SPECIAL REPORT OF THE JOINT SELECT COMMITTEE TO CONSIDER AND REPORT ON THE BILL SHORTLY ENTITLED: "THE BANKRUPTCY AND INSOLVENCY ACT, 2013"

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1. ESTABLISHMENT, COMPOSITION AND TERMS OF REFERENCE OF THE COMMITTEE

Members of the Honourable House are reminded that on the 21ST day of January 2014 the House of Representatives on a motion moved by the Minister of Science, Technology, Energy and Mining and Leader of the House passed the following resolution:

BE IT RESOLVED that, notwithstanding Standing Order 76(1), this Honourable House of Representatives appoint a Select Committee comprising the following Members:
Hon. George Anthony Hylton, Chairman
Hon. Peter Bunting
Mr. Richard Parchment
Mr Mikael Phillips
Mr. Andre Hylton
Mr. Paul Buchanan
Mr. Audley Shaw
Mr. Karl Samuda
Mr. Delroy Chuck

Members of the Honourable House are also reminded that on the 17th day of January, 2014, on a motion moved by the Minister of Foreign Affairs and Foreign Trade and Leader of Government Business, the Senate passed the following resolution:

BE IT RESOLVED that this Honourable Senate appoint a Select Committee comprising the following Members:
Senator the Honourable Mark Golding
Senator Norman Grant
Senator Imani Duncan-Price
Senator Sophia Frazer-Binns
Senator Alexander Williams
Senator Nigel Clarke

2.0 EXECUTIVE SUMMARY

The Bill shortly entitled "The Bankruptcy and Insolvency Act, 2013" seeks to repeal the existing Bankruptcy Act and to create new provisions to govern the regulation of bankruptcy and insolvency in Jamaica. The provisions of the Bill, for the most part, are taken from the Barbados Bankruptcy and Insolvency Act, with a few of the provisions being taken directly from the Canadian Insolvency legislation from which the Barbados Act was modelled. Of significance is the fact that the Bill, among other things, seeks to encapsulate all provisions relating to the administration of insolvency for both individuals and corporate entities into a single piece of legislation. Another significant feature of the Bill is its focus on rehabilitation of the debtor, where possible, for the benefit of the debtor as well as the affected stakeholders including the creditors.

The Bill outlines the circumstances under which an act of bankruptcy is committed, the procedures for filing a bankruptcy petition and the procedures to be followed in respect of the administration of the estates of bankrupts. Provision is also made for the filing of a notice of intention and of a proposal, the treatment of realizable assets, the circumstances under which there could be a stay of proceedings and how this stay would operate, the filing of proof of claims as well as payment to creditors. The Bill also introduces new players into the entire process, such as the Supervisor of Insolvency who will play the role of regulator, and private trustees/insolvency practitioners who will be required to be licensed and will be regulated by the Supervisor of Insolvency.

Some of the entities which made submissions to your Committee lauded the effort being made in certain provisions of the Bill to remove the stigma associated with bankruptcy and insolvency, and expressed the hope that with a change in the mindset of the persons who will find it necessary to use the legislation, this goal will be achieved.

It is also expected that the passage of the Bill will facilitate an environment that will encourage investment and foster the growth of businesses and ultimately the Jamaican economy.

Your committee commenced its examination of the Bill on February 6, 2014 and held twenty one (21) meetings before concluding its deliberations. During the period, written and oral testimonies were received from:

- The Bank of Jamaica (BOJ)
- The Jamaican Bar Association (JBA)
- The Financial Services Commission (FSC)
- The Private Sector Organization of Jamaica Insolvency Review Committee (PSOJ)
- The Office of the Trustee in Bankruptcy (OTB)
- The Jamaica Chamber of Commerce (JCC)
- The Institute of Chartered Accountants of Jamaica (ICAJ)

Other entities which had been asked to submit their comments on the Bill indicated that they had already had the opportunity to elucidate their concerns when the Bill was being drafted.

After your Committee concluded its clause by clause analysis of the Bill, the services of a Consultant who has experience in the Canadian bankruptcy law was engaged to provide a better understanding of some of the issues with which your Committee continued to experience difficulties.

3.0 FINDINGS & RECOMMENDATIONS

A. General Observations

Those stakeholders who reviewed the Bill felt that it would have a generally positive impact and agreed with, for the most part, the philosophies underpinning the reform. They suggest however, that in order to ensure appropriate knowledge and use of the legislation, public education would have to be a vital part of the process. Of concern is the fact that as currently drafted, the language of many of the clauses of the bill does not make it user friendly for both insolvency practitioners and the general public, and the overall view was that where possible, this should be made as simplified as possible. This concern was foremost in the minds of Committee Members as they examined the various clauses of the Bill. In addition to amendments made to the language of several provisions of the Bill, several of the clauses have been relocated in order make it easy to follow.

B. The Overall Scheme of the Act

Your Committee spent a considerable length of time trying to determine the appropriate scheme for the Act that is compatible with the realities of the Jamaican situation. This process, which involved among other things, working through a number of the individual schemes in the Bill such as those related to proposals, assignments and distribution, made it easier for your Committee to determine the amendments that should be made to the various provisions of the Bill in order to facilitate the schemes proposed. The following represents the amendments that have been recommended by your Committee to make the legislation user-friendly, implementable and workable:

C. SPECIFIC RECOMMENDATIONS

The Intent of the legislation

Your Committee agrees with a proposal made for the objectives of the Bill to be clearly stated at the outset, to enable users to understand what the legislation is trying to accomplish. To this end, it is agreed that the following should be inserted at the beginning of the Act:

"*The Act seeks to create an environment which aids in the rehabilitation of debtors and the preservation of viable companies, having due regard to the protection of the rights of creditors and other stakeholders and a fair allocation of the costs of insolvencies with the overriding interest of strengthening and protecting the country's economic and financial system and the availability and flow of credit within the economy.*" The point was made that it was important to ensure that the legislation does not inhibit the flow of credit in our economy and it would not be desirable to have a construct in which persons were less inclined to lend money particularly to riskier borrowers as this would be counterproductive.

Your committee further recommends that in order to promote ease of use of the legislation, similar introductory clauses should be inserted at the beginning of each Part of the Bill to give an overview of the scope of those Parts.

Part 1. Preliminary

Clause 1 - Short title and commencement

In keeping with the guiding philosophy of the legislation to reduce the stigma associated with bankruptcy, your Committee accepts the recommendation made for the name of the Act to be changed to "*the Insolvency Act*".

Clause 2 - Interpretation

This clause provides the interpretation that should be given to certain key terms which are used throughout the Act. Your Committee examined the following terms which were highlighted by various stakeholders for review and modification and wishes to make the following recommendations:

"*affidavit*" - *Your Committee agrees that the words "or a solemn affirmation" should be deleted from in line 1 of this definition.*

"*bailiff*" - *The recommendation by the ICAJ for the word "bailiff" to be replaced by "executing officer" is not accepted by your Committee because it was felt that the current definition of the term does not exclude a professional bailiff.*

"*bankrupt*" - *Your Committee accepts the proposal to replace the words "under section 4" with the words "under Part III".*

"*claim provable in bankruptcy*" - *Your Committee examined the proposal made by the ICAJ for the words "shall be construed accordingly" to be deleted from this definition as their meaning was not readily understood. This proposal is not accepted as your Committee feels that the words in question are a necessary inclusion in the definition.*

"*committee*" - *Your Committee feels that a definition of "committee" is not needed in the Bill since a proposal made by the ICAJ for a Joint Insolvency Committee (JIC) to be established under the legislation at clause 220 has not been accepted.*

"*company*" - *Member Golding suggested and it was agreed that there might be need to include a definition of company in the Act because there were certain documents that were required to be filed with the Registrar of Companies which applied to companies incorporated under the Companies Act but not to other bodies corporate, such as statutory bodies, which have no relationship with the Registrar of Companies.*

"*corporation*" - *your Committee agrees that the current definition of "corporation" in the Bill should be replaced by the following which has been proposed by the PSOJ: "means, subject to section 28, any incorporated entity, authorized to carry on business in Jamaica or that has an office or property in Jamaica Provided however, where the debtor is an Excluded Corporation, i) Part V (Proposals) shall not apply to such Excluded Corporation save under the authority of the Regulator or otherwise with the express written consent of the Regulator"*

(ii) Nothing contained in this Act shall in any way preclude the powers of the Regulator and Minister under the Relevant Acts and any restrictions under those Acts shall continue to apply;"

"Excluded Corporation" means

(a) a company licensed under the Financial Institutions Act;

(b) a bank;

(c) a building society licensed under the Building Societies Act; or

(d) a company that –

(i) Engages in insurance business within the meaning of the Insurance Act; or

(ii) Performs services as an insurance intermediary within the meaning of the Insurance Act"

"Relevant Acts" means "the Financial Institutions Act, the Banking Act, the Building Society Act and such other legislation as the Minister may by order prescribed.

Based on an amendment to clause 100 of the Bill, your Committee further agrees that the term "Excluded Corporation" in the above definition should be changed to "Financial Institution".

"Regulator" means "the BOJ, FSC or such other person as the Minister may by order prescribe."

"council" - Your Committee does not agree that a definition of this term is needed since the proposal to include a provision for the establishment of a Joint Insolvency Committee has not been accepted.

"court" - The ICAJ's submission that the definition of "court" should be amended to remove the powers from the Minister. Your Committee does not agree with this proposal.

"date of the bankruptcy" - Consequent on an amendment made to clause 119 of the Bill, your Committee agrees that a definition of "date of the bankruptcy" should be inserted to speak to the making of a receiving order against the person, the issuing of a certificate of assignment or a deemed assignment occurring.

"date of the initial bankruptcy" - The following proposal by the PSOJ for the definition in the Bill to be reworded, in order to place certainty around the point at which the assignment is deemed to occur, has been accepted by your Committee:

"means in relation to a bankrupt the earliest of the date of:

(a) Issue of a Certificate of Assignment by or in respect of a person;

(b) Filing of a proposal by or in respect of a person;

(c) *Filing of the first petition for a receiving order against a person;"*

Based on an amendment made to clause 119 of the Bill, your Committee agrees that as a consequential amendment, paragraph (a) of this definition should be further modified to speak to "an application for an assignment".

"debtor" - your Committee accepts the OTB's proposal that the definition of "debtor" should be prescriptive and consequently, the word "includes" should be changed to "means" in the first line.

It was suggested and your Committee agrees that the term "where the context otherwise requires" should be deleted from paragraph (c) of this definition.

Your Committee also agrees to the PSOJ's proposal for the inclusion of a paragraph (d) to read: "for the purposes of Part V, a looming insolvent".

"deposit-taking institutions" - your Committee agrees that a definition for this term should be inserted in the Bill to read:

"means:

(a) a company licensed under the Financial Institutions Act;

(b) a bank;
(c) *a building society licensed under the Building Societies Act*".

"*goods*" - your *Committee agrees that the first definition of "goods" should be deleted.*

"*insolvent person*" - *your Committee accepts the proposal to delete the word "is" after the word "who" in line 1 of paragraph (a)(i).*

"*institute*" - *your Committee agrees that a definition of this term is not needed in the Bill.*

"*looming insolvent*" - The Consultant noted that the standard terminology used to describe a "looming insolvent" in other jurisdictions was "a person facing imminent insolvency" and therefore recommended that t*he definition of "looming insolvent" be replaced by a definition for "person facing imminent insolvency", which would read:*

> *"person facing imminent insolvency" means a person who resides, carries on business or has property in Jamaica, whose liabilities to creditors provable as claims under this Act, amount to not less than two hundred and fifty thousand dollars or such other amount as the Minister may prescribe as the threshold and who reasonably anticipates that he will, for any reason, be within the a period of twelve months unable to meet his obligations as they generally become due;"*

"*Minister*" - *A submission was made to your Committee for a definition of "Minister" to be provided in the Act. It was clarified however that unless specified in the Act, references to Ministers in the statutes are normally in keeping with the meaning as specified in the Interpretation Act. This proposal is therefore not accepted by your Committee.*

"*prescribed threshold*" - Your Committee was told that in order to petition for a receiving order, the debt owing to the petitioning creditor needs to be above the amount set as the prescribed threshold. This threshold would be applicable to both individuals and companies. After considering several proposals from Members and stakeholders as to what would be a reasonable amount to be used as this limit, *your Committee agrees that the "prescribed threshold" should be set at three hundred thousand dollars and that the Minister would have the power to vary this amount from time to time.*

"*proposal*" - *Consequent on an amendment made to clause 43 of the Bill, and based on a recommendation made by the Consultant that the current definition was too prescriptive and therefore* limited a proposal to: (a) a composition; (b) an extension of time; or (c) a scheme of arrangement, *your Committee agrees that the definition of "proposal" should be modified to read:*

"Proposal" includes a proposal for a composition, an extension of time or a scheme of arrangement, and includes a proposal which has been modified pursuant to section 43".

"*public utility*" - *your Committee considered the proposal made for the definition of "public utility" to be modified to include fuel, garbage collection and postal services. After careful consideration, your Committee agrees that this proposal should not be accepted given : (i) that the definition in the Bill is consistent with the provisions in the Public Utilities Act, (ii) that public utility is excluded from the stay in clause 77(6) and (iii) that the exclusion of the services mentioned would not adversely affect the respective service providers.*

"*receiver*" - *The PSOJ made a submission that in the definition of "receiver", the reference to "…of all or substantially all of the inventory, the accounts receivable or the other property of a debtor that was acquired for, or is used in relation to, a business carried on by the debtor" in line 5 should be deleted and replaced with "any assets of*

the debtor". This proposal was made because the PSOJ was of the view that the current definition in the Bill seems to be limited to a receiver who is dealing with all of the assets of the debtor and would not capture for example a receiver appointed only in respect of land or any other specific class of assets. It was felt that a receiver appointed even in those circumstances ought to be a licensed trustee who would be subject to the provisions for a trustee and subject to the jurisdiction of the Supervisor. Your Committee agrees with the proposed modification of the definition.

Your Committee also agrees with the suggestion that after the word "debtor", the following words should also be inserted "whether or not comprising all of the assets of a business carried on by the debtor".

A decision taken by your Committee that rather than defining "receiver" to mean a trustee, given that there were several provisions of the Bill that related to a trustee but were not applicable to a receiver, a substantive provision should be included in the Bill requiring a person appointed as a receiver to be licensed as a trustee. *Your Committee eventually accepts the proposal made by the Consultant who suggested that the definition of receiver should be amended by replacing the words "a trustee" with the words "a person" and by replacing the words "a debtor" with the words "insolvent person or bankrupt".*

"receiver-manager" - The recommendation made by the ICAJ for a definition of "receiver-manager" to be included in the Bill has not been accepted by your Committee as it is felt that this is not necessary given that the meaning of the term is widely understood and that it is not usually defined in the Act.

"*secured creditor*" *- Much discussion was generated around this definition. One of the issues raised was whether a definition of secured creditor was at all needed in the Act since the term is generally understood. There was also the question of whether this definition captures certain categories of persons such as an equipment lessor or a repo lender. Your Committee examined and subsequently accepted a suggested definition of this term presented by the PSOJ, as it was argued that this suggested rewording encompasses various forms of security that are not included in the current definition. Consequently, it is agreed that the definition of "secured creditor" should be amended to state:*
"(a) *holding a security interest as defined under the Security Interests in Personal Property Act*; or
(b) *holding any other form of mortgage, pledge, charge or lien on or against the property of the debtor or any part thereof, as security for a debt due or accruing due to him from the debtor; or*
(c) whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable;"

"*supervisor*" *- The FSC's proposal for the definition of "supervisor" to be modified to incorporate the functions listed in clause 221(1) of the bill is not accepted by your Committee. Your Committee feels that not only will this be impractical, but that unnecessary confusion can be created should any of those functions be inadvertently omitted.*

"trustee" - Your Committee agrees that this definition should be expanded to provide: "and shall include the Government trustee".

"unsecured creditor" - The Consultant observed that there was no definition of "unsecured creditor" in the Act although the term was used in at least Part V in connection with proposals. He recommended that the term "unsecured creditor" be defined to mean any creditor that is not a secured creditor. Your Committee accepts this proposal.

Sub-clause (4)(d)(i)
Your Committee accepts the recommendation by the PSOJ for this provision to be modified to include "grandfather" and "grandmother" among the list of those who should be considered as a related person.

Part II. Acts of Bankruptcy

Clause 3 - Acts of Bankruptcy

The Consultant was of the view that language of clause 3 was outdated and therefore suggested that your Committee considers modernizing and simplifying clause 3 using the Insolvency Act 2006 (New Zealand) as a model.

Sub-clause (1)(a)
The Consultant informed your Committee that in actual practice, the intention of this provision was not that it would be an act of bankruptcy for someone to become bankrupt or file an assignment in a domestic country alone. Rather, it was an act of bankruptcy for them to file an assignment *anywhere*. He therefore *suggested that sub-clause (1)(a) should be amended to read: "in Jamaica or elsewhere, makes an assignment of his property to a trustee for the benefit of his creditors generally". Your Committee accepts this recommendation.*

Sub-clause (1)(b)
The following proposed amendments have been accepted by your Committee:

(a) that the word "make" should be deleted in line 1 and replaced with the word "*makes*"; and
(b) that the words "or is subject to" in line 2 should be deleted.

The Consultant however informed your Committee that the essence of this act of bankruptcy was that the debtor has engaged in what would be an improper preferential transaction covered by clause 117. He said the language, both as it reads in the Bill and as it is proposed to be amended, did not track the language in clause 117(1), which describes the transactions that may be caught by the section. He recommended that the language in sub-clause (1)(b) should track the language used in clause117(1) of the Bill. *Your Committee agrees that perhaps the scope of this provision was not sufficiently broad and therefore recommends that sub-clause (1)(b) should be amended by using broad language that seeks to capture any other transaction referred to in section 117.*

Sub-clause (1)(e)
Your Committee accepts the proposal made that the judgement should remain unsatisfied for a period of at least 30 days, and recommends an amendment to reflect this change.

Sub-clause (1)(g)
Your Committee agrees that the words *"any of his property"* should form the closing words of this paragraph.

Your Committee considered the proposal made by the JCC for the word "primary" to be inserted before the word "intent" in line 1. Your Committee feels however that if a

person has an intent to defraud, it should not matter whether or not it is their primary intent. Therefore, this proposed amendment is not accepted.

Sub-clause (3)
Your Committee accepts the recommendation made by the ICAJ that the provision at clause 3(3) should become a separate item with its own heading (Assignment of Property) to ensure that readers of the Act would be clear on the matter of unauthorised assignments.

Your Committee further agrees that this should be inserted at the end of clause 30.

Part III. Receiving Orders, Interim Receivers, Receivers and Creditors

Clause 4 - Filing petition of a receiving order, etc.
Sub-clause (1)
Your Committee was told that arising from the decision taken at a meeting of the Rules Committee a recommendation was *being made that the reference to "petition" in clause 4(1) should be changed to "application"*. By extension, the references to "petitioner" would be changed to "applicant". The Rules Committee was of the view that this should be a new part to the present Rules and therefore, consistency in the language is needed. *Your Committee accepts these recommendations.*

Sub-clause (2)(a)
The Consultant observed that the prescribed threshold was relevant for Part III and was intended to set a debt threshold for a petition. He noted that the definition of "prescribed threshold" referenced that one or more creditors having an aggregate amount equal to the prescribed threshold. He clarified that clause 4(1) contemplates that one or more creditors may petition, but clause 4(2)(a) requires that a petitioning creditor must show that s/he alone is owed no less than the prescribed threshold. *He subsequently made the recommendation that paragraph 4(2)(a) should be amended to make specific reference to the dollar amount of the prescribed threshold and to indicate that the debt could be owing to one or more creditors. Your Committee accepts this recommendation and agrees that the provision should be amended to read: "(a) the debt owing to the petitioning creditor or creditors, which shall amount to not less than three hundred thousand dollars."*

Sub-clause (2)(b)
Your Committee examined the proposal made by the JCC that rather than having the time period run from the act of bankruptcy, it should be from the date on which any creditor becomes aware of the act because the act might have taken place in secrecy. The PSOJ was however of the view that there is need for acts of bankruptcy to have a finite date and period for calculation purposes given the fact that insolvency proceedings would not only affect the particular debtor or creditor but a wider cross-section of persons. Your Committee agrees that whilst there is merit in the concern raised, this is trumped by the need to have that certainty, and recommends that *there should be no change to this provision.*

Sub-clause (2)(c)(i)
Your Committee considered a proposal for this provision to be deleted and replaced with the following:
"estimates the value of his security and will claim for the balance, if any".

After careful examination of the provision, your Committee recommends that the entire paragraph (c) should be reworded as follows:
"in the case of a secured creditor,

(i) that the creditor is willing to give up his security for the benefit of the creditors, in the event of a receiving order being made against the debtor;

(ii) *shall state an estimate of the value of his security and whether he intends to claim for the balance, if any."*

Sub-clause (2)(c)(ii)

During the discussion on sub-paragraph (i) above, the question of the intent of paragraph (c) was raised. The clarification was made that the intent of the provision is that a secured creditor could only proceed to seek a receiving order to the extent that he is unsecured because to the extent that he is secured, he must use the remedies under his security. Therefore, he must make a choice between pursuing the application or keeping his security. The creditor would then proceed to sub-paragraph (iii) which provides that when the creditor states the value of the estimate (having chosen not to give up his security) he would then proceed to the extent to which the debt exceeds the value.

Your Committee therefore agrees that paragraph (c)(ii) should be reworded to become consistent with the intent of the entire provision.

The question was also raised as to whether a creditor would be bound by the estimate in any way so that there would be a consequence if he over- or under-estimated the value. Your Committee was informed that the purpose of the estimate was merely to determine whether there was any unsecured portion that exceeds the prescribed threshold, which would then allow the secured creditor to be a petitioner in this process. It was stated further that the creditor was not bound by the amount that was given as the estimate.

A new Sub-clause (2)(c)(iii)
The PSOJ proposed the insertion of a new sub-paragraph (iii) which is aimed at having the application indicate the nature of the security held by the secured creditor. This was also tied to a policy issue regarding the concept of how floating charges should be dealt with under the Bill. The PSOJ suggested that this sub-paragraph should state:
"holds a fixed and/or floating charge or otherwise describing the nature of the security held by such creditor".

After careful consideration of this suggested amendment, your Committee agrees that the PSOJ's proposal should be modified to read: "*shall state in the case of a secured creditor, a description of the nature of the security held by such creditor*" and that the clause should be amended accordingly.

Sub-clause (3)
Your Committee agrees with the OTB's proposal that 4(3) should be amended by adding a proviso stating that the balance being claimed for is above the prescribed threshold.

The Consultant reviewed the decision of your Committee as well as the provision in the Bill and made the following comments: "The JSC recommendation is that a secured creditor that values its security can be permitted to be an applicant creditor only if they are owed, after taking into account the estimated value of its collateral, at least the prescribed threshold. While section 4(2)(a) currently provides that an applicant creditor must be owed not less than the prescribed amount, this may not be correct if the intention is that: (a) a debtor may be bankrupted so long as it owes the prescribed

threshold; and (b) one or more creditors can bring a bankruptcy application." As set forth below, clause 4(2)(a) should perhaps be amended to read: " the debt owing to the applicant creditor or creditors, which shall amount to not less than the prescribed threshold". He went on to clarify that assuming that this was correct, the only circumstance where an unsecured creditor must be owed at least the prescribed threshold was where it was the only applicant creditor. A secured (or any other) creditor who was owed less than the prescribed threshold could be an applicant creditor provided that it, together with the other applicant creditor(s), was owed at least the prescribed threshold by the debtor. He suggested that clause 4(3) should reflect this and permit a secured creditor to be an applicant creditor to the extent of the unsecured debt owing to it after taking into account the estimated value of its collateral. Additionally, clause 4(3) did not contemplate the situation where the secured creditor states that he is willing to give up his security."

