

**BANKRUPTCY ACT
OF THE
KINGDOM OF BHUTAN, 1999**

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THE BANKRUPTCY ACT OF THE KINGDOM OF BHUTAN, 1999

PART I GENERAL PROVISIONS

Title

1. This act may be cited as the Bankruptcy Act of the Kingdom of Bhutan, 1999.

Commencement

2. This Act shall come into effect from the 14th day of the 6th month of Female Earth Year of the Bhutanese Calendar corresponding to July 27,1999.

Application

3. This Act shall extend to the whole of the kingdom of Bhutan and applies to every person organized, doing business, having property, or domiciled in Bhutan.

Definition

4. In this Act, unless the context indicates otherwise:
 - (1) “arrangement” means a plan of a debtor for the settlement or satisfaction of, or extension of time for, the payment of his debt.
 - (2) “bankruptcy” means a debtor who has committed an act of bankruptcy under this Act and is liable to be proceeded against his creditors therefore, or whose circumstances are such that he is entitled, on his voluntary petition, to the benefit of this Act.
 - (3) “claim” means right to payment, whether or not such right is reduced to a judgement, liquidate unliquidate, fixed, contingent, matured, immature, disputed, undisputed, secured or unsecured.
 - (4) “collateral” means a property that is subject to a security interest.
 - (5) “composition” means an agreement between a debtor and his creditors whereby the creditors accept a pro rata payment of less than the whole amount of their claims in discharge and satisfaction of the whole.
 - (6) “consideration” means a right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, undertaken, or suffered by another party as a part of a bargain for exchange.
 - (7) “court” means High Court, Dzongkhag courts and any other adjudicating body that may be established by the Royal Government of Bhutan.
 - (8) “creditor” means a person who has a claim against a debtor.
 - (9) “debt” means liability on a claim.
 - (10) “debtor” means person concerning which a case has been commenced under this Act.
 - (11) “incapacitated” means state of impairment by reasons of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause such that lacks sufficient understanding, power or ability to make or communicate responsible decision concerning one’s person or property.

- (12) “person” includes an individual, sole proprietorship, a partnership, a company unincorporated association, Government agency, a natural person in his or her capacity as a legal representative and any body recognized as a separate legal entity.
- (13) “prescribed” means prescribed by regulations.
- (14) “property” means any movable or immovable property, including but not limited to, cash and securities, over which or the profits of which any person has a disposing power that he may exercise for his benefit.
- (15) “purchaser” means a transferee of a voluntary transfer and includes an immediate or mediate transferee of such a transferee.
- (16) “receiver” or “trustee” means a person appointed or authorized by a court of a relevant jurisdiction to take charge of the property of the debtor for the purpose of enforcing a lien against such property or for the purpose of administering such property for the benefit of the debtor’s creditors.
- (17) “Regulation” means regulations made under the Act.
- (18) “secured creditor” means a person holding a perfected mortgage, charge or lien on the property of a debtor or any part thereof as a security for a debt due to such person from the debtor.
- (19) “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or interest in property, including by creation of any charge upon the property.
- (20) “value” means any consideration sufficient to support a contract and includes a pre-existing debt or liability.

Words and expression used in this Act and not defined herein shall have the same meaning as those attributed to them by the court.

Rules of Construction

- 5. In this Act, unless the context indicates otherwise, the singular shall include the plural, and masculine shall include the feminine.

PART II JURISDICTION AND POWERS OF THE COURT

Bankruptcy Jurisdiction

6. The High court and the Dzongkhag Courts shall have jurisdiction under this Act, provided that the Royal Government may invest any other court with jurisdiction in any class of cases hereunder.

Powers of the Court

7. Subject to the provisions of this ACT, the court shall have full power to decide all question of fact or of law arising in any case of bankruptcy coming within the cognizance of the court may deem necessary or expedient to decide for the purpose of doing complete justice or of making a complete distribution of property in any case.
8. Upon application of the court by a debtor, a creditor of a debtor, a receiver or trustee, a secured party, a person who may owe payment or performance of the obligation secured, or any person who has an interest in any property which may be subject to an pursuant to this section the court may:
 - (i) make an order, including binding declaration of rights and injunctive relief, that is necessary to do complete justice or to make a complete justice or to make a complete distribution of property in any case;
 - (ii) give direction to any party regarding the exercise of the party 's rights or the discharge of the party's obligations;
 - (iii) make any order necessary to determine questions of priority or entitlement in or property or its proceeds,
 - (iv) make any order necessary to ensure protection of the interests of any person in or to property, but only on terms that are just for all parties concerned.
9. Subject to the provisions of the Act, the court, in proceedings under this Act, shall follow the same procedures as it follows in the exercise of original civil jurisdiction.

PART III ACTS OF BANKRUPTCY

Acts of Bankruptcy

10. A debtor commits an act of bankruptcy in each of the following cases:
 - (i) If he makes a transfer of all or substantially all of his property for the benefit of his creditors generally;
 - (ii) If he makes a transfer of his property or any part thereof with intent to defeat or delay his creditors;
 - (iii) If, with intent to delay or defeat his creditors, he:
 - (a) departs from his usual place of abode or business or otherwise absent himself or
 - (b) he secludes himself to deprive his creditors of the means communicating with him;

- (iv) If he files a bankruptcy petition under this Act;
- (v) If he gives notice to any of his creditors that he has suspended, or is about to suspend, payment of his debts, unless such debts are the subject of a bona fide dispute;
- (vi) If a creditor has served on the debtor notice of a final decree or order against the debtor for the payment of money (execution of which has not been stayed) and the debtor has failed to pay the amount due within the period specified in notice (which in no event shall be less than one month after service of the notice on the debtor).

PART IV PETITION

Petition and Adjudication

11. Subject to the conditions set forth in this Act, if a debtor commits an Act of Bankruptcy, a bankruptcy petition may be filed either by a creditor or by the debtor, and the court may on such petition make an order (hereinafter an “Order of Adjudication”) adjudging him bankrupt.
12. Every bankruptcy petition shall be filed with the court in the Dzongkhag in which the debtor ordinarily resides or carries on business or is employed.

Condition on which Creditor may Petition

13. A creditor shall not be entitled to file a bankruptcy petition against a debtor unless;
 - (i) the creditor’s claim, or, if two or more creditors join in the petition, the aggregate amount of such creditor’s claims, exceed Nu. 10,000/-; and,
 - (ii) the act of bankruptcy on which the petition is grounded occurred within 1 year period expires on a day when the court is closed, the bankruptcy petition may be filed on the next day on which the court reopens.

Conditions on which Debtor may petition

14. A debtor shall be entitled to file a petition only if he is unable to pay debts, and-
 - (i) his debts exceeds Nu.10,000/-; or,
 - (ii) an order for attachment in execution of a judgment to pay money against the debtor’s property has been made.
15. A debtor who’s Order of Adjudication in a previous proceeding under this Act has been annulled due to the debtor’s failure to file or to prosecute an application for discharge, or who has failed to comply with the terms of a composition or scheme of arrangement to reorganize under this Act, may not file a bankruptcy petition without leave of the court.
16. The court shall not grant such leave unless it finds that:
 - (i) the debtor was prevented by any reasonable cause from filing or prosecuting an application for discharge; or,
 - (ii) that the debtor failed to comply with the terms of the composition or scheme of arrangement to reorganize due to circumstances for which the debtor may not justifiably to held responsible; or,

- (iii) that the petition is founded on acts substantially different from those contained in the order of Adjudication in the previous proceeding.

Contents of Petition

17. Every bankruptcy petition filed by a debtor shall contain the following:
 - (i) a statement that the debtor is unable to pay his debts;
 - (ii) the place where the debtor ordinarily resides or carries on business or is employed;
 - (iii) a list of all claims against the debtor, together with the names and addresses of his creditors, so far as they are known or can with reasonable diligence be ascertained;
 - (iv) a schedule of all debtor's property together with :
 - (a) an estimate of the values of all such property not consisting of money;
 - (b) the place where such property can be found;
 - (v) a list of property that the debtor claims as exempt under section 36;
 - (vi) statement whether the debtor has previously filed a bankruptcy petition and, if so,
 - (a) whether such petition was dismissed and the reason therefore, and
 - (b) if the debtor has previously been adjudged bankrupt, the particulars of the prior proceeding including a statement of whether any prior Order of Adjudication has been annulled and the grounds therefore.
 - (c) If the debtor is a business debtor, a statement whether the debtor will seek to reorganize his business through a composition or scheme of arrangement under Part XI of this Act.
18. Every Bankruptcy petition filed by a creditor or creditors shall set forth the particulars regarding the debtor specified in section 17 (2) so far as they are known to the creditor or can with reasonable diligence be ascertained, and shall also specify:
 - (i) the act of bankruptcy committed by the debtor and the date of its commission ; and
 - (ii) the amount and particulars of the creditors or creditors claim or claims against the debtor.
19. If the petitioning creditor is a secured creditor, the creditor shall state in the petition that he is willing to relinquish his security in the event the debtor is adjudged bankrupt or give an estimate of the value of his security, in which case he may be admitted as petitioning creditor to the extent his claims exceeds the estimated value of his security.

Withdrawal of Petition

20. No petition under this Act, whether filed by a debtor or creditor or creditors, shall be withdrawn without the leave of the court.

Consolidation of Petition

21. Where two or more petitions are filed against the same debtor. Or separate petitions are filed against joint debtor, the court may consolidate such petitions or any of them on such terms as the court deems appropriate.

Substitution of Petition

22. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any creditor to whom the debtor is indebted in the amount required under section 13.

Continuance of Proceedings on Death or Incapacity of Debtor

23. If a debtor by or against whom a petition for bankruptcy has been filed dies or becomes incapacitated, the bankruptcy proceeding shall, unless the court orders otherwise, continue to the extent necessary to realize and distribute the property of the debtor.

Procedure on Admission of Petition

24. Upon the filing of a bankruptcy petition, the court shall make an order fixing a date for hearing the petition.
25. Notice of the hearing shall be given to all creditors within 21 days of the filing by the debtor of a list of the claims against him.
26. If the debtor is not the petitioner, notice of the order under section 24 shall be served on the debtor within 21 days.

Appointment of Interim Receiver

27. The court, when making an order admitting a petition under this Act, may appoint an interim receiver of the property of the debtor, or any part thereof. If an interim receiver is not appointed at such time, the court may appoint an interim receiver appointed receiver at any subsequent time before adjudication.
28. An interim receiver appointed pursuant to section 27 shall, except as provided by order of the court, have all the powers and duties of a receiver appointed pursuant to section 101.
29. Upon application of a creditor, debtor, or any other person with an interest in the property of the debtor, and after notice to any other person that Court directs, the court may:
 - (1) remove, replace, or discharge the interim receiver;
 - (2) give directions on any matter relating to the duties of the interim receiver;
 - (3) approve the accounts and fix the remuneration of the interim receiver;

- (4) make any order, subject to the provisions of this act , with respect to the interim receiver that it deems appropriate.

Interim Attachment Order against Debtor

30. At the time it makes an order admitting a petition, or any subsequent time before Adjudication, the Court may, on its own or on the application by any creditor, order the attachment of any property, other than exempt property, in the possession or under the control of the debtor.

Debtor's duties

31. On receiving notice of an order admitting a bankruptcy petition, the debtor shall, within fifteen days, produce all books of account and, if he has not done so already, file with the Court:
 - (1) a list of all claims against the debtor, together with the names and the addresses of his creditors so far as they are known or can with reasonable diligence be ascertained;
 - (2) a schedule of all of the debtor's property, except exempt property , together with
 - (a) an estimate of the value of all such property not consisting of money;
 - (b) the place where such property can be found;
 - (c) a list of property that the debtor claims as exempt under section 36 of this Act.
32. The debtor shall submit to such examination in respect of his property or his creditors before the court or receiver as may be required by the court or receiver.
33. If a receiver is appointed, the debtor shall surrender all of his property, except exempt property, to the receiver and cooperate with the receiver as necessary to enable the receiver's duties under this Act.
34. The debtor shall execute such instruments, and generally do all such acts and things in relation to his property as may be required by the court or receiver.
35. If the debtor is a business entity, the debtor shall file with the court within fifteen days of receiving notice of an order admitting a bankruptcy petition a statement whether the debtor will seek to reorganize its business through a composition or scheme of arrangement under Part XI of this Act.

Exemption

36. The following property is exempt from application of this Act:
 - (1) any interest , not to exceed Nu.5,000/- in value in a religious article or family heirloom;
 - (2) any interest of the debtor in a single dwelling place used by the debtor and his dependents as a residence, provided that there is no lien on the property ;

- (3) the debtor's interest, not to exceed Nu.1000/- in value in any particular item or Nu.25,0000/- in aggregate value, in household furnishings, household goods, clothing, appliances, books, animals, crops, musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
 - (4) The debtor 's aggregate interest, not to exceed Nu. 10,000/- in value, in any implements, professional books, or tools of trade of the debtor or a dependent of the debtor;
 - (5) Professional prescribed health aids for the debtor or a dependent of the debtor;
37. If the debtor does not file a list of exempt property pursuant to section 17 and 31 of this Act, a dependent of the debtor may file such a list, or may claim property as exempt on behalf of the debtor.
38. Unless a party in interest objects, the property claimed as exempt by the debtor is exempt from the operation of this Act. If a party in interest objects to the debtor's claim that certain property is exempt, the court shall determine whether such property is exempt under this section.

Procedure at Hearing

39. On the date fixed for the hearing of the petition, the Court shall require proof of the following:
- (1) that the petitioner is entitled to present the petition; provided that, where the debtor is the petitioner, he shall only have to provide prima facie evidence that he is unable to pay his debts;
 - (2) that the debtor, if he is not the petitioner, has been served with notice of the order admitting the petition;
 - (3) that the debtor committed the act of bankruptcy alleged in the petition.

Dismissal of Petition

40. Where the petitioner is a creditor, the Court shall dismiss the petition if:
- (1) the creditor has failed to establish that the conditions in section 13 for filing a petition have been met;
 - (2) the debtor established that he is able to pay his debts as they become due; or,
 - (3) it finds that just cause exists that no Order of Adjudication should be made.
41. Where the petitioner is the debtor, the Court shall dismiss the petition if the debtor has failed to establish that the conditions in section 14 for filing a petition have been met.

42. Where a petition presented by a creditor is dismissed under section 40, and the Court finds that the petition was frivolous or filed in bad faith, the Court may, on application of the debtor, order the creditor to pay the debtor an amount in damages which the Court deems reasonable to compensate the debtor for expenses or injury resulting from the petition.

PART V ORDER OF ADJUDICATION

Order of adjudication

43. If the Court does not dismiss the petition, it shall make an Order of Adjudication and shall specify the period within which the debtor shall apply for a discharge or seek approval of a proposal for composition or scheme of arrangement if the debtor is seeking to reorganize his business under Part XI of this Act (which period shall in no event exceed 180 days).
44. The Court may, on sufficient cause shown, extend the period within which the debtor shall apply for a discharge or seek approval of a composition or scheme of agreement.

Effect of an Order of Adjudication

45. Except in cases in which the debtor seeks to reorganize his business under Part XI of this Act, on making of an Order of Adjudication, the debtor shall aid the Court or the receiver, if one is appointed, in realization of his property and the distribution of the proceeds among his creditors.
46. Except in cases in which the debtor seeks to reorganize his business under Part XI of this Act, on the making of an Order of Adjudication, all of the non-exempt property of the debtor shall vest in the Court or the receiver, if one is appointed, and shall become divisible among his creditors.
47. In cases in which the debtor seeks to reorganize his business, on making of an Order of Adjudication, the debtor shall retain his property subject to such conditions or limitations as the Court may prescribe, pending the approval of a composition or scheme of arrangement under Part XI of this Act; provided that the Court may order the receiver, if one is appointed, to take possession of the debtor's property or sell some or all of it.

Provided that if the debtor fails to seek approval of a proposal for a composition or scheme of arrangement within the period specified, or to seek an extension of Such a period, or if the court rejects the proposed composition or scheme of arrangement, sections 45, 46, and 51 shall apply and the Court shall set the period within which the debtor shall apply for a discharge under section 43.

48. Except as provided by this Act, no creditor shall during the pendency of a proceeding under this Act have any remedy against the property of the debtor in respect of any debt provable under this Act, or commence any suit or other legal proceedings except with the leave of the Court on such terms as the Court may require.
49. For the purpose of section 46, all unregistered goods which, on the date the petition is filed, are in the possession of the debtor by the consent of the true owner under circumstances that the debtor appears to be the owner of the goods, shall be deemed to be property of the debtor.
50. For the purpose of section 46, the property of the debtor shall include any Nonexempt property acquired by the debtor after the Order of Adjudication and before his discharge.
51. Except in cases in which the debtor seeks to reorganize his business, and in which the debtor shows that property subject to a security interest is necessary to effect the reorganization of his business, nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security upon default of the debtor as provided in his security agreement.
Provided that the secured creditor obtained his interest in the security for valuable consideration prior to the filing of the bankruptcy petition without notice of any prior act or bankruptcy committed by the debtor.
52. An order of Adjudication shall relate back to, and take effect from:
 - (i) the time of the commission of the act of bankruptcy on which the order of Adjudication is made; or
 - (ii) if the debtor has committed more than one act of Bankruptcy petition within the three months preceding the date the petition was filed.

Stay of Pending Proceeding

53. Any court which a suit or other proceeding is pending against the debtor or the property of the debtor shall, on proof that an Order of Adjudication has been made against him under this Act, either stay the proceeding or allow it to continue on such terms as such terms as such the court deems proper.
54. The court that entered the Order of Adjudication may, at any time after entering such Order, stay any civil suit or other proceeding pending against the debtor or the property of the debtor in another court.
55. An order under section 54 shall be served upon the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be filed with the court before which the suit or proceeding is pending.

56. On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under sections 53 and 54, such as by terminating, annulling, modifying or conditioning such stay for good cause including lack of adequate protection of the interest of such party in the property of the debtor.

Publication of Order of Adjudication

57. Notice of an Order of Adjudication stating the name, address, and description of the debtor, the date of the Order of Adjudication, the period within which the debtor is required to apply for a discharge or to seek approval of a composition or scheme of arrangement to reorganize his business, and the Court by which the Order of Adjudication was made, shall be published in a national newspaper and in such other manner as the court may order.

Schedule of Creditors

58. When an Order of Adjudication is entered under this act, all persons claiming themselves to be creditors of the debtor in respect of debts provable under this Act shall tender proof of their claims to the court, including evidence of the amount and particulars thereof.
59. If a creditor does not file proof of such creditor's claim, the debtor or receiver may file a proof of such claims.
60. The court shall determine the persons who have proved themselves to be creditors of the debtor and the amount of the debt owned to each person respectively, and shall issue a schedule of such persons and debt.
Provided that , if the court finds that the value of any debt cannot reasonably be estimated, the court may make an order excluding such debt from the schedule.
61. A copy of the schedule shall be posted at the court, and shall be published in a national newspaper and in such other manner as the court may order.
62. Any creditor of the debtor may, before the discharge of the debtor, or before approval of a composition or scheme of arrangement, tender proof of his claim and apply to the court for an order directing his name to be entered in the schedule of the debtor's debt. The court, after notice to the debtor, the receiver and the other creditors, and a hearing of their objections (if any) shall, except for good cause, grant such application subject to such terms as Court may impose.

Debts Provable

63. Except as provided in section 64, all debts and liabilities, present or future, certain or contingent, to which the debtor is liable on the date of the order of Adjudication, or to which he may become liable before his discharge due to an obligation incurred prior to Adjudication, shall be deemed provable under this Act.
64. Debts that have been excluded from the schedule on the ground that their value cannot be fairly estimated shall not be provable under this Act.

Annulment of Order of Adjudication

65. Where, on the application of the debtor or any other interested party, the court finds a debtor ought not to have been found bankrupt or that the debtor's debts have been paid in full, the court shall annul the Order of Adjudication.
66. The court may on its own motion or on application of the receiver or any creditor annul any Order of Adjudication made on the application of a debtor not entitled to present such petition by reason of section 15 of this Act.

Effect of Annulment

67. Where an order of Adjudication is annulled, all sales and disposition of the property, payments made, and acts done pursuant to such Order of Adjudication prior to such annulment shall be valid.
68. Except as provided in section 67, the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint or, if no such appointment is made, shall revert to the debtor to the extent of his interest preceding the Order of Adjudication on such terms and conditions, if any, as the Court may declare.
69. Notice of an order annulling an Order of Adjudication shall be published in the national newspaper and in such other manner as the court may order.

PART VI DISCHARGE

Application for Discharge

70. At any time after the order of Adjudication, but within the period specified by the court, the debtor may apply to the court for an order of discharge.
71. Upon receiving an application for an order of discharge, the court shall fix a day for hearing such application and any objections thereto, and shall require the debtor to give notice of such hearing to all schedule creditors and to such other interested parties as the court may prescribe.

Discharge

72. The court shall grant the debtor a discharge, if:
 - (i) the debtor has failed to keep such books of account as are customary and required in the business carried on by him and as sufficient to disclose the debtor's business transactions and financial position within the three years immediately preceding his bankruptcy;
 - (ii) the debtor contracted any debt provable under this Act that he had no reasonable expectation of being able to repay when contracted it.

- (iii) the debtor failed to account satisfactorily for any loss of assets or any deficiency of his assets to meet his liabilities.
 - (iv) the debtor brought on , or contributed to, his bankruptcy by rash and hazardous speculations, unjustifiable extravagance, gambling, or culpable neglect on his business affairs;
 - (v) the debtor within six months prior to the filing of the bankruptcy petition and when unable to pay his debts as they came due, gave an undue preference to any of his creditors;
 - (vi) the debtor has been adjudged bankrupt or made a composition or scheme of arrangement with his creditors on any previous occasion within three years prior to the filing of the petition for bankruptcy;
 - (vii) the debtor has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.
73. In all cases excepting those stated in section 72, the court shall grant the debtor a discharge.
74. For the purpose of sections 72 and 73, the report of the receiver, if one has been appointed, shall be taken in evidence and shall be presumed to be correct by the Court.

Effect of a failure to Apply for Discharge

75. If a debtor fails to apply for a discharge within the time specified by the court, or to appear for the hearing on his application for discharge, the court may annul the Order of Adjudication or make such order, as it deems proper.
76. If an order of Adjudication is annulled under section 75, the provisions of sections 67, 68 and 69 shall apply.

Effect of an Order of Discharge

77. An order of discharge shall release the debtor from all debts provable under this Act, except;
- (i) any debtor or liability incurred by means of any fraud, fraudulent breach of trust, embezzlement, or larceny to which the debtor was a party;
 - (ii) any debt or liability in respect of which the debtor obtained forbearance by means of any fraud to which he was a party;
 - (iii) any debt or liability incurred as a result of the debtor's willful and malicious injury of persons or property;
 - (iv) any debt or liability to a spouse, former spouse, or child of the debtor for maintenance or support of such spouse or child incurred as a result of a separation agreement ,divorce decree or other order of the Court.
 - (v) Any debt not scheduled with the same name, if known to the debtor, of the creditor to whom such debt is owned in time to allow the creditor to prove his claim, unless the creditor had notice or actual knowledge of the bankruptcy proceeding.

78. An order of discharge shall not release any person who, at the date of the filing of the bankruptcy petition, was a partner or co-trustee with the debtor, or who was jointly bound or had made any joint contract with him, or any person who was surety for him.

PART VII PROOF OF DEBT

Mode of Proof

79. A creditor shall prove his claim under this Act by filing with the court an affidavit verifying the claim or by appearing before an officer of the Court and presenting an oral statement concerning the claim, a record of which shall be prepared and filed by the Court officer.
80. The affidavit or oral statement shall set forth the particulars of the creditor's claim.
81. If the claim, or an interest in property securing the claim, is based upon writing, the original or a duplicate shall be submitted with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

Disallowance or Reduction of Scheduled Claims

82. Upon the application of the receiver (if one has been appointed) a creditor, or (in case of a composition or scheme of arrangement) the debtor, the court may expunge an entry or reduce the amount of a debt improperly entered in the schedule after notice to the creditor offering proof of such debt and such inquiry as the court deems necessary.

Mutual Dealings and Set-Off

83. Where there have been mutual dealings between the debtor and a creditor offering proof of a claim under this Act, the sum due from this one party to other shall be set-off against any sum due from the other party, and only the balance of the account shall be claims or paid on either side respectively.

Secured Creditors

84. Where a secured creditor realizes his security, he may prove for any balance due to him.
85. Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole claim.

86. Where a secured creditor neither realizes nor relinquishes his security, his claim shall not be entered in the schedule unless he states in his proof the particulars and value thereof, and he shall be entitled to receive a dividend only in respect of the balance of his claim after deducting the value of his security. The secured creditors' valuation of his security shall be accepted by the court unless another creditor, the receiver or other party in interested objects, in which case the court shall order an independent assessment of such security.
87. Where the security is so valued, the court may at any time before realization redeem it on payment of the creditor of the assessed value.
88. Where the creditor, after having valued his security, subsequently realizes it, the net amount realized shall be substituted for such valuation.
89. A secured creditor who fails to comply with sections 84.85.86,87 and 88 shall be excluded from any share in the debtor's estate.

Interest

90. On any debt that is provable under this Act, which is overdue when the debtor is adjudged bankrupt where no evidence is produced to the satisfaction of the court of the rate of interest being fixed, then no interest shall be chargeable or recoverable.
91. Where a debt proved under this Act provides for the payment of interest, the interest, for the purpose of dividend, shall be calculated at a rate not exceeding 15% per annum expressed as a simple annual rate; provided the creditor shall receive out of the debtors' estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

PART VIII EFFECT OF BANKRUPTCY ON PRIOR TRANSACTION

92. No order of execution against the property of a debtor adjudged bankrupt under this Act shall be valid against the receiver, or against the debtor if he is seeking to reorganize under PART XI of this Act, unless the execution was completed before the admission of the bankruptcy petition, or before notice to the execution creditor of any act of bankruptcy committed by the debtor.
93. Nothing in section 92 shall affect the rights of a secured creditor to benefit from an order of execution against the creditor's security, provide that, where the debtor is seeking to reorganize his business, the court may stay such execution if the security is necessary to such organization.

Provided that the Court provides the secured creditor adequate protection of his interest in the security.

94. A person who is in good faith purchases the property of a debtor under sale in execution shall in all cases acquire good title to it against the receiver or the debtor.

95. Where execution of a judgment has issued against any property of the debtor, and before the sale of such property the court executing the judgment is given notice that a bankruptcy petition has been filed by or against the debtor, such Court shall direct the property to be delivered to the receiver, to the court where the bankruptcy petition has been filed, or to the debtor if he is seeking to reorganize his business, but the costs of the execution proceeding shall be a first charge on the property so delivered, and the receiver, the court where the bankruptcy has been filed, or debtor may sell the property, or part thereof to satisfy such charge.

Avoidance of Voluntary Transfer

96. Any transfer of property, except a transfer in good faith and for valuable consideration, shall, if the transferor is adjudged bankrupt on a petition filed within six months of the transfer, be avoidable as against the receiver and may be annulled by the court.

Avoidance of Certain Preferences

97. Every transfer of property, payment made, and obligation incurred by any person who is unable to pay his debts as they come due shall be deemed fraudulent and void against the receiver, and may be annulled by the court, provided:
- (i) such person is adjudged bankrupt on a petition presented within six months of the transfer, payment or obligation incurred; and
 - (ii) the transfer or payment was made, or the obligation was incurred in favor of any creditor in order to prefer the creditor over other creditors.
98. Section 97 shall not affect the rights of any person who in good faith and for valuable consideration has acquired title through or under a creditor of a bankrupt debtor.

Persons by whom Petitions for Annulment may be made

99. A petition for annulment of any transfer under section 96, or of any transfer, payment or obligation under section 97 of this act, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and established that the receiver has been requested and refused to make such a petition.

Protection of bona fide Transaction

100. Subject to the provisions of this Part, nothing in this Act shall invalidate:
- (i) any payment by the debtor to any of his creditors;
 - (ii) any payment or delivery to the debtor;
 - (iii) any transfer by the debtor for valuable consideration; or
 - (iv) any contract or dealing by or with the debtor for valuable consideration;

Provided that such payment, delivery, transfer, contract or dealing takes place before the date of the Order of Adjudication and the payee, deliverer, transferee, or person with whom such contractor dealing takes place does not have notice of the presentation of any bankruptcy petition by or against the debtor or of any act of bankruptcy committed by the debtor.

PART IX REALIZATION OF PROPERTY

Appointment of Receiver

101. The Court may, when it issues the Order of Adjudication or anytime thereafter, appoint a receiver for the property of the debtor.
102. The court may:
 - (i) require the receiver to provide such security as it thinks fit; and
 - (ii) fix the amount paid as remuneration for the services of the receiver out of the assets of the debtor.
103. Where the Court appoints a receiver, it may order the transfer or delivery of the debtor's property from the possession of any person to the receiver.
104. Where a receiver appointed under section 101:
 - (i) fails to submit accounts at such time and in such form as the Court directs; or
 - (ii) fails to pay the balance due from him thereon as the court direct, or
 - (iii) causes loss to the property of the debtor by wilful default or gross negligence,

the court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss occasioned by him.

105. The provisions of sections 101,102,103 and 104 shall apply to interim receivers appointed under section 27.
106. The court may appoint the debtor himself to superintend the management of the property, or any part thereof, of the debtor, or to carry on the trade (if any) of the debtor for the benefit of the creditors, and to assist in the administration of his property in such manner and on such terms as the Court may direct.

Powers of the Court where no Receiver is appointed

107. Where no receiver is appointed, the Court shall have all the rights and powers conferred on a receiver under this Act.

Duties and Power of Receiver

108. Subject to the provisions of this Act, the receiver shall, with all deliberate speed, realize the property of the debtor and distribute dividends among the creditors entitled to share in such dividends under this Act, and for that purpose may:
 - (i) sell all or any part of the property of the debtor;
 - (ii) give receipt for any money received by him;

and may, by leave of the Court, do any or all of the following:

- (iii) carry on business of the debtor in so far as may be necessary to effect the beneficial and orderly winding up of the debtor's business;
- (iv) institute, defend or continue any suit or other legal proceeding relating to the property of the debtor;
- (v) employ an agent to do any business or take any proceedings which may be sanctioned by the Court;
- (vi) accept as consideration for the sale of any property of the debtor a sum of money payable at a future time subject to such stipulations as the court may require;
- (vii) mortgage or pledge any part of the property of the debtor for the purpose of raising money for the payment of the debtor's debts;
- (viii) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; and
- (ix) divide among the creditors any non-exempt property, according to its estimated value, which cannot be readily sold.

Power to require Information regarding the Debtor's Property

- 109. The Court may, on application of the receiver or any creditor who has proved his debt, at any time after an Order of Adjudication has been made, summon before it any person known or believed to have in his possession any property belonging to the debtor, or to be indebted to the debtor, or to have information concerning the debtor or his dealings or property.
- 110. The court may require any person summoned before it under section 109 to produce any documents in his possession or power relating to the debtor or his property.
- 111. Any person summoned under section 109 who refuses to attend before the Court at the appointed time, or who refuses to produce any document, without good cause shown, shall be held in contempt, and the Court may order him to be apprehended and brought before the court for the examination concerning the debtor or his property.

PART X DISTRIBUTION OF PROPERTY

Priority of Debts

- 112. In the distribution of the property of the debtor, the debts listed in this section be paid in priority to all other debts in the following order:
 - (i) first, in payment of administration expenses and fees assessed against the estate;
 - (ii) second, in payment of all salary, wages, commissions, severance and sick leave pay, not exceeding Nu.25000/- earned by any individual in respect of services rendered to the debtor during the 90 days prior to the filing of bankruptcy petition by or against the debtor; after the receipt of such amounts such individuals shall rank as ordinary, unsecured creditors for any residue owed by the debtor;

- (iii) third, in payment of all debts due to the Royal Government of Bhutan on to any local authority, except for debts due to the Royal Government or to any local authority when they are acting in a commercial capacity;
 - (iv) fourth, in payment of claims for debts to a spouse, former spouse, or child of the debtor ,for alimony to , maintenance for or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court.
113. If the debtor has insufficient assets to pay all of the priority debts listed in section 112, each claim of each of the four classes of priority debts shall be paid in full before any claim in the next class receives any distribution. Each claimant within a particular class shall share pro rata if the debtor's assets are insufficient to satisfy all claims in the class.
114. Subject to the provisions of this Act, all other claims entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without preference.
115. Where there is any surplus after the payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged bankrupt at the statutory rate of interest on all debts entered in the schedule.

Calculation of Dividends

116. In the calculation of dividends, the receiver or the Court, as the case may be, shall retain sufficient assets to pay :
- (1) debts provable under this Act due to persons who, for good cause shown, have not had sufficient time to tender their proofs;
 - (2) debts provable under this Act that are the subject of claims not yet determined;
 - (3) disputed proofs or claims; and
 - (4) expenses necessary for the administration of the estate or otherwise.
117. Subject to the provisions of section 116, all money shall be distributed as dividends within one year following the Order of Adjudication, unless the receiver satisfies the Court that there is good cause to postpone distribution to a later date.

Right of Creditor who has not Proved before declaration of Dividend

118. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid any such dividend or dividends out of any money or property held by the receiver before such money or property is applied to any future dividend or dividends.

Provided any such creditor may not disturb any distribution declared before his debt was proved on the ground that he has not participated therein.

Final Dividend

119. When the receiver has realized all the property of the debtor, or so much of it as the Court determines can be realized without unduly protracting the receivership, he shall declare a final dividend.
120. Before declaring a final dividend, the receiver shall give notice in the manner prescribed to persons whose claims to be creditors have been notified but not proved that, if they do not prove their claim within the time set by the notice, he will proceed to make a final dividend without regard to their claims.
121. After expiration of the time so limited or such extensions as the Court has granted, the receiver shall divide the property of the debtor among the creditors listed on the schedule without regard to the claims of any other person.

No suit for Dividend

122. No suit for dividend shall lie against the receiver:

Provided that where the receiver refuses to pay any dividend, the Court may, on application of any creditor whose claim is entered on the schedule, order the receiver to pay it, and where such dividends is withheld without justification, to pay interest thereon for the time that such dividend is withheld and the costs of the application out of his own money.

Allowance to the Debtor

123. The Court may make such allowances as it deems just to the debtor out of his property for the support of himself and his family, or in consideration of his services of he is engaged in winding up his estate.

Right of Debtor to Surplus

124. The debtor shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act, and of the expenses of the proceedings taken there under.

Committee of Inspection

125. The Court may authorize the creditors who have proved their debts to appoint a committee of inspection to superintend the administration of the debtor's property by the receiver.
126. The persons appointed to the committee shall be creditors who have proved their debts or their representatives.
127. The committee shall have such powers of control over the proceedings of the receiver as the Court may authorize.

Estate Administered in two countries

128. A creditor who receives in any bankruptcy proceeding in a foreign country any part of the property of the debtor located in such country may not prove a claim under this Act, unless he accounts for the property or funds received by him in such foreign proceedings in his claim.

Appeals against the Receiver

129. A debtor, creditor, or any other interested person may appeal any act or decision of the receiver, within 30 days of such act or decision, to the Court, which shall affirm or modify such act or decision.

PART XI COMPOSITION AND SCHEME OF ARRANGEMENT

Composition and schemes of Arrangement

130. Where a debtor adjudged bankruptcy under sections 43 and 44 submits a proposal for a composition to discharge his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for a meeting of the creditors to consider the proposal:
- (1) The debtor shall provide notice of the meeting to consider his proposal to each creditor who has been included on the schedule provided for in section 60 or who has submitted proof of his claim on such terms as the Court may prescribe, and to each of his secured creditors.
 - (2) Notice pursuant to subsection 130 (i) shall include a copy of the debtor's proposal, which must include information of a kind, and in sufficient detail, as will enable creditors to make an informed judgment about the proposal.
 - (3) If a creditor requests additional information about the debtor's proposal, the Court may order the debtor to provide such information as the Court deems reasonably necessary.
131. If, on consideration of the proposal, a majority of the creditors, who are included on the schedule and who have submitted proof of their claims, or other proxies holding two-thirds in value of all the claims of creditors whose debts are proved vote to accept the proposal at the creditors' meeting, the proposal shall be deemed to have been accepted by the creditors.
132. The receiver, if one has been appointed, shall prepare a report on the terms of the proposal and on the conduct of the debtor for the Court.
133. Where the Court finds, after hearing the report of the receiver and considering any objections made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

134. The Court shall refuse to approve the proposal unless each dissenting creditor will receive or retain under the proposal payment or property of a value. As of the effective date of the proposal, that is not less than such creditor would have received if the debtor's estate was liquidated and the proceeds thereof distributed according to the terms of this Act.
135. Except when the debtor is attempting to reorganize his business, the Court shall refuse to approve any composition or scheme of arrangement unless it provides for the payment in priority to other debts of all debts directed to be so paid under this Act.
136. The Court shall refuse to approve the proposal:
 - (1) if the proposal discriminates unfairly between creditors: or
 - (2) is unfair and inequitable with respect to any creditor that has not accepted the proposal; provided that, a proposal is fair and equitable with respect to a creditor if the creditor will receive an amount equal to his claim under the plan, or if the holder of any claim junior to such creditor's claim will not receive any payment in such claim.
137. The Court shall refuse to approve the proposal if it does not afford secured creditors adequate protection of their security.
138. In all other cases, the Court shall approve the proposal.

Order on Approval of Proposed Composition or Arrangement

139. If the Court approves the proposal, the terms of the proposal shall be embodied in an order of the Court and the Order of Adjudication shall be annulled. Sections 67,68 and 69 shall apply to an Order of Adjudication annulled under this section.
140. A proposal approved by the Court shall be binding on all creditors in so far as it relates to any debt provable under this Act, which is due to them by the debtor, and on all secured creditors, provided the proposal affords them adequate protection of their security.
141. The jurisdiction of the Court does not terminate on the approval of a proposal for a composition or scheme of arrangement. Though the Order of Adjudication is annulled, the Court retains jurisdiction to give the composition or scheme of arrangement effect.

Order on Rejection of Proposed Composition or Arrangement

142. If the Court rejects a proposal for a composition or scheme of arrangement, the Court shall by order specify the period within which the debtor shall apply for a discharge and proceed with the realization and distribution of the debtor's property under this Act.

Power to Re-adjudge the Debtor Bankrupt

143. If the debtor fails to make any instalment or payment due under the composition or scheme of arrangement, or if the Court finds that the composition or scheme of arrangement cannot proceed without injustice, or that the approval of the composition or scheme of arrangement was obtained by fraud, the Court may, on its own motion or on the motion of a creditor, re-adjudge the debtor bankrupt and annul the composition or scheme of arrangement.
144. The annulment of a composition or scheme of arrangement under section 143 shall not affect the validity of any transfer or payment or other act done in accordance with such composition or scheme of arrangement.
145. When a debtor is re-adjudged bankrupt under section 143, all debts contracted before the date of such re-adjudication shall be provable in the bankruptcy.

PART XII BANKRUPTCY CRIMES

Offences by Debtor

146. Any debtor who, before or after an Order of Adjudication:
 - (1) wilfully fails to perform the duties imposed on him under this Act, or who fails to deliver up possession of any property or part thereof, which is divisible among his creditors under this Act, to the Court or any such person authorized by the Court to take possession thereof; or
 - (2) fraudulently with intent to conceal the state of his affairs or to defeat the purpose of this Act:
 - (i) has destroyed or otherwise wilfully prevented or purposely withheld any document relating to his affairs, or
 - (ii) has kept or caused to be kept false books, or
 - (iii) has made any false entries in or withheld entries from or wilfully altered or falsified any document relating to his affairs, or
 - (3) fraudulently with intent to diminish the sum to be divided among his creditors or to give undue preference to any of his creditors:
 - (i) has discharged or concealed any debt due to or from him, or
 - (ii) has made away with, charged, mortgaged or concealed any part of his property

shall be fined an appropriate amount, not to exceed the value of the property concealed, or imprisoned for an appropriate term, not to exceed one year or both.

Criminal Liabilities After Discharge or Composition

147. A bankrupt debtor found guilty of any offence under section 146 of this Act shall not be exempt from any proceeding against him or his property by reason of his having obtained a discharge or approval or acceptance of a composition or scheme of arrangement.

Undischarged Bankrupt Debtor Obtaining Credit

148. An undischarged, bankrupt debtor who obtains credit exceeding Nu. 100/- without informing the creditor that he is an undischarged bankrupt shall be fined not more than Nu. 1000/- or imprisoned not longer than six months or both.

PART XIII SUMMARY ADMINISTRATION

Summary Administration

149. Where a petition is presented by or against a debtor, and the Court is satisfied by affidavit or otherwise that the non-exempt property of the debtor is unlikely to exceed Nu. 50,000/-, the Court may make an order that the debtor's estate be administered in a summary manner.
150. Where the Court orders the debtor's estate to be administered in a summary manner, the provisions of this Act shall be modified as follows:
- (1) unless the Court otherwise directs, no notice required by this Act shall be published in a national newspaper;
 - (2) on admission of a petition, the non-exempt property of the debtor shall vest in the Court as a receiver;
 - (3) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order, and it shall not be necessary to frame a schedule;
 - (4) the non-exempt property of the debtor shall be realized and distributed in a single dividend;
 - (5) the debtor shall apply for a discharge within six months from the Adjudication; and
 - (6) such other modifications as the Court shall prescribe to save expenses and simplify the procedure;

Provided that the Court may order the ordinary procedures or any of them to be followed in regard to the debtor's estate.

PART XIV MISCELLANEOUS

Costs

151. The costs of any proceedings under this Act shall, subject to any rules made under this Act, be in the discretion of the Court.

Power to make Rules

152. The High Court may make rules to effect the provisions of this Act.

153. In particular, and without prejudice to the generality of the foregoing, the High Court may make rules governing:

- (1) the form and manner of any notice required under this Act;
- (2) the appointment and remuneration of receivers, the audit of accounts of receivers and the costs of such audits;
- (3) meetings of creditors;
- (4) the procedure to be followed in the case of estates to be administered in a summary manner; and
- (5) any matter which is to be or may be prescribed.