respect of a debt that has been—

- (a) shown in the debtor's application for the summary instalment order; or
 - (b) included in the summary instalment order; or
 - (c) notified to the supervisor.
- (2) After the summary instalment order has been made, a person must not begin or continue a proceeding unless—
- (a) the Assignee gives permission for a creditor to begin or continue the proceeding (in which case the Assignee may impose any conditions that the Assignee thinks appropriate); or
 - (b) the debtor is in default under the order.
- (3) In the case of a proceeding in a District Court, unless subsection (2) applies, the court—
- (a) must halt the proceeding on receiving notice of the order; and
 - (b) may award all or part of the creditor's costs incurred up to the time of the court's notification, and may certify accordingly for the purpose of the creditor proving the debt under this subpart.

Compare: 1967 No 54 s 148

353 Supervisor must give notice of summary instalment order to creditors

The supervisor must send a notice of the summary instalment order to every creditor—

- (a) known to the supervisor; or
- (b) whose name is shown on the debtor's application for the order; or
- (c) who has proved a debt under section 356.

Compare: 1967 No 54 s 147(a)

354 Public register of debtors subject to current summary instalment order

- (1) The Assignee must maintain a public register of persons who are subject to a current summary instalment order.
- (2) The register must be maintained in accordance with subpart 5 of Part 7.

355 Meaning of current summary instalment order

A summary instalment order is not current if it has been discharged or all the instalments required to be paid under the order have been paid in accordance with the order.

356 Creditor's claim

- (1) A creditor who has proved his or her debt to the satisfaction of the supervisor is entitled to be included as a creditor in the administration of the debtor's estate under the summary instalment order for the amount of the debt.
- (2) A creditor may object to the supervisor's acceptance or rejection of any creditor's claim by applying to the Assignee.
- (3) If a creditor objects under subsection (2), the Assignee may give any directions the Assignee thinks appropriate as to the acceptance or rejection of the claim.
- (4) A person who becomes a creditor of the debtor after the order has been made, and who proves a debt before the supervisor,—
 - (a) may elect to be included in the administration of the debtor's estate; and
 - (b) in that case, may be paid a dividend under the order only after creditors who became creditors of the debtor before the order was made and who have been included as a creditor in the administration have been paid under the order.

Compare: 1967 No 54 s 147(b)–(d)

357 Payment of debtor's earnings to supervisor

- (1) This section applies if the supervisor, under a power given by a summary instalment order made by the Assignee, directs the debtor's employer to pay the debtor's earnings, or part of them, to the supervisor.
- (2) The amounts that the employer must pay to the supervisor are recoverable as a debt from the employer, and the supervisor's receipt is a complete discharge to the employer for the debt.
- (3) Payment by the employer in contravention of the supervisor's direction to pay the supervisor discharges the liability of the employer to the supervisor for the amount of the payment only if it is made—

- (a) with the consent of the supervisor or the Assignee; or
- (b) to a person who is not the debtor and who has a better legal claim to it than the debtor.

Compare: 1967 No 54 s 146(10)

358 Distribution of money paid by debtor

- (1) The supervisor must distribute the money paid by the debtor under the summary instalment order in the following order:
 - (a) first, payment of the costs of administration (including the supervisor's remuneration) in accordance with the prescribed scale:
 - (b) secondly, the Assignee's costs and fees:
 - (c) thirdly, payment of the debts in accordance with the order:
 - (d) fourthly, payment of any surplus to the debtor.
- (2) The debtor is discharged from the unsecured debts to which the order relates if the supervisor pays, from the money received under the order, the amounts in subsection (1)(a) to (d) in full.

Compare: 1967 No 54 s 149

359 Default by debtor

- (1) A debtor who defaults in paying any sum due under a summary instalment order is presumed, unless the contrary is proved, to have—
 - (a) been able to pay the sum from the date of the order; and
 - (b) refused or neglected to pay it.
- (2) If the debtor defaults in making payment in accordance with the order, unless a District Court orders otherwise,—
 - (a) a proceeding that has been halted under section 352 may begin or continue:
 - (b) any period during which a proceeding was halted under section 352 must be added to any period of limitation that applies to the proceeding.
- (3) The supervisor must notify the Assignee as soon as practicable of a default by the debtor in making payment in accordance with the order.

Compare: 1967 No 54 s 150

360 Offence of obtaining credit

- (1) A person (A) commits an offence if—
- (a) A is a debtor in respect of whom a summary instalment order has been made; and
 - (b) before all creditors have been paid all amounts to which they are entitled under the order, A,—
 - (i) alone or jointly with another person, obtains for the time being credit of \$1,000 or more; or
 - (ii) incurs liability for the time being to any person of \$1,000 or more for the purpose of obtaining credit for another person; or
 - (iii) enters into a hire purchase agreement under which A is liable to pay \$1,000 or more.
- (2) It is a defence if A proves,—
- (a) in a case to which subsection (1)(b)(i) applies, that before obtaining the credit of \$1,000 A informed the person giving the credit that A was affected by a summary instalment order:
 - (b) in a case to which subsection (1)(b)(ii) applies, that before A incurred the liability of \$1,000 the person giving the credit was informed that A was affected by a summary instalment order.
- (3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.
- (4) No matter what section 14 of the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid at any time within 2 years after the time when the matter of the information arose.

Compare: 1967 No 54 s 151

Subpart 4—No asset procedure**361 Introduction to this subpart**

This subpart sets out a procedure for dealing with a debtor who has no realisable assets.

Entry to no asset procedure

362 Application for entry to no asset procedure

- (1) A debtor who meets the criteria set out in section 363 may apply to the Assignee for entry to the no asset procedure.
- (2) A debtor applies for entry to the no asset procedure by completing and filing with the Assignee the following documents:
 - (a) an application in the prescribed form; and
 - (b) a statement in the prescribed form of the debtor's affairs.
- (3) The Assignee may reject the debtor's application if the application or statement of the debtor's affairs is, in the Assignee's opinion, incorrect or incomplete.

363 Criteria for entry to no asset procedure

- (1) The Assignee may admit a debtor to the no asset procedure if the Assignee is satisfied on reasonable grounds that—
 - (a) the debtor has no realisable assets; and
 - (b) the debtor has not previously been admitted to the no asset procedure; and
 - (c) the debtor has not previously been adjudicated bankrupt; and
 - (d) the debtor has total debts (excluding any student loan balance) that are not less than \$1,000 and not more than \$40,000; and
 - (e) under a prescribed means test, the debtor does not have the means of repaying any amount towards those debts.
- (2) In this section, **realisable assets** does not include the assets that a bankrupt is allowed to retain under section 158, but does include any assets (for example, gifted assets) that might be recoverable by the Assignee if the debtor were adjudicated bankrupt on the date of application for entry to the no asset procedure and if the irregular transaction provisions in subpart 7 of Part 3 applied.
- (3) The amounts in subsection (1)(d) may be varied by the Governor-General by Order in Council to take account of increases in the all groups index number of the Consumer Price Index.

Section 363(2): amended, on 17 November 2009, by section 7 of the Insolvency Amendment Act 2009 (2009 No 52).

364 Debtor disqualified from entry to no asset procedure in certain cases

The Assignee must not admit a debtor to the no asset procedure if the Assignee is satisfied, on reasonable grounds, that—

- (a) the debtor has concealed assets with the intention of defrauding his or her creditors, for example, by transferring property to a trust; or
- (b) the debtor has engaged in conduct that would, if the bankrupt were adjudicated bankrupt, constitute an offence under this Act; or
- (c) the debtor has incurred a debt or debts knowing that the debtor does not have the means to repay them; or
- (d) a creditor intends applying for the debtor's adjudication as a bankrupt and it is likely that the outcome for the creditor if the debtor is adjudicated bankrupt will be materially better than if the debtor is admitted to the no asset procedure.

365 Assignee must notify creditors

If a debtor has applied to the Assignee for entry to the no asset procedure, the Assignee must as soon as practicable send a summary of the debtor's assets and liabilities to each known creditor of the debtor.

366 Restrictions on debtor obtaining credit after application made

A debtor who has applied for entry to the no asset procedure must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than \$100 without first informing the credit provider that the debtor has applied for entry to the no asset procedure.

367 When debtor admitted to no asset procedure

- (1) A debtor is admitted to the no asset procedure when the Assignee sends the debtor a written notice in the prescribed form.
- (2) The Assignee must as soon as practicable notify creditors and advertise in the prescribed manner that the debtor has been admitted to the no asset procedure.

368 Public register of persons admitted to no asset procedure

- (1) The Assignee must maintain a public register of persons admitted to the no asset procedure and persons discharged from that procedure under section 377.
- (2) The register must be maintained in accordance with subpart 5 of Part 7.

Section 368(1): amended, on 17 November 2009, by section 13(6) of the Insolvency Amendment Act 2009 (2009 No 52).

Effect of entry to no asset procedure

369 Creditors may not enforce debts

- (1) A creditor (**C**) of a debtor (**D**) must not, after D has been admitted to the no asset procedure, begin or continue any step to recover or enforce a debt—
 - (a) that D owes C at the time when D applies for entry to the no asset procedure; and
 - (b) that would be provable in D's bankruptcy if D were adjudicated bankrupt.
- (2) However, subsection (1) does not apply to the following debts, which remain enforceable:
 - (a) any amount payable under a maintenance order under the Family Proceedings Act 1980;
 - (b) any amount payable under the Child Support Act 1991;
 - (c) a student loan balance.

370 Debtor's duties after entry to no asset procedure

- (1) The Assignee may require the debtor, and the debtor must comply with any reasonable request, to provide assistance, documents, and information necessary for applying the no asset procedure to the debtor.
- (2) The debtor must notify the Assignee as soon as practicable of any change in the debtor's circumstances that would allow the debtor to repay an amount towards the debts referred to in section 369(1).
- (3) The debtor must not obtain credit (including hire purchase credit), either alone or jointly with another person, of more than \$1,000 without first informing the credit provider that the debtor is subject to the no asset procedure.

371 Offence of obtaining credit

- (1) A person (A) commits an offence if A, while admitted to the no asset procedure,—
- (a) alone or jointly with another person, obtains for the time being credit of \$1,000 or more; or
 - (b) incurs liability for the time being to any person of \$1,000 or more for the purpose of obtaining credit for another person; or
 - (c) enters into a hire purchase agreement under which A is liable to pay \$1,000 or more.
- (2) It is a defence if A proves,—
- (a) in a case to which subsection (1)(a) applies, that before obtaining the credit of \$1,000 A informed the person giving the credit that A was admitted to the no asset procedure;
 - (b) in a case to which subsection (1)(b) applies, that before A incurred the liability of \$1,000 the person giving the credit was informed that A was admitted to the no asset procedure.
- (3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$5,000 or both.
- (4) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid at any time within 2 years after the date of the offence.

Compare: 1967 No 54 s 151

*Termination and discharge***372 Termination**

A debtor's participation in the no asset procedure terminates when—

- (a) the Assignee terminates the debtor's participation under section 373; or
- (b) the debtor is discharged under section 377; or
- (c) the debtor applies for his or her own adjudication; or
- (d) a creditor who is entitled to do so (for example, because the creditor's debt is enforceable as a debt specified in

section 369(2)) applies for the debtor's adjudication and the debtor is adjudicated bankrupt.

373 When Assignee may terminate

- (1) The Assignee may terminate a debtor's participation in the no asset procedure if—
 - (a) the debtor was wrongly admitted to the no asset procedure, for example, because the debtor concealed assets or misled the Assignee; or
 - (b) the Assignee is satisfied that the debtor's financial circumstances have changed, enabling the debtor to repay an amount towards his or her debts.
- (2) The Assignee terminates a debtor's participation in the no asset procedure by sending the debtor a written notice in the prescribed form to the debtor's last known address, and the termination is effective when the notice is sent, whether or not the debtor receives it.
- (3) The Assignee must as soon as practicable send a written notice of the termination to each creditor of the debtor known to the Assignee.

374 Assignee may apply for preservation order

- (1) If the Assignee terminates a debtor's participation in the no asset procedure on the ground that the debtor has concealed assets or misled the Assignee, the court on the application of the Assignee may make an order for the preservation of the debtor's assets pending an application for the debtor's adjudication.
- (2) The court may make an order under subsection (1) on the terms and conditions that it sees fit.

375 Effect of termination

Except in the case of termination by discharge under section 377, the debtor's debts that became unenforceable on the debtor's entry to the no asset procedure become again enforceable on termination of the debtor's participation in the no asset procedure, and the debtor is liable to pay any penalties and interest that may have accrued.

Section 375: amended, on 17 November 2009, by section 8 of the Insolvency Amendment Act 2009 (2009 No 52).

376 Creditor may apply to Assignee for termination

- (1) A creditor who objects on a ground set out in subsection (2) to the admission of the debtor to the no asset procedure may apply to the Assignee for termination.
- (2) The grounds for objection are—
 - (a) the debtor did not meet the criteria for entry to the no asset procedure; or
 - (b) there are reasonable grounds for the Assignee to conclude that the debtor was disqualified under section 364.

377 Time of discharge

- (1) The debtor is automatically discharged from the no asset procedure 12 months after the date when the debtor was admitted to it.
- (2) However, a debtor is not automatically discharged if the Assignee—
 - (a) is satisfied that the 12-month period should be extended for the purpose of properly considering whether the debtor's participation in the no asset procedure should be terminated; and
 - (b) sends a written deferral notice to the debtor's last known address before the expiry of the 12-month period.
- (3) The deferral notice must state an alternative date for automatic discharge, which must be no later than 25 working days after the expiry of the 12-month period.
- (4) The deferral notice is effective whether or not the debtor receives it.
- (5) The Assignee must, as soon as practicable, send a written notice of the deferral to each creditor of the debtor known to the Assignee.
- (6) The debtor is automatically discharged from the no asset procedure on the date stated in the deferral notice.
- (7) The Assignee may revoke a deferral notice in the same way in which it was sent, in which case, the debtor is automatically discharged from the no asset procedure on—

- (a) the expiry of the 12-month period in subsection (1), if the notice is revoked before that date; or
- (b) in other cases, the date of revocation.

Section 377 heading: substituted, on 17 November 2009, by section 9(1) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(2): substituted, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(3): added, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(4): added, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(5): added, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(6): added, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 377(7): added, on 17 November 2009, by section 9(2) of the Insolvency Amendment Act 2009 (2009 No 52).

377A Effect of discharge

- (1) On discharge under section 377, the debtor's debts that became unenforceable on the debtor's entry to the no asset procedure are cancelled, and the debtor is not liable to pay any part of the debts, including any penalties and interest that may have accrued.
- (2) However, subsection (1) does not apply to—
 - (a) any debt or liability incurred by fraud or fraudulent breach of trust to which the debtor was a party;
 - (b) any debt or liability for which the debtor has obtained forbearance through fraud to which the debtor was a party.
- (3) The debts and liabilities referred to in subsection (2) become again enforceable on discharge under section 377, and the debtor is liable to pay any penalties and interest that may have accrued.

Section 377A: inserted (with effect on 10 March 2009), on 17 November 2009, by section 10(2) of the Insolvency Amendment Act 2009 (2009 No 52).

377B Discharge does not release partners and others

A discharge under section 377 does not release any person who, at the date of discharge, was—

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

Section 377B: inserted, on 17 November 2009, by section 11 of the Insolvency Amendment Act 2009 (2009 No 52).

Part 6

Insolvent deceased estates

378 Interpretation

- (1) In this Part, unless the context otherwise requires,—
- administration**, in relation to the will or estate of a deceased person, has the same meaning as in the Administration Act 1969
- administrator** means an administrator within the meaning of the Administration Act 1969
- appointee** means an appointee under section 387(2)
- beneficiary** means a person who is beneficially interested in the deceased's estate
- estate**, in relation to a deceased debtor, means that part of the debtor's estate that is available for distribution under section 393.
- (2) This subpart does not affect—
- (a) any property of a deceased person that does not form part of his or her estate as defined in subsection (1); or
 - (b) the administration of that property.
- (3) The administrator of the property of a deceased person (**D**) that does not form part of D's estate as defined in subsection (1) is, and (whether or not there is an administrator) the appointee is not,—
- (a) D's executor or administrator for the purposes of section 6 of the Deaths by Accidents Compensation Act 1952;
 - (b) D's personal representative for the purposes of section 48 of the Trustee Act 1956.

Compare: 1967 No 54 s 153

*Application and order that estate be
administered under this Part*

379 Court may order that estate be administered under this Part

- (1) The court may order that the estate of a deceased debtor be administered under this Part on the application,—
 - (a) under section 380, of the administrator or a person who is applying to the court for a grant of administration;
 - (b) under section 381, of—
 - (i) a creditor who has produced evidence establishing a debt due to the creditor; or
 - (ii) a beneficiary.
- (2) The court may refuse to make the order if it is satisfied that—
 - (a) there is a reasonable probability that the estate will be enough for payment of the deceased's debts; and
 - (b) the creditors will not be prejudiced by the estate being administered in the normal way.

380 Application by administrator, etc

- (1) The administrator, or a person who is applying to the court for a grant of administration, may apply to the court for an order that the estate be administered under this Part if the administrator or person applying ascertains that the money in the estate, together with the proceeds of any assets in the estate that can conveniently be converted into money, will not be, or is not likely to be, enough to meet the several claims on the estate.
- (2) The application may be—
 - (a) joined with an application for a grant of administration in respect of the deceased's will or of the deceased's property that does not form part of his or her estate; or
 - (b) made at any time after that grant of administration.
- (3) An applicant under this section, in addition to the application, must file in the court an account that shows the assets, debts, and liabilities of the deceased, to the extent that the applicant knows what they are.
- (4) The account—
 - (a) must be verified by affidavit; and
 - (b) may be amended from time to time; and

- (c) must be filed—
 - (i) when the application is filed; or
 - (ii) within the prescribed time after the application is filed; or
 - (iii) within the additional time that the court allows.

Compare: 1967 No 54 s 154

381 Application by creditor or beneficiary for order under this Part

- (1) The following persons may also apply to the court for an order under this Part:
 - (a) a creditor of the deceased's estate, if the creditor's debt has reached the threshold for a creditor's application for adjudication;
 - (b) a beneficiary.
- (2) A creditor or beneficiary may apply for an order if—
 - (a) the administrator has not applied under this Part, and after being requested in writing to apply, fails to apply within 15 working days after receiving the request; or
 - (b) after 4 months from the date of the debtor's death, no administrator has been appointed and no application has been filed in the court under section 380.
- (3) In the case of an application under subsection (2)(a) for an order that the estate be administered under this Part, the court must not make the order before 2 months have expired after the date when the administration was granted, but this restriction does not apply if—
 - (a) the administrator has consented; or
 - (b) the applicant proves that—
 - (i) the deceased committed an act of bankruptcy within 3 months before his or her death; or
 - (ii) the administrator has favoured or is about to favour any creditor; or
 - (c) in the court's opinion the administrator is not properly administering the estate.
- (4) The court may allow an application under subsection (2)(b) to be filed before 4 months after the date of the debtor's death have expired if the court is satisfied that—

- (a) the deceased committed an act of bankruptcy within 3 months before his or her death; or
- (b) the estate that should have been available for the deceased's creditors is reducing.

Compare: 1967 No 54 s 155

382 Notice of application by creditor or beneficiary

If an application has been filed by a creditor or beneficiary under section 381, the applicant must give notice of the application in the prescribed manner to—

- (a) the administrator; or
- (b) if there is no administrator, to the person specified by the court.

Compare: 1967 No 54 s 156

383 When Registrar may hear application

- (1) A Registrar may hear an application for administration of the estate of a deceased person under this Part if—
 - (a) the Registrar has jurisdiction to grant administration of the estate of any deceased person; and
 - (b) the application is joined with an application for a grant of administration in respect of the estate or will of the deceased.
- (2) A Registrar may hear the application even if a Judge is available to hear it.

Compare: 1967 No 54 s 157(2)

384 Costs of application

The court, on hearing an application under this Part, may—

- (a) make the order or refuse the application with or without costs; and
- (b) in either case, order costs to be paid by one party to another, or out of the estate.

Compare: 1967 No 54 s 157(1)

385 Court may order administration by Assignee or Public Trust

- (1) This section applies if an application has been filed for an order to administer an estate under this Part, and the court thinks

that the estate is likely to be better administered by one of the persons mentioned in subsection (2)(b) than by the person who is or may become the administrator.

- (2) The court may, as part of its original order on the application or by any subsequent order, order that—
- (a) the administrator (if there is one) must no longer administer the estate; and
 - (b) the Assignee, Public Trust, or some other person, as the court thinks appropriate, must administer the estate.

Compare: 1967 No 54 s 158

386 Certificate filed by Public Trust or Māori Trustee has effect as application and order

- (1) Public Trust or the Māori Trustee may file a certificate under this section if Public Trust or the Māori Trustee (as the case may be) is the administrator of, or would be entitled to obtain a grant of administration for, an apparently insolvent estate.
- (2) The filing of the certificate in the prescribed form has the effect both of an application and an order that the estate be administered under this Part.
- (3) The certificate must be filed in the registry of—
- (a) the court out of which the grant of administration issued; or
 - (b) the court in which Public Trust or the Māori Trustee has filed an election to administer under—
 - (i) Part 4 of the Public Trust Office Act 1957 or Part 6 of the Public Trust Act 2001, in the case of Public Trust; or
 - (ii) section 12A or section 12B of the Maori Trustee Act 1953, in the case of the Māori Trustee; or
 - (c) if no grant of administration has been issued or no election to administer has been filed, the court that Public Trust or the Māori Trustee thinks appropriate.
- (4) An election to administer an estate under this Part may be combined with an election to administer the estate under Part 6 of the Public Trust Act 2001 or section 12A or section 12B of the Maori Trustee Act 1953.

- (5) Powers conferred on Public Trust or the Māori Trustee under this Part are in addition to the powers conferred on either of them by any other enactment or law.

Compare: 1967 No 54 s 160

Section 386 heading: amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 386(1): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 386(3)(b): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 386(3)(b)(ii): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 386(3)(c): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 386(5): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

*Effect of order that estate be administered under
this Part*

387 Estate vests in appointee

- (1) The whole of the estate at the date when the application for the order under this Part was filed vests in the person appointed by the court to administer it (the **appointee**).
- (2) The court, in its order that the estate be administered under this Part or in a subsequent order, may appoint as appointee—
- (a) the administrator; or
 - (b) the Assignee; or
 - (c) Public Trust; or
 - (d) any other person.

Compare: 1967 No 54 s 159(1)

388 Appointee must realise, administer, and distribute estate

The appointee must, as soon as practicable after the estate vests in the appointee, realise, administer, and distribute the assets in accordance with the law and practice of bankruptcy, subject to any modifications in this Part.

Compare: 1967 No 54 s 159(1)

389 Entitlement of surviving spouse to household furniture and effects

- (1) This section applies if the estate that vests in the appointee includes any of the deceased's necessary household furniture and effects that would have passed to the deceased's surviving spouse (S) if the estate had not been insolvent.
- (2) S may select and retain as his or her own property so much of the furniture and effects referred to in subsection (1) that the appointee determines.
- (3) S must make the selection within the time that the appointee allows.
- (4) S's selection does not affect any rights under a valid charge or hire purchase agreement in respect of the goods selected.
- (5) The fact that the goods available for selection are subject to a charge or hire purchase agreement does not give S any rights to any other part of the deceased's property.

Compare: 1967 No 54 s 159(2)

390 Appointee may make allowance to surviving spouse

- (1) The appointee may make an allowance out of the estate to the surviving spouse or to any of the relatives or dependants of the deceased or the surviving spouse for the support of any of them.
- (2) However, the appointee must first obtain the consent of the creditors, which must be expressed in the form of an ordinary resolution.

Compare: 1967 No 54 s 159(4)

*Administration of estate under this Part***391 Sections 392 to 398 apply in respect of estate administered under this Part**

Sections 392 to 398 apply when an order has been made that the estate be administered under this Part.

Compare: 1967 No 54 s 162(1)

392 Appointee's authority, powers, and functions

The appointee has, in relation to the estate, the same authority, powers, and functions as the Assignee has in relation to the property of a bankrupt.

Compare: 1967 No 54 s 162(1)

393 Distribution of estate

- (1) The estate must be distributed in the following order:
 - (a) first, payment of all proper costs, charges, debts, and expenses of the due administration of the estate, whether incurred before or after the order is made;
 - (b) secondly, payment of the deceased's reasonable funeral expenses;
 - (c) thirdly, payment of the following expenses of the deceased incurred during the 3 months immediately before the deceased's death:
 - (i) medical expenses;
 - (ii) reasonable expenses for hospital care (as defined in section 4(1) of the Health and Disability Services (Safety) Act 2001) provided for the deceased, so far as those expenses are lawfully recoverable;
 - (d) fourthly, payment of other claims and interest in accordance with section 274;
 - (e) all other claims, which rank equally and abate in proportion if there is insufficient to pay them in full.
- (2) For the purposes of subsection (1)(d), a reference in section 274 to the date of adjudication must be read as a reference to the date of the deceased's death.

Compare: 1967 No 54 s 162(1)(b), (2)

394 Payment of surplus

- (1) In this section, **surplus** means the surplus of assets that remains with the appointee after the appointee has paid in full—
 - (a) the debts due by the deceased debtor; and
 - (b) the costs of the administration under this Part; and
 - (c) any other money that would be payable in a case of bankruptcy.
- (2) The surplus must be—

- (a) paid to, or retained by, the administrator of the deceased's property that does not form part of the deceased's estate under this Part, if there is one; or
 - (b) if there is no administrator of the deceased's property that does not form part of the deceased's estate under this Part, distributed as approved by the court, having regard to the persons who are entitled to it.
- (3) The court may make an order approving the distribution of the surplus as part of the order that the estate be administered under this Part, or at any time after, and the order may be varied in respect of the surplus that remains in the appointee's hands at the date of each variation.

Compare: 1967 No 54 s 162(1)(c), (3)

395 Creditor's notice to administrator

- (1) If a creditor applies for an order that the deceased's estate be administered under this Part, and the order is made, notice to the deceased's administrator that the application has been filed is treated as an act of bankruptcy.
- (2) After receipt of the notice, the administrator does not obtain a discharge for any payment of money or disposition of property by the administrator, unless it is done pursuant to the order.

Compare: 1967 No 54 s 162(1)(d)

396 Appointee may act in relation to deceased's irregular transactions

- (1) An appointee may take a step that the Assignee could have taken under subpart 7 of Part 3 (for example, the cancellation of an irregular transaction) as if the deceased had been bankrupt at the time of death.
- (2) However, there are 2 additional restrictions when an appointee takes a step under subpart 7 of Part 3:
- (a) the appointee must not issue a notice cancelling a gift or voluntary settlement without first obtaining the permission of the court; and the court must not give permission unless it appears that recovery of the gift or settlement is necessary to pay the debts of the estate in full (including interest); and

- (b) the court must not make an order under section 213 unless it is satisfied that recovery of the deceased's contribution to the property of another is necessary to pay the debts of the estate in full (including interest).

Compare: 1967 No 54 s 162(1)(e), (f)

397 Appointee may cancel execution

The appointee may cancel an execution against the deceased debtor's estate unless it was completed more than 3 months before the date of the order that the estate be administered under this Part.

Compare: 1967 No 54 s 162(1)(g)

398 Administrator's acts valid before notice

Nothing in this Act invalidates any payment made, or any act or thing done, in good faith by the administrator before the administrator had notice of an intention to apply for an order that the estate be administered under this Part.

Compare: 1967 No 54 s 163

Part 7

Offences and miscellaneous provisions

Subpart 1—The Assignee

399 Appointment of Official Assignee for New Zealand and others

- (1) Suitable persons must be appointed under the State Sector Act 1988 to the following positions under this Act:
- (a) the Official Assignee for New Zealand:
 - (b) the Deputy Official Assignee for New Zealand:
 - (c) Official Assignees:
 - (d) as required, Deputy Assignees to help in the administration of estates.
- (2) Assignees and Deputy Assignees are officers of the court.
- (3) The Deputy Official Assignee must discharge his or her duties and exercise his or her powers under the control and direction of the Official Assignee for New Zealand.

- (4) Assignees and Deputy Assignees must discharge their duties under the control and direction of the Official Assignee for New Zealand and the Deputy Official Assignee for New Zealand.
- (5) Nothing in this section affects section 59 or section 404(3).
Compare: 1967 No 54 s 15

400 Assignee may act on behalf of another Assignee

An Assignee or Deputy Assignee may act for, or in the place of, another Assignee or Deputy Assignee, and in that capacity has all the authority and powers of the Assignee or Deputy Assignee for whom, or in whose place, he or she acts.

Compare: 1967 No 54 s 16

401 Assignee's use of name, seal, etc

- (1) An Assignee may sue and be sued in the name of “The Official Assignee in Bankruptcy of the property of [*bankrupt's name inserted*]”, and in that name may do anything that must be done or should be done as part of his or her functions as Assignee.
- (2) An Assignee may—
 - (a) administer oaths and take statutory declarations; and
 - (b) appear in court and examine the bankrupt in any proceedings.
- (3) An Assignee must have a seal of office, which the Assignee must keep and use when required in the administration of the estates in the Assignee's charge.
- (4) An Assignee may execute all documents by signing the Assignee's own name over the official name, and need not affix a seal to any document, although he or she may do so.

Compare: 1967 No 54 s 17

402 Assignee's additional rights and remedies

The Assignee, in addition to rights and remedies under this Act, has the rights and remedies provided by any other Act or rule of law.

403 Disqualification of Assignee

- (1) An Assignee (A) is disqualified from acting in a bankrupt estate if A is a creditor of the estate and the creditors resolve that A must not act as Assignee.
- (2) Subsection (1) does not apply if A is a creditor of the estate only in the capacity of—
 - (a) the Assignee of the property of another bankrupt; or
 - (b) the liquidator of a company; or
 - (c) an appointee under Part 6.

Compare: 1967 No 54 s 18(1)

404 Vacation of office by Assignee

- (1) An Assignee must vacate his or her office if he or she is adjudicated bankrupt.
- (2) An Assignee is eligible, subject to the provisions of the State Sector Act 1988, to be reappointed an Assignee when discharged from bankruptcy.
- (3) This section does not affect the question of the employment of an Assignee who is adjudicated bankrupt whilst in any other position in the Public Service.

Compare: 1967 No 54 s 18(3)

405 Protection of Assignee

An Assignee is not liable in any action or proceeding for any thing the Assignee may have done or omitted to do by reason only that the bankrupt is discharged or the bankruptcy is annulled.

Compare: 1967 No 54 s 138

406 Assignee's remuneration

- (1) The Assignee may charge remuneration for carrying out his or her duties and exercising his or her powers as Assignee at the amount or rates fixed or prescribed under section 407 or charged according to rates prescribed under that section.
- (2) Remuneration that has been charged under subsection (1) and paid to the Assignee must be paid into a Crown Bank Account.

Compare: 1967 No 54 s 166

407 Rates of Assignee's remuneration

- (1) The Governor-General may, by Order in Council, make regulations that fix or prescribe the amount or rates of remuneration chargeable under section 406.
- (2) The regulations may, for example, prescribe—
 - (a) hourly or other rates;
 - (b) different rates for work done in the bankruptcy by different classes of persons;
 - (c) rates by reference to the net value of the assets realised by the Assignee together with other amounts as may be specified;
 - (d) rates for the exercise of particular functions or powers;
 - (e) rates by reference to any other criteria that may be specified.

Compare: 1967 No 54 s 166A

408 Assignee must apply for order of release

- (1) After advertising the filing of the final statement of accounts and statement of financial position for the estate of a bankrupt (*see* section 228), the Assignee must apply to the court for an order releasing the Assignee from the administration of that estate.
- (2) The Assignee must advertise his or her intention to apply for an order of release, and the time when the application will be heard.
- (3) The court must hear the application not earlier than 10 working days before, and not later than 20 working days after, the Assignee advertises the application under subsection (2).
- (4) On hearing the application, the court—
 - (a) must take into account any objection to the Assignee's release by any creditor or other person interested in the bankruptcy; and
 - (b) if the court refuses the order, may, on the application of any creditor or other person interested in the bankruptcy, make any order it thinks fit to remedy any breach of duty by the Assignee.

Compare: 1967 No 54 s 133

409 Effect of order

- (1) An order of release made under section 408 discharges the Assignee, from the date of the order, from all liability for any act or omission by the Assignee—
 - (a) in the administration of the bankrupt's affairs:
 - (b) in relation to the Assignee's conduct as Assignee of the bankrupt up to the date of the order.
- (2) The order must not be revoked except if it was obtained by fraud.

Compare: 1967 No 54 s 133(5), (6)

410 Subsequent order of release

- (1) This section applies if the Assignee receives further property of the bankrupt after the date of an order of release.
- (2) The Assignee must, after realising or otherwise dealing with that property, apply for an order of release in respect of the Assignee's administration of it.
- (3) Sections 408 and 409 apply to an application for a subsequent order of release.

Compare: 1967 No 54 s 133(7)

Subpart 2—The court

411 Jurisdiction and powers of court

- (1) A Judge may exercise all the powers and jurisdiction given to the court under this Act.
- (2) A Judge may hear a proceeding under this Act, or any aspect of it, in Chambers or in open court, except that the following must be heard and dealt with in open court:
 - (a) the public examination of a bankrupt:
 - (b) an application for annulment of a bankruptcy or the discharge of a bankrupt.

Compare: 1967 No 54 s 5(1)

412 Court may look at real nature of transaction

In considering a transaction, the court may look at its real nature, and it does not matter that the transaction appears to be,

or is described by the parties to it as being, something different.

Compare: 1967 No 54 s 5(2)

413 When Registrar or District Court Judge may exercise powers and jurisdiction of court

- (1) A Registrar or a District Court Judge has, with the exception of the powers listed in subsection (2), all the powers and jurisdiction of the court under this Act during—
 - (a) a court vacation; or
 - (b) the illness of a Judge; or
 - (c) any period when there is no Judge at the place where the office of the court is situated.
- (2) A Registrar or a District Court Judge does not have the power under subsection (1) to—
 - (a) make an order of discharge or annulment; or
 - (b) commit for contempt of court; or
 - (c) exercise any jurisdiction conferred by subpart 3 of Part 7; or
 - (d) conduct a public examination under subpart 5 of Part 3.
- (3) A Registrar or a District Court Judge may, if in doubt as to the proper order to be made on an application, refer it to a Judge at the next convenient opportunity, and a Judge may hear and decide the application.
- (4) A Judge may vary or discharge any decision by a Registrar or District Court Judge, and the decision of the Judge under this subsection can be reviewed, rescinded, or varied by the court under section 414.
- (5) There is no appeal directly to the Court of Appeal from the decision of a Registrar or a District Court Judge.
- (6) Nothing in this section affects the specific powers of a District Court Judge under this Act, for example, in section 165.

Compare: 1967 No 54 s 6

414 Rehearings and appeals

- (1) The court may review, rescind, or vary any decision of the court or a Judge under this Act.

- (2) An aggrieved person may appeal to the Court of Appeal from a decision of the court or a Judge under this Act.

Compare: 1967 No 54 s 8

415 Proceedings not halted pending appeal

A notice of appeal does not halt proceedings under the decision under appeal unless the court or the Court of Appeal makes an order halting the proceedings.

Compare: 1967 No 54 s 9(1)

416 Suspension of adjudication pending appeal

- (1) If an appeal has been filed against an order of adjudication, the bankrupt or any other interested person may apply to the court or the Court of Appeal for an order suspending the adjudication until the appeal is decided.
- (2) The court or Court of Appeal may suspend the adjudication on the conditions that it thinks appropriate, including conditions as to anything done or decided, or that ought to have been done or decided, by any person in the period between the adjudication and the order suspending adjudication.
- (3) The court or the Court of Appeal may at any time make an order as it thinks appropriate as to anything done or decided, or that ought to have been done or decided, by any person in the period between the adjudication and the date when the appeal is decided if—
- (a) the adjudication has been suspended and the appeal fails; or
 - (b) the adjudication has not been suspended and the appeal succeeds.

Compare: 1967 No 54 s 9(2)–(4)

417 Court may extend time

- (1) The court may extend any time limit imposed by this Act, or by rules or regulations made under this Act, for doing any act or thing.
- (2) The court may extend the time limit—
- (a) before or after the time limit has expired:
 - (b) on the conditions it thinks appropriate.

Compare: 1967 No 54 s 10

418 Defects in proceedings

- (1) A proceeding under this Act must not be invalidated or set aside for a defect (which includes misdescription, misnomer, or omission) in a step that must be taken as part of, or in connection with, the proceeding, unless a person is prejudiced by the defect.
- (2) The court may order the defect to be corrected, and may order the proceeding to continue, on the conditions that the court thinks appropriate in the interests of everyone who has an interest in the proceeding.

Compare: 1967 No 54 s 11

Subpart 3—Offences by bankrupt*Indictable offences***419 Offences in relation to debts**

- (1) A bankrupt (**B**) commits an offence if B did not, when contracting a debt, expect to be able to pay the debt when it fell due for payment, as well as pay all B's other debts (including future and contingent debts).
- (2) A bankrupt (**B**) commits an offence if B has materially contributed to, or increased the extent of, B's insolvency by gambling or by rash and hazardous speculations or by unjustifiable spending or by extravagance in living.
- (3) For the purposes of subsection (1), B is rebuttably presumed to have committed the offence if B, when contracting the debt, had no reasonable ground for expecting that B would be able to pay the debt when it fell due for payment as well as pay all B's other debts (including future and contingent debts).

Compare: 1967 No 54 s 126(1)(a), (c)

420 Offences in relation to property

- (1) A bankrupt (**B**) commits an offence if B—
 - (a) conceals or removes any part of B's property—
 - (i) within 2 months immediately before any unsatisfied judgment or order for payment of money is obtained against B; or
 - (ii) at any time after an unsatisfied judgment or order for payment of money is obtained against B; or

- (b) with intent to defraud B's creditors or any of them, makes, or causes to be made, any gift, delivery, or transfer of, or charge over, B's property.
- (2) A bankrupt (**B**) commits an offence if, after an application for B's adjudication has been filed, or within 2 years immediately before the application is filed, B—
- (a) conceals any part of B's property to the value of \$500 or more; or
 - (b) conceals any debt due to B or due from B; or
 - (c) fraudulently removes any part of B's property to the value of \$500 or more.

Compare: 1967 No 54 s 126(1)(b), (g)

421 Offence in relation to written statement to creditor, etc

A bankrupt (**B**) commits an offence if, within 3 years immediately before B's adjudication,—

- (a) B makes or produces any written statement to a person who—
 - (i) is at the time B's creditor; or
 - (ii) becomes B's creditor as a result of the statement being made or produced to that person; and
- (b) the statement is not a true and fair statement of B's affairs.

Compare: 1967 No 54 s 126(1)(e)

422 Offence in relation to documents, etc

A bankrupt (**B**) commits an offence if, after an application for B's adjudication has been filed, or within 2 years immediately before the application is filed, B—

- (a) conceals, destroys, mutilates, or falsifies, or is a party to the concealment, destruction, mutilation, or falsification of, any document affecting, or relating to, B's property, conduct, or dealings; or
- (b) makes, or is a party to the making of, any false entry in any document affecting, or relating to, B's property, conduct, or dealings; or
- (c) fraudulently parts with, alters, or makes any omission in, or is a party to fraudulently parting with, altering,

- or making any omission in, any document affecting, or relating to, B's property, conduct, or dealings; or
- (d) prevents the production of any document affecting, or relating to, B's property, conduct, or dealings to any person to whom B has an obligation under this Act to produce it.

Compare: 1967 No 54 s 126(1)(f)(i)–(iv)

423 Offence in relation to fictitious losses or expenses

A bankrupt (**B**) commits an offence if, after an application for B's adjudication has been filed, or within 12 months immediately before the application is filed, B attempts to account for any part of B's property by fictitious losses or expenses.

Compare: 1967 No 54 s 126(1)(h)

424 Offences in relation to credit, etc

- (1) A bankrupt (**B**) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed,—
- (a) B obtains property on credit and has not paid for the property; and
- (b) B obtains the property on credit—
- (i) by a false representation or other fraud; or
- (ii) by a false statement of financial position or other false statement of B's affairs; or
- (iii) under the false pretence of carrying on business and dealing in the ordinary course of trade.
- (2) A bankrupt (**B**) commits an offence if, within 3 years before an application for B's adjudication has been filed or at any time after the application is filed, B pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary course of trade, any property that B has obtained and has not paid for.

Compare: 1967 No 54 s 126(1)(i)

425 Offences in relation to obtaining consent of creditors

A bankrupt (**B**) commits an offence if B makes a false representation for, or is guilty of any other fraud for, the purpose of

obtaining the consent of any 1 or more of B's creditors to any agreement with reference to B's affairs or B's bankruptcy.

Compare: 1967 No 54 s 126(1)(j)

426 Offence in relation to leaving New Zealand

A bankrupt (**B**) commits an offence if, after an application for B's adjudication has been filed or within 12 months immediately before the application is filed, B—

- (a) leaves New Zealand (either temporarily or permanently) and takes with him or her any part of any property to the value of \$1,000 or more that ought, by law, to be divided among B's creditors; or
- (b) attempts to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property; or
- (c) prepares to leave New Zealand (either temporarily or permanently), taking with him or her any part of that property.

Compare: 1967 No 54 s 126(1)(k)

427 Defence of absence of intent

- (1) A bankrupt (**B**) does not commit an offence under section 420(1)(a) if B proves that at the material time he or she had no intent to defraud any of B's creditors.
- (2) A bankrupt (**B**) does not commit an offence under any of the following provisions if B proves that at the material time B had no intent to defraud:
 - (a) section 420(2)(a) or (b):
 - (b) section 424(1):
 - (c) section 424(2):
 - (d) section 426.
- (3) A bankrupt (**B**) does not commit an offence under section 421 if B proves that at the material time B had no intention to deceive.
- (4) A bankrupt (**B**) does not commit an offence under section 422(a), (b), or (d) if B proves that at the material time B had no intent to conceal the state of his or her affairs or to defeat the law.

428 Penalties for indictable offences by bankrupt

A bankrupt who commits an offence under any of sections 419 to 426 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

*Offences in relation to record of transactions***429 Failure to keep and preserve proper record of transactions**

- (1) A bankrupt (**B**) commits an offence if, for any period during the 3 years immediately before B's adjudication,—
- (a) B might reasonably be expected, because of B's occupation or transactions for the period, to keep a record of those transactions; and
 - (b) B failed to keep and preserve a proper record of the transactions.
- (2) Despite anything that the Summary Proceedings Act 1957 says, an information for an offence under this section may be laid against a bankrupt at any time within 2 years after the date of his or her adjudication.

Compare: 1967 No 54 s 127(1)

430 Failure to keep proper records with intent to conceal

A bankrupt (**B**) commits an offence if, with intent to conceal the true state of his or her affairs, B has failed to keep and preserve a proper record of B's transactions.

Compare: 1967 No 54 s 127(2)

431 Penalties for offences relating to records

- (1) A person who commits an offence under section 429 is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.
- (2) A person who commits an offence under section 430 is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$10,000 or both.

432 When bankrupt deemed not to have kept or preserved proper record

- (1) For the purposes of sections 429 and 430, a bankrupt (**B**) is deemed not to have kept a proper record of his or her transactions if, being engaged in any trade or business, B has not kept the necessary books and accounts.
- (2) In subsection (1), **necessary books and accounts** means the books and accounts that are necessary to explain B's transactions and financial position in B's trade or business, and includes—
 - (a) a book or books containing entries from day to day in sufficient detail of all cash received and cash paid; and
 - (b) if B's trade or business has involved dealing in goods,—
 - (i) a record of all goods sold and purchased; and
 - (ii) detailed stock sheets of annual and other stock takings showing the quantity and the valuation made of each item of stock on hand; and
 - (c) if B's trade or business has involved B's services, details of those services.
- (3) For the purposes of sections 429 and 430, B is deemed not to have preserved a proper record of his or her transactions if B has not preserved—
 - (a) the records listed in subsection (2), if applicable;
 - (b) a record of all goods purchased in the course of B's business, with the original invoices;
 - (c) a daily record of all goods sold on credit.

Compare: 1967 No 54 s 127(3), (4)

Summary offences

433 Summary offences

- (1) A bankrupt (**B**) commits an offence if B—
 - (a) fails without reasonable excuse to do any of the things required of B by section 67 or 87 or subpart 2 of Part 3 or subpart 5 of Part 3 or to comply with any of the provisions of section 299 or 307; or
 - (b) refuses or neglects to answer fully and truthfully all proper questions put to B at any examination held under this Act; or

- (c) wilfully misleads the Assignee in any statement made to him or her in the course of the administration of B's affairs, whether orally or in writing or in any answer to any question put to B; or
 - (d) after becoming aware that any person has filed a false proof in the bankruptcy, failed to disclose that fact immediately to the Assignee; or
 - (e) has within 2 years before B's adjudication, at a time when B was unable to pay B's debts as they became due, given, with intent to defraud B's creditors, any undue preference to any of B's creditors; or
 - (f) while a bankrupt and without having first obtained the consent of the Assignee,—
 - (i) leaves, or attempts to leave, New Zealand, temporarily or permanently; or
 - (ii) makes preparations for leaving New Zealand, temporarily or permanently; or
 - (g) before B obtains a final order or discharge, or before a suspended order of discharge takes effect under this Act,—
 - (i) alone, or jointly with another person, obtains credit of \$1,000 or more; or
 - (ii) incurs liability to any person of \$1,000 or more for the purpose of obtaining credit for another person.
- (2) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information for any of the offences in subsection (1) may be laid against a bankrupt at any time within 2 years after the date of the offence.

Compare: 1967 No 54 s 128(1), (2)

434 Defences to summary offences of obtaining credit

- (1) A bankrupt (**B**) does not commit an offence under section 433(1)(g)(i) if B proves that, before obtaining the credit of \$1,000 or more, B informed the person giving the credit that B was an undischarged bankrupt.
- (2) A bankrupt (**B**) does not commit an offence under section 433(1)(g)(ii) if B proves that, before incurring the liability of \$1,000 or more, the person giving the credit was informed

that the person incurring the liability was an undischarged bankrupt.

Compare: 1967 No 54 s 128(1)(g)

435 Penalty for summary offences by bankrupt

A person who commits an offence under section 433(1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 128(1)

*Offences in relation to management of
companies*

436 Offence by bankrupt in relation to management of companies

- (1) A bankrupt commits an offence if he or she—
 - (a) acts as a director of a company; or
 - (b) fails without reasonable excuse to comply with section 149.
- (2) Despite anything that section 14 of the Summary Proceedings Act 1957 says, an information in respect of an offence under subsection (1) may be laid at any time within 2 years after the date of the offence.

Compare: 1967 No 54 s 128A

437 Penalties for offence in relation to management of companies

A person who commits an offence under section 436 is liable,—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

*Assignee's discretion to prosecute***438 Assignee may prosecute if reasonable grounds certified by Crown Solicitor**

- (1) If the Assignee has reason to suspect that a person (X) has committed an offence under this Act, the Assignee may refer the case to the appropriate Crown Solicitor.
- (2) The Assignee may lay an information against X if the Crown Solicitor certifies that there are reasonable grounds for prosecuting X.

Compare: 1967 No 54 s 129

439 Assignee has immunity for prosecution if certificate given by Crown Solicitor

No action may be taken against the Assignee for malicious prosecution in relation to a prosecution under this Act if the Crown Solicitor certified that there were reasonable grounds for bringing the prosecution.

Compare: 1967 No 54 s 129(2)

Subpart 4—Miscellaneous provisions

440 False or misleading statements or refusal to answer questions

- (1) A person commits an offence if he or she—
 - (a) makes a statement to any Assignee or person concerned in the administration of this Act, knowing that the statement is false in a material particular; or
 - (b) wilfully misleads, or attempts to mislead, any Assignee or person concerned in the administration of this Act; or
 - (c) without reasonable excuse, fails or refuses to answer any question put to him or her by the Assignee.
- (2) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or both.

Compare: 1967 No 54 s 164

441 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing fees to be paid under this Act or regulations made under this Act:
- (b) prescribing the procedure for lodging a debtor's application for adjudication with the Assignee:
- (c) prescribing how and when the debts and claims of creditors must be made and proved, and when a debt or claim may be allowed or disallowed:
- (d) providing for the public examination of bankrupts:
- (e) prescribing the expenses that may be paid to a bankrupt, or any other person, who is required to attend any examination by the Assignee:
- (f) prescribing the steps an undischarged bankrupt must take to obtain the Assignee's consent to leaving New Zealand and the circumstances in which, and the conditions on which, the Assignee may consent:
- (g) prescribing the steps an undischarged bankrupt must take to obtain the Assignee's consent for the purposes of section 149 (which concerns the prohibition of a bankrupt entering business) and the circumstances in which, and the conditions on which, the Assignee may consent:
- (h) prescribing the accounts that must be kept by the Assignee, the audit of those accounts, and the fees payable for the audit:
- (i) prescribing the manner of publication of the Assignee's final statement of receipts and payments:
- (j) prescribing the manner of advertising under this Act:
- (k) providing for the appointment, retirement, removal, discharge, and control of trustees under subpart 2 of Part 5, and for the accounts that must be kept by them, and for the audit of those accounts:
- (l) providing for any matters contemplated by subpart 3 of Part 5, necessary for its administration, or necessary for giving it full effect:
- (m) prescribing the scale of fees of the court and the Court of Appeal for proceedings under this Act:
- (n) prescribing the form of—
 - (i) a statement of affairs that is filed under section 46, 67, or 362:

- (ii) an application that is made under section 49, 342, or 362:
 - (iii) a notice under section 367 or 373:
 - (o) prescribing the steps that must be taken by the bankrupt under section 141 in relation to the bankrupt's property and the distribution of the proceeds to the creditors:
 - (p) regulating the payment by the Assignee of money into the Assignee's bank account under section 220(1):
 - (q) prescribing the time for giving a notice of opposition under section 297:
 - (r) prescribing how instalments under a summary instalment order must be paid:
 - (s) providing for the conduct of creditors' meetings under subparts 1 and 2 of Part 5:
 - (t) prescribing the criteria for the means test under section 363(1)(e):
 - (u) prescribing reasons for refusal by the Assignee under section 447(2) of access to a public register:
 - (v) prescribing any further information or documents that must be held under a public register under section 449(1):
 - (w) regulating the search of public registers (*see* section 452):
 - (x) prescribing any further search criteria under section 453(1):
 - (y) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) In subsection (1)(n), **prescribing the form** includes specifying the content, means of communication, or any other requirement of a statement of affairs, application, or notice without necessarily specifying the use of a particular form.

Compare: 1967 No 54 s 14

442 Rules

- (1) Rules may be made from time to time under the Judicature Act 1908—
- (a) relating to the procedure of the court under this Act:
 - (b) relating to appeals to the Court of Appeal under this Act:

- (c) to give effect to this Act.
- (2) Matters that may be dealt with by the rules include the following:
 - (a) how proceedings are started and transferred from one registry of the court to another:
 - (b) where proceedings may be started:
 - (c) the forms to be used in proceedings:
 - (d) the service of documents filed or issued in proceedings:
 - (e) the amendment of defects and errors in proceedings:
 - (f) how evidence may be given:
 - (g) how the identity of persons who are parties to, or involved in, proceedings must be proved:
 - (h) how witnesses are summoned and documents are discovered:
 - (i) the right of creditors and other persons to appear in proceedings, and the procedure to be followed in the absence of creditors or other persons:
 - (j) the notices that must be given in connection with proceedings, and who must give them and to whom:
 - (k) the manner of advertising:
 - (l) the consolidation of proceedings:
 - (m) the substitution of parties to proceedings:
 - (n) authorising the continuation of proceedings after the death of the debtor in question:
 - (o) authorising proceedings to be begun against 1 or more partners of a business partnership without including the others, and providing for the disclosure of the other partners:
 - (p) the scale of costs of lawyers and others in proceedings:
 - (q) the award of costs and when security for costs must be given:
 - (r) the execution of processes and the enforcement of orders under this Act:
 - (s) the time limit for appealing to the Court of Appeal and how the appeal must be brought:
 - (t) matters necessary for the administration of this Act or necessary for giving it full effect.

Compare: 1967 No 54 s 13

443 Repeal and revocation

- (1) The Insolvency Act 1967 is repealed.
- (2) The Insolvency Regulations 1970, the Insolvency (Priorities) Order 1988, and the Summary Instalment Orders (District Court) Rules 1970 are revoked.

444 Transitional provisions

- (1) In this section,—

1967 Act means the Insolvency Act 1967 as if it had not been repealed by this Act, and any rules or regulations made under that Act

commencement means the commencement of Parts 1 to 7 of this Act

past event means any of the following that has occurred before commencement:

- (a) issuing a bankruptcy notice:
 - (b) filing a petition for adjudication:
 - (c) filing an application for a summary instalment order:
 - (d) the making of a proposal:
 - (e) the making of a compromise:
 - (f) filing an application for an order for the administration of an insolvent deceased estate.
- (2) The 1967 Act continues to apply, to the exclusion of this Act, to any past event and to any step or proceeding preceding, following, or relating to that past event, even if it is a step or proceeding that is taken after commencement.
 - (3) For the avoidance of doubt, nothing in subpart 7 of Part 3 permits the cancellation of an irregular transaction that was completed before this section came into force, if that transaction could not have been cancelled if this section had not come into force.

445 Consequential amendments to other enactments

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

Subpart 5—Public registers

446 Subpart applies to public register maintained under section 62, 354 or 368

This subpart applies to a public register maintained under section 62 or 354 or 368.

447 When public register must be accessible

- (1) A public register must be available for access and searching by members of the public during business hours on a working day.
- (2) However, the Assignee may refuse access to a public register or suspend the operation of a public register, in whole or in part,—
 - (a) if the Assignee considers that it is not practical to provide access to the register; or
 - (b) for any other reason that is prescribed by regulations made under this Act.

448 Purposes of public registers

- (1) A public register maintained under section 62 has—
 - (a) the purpose of providing information about bankrupts and discharged bankrupts; and
 - (b) the further purposes set out in subsection (4).
- (2) A public register maintained under section 354 has—
 - (a) the purpose of providing information about persons subject to a current summary instalment order; and
 - (b) the further purposes set out in subsection (4).
- (3) A public register maintained under section 368 has—
 - (a) the purpose of providing information about persons currently admitted to the no asset procedure and persons discharged from that procedure under section 377; and
 - (b) the further purposes set out in subsection (4).
- (4) The further purposes of the public registers are to—
 - (a) facilitate the compliance, audit, and other supporting and administrative functions of the Assignee, Ministry, the courts, or any other person under this Act or any other enactment; and

- (b) facilitate the enforcement functions and the exercise of the powers of the Assignee, Ministry, the courts, or any other person under this Act or any other enactment; and
- (c) provide statistical information and information for research purposes in relation to bankruptcy, summary instalment orders, and the no asset procedure.

Section 448(3)(a): amended, on 17 November 2009, by section 12 of the Insolvency Amendment Act 2009 (2009 No 52).

449 General information that must be held in public registers

- (1) The public registers must contain the following information in respect of a person (**P**) who is or has been bankrupt, or who is subject to a current summary instalment order, or who is currently admitted to the no asset procedure, or who has been discharged from that procedure under section 377:
 - (a) P's full name:
 - (b) whether P is currently bankrupt, or has been discharged from bankruptcy, or is subject to a current summary instalment order, or is currently admitted to the no asset procedure, or has been discharged from the no asset procedure under section 377, as the case may be:
 - (c) the bankruptcy, summary instalment order, or no asset procedure number, as the case may be:
 - (d) P's address as contained in P's statement of affairs, or application for adjudication, or application for a summary instalment order, or application for admission to the no asset procedure or, if P has notified the Assignee of a change of address, that address, or in the case of adjudication on a creditor's application, P's address contained in that application:
 - (e) P's occupation and current employment status, if known:
 - (f) in the case of an adjudication by the court, which court, and the time and date of the adjudication:
 - (g) in the case of an automatic adjudication, a statement that P was automatically adjudicated bankrupt under section 47, and the time and date of the adjudication:
 - (h) if P is admitted to the no asset procedure, the date of admission:

- (ha) if P is discharged from the no asset procedure under section 377, the date when P was so discharged:
 - (i) if P is a discharged bankrupt, the date, type, and conditions (if any) of discharge:
 - (j) if the bankruptcy was annulled under section 309(1)(b) or (c) or section 310(2)(b) or (c), under which of those provisions it was annulled:
 - (k) if the court has refused to discharge P from bankruptcy, that information:
 - (l) if the court has suspended P's discharge from bankruptcy, that information:
 - (m) the place of the office of the Assignee dealing with P's bankruptcy or admission to the no asset procedure and that office's contact number for enquiries:
 - (n) in the case of a person subject to a current summary instalment order, the full name and business postal address of the supervisor:
 - (o) any other prescribed information or documents.
- (2) Subject to sections 447(2) and 451(1), the information listed in subsection (1) must be available to any member of the public.
- (3) A public register must not contain any information in relation to a person whose bankruptcy was annulled under section 309(1)(a) or 310(2)(a), and the bankruptcy that was so annulled does not count for the purposes of section 449A.
- (4) All information relating to a person who has been adjudicated bankrupt and discharged from bankruptcy must be removed from the public register maintained under section 62—
- (a) 4 years after the date of discharge; but
 - (b) in the case of a conditional discharge, 4 years after the discharge becomes unconditional.
- (4A) All information relating to a person who has been admitted to the no asset procedure must be removed from the public register maintained under section 368—
- (a) 4 years after the date of discharge under section 377; or
 - (b) as soon as practicable after a termination under section 372(a), (c), or (d).
- (5) All information relating to a person who has been adjudicated bankrupt but whose bankruptcy has been annulled under section 309(1)(b) or (c) or section 310(2)(b) or (c) must be re-

moved 7 years after the date of adjudication from the public register maintained under section 62.

Section 449(1): amended, on 17 November 2009, by section 13(1) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 449(1)(b): amended, on 17 November 2009, by section 13(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 449(1)(ha): inserted, on 17 November 2009, by section 13(3) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 449(3): amended, on 17 November 2009, by section 13(4) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 449(4A): inserted, on 17 November 2009, by section 13(5) of the Insolvency Amendment Act 2009 (2009 No 52).

449A Information kept indefinitely on public register after multiple insolvency events

- (1) This section applies in the case of a person who—
 - (a) is or has been bankrupt on 2 or more occasions; or
 - (b) is or has been both bankrupt and discharged from the no asset procedure under section 377.
- (2) Information about the person must not be removed from the public register under this Act and, in particular, section 449(4), (4A), and (5) do not apply to the person.
- (3) The Assignee must ensure that the public register contains all of the information required by this Act about the person and each insolvency event.
- (4) Bankruptcies under the Insolvency Act 1967 count for the purposes of subsections (1) and (3), but bankruptcies under the Bankruptcy Act 1908 do not count for either purpose.

Section 449A: inserted, on 17 November 2009, by section 14 of the Insolvency Amendment Act 2009 (2009 No 52).

450 Restricted information that may be held in public register maintained under section 62

- (1) The public register maintained under section 62 may contain any or all of the documents set out in section 100 in respect of a person (**B**) who is or has been bankrupt.
- (2) A member of the public must not have access to the documents contained in the public register under subsection (1) in respect of B unless that person is entitled to inspect those documents under section 100.

451 When Assignee may omit, remove, restrict access to, or amend, information contained in public registers

- (1) The Assignee may omit, remove, or restrict access to information contained in a public register in respect of a person (**P**) if the Assignee considers, in his or her discretion, that the disclosure of the information via the public register would be prejudicial to P's safety or the safety of P's family.
- (2) The Assignee may amend the information contained in a public register in order to update the information or correct any error in, or omission from, the information.
- (3) The Assignee may refuse to provide access to any information in a public register if, in the Assignee's opinion, it is impractical to provide the volume of information requested.

452 Search of public registers

A person may only search the public registers in accordance with this Act or regulations made under this Act.

453 Search criteria

- (1) The public registers may be searched only by reference to the following criteria:
 - (a) the bankruptcy number, summary instalment order, or no asset procedure number:
 - (b) the name, or any part of the name of a person:
 - (c) the name of a court:
 - (d) insolvency status:
 - (e) the date of adjudication, summary instalment order, admission to the no asset procedure, or discharge, by reference to a range of dates:
 - (f) any combination of the criteria in paragraphs (a) to (e):
 - (g) any other prescribed criteria.
- (2) In subsection (1)(d), **insolvency status** means that a person (**P**)—
 - (a) is currently bankrupt; or
 - (b) is subject to a current summary instalment order; or
 - (c) is currently admitted to the no asset procedure; or
 - (d) is a discharged bankrupt; or
 - (da) is discharged from the no asset procedure under section 377; or

- (e) is a discharged bankrupt subject to conditions of discharge; or
- (f) was adjudicated bankrupt but the adjudication was annulled under section 309(1)(b) or section 310(2)(b); or
- (g) was adjudicated bankrupt but the adjudication was annulled under section 309(1)(c) or section 310(2)(c); or
- (h) is subject to section 449A (which relates to permanent retention of information on the register after multiple insolvency events).

Section 453(2)(da): inserted, on 17 November 2009, by section 15(1) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 453(2)(g): amended, on 17 November 2009, by section 15(2) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 453(2)(h): added, on 17 November 2009, by section 15(2) of the Insolvency Amendment Act 2009 (2009 No 52).

454 Search purposes

The public registers may be searched—

- (a) by any individual, or by any person with the consent of that individual, for the purpose of searching for information about that individual:
- (b) by any person for the purpose of ascertaining whether another person is bankrupt, is a discharged bankrupt, is subject to a current summary instalment order, is currently admitted to the no asset procedure, or is discharged from that procedure under section 377:
- (c) by any person for any purpose related to the bankruptcy of a person, the making of a current summary instalment order in respect of a person, or the admission of a person to the no asset procedure:
- (d) by any person for any of the purposes set out in section 448(4)(a) or (b):
- (e) by any person for the purpose of ascertaining whether section 449A applies to another person.

Section 454(b): amended, on 17 November 2009, by section 16(1) of the Insolvency Amendment Act 2009 (2009 No 52).

Section 454(e): added, on 17 November 2009, by section 16(2) of the Insolvency Amendment Act 2009 (2009 No 52).

455 Information contained in public registers may be used for statistical or research purposes

Nothing in this subpart prevents the use of information contained in the public registers for statistical or research purposes if the information—

- (a) does not identify any person; and
- (b) is not published in any form that could reasonably be expected to identify any person.

456 When search breaches information privacy principle

A person who searches a public register for a purpose that is not a purpose set out in section 454 must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

457 Crown and Assignee not liable for act or omission

The Crown and the Assignee cannot be sued for any act or omission in relation to the maintenance of a public register under this subpart done or omitted to be done in good faith and with reasonable care.

Schedule 1

s 217(2)

Assignee's general powers

The Assignee has the power to—

- (a) hold property:
- (b) begin, continue, discontinue, and defend legal proceedings relating to the property of the bankrupt:
- (c) with the leave of the court, continue in the Assignee's name legal proceedings begun by the bankrupt before adjudication:
- (d) refer a dispute to arbitration:
- (e) compromise debts, claims, and liabilities, present or future, actual or contingent, or ascertained or not, subsisting or believed to subsist between the bankrupt and any person, on whatever terms are agreed:
- (f) make a compromise or an arrangement with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy:
- (g) accept as consideration for the sale of any of the bankrupt's property money to be paid in the future, on terms (including terms as to security) that the Assignee thinks appropriate:
- (h) make a compromise or an arrangement in respect of a claim that arises out of, or is incidental to, the bankrupt's property, whether it is a claim by the Assignee, or a claim by a person against the Assignee:
- (i) carry on the bankrupt's business, if it is necessary or advantageous in order to dispose of it, and for that purpose may employ and pay any person, including the bankrupt:
- (j) use money in the bankrupt's estate for the repair, maintenance, upkeep, or renovation of the bankrupt's property, whether or not the work is necessary to salvage the property:
- (k) borrow money:
- (l) mortgage any of the bankrupt's property:
- (m) employ any person to do anything that must be done in the course of the administration of the bankruptcy, including the receipt and payment of money:
- (n) prove and draw a dividend in respect of any debt due to the bankrupt:
- (o) if any of the bankrupt's property cannot be readily or advantageously sold because of its peculiar nature or other special

- circumstances, divide it in its existing form among the creditors according to its estimated value:
- (p) give receipts and sign discharges and releases for any money that the Assignee receives, so that the person who pays the money is effectively discharged from any responsibility for how the money is used:
 - (q) execute a power of attorney, deed, or any other document for the purpose of carrying into effect the provisions of this Act:
 - (r) exercise, in relation to the bankrupt's property, any power conferred on a trustee under the Trustee Act 1956 or by the court under that Act; and for the purposes of those powers the Assignee is a trustee of the bankrupt's property:
 - (s) exercise any authority or power or do any act in relation to the bankrupt's property that the bankrupt could have exercised or done if he or she was not bankrupt:
 - (t) in respect of any particular estate or estates,—
 - (i) appoint an agent to act for the Assignee:
 - (ii) delegate to that agent any or all of the powers conferred by this schedule:
 - (iii) revoke the agent's appointment:
 - (iv) set the agent's remuneration, which must be paid out of the estate:
 - (u) exercise, on the terms the Assignee thinks appropriate, the following powers in relation to the sale of the bankrupt's property:
 - (i) sell the whole or a part of the bankrupt's property by public auction or public tender:
 - (ii) buy in at an auction of the bankrupt's property:
 - (iii) rescind or vary a contract for the sale of the bankrupt's property:
 - (v) surrender any shares of the bankrupt in a building society in accordance with the rules of the society:
 - (w) sell the following property of the bankrupt by private contract:
 - (i) perishable property or property that is likely to fall rapidly in value:
 - (ii) property that is unsold after being offered for sale by public auction or public tender:
 - (iii) property that the Assignee considers unnecessary or inadvisable to sell by public auction or public tender be-

cause of its nature, situation, value, or other special circumstance:

- (iv) property authorised by a resolution of creditors to be sold by private contract, but in that case the Assignee must sell the property in accordance with the authority given by the creditors:
- (v) company securities, New Zealand Government securities, and local authority securities, if sold on a securities market operated by a registered exchange registered under the Securities Markets Act 1988.

Compare: 1967 No 54 s 71

Schedule 2
Consequential amendments to other enactments

s 445

Part 1
Amendments to Acts

Administration Act 1969 (1969 No 52)

Section 31: omit “Part 17 of the Insolvency Act 1967” and substitute “Part 6 of the Insolvency Act 2006”.

Section 32(1): omit “Part 17 of the Insolvency Act 1967” and substitute “Part 6 of the Insolvency Act 2006”.

Section 82(1): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Carriage of Goods Act 1979 (1979 No 43)

Section 11(4): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Companies Act 1993 (1993 No 105)

Section 103(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Definition of **Official Assignee** in section 240(1): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 280(1)(l): omit “section 111(1)(c) of the Insolvency Act 1967” and substitute “section 299(1)(c) of the Insolvency Act 2006”.

Section 300(5): omit “section 19(d) of the Insolvency Act 1967” and substitute “section 17(1)(a) of the Insolvency Act 2006”.

Section 301(3): omit “section 19(d) of the Insolvency Act 1967” and substitute “section 17(1)(a) of the Insolvency Act 2006”.

Section 302(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Construction Contracts Act 2002 (2002 No 46)

Section 71(2)(a): omit “section 32 of the Insolvency Act 1967” and substitute “section 76 of the Insolvency Act 2006”.

Part 1—*continued***Contractual Mistakes Act 1977 (1977 No 54)**

Definition of **disposition** in section 8(3): omit and substitute:

“**disposition** means—

- “(a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
- “(b) the creation of a trust:
- “(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:
- “(d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:
- “(e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
- “(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person’s own estate and to increase the value of the estate of any other person.”

Copyright Act 1994 (1994 No 143)

Section 208(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 42(7): omit “sections 93A to 93I of the Insolvency Act 1967” and substitute “sections 255 to 263 of the Insolvency Act 2006”.

Section 44(4): omit “section 93C of the Insolvency Act 1967” and substitute “section 257 of the Insolvency Act 2006”.

Part 1—*continued*

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

Section 51(2)(b)(i) and (ii): repeal and substitute:

- “(i) proceeds of an account receivable that is subject to a security interest that—
 - “(A) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - “(B) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises from the transfer of the account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); or
- “(ii) proceeds of inventory that are subject to a security interest that is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999.”

Section 51(6): omit “section” and substitute “subsection.”

Section 51(6)(b): insert “that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999” after “interest”.

Section 51(6)(c): omit “does not arise” and substitute “is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises”.

Corrections Act 2004 (2004 No 50)

Section 19(7)(c): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Part 1—*continued***Customs and Excise Act 1996 (1996 No 27)**

Section 98(2): omit “section 90 of the Insolvency Act 1967” and substitute “sections 243, 244, and 246 to 250 of the Insolvency Act 2006”.

Section 101(2): omit “section 104 of the Insolvency Act 1967” and substitute “section 274(5) of the Insolvency Act 2006”.

District Courts Act 1947 (1947 No 16)

Section 90(3): omit “section 50 of the Insolvency Act 1967” and substitute “sections 108 to 112 of the Insolvency Act 2006”.

Employment Relations Act 2000 (2000 No 24)

Section 170(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Energy Companies Act 1992 (1992 No 52)

Section 6(1)(c): omit “section 111 of the Insolvency Act 1967” and substitute “section 299 of the Insolvency Act 2006”.

Fisheries Act 1996 (1996 No 88)

Section 270: repeal.

Forest and Rural Fires Act 1977 (1977 No 52)

Section 64(4)(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Goods and Services Tax Act 1985 (1985 No 141)

Section 42(2)(c)(ii)(B): insert “that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999” after “interest”.

Section 42(2)(c)(ii)(C): omit “does not arise” and substitute “is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time of the receiver’s appointment and that arises”.

Part 1—*continued*

Health and Disability Services (Safety) Act 2001 (2001 No 93)

Section 48(1)(b)(iii): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 49(1)(c)(iii): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Health Practitioners Competence Assurance Act 2003 (2003 No 48)

Section 55(3)(c): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 87(4)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 122(2)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Clause 3(2)(b) of Schedule 1: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Human Rights Act 1993 (1993 No 82)

Section 20G(c): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 101(3)(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 103(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Illegal Contracts Act 1970 (1970 No 129)

Section 6(2): omit and substitute:

“(2) In this section, **disposition** means—

“(a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:

“(b) the creation of a trust:

“(c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:

Part 1—*continued***Illegal Contracts Act 1970 (1970 No 129)**—*continued*

- “(d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:
- “(e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
- “(f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person’s own estate and to increase the value of the estate of any other person.”

Income Tax Act 2004 (2004 No 35)

Section CG 2(4)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section EW 29(10): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section EW 47(1)(b)(i): omit “114 of the Insolvency Act 1967” and substitute “304 of the Insolvency Act 2006”.

Section EZ 35(6)(a)(i): omit “114 of the Insolvency Act 1967” and substitute “304 of the Insolvency Act 2006”.

Section EZ 35(8)(d)(ii): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Industry Training Act 1992 (1992 No 55)

Section 16: omit “, 23,” and “, and section 23,”.

Insurance Intermediaries Act 1994 (1994 No 41)

Section 17(1)(c): omit “Part 17 of the Insolvency Act 1967” and substitute “Part 6 of the Insolvency Act 2006”.

Section 17(2): insert “or the Insolvency Act 2006” after “Insolvency Act 1967”.

Part 1—*continued*

Joint Family Homes Act 1964 (1964 No 45)

Section 9(2)(d): omit “Insolvency Act 1967” wherever it appears and in each case substitute “Insolvency Act 2006”.

Section 12A(6): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Judicature Act 1908 (1908 No 89)

Section 26I(2)(e): repeal and substitute:

“(e) Sections 123, 154, 165 to 168, 173, 179, 232 to 234, 236 to 238, Part 15A, and Part 16 of the Companies Act 1993.”.

Section 26I(2): insert after paragraph (h):

“(ha) the Insolvency Act 2006 (except sections 150, 166(3), 180, and 236(2)):

“(hb) any regulations or rules made under the Insolvency Act 2006.”.

Section 448(1)(g): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 651(1)(b): omit “section 154(3) of the Insolvency Act 1967” and substitute “section 380(4)(c)(iii) of the Insolvency Act 2006”.

Section 819(1): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 824(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Rule 458D(1)(a)(vi) of Schedule 2: omit “294(2)” and substitute “296(5)”.

Rule 458EA(1)(b) of Schedule 2: omit “294(2)” and substitute “296(5)”.

Rule 458EA(2)(b) of Schedule 2: omit “294(2)” and substitute “296(5)”.

Rule 458H(3)(b) of Schedule 2: omit “294(2)” and substitute “296(5)”.

Rule 458I(1)(a)(ii)(B) of Schedule 2: omit “294(2)” and substitute “296(5)”.

Part 1—*continued***Lawyers and Conveyancers Act 2006 (2006 No 1)**

Section 284(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Clause 2(2) of Schedule 3: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Clause 3(3) of Schedule 4: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Layby Sales Act 1971 (1971 No 80)

Section 11(1A)(b): insert “that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999” after “interest”.

Section 11(1A)(c): omit “does not arise” and substitute “is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the commencement of the liquidation, or at the time of the receiver’s appointment, or at the date of adjudication, as the case may be, and that arises”.

Section 11(2): repeal and substitute:

“(2) Debts to which priority is given by subsection (1) must be paid in accordance with section 312 and Schedule 7 of the Companies Act 1993, or section 30 of the Receiverships Act 1993, or section 274(3) of the Insolvency Act 2006, as the case may be.”

Medicines Act 1981 (1981 No 118)

Section 55D(4): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Paragraph (b) of the definition of **pharmacist** in section 55E(3): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Motor Vehicle Sales Act 2003 (2003 No 12)

Section 85(1): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 88(4)(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Part 1—*continued*

Personal Property Securities Act 1999 (1999 No 126)

Section 17A(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Plumbers, Gasfitters, and Drainlayers Act 1976 (1976 No 69)

Section 6B(2)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Privacy Act 1993 (1993 No 28)

Item relating to the Insolvency Act 1967 in Part 1 of Schedule 2: omit and substitute:

Insolvency Act 2006

Sections 62, 368

Proceeds of Crime Act 1991 (1991 No 120)

Section 27(4): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 60(1): omit “section 23 of the Insolvency Act 1967” and substitute “section 13 of the Insolvency Act 2006”.

Section 60(2): omit “section 42 of the Insolvency Act 1967” and substitute “section 101 of the Insolvency Act 2006”.

Section 60(3): omit “section 87(2) of the Insolvency Act 1967” and substitute “section 232(2) of the Insolvency Act 2006”.

Property Law Act 1952 (1952 No 51)

Items repealed.

Property (Relationships) Act 1976 (1976 No 166)

Section 58(1): repeal and substitute:

“(1) If, had this Act not been passed, any property would have become vested in an appointee (within the meaning of section 378(1) of the Insolvency Act 2006) on an order being made under section 379 of that Act to administer the estate of a deceased spouse or partner under Part 6 of that Act, then

Part 1—*continued***Property (Relationships) Act 1976 (1976 No 166)**—*continued*

that property (and no other property) becomes vested in an appointee as if this Act had not been passed.”

Section 59(1)(a): repeal and substitute:

“(a) if, after the death of a spouse or partner, the family home (including a homestead) or, if section 11A applies, the proceeds of the sale of the family home vest in an appointee (within the meaning of section 378(1) of the Insolvency Act 2006) on an order being made under section 379 of that Act to administer the estate of a deceased spouse or partner under Part 6 of that Act:”.

Section 88(3)(c): repeal and substitute:

“(c) an appointee (within the meaning of section 378(1) of the Insolvency Act 2006) in whom the estate of a deceased spouse or partner vests on an order being made under section 379 of that Act.”

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Clause 1(a)(ii) of Schedule 1: omit “Part 16 of the Insolvency Act 1967” and substitute “subpart 3 of Part 5 of the Insolvency Act 2006”.

Radiocommunications Act 1989 (1989 No 148)

Section 183(3): omit “Subject to subsection (4) of this section, the” and substitute “The”.

Section 183(4) to (6): repeal.

Receiverships Act 1993 (1993 No 122)

Definition of **Official Assignee** in section 2(1): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 5(1)(l): omit “section 111(1)(c) of the Insolvency Act 1967” and substitute “section 299(1)(b) of the Insolvency Act 2006”.

Section 31(1)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Part 1—*continued*

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 122(7): omit “sections 93A to 93I of the Insolvency Act 1967” and substitute “sections 255 to 263 of the Insolvency Act 2006”.

Section 127(4): omit “section 93C of the Insolvency Act 1967” and substitute “section 257 of the Insolvency Act 2006”.

Section 134(6)(b): insert “that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999” after “interest”.

Section 134(6)(c): omit “does not arise” and substitute “is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the registered bank was declared to be subject to statutory management and that arises”.

Section 136(1)(b): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Paragraph (b) of the definition of **insolvency** in section 156L: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Heading to section 156S: omit “**Insolvency Act 1967**” and substitute “**Insolvency Act 2006**”.

Section 156S(b): repeal and substitute:

“(b) sections 255 to 262 of the Insolvency Act 2006.”

Section 156T(1)(a): omit “section 56 of the Insolvency Act 1967” and substitute “section 194 of the Insolvency Act 2006”.

Section 156T(2): omit “section 56 of the Insolvency Act 1967” and substitute “section 194 of the Insolvency Act 2006”.

Retirement Villages Act 2003 (2003 No 112)

Section 22(1)(b): omit “section 75 of the Insolvency Act 1967” and substitute “section 117 of the Insolvency Act 2006”.

Ship Registration Act 1992 (1992 No 89)

Section 51(6)(c): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Part 1—*continued***Social Workers Registration Act 2003 (2003 No 17)**

Section 118(1)(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Clause 3(2)(a) of Schedule 2: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of Schedule 1: omit the item relating to the Insolvency Act 1967 and substitute:

Insolvency Act 2006	419 to 428, 430	Offences by bankrupt
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Te Ture Whenua Maori Act 1993 (1993 No 4)

Section 343(4): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 343(5): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

Section 48(4)(a): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Section 50(2): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Treaty of Waitangi Act 1975 (1975 No 114)

Clause 2(2) of Schedule 2: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Trustee Companies Act 1967 (1967 No 35)

Section 7(2)(t): omit “Part 15 of the Insolvency Act 1967” and substitute “subpart 2 of Part 5 of the Insolvency Act 2006”.

Part 1—*continued*

Unit Trusts Act 1960 (1960 No 99)

Section 27(3): omit “paragraph (d) of subsection (1) of section 19 of the Insolvency Act 1967” and substitute “section 17(1)(a) of the Insolvency Act 2006”.

Volunteers Employment Protection Act 1973 (1973 No 25)

Section 15: repeal.

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

Section 63(a): omit “section 32 of the Insolvency Act 1967” and substitute “section 76 of the Insolvency Act 2006”.

Clause 5(2) of Schedule 3: omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Schedule 2 Part 1 **Property Law Act 1952**: items repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Schedule 2 Part 1 **Weathertight Homes Resolution Services Act 2006** heading: amended, on 1 April 2007, by section 127(3)(a) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Schedule 2 Part 1 **Weathertight Homes Resolution Services Act 2006**: amended, on 1 April 2007, by section 127(3)(b) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Schedule 2 Part 1 **Weathertight Homes Resolution Services Act 2006**: amended, on 1 April 2007, by section 127(3)(c) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Schedule 2 Part 1 **Weathertight Homes Resolution Services Act 2006**: amended, on 1 April 2007, by section 127(3)(d) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Schedule 2 Part 1 **Weathertight Homes Resolution Services Act 2006**: amended, on 1 April 2007, by section 127(3)(e) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Part 2
Amendments to Regulations

Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)

Schedule 1: omit the item relating to the Insolvency Act 1967 and substitute:

Insolvency Act 2006

Section 62

Education (Early Childhood Centres) Regulations 1998 (SR 1998/85)

Regulation 3(4)(c): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Education (Hostels) Regulations 2005 (SR 2005/332)

Regulation 13(d): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Regulation 38(d): omit “Insolvency Act 1967” and substitute “Insolvency Act 2006”.

Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)

Regulation 21(1)(c): omit “Part 17 of the Insolvency Act 1967” and substitute “Part 6 of the Insolvency Act 2006”.

Weights and Measures Regulations 1999 (SR 1999/373)

Regulation 17(1)(b)(ii): omit “section 111 of the Insolvency Act 1967” and substitute “section 299 of the Insolvency Act 2006”.

Insolvency Amendment Act 2009

Public Act 2009 No 52
Date of assent 16 November 2009
Commencement see section 2

1 Title

This Act is the Insolvency Amendment Act 2009.

2 Commencement

- (1) Section 10 is deemed to have come into force on 10 March 2009.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 2

Transitional provisions and amendment to Privacy Act 1993

Insolvent gifts

17 Amendments relating to insolvent gifts apply only to bankruptcies commenced after Act comes into force

The principal Act applies to any bankruptcy that is commenced before the day after the date on which this Act receives the Royal assent as if sections 4 to 6 of this Act had not been enacted.

Which debts are cancelled on discharge from no asset procedure

18 Amendments relating to cancellation of fraudulent debts under no asset procedure

- (1) Any debt that is cancelled under section 377(2) of the principal Act in the period before the enactment of section 377A of the principal Act by section 10 of this Act, but that is later revived by the enactment of section 377A(2), must be treated as if the debt had not been cancelled.

- (2) In particular, the debtor is liable to repay any part of the debt, including any penalties and interest that may have accrued during the period when the debt was cancelled.
- (3) Subsection (2) does not limit subsection (1).
- (4) Any proceedings for enforcement of the debt may be commenced or continued after the enactment of section 377A as if the debt had never been cancelled.

Public registers

19 Amendments relating to 4-year period for public registers apply to all debtors admitted to no asset procedure after Act comes into force

The principal Act applies to any debtor who is admitted to the no asset procedure before the day after the date on which this Act receives the Royal assent as if sections 12, 13, 15, and 16 of this Act had not been enacted.

20 Amendments relating to retention of records if multiple insolvency events

- (1) Section 449A of the principal Act (as enacted by section 14 of this Act) applies to any person regardless of whether any of the insolvency events referred to in section 449A(1) occurred before or after the enactment of that section.
 - (2) As soon as practicable after this section comes into force, the Assignee must ensure that the public register contains all of the information required by the principal Act (as amended by this Act) about any person to whom section 449A applies.
 - (3) To avoid doubt, the requirement in subsection (2) includes a requirement to ensure that the public register contains information about bankruptcies under the Insolvency Act 1967 in respect of any person to whom section 449A applies.
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Contents

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 - 2 Status of reprints
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Insolvency Act 2006. The reprint incorporates all the amendments to the Act as at 7 July 2010, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Insolvency Amendment Act 2010 (2010 No 69)

Insolvency Amendment Act 2009 (2009 No 52)

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): sections 861, 863

Insolvency (Maximum Priority Amount) Order 2009 (SR 2009/228): clause 3

Māori Trustee Amendment Act 2009 (2009 No 12): section 30(1)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Property Law Act 2007 (2007 No 91): section 364(1)

Insolvency Act 2006 Commencement Order 2007 (SR 2007/332)

Weathertight Homes Resolution Services Act 2006 (2006 No 84): section 127(3)

District Courts Rules 1992 (SR 1992/109): rule 676