Your Committee agrees to amend sub-clause (3) to read:

Where a secured creditor referred to in subsection (1)(c):

(a) states that he is willing to give up his security for the benefit of the creditors, in the event of a receiving order being made against the debtor, he may be admitted as an applicant creditor to the extent of the debt or debts due to him; or

(b) gives an estimate of the value of his security he may be admitted as an applicant creditor to the extent of the balance of the debt or debts due to him after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

Sub-clause (4)

Given that this provision is dealing with an application and not a petition, your Committee agrees that the words "bankruptcy petition" should be deleted and replaced by the words "an application".

Sub-clause (9)

Regarding the OTB's proposal for provision to be made in the Act for the means by which the security for costs would be provided for example by payment into Court or deposit into an interest bearing account at a commercial bank, your Committee accepts the suggestion by the PSOJ that this matter would be addressed in the Rules.

Clause 5 - Court proceedings of petition for receiving order

Sub-clause (2)

A recommendation was made by the JCC for the Act to explicitly state that the consolidation of petitions against the members of a partnership would only be possible where the petitions relate to debts incurred in the business of the partnership. Although your Committee feel that there was merit to this point, it feels that this should be a matter that is left to the determination of the Court, based on the facts presented before it. Your Committee therefore recommends that there should be no change to this provision.

Your Committee agrees with the point raised that in this section and elsewhere in the Act, the terms "*as the Court thinks fit*" and "*as the Court thinks just*" were used interchangeably to mean the same thing, and that only one of these phrases should be used consistently throughout the Act. Your Committee recommends an amendment to reflect this.

Clause 6 - Trustee appointed where receiving order made

Your Committee agrees that no change is needed to this clause.

Clause 7 - Stay of proceedings by the Court
Sub-clauses (1) and (2)
The OTB suggested the merging of these two provisions. Your Committee was however of the view that these were distinct provisions, and accepts the proposal made to link subsections (1) and (2), by inserting the words "without limiting the effect of subsection (2)" as introductory words to subsection (1) and by inserting the words "notwithstanding subsection (1)" at the beginning of subsection (2). *Your Committee recommends that this change be reflected in the Bill*.

During the discussions, it was brought to your Committee's attention that sub-clause (2) recognises a stay being granted in other circumstances as well, and that a policy decision should be taken regarding the question of whether there might be other circumstances in which Parliament would want the Court to have the power to grant a stay. Whilst some Members of your Committee were not comfortable with the Court having a free standing, unguided, unfettered discretion to stay the attempts of a person who is trying to recover amounts that are owing to him, they were unable to propose a wording to satisfy this concern.

Clause 8 - Order by Court where proceedings have been stayed or not prosecuted with due diligence
The Consultant proposed and your Committee agrees that clause 8(a) should be amended to read: "make an order...".

Clause 9 - Where proceedings on petition have been stayed for trial and question decided in favour of validity of debt
Sub-clauses (1) and (2)
Your Committee agrees with the comments made by the OTB that it appeared unnecessary to have to apply for a date for further proceedings when this could be set at the hearing at which the determination was being made. It was also felt that the JCC made a valid point that based on the present backlog in the Court system, that the required notice should be issued by the creditor and that proof of service of the notice in the form of an affidavit be submitted to the Court's Registry for the continued processing of the matter.

Your Committee therefore accepts the recommendation by the PSOJ that clause 9 be deleted in its entirety as it deals with procedural issues which should be addressed in the Rules.

Clause 10 - Withdrawing petition
In support of the recommendation by the OTB, your Committee had agreed that Clause 10 should be amended to provide that it would apply where a receiving order has already been granted by the Court. It recommends an amendment to reflect this change. The Consultant however noted that the effect of this amendment would be to require that an applicant creditor could withdraw a bankruptcy application – terminate the bankruptcy proceeding without the consent of the court. This would not be consistent with the intention of the provisions in the Canadian Bankruptcy and Insolvency Act. The conceptual foundation for requiring that the court approve the withdrawal of a bankruptcy application is: (a) bankruptcy is intended to be a "collective" remedy or "class proceeding" insofar as the petitioning creditor(s) are seeking a remedy for the benefit of all creditors; and (b) bankruptcy is not to be used as a debt collection tool and a bankruptcy petition is not to be used as leverage to force payment of a debt. The leading case on this provision in Canadian legislation is *Abu Hatoum (Re)*, [1987] O.J. No. 1996 (S.C.), where the court held that a petition cannot be withdrawn as a result of a bilateral agreement between one creditor and the debtor unless the court is satisfied that other creditors will not be prejudiced by the withdrawal.

Customarily, there will be affidavit evidence delivered in support of an application to withdraw a petition as to the fact that the debtor is solvent and able to pay its creditors.

He further informed your Committee that a separate provision of the Act (clause 278) already provides the court with jurisdiction to, in appropriate circumstances, review or rescind a receiving order. He suggested that clause 10 of the Bill should not be amended. *After further consideration, your Committee accepts the Consultant's recommendation not to amend clause 10.*

Clause 11 - Debtor against whom petition filed dies

Concerns were raised by the OTB and the JCC that clause 11 as currently worded speaks to the continuation of proceedings against a deceased debtor as if he were alive. *Your Committee therefore accepts the suggestion made for the clause to be reworded to reflect: "where a debtor against whom an application for a receiving order has been filed dies, the proceedings shall not be terminated by reason only of his death".* This means that someone could be appointed to continue in the person's death, as usually obtains.

Your Committee also considered a proposal made by the JCC for provision to be made for the Administrator General to be appointed in the event that a person was not appointed within six months or such other time as the Court might direct, and concludes that such a default appointment is not necessary because Court proceedings are automatically stayed when someone dies until someone is appointed. It is also felt that such a provision could not simply be imposed on the Administrator General without first hearing their views on the matter, particularly given that there might be cost and other implications.

Clause 12 - Petition for receiving order against estate of deceased

Sub-clause (2)

Your Committee agrees that a definition for "legal personal representative" is not necessary in the Act and therefore recommends that the proposed amendment should not be accepted.

Sub-clause (3)

Your Committee examined the concern expressed by the ICAJ as to why the legal personal representative should be held personally liable for another person's debt. In support of this, the PSOJ proposed that it needs to be clearly stated that the liability relates only to where the penalty arises by virtue only of the personal representative's own actions, that is, a breach of clause 12(2). Your Committee also sought to determine what "*penalties*" were being referred to in 12(3). It was suggested that this refers to the scenario where the legal personal representative might be transferring properties, which attracts stamp duties he causes penalties to incur in relation to any kind of transfers that he is undertaking.

In order to address the concerns raised, your Committee agrees that clause 12(3) should be reworded to state that where the legal personal representative has contravened the provisions of subsection (2) resulting in a diminution in value of the estate of the deceased debtor, he should compensate the estate to the extent of that diminution in value.

Sub-clause (4)

Your Committee accepts the recommendation made that the words "by the legal personal representative" should not be a part of subparagraph (b) but instead should form the closing words of subsection (4).

Clause 13 - Costs of petitioner in petition against estate of deceased
Your Committee agrees that no amendment should be made to this clause.

Clause 14 - Appointment of interim receiver for the protection of the estate of a debtor when receiving order filed
Your Committee agrees that no change is necessary to this clause.

Clause 15 - Appointment of interim receiver where notice of intention to enforce a security pending
The ICAJ recommended that there should be a specific timeframe within which the appointment of an interim receiver must be done. The PSOJ questioned how the Act could specify a timeframe given that according to the provision, this must be done whenever the Court is satisfied that it needs to be done. It was stated further that this appointment of an interim receiver would only arise when an applicant or a party indicates to the Court that an interim receiver is needed because of a specific reason. *Your Committee therefore agrees not to accept the ICAJ's proposal.*

Sub-clause (3)
The question was raised concerning at whose request the interim receiver would be appointed. The clarification was made that based on the language of sub-clause (3), it would be the debtor or the creditor who would make the request. After further examination of the entire clause 15, *your Committee agrees that clause 15(1) should be reworded to make it clear that it is speaking to an application by the secured creditor who intends to issue the notice.*

Concerning the proposal made by the OTB for clauses 15 and 16 to be merged because they both set out substantially the same provision but for different circumstances, *your Committee accepts that the two clauses are quite different and should therefore not be merged.*

Clause 16 - Appointment of interim receiver where notice of intention or proposal filed
Your Committee agrees that there should be no change to this clause.

Clause 17 - Costs of interim receiver
Your Committee does not agree with the ICAJ's proposal for the duration of the appointment of the interim receiver to be included in the Bill and recommends that no change be made to this clause.

Clause 18 - Trustee may be appointed receiver under security agreement
It was brought to your Committee's attention by the Consultant that prior to recent amendments in Canada, anyone was able to act as a receiver, leading to a situation of chaos. Your Committee was told that the current wording of clause 18(1) could result in a similar situation being experienced in Jamaica, as this provision restricted private appointments but not court appointments. Consequently, the Court could appoint anyone as receiver. *It was suggested and your Committee agrees that an amendment be made to provide that only a licensed trustee may act as a receiver was subsequently accepted by your Committee.*

Clause 19 - Secured creditor to provide notice
Sub-clause (1)
In respect of the JCC's recommendation that clarification should be made in the Bill concerning what is meant by the word "substantially", *your Committee agrees that no such change is needed.*

Sub-clause (2)

Your Committee does not agree with the proposal made by the ICAJ for the provision to clarify whether this relates to ten "business" days as the provision is speaking to ten days, as provided for in the Interpretations Act. It is also felt that such a change might not be in accordance with new flexi time legislation that has been recently put in place.

Sub-clause (4)

The OTB expressed concern that clause 19(4) appears to defeat the section's objective of requiring notice to be provided to a debtor before the enforcement of security by stating that it does not apply to certain secured creditors. Your Committee was told that this concern was addressed by the provisions in clause 89.

Concern was raised that if the collateral was perishable, the idea of not being able to enforce it was counterproductive. It was stated that the collateral might have to be stored in a particular manner for example and the cost of storage might be so expensive that in a situation where there are no funds available, the collateral would lose value precipitously. It was suggested that a mechanism should be included for that value to be preserved by an early decision, notwithstanding the stay that was in place. Your Committee was however informed that this concern was also addressed by clause 89 of the Bill.

Clause 20 - Appointment of receiver

Sub-clause (2)(a)(i)

The PSOJ proposed that this provision should be amended by inserting the words "*and if a corporation, to the Registrar of Companies*" after the word "Supervisor". However, your Committee recognised that there were other corporations that are incorporated under the Companies Act, which also needs to be captured. *Your Committee agrees that an appropriate amendment should be made to this provision to would capture all the companies that are incorporated under the Companies Act.*

Sub-clause (2)(a)(iii)

The PSOJ submitted that since there was a requirement to advertise in the newspaper, there should not also be a requirement to send a notice to every single creditor, given that, among other things, this could be quite expensive. The Consultant however disagreed with this proposed amendment, citing the fact that the requirement to provide creditors with specific notice is intended to ensure that those with direct dealings with the debtor are aware of the appointment of the receiver. *Your Committee was not in agreement with the proposal made by the Consultant and recommends that sub-clause (2)(a)(iii) should be modified to clearly indicate that notice will be done by way of advertisement and will not be sent to every creditor, but that the Supervisor will have the power to require that notice be given to the creditors in such other manner as he may determine if he feels that this is necessary in the circumstances.* This therefore meant that the default position would be that notice would be given by way of advertisement unless the Supervisor required some other method to be used.

Sub-clause (2)(b)

Your Committee agrees that subsection (b) should be deleted in its entirety as the issue covered in this paragraph is already addressed under sub-clause (2)(a)(iii).

Clause 21 - Duties of receiver

Sub-paragraph (i)

Your Committee agrees with the OTB's observation that the provisions at 21 (c) and (i) were identical and recommends that (i) should therefore be deleted.

Sub-paragraph (h)

Your Committee agrees that the word "shall" be deleted from the paragraph (h).

While examining clause 21, the question was raised as to whether the clause would also be applicable to a receiver appointed under a debenture. Your Committee was told

that the important point to note was that in order to be appointed as receiver, a person needs to be a licensed trustee. This comment led to the observation that there were several provisions of the Bill which applied to trustees but were not meant to apply to receivers, and consequently, it was not correct to include in the definition of a "receiver" the words 'is a trustee'. *Your Committee therefore agrees that instead of defining a receiver in this way, a substantive provision should be inserted in the Bill to require that a person shall not be appointed as a trustee unless that person has been licensed as a trustee under the Act. As a consequence, the definition of "receiver" would have to be reviewed.*

Clause 22 - Debtor to provide names and addresses of creditors
Your Committee agrees that no change is necessary to this clause.

Clause 23 - Receiver to provide notice of disposition
The Consultant questioned the purpose of having a provision that requires a receiver to give notice of disposition of the assets. He noted that Section 37 of The Security Interests in *Personal Property Act, 2013* (the "SIPPA") imposed a similar notice obligation on a secured creditor and a receiver that intends to dispose of collateral, but said the objective of that section was to permit persons with an interest in collateral with an opportunity to pay out the secured creditor to prevent the disposition. Section 37 provided for notice to a more expansive group and prescribed the information that must be included in the notice; and there was no suggestion in the Bill that Section 37 of the SIPPA would not apply to a receiver as defined by the Bankruptcy and Insolvency Act. *The Consultant therefore recommended that clause 23 should be deleted. Your Committee accepts the recommendation made by the Consultant*, given that SIPPA already has a regime and that there is no need to amend the regime that applies to real estate mortgages. Your Committee also notes that there is the Registrar of Titles Act that would apply as well as the fact that the common law extrapolations as to the requirements are already well understood.

Clause 24 - Personal liability of receiver
Your Committee agrees that no change is necessary to this clause.

Clause 25 - Court Order in respect of non-performance of duties by Supervisor, debtor, receiver etc.
Your Committee agrees that no change is necessary to this clause.

Clause 26 - Court may order statement of accounts to be submitted for review
Your Committee agrees that no change is necessary to this clause.

Clause 27 - Receiver may apply to Court for directions
Sub-clause (2)
Your Committee agrees that the word "directors" should be changed to "directions" in sub-clause (2).

The Consultant expressed concern that clause 27 permitted only a receiver to apply for directions in relation to Part III. He explained however, that the relief that is available on an application for directions includes relief that would typically be available to other parties as well as a receiver. Similar provisions in the Canadian PPSA legislation and the SIPPA permit, *inter alia*, the debtor and any person with an interest in collateral to apply for relief. *Your Committee therefore accepts the recommendation made by the Consultant that clause 27 be amended to permit other interested parties to apply for directions and in respect of any matter relating to the receivership or interim receivership.*

Clause 28 - Certain provisions of Companies Act to apply where debtor is a company

Your Committee agrees that no change is necessary to this clause.

Clause 29 - Priorities of distribution in a receivership

Several suggested amendments were initially made to this clause, which seeks to address the issue of how floating charges are to be treated. However, while considering one of the suggestions made, which was for the clause to be amended to speak to a receiver appointed under an agreement, your Committee noted that the provision appeared to be problematic and was also limited to a situation where the debtor was not a bankrupt. Consequently, there was no provision as to what would occur in the situation where the debtor was a bankrupt, although priority issues in respect of the ranking of claims would also relate to bankrupts. *Your Committee subsequently agrees that clause 29 should be deleted,* particularly in view of the fact that there is another provision in the Act that deals with the ranking of claims generally to insolvency proceedings under the Act. *Your Committee also recommends that this other provision dealing with priorities should be appropriately worded to ensure that it addresses all the relevant issues.*

Part IV. Assignments

Clause 30 - Procedure for making assignment

Sub-clause (1)

Several issues were raised in respect of this provision.

The PSOJ was of the view that based on how the clause is framed, a debtor would apply to the Supervisor for approval to make an assignment and questioned the circumstances in which such a decision could be refused. After assessing the various proposals made by the stakeholders concerning what should be addressed by the provision, your Committee agrees that save for ensuring that the requirements are met (such as ensuring that the necessary resolutions were passed etc), if a debtor decides to make an assignment of all his assets to all his creditors, then he should be allowed to do so. Therefore, the purpose of the Supervisor in this provision would be to ensure that the information in the application is appropriate and the applicable requirements are met as opposed to carrying out any substantive review.

Your committee therefore agrees to a rewording of sub-clause (1) *to provide (i) for an application to be made to the Supervisor for approval, (ii) a list of the requirements for the application and (iii) the grounds on which the Supervisor may refuse the application, (that is, non-compliance with certain stated requirements in the section).*

Your Committee further accepts the proposal made by the PSOJ for the insertion of the words "subject to sub-section (2)" at the beginning of sub-clause (1). It also agrees that the word "insolvent's" should be replaced by the word "insolvent person's" in line 2.

Sub-clause (2)

Your Committee agrees to the recommendation to delete the existing sub-clause (2) and replace it with the following: *"An insolvent person that is a corporation may only apply for such an assignment where the members thereof have passed a resolution to that effect in accordance with its governing laws".* This change would make it clear that both were subject to the same procedures, with the added provision in subsection (2) relating to the resolution.

Sub-clause (3)

Your committee accepts the PSOJ's proposal for a new subsection (3)(e) to be inserted to read: "name and address of the trustee who has consented to act in connection with the estate, if any".

Your Committee further agrees that the use of personal pronoun "his" in sub-clause (3)(a) is inappropriate and recommends a rewording of the provision *to reflect that the property of the insolvent person was to be available for distribution among the creditors.*

Sub-clause (4)

Your Committee accepts the proposal made for the existing sub-clause to be deleted and a new provision inserted to speak to notification to the parties mentioned. *The new sub-clause (4) should read: "Notice of the making of an application for assignment under subsection (1) shall be sent to the Registrar of Companies, the Regulator [if it is a regulated entity] and such other person as the Minister may by order prescribe."*

New Sub-clause

The observation was made that although sub-clause (5) states that the Supervisor shall refuse an application for assignment if it was not made in accordance with this section, there was no provision in the Bill requiring that the Supervisor should grant the approval if the application is made in accordance with this section. This led to the question of whether there were other grounds on which the Supervisor might refuse the application. It was felt that it should not be left at large for a Supervisor to interpret that he had some other role to play in this regard. *Your Committee therefore agrees to the insertion of a new sub-clause to provide that as long as the application complies with the section, it should be approved by the Supervisor.*

Sub-clauses (6), (7) and (8)

Based on concerns raised about the wording of the existing sub-clause (6), the following scheme for assignment process was determined by your Committee:

WHERE A TRUSTEE IS NAMED IN THE APPLICATION

(i) There is an application with a proposed trustee

(ii If approved, that person becomes the trustee referred to in the certificate

(iii) A meeting has to be called by that trustee within a certain number of days for the purposes of ratifying his appointment or changing him if the creditors wish to do so and also to approve the remuneration of the trustee.

WHERE NO TRUSTEE IS NAMED IN THE APPLICATION

(i) If the application does not name a trustee and that application is approved, a notice should be sent requiring that within 14 days a trustee should be named

(ii) If this does not occur, the Government trustee should be appointed and the certificate issued

(iii) The meeting of creditors should then be held and the creditors would have the opportunity to either proceed with the Government trustee or change that trustee.

In order to achieve the scheme set out above, the Committee agrees to the following changes in respect of sub-clauses (6), (7) and (8):

new sub-clause (6)

"Subject to subsection (8), where the Supervisor approves the application, the Supervisor shall, with the consent of such trustee named in the application, if any, appoint such trustee named in the application as the trustee of the estate provided however that the creditors may by ordinary resolution at any time appoint another trustee in lieu of that trustee so named."

new sub-clause (7)

"Where no trustee is named in the application, the Supervisor shall, after

giving the insolvent person fourteen days' notice in writing to notify it of a trustee who has consented to act as trustee, appoint the Government Trustee to act."

new sub-clause (8)
"The Supervisor shall issue a certificate of assignment in the form set out as Form 20 and shall insert therein the name of the trustee appointed to act as trustee pursuant to sub-sections (6) or (7)."

Your Committee further agrees that a new sub-clause should be inserted to provide:
"Within five days after the day the certificate of assignment is issued, the trustee shall send notice of the meeting of creditors under Part VII in the manner specified in section 45 to ratify the appointment or change the trustee to one chosen by the creditors and to approve the remuneration of the trustee."

Time at which the vesting of assets should take place
The issue was raised as to when the vesting of the assets should occur given that there would be a short interregnum before the issue related to the appointment of the trustee would go to the creditors for ratification. The fear expressed by members and stakeholders was that during that period, the assets would still remain with the debtor, who could dispose of them should the opportunity arise. *Your Committee therefore agrees that provision should be made in the Bill for the certificate to be issued and for the vesting to take place immediately, on the date that the certificate is issued, in the trustee referred to in the certificate.*

Sub-clause (9)
In view of the recommendations made by the PSOJ to change the word "insolvent person" to "bankrupt" in lines 1 and 2; and by the OTB for the summary administration to be allowed in respect of a corporation, your *Committee agrees to the following rewording of sub-clause (9)*:
"*Where, in the opinion of the Supervisor the realizable assets of the bankrupt after the claims of secured creditors are deducted, does not exceed the prescribed threshold, the provisions relating to the summary administration of estates shall apply in accordance with sections 190 and 192."*

Sub-clause (10)
Your Committee accepts the following proposed amendments made by the PSOJ:

(a) The words "insolvent person" should be deleted in lines 2 and 4 and replaced with the word "bankrupt";
(b) The words "the insolvent person's discharge" should be deleted from line 4 and replaced with the words "the date of the initial bankruptcy event".

Sub-clause (11)
Your Committee agrees that the reference to "insolvent person" should be changed to "bankrupt".

Your Committee examined paragraph (b) and *agrees that this paragraph should be deleted* because it appears to be counterintuitive given that the summary administration process is meant to be a cheaper procedure that should apply to small estates.

New sub-clause
Your Committee agrees to insert at the end of clause 30 the provision that was previously included under clause 3(3) regarding the voiding of an assignment between the time of instituting proceedings and its disposition.

The Consultant suggested that Section 30 be amended to provide for the filing of an assignment with the Supervisor in the form set out as Form 1; and that acceptance be provided once the insolvent person satisfies the requirements for making an assignment. Once the assignment is in the prescribed form and accompanied by the required documents, then it is to be accepted by the Supervisor. Also, the Act should provide for the assignment to be filed in the prescribed manner and the Regulations should contemplate that the assignment is filed through the trustee. Your Committee accepts this recommendation.

Clause 31 - Effect of approval of assignment
Sub-clause (1)
Your Committee agrees to the proposed amendment for the existing sub-clause (1) to be deleted and replaced with the following:
"Upon the issue by the Supervisor of a Certificate of Assignment, the property of the bankrupt vests in the trustee".

Part V. Proposals

Your Committee agrees to the insertion of an introductory scope provision to state:
"*the object of this Part is to provide for the business, property and affairs of an insolvent company to be administered in a way that:*

a. *maximises the chances of a company, or as much as possible of its business, continuing in existence; or*
b. *if it is not possible, for the company or its business to continue in existence – results in a better return for the company's creditors and members than would result from an immediate winding up of the company*."

Clause 32 - Interpretation of Part V
Sub-clause (1)
Your Committee was told that the underlying policy embodied in the Canadian legislation was that unsecured creditors would be subject to the legislation in all circumstances, while secured creditors would be free, subject to limited exceptions designed to ensure that the trustee was able to protect the estate from a secured creditor who wished to sell assets significantly less than their value. The concept in the proposal process was that secured creditors would be stayed from exercising their remedies until it was decided what kind of proposal would be adopted. Your Committee was also told that although a proposal could with both secured and unsecured creditors, in the practical application, it was extremely rare in Canada for a debtor to try to negotiate a proposal with its secured creditors. Rather, the typical route taken in dealing with secured creditors was to negotiate a private deal with them.

The Consultant observed that clause 32 attempted to categorize classes of creditors and suggested that a creditor could be both secured and unsecured at the same time. He informed your Committee that while a creditor could have two separate claims, a secured claim in which he may participate as a secured creditor, and an unsecured claim where he may participate as an unsecured creditor, a creditor could not be both secured and unsecured at the same time as suggested by clause 32. Additionally, a secured creditor who has given up his security was no longer a secured creditor, and once he elected to take the collateral in full and final satisfaction of the debt, he was no longer a creditor at all. The Consultant proposed that clause 32 as currently worded created confusion and was therefore not needed in the Bill.

Your Committee considered these views and subsequently accepts the Consultant's recommendation that clause 32 (1)(a)and (b) and should be deleted.

Sub-clause (1)(c)

Your Committee agrees that in sub-clause (1)(c), the word "debtor" should be replaced with the words "looming insolvent".

Sub-clause (2)

The Consultant recommended that sub-clause (2) was unnecessary and should be deleted from the Bill.

Clause 33 - Who can make a proposal

Sub-clause (1)

A proposal was made by the PSOJ that clause 33(1)(c) should be deleted and replaced by "a trustee of the estate of a bankrupt", however, your Committee was advised against this deletion by the Consultant who indicated that this would create a hole in the legislation. Your Committee was reminded that such action would effectively remove the ability of the liquidator of an insolvent person's property to initiate a proposal proceeding, and that the class of persons who would be subject to Jamaican insolvency legislation included corporations under foreign statutes. Consequently, the liquidator of an insolvent overseas company that carried on business in Jamaica might wish to commence a proposal proceeding in Jamaica. *Your Committee therefore agrees that sub-clause (1)(c) should not be deleted.*

Your Committee originally recommended that sub-clause (1)(f) should be deleted from the Bill, consequent on amendments that had been proposed to clause 32. The Consultant however recommended that Clause 33(1)(f) should be retained and amended to provide that a person facing imminent insolvency is able to file a proposal under Part V. He also recommended that for the purposes of Part IV the term "insolvent person" should include a person facing imminent insolvency. These recommendations were accepted by your Committee.

Sub-clause (2)

The Committee agrees that the words "in accordance with section 40, a person referred to in subsection (1)" should be inserted after the word "trustee" in line 1. It is also agreed that the words "an insolvent person" should also be deleted.

The OTB expressed concern that the current wording of the provision indicates that someone who wants to make a proposal has to file a notice of intention to the Supervisor prior to making that proposal with the trustee. They suggested that since it was the trustee who would assist with the making of the proposal and since the Supervisor might not be involved in the process at that stage, it would be better to provide that the person submits a notice to the trustee, who would assist the person to formulate the proposal. Once the proposal is submitted to the creditors and approved, the proposal would be lodged with the Supervisor. During the discussion, the point was also made that currently, the filing of a notice with the Supervisor is an important date because certain rights or prohibitions flow from that date and therefore, that if this is changed to a notice filed with a trustee, they would lose the ability to impose that central regulatory standing.

To address the OTB's concern, your Committee agrees to delete the words "a copy of the consent showing" in sub-clause (2)(b).

Your Committee agrees that sub-clause (2)(c) should be deleted.

Your Committee was reminded that the filing of this notice of intention was optional and that persons could forego this process and go directly to the proposal phase.

Your Committee considered the concern raised that since the proposal could be filed up to three months (with extension) after the filing of the notice of intention, that during that period, the Supervisor would not be aware of who the creditors were, and that this deficiency should be corrected in the Bill. Your *Committee however feels that since the Supervisor cannot act on that information at that stage and since his role is not to protect the creditors if persons violate the stay, there is no need to address this concern in the Act.*

Clause 34 - Trustee shall send to creditors a copy of intention filed

The OTB raised concern as to whether the notice of intention should be sent to <u>all</u> known creditors. They also questioned whether this should be done by advertisement, whether any notice to creditors was at all necessary at this stage or whether this should only be done when the debtor has the proposal ready to be presented to the creditors. This is in light of the fact that the notice of intention can be made by a looming insolvent who is not yet insolvent. During the discussions on this proposal, it was suggested that the clause should be deleted on the one hand because the knowledge that a notice of intention has been filed can trigger a series of actions by creditors and other persons that can be detrimental to the debtor. On the other hand, it was felt that the withholding of such information would place the smaller creditors in a disadvantageous position as the larger creditors such as the banks could insert a clause in their contract with the debtor that requires them to be notified of the filing of a notice of intention. It was also argued that such lack of information could cause someone to breach the stay of proceedings. It was also felt that sending notice to every creditor might be costly, and prove difficult for a debtor who was already facing financial constraints. Your Committee weighed the views presented, which included the fact that the withholding of information would not result in a breach of the stay, and a*grees to the deletion of clause 34.*

The Consultant however proposed that clause 34 should not be deleted as the best practices guidelines from a number of organizations indicated that it was critically important that creditors receive specific notice. *Your Committee was also informed that* once a notice of intention to file a proposal had been filed, the creditor was no longer legally required to provide credit to the debtor and was entitled to receive cash on delivery (COD) terms and other rights. Consequently, if the creditors did not receive notice that a notice of intention had been filed, they would not be aware of what rights they might have, with the result being that the small companies doing business with the debtor would be prejudiced because they did not know that they were entitled to COD terms or that they had a right to go to Court. *The Consultant therefore recommended Clause 34 should be retained should be modified to (i) include a requirement to send notice to the creditors, and (ii) make provision for the Supervisor to be given the discretion to decide whether or not the notice should be sent. He further recommended that the regulations should then provide some criteria outlining the circumstances in which the notice ought not to be sent. Your Committee accepts these recommendations.*

It was further suggested that clause 34 should be further amended to state:"... send to every known creditor in the circumstances and manner prescribed..." This proposal was accepted by your Committee.

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Timelines in respect of proposals, starting from the Filing of a Notice of Intention

Your Committee spent a considerable length of time trying to synchronize the timelines in respect of the entire proposal process as this was felt to be critical in order for the process to work effectively. Their review of these timelines resulted in amendments being proposed to Clauses 35, 36, 45, 46, 56, 63 and 74 of the Bill.

A flowchart outlining the various stages in the process was prepared by an Insolvency Practitioner from PricewaterhouseCoopers, which showed that the stay of proceedings, which comes into effect from the filing of a notice of intention, could last for a maximum of five months and twenty one days, taking into consideration the maximum amount of time for which extensions could be granted and the amendments that had already been proposed by your Committee in respect of some of the Clauses mentioned. This means that the maximum period that a debtor would have to file a proposal is five months and 21 days.

A summary of the general scheme in the Bill, including the modifications already proposed are as follows:

(1) If a notice of intention is filed, the person has fourteen days in which to file a cash-flow statement with the trustee.

[Note:

(a) If an extension is sought and granted for the filing of the cash-flow statement, then the proposal must be filed within the period of the extension.

(b) If the cash-flow statement is not filed within the required time and no extension of time is granted, then an assignment would be triggered].

(2) Nine days after the filing of this cash- flow statement, the proposal must be filed. [This is based on the requirement that the proposal is to be filed within thirty days from the original date, which is the date of the filing of the notice of intention].

[Note: During this nine day period between the filing of the cash-flow statement and the filing of the proposal, the trustee would have time to do his vetting of the documents given that he would also have to sign the proposal].

[Note: If a proposal is not filed, the person would have to make an application for an extension.]

(3) A meeting of creditors is to be held within twenty one days of the filing of the proposal.

(4) creditors must be given at least ten days notice of this meeting.

……

Clause 35 - Insolvent person shall file cash-flow statement, report, etc for notice of intention

Sub-clause (1)

Your Committee agrees that the chapeau of 35(1) should be reformulated to clarify that it would be the person who files the notice under section 33 that would file the notice of intention.

The Consultant informed your Committee that the cash-flow projections were a critical aspect of the proposal process because they represented the way in which creditors assessed the viability of the debtor company and the way in which the trustee ensured that the creditors were not being prejudiced. The cash-flow was a simple document that was filed on a regular basis, and the trustee would monitor the cash-flow and compare the actual cash-flow against the projections to the identify erosions in the company's position, which the trustee was required to report to the creditors. The Consultant noted a proposal made by your Committee to extend the time period for filing the cash-flow, and expressed concern that this would introduce possible prejudice to creditors, and recommended that in order to balance the interests, there should be a requirement for the cash –flow to be produced in ten days and then give the Supervisor the jurisdiction to extend that period if necessary for an additional period of ten days. Committee Members were however of the view that ten days was not realistic in the Jamaican context, *and your Committee eventually agrees to the timeframe of fourteen days, with the Supervisor having the flexibility of extending this to another fourteen days, if the Supervisor considers that the circumstances so require.*

The Consultant suggested that there was need to synchronise this new timeline of fourteen days with the timeline within which the deemed assignment would take place. Your Committee agrees that both timelines should be aligned.

Your Committee was also told that the details outlining what should be contained in the cash-flow projection should be placed in the regulations.

Insertion of a new provision in the Bill

Following on an observation made that the Bill does not readily or explicitly allow for companies emerging with new securities in a formerly insolvent entity, your Committee was told that as currently worded, the legislation does not restrict someone from making proposals that could affect the structure of their securities because the Act does not specify the form in which someone could make a proposal. Your *Committee* whilst accepting this point, *is still of the view that a provision should be included in the Bill, stating that the types of schemes of arrangements that are available under the relevant provisions of the Companies Act should be included as part of a proposal. This provision should specify that for a particular event, with a particular trigger, the relevant transactions that are part of a proposal would take effect (based on ratification by the Supervisor) in like manner as they would if an order of the Court had been made. Your Committee recommends an amendment to reflect this.*

Clause 36 - Assignment deemed to be made where cash-flow statement not filed within prescribed time

Sub-clause (1)

Your Committee accepts the recommendation made by the Consultant that the debtor should be deemed to have made an assignment if it did not file the documents required by section 35(1) within the time contemplated by that section.

The Consultant noted that the timeline in sub-clause (1)(a) should be synchronized, in light of the changes made to clause 35, so that the failure to file the cash-flow within the required time or the extended timeline would result in the deemed assignment. Your *Committee agrees that the timelines should be aligned.*

Your Committee further agrees that in terms of the proper sequencing of the provisions, clause 36 should be moved to a later part of the Bill.

Your Committee further agrees to accept the recommendation made by the Consultant that the Supervisor should have the ability to extend the time for the filing of the documents required by section 35(1).

Your Committee spent some time considering whether the thirty day period in clause 36(1)(b) should be reduced to twenty one days, but eventually agrees that no change should be made. It was felt that if the time period was reduced, the nine day period between the filing of the cash-flow statement (which is the main document needed to assist in the preparation of the proposal) and the filing of the proposal would no longer exist. It was also felt that the Canadian legislation also made provision for this thirty day period with good reason.

Sub-clause (4)
Your Committee agrees that as a consequential amendment, this provision should be amended to make specific reference to "subsection (1)(b)".

Sub-clause (5)
Your Committee *agrees to the proposal for sub-clause (5)(b) to be amended to require that the Supervisor be satisfied that the extension is justified in the circumstances.*

The Time Period of the stay in clause 36
During discussion on the provisions in the Bill related to the stay of proceedings, Committee Members and stakeholders alike felt that the five month period for the stay to be in effect was too long, particularly in view of the fact that the stay also affected secured creditors, whose debts might not be serviced during this period and their only recourse would be to convince the Court that the stay should be lifted because of its detrimental effect. Your Committee also considered the fact that in the banking sector, this period could only last for a maximum of ninety days. Your Committee had therefore decided to reduce the length of the stay, but was cautioned by the Consultant against compressing the time period between the filing of the notice of intention and the making of a proposal. The Consultant noted that the Bill provided for a maximum 30 day period between the filing of the notice of intention and the proposal. The Court was also authorized to grant extensions of that 30 day period in 45 day blocks up to a maximum of 6 months.

Your Committee also made a proposal to reduce the 45 day blocks to 30 days, but was told by the Consultant that this recommendation would not be workable in practice for a number of reasons, one of them being that it was almost impossible for a medium sized enterprise to both work on the application to court for an extension of time and work on a proposal where they were negotiating with their creditors. Your Committee was told that even with the 45 days allocated under the Canadian statute, there were serious issues with the amount of company, trustee and professional resources that were allocated to preparing for the extension as well as negotiating. Consequently, the Canadian Bar Association was now recommending an extension of the 45 days to 60 days to provide the debtor with more time. The Consultant urged your Committee not to reduce the timeline from the six months provided for in the Bill and asked that they give serious consideration to adopting an automatic type extension subject to opposition, given the amount of resources (judicial and the Supervisor's) that would be spent on extension applications if these provisions became frequently used. *Your Committee, being mindful of the need to minimize costs and conscious of the*

judicial system in Jamaica agrees with the Consultant's recommendation for the period of the stay to remain unchanged in clause 36 of the Bill.

Clause 37 - Court may on application declare termination before expiration period of a notice of intention

Sub-clause (1)
Your Committee accepts the proposal made by the PSOJ for the following to be deleted from line 1 of clause 37(1) "by a person under section 15(1)" and replaced with the words "by an interim receiver".

Sub-clause (2)
Your Committee agrees that 37(2) should be deleted in its entirety.

It was also suggested and your Committee agrees that clause 37 should also be moved to a later part of the Bill.

The question was raised as to the efficacy of having the Court terminate the process in clause 37, with the suggestion that this should instead be terminated by the Supervisor given the tight timeframe involved. Your Committee however supports the view that this determination should best be left to the Court and therefore, no change should be made.

Clause 38 - Trustee to assist in preparation of proposal
The Consultant proposed that consideration should be given to the role of the trustee under the Act and suggested that the trustee should be authorized to participate in the negotiations because the concept was that the trustee should be an independent party. *He was of the view however that the trustee should not be mandated to participate in the negotiations and proposed instead that the word "shall" be changed to "may" in line 1. This proposal was accepted by the Committee.*

Clause 39 - Circumstances where proposal may be made
Your Committee agrees that no change is necessary to this clause.

Clause 40 - Insolvent person, bankrupt, receiver, liquidator or trustee may make proposal
Sub-clause (1)(a)
Your Committee accepts the proposal to delete the reference in 40(1)(a) to "an insolvent person" and replace that with the words "debtor (other than a bankrupt)".

Sub-clause (1)(b)(ii)
Given that there is no pending proceeding involved, the Committee agrees that the word "affidavit" should be deleted and replaced by the word "declaration" in line 3 of sub-clause (1)(b)(ii).

Your Committee further agrees that the words "verified by declaration as being correct to the belief and knowledge of the person making the proposal" should be removed from (1)(b)(ii) and placed as the floor of sub-paragraphs (i) and (ii) since it was applicable to both.

The recommendation made by the JCC for clause 40 to provide that once a secured creditor does not file a claim he ought to be free to realise his security at any time during the bankruptcy and insolvency proceedings was not accepted by your Committee. This is because a temporary stay would be in place when the proposal is

being considered, and allowing a creditor to realise his security would defeat the very intent of the proposal. Your *Committee agrees however that in respect of the temporary stay, there should be a safety mechanism put in place to provide that if a secured creditor's collateral is in danger of evaporating, or being dissipated or removed, that creditor should be able to protect his rights notwithstanding the stay.*

Sub-clause (2)
Concern was raised that if no timeline is given for the Inspectors to respond, the proposal might not be able to go forward in a situation where the Inspectors fail to act. Your *Committee therefore agrees that sub-clause (2) should be deleted.* It was felt that if necessary, the creditors could ask the Inspectors for their input before they approve the proposal, and therefore, there is no need to build into the Act this requirement for the Inspectors to sign off on the proposal.

Sub-clause (3)
Your Committee agrees that the words "before any decision is made by the creditors and the Court" should be deleted.

It is also agreed that the reference to "section 33(1)" should be changed to "section 40".

Sub-clause (4)
Your Committee accepts the view that this provision is unnecessary because the schemes of assignment are self-contained and consequently, there is no need to have any kind of declaratory provision in relation to that. *Your Committee therefore agrees that sub-clause (4) should be deleted.*

Clause 41 - A proposal shall be made to creditors
New sub-clause (4)
Your Committee agrees that the amended clause 47 should be inserted as sub-clause (4) of this clause.

Clause 42 - Filing of proof of claims.
Sub-clause (2)
Your Committee agrees to the suggestion that the reference to "section 47" should be changed to "section 56".

Your Committee further agrees that the reference to "section 33(1) should be changed to "section 40".

Sub-clause (2)(a)
It was brought to your Committee's attention that the references to "sections 161 to 163" were incorrect. *Your Committee agrees that the correct reference should be inserted in this provision.*

Clause 43 - Proposal may include terms of supervision
During the discussion on clause 63(1), concern was raised that the wording of that provision did not make it clear that a proposal could be accepted or rejected in its amended form, and that an amendment to address this concern should be made to clause 43. Your Committee therefore agrees *that clause 43 of the Bill should be amended to read:*
"At a meeting to consider a proposal, the creditors, with the consent of the debtor, may include such provisions or terms in the proposal with respect to:
(a) the supervision of the affairs of the debtor; or

(b) any other aspect of the proposal

as they may deem advisable, and the creditors may accept or reject a proposal in its original or amended form pursuant to this clause."

Clause 44 - Trustee or nominee to chair creditors' meeting

Your Committee agrees that no amendment is necessary to this clause.

Clause 45 - Trustee shall call meeting of creditors

Sub-clause (1)

Your Committee observed that the use of the term "convene a meeting" in this provision did not accurately convey the fact that the meeting is to be held within twenty one days of the filing of the proposal. Your Committee therefore agrees that sub-clause (1) should be reworded to clarify that the meeting itself was required to be held within twenty one days of the filing of the proposal but at least 10 days notice of the meeting must be provided. It was therefore recommended that the language in sub-clause should be modified along the lines of that used in Section 51(1) of the Canadian legislation.

Whilst discussing the alignment of the timelines in respect of proposals, it was brought to your Committee's attention that there was an inconsistency between this provision and the provision in clause 56(1). It was pointed out that although clause 45(1) requires the meeting to be held not less than ten days after the notice of said meeting is sent, under clause 56(1), secured creditors were given thirty days to respond to the proposal by filing a proof of claim with the trustee and the filing of such proof of claim would give them voting rights at the meeting. Although this would require that such filing be done prior to the meeting, based on the current wording of clause 45(1), theoretically, the meeting could be held even before the creditors had received the notice. Your Committee was also told that in Canada, secured creditors must respond to the proposal before or at the meeting of creditors, otherwise, they would be voted down. *To address these anomalies, your Committee agrees that an amendment should be made to clause 56(1) of the Bill.*

Sub-clause (2)

Your Committee accepts the suggestion made that this clause should be amended to read: "...sending to every creditor known to the trustee..." in order to clarify the issue of *to whom the creditor is known.*

Your Committee also agrees that the reference to "trustee" in line 2 of sub-clause (2) should actually be to the "Supervisor".

Your Committee does not agree with the recommendation made by the OTB for paragraphs (b), (c) and (d) to be deleted since having to send all these documents would prove too costly. Your *Committee is of the view that it would be necessary for persons to have these documents in advance to properly prepare for the meeting and therefore recommends that sub-clause (2) be amended to speak to sending these documents "electronically or otherwise"* in order to address the concern raised.

It is further agreed that the word "after" in line sub-clause (2)(c) should be deleted.

Clause 46 - Adjournment of meeting

Your Committee agrees that the word "affirm" in line 1 should be deleted and replaced with the word "decide".

Your Committee discussed whether there should be a limit placed on the number of times that the creditors could adjourn the meeting and whether repeated adjournments could impact the stay. Your Committee was informed that the stay would operate until the trustee was discharged and therefore, would not be affected by the repeated adjournment of meetings. After making reference to the Canadian legislation which does not make provision for any long stop date on the adjournment process but rather makes provision for the specific circumstances in which the meeting can be adjourned by the creditors, *your Committee agrees that no specific limit should be placed in the Bill regarding how many times a meeting can be adjourned. It was felt that this matter should be left to the wisdom of the creditors.*

Clause 47 - Court may on application determine classes of secured claims
During discussion on clause 64 of the Bill, reference was made to this clause and it was felt that the same changes made in respect of proposals should also be made regarding the determination of the classes, that is, the trustee should determine the classes instead of the Court and those who object to the trustee's decision could appeal on the grounds that it was oppressive or unfairly prejudicial.

Your Committee had therefore agreed to a rewording of clause 47 to provide that the trustee would determine the classes of secured claims appropriate to a proposal and the class to which a secured claim falls, with a right of appeal to anyone who is adversely affected by that determination on the grounds that it is oppressive or unfairly prejudicial. However, the Consultant subsequently suggested that clause 47 should not be amended as proposed. Rather, *he recommended that clause 47 should be amended to reflect that the court may determine the proper classification of creditors, and that clause 47 should be removed and relocated as sub-clause (4) of clause 41. Your Committee accepts these recommendations.*

Clause 48 - Questions relating to proposal to be decided by ordinary resolution
Your Committee agrees that no amendment is necessary to this clause.

Clause 49 - Trustee shall make or cause to be made an appraisal and investigation
Your Committee agrees that the references to "insolvent person" should be changed to "debtor".

During discussions on clause 193 of the Bill which deals with the requirement for counselling to be provided to individual bankrupts, your Committee decided that in relation to proposals, the counseling should not be mandatory and the trustee may recommend and the creditors may agree to include within the proposal a condition that the insolvent person/looming insolvent undertake some kind of training/counseling. Your Committee further recommends that this provision should be included in clause 49 of the Bill.

Clause 50 - trustee to file cash-flow statement
Your Committee agrees that no change is needed to this clause.

Clause 51 - Court to decide whether cash-flow statement or parts thereof may be released
Your Committee accepts the proposal made by the OTB that in respect of subsections (2), (3) and (4), the Supervisor be given authority to issue the directive to the trustee thereby eliminating the need for an application to the Court. Your Committee recommends an amendment to reflect this change.

Sub-clause (3)

Your Committee agrees to the following rewording of this provision:
"*The Supervisor may refuse or give direction for the release of the cash flow statement or any part of that statement having regard to whether the decision would unduly prejudice the person who made the proposal under section 40 or the creditors in general*".

Clause 52 - Court may direct interim receiver to have access to financial documents, books, etc.
The Consultant recommended that clause 52 of the Bill should be amended to provide for the trustee, as opposed to an interim receiver, to perform these functions. Your Committee was informed that under the Canadian legislation, it was the proposal trustee who would carry out the duties listed under this clause, but that when an interim receiver was appointed, the interim receiver could be authorized to carry out the duties in substitution for the trustee. *The Consultant suggested and your Committee agrees that in clause 52, the words "interim receiver" should be replaced with the word "trustee".*

Sub-clause (4)
The Consultant observed that there was confusion about the role of the trustee and interim receiver under this sub-clause. He explained that an interim receiver could never be replaced by a trustee as suggested in this sub-clause. Rather, it was the trustee who would be replaced by the interim receiver. *He therefore suggested and your Committee agrees that the words "interim receiver" should be changed to "trustee" and the word "trustee" should be changed to "interim receiver" wherever they appeared in this sub-clause.*

Clause 53 - Trustee to file proposal in respect of an insolvent person with Supervisor
Sub-clause (1)
Your Committee discussed at length whether the proposal should become a public document, given that it might include information that a company would not wish to have disclosed to the creditors and other persons at large who are not affected by the proposal or who do not have a legitimate interest in the particular company that would require them to have this information. Some members were of the view that it would be consistent with the new paradigm to have the information being made public and that restricting information does not serve an economy that is based on free market principles. Other Members pointed to the overarching objective of the provisions relating to proposals, which is to rehabilitate the business where possible, and that since there might be sensitive information contained in the proposal, full public disclosure might mitigate against achieving this goal. It was also felt that anyone with a legitimate commercial interest in a company that is being rehabilitated and wants to determine whether the terms of the proposal are sustainable could in fact request the proposal from the particular company.

After making reference to what obtains in other jurisdictions, including New Zealand which has developed an elaborate regime to protect legitimate interests of privacy or secrecy in terms of what is disclosed, and taking into consideration the relevant exemption provisions of Jamaica's Access to Information Act regarding disclosure, *your Committee is of the view that there should be provision for sensitive commercial information and other private information in a proposal to be exempt from disclosure. Your Committee however agrees that the amendment to achieve this should be addressed under clause 224 of the Bill.*

Your Committee accepts the PSOJ's proposal to insert at the end of Clause 53(1) the following: "and where the insolvent person is a corporation, shall promptly

thereafter deliver notice thereof to the Registrar of Companies". It was stated that the main proposal document could be kept at the Supervisor's office but that a notice should be filed at the Companies Office for record keeping purposes.

Clause 54 - Determination of claims where proposals made with respect to insolvent persons
Your Committee agrees that no change is necessary to this clause.

Clause 55 - Determination of claims where proposal is made with respect to bankrupt
Your Committee agrees that the correct reference in line 1 should be to section 270 (10).

Clause 56 - Secured creditor may file proof of secured claim in response to proposal
Sub-clause (1)
Your Committee agrees with the suggestion that the references to "subsections (2) and (4)" in sub-clause (1) are incorrect and should be replaced by references to "subsections (3)and (5)".

It was suggested and your Committee agrees that in order to bring clarity to this provision, line 3 of sub-clause (1) should be reworded to state: "*may respond to the proposal within thirty days of receiving it by filing with the...*"

During the discussions on clause 45(1) of the Bill, your Committee was made aware of the inconsistency in timing between that provision and the provision under clause 56(1). *Your Committee therefore decided that in order to address the anomalies identified, clause 56(1) should be amended by: (i) deleting the reference to "within thirty days" in line two, and (ii) extending this provision by inserting of the words "at or before the meeting" after the word "Schedule" in the last line.*

Sub-clause (2)
The OTB expressed concern that the wording of clause 56(2) is unclear and suggested that unless the secured creditor has surrendered his security, he should only vote with respect to the balance after deducting the value of his security, and not the "entire claim" as being stated in the provision. Your *Committee agrees that the intent of the legislation is for the secured creditor to keep his security and only vote on the difference between that security and the proposed value*.

The Consultant expressed concern that Clause 56(2) appears to provide that a secured creditor could file a proof of claim and vote on all matters relating to the proposal, even though the proposal was not made to that secured creditor. He noted also that contrary to what your Committee believes, the intention of the provision was that where a proposal was made to a secured creditor, the secured creditor may vote its entire secured claim on questions relating to the proposal subject to the fact that whether the vote will be accepted is on a class-by-class basis. He informed your Committee that pursuant to section 59, where a proposal was not made to a secured creditor, the secured creditor could not file a proof of claim. *The Consultant proposed that Clause 56(2) be amended to read: "A secured creditor who files a proof of secured claim in accordance with subsection (1), may, subject to the Act, vote on all questions relating to the proposal in respect of that entire claim, and sections 158 to 161 shall apply, in so far as they are applicable, with such modifications as the circumstances require, to proofs of secured claim. Your Committee accepts this proposal".*

Sub-clause (3)
Your Committee agrees that the term "proposed assessed value" should be amended to speak to a "proposed value".

Sub-clause (5)
A recommendation was made by the JCC for sub-clause (6) to be amended to allow the creditor fifteen days from the date on which the proposed assessed value is received instead of fifteen days after it was sent. Your Committee *therefore agrees that the words "sent to the creditors" should be deleted and replaced with the words "received by the secured creditor".*

Sub-clause (6)
Your Committee accepts the suggestion made by the OTB that this provision be amended to provide that an agreed out of Court mechanism should be used when a dispute arises regarding the value and how this is to be determined, rather than having the matter settled by the Court. *Your Committee therefore agrees that the determination should be made by the Supervisor acting on independent/expert advice, and that the costs should be borne by whoever was asking for the value to be revised. Consequently, your Committee agrees that this sub-clause should be deleted.*

Clause 57 - Failure of secured creditor to file a proof of claim
Concern was raised by the OTB that based on the current wording of clause 57, if a proposal is sent out to creditors and they do not respond, those creditors are automatically deemed to have voted against that proposal. The OTB was of the view that this could result in a situation where those who are present at the meeting of creditors and vote are outnumbered by those who do not respond. Your *Committee had suggested that the clause be amended to provide "Where a secured creditor having a secured claim of a particular class does not file a proof of secured claim at or before the meeting of creditors, then that secured creditor having claims of that class shall be deemed to have voted for the refusal of the proposal*". The Consultant pointed out that the provision in the Bill and the new provision being proposed would have the same outcome, which was that the proposal would fail, but went on to explain that this proposed amendment could result in a situation where a proposal could fail because a group of ambivalent creditors who chose not to participate because they did not a preference one way or the other were deemed to have voted against that proposal. He clarified that the intent of this clause was to ensure that secured creditors were never bound by any decision that they did not approve. *Your Committee considered the points made by the Consultant and agrees that clause 57 should not be amended.*

Clause 58 - Secured creditors not receiving proposal may not file proof of claim
Your Committee agrees that no change is necessary to this clause.

Clause 59 - Creditors with proven claims may vote prior to meeting to consider proposal
Your Committee agrees that no change is necessary to this clause.

Clause 60 - Creditor may appeal decision of meeting held to consider proposal
Your Committee agrees to the deletion of this clause in its entirety because it was felt that there were other mechanisms that allowed an aggrieved creditor to make an appeal to the Court and that there were no clear guidelines in respect of the grounds on which such an appeal could be made in clause 60.

Clause 61 - Claims where creditor elected not to participate in proposal
Your Committee agrees that no change is necessary to this clause.

Clause 62 - Creditors may resolve to accept or refuse proposal
Sub-clause (2)(c)
Your Committee agrees that the correct reference should be to section 64.

Your Committee questioned the relevance of this provision and sought to determine what it meant. Your Committee was told when read in conjunction with clause 64(1)(b), sub-clause (2)(c) meant that the vote does not count for the purposes of the proposal generally on which the unsecured creditors are voting and that it only counts for the purpose of the secured claim. This means that the votes of the secured creditors do not count unless it specifically relates to them. This is also relevant given that the secured creditor has the option of either realising his security or electing to hand over the security and prove in the insolvency as an unsecured creditor.

Sub-clause (3)
Your Committee agrees that the words "the debtor" in line 2 should be deleted.

Sub-clause (4)
The OTB recommended that the Bill should be amended to provide that a trustee should not be allowed to act with respect to a matter in which he has an interest because this could give rise to a conflict of interest given the level of influence he could exert over various creditors. Your Committee agrees with this point and is of the view that a trustee who has an interest in an estate should not be appointed as trustee for that estate as this would be inappropriate. *Your Committee agrees that an amendment to address this concern should be made to clause 232 of the Bill. Your Committee further agrees that consequent on the amendment to clause 232, sub-clause (4) should be deleted.*

Sub-clause 5
Your Committee notes that some words appear to be missing from sub-clause (5)(b) that would speak to the acceptance, and recommends that the *words "vote for the acceptance of the proposal" or other appropriate words should be inserted to address this.*

Clause 63 - Refusal of proposal by creditors
Sub-clause (1)
The PSOJ recommended that the words "application for an" should be inserted after the words "deemed to have made". The question of whether sub-clause (1) would also apply to a looming insolvent was raised by the ICAJ, who felt that this should not be the case. The concern was that there might be a situation where the creditors feel that the proposal made by a debtor should be rejected because in their opinion, the financial situation of the debtor did not warrant him having to take the route of making that proposal.

In order to address the concerns raised, your Committee agrees to the following amendments:

(i) Make subsection (1) subject to subsection (3); and

(ii) *Insert a new subsection (3) to provide that "where the creditors have rejected the proposal on the grounds that they are not satisfied that the financial situation facing the debtor warrants entering into the arrangements comprised in the proposal, then subsection (1) shall not apply".*

Sub-clause (2)

Your Committee deliberated on a proposal made by the PSOJ for the reference to "Form 1" in sub-clause (2)(a) to be changed to "Form 20", so that what would be issued in this instance is a certificate.

Your Committee established that the process in respect of this provision was that:

(a) The 'Form 1' mentioned in this sub-clause was tantamount to the debtor's application that was used to initiate the process.

(b) Upon the refusal of the proposal, there would be no issue of an assignment, but rather, the Supervisor would issue a certificate of assignment under sub-clause (2)(a).

(c) This certificate of assignment was to be accompanied by an appropriate Form, which is to be developed and included in the Appendix to the Bill.

(d) The certificate of assignment would be the definitive act by virtue of which the vesting of property would take place.

Your Committee consequently agrees to the following amendments:

(1) Form 1 should be adjusted to be in the nature of an application for assignment; and

(2) *Clause 63(2)(a) should be amended to state: "file a report in respect of the refusal of the proposal in the Form set out as Form 13 in the First Schedule with the Supervisor, who shall thereupon issue a certificate in the form set out as Form…(to be developed) in the First Schedule, which has the same effect for the purposes of this Act as a certificate issued pursuant to section 30; or"*

Your Committee also agrees with the recommendation for a new paragraph (b) to be inserted to provide:
"if the insolvent person is a company, file notice of the assignment with the Registrar of Companies;"

It was recommended that *the following words should be inserted as the closing words of the existing paragraph (b) which would be renumbered as (c):*
"and affirm the remuneration of the trustee". Your Committee accepts these proposals and recommends amendments to the Bill to reflect these changes.

Your Committee also agrees that the word "assignment" in line 3 of the renumbered sub-paragraph (c)(ii) should be changed to "certificate".

The PSOJ made the point that where the proposal is rejected and consequently there is a deemed assignment, there is a requirement for a meeting of the creditors to be held. If there is a quorum at the meeting at which the proposal was rejected, then that meeting could be deemed to be the meeting of the creditors following the assignment. However, if there was no quorum at that meeting, there was then a requirement to call a meeting of the creditors in accordance with section 126, which speaks to the meeting being held within twenty-one days of the trustee's appointment. Concern was raised that in the scenario in clause 63(2), the trustee would have been appointed long before that time and therefore, section 126 would not apply. Consequently, it is still unclear as to the time period within which the meeting should be held after the deemed assignment.
Your Committee therefore agrees that the re-numbered sub-clause (2)(c)(ii) should be modified by deleting the reference to "section 126" and inserting the following: "which shall be held within twenty one days from the date of the notice".
Your Committee also agrees that a similar amendment should be made to clause 74(2).

Your Committee further agrees with the suggestion that it should be clear in the Act that if the proposal is rejected, then the security or guarantee tendered would either lapse or be withdrawn.

The Establishment of a separate Court to deal with bankruptcy matters

Concerns were raised by Members of your Committee and stakeholders regarding the lengthy delays, the lack of knowledge on the part of the staff at the various Court offices and the inadequacies of the Court system itself in dealing with bankruptcy and insolvency matters in general.

Your Committee was told that representatives of the PSOJ Insolvency Review Committee had brought these concerns to the Committee dealing with Rules, and that that Committee had taken a decision to make a proposal to the Chief Justice that the Rules establish an Insolvency Division in the same way that a Commercial Court Division had been established. It was also stated that the advantage of using this approach instead of having the legislation establish an Insolvency Court was that they would not encounter the difficulty where a Judge in that Court could not hear other matters, thereby creating a fixed regime that has no flexibility. Your Committee was further informed that the Commercial Court has worked well as a Rules established Court with nominal cost implications, and that the same cost benefits were expected in respect of this Insolvency Division. It was also stated that the Chief Justice was looking at specialist training for Judges in respect of the Insolvency legislation. In terms of timetable for implementation, the planned timing was for the Rules to be implemented on the same day that the Act is implemented that the Insolvency Division should also be implemented on that day.

Your Committee endorses the proposal for the establishment of an Insolvency Division, and was of the view that this approach would allow for the Rules to be crafted in such a way that they could be amended from time to time. Your Committee is also of the view that subject to the availability of resources, a separate Registrar should also be assigned to this Court as was done in the case of the Commercial Court etc. and expresses the hope that the appointment of Judges to the Insolvency Division would take into account the nature of the cases that are filed there and the experience and expertise of the particular Judge.

Clause 64 - Effect of acceptance of proposal by creditors and its approval by Court

Sub-clause (1)

Your Committee agrees that the references to "debtor" in sub-clause (1)(b) should be changed to "insolvent person".

The OTB proposed that the provision in 64(1) should be reworded so that approval need not be sought from the Court. This was endorsed by the PSOJ which recommended that this should be the purview of the Supervisor. After deliberating on this suggestion, your Committee agrees to the following as the scheme that it would wish to incorporate in the legislation (which was similar to what obtained in respect of a prospectus):

1) The proposal is voted on by the creditors and approved.
2) The proposal is then registered with the Supervisor who would issue a confirmation of registration if they are satisfied that the requirements of the Act and the regulations have been met in relation to that proposal.

3) If the proposal is refused by the Supervisor and the reason for the refusal is something that could be corrected, the Supervisor should send it back to the creditors so that matter could be addressed.
4) Having done that, the minority creditors would have a right of appeal to the Court.

Your therefore Committee agreed that:

I. Clause 64(1) should be amended to state that where a proposal is accepted by the creditors, it should be registered with the Supervisor and the Supervisor should register it within 14 days unless they form the view that it is non-compliant with the Act or it is unlawful under any other enactment or regulations.

II. Creditors who have not voted for the acceptance of the proposal but who would be bound by it have a right to appeal on the grounds that it is unfairly prejudicial or oppressive.

It was emphasized that in this scheme, the Supervisor would not be doing a substantive review of the proposal, but rather, would be looking at it from the point of view of procedural compliance and completeness, among other things.

The Consultant did not agree with the Committee's recommendation for the Court to be removed from the approval process and for the proposal to be voted on and approved by the creditors and then registered with the Supervisor. He informed your Committee that such an amendment would give rise to the issue of how it would impact the rights of creditors and also of international recognition of the process. Your Committee was further informed that it was the recognition of that court order approving the proposal that had the effect of making the proposal binding in foreign countries, and consequently, there might be difficulties encountered in having many foreign countries recognizing an administrative approval of the proposal, particularly where a domestic creditor has indicated that his rights had been confiscated. The Consultant recommended that Jamaica adopt the approach taken in Canada in respect of summary proposals, where the statute deems that a proposal approved by the creditors, to be sanctioned by the Court, subject to someone making a request to have it reviewed by the Court. The Registrar of the Court signed the approval order over the counter and there was no need for a hearing. Several concerns were raised by this suggested deemed approval process, including how such approval would be treated by the Court if there was subsequent litigation and how the deemed order would become final and conclusive since it was only at that point that it would meet the international requirement of being recognized as a foreign order.

After careful consideration of all the concerns raised, *your Committee accepts the proposal made by the Consultant that provision should be made in the legislation for a "deemed" sanction process which provided for a proposal accepted by creditors and the Supervisor to be deemed sanctioned by the Court unless: (a) a creditor or the Supervisor requested that formal sanction hearing take place; or (b) the debtor elected to take steps to seek an order sanctioning the proposal*. The clarification was made that provision would be made for a period of time within which an appeal could be made, and after this time had elapsed, the deemed sanction would be treated as an Order of the Court that was final and no longer subject to appeal.

Your Committee sought to determine the relevance of the words "*but does not release the insolvent person from the debts and liabilities referred to in section 215…*" to the rest of the provision in sub-clause (1)(b). Your Committee was told that in the Canadian legislation, these words were included as a separate provision in the same section of

the Act. *Your Committee therefore agrees that these words should be removed from sub-clause (1)(b) and placed as a separate provision in clause 64.*

Clause 65 - Effect of acceptance of proposal by creditors and its approval by Court
Your Committee considered whether or not the Court should have the power to approve a proposal even before the creditors had voted on it, as was being suggested by this clause. Your Committee determined that since there would be a deemed approval by the Court of the proposal that has been accepted by the creditors and the Supervisor, [*see amendment to clause 64*], the process of having formal Court approval being provided for in clause 65 was no longer necessary. *As such your Committee agrees that the existing Clause 65 should be deleted.*

The question was however raised as to what would occur in the situation where a proposal made by a person facing imminent insolvency has been rejected. PricewaterhouseCoopers was of the view that rejection of the proposal should not lead to an automatic assignment being made, as being recommended by the Consultant, but rather, that the creditors should be given the option to allow the company to continue to trade. They were also of the view that instead of calling a separate meeting to decide whether or not to allow the company to continue to operate, the creditors, at the same meeting where the decision was taken not to accept the proposal, should also vote on whether or not they would allow the debtor to withdraw the proceedings under this section, which would have the effect of allowing the company to continue to operate. The Consultant, after further consideration of the matter, conceded that whilst optimistic, it was possible that the business could be able to carry on business in the ordinary course.

Your Committee consequently agrees that instead of having an automatic assignment if the proposal was rejected, provision should be made in the Bill to allow the creditors to determine if the business should be allowed to continue to operate. It was agreed that a new section would be inserted in the Bill to provide:

> *"(1) Where a person facing imminent insolvency files a proposal and that proposal is not accepted by creditors as required by section 62, the person facing imminent insolvency shall not be deemed to have made an assignment, but at that meeting the creditors may resolve, by special resolution, to permit the looming insolvent to terminate the proceedings under Part IV.*
>
> *(2) Where the creditors do not pass a special resolution permitting a person facing imminent insolvency to terminate the proceedings under Part IV:*
> *(a) The person facing imminent insolvency is deemed to have made an assignment; and*
> *(b) The trustee shall forthwith file a report in prescribed formed with the Supervisor, who shall then issue a Certificate of Assignment in the prescribed form, which has the same effect as an assignment filed pursuant to section 30."*

Clause 66 - Creditors may appoint inspectors
Your Committee agrees that no changes should be made to this clause.

Clause 67 - Secured claims upon bankruptcy
Your Committee agrees that the word "if" should be deleted from this provision.

Clause 68 - Trustee to apply to Court for approval of proposal
Your Committee agrees that based on amendments to previous clauses of the Bill, that Clause 68 should be reworded in its entirety to provide that where the

creditors have voted for the acceptance of the proposal, the trustee should within five days deliver it to the Supervisor for registration. The provision should also state that upon receiving it, the Supervisor should review it and should issue a letter of registration within 14 days thereafter unless: (i) the proposal is not compliant with the Act or regulations, (ii) it breaches any other applicable law or (iii) an objection or appeal has not been filed.

Clause 69 - Approval of proposal by Court

Your Committee agrees clause 69 should be changed substantially based on the other amendments that had been made.

Sub-clause (2)

It was agreed that this provision should be reworded to state that any person who was aggrieved by a decision of the majority in accepting a proposal may appeal to the Court. Sub-clause (2) should also provide that the Court, taking into account the scoping provision (which is to be inserted at the beginning of the proposal section), may set aside the approval where the Court was of the opinion that the proposal was unfairly prejudicial or oppressive or breached the Act or regulations. The reference to "are not calculated to benefit the general body of creditors" in this sub-clause would be deleted as they would no longer be necessary.

Sub-clause (3)

Your Committee agrees that clause 69(3) should be deleted because there was no logic to this requirement that the debtor's bad behavior should be either an automatic bar to a proposal that offered less than a certain number of cents in the dollar or a ground of appeal.

Sub-clause (4)

Your Committee agrees to the deletion of sub-clause (4) given that the Court was being removed from the process and the creditors would be the ones approving the proposal, subject to an appeal by the dissatisfied creditors on the grounds of undue prejudice or oppression.

Sub-clause (5)

Your Committee was told that sub-clause (5)(a) was seeking to elevate the particular claims mentioned and indicates that the proposal must provide for them. The PSOJ raised concern as to how the provision was intended to operate, given that it was being suggested that the proposal was being made by an employee of the debtor. Your Committee examined the equivalent provision from the Canadian legislation, which provided that "*no proposal in respect of an employer shall be approved by the Court unless it provides for payment of the employees*". Your Committee, after some discussion on exactly who should be provided for in respect of the proposal, agrees that it should be all the things, except for taxes, that were outlined in category 2 of clause 172(1)(b).

Your Committee therefore agrees that the reference to section 172(d) in clause 69(5)(a) should be changed to section 172(1)(b)(i), (ii) and (iii).

Your Committee also agrees with the suggestion made that rather than leaving it to the affected persons to have to appeal to the Court to get their remedy given the cost implications and the types of persons who would be affected, clause 69(5)(a) should also be reworded to provide that in the registration process, the Supervisor should be given the ability to decline registration of the proposal unless it provides for these things.

Sub-clause (7)

The Consultant was of the view that this provision should be amended to contemplate that the fees and expenses of the trustee may be paid otherwise than out of the funds payable to creditors under the proposal. Your Committee agrees that Clause 69(7) be amended to read:

"All monies payable under the proposal shall be paid to the trustee and shall be distributed by him to the creditors after payment of all proper fees and expenses unless that proposal otherwise provides for the payment of such fees and expenses."

Clause 70 - Replacement of trustee by Court

The PSOJ suggested that instead of having to go to Court, the creditors should be able to appoint the replacement trustee. Your Committee *agrees with this proposal and recommends that in order to achieve this:*

(i) The marginal note to clause 70 should be changed to read "Replacement of Trustee by creditors".

(ii) *Clause 70 should be reworded to indicate that, "Notwithstanding section 239, the creditors may by special resolution appoint another trustee in lieu of the trustee under the notice of intention or proposal that was filed, if they are satisfied that it would be in their best interests to do so."*

Clause 71 - Proposals made after bankruptcy operates to annul bankruptcy

Your Committee agrees that in view of the decisions taken in respect of the provisions related to the approval process for proposals, consequential amendments should be made to clause 71.

Clause 72 - Court refusal in respect of insolvent person

Your Committee was informed that what would occur under this clause was that an assignment was deemed to be made, and consequently, the clause should be speaking about a certificate of assignment. Your Committee was also told that in keeping with the previous decision of the Committee to move these matters outside of the jurisdiction of the Court, the decision to refuse the proposal under this clause would now be made by the Supervisor.

Your Committee agrees to the following scheme for clause 72:

(i) if the decision of the Supervisor to refuse a proposal was based on a discrepancy of a procedural nature that could be remedied, then the Supervisor should give a directive for the error to be corrected.

(ii) if it was something that was incapable of being remedied, then the deemed assignment would be triggered and a certificate of assignment should be issued by the Supervisor.

(iii) the Supervisor and the trustee should decide on the timeframe in which the matter should be addressed.

Your Committee therefore recommends that Clause 72(1) should be amended to provide that:

1) *The Supervisor could refuse a proposal on the grounds that there was a procedural discrepancy etc.*
2) *Having refused the proposal, if the Supervisor was satisfied that the grounds on which the refusal was made could be remedied, the Supervisor would direct that steps should be taken to do so, but that in identifying the specific steps and timeframe, there should be consultation with the trustee by the Supervisor.*

3) *If the Supervisor did not consider that it was a matter that could be remedied, then the certificate of assignment would be issued and the assignment process would take over.*
4) *An aggrieved person would have the right to appeal to the Court to have the decision of the Supervisor reviewed by that body (given that this was a situation in which the creditors' approval would have been overturned).*

Clause 73 - Court may annul proposal
Sub-clause (1)
Your Committee agrees that clause 73(1) should be replaced by the provision in section 32(1) of the Barbados Act which provides:
"where default is made in the performance of any provision in a proposal or where it appears to the Court that the proposal cannot continue without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may on application with such notice as the Court may direct to the debtor and if applicable, to the trustee and to such creditors annul the proposal"

It was further agreed that the references to "the Court" should be changed to "the creditors or the Supervisor".

Clause 74 - Effect of annulment of proposal

Sub-clause (1)
Your Committee accepts the recommendation made by the Consultant that sub-clause (1) should be amended by changing the words "such annulment" in the last line to "such deemed assignment".

Sub-clause (2)
Your Committee agrees that the reference to "section 126" should be deleted and replaced by a reference to "which shall be held within 21 days from the date of the notice".

Clause 75 - Default in performance of proposal
Your Committee agrees that no change is needed to this clause.

Clause 76 - Date of bankruptcy by insolvent person shall be date of assignment where proposal filed
Your Committee agrees that no change is necessary to this clause.

Clause 77 - Agreements shall not be terminated or altered, in certain circumstances, where notice of intention or proposal filed
Sub-clause (1)
Your Committee agrees that clause 77(1)(a) should be amended to read: "*the debtor is or may soon be insolvent; or*"

Sub-clause (3)
Your Committee agrees that the word "not" should be inserted after the word "may" in line 3 of this provision.

Sub-clause (7)
It was agreed that subsection (5) should also be exempted from the provision in clause 77(7). Consequently, the words "and (5)" should be inserted after the words "Subsection (1)" in this provision.

Your Committee also agrees that the recommendation made by the BOJ for that entity to have the residual power to stop a payment in relation to certain financial contracts termed "excluded contracts" upon insolvency, has been addressed in the revised definition of "corporation" in clause 2 of the Bill.

Sub-clause (8)
It was suggested and your Committee agrees that the definition in sub-clause (8) should be moved to and incorporated under sub-clause (10).

Sub-clause (9)
Your Committee agrees that the words "insolvent person" should be replaced with the words "a debtor".

It was further agrees that all the words appearing after the word "filed" in line 1 of sub-clause (9)(b) should go back to the margin to form the closing words of paragraphs (a) and (b).

During discussions on repurchase agreements under sub-clause (1), Your Committee decided that sub-clause (9) should be expanded to apply to the situation "where a certificate of assignment or deemed assignment has arisen".

Sub-clause (10) - Repurchase Agreements (Repos)
During your Committee's deliberations on repurchase agreements, the following issues were addressed and recommendations made:

1) To address the concern of the FSC that in addition to ordinary repurchase agreements, retail agreements should also be captured in the carve out provisions of the Act, *it was agreed that a paragraph (c) should be added to clause 80(1) to provide that the underlying assets which are the subject of a repurchase agreement would be excluded from the estate of an insolvent person.*

2) To ensure that clause 77 would apply to the retail repurchase market, *it was agreed that the definition of a repurchase agreement in this clause should be extended to provide that any contract which the FSC treats as such in any guidelines or regulations shall be deemed to be a repurchase agreement.* This would ensure that those funding products would be covered. *It was further agreed that the definition of repurchase agreement should capture those repurchase agreements entered into by banks and other entities that are not subject to the FSC guidelines.*

3) In respect of the insolvency of a securities dealer, your Committee felt that it would be useful to adopt the recommendation made by the FSC for the Act to clearly state that in the event of insolvency, repurchase agreements and their underlying assets would be dealt with or administered according to the provisions of the Securities Act and Regulations. Concern was however raised that the Securities Act might not have provisions to treat specifically with this matter. It was also brought to your Committee's attention that although clause 77(9) addresses this issue, that provision was limited to the case where a notice of intention or a proposal has been filed. *Your Committee therefore agrees that clause 77(9) should be expanded to apply to the situation "where a certificate of assignment or deemed assignment has arisen".*

4) *It was suggested that a provision should be inserted in the Bill to make it clear that a repurchase agreement will not be declared void, invalid or reversible where a bona fide investor unwittingly enters into a repurchase*

agreement with the insolvent person immediately prior to (up to and including) the commencement of bankruptcy proceedings.

5) The FSC suggested that where a repurchase agreement has come into existence, on the day of but after the commencement of winding-up proceedings or reorganization measures, it shall be legally enforceable and binding on third parties unless the collateral taker was aware, or ought reasonably to have been aware of the commencement of such proceedings. The FSC suggested further that where notice of the proceedings is published in a widely circulated newspaper, then the public should be deemed to have notice. Your Committee was told that the intent of this proposed amendment is to ensure that if someone invested within the period after the commencement of proceedings, the transaction would be protected from being seen as being fraudulently preferred.

Your Committee agrees that the stay ought not to preclude the repurchase agreement from being performed in accordance with its terms, and *therefore recommends that a provision should be inserted in clause 88, worded in language similar to the provision at clause 88(2) of the Bill, to preserve the rights of a party to a repurchase agreement to enforce the terms of that agreement including the disposition of the underlying assets in accordance with the terms of the agreement.* The effect of this proposed amendment is to preserve the ability to liquidate the collateral.

Clause 78 - Certificate of performance performed

Your Committee considered the proposal made by the OTB that it is the Supervisor who should issue the certificate of performance to the debtor and the trustee after the report was filed by the trustee. Your Committee however accepted the proposal made by the PSOJ which is that, when he receives the report from the trustee, the Supervisor should register it and maintain that record in accordance with clause 224 of the Bill. *It was therefore agreed that clause 78 should be amended to make provision for the Supervisor to register the trustee's report when it is received.*

Clause 79 - Application of other provisions of Act

Your Committee accepts the recommendation made by the PSOJ to delete the words "to proposal" in line 1 of this clause.

New Provision on Debtor in Possession Financing (Interim Financing)

The PSOJ proposed that a new provision should be inserted in the Bill to address the issue of debtor in possession financing, the primary purpose of which is to facilitate the rehabilitation of the company. In looking at this proposal, your Committee compared the provision on interim financing in Canada with that of the United States in order to gain an understanding of how this financing was expected to work. Your Committee noted that the Canadian provision involves a single step process, where the trustee would apply to the Court for this type of financing while the United States' model entails a two-tier process of first having to seek and be denied unsecured funding and then applying to the Court to obtain this financing. *Your Committee, having examined both provisions, recommends that the Canadian model, with the modifications presented below, should be adopted.* This provision, in its original form, states:

"50.6 - ORDER — INTERIM FINANCING

Order — interim financing

(1)On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Individuals

(2)In the case of an individual,

(a)they may not make an application under subsection (1) unless they are carrying on a business; and

(b)only property acquired for or used in relation to the business may be subject to a security or charge.

Priority

(3)The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

Priority — previous orders

(4)The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(5)In deciding whether to make an order, the court is to consider, among other things,

(a)the period during which the debtor is expected to be subject to proceedings under this Act;

(b)how the debtor's business and financial affairs are to be managed during the proceedings;

(c)whether the debtor's management has the confidence of its major creditors;

(d)whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e)the nature and value of the debtor's property;

(f)whether any creditor would be materially prejudiced as a result of the security or charge; and

(g)the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be."

Your Committee was told that the in Canada, interim financing:

(i) is a court-driven process,

(ii) does not apply to an individual unless the individual carries on a business and has property acquired for and used in relation to that business,

(iii) does not apply to a person who has been declared a bankrupt.

Only a debtor, (defined in Canada as including a bankrupt where the context so requires) may bring an application for an order authorizing interim financing.

Your Committee, after examining the above provisions and other related provisions from the Canadian legislation, further recommends that:

(1) The provisions in the Canadian model which deal with allowing super priority for (i) directors and officers contingent liabilities and (ii) the professional fees that may be incurred as part of the process, should also be included in our Insolvency legislation. The proviso that is included in the Canadian model, which speaks to this being applicable only where there is gross negligence or other breaches of duties that are not wilful, should also be adopted.

(2) Regarding who should grant the approval, if the debtor, the trustee and all the affected secured creditors accept the interim financing proposal when it is put to them as part of the proposal for the sustainable rehabilitation of the business, then the application should be approved by the Supervisor. The Supervisor would issue a certificate of interim financing which would have the effect under the statute of allowing the interim financing to have priority lien.

(3) If there is no consensus among the parties, the application would have to be brought to the Court for that body to make a determination on whether interim financing should be granted.

(4) Regarding the issue of whether a bankrupt should be allowed to invoke this interim financing provision, your Committee was told that based on the scheme being proposed under the Bill, a person would first have to get the proposal approved by the creditors before he could make an application for interim financing. Once the creditors approved the proposal put forward by a person who is already in bankruptcy, the bankruptcy would come to an end and the person would qualify to be able to invoke the interim financing procedure as he would no longer be a bankrupt.

Part VI. Effect of Bankruptcy on Property of Bankrupt

Clause 80 - Property of bankrupt

Sub-clause (1)

Arising out of discussions on repurchase agreements in clause 77(10), your Committee agrees to the insertion of a new paragraph (c) to provide that the underlying assets which are the subject of a repurchase agreement would be excluded from the estate of an insolvent person.

Clauses 81 and 82 - Excess income individual bankrupts to be as prescribed and Trustee shall fix the amount to be paid by bankrupt

It was stated that clauses 81 and 82 together contemplated a notion that there was some basic amount of income that a bankrupt should be entitled to retain for his own account, which should not form part of what would be available to the creditors.

It was brought to your Committee's attention that currently worded, these two provisions could be interpreted as being applicable to individuals and corporate entities. *Your Committee therefore recommends that clauses 81 and 82 should be amended to make it clear that they are dealing with individuals.*

Clause 83 - Supervisor shall recommend amount to be paid by bankrupt where the standards not applied

The view was expressed by the OTB that the currently wording of clause 83 indicates that the amount to be paid by the bankrupt would be dealt with in the form of a recommendation sent back to the bankrupt. They suggested this ought to be a directive handed down from the Supervisor, which ought to be complied with. They further suggested that in the event that there was a dispute between the trustee and the bankrupt as to the amount to be paid, this dispute should be taken to mediation and if it remained unresolved, it should be taken to the Supervisor who would make a final determination. If there was disagreement with the decision of the Supervisor, the matter should be referred to the Court to be resolved. It was also proposed that a timeline should be inserted, within which the trustee should make the determination as to how much was to be paid by the bankrupt.

Your Committee deliberated on these proposals and arrived at the following conclusions:

(1) *That clarification should be made in clause 83 that it relates specifically to an individual.*

(2) Clause 83(2) should be adjusted to reflect the overall concept of this provision, which is that:

- *(a) The amount that is to be contributed by the bankrupt is fixed by the trustee who would make reference to the prescribed standards in clause 81;*
- *(b) The determination of the trustee is to be binding on the bankrupt;*
- *(c) If the bankrupt feels that the determination made by the trustee was not fair and just or does not adequately meet the prescribed standards, the bankrupt may refer the matter to the Supervisor for determination;*
- *(d) The Supervisor would have the discretionary power, if it deems fit, to refer the matter to mediation or to make the final determination on the matter based on the facts before it. If the matter goes to mediation, the Supervisor may or may not accept the outcome of that process, that is, the decision would be non-binding on the Supervisor;*
- *(e) Given that the circumstances might vary and that the trustee might need to carry out his investigations in order to arrive at the determination, a provision should be inserted in clause 82 for this to be done as soon as reasonably practicable to the commencement of the bankruptcy;*
- *(f) The trustee should notify the creditors promptly of the decision or any variation of the decision made under clause 82(2), and the aggrieved creditor should have the right to appeal to the Supervisor if he/she felt that the trustee's decision was not consistent with the prescribed standards;*
- *(g) An aggrieved creditor who feels that the trustee has delayed unduly in making the determination under clause 82(1) should have the right to refer that matter to the Supervisor for determination.*

Your Committee therefore recommends amendments to reflect these changes.

Clause 84 - Court to determine amount to be paid by bankrupt

Sub-clause (1)

Based on the proposed amendments to clause 83, where either the bankrupt or the creditor could ask the Supervisor to review the determination made by the trustee, your Committee agrees that clause 84(1) is no longer necessary and therefore recommends that it should be deleted.

Sub-clause (2)
Your Committee agrees that in clause 84(2), it is the Supervisor instead of the Court that should make the determination.

Sub-clause (3)
Your Committee was of the view that as currently worded, the intent of this provision was unclear. It was further suggested that clause 84(3)(a), (b) and (c) could be added as paragraphs (c), (d) and (e)of clause 84(2) as things that the Supervisor takes into account in making his determination.

The comparative provision from the Canadian legislation was examined, which reflected that all the words appearing after the words "a person" in line 2 of 84(3)(b) as well as all the words that were included in the Bill as 84(3)(c) should go back to the margin in order to form the closing words of clause 84(3)(a) and (b). *Your Committee therefore agrees to adopt the formulation in the Canadian model, so that the closing words that would govern sub-clause (3)(a) and (b) would read:*
"where the person is related to the bankrupt, and the Supervisor may determine the part of the salary, wages or other remuneration or the part of the payment or commission, that shall be paid to the trustee on the basis of the amount so fixed by the Supervisor unless it appears to the Supervisor that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed".

Sub-clause (5)
It was suggested and *your Committee agrees that sub-clause (5)(a) applies to clause 81 and therefore, the definition of "total income" found in this provision should be relocated.*

It was also suggested that the provision in *sub-clause (5)(b)* was a general provision that would be applicable to the sections in Part VI of the Bill and did not apply only in relation to clause 84. *Your Committee agrees that this provision should also be relocated.*

Clause 85 - Application to amend order to fix amount
Sub-clause (1)
The question of the enforceability of this provision was raised if, in keeping with the proposed scheme, the determination in clause 85 should be made by the trustee or the Supervisor instead of the Court. The concern expressed was that whereas a Court order would have the effect of being binding on a third party, it was not clear how a determination by an entity other than the Court could become binding on a third party. It was suggested that and your Committee agrees that *this concern should be addressed by having the statute state specifically that the third party was required to comply with the direction from the Supervisor or the trustee, but if the third party failed to do that, then the trustee or the Supervisor would then apply to the Court for an order to be made to enforce it. Your Committee further agrees at as a consequential amendment, the reference to "any interested person" in line 1 of clause 85(1) should be changed to "the trustee or Supervisor".*

It was also agreed that the reference to "section 83" in line 3 should be changed to "section 84".

Clause 86 - Assignment of existing or future wages of no effect after bankruptcy
Sub-clause (2)
Your Committee agrees that the reference to "the bankruptcy" in the last line of sub-clause (2) should be changed to "the date of the initial bankruptcy event".

Your Committee further accepted the proposal made by the OTB that sub-clause (2) should include amounts earned after the date of the bankruptcy.

Stay of Proceedings upon the Filing of Notice of Intention or Proposal

The suggestion was made and your Committee agrees that clauses 87 to 90 are to be relocated because they seem to be preliminary to a proposal being filed.

Your Committee spent a considerable length of time trying to comprehend how the stay of proceedings works in respect of the filing of the notice of intention and the filing of a proposal. Of particular concern was how the stay would affect the rights of secured creditors.

Clause 87 - Stay of Proceedings upon filing of notice of intention or proposal
Your Committee, during its consideration of the provisions of this clause, which was taken directly from the Barbados legislation, found that although an attempt had been made to consolidate into one clause the stay of proceedings in respect of both the filing of a notice of intention and the filing of a proposal, the provisions related to the latter had been omitted. Consequently, your Committee gave instructions for this omission to be addressed, with reference to be made to the Canadian legislation. Among the other concerns raised was the observation that as currently worded, sub-clauses (2), (3) and (4) appeared to give significant latitude to secured creditors to continue to enforce their rights in the circumstances outlined in those provisions.

The PSOJ subsequently presented your Committee with a redraft of clauses 87 and 88 which dealt with as separate provisions the stay of proceedings with respect to: (i) the notice of intention, (ii) the proposal, and (iii) bankruptcy.

Your Committee was told that the stay for the notice of intention differed from the stay for the proposal in respect of: (a) the end period, in that on the filing of a proposal, the stay would end on either the bankruptcy or the discharge of the trustee whereas, the stay on the filing of a notice of intention would end when the proposal is filed
(b) the effect of the stay is also different in the context of the proposal.

Literature provided by the PSOJ on how the stay operates in practice in Canada indicated that the filing of either a notice of intention or a proposal invokes an

immediate stay of proceedings, and that creditors were restricted from taking any further actions against the debtor. It was stated that in most instances, the secured creditor would be stayed as well unless that creditor provided notice that he intended to proceed against the assets more than ten days prior to the filing of the notice of intention. It was also stated that the stay of proceedings only applies to the claims that exist up to the date of the filing of the notice of intention, and that all debts after that date are outside of the process and must therefore be paid immediately, or on the terms that have been agreed to by the creditors.

Your Committee was also informed by the Insolvency practitioners who participated in the deliberations that in terms of settlement of the assets, the position of the secured creditor remains intact, and that if there is to be any impairment to a particular secured creditor, that creditor would have been approached beforehand by the debtor who would also have refinanced that loan. Consequently, the debtor would have already had the support of that creditor prior to putting that proposal to the unsecured creditors. They informed your Committee that since the purpose of the legislation was to allow a business which is having difficulty with unsecured creditors in the ordinary course of business to be able to resolve those situations without the secured creditors taking action, once the proposal was in process, the secured creditor could not abort or circumvent the process. He could however take action if the proposal was rejected.

Concerns were also raised by Committee members and stakeholders that the five month period for the duration of the stay was too long, and the fear expressed was that this could cause secured creditors, (who are also bound by the stay unless they apply to the Court with good reasons to have the stay lifted in respect of their particular security), to act precipitously. Your Committee was of the view that the length of the stay could be shortened by reducing the length of the extensions that could be granted from forty-five days at a time to thirty days at a time, while allowing the flexibility for the period to be extended should the need arise. An amendment was recommended to clause 36(5) of the Bill to address this.

Below are the redrafted provisions to be inserted in the Bill:

New Clause 87 - Stay of Proceedings - notice of intention

Stay of proceedings - notice of intention

87. – (1) Subject to subsection (2) and section 89, where a notice of intention has been filed under section 33 in respect of a debtor (other than a bankrupt) –

(a) no creditor shall –

(i) have any remedy against such debtor or the debtor's property; or

(ii) commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy; and

(b) no provision of a security agreement between such debtor and a secured creditor that provides, in substance, that on –

(i) such debtor's insolvency;

(ii) the default by such debtor of an obligation under the security agreement; or

(iii) the filing by such debtor of a notice of intention under section 33 in respect of the debtor,

such debtor ceases to have such rights to use or deal with assets secured under the agreement as the debtor would otherwise have, has any force or effect,

until the filing of a proposal in respect of such debtor or the bankruptcy of such debtor

(2) Subsection (1) shall not apply –

(a) to prevent a secured creditor who took possession of secured assets of such debtor for the purpose of realization before the notice of intention under section 33 is filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention to enforce security under section 19 to enforce that creditor's security against such debtor person more than ten days before the notice of intention was filed in respect of such debtor; or

(c) to prevent a secured creditor who gave notice of intention under section 18 to enforce that creditor's security, from enforcing the security if such debtor has, under section 18(2), consented to the enforcement action.

Sub-clause (1)

The question was raised as to whether the words "for the recovery of a claim provable in bankruptcy" was meant to govern both sub-paragraphs (i) and (ii). Your Committee was told that this provision was taken from the Canadian legislation and then separated into two provisions. After examining the Canadian legislation, *your Committee recommends that sub-clause (1)(a) should be reformulated so that it appears in the same manner in which it is presented in the Canadian legislation.*

Your Committee agrees that the words "commencement of" should be inserted after the words "or the" in the penultimate line of sub-paragraph (1)(b).

Sub-clause (2)

Your Committee agrees that a comma should be inserted after the words "section 19" in line (3) of paragraph (b) and that the words "to enforce" should be replaced by the words "from enforcing".

New Clause 87A - Stay of Proceedings - proposal

Stay of 87A. – (1) Subject to subsections (2) to (4) and section 89, where a proposal

proceedings - has been filed in respect of a debtor (other than a bankrupt) –

proposal

(a) no creditor shall –

(i) have any remedy against such debtor or such debtor's property; or

(ii) commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy

until the trustee has been discharged or such debtor becomes bankrupt; and

(b) no provision of a security agreement between such debtor and a secured creditor that provides, in substance, that on –

(i) such debtor's insolvency;

(ii) the default by such debtor of an obligation under the security agreement; or

(iii) the filing by such debtor of a notice of intention under section 33, or of a proposal in respect of such debtor,

such debtor ceases to have such rights to use or deal with assets secured under the agreement as such debtor would otherwise have, has any force or effect, until the trustee has been discharged or such debtor becomes bankrupt.

(2) Subsection (1) shall not apply –

(a) to prevent a secured creditor who took possession of secured assets of such debtor for the purpose of realization before the proposal under section 33 is filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention to enforce security under section 19 to enforce that creditor's security against such debtor more than ten days before –

(i) a notice of intention was filed in respect of such debtor; or

(ii) the proposal was filed, if no notice of intention was filed from enforcing that security; or

(c) to prevent a secured creditor who gave notice of intention under section 18 to enforce that creditor's security, from enforcing the security if such debtor has, under section 18(2), consented to the enforcement action.

(3) Subject to sections 24, 101 and 162 to 170, the filing of a proposal under section 40 shall not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(4) Subject to sections 24, 101 and 162 to 170 where secured creditors holding a particular class of secured claim vote for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Sub-clause (1)

Your Committee agrees that sub-clause (1)(a) should be amended to reflect the formulation *presented in the Canadian legislation*.

Sub-clauses (3) and (4)

Concerns were raised as to why subsections (3) and (4) were included in respect of the stay of proceedings for a proposal and not for the notice of intention, given that this distinction had a material impact on the secured creditor. The view was that if these two provisions were needed, they should be applicable to both provisions. The question was also raised as to how matters provided for in these provisions would arise if the secured creditor did not have a claim provable in bankruptcy.

New Clause 88 - Stay of Proceedings upon bankruptcy

Stay of proceedings upon bankruptcy.

88. – (1) Subject to subsection (2), (3) and section 89, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.

(2) Subject to sections 24, 101 and 162 to 170, the bankruptcy of a debtor shall not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the Court otherwise orders.

(3) Where a court makes an order under subsection (2), the Court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows –

(a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all installments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no installment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

New Clause 88A. – (1) No order may be made under section 88(2) if the order would have the effect of preventing a secured creditor from realizing or otherwise dealing with financial collateral.

(2) "Financial collateral" means any of the following that is subject to

an interest, or a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

(a) cash or cash equivalents including negotiable instruments and demand deposits;

(b) securities, a securities account, a securities entitlement or a right to acquire securities; or

(c) a futures agreement or a futures contract

Sub-clause (2)

The question was raised as to whether clause 88A(2) was still relevant given previous amendments that had been made by your Committee. It was brought to your Committee's attention that the definition of "a title transfer credit support agreement" was included in the definition of "financial collateral" and that the latter was also included in the definition of "eligible financial contract". *Your Committee therefore agrees to the deletion of the words "a title transfer credit support agreement".*

During the deliberation on retail repurchase agreements in clause 77(10), your Committee agreed that this provision should be expanded to make it clear that the stay does not impact eligible financial contracts or lease re-purchase agreements.

Clause 89 - Aggrieved creditor may apply to Court for removal of stay

Your Committee agrees that no change is necessary to this clause.

Clause 90 - stay ineffectual against certain parties and claims

Your Committee agrees that no amendment is necessary to this clause.

Effect of Receiving Order Assignment on Bankrupt

Clause 91 – Precedence of bankruptcy over certain creditors unless process completed

Sub-clause (2)

Your Committee considered the proposal made by the OTB that under clause 91(2), if the property or the asset has not been executed, and therefore was still in the possession of the bailiff, it should be handed over by the bailiff to the trustee in keeping with what obtains under the present regime. *Your Committee agrees that no change should be made to this clause as the OTB's concern has already been addressed in clause 94(1).*

Clause 92 – Property of bankrupt to vest in trustee on receiving order or assignment

Sub-clause (1)

Your Committee agrees with the proposal made by the PSOJ that this provision should be amended to reflect that a certificate of assignment would be issued by the Supervisor.

Proposed new sub-clause (3)

Your Committee gave consideration to the suggestion made by the PSOJ to insert a new sub-clause (3) similar to section 544(a)(1) of the Bankruptcy Code of the US that as of the date of the commencement of the bankruptcy, the trustee has the rights and

powers of an execution creditor over all the property of the debtor under the Security Interests in Personal Property Act.

Your Committee however agrees to the insertion a new sub-clause to make it clear that where a secured creditor has not perfected his security interest at the time that bankruptcy starts, that creditor is treated as unsecured vis-a-vis the trustee in the process.

Clause 93 - Trustee to avail himself of other rights under other enactments
Your Committee agrees that no change is necessary to this clause.

Clause 94 – Delivery of seized property to trustee where assignment or receiving order made
Sub-clause (1)
Your Committee agrees with the recommendation made by the OTB that the receiving order should be certified by the Court which makes it, and recommends and amendment to reflect this change.

The OTB questioned whether this sub-clause should be subject to section 91(1) which deals with secured creditors and completed execution. After consideration of the provisions involved, your Committee agrees that a link should be made between clause 91(1) and clause 94(1).

Clause 95 - Trustee may surrender lease or deal with leasehold interests
Sub-clause (3)
Your Committee does not agree with the recommendation made by the JCC that this provision should specify how much notice should be given by the landlord as it was felt that this should be dealt with in the rules.

Your Committee also considered the suggestion made by the JCC that the landlord of a property should have a voice in determining whether he wishes to continue with a lease that was held by the bankrupt. Your Committee felt that because of the stay, the landlord could not terminate a lease. The JCC accepted this.

Clause 96 - Receiving order and assignment to be registered
Sub-clause (1)
Your Committee recommends that the words “in respect of word” should be inserted after the word “trustee” in sub-clause (1)(b).

Your Committee further agrees that the words “or personal property” should be inserted after the word “property” in line 3 of sub-clause (1)(b). This would ensure that the receiving order or the assignment would be filed with the Security Interests in Personal Property (SIPP) Registry to the extent that it impacts personal property. Your Committee further agrees that clause 96(1) should be amended to provide that the trustee should make a SIPP filing within fifteen days of his appointment, and if this is done, any security interest which is perfected after the date that the bankruptcy commences would be treated as against the trustee as an unsecured debt for the purposes of this Act. If however the trustee fails to file within the fifteen days, any security interest which is affected, prior to the filing, is treated as having been perfected at the time that the bankruptcy commenced.

Your Committee further agrees that all the words appearing after the word “Supervisor” in line 1 should be moved to the margin to form the closing words of paragraphs (a) and (b).

Sub-clause (2)
Your Committee agrees that the words "or property" be inserted after the words "of any land or charge" wherever they appeared in sub-clause (2). This would include personal, legal, equitable and every description of property.

Sub-clause (6)
Your Committee agrees with the suggestion that the word "property" in the last line of this sub-clause should be deleted.

Conveyance

Clause 97 - Effect of bankruptcy on interest in property
Your Committee agrees that no change is necessary to this clause.

Clause 98 - Transactions valid unless prior registration
Your Committee agrees that no amendment should be made to this clause.

Corporations and Banks

Clause 99 - Contributions to be made to bankrupt corporation
Your Committee agrees that no change is necessary to this clause.

Clause 100 - Banks and other deposit taking institutions shall advise trustee of existence of account
Sub-clause (1)
Your Committee was told that this provision should not be limited to banks since there were other financial institutions such as credit unions and building societies which hold money or assets for persons and should therefore be covered. *Your Committee therefore agrees that the words "banker" and "bank" should be changed to "financial institution" wherever they appeared in this provision.*

Sub-clause (2)
Based on a submission made by the PSOJ that insurance companies should be excluded from this sub-clause, your Committee considered amending sub-clause (2) to make it subject to the rights of any secured creditor who has a security interest in the account, and in the case of an insurance policy, subject to the rights of any person who is entitled under the terms of the policy to be paid the insurance proceeds. After further discussions however, your Committee agrees that the provision should remain unchanged as it was felt that the provision was merely indicating that no action should be taken by the bank for a month without a direction from the trustee or the Court.

Sub-clause (3)
Your Committee agrees that sub-clause (3) should be amended in the following manner:

(i) the reference to "deposit taking institutions" should be changed to "financial institutions",

(ii) the word "application" which implies a procedure should be changed to "a request in writing",

(iii) the word "deposits" should be changed to "sums",

(iv) the provision should not only be limited to money and therefore the words "or other financial assets" should be inserted after the word "money" and (v) the word "the" in the last line of this provision should be replaced by the words "or deliver". Your Committee agrees that sub-clause (3) should be amended to reflect the aforementioned suggestions.

Trustee and Property of Bankrupt

Clause 101 - Trustee may inspect property
Your Committee agrees that no amendment is necessary to this clause.

Clause 102 - Liability of trustee where property is disposed of
The JCC suggested that this provision should be modified to provide that it would not apply in the case where fraud has been committed by the trustee. Your Committee is however of the view that fraud would not arise in this instance because fraud predicates having knowledge and acting in a dishonest manner. Therefore, this suggestion is not accepted.

Your Committee agrees that the words "be personally liable" should be removed from paragraph (a) and placed at the end of the chapeau so that it applies to both paragraph (a) and (b).

Your Committee also agrees that all the words appearing after the word "property" in paragraph (b) should be moved to the margin to form the closing words of (a) and (b).

Clause 103 - Persons claiming ownership interest in property of the bankrupt
Your Committee agrees to the deletion of the word "ownership" in the marginal note.

Sub-clause (1)
Your Committee questioned whether a timeline should be included in this provision, as suggested by the OTB. *Your Committee eventually agrees that such an inclusion is unnecessary given the provision at sub-clause (4) where the trustee could require a person to file a proof of claim if he becomes aware that that person has an interest in the property.*

Sub-clause (3)
Your Committee agrees to the insertion of the word "unless" before the words "the claimant" in line 1.

Supplier of Goods

Clause 104 - Unpaid suppliers may prove for certain goods
The PSOJ questioned whether this provision was necessary in view of the provisions under the Security Interests in Personal Property (SIPP) Act. Members wondered why a provision was being placed in the Act to put suppliers in a preferred position relative to the other creditors. The question was also raised as to why suppliers would be given the right to reclaim the goods given that in the normal course of business, if the supplier has a credit arrangement and supplies goods for thirty days and the person did not pay, the supplier could either reclaim the goods or take the matter to court as a civil matter. *Your Committee agrees that this clause should be deleted.*

Clause 105 - Claim of farmer or fisherman
Your Committee agrees that this clause should be deleted. Your Committee is of the view that since the goods involved are perishable, the debt might be more than the value of the goods.

Intellectual Property

Clause 106 - Sale of patented articles by trustee
Your Committee agrees that no amendment is necessary to this clause.

Clause 107 - Copyright works dealt with by bankrupt
Sub-clause (1)
Your *Committee agrees that sub-clause should be amended because in its current form, it does not read properly. Your Committee recommends that the provision in the Canadian legislation should be used to assist in reformulating this provision.*

Clause 108 - Bankrupt's intellectual property vests in purchaser upon sale by trustee
Your Committee agrees that no amendment is necessary to this Clause.

Partnership Property

Clause 109 - Limited partnerships
Your Committee agrees that no change is necessary to this clause.

Clause 110 - Proceedings against bankrupt partner
Your Committee agrees that no amendment is necessary to this Clause.

Crown Interests

Clause 111 - Crown claims are unsecured
Your Committee agrees that no change is necessary to this clause.

Clause 112 - Crown's security to be registered to be enforceable
Your Committee agrees that no change should be made to this clause.

Settlements and Preferences

**Clause 113 - Settlements of property within one year void
Sub-clause (1)
Based on an amendment made to Clause 124(2), your Committee agrees that clause 113(1)(b) also be amended to read: "ending on the date on which the proposal has been filed by the settlor ...".

Clause 114 - Contracts in consideration of marriage
Your Committee agrees that no change is necessary to this clause.

Clause 115 - Payments void subject to proof of certain facts
Your Committee agrees that no amendment is needed to this clause.

Clause 116 - Assignment of book debts by a bankrupt
Your Committee agrees that no change should be made to this clause.

Clause 117 - Preferences voidable if made within six months
Sub-clause (1)
Your Committee accepts the recommendation made for all the words appearing after the words "insolvent person" in paragraph (d) should be moved back to the margin.

New provision
During the discussions on repurchase agreements, the question was raised as to whether an exclusion should be made under this clause for repurchase agreements

entered into by a securities dealer. Your Committee, in arriving at a decision, examined section 95 (2.1) of the Canadian legislation. *Your Committee agrees that since "repurchase agreements" are covered under the definition of "eligible financial contracts", a provision should be included in clause 117 along the lines of the provision in the Canadian legislation which states that the relevant subsection shall not apply in respect of "a transfer, charge or payment made in connection with financial collateral and in accordance with the provisions of an eligible financial contract".*

Clause 118 - Preferences to related party voidable if made within twelve months
Your Committee accepts the proposal for the words "three months" to be replaced by the words "six months".

Clause 119 - Transactions between initial bankruptcy event and bankruptcy
Sub-clause (1)
This clause deals with fraudulent preference and seeks to validate any transactions that are done in good faith. The OTB suggested that this clause be amended to provide that the transactions under sub-clause (1) should be done subject to or with notice to the trustee, to ensure that there is always awareness of the state of the estate and what was being done with the property. *Your Committee however,* after much deliberation on the intent of the provision accepted the OTB's suggestion and *recommends the insertion of a new sub-clause (4) which would provide:*
"any transaction referred to in subsection (1) if it takes place at a time when a trustee is appointed shall not be entered into without the prior [notice to and] consent of the trustee".

It was brought to your Committee's attention that unlike the provision in the Canadian legislation, the provision in the Bill had the time period extending from the date of initial bankruptcy event to the date of discharge of bankruptcy. It was suggested and your Committee agreed that the two time periods involved should be the date of the initial bankruptcy event and the date of the bankruptcy (that is, the date of the granting of a bankruptcy order against the person, the filing of an assignment or the event which causes the assignment to be deemed). *Your Committee therefore recommends that the words "discharge of" should be deleted from line 3 of sub-clause (1). As a consequence, a definition of "the date of the bankruptcy" would be inserted in the Bill and the definition of "date of initial bankruptcy event" should be amended.*

Your Committee further agrees that the word "foregoing" should be deleted from line 5 of sub-clause (1).

Clause 120 - Proceeds from dealing with property obtained in void or voidable transaction
Your Committee agrees that no change is necessary to this clause.

Clause 121 - Good faith transactions with bankrupts protected
A suggestion was made that the word "the" in line 5 should be changed to "such", and the CPC was asked to decide whether such a change is necessary.

Clause 122 - Reviewable transactions in year prior to initial bankruptcy event
Your Committee agrees that no amendment is necessary to this clause.

Clause 123 - Where dividend paid by corporation that is bankrupt
Sub-clause (1)
Your Committee agrees that this provision should be modified to speak to "share capital" instead of "capital stock".

Sub-clause (7)

Your Committee agrees that all the words appearing after the word "insolvent" in the last line of paragraph (b) should be moved to the margin to form the closing words of paragraphs (a) and (b).

Clause 124 - Mutatis mutandis

Your Committee was told by the Consultant that the intent of this Clause was to permit the creditors of a company that has made a proposal to set aside transactions undertaken before the notice of intention or proposal was filed, unless the proposal, (which the creditors had to vote on), took those rights away.

Sub-clause (2)

The Consultant clarified that the reference to "becomes bankrupt" in line 2 of clause 124(2) was intended to deal with the situation where the proposal was *filed* and not to where the proposal was annulled by the Court. Therefore, the idea was that the date of initial bankruptcy event was the date that the notice of intention (NOI) was filed so that it would capture any transactions before the notice of intention was filed. *He recommended that all the words appearing after the word "to" in line 3 should be deleted and replaced by the words "the date that the proposal is filed in accordance with this Act". Your Committee accepts this recommendation.*

Clause 125 - Where proposal followed by bankruptcy

Your Committee agrees that as a consequential amendment, the words "initial bankruptcy event" should be changed to "annulment" in line 2.

Part VII. Administration of Estates

Your Committee agrees to the insertion of an introductory paragraph at the beginning of Part VII of the Bill to clearly outline the scope of this Part.

Clause 126 - Trustee to send notice to creditors of first meeting

The PSOJ was of the view that the notice in this provision should be by way of advertisement rather sending this notice to each individual creditor. The OTB suggested that there should be two kinds of notice: (i) a general notice to inform the public that the individual in question had become a bankrupt so that any person with an interest or a claim could come forward. It was suggested that this could take the form of a publication. (ii) A notice of the meeting of creditors, in which case the trustee could notify those creditors of whom he was aware. Your Committee, after discussing these proposals, concluded that there should be an advertisement or notice published generally to indicate that a person had been made a bankrupt and to notify persons of the date and time of the first meeting of creditors. It was argued that based on the cost involved, it would not be practical to send a second notice five days prior to the holding of the meeting of creditors. Your Committee was also of the view that five days was too short a time for the trustee to be able to make all the necessary arrangements before sending his notice and suggested that ten days was a more realistic timeframe.

Your Committee therefore agrees that:

Sub-clause (1)(b) should be amended to read: "within ten days after the date of the trustee's appointment, to send a notice of the bankruptcy and of the first meeting of creditors in the prescribed manner." Your Committee further agrees that sub-clause (1) should be modified further to make reference to the

form set out as Form 19. It was also agreed that the regulations would then state to whom it should be sent and in what manner. The consensus was that the regulations would prescribe that this the first notice is to be published in a local daily newspaper and if the trustee thinks appropriate, in any other jurisdiction, and must be given personally to the bankrupt and filed with the Supervisor.

As a consequence, sub-clauses (5), (6) and (7) should also be deleted. (It should be determined whether the provisions of sub-clause (6), which speaks to information about the bankrupt's obligation to make payments under section 82 to the estate and any material change relating to financial situation of the bankrupt, could be included elsewhere in this Part of the Bill.)

In view of the amendments made, your Committee also agrees that Form 19 should be amended by:

i. *Modifying paragraph 4 to become a statement as to where the proof of claim and proxy form could be obtained. The references to the list of creditors and the claims amounting to twenty-five dollars etc. would be deleted.*
ii. *Deleting paragraph 6, given that it was not relevant to the first meeting.*

Sub-clause (4)(a)
Your Committee accepts the proposal made for the word "and" to be inserted after the word "creditors".

Sub-clause (4)(b)
In order to clarify that the extension would be based on a request made by the trustee, *your Committee agrees to the insertion of the words "at the request of the trustee" after the word "may" in line 2.*

Clause 127 - First meeting of creditors to consider the affairs of bankrupt appoint trustee, etc

Your Committee agrees with the suggestion made by the PSOJ for commas to be inserted immediately after the words "assignment" and "proposal".

Your Committee also agrees that a new sub-paragraph (c) should be inserted to provide: "affirm the remuneration of the trustee".

Clause 128 - Trustee shall call meeting in certain circumstance
The Committee accepts the proposal to insert the words "or the Supervisor" after the word "Court" in clause 128(1)(a).

Your Committee further accepts the suggestion for the insertion of a new sub-paragraph (c) to state: "whenever the trustee deems appropriate".

Clause 129 - Majority of inspectors may convene meeting
Your Committee agrees that no amendments are necessary to this clause.

Clause 130 - Notice regarding subsequent meetings
Your Committee agrees that no change should be made to this clause.

Clause 131 - Trustee or nominee shall be chairman of first meeting

Your Committee agrees with the suggestion from the PSOJ that clause 131 should be redrafted to provide:

"(1) The trustee or the nominee of the trustee shall be the chairman of the first meeting and shall decide any questions or disputes arising at the meeting."

(2) At all meetings of the creditors other than the first the trustee or his nominee shall be the chairman unless by resolution of the creditors at the meeting some other person is appointed.

(3) A creditor may appeal to the Court from any decision arising from the meeting."

Clause 132 - Minutes of first meeting

Your Committee agrees that no amendment is necessary to this clause.

Clause 133 - Quorum at meetings

Your Committee examined the OTB's concern that Clause 133 provides for the trustee's appointment to be confirmed even where there is no quorum at a creditors' meeting when a quorum requires only one creditor. Your Committee was however unable to determine how this concern should be addressed since no specific recommendation had been made.

A recommendation was made by the PSOJ that clause 133(2)(a)(i) should be amended by inserting the words "and remuneration" after the word "appointment" in line 1. Your Committee was of the view was of the view that what should be provided for is that if, at the second meeting there was still no quorum, the trustee's fee should be affirmed. *Your Committee however agrees* that the appropriate amendment should be made to *clause 271(2), which should be modified to clarify that where there has not been a quorum at the first meeting of creditors called under clause 133, then the trustee should apply to the Supervisor for direction in fixing the amount for his remuneration.*

The point was raised as to whether this should also be applicable to proposals. Your Committee was however informed that in relation to proposals, the trustee would have been appointed by the debtor or the person making the proposal and the question of his fees would be resolved between those parties.

Clause 134 - Adjournment of meeting

Your Committee accepts the proposal made that the words "other than as provided for in section 133" should be inserted at the beginning of clause 134.

Clause 135 - Creditors may express views according to class

Your Committee agrees that no amendment is necessary to this clause.

Clause 136 - Chairman may admit or reject proof of claim

A suggestion was made by the OTB that rather than provide for the admission of claims to take place at the meeting of creditors, there was practical advantage to having the trustee determine the claims ahead of the meeting and notify the creditors who may then challenge the decision at the meeting and if not satisfied of the outcome, appeal to the Court.

Your Committee therefore agrees that the words "chairman of any meeting of creditors" should be deleted and replaced with the word "trustee" in line 1 of clause 136(1); and

that the words "at or before a meeting of creditors" should be inserted after the word "claim" in line 2 of this subsection.

The point was made that the trustee was in fact the chairman of the meeting and that the proposed amendments would give the trustee the power to accept or reject a claim either before or at the meeting.

Your Committee further agrees that the references to "chairman" in subsections (2) and (3) should be replaced by references to "trustee".

Clause 137 - Completed proof or claim required to enable voting
Your Committee agrees that no change is necessary to this clause.

Clause 138 - Voting at meetings
Your Committee agrees that no amendments are necessary in respect of this clause.

Clause 139 - Voting where claims acquired
Your Committee agrees that no amendment is necessary to this clause.

Clause 140 - Where non-bankrupt parties jointly liable
Your Committee agrees that no amendment is necessary to this clause.

Clause 141 - Secured creditors may vote unsecured portion only
Your Committee agrees that no change is necessary to this clause.

Clause 142 - Trustee may vote
Your Committee agrees that the words "a creditor or" should be deleted from line 1 of this provision.

Clause 143 - Minutes of meeting to be proof of subsequent meetings
Your Committee agrees that no amendment is necessary to this clause.

Clause 144 - Creditors vote by dollar
Your Committee agrees that no change should be made to this clause.

Clause 145 - Appointment of inspectors
Clarification was sought as to the intent of this provision. *Your Committee was told that it provides that where there was a vacancy among the inspectors, that vacancy could be filled either at a meeting of the creditors or at a meeting of the inspectors. Your Committee therefore agrees that the clause should be reworded to clearly reflect this.*

Your Committee was informed that in practice, depending on the quantum of creditors and the magnitude of the expense that could be created for the estate by calling a meeting of creditors to fill a vacancy among the inspectors, the inspectors would normally fill that vacancy amongst themselves by referring to the results of the actual voting and selecting the person who was next in line. If there was no one next in line, they would simply choose someone.

Sub-clause (4)
Your Committees that *agrees that the words "on the board of" should be deleted and replace by the words "among the".*

Clause 146 - Powers of inspector
Your Committee agrees that no amendment is necessary to this clause.

Clause 147

It was suggested and your *Committee agrees that the word "and" in clause 147(1)(a) should be changed to "or"* because the provision was clearly dealing with two separate scenarios in which revocation could arise.

Clause 148

The question was raised as to whether this was a matter for the Supervisor to determine as opposed to the Court. *It was agreed that the reference to "Court" should be changed to "Supervisor", on the understanding that there might be other things that were required to be authorized or done by the inspectors but in the absence of inspectors ought to be done by the Court rather than the Supervisor.* The change was made based on the view that the tasks listed in clause 153 to be done by the inspectors could be adequately carried out by the Supervisor instead having to go to the Court.

Clause 149 - Trustee may call meeting of inspectors

A proposal was made by the PSOJ that the word "and" in clause 149(1)(a) should be replaced by the word "or". It was however brought to your Committee's attention that the intent of the clause was that the trustee may call the meeting when he deems it advisable but was obligated to call such meeting when it was requested by the majority of inspectors. *Your Committee agrees that the provision should be reorganized in order to clearly convey this.*

Sub-clause (3)

Your Committee agrees that in this instance, the determination should be made by the Supervisor and not the Court. *Your Committee therefore recommends that the reference to the "Court" in this provision should be changed to the "Supervisor".*

Your Committee also agrees that the reference to "inspector" should be changed to "trustee".

Clause 150

The suggestion was made and *your Committee agrees that all the words appearing after the word "them" in line 2 of clause 150(b) should be moved back to the margin to form the closing words of (a) and (b).*

Clause 151 - Directions by inspectors etc.

Sub-clause (2)

Your Committee considered the suggestion made by the OTB that the inspector's decision if not supported by the trustee should be first reviewed by the body of creditors they represent and if the issue remained unresolved, then it could be referred to the Court which must make a ruling. This however led to the question of whether this would mean that no interested person could go to Court unless they had gone through the process of taking it to the rest of the creditors, and whether, if this was done and they did not agree, that person could not then go to Court. Your Committee was told that subsection (1) also made provision for the decision of the creditors to override that of the inspectors in situations where there was a conflict between the two. Your Committee does not believe that an amendment is needed to address the OTB's concern given that provision was already made in the legislation for any aggrieved creditor to take the matter to Court.

During the discussions, concern was also raised that since the body of inspectors would normally liaise with the trustee/receiver, and not directly with the general body of creditors (whom it represents) on a frequent basis, in order for creditors to have information at all times about the progress of the administration of an estate, a procedure was needed whereby a creditor who was not part of the process directly could obtain information.

It was therefore agreed that a provision should be included that would empower the Supervisor to seek and obtain information from the trustee on behalf of a creditor in relation to any matter that was relevant to the interest of that creditor.

It was further agreed that this amendment should not be made in clause 151 but rather to clause 222.

It was stated further that if the information was not provided or was provided but raised an issue that should be taken further, then under clause 151(2), the creditor as an interested person could go to the Court and seek an order in relation to that matter.

Clause 152 - Court approval required by inspector to acquire property
Your Committee agrees that no change is necessary to this clause.

Clause 153 - Duties of inspector
Your Committee agrees that for the purpose of clarity, the words "Pursuant to section 247" should be inserted at the beginning of clause 153(1).

Clause 154 - Remuneration to inspectors
Your Committee agrees that no change is necessary to this clause.

Clause 155 - Claims provable
Your Committee agrees that no amendment is necessary to this clause.

Clause 156 - Where bankruptcy follows proposal
Your Committee agrees that no change is necessary to this clause.

Clause 157 - Proof in respect of distinct contracts
Your Committee agrees that no amendment should be made to this clause.

Clause 158 - Proof of claim required to share in distribution
Sub-clause (1)
Your Committee accepts the proposal made by the PSOJ that an "s" should be added to the word "prove" in line 1.

Clause 159 - Court may disallow false claims
Your Committee agrees that no change is necessary to this clause.

Clause 160 - Creditors may examine proof of claim
Your Committee agrees that no amendment is necessary to this clause.

Clause 161 - Proof of claims for wages of workers and others employed by bankrupt
The question was raised as to whether this clause was in fact necessary. Your Committee examined the clause and concluded that it was a useful provision to have in the legislation. *Your Committee however agrees that all the words appearing after the word "bankrupt" in clause 161(c) should be moved back to the margin to form the closing words of (a), (b) and (c).*

Clause 162 - Secured creditor may prove for balance due
Your Committee agrees that no amendment should be made to this clause.

Clause 163 - Secured creditors may prove who claim
Your Committee agrees that no change is necessary to this clause.

Clause 164 - Trustee may require proof of claim by secured creditor

Your Committee agrees that no change should be made to this clause.

Clause 165 - Trustee may require security to be sold
Your Committee agrees that no amendment is necessary to this clause.

Clause 166 - Secured creditor may require trustee to elect
Your Committee agrees that the reference to "trustee" in line 2 should in fact be to "creditor" and recommended an amendment to reflect this change.

Clause 167 - Amended claim where security realised
Your Committee agrees that no change is necessary to this clause.

Clause 168 - Amendment of claim where security not realised
Your Committee agrees that no amendment is necessary to this clause.

Clause 169 - Exclusion of secured creditor from dividend
Your Committee agrees that no amendment should be made to this clause.

Clause 170 - No creditor to receive no more than one hundred cents on dollar
Your Committee agrees that no change is necessary to this clause.

Clause 171 - trustee to examine proofs
Your Committee agrees that no amendment is necessary to this clause.

Clause 172 - Ranking of claims
Your Committee held extensive deliberations on clause 172 of the bill. A primary concern was how secured creditors are treated with regard to the scheme of distribution in this clause. Another issue was how to preserve the status quo as it relates to floating charges as opposed to fixed security interest. During the discussions on this clause, a number of points were made and issues clarified:
(i) Your Committee was told that under the current law, there is a differential in treatment depending on the secured creditor's rights. Therefore, if the secured creditor is holding a fixed charge for a security that takes the form of a fixed charge such as a mortgage over a building, that would not be subject to the scheme of distribution in clause 172. However, if it was a fixed charge over a piece of equipment or other assets which are subject to a floating charge, the preferred debts, which are set out in categories 1 and 2 of clause 172 are payable ahead of the secured creditor out of those assets.

(ii) Clarification was made that in a bankruptcy situation, there were different scenarios that could apply in respect of secured creditors:

(a) In respect of a secured creditor who wants to petition for a receiving order in relation to the debtor, that secured creditor would give up the security, determine a value for that security and prove in the bankruptcy for that amount as an unsecured creditor.
(b) In a situation where the debtor has gone into bankruptcy by one means or another, and the secured creditor, like any other creditor, intends to prove for his debt as a secured creditor if he holds a fixed charge, that creditor could indicate to the liquidator the he wants his fixed charge. Alternately, the secured creditor could value the security and prove for the balance. He could also indicate that he is giving up his security altogether and would then prove for the entire amount as an unsecured creditor.

(iii) Your Committee was told that the purpose of a debenture is to allow secured credit to float a business and allow it to continue conducting business even though its assets

are pledged. In terms of how this works, the assets which of necessity need to be dealt with by the business in order for it to conduct business are treated as subject to a floating charge as long as there is no event that crystallizes that charge. The charge is in suspense and the business is able to deal with those assets as if they were unencumbered.

(iv)The point was also made that a standard debenture not only creates floating charges but also creates security interests over all present and future fixed and floating assets of the company. However, it categorises certain assets as being subject to a floating charge and the others as being subject to a fixed charge.

Taking the foregoing into consideration, your Committee agreed to a proposed reformulation of clause 172, the primary purpose of which was to include in the legislation a scheme of distribution which is consistent with what now obtains in a situation where there is a debenture, and which seeks to ensure that the Categories 1 and 2 debts in clause 172 are not subordinated to the debenture holder's rights in relation to the proceeds from assets that are subject to a floating charge. It was argued that if this was not done, the effect would be that they would be substantially improving the position of secured creditors over what now exists in relation to that category of assets.

Your Committee therefore agrees that clause 172 should be redrafted to reflect the following proposed amendments for the scheme of distribution:

(1) Regime # 1
In respect of property which, immediately before the occurrence of the act of bankruptcy which has led to the debtor becoming a bankrupt, the debtor was permitted to deal with and dispose of during the ordinary course of the debtor's business, the proceeds realized from such properties shall be applied as follows:
(a) firstly, in the payment of amounts referred to in Category 1 of clause 172 (1) of the Bill,
(b) secondly, in payment of the amounts referred to in category 2 of clause 172(1) of the Bill and
(c) thirdly, in payment of obligations owed to any secured creditor whose security includes that property. If there are more than one, it should be applied in accordance with the priorities of their respective securities in that property, and thereafter,
(d) in payment of the claims referred to in Category 3.

It was felt that this would reduce the likelihood of a debenture holder being able to put himself into a more advantageous position by giving a default notice crystallizing his floating charge prior to the debtor becoming a bankrupt, thereby ending the permission given to the debtor to deal with and dispose of the assets in the ordinary course of debtor's business, prior to the debtor becoming a bankrupt. Consequently, any floating assets that subsequently become fixed assets are still treated as being subject to the regime that applies to floating assets.

Your Committee further agrees that the regime in (1) above should also apply to - (a) any other property of the same type or nature as the property referred to in (1), which becomes the debtor's property after the relevant date, and (b) any other type of property that, after the relevant date, is derived from, or represents proceeds arising from the disposition of the property referred to in (1).

Your Committee was told that the basic concept is that, consistent with the situation that existed prior to the passing of the Security Interests in Personal Property Act, this regime should apply to property which is traditionally the subject of a floating charge (i.e. current assets comprising working capital, such as raw materials, work-in-progress, finished goods or other inventory, trade accounts receivable, and cash proceeds from

the ordinary trading of the business). This is to ensure that the regime also extends to any other property customarily treated as working capital into which such assets are converted after the relevant date through the process of production, sale, collection of trade receivables, and re-stocking. Furthermore, if cash derived from property to which the regime applies is used after the relevant date to purchase property of another class (such as real estate, motor vehicles, or financial assets like bonds or stocks), the latter property should also fall within the regime.

(2) Regime # 2.
The proceeds realised from any other property of the bankrupt which is comprised in the security held by a secured creditor, shall be applied as follows:

(a) firstly, in payment of the obligations owing to the secured creditor (and, if there are more than one such secured creditor, the proceeds shall be applied in accordance of the priorities of their respective securities in such property);

(b) secondly, in payment of the amounts referred to in Category 1 of clause 172(1);

(c) thirdly, in payment of the amounts referred to in Category 2 of clause 172(1); and

(d) thereafter, in payment of the claims referred to in Category 3 of clause 172(1).

(3) Regime # 3
The proceeds realised from any other property of the bankrupt shall be applied as follows:

(a) firstly, in payment of the amounts referred to in Category 1 of clause 172(1);

(b) secondly, in payment of the amounts referred to in Category 2 of clause 172(1); and

(c) thereafter, in payment of the claims referred to in Category 3 of clause 172(1).

The PSOJ suggested that in phrasing the language of the new provisions being proposed, it should be made clear that once a person is able to demonstrate control over a category of assets that would typically be considered to be subject to a floating charge, that that would continue to be treated as a fixed charge. *Your Committee agrees that this concern should be addressed in the proposed redraft of clause 172, and that what should be incorporated is the basic principle of the concern being expressed, with a provision that if an issue arose, that it should be resolved by the Court.*

The point was raised that in practice, where inventories are floating charges, upon the appointment of a receiver the proceeds from the sale of the inventories would not be distributed to preferential creditors but rather, to the secured creditors because the secured creditor would have been able to demonstrate that he was treating the inventories not as merely a floating charge but as a fixed charge which he intends to rely on in the event of bankruptcy. *It was suggested and your Committee agrees that this should be clearly stated in clause 172.*

Reference was made to Form 10, which was the Proof of claim form that should be filled out by creditors, and the question was raised as to how the debenture holder (the person with the floating charge) would be able to prove his claim and what Form that debenture holder would fill out. *It was proposed and your Committee agrees that the Forms would need to adjusted to ensure that persons holding a floating charge would be able to use them to make their claims.*

The question of whether a revised proof of claim could be submitted was also raised. Your Committee was told that a proof of claim could be submitted at any time and

would be accepted prior to an actual distribution. Clarification was also made that an amended claim could also be submitted. The claim submitted would be treated in accordance with the priority rules.

The Consultant informed your Committee that the provision in the Australian equivalent of the Security Interests in Personal property Act dealing with "circulating assets" was consistent with what your Committee was seeking to achieve in its suggested amendments to Clause 172 of the Bill and *therefore recommended that the Australian legislation should be looked at in drafting the specific language of the revised Clause 172. Your Committee accepts this recommendation.*

Clause 173 - Reviewable Transaction
Your Committee agrees that no change is necessary to this clause.

Clause 174 - Claims of relative of bankrupt
Your Committee agrees that no change is necessary to this clause.

Clause 175 - Claim of participating lender
The OTB suggested that this provision should be amended to provide that a lender could recover the principal advanced but not the variable interest or share of the profit. Your Committee agreed that if the lender was unsecured, he should be treated as a creditor under category 3 in clause 172 and should be able to recover his principal. *Your Committee therefore agrees that the penultimate lines of clause 175 should be reworded to reflect that the lender is "...not entitled to recover anything in respect of the interest or the share of profits referred to but that the principal would not be subordinated".* The lender in this instance would still be a creditor but would rank above equity holders and below other debt holders in relation to his profit shares.

Clause 176 - Claim of officer and director
Your Committee agrees that no amendment should be made to this clause.

Clause 177 - Dividends prorate
Your Committee agrees that no change is necessary to this clause.

Clause 178 - Property of bankrupt partnership
Your Committee agrees that no amendments are necessary to this clause.

Clause 179 - Where surplus remains after claims paid
Your Committee agrees that no change is necessary to this clause.

Clause 180 - Final Surplus to bankrupt
Your Committee agrees that no amendment is necessary to this clause.

Clause 181 - Motor vehicle insurance
It was brought to your Committee's attention by the OTB that this clause makes special provision for claims for damages arising from motor vehicle accidents. The suggestion was made that consideration should be given to expanding this to claims for damages for tort or at least for negligence generally. Your Committee, after much consideration, concluded, among other things, that the provision was meant to deal with claims in respect of the Motor Vehicle Insurance (Third-Party Risks) Act.

Your Committee agrees that:

(i) the marginal note to clause 181 should be changed; and

(ii) a new subsection (2) should be inserted to provide: "where a creditor of a bankrupt estate is a person who has suffered personal injury in respect of which they have a valid claim against the estate and the estate has purchased insurance to cover the liability that is owed to that creditor, then that creditor shall have a prior right over other creditors against or in relation to the proceeds of that insurance to the extent that those proceeds are paid as a result of his claim and to settle his claim, and the trustee shall receive those proceeds and hold it in trust for him." Based on this amendment, the claim would be treated as a preferred debt.

(iii) a provision should be included to provide that the reasonable costs incurred by the trustee in collecting on the policy shall be deductible from the proceeds of the policy.
If the cost was not agreed, the affected party would have a right to take the matter to the Court.

A suggestion was also made that subsection (1) could be amended to refer specifically to a right under the Motor Vehicle Insurance (Third-Party Risks) Act. However, no decision was taken on this proposal.

Clause 182 - **Supervisor's levy**

A recommendation was made by the FSC that the Bill should be amended to provide that the fees charged for the licensing of trustees and the registration of receivers should go directly to the Supervisor as opposed to being lodged in the Consolidated Fund. This would be in keeping with international best practices, where regulators such as the FSC [and the Supervisor] should be independent bodies that are self-funded without any reliance on the public purse. Whilst your Committee was mindful of the need for the Supervisor to be independent, Members were of the view that the Ministry of Finance and Planning would have to sign off on any such authorization to have the funds collected by the Supervisor treated as appropriation in aid. *Your Committee recommends that the Ministry of Finance & Planning should be consulted to obtain their feedback on this proposal.*

The question was raised as to whether the 6% levy provided for in this clause, which was a fee charged by the Supervisor *in addition* to the fees being charged by the trustee who was actually doing the work, was too high. It was stated that in a large insolvency, this would be a significant sum of money and would increase the cost of insolvency. The question was also raised as to why the regulator, which was in this instance playing a relatively passive role, was charging this 6% levy in the first instance. One of the points made was that presently, the OTB charged a 6% commission on dividends, which was paid into the Consolidated Fund from which the Office received financing. The point was further made that in this instance, the OTB was actually administering the estates and was charging for that work, whereas, in the provision in the Bill the Supervisor was charging this fee for playing a relatively passive role. It was felt that the cost of the Supervisor should not be borne by the bankrupt's estate, but rather by the Government and/or practitioners who earn from providing services in this area.

It was also suggested that provision needs to be made for how the Government trustee (which was the trustee of last resort) would receive any remuneration for acting as trustee for a particular estate. The proposal made was to statutorily fix what the Government trustee should be paid. This suggestion did not find favour with many of the stakeholders and Members of your Committee, who expressed concern that if a fee

was fixed in the Act for the Government trustee, it would be used as a benchmark by private trustees who would attempt to fix their fees above that amount.

After further discussions, your Committee agrees that:

i. *Clause 182 should be deleted in its entirety; and*
ii. *That a new subsection should be added to clause 225 for the Minister to, by way of regulations, set the fees to be charged by the Government trustee for providing these services. It was further agreed that this should be subject to negative resolution.*

Clause 183 - Inspectors to declare dividends to ordinary unsecured creditors
Your Committee agrees that no change is necessary to this clause.

Clause 184 - Thirty –day notice to prove claims
Your Committee agrees that no amendment is needed in respect of this change.

Clause 185 - Where claim proven after dividend declared
Your Committee agrees that no change is necessary to this clause.

Clause 186 - Final Statement of receipts and disbursements to be prepared
Your Committee agrees that no change is needed to this clause.

Clause 187 - Final statement of receipts and disbursements
Sub-clauses (5) and (6)
These sub-clauses provide that an objection could be raised in respect of the accounts of the trustee after these have been approved, commented on, taxed by the Court and forwarded to the creditors, Registrar, Supervisor and the bankrupt. Several issues were raised, including: (i) whether these accounts should be taxed by the Court, and further, whether the Court should be involved in this process at all, (ii) whether the approval should in fact be given by the inspectors, (iii) why these accounts should be sent to the Registrar [*of the Supreme Court*], and (iv) the time at which an objection should be made, that is, whether it should be on preparation of the accounts as suggested by the OTB.

After examining these issues, your Committee agrees that *the scheme should be that:*
(i) a copy of the dividend sheet and notice set out in the Form 21 should be sent to the creditors and the bankrupt by the trustee
(ii) the creditors would have fifteen days as set out in subsection (5) to object.
(iii) this objection should be made to the Supervisor who could review it and make a determination which would be binding on all interested parties unless an interested applied to the Court within 15 days after the determination has been made by the Supervisor for a review of such determination.
(iv) the Court should then make such order as it thinks fit upon hearing any interested parties who may appear.
(v) at the end of the entire process, the trustee should file a notice of discharge with the Supervisor not less than thirty days after the payment of the final dividend.

If the accounts are not approved by the creditors and the bankrupt, the matter could referred to the Supervisor for his consideration and if there are any issues, an interested person could apply to the Court.

Your Committee therefore agrees to the following changes to clause 187:

1) *Sub-clauses (2) and (5) should be conflated to provide that:*
"The statement referred to in subsection (1), shall be prepared in the form set out as Form 20 in the First Schedule or as near thereto as the circumstances of the case will permit, and together with a copy of the dividend sheet and the notice in Form 21 shall be submitted to the creditors and the bankrupt for their approval." The provision in subsection (5) about having fifteen days to comment would also apply.

2) *Sub-clause (3)* should be modified to read:
"*The trustee shall forward a copy of the statement and dividend sheet to the Supervisor after they have been approved by the creditors and the bankrupt.*"

3) *Sub-clause (4)* should be amended to state:
"*The Supervisor shall comment as he sees fit.*" This would represent an independent, regulatory review of the accounts.

4) *Sub-clause (6) should be amended to speak to the filing of a notice of objection with the Supervisor and not to the Registrar.*

5) *Your Committee further agrees that a provision should be included to provide that if there is an objection, the Supervisor may make a determination on how to resolve that objection and that the Supervisor's determination should be final unless an application is made to the Court within fifteen days after the determination by the trustee, the bankrupt or any creditor to have the Court review the matter and make such order as it deems fit.*

6) *There should also be a separate sub-clause requiring that a notice of discharge should be filed with the Supervisor not less than thirty days after the final dividend is paid.*

Clause 188 - Dividends on joint and separate properties
Your Committee agrees that no amendment is necessary to this clause.

Clause 189 - Unclaimed dividends and undistributed funds
Your Committee determined that based on the changes made to clause 187, the scheme for clause 189 should be that the dividends would not be paid until the creditors have approved the final accounts. Consequently, *it was agreed that the dividends should be paid after the final accounts have been agreed and that any anomalies/issues should be addressed before those funds are paid out.*

The OTB expressed the view that there was no reason why any other undistributed funds, less possible administrative expenses should not be paid over to the bankrupt as the balance of his estate. This led to the question of why reference was made in this clause to "undistributed funds" as opposed to "unclaimed dividends".
Your Committee therefore agrees that the words "and undistributed funds that the trustee possesses" should be deleted from line 3 of sub-clause (1).
It was also agreed that the words "and funds" should be deleted from subsection (2).

The PSOJ raised the issue of what the Supervisor should do with any unclaimed dividends that remain uncollected. *Your Committee agrees that a new subsection*

should be inserted to reflect that if the dividends remain unclaimed after six (6) years, they should be lodged into the Consolidated Fund.

The ICAJ suggested that a requirement should be included for the Supervisor to advertise each year that these funds are being held in trust for the particular claimant(s). *Your Committee agrees that provision would be made in the regulations for the Supervisor to give notice on its website of any unclaimed dividends that it has received under this provision.*

Clause 190 - Summary Administration

Paragraph (c)

The Committee agreed with the suggestion made by the JCC that in clause 190(c), the requirement to publish a notice of bankruptcy in a local newspaper should be applicable in cases of Summary Administration and should not be left to the discretion of the Trustee or an order of the Court. This would ensure that unsecured creditors and other potential creditors are advised of the event of bankruptcy.

It was therefore agreed that clause 190(c) should be amended to state:
"a notice of the bankruptcy in the form set out as in Form 19 in the First Schedule shall be published in a local newspaper in circulation throughout Jamaica unless the Supervisor determines that such publication is unnecessary in the circumstances of the case." This formulation was adopted, taking into consideration the concern raised that these would be small estates, and that a requirement for publication in the newspaper might not be beneficial to the creditors if the cost of such publication results in limited or no funds being left to be distributed among the creditors. The point was also made that the situation might exist where there are no funds left to even make such a publication in the newspaper.

Your Committee further agrees that this paragraph should be amended to reflect that if it is a company, the notice should be sent to the Registrar of Companies.

Paragraph (g)

Your Committee did not accept the suggestion made by the JCC that this provision should clarify whether "relationship" meant the business or personal relationship between the individuals. It was felt that the provision should be left fairly vague to allow the Supervisor to determine whether, in a given case, the circumstances would warrant the estates being treated as one.

Clause 191 - Remuneration in summary administration

Your Committee agrees that no change is necessary to this clause.

Clause 193 - Trustee to counsel to counsel individual bankrupts

The OTB expressed concern as to how the cost of this counseling was to be borne and its likely impact. They also expressed concern as to who would provide this counseling and what type of counseling (whether financial or emotional) might be required. During the deliberations on these matters, a number of other issues were highlighted which included:

- **(a)** Whether it would be all bankrupts who would require this couseling;
- **(b)** Who would determine whether or not this counselling was necessary;
- **(c)** Whether, given the Jamaican context, it would be practical to have such a requirement being mandatory; and

(d) Whether it should be counselling that is required or some other kind of appropriate training (in Accounting for example) as a condition of the proposal being approved by the creditors

Your Committee also made reference to literature taken from the website of the Office of the Superintendent of Bankruptcy in Canada, where it was stated that before a proposal was put forward, the trustee would make an assessment to evaluate the person's financial situation, to explain the available options and to discuss the merits and consequences of their choice. Should the individual decide to prepare a proposal or declare bankruptcy, the Act required that counseling may be given by a Counselor registered with the Office of the Superintendent of Bankruptcy. The counseling would consist of two sessions, the first dealing with information regarding money management, spending and shopping habits, warning signs of financial difficulties and obtaining and using credit. In the second session, the Counselor would help the debtor to discover and understand the causes of the insolvency and bankruptcy and assist in establishing a rehabilitation plan by helping the debtor to develop recommendations and alternatives for a financial action plan. The debtor must attend these sessions and counseling may also be provided to someone who was related to him or had a financial relationship with him. If the person wished to obtain additional assistance, he may request a third session. A certificate of full performance cannot be issued to someone who neglected or refused to use these services.

The observation was also made that in Canada, this counseling related to both the proposal stage and to bankruptcy, and that it was limited to the financial life of the debtor. It was also stated that in Canada a lot of assistance was provided to bankrupts and therefore, they could adopt that approach.

Your Committee recommends that:

1) *In relation to proposals, the counseling should not be mandatory;*
2) *That the trustee may recommend and the creditors may agree to include within the proposal a condition that the insolvent person/looming insolvent undertake some kind of training/counselling; and*
3) *That these amendments should be included under clause 49 of the Bill.*

4) *In relation to someone who was already in bankruptcy,* no requirement should be placed in the Act now, but provide that regulations may require, as a condition of automatic discharge under section 205, that the person go through some form of counseling or training. *That is, add a paragraph in the regulations making section of the Act to provide that regulations would be prescribed requiring someone who was a bankrupt to undergo counseling/training prior to the automatic discharge under section 205.*

Clause 194 - Duties of bankrupts

Paragraph (b)

Your Committee agrees that in clause 194(b)(i), the word "and" should be inserted after the word "bankrupt".

Paragraph (e)

The PSOJ suggested that in the chapeau of clause *194(e), the reference to "Supervisor" should be changed to "trustee"* as it was felt that it was the trustee who should also be allowed to extend the time beyond the five days. *Your Committee agrees to this suggestion.*

Paragraph (e)(v)

Your Committee accepts the proposal made by the OTB that it was inappropriate for the Supervisor to authorize someone to assist with the preparation of the bankrupt's statement of affairs at the expense of the estate and suggested that this should be the role of the *trustee*.
It was therefore agreed that the words "or the Supervisor, as the case may be" should be deleted from lines 3 - 4 of clause 194(e)(v).

It was further agreed all the words appearing after the word "trustee" in the amended 194(e)(v) should be moved to the margin to form the closing words of clause 194(e).

It was also agreed that the word "Supervisor" should be replaced with the word "trustee" in line 7 of 194(e)(v).

Paragraph (h)

A suggestion was made by the OTB that if any action was to be taken following the disclosure provided for in this clause, that the five year limitation might be too short. The point was also made that this provision might not be premised on the idea that the transaction would be automatically void as a fraudulent preference. Your Committee was told if there was a breach of fiduciary duty by the directors which resulted in one of the company's asset being given away, one's ability to trace that asset would extend beyond the period for fraudulent preference. It was also stated that for most claims, such as contractual and tort claims, six years was the limitation period and that for certain equitable claims, there was no limitation period.
Your Committee subsequently agrees that the five year limitation period in this provision should be changed to <u>six</u> years.

Paragraph (l)

Your Committee accepts the suggestion that the words "to assist the trustee" should be inserted after the word "effort" in line 1 of clause 194(l).

Paragraph (m)

The OTB suggested that this power should be relocated to the provisions of the Act dealing with powers of the trustee and that it should also include authorizing the trustee to execute any necessary documents. *Your Committee examined this proposal and agrees that the words "by the trustee" should be inserted after the word "required" in line 2 of clause 194(m).*

Clause 195 - Responsible officer, bankrupt is a corporation

The OTB was of the view that the examinations referred to in clauses 195, 197 and 198 should be before a Registrar and not the Supervisor, so that any directive required to be given as a result could be embodied in a Court Order. *Your Committee* had a fulsome discussion on this suggestion and subsequently *agrees* that since this matter relates to the administration of the estate and obtaining information about the estate, *the references to "Supervisor" in line 4 of clause 195 should be replaced with references to "trustee",* given that it was the trustee who was involved with the administration of the bankrupt's estate.

Clause 196 - Imprisoned bankrupt

Your Committee agrees that the word "is" should be inserted after the words "imprisonment or" in lines 1-2.

Your Committee agrees that in clause 196(a), the word "in" should be deleted from line 1.

It was also agreed that all the words appearing after the word "Act" in line 1 of clause 196(c) should be moved to the margin to form the closing words for (a), (b) and (c).

Clause 197 - Examination of bankrupt by Supervisor

Clarification was made that the examination provided for in this provision could take place at any time during the course of administration, before the bankrupt was discharged. Additionally, it was contemplated that these examinations would be conducted at various stages, such as upon the making of a receiving order and subsequent to that, in light of various changes that could take place in respect of the situation of the bankrupt.

Arising out of the discussion on clause 195, and in view of the above clarifications, your Committee agrees:

1. That sub-clause (1) should be amended to provide: "At any time before the discharge of the bankrupt, the trustee may require the attendance of the bankrupt in order to examine the bankrupt under oath with respect to the conduct of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property, and shall put to the bankrupt such questions as the trustee may see fit."

2. That sub-clause (2) should be deleted and the requirement with respect to making notes should be incorporated under sub-clause (3)(a).

3. That sub-clause (3)(a) should be modified to read:
"where the examination under subsection (1) is held the trustee shall make notes of the examination and
(a) before the first meeting of creditors, the notes shall be communicated to the creditors at the meeting; or" ....

4. That sub-clause (4) should be amended to state:
"where a bankrupt fails to present himself for examination by the trustee or otherwise fails to cooperate with the process, the trustee shall apply to the Court for an Order for an examination before the Court of the bankrupt in furtherance of the matters set out in subsection (1).

During the discussions on a suggestion made by the OTB that clause 199 should be amended to provide that the examination referred to should be a mandatory one at the commencement of administration and thereafter as required or ordered, your Committee felt that the compulsory examination should first take place before the meeting of the creditors. It was however agreed that such a requirement should be incorporated in clause 197 of the bill instead of in clause 199.

Your Committee therefore recommends that sub-clause (1) should be further amended to provide for a mandatory initial examination by the trustee at the commencement of the bankruptcy before the first meeting of creditors, and for subsequent examinations to be carried out if the trustee considered them necessary.

Your Committee also agrees that *a provision should be added to clause 197* requiring the trustee to file in Court the trustee's notes of any previous examinations of the bankrupt that may have taken place. This provision could state: "*where the trustee has examined any person before, out of Court, the notes of that examination shall be filed in Court".*

Clause 198 - Investigation by Supervisor regarding bankrupt

Your Committee spent some time debating whether or not Clause 198 should be deleted. Committee Members were of the view that the Supervisor would need to

have this wider, more general power to conduct investigations in respect of a bankrupt, outside of an examination that was provided for in clause 198, but felt that this provision should be relocated to clause 221(2)(c) which addresses the Supervisor's powers in respect of inspections and investigations of estates or other matters to which this Act applies. *Consequently, it was agreed that clause 198 should be deleted from the Bill, and its provisions subsumed under clause 221(2)(c).*

During the discussion on this clause, the question was raised as to whether the trustee should not also be given the power of investigation, in addition to the power of examination that he was given under the Act. *Your Committee was however of the view that investigation was a regulatory power that should properly be vested in the Supervisor, but went on to indicate that should the trustee have the need to conduct investigations that went beyond examination, he could utilize the provision under clause 199(2) which was sufficiently broad to enable him to do so once he had obtained a court order.*

Clause 199 - Trustee may examine bankrupt and others

Arising out of the discussions on a suggestion made by the OTB that clause 199 should be amended to provide that the examination referred to should be a mandatory one at the commencement of administration and thereafter as required or ordered, your Committee was of the view that the compulsory examination should first take place before the meeting of the creditors. Your Committee further agrees that this amendment should be made to clause 197 of the Bill instead of in clause 199.
Your Committee therefore recommends that clause 197(1) should be further amended to provide for a mandatory initial examination by the trustee at the commencement of the bankruptcy before the first meeting of creditors, and for subsequent examinations to be carried out if the trustee considered them necessary.

During these discussions, your Committee also agreed that *a provision should be added to clause 197* requiring the trustee to file in Court the trustee's notes of any previous examinations of the bankrupt that may have taken place. This provision could state: "*where the trustee has examined any person before, out of Court, the notes of that examination shall be filed in Court".*

Sub-clause (1)
Your Committee agrees that based on the amendments made to clause 197, subsection (1)(a)(i) which referred to examination in respect of a bankrupt should be deleted.

The PSOJ questioned the need to make reference to ordinary resolution in clause sub-clause (1). *Your Committee agrees that the words "on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors," should be deleted from sub-clause (1).*

Your Committee also agrees that the words "before the Registrar" should be deleted from subsection (1)(a).

Consequent on the aforementioned modifications, the revised subsection (1) and paragraph (a) would read:
"*The trustee may –*

(a) without an order, examine under oath –

(i) any person reasonably thought to have knowledge of the affairs of the bankrupt; or

(ii) any person who is or has been an agent, clerk, servant, officer, directors or employee of the bankrupt,

respecting the bankrupt, his dealing or property; "

Your Committee also agrees that a provision should be added to clause 199 empowering the trustee to apply to the Court for an order to assist in obtaining the required information when the persons listed in (a)(i) and (ii) above are not cooperating.

It was suggested and your Committee agrees that the word "order" at the beginning of sub-clause (1)(b) should be changed to "require".

Sub-clauses (2) and (3)

Your Committee agrees that sub-clauses (2) and (3) together should be moved to the section of the Act dealing with the powers of the Supervisor.

It was further agreed that a provision should be added to clause 199 to provide: "where the trustee has examined any person before, out of Court, the notes of that examination shall be filed in Court".

Clause 200 - Trustee may require delivery of property of bankrupt and production of books and records

Sub-clause (2)

Your Committee agrees that as a consequential amendment, the reference to "the Registrar" should be deleted from sub-clause (2) of clause 200.

It was further agreed that a provision should be added to clause 200 to provide that where the persons [under clauses 197, 199 and 200] are not cooperating in the examination process, the trustee should apply to the Court for orders to assist in obtaining the information or the property. It was stated that it might be an order that the person attend Court and be examined under oath, or other types of orders.

Clause 201 - Where person may be ordered by Court to pay trustee

Your Committee agrees that no amendment is necessary to this Act.

Clause 202 - Issue of warrant for apprehension and examination of persons

Your Committee accepted the suggestion made by the PSOJ that the reference to "section 197" in line 2 was incorrect. Your Committee agrees *that the correct reference should be to "section 194(d)".*

Your Committee further agrees that as a consequential amendment, the word "Supervisor" should be changed to "trustee" in line 2.

Your Committee did not accept the proposal made by the PSOJ that the references to "a summons" should be changed to "an order". Instead, it was felt that there should be an option of persons being served with either a summons [which in the CPR related to a witness summons] or an order. *It was therefore agreed that the words "or an order" should be inserted after the words "a summons" in lines 3 and 5.*

Clause 203 - Examination by Court

Sub-clause (1)

Your Committee accepts the suggestion made by the PSOJ that clause 203(1) should be amended by inserting the word "is" after the word "Part" in line 2.

Clause 204 - Court order for arrest of bankrupt

Your Committee accepted the recommendation that clause 204 would better meet its objective if it provided for the books and records seized to be turned over to the trustee. *It was therefore agreed that clause 204 should be amended to reflect that the records may be turned over to the trustee unless the Court otherwise directs.*

Clause 205 - Automatic discharge of first-time individual bankrupt

Concern was raised by the BOJ that the provisions made in the Bill for the automatic rehabilitation of the bankrupt might make it difficult for the Supervisor (BOJ) to be able to access information on that bankrupt in order to be satisfied that the particular individual satisfies the fit and proper criteria. The BOJ suggested that as regulator, they should have some residual power to consider the circumstance of a bankruptcy in making a determination as to fit and proper. Your Committee noted the BOJ's concern but was of the view that there was nothing in the provision in the Bill that prevents the BOJ or any other regulator from being able to look into the circumstance of a bankruptcy in making a determination as to fit and proper. It was felt that the onus would be on the regulator to ask the relevant questions in order to be furnished with the required answers. Your Committee is also of the view that this is a matter for the BOJ to address in their own regime as opposed to making an adjustment to the Insolvency Act.

Sub-clauses (1) and (2)

Your Committee agrees that the word "whereof" in line 1 should be replaced with the word "where".

The OTB made a suggestion that the word "oppose" in clause 205(1)(c) should be changed to "refuse" so as not to place the Supervisor in an adversarial position to the bankrupt. Your Committee was however told that "oppose" was the correct word, given that the discharge was automatic and was not something that would be granted by the Supervisor. Therefore, the Supervisor, like the trustee or other persons mention could oppose the discharge.

The issue was also raised as to why clause 205(1)(a) spoke to an eight-month period while all the other provisions in sub-clauses (1) and (2) spoke to a nine month period. Clarification was made that there was a difference in order to allow for a period of time in which the stakeholders could have sight of the trustee's report, so that if there was going to be any objection to the discharge, this would not occur at the end of the nine month period.

It was also submitted to your Committee that given the various steps that need to be taken and how long these steps usually take, the period of eight or nine months would be too short. It was suggested that the period should be changed to one year, notwithstanding the need to expedite the process. Consideration was given to this proposal, and your Committee *agrees that clause 205(1)(a) should be amended to speak to "expiration of the eleventh month".*

It was further agreed that sub-clause (1)(c), (d) and (g) as well as sub-clause (2) should be amended to refer to "expiration of the twelve month period".

A proposal was also made that it should be clearly stated from the outset of clause 205 that the date of automatic discharge takes effect twelve months after the grant of the receiving order, that eleven months after the order is made, the trustee must file his report and that at the expiration of the full twelve months, persons could oppose the discharge. If they did not, the bankrupt would be automatically discharged.

Your Committee consequently agrees that the clause should be reworded to clearly indicate that:

1) *There is an automatic discharge of a first time bankrupt after twelve months subject to the provisions of clause 205;*
2) *The report is to be completed by the trustee within eleven months under clause 205(1)(a) and at the end of the eleven-month period, the trustee should file his report with the Supervisor;*
3) *The trustee can apply to the Supervisor for an extension, with notice of this being given to the bankrupt;*
4) *The Supervisor should then determine the reasonableness of the grounds on which the extension is being sought and either grant or deny that request. The criteria for granting the extension should be that good grounds have been provided and the extension would not be unfairly prejudicial to the bankrupt.*
5) *After the filing of the report by the trustee, there is a 30-day period for objection.*
6) *The period of objection is thirty days from the delivery of that report;*
7) *If there is no objection or opposition, then at the expiration of the 12 months, the bankrupt is automatically discharged;*
8) *If an extension is granted, then at the end of that extended period, once no one opposes the granting of the discharge, then the bankrupt is automatically discharged.*

The PSOJ expressed concern that as currently worded, clause 205(1)(f) suggests that irrespective of who opposed the discharge, it was the trustee who would have to make the application to the Court for the matter to be heard. Your Committee agreed that it was the person who opposed the discharge of the bankrupt that should make the application to the Court for the matter to be heard. Your *Committee therefore agrees that sub-clause (1)(f) should be amended by deleting the words "the trustee" in line 2 and inserting the words "such person may".*

The Consultant suggested that the scheduling of a discharge application should be in the hands of the trustee or the bankrupt. *Your Committee however indicated that no amendment had been made to the contrary and therefore, the scheduling of a discharge application would still remain with the trustee or the bankrupt.*

Clause 206 - Bankruptcy of an individual operates as an application for discharge

The PSOJ found it difficult to identify how the provisions of clause 206 would work in practice, where the making of the receiving order and or the making of the assignment would be treated as the application for discharge. They suggested that the clause be deleted and replaced by a new provision which would address the application for discharge by a corporation and an individual who is not a first time bankrupt. The Consultant advised that in Canada, rather than leaving it to someone to file the application for discharge with the Court, when the time was appropriate, the bankrupt would be deemed to have applied for discharge, and the trustee would then indicate its intention to proceed with the application. He recommended that clause 206 should not be deleted and that provision should not be made for the discharge of a bankrupt corporation but rather, that the clause should be amended to make provision for the dissolution of a bankrupt corporation. He recommended further that much of what was contained in the existing clause 206 could be placed in the regulations and the Rules of Court where appropriate.

Your Committee accepts the Consultant's recommendation not to delete clause 206. Your Committee further agrees that the details of the procedures for

discharge set out in clause 206 should be removed and placed in the regulations and Rules of Court and that a provision should be inserted in clause 206 to address the dissolution of a bankrupt corporation. The proposed wording for the new clause 206, which has been agreed to by your Committee is as follows:

"(1) Subject to section 159, the making of a receiving order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing to the trustee, waives the application for discharge.

(2) The trustee shall apply to the Court to proceed with the application for discharge of a bankrupt who has not delivered a waiver in accordance with subsection (1) in the time and manner prescribed.

(3) A bankrupt who has given notice of a waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply to the Court for a discharge in the prescribed manner, and the trustee on being served therewith shall proceed as provided in this section.

(4) A bankrupt corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full and a corporation which is not so prohibited from applying for a discharge may do so in the prescribed manner.

(5) The Court may, before hearing an application for discharge, if requested by the trustee, require such funds to be deposited with, or such guarantee to be given to, the trustee, as it deems proper, for the payment of the fees and disbursements incurred in respect of the application.

(6) The Trustee shall, not less than fourteen days before the day appointed for the hearing of an application for discharge, send notice of the application in the prescribed form to the Supervisor, and the bankrupt and shall publish such notice in the Gazette and a daily newspaper widely circulated in Jamaica or otherwise distribute it as the Supervisor may direct.

(7) Where the trustee is not available to perform the duties required of a trustee on the application of a bankrupt for a discharge, the Court may authorize any other person to perform such duties and may give such directions as it deems necessary to enable the application of the bankrupt to be brought before the Court.

(8) An order of discharge of a bankrupt made by the Court shall be published by the trustee in the Gazette and a daily newspaper widely circulated in Jamaica, and in the case of a bankrupt corporation (subject to subsection (4), served on the Registrar of Companies.

(9) A bankrupt corporation, subject to subsection (4), shall be deemed to be automatically dissolved upon the discharge of the trustee pursuant to section [273] and such dissolution shall take effect on the expiration of three months from the date of discharge of the trustee. The trustee, or such other person as the Court may direct, shall, unless the trustee is discharged by the Supervisor, within 7 days thereof, send notice of the discharge of the trustee to the Supervisor. The Supervisor, on discharging a trustee, shall issue to the Registrar of Companies for recording a Certificate of Dissolution and the provisions of the Companies Act with respect to a dissolved company shall apply thereto mutatis mutandis.

(10) The Court may, on the application of any person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the corporation is to take effect for such time as the Court thinks fit."

Your Committee also recommends that sub-clauses (9) and (10) should be relocated to the part of the Act dealing with the discharge of the trustee.

In respect of sub-clause (9), PricewaterhouseCoopers expressed concern that currently, the Registrar of Companies would not issue a certificate of dissolution if there were outstanding matters for the company such as outstanding annual returns or change of Directors that had not been filed. This made it difficult to bring to finality a company that should be liquidated, as the resources needed to bring the company up-to-date might not be available and it might also not be practical given that some of the persons who would be critical to that process. They raised the question of whether this deemed dissolution in sub-clause (9) would not supersede this practice. The PSOJ was also of the view that it was not appropriate to stymie the liquidation/winding-up process for a company because of the filing of documents, particularly since the company might not be in a position to find the information required to bring the records up-to-date. Your Committee consulted the Registrar of Companies on this matter, who informed your Committee that the certificate from the Supervisor stating that the company has been dissolved would suffice and would be accepted by them.

Clause 207 - Trustee to prepare report of application of bankrupt for discharge

Sub-clause (1)

Your Committee agrees that sub-clause (1)(f) should be amended by deleting the word "justify" and replacing it with the words "be relevant to"

New paragraph

Your Committee also agrees that the provisions of clause 208(1) should be removed and inserted as paragraph (f) in clause 207(1). The existing paragraph (f) would be renumbered as (g).

The question was raised as to whether this new paragraph should not also speak to the bankrupt's payment record during the course of the bankruptcy. *Your Committee agrees and recommends that since sub-clause (1)(d) spoke to the conduct of the bankrupt before and after the date of initial bankruptcy, the new sub-clause (1)(f) should be amended to only speak to the bankrupt's payment record since the commencement of the bankruptcy and his ability to make payments going forward.*

Sub-clause (6) and (7)

Your Committee accepts the suggestion that the words "at or before the time appointed for hearing the application for discharge" should be deleted from subsections (6) and (7) so that the timing would be dealt with by the Rules of Court.

Clause 208 - Trustee's report to provide recommendation

It was suggested that in order to make the process in clause 208 less costly and more time efficient, a less formal process than mediation should be used to resolve the matters referred to and the Supervisor should be used to resolve these issues. The view was also expressed that mediation might not always be appropriate for the particular issue being addressed. Your *Committee subsequently agrees that clause 208 should be amended to make provision for an informal process for the parties to seek to resolve their issues and if they are unable to resolve those issues within a certain period of time, that the matter should be referred to the Supervisor, whose determination would be binding and final, unless there is an appeal to the Court.*

The point was made that in the future, it was envisaged that the Supervisor would establish have a department that would deal with the mediation process and that over time, they would develop the expertise to play that role in an informed way.

Sub-clause (7)
The question was raised as to what was hoped to be achieved by having two different mechanisms for the time at which the hearing would be held under paragraphs (a) and (b). Your Committee was told however that this concern had been addressed by the amendment made to remove this determination from the Court and have it dealt with by the Supervisor, which would result in consequential amendments being made to sub-clause (7).

Sub-clause (8)
Your Committee agrees with the suggestion made by the PSOJ that rather than making provision for the trustee to issue the certificate to the bankrupt, sub-clause (8) should be modified to require that once the bankrupt complied with the conditions for discharge, the trustee would file with the Supervisor and the Supervisor would then issue the certificate stating that the bankrupt was discharged. *Your Committee recommends that an appropriate amendment should be made to reflect this.*

The Consultant suggested that the use of mediation should be carefully considered based on a cost-benefit analysis.

Clause 209 - Power of Court in relation to discharge
Your Committee agrees that no change is necessary to this clause.

Clause 210 - Facts relevant to discharge
Paragraph (c)
The OTB made reference to the existing regime where a company that was being wound up was not expected to carry on any further business. The point was made however that an individual in bankruptcy might oftentimes be the sole proprietor of the business, and to the extent that he was required to contribute towards the settlement of his liabilities, he would need to carry on his business in order to generate income. The OTB therefore recommended that paragraph (c) be amended to distinguish between corporate and individual bankrupts. Your Committee carefully considered this proposal, but concluded that such a distinction should not be made in the Bill without further research on the matter. Committee Members were of the view that although insolvency requires an adjustment of a person's behaviour particularly in relation to assuming credit, insolvency did not necessarily mean an immediate cessation of all activities as the business might still have assets that need to be realised in the most efficacious way for the benefit of the creditors. *Your Committee therefore agrees that no adjustment should be made to this clause.*

Clause 211 - Value of bankrupt's assets
Your Committee agrees that no amendment is necessary in respect of this clause.

Clause 212 - Cessation of any statutory disqualification
Your Committee was told that this provision did not discharge someone from bankruptcy but rather, it removes a disqualification so that in those situations where a disqualification might cause undue hardship to the individual in question, the Court would have an opportunity to lift the disqualification.

Several concerns were raised during the deliberations on this clause. One issue was the effect of this further qualification of issuing a certificate by the Court in respect of a discharged bankrupt, evidencing whether the bankruptcy was caused by misfortune or misconduct. It was felt that this went against the spirit of legislation to remove the

stigma associated with bankruptcy, that is was prejudicial to the kind of economy that was desirable in the Jamaican context, and discouraged risk-taking. The general consensus however, was that this second step in the process was needed. The question was also raised as to whether clause 212 was needed at all given that there were already provisions which spoke about un-discharged bankrupts. The suggestion was made that the clause should be deleted. Your Committee was of the view that the two discharge processes in the Bill should be retained: one being the automatic discharge of the first time bankrupt and the other being the regular discharge process for other individuals and corporation. *Your Committee agrees that the scheme that should be established is for there to be a distinction between: (i) the kinds of cases that would fall within the category of automatic discharge, which would be matters that could be settled by the Supervisor who would then issue a certificate and (ii) the more serious matters such as those actions that bordered on fraud, misconduct and others that should be referred to the Court for a determination to be made based on the facts presented and for the Court to issue a certificate of discharge.*

The question was raised as to the significance of the term "by misfortune", which could lead to a wide range of interpretation. Your Committee was told that this was not a term of art in bankruptcy proceedings which had to be retained in the legislation and therefore, *it was agreed that the term "by misfortunate" should be deleted*. The point was also made that the relevant issue in this provision was whether or not there had been any misconduct on the part of the bankrupt.

It was noted that this clause focused on the cause of the bankruptcy, and a suggestion was made that the bankrupt's conduct during the course of the bankruptcy proceedings should also be a relevant consideration in determining whether a certificate of discharge should be issued. Your Committee was told that the trustee would have been observing the behaviour of the person during the bankruptcy and would state in his report what his observations were and whether or not he had any objection to the person being discharged. *Your Committee therefore agrees that the scope of clause 212 should be expanded to include not only the cause of the bankruptcy but also the person's conduct during the bankruptcy.*

It was brought to your Committee's attention that the provisions of clause 212 might have the effect of an implied repeal of the provisions of other legislation such as section 41 of the Constitution. *It was therefore suggested and your Committee agrees that there should be a carve-out of the relevant provisions.*

Further, it was proposed that in clause 212 there should also be a carve out in respect of fit and proper criteria particularly in relation to the players in the financial sector who handle people's money. *Your Committee therefore agrees that a carve out provision should be included in this clause in respect of any adjudication of fitness and propriety by the Bank of Jamaica and the Financial Services Commission for the purposes of their role as regulators of deposit-taking or other financial services.* This would ensure that despite the issuance of the certificate, the ability of these regulators to enquire into the history of the particular individual would not be impacted.

Clause 213 - Bankrupt to report to trustee and Court
Your Committee agrees that no change is necessary in respect of this clause.

Clause 214 - Court may consider effects of settlement before marriage
Your Committee agrees that no change is necessary to this clause.

Clause 215 - Debts not released by order of discharge
Sub-clause (1)
The OTB was of the view that the damages referred to in this provision were debts that could be claimed and settled during the administrative process and questioned whether it was necessary to include them in the legislation. Your Committee however felt that although normal commercial debts were released after discharge, the other liabilities listed in this provision should not be purged by discharged.

The OTB also recommended that consideration be given to whether the debts listed in sub-clause (1)(i) were the only ones that should be included in this provision or whether it should also include other loans granted by the Government subject to which persons might or might not be bonded. Your Committee does not agree with this suggestion and recommends that no change should be made.

Concern was also raised that the possibility existed that a bankrupt could be discharged and released from the debt whereas his guarantor would still be liable. Your Committee felt that without more, the existing rule which states that the bankrupt is released but the guarantor is not should remain because this was the principle on which guarantees are granted.

Your Committee therefore agrees that no change should be made to clause 215 of the Bill.

Clause 216 - Third parties not released
Your Committee agrees that no amendment should be made to this clause.

Clause 217 - Court may annul discharge of the bankrupt
Your Committee agrees that no change is needed in respect of this clause.

Clause 218 - Court may annul bankruptcy
Your Committee did not accept the suggestion made for a timeline to be imposed within which the bankruptcy should be annulled and *therefore recommends that no change is necessary to this clause.*

Clause 219 - Issuance of orders to be delayed
Your Committee agrees that the word "entered" in line 4 should be changed to "filed".

Clause 220 - Appointment of Supervisor
Your Committee spent a considerable length of time discussing the issue of who should be appointed as Supervisor of Insolvency. A number of suggestions were made, which were carefully considered by your Committee. At the end of their deliberations, Committee Members were of the view that the ideal solution would be to establish an independent, autonomous body to house the Office of the Supervisor of Insolvency, but were also mindful that given the fiscal constraints currently facing the Government at this time, that this option might not be the most feasible.

Your Committee wishes to indicate that at this point in time, they would not be taking a decision as to who should be named as the Supervisor. Rather, to aid this decision, the Minister and Ministry of Industry, Investment and Commerce will undertake the relevant analysis of the likely costs associated with the following available options:
(i) the Financial Services Commission (FSC), with the appropriate firewalls in place
(ii) an enhanced Office of the Trustee in Bankruptcy (OTB)
(iii) a merger of the FSC and the OTB

(iv) a merger of any other existing entity that could provide the appropriate support services
(v) an entirely new entity being created.

Your Committee is also of the view that it would be prudent to ensure that any entity chosen as the Supervisor of Insolvency will fall within the purview of the Ministry of Industry, Investment and Commerce, which is charged with the responsibility for promoting investment and growth.

Clause 221 - Functions of Supervisor
Sub-clause (1)
It was suggested by the FSC and *your Committee agrees that this sub-clause (1) should be expanded to provide that "the Supervisor shall regulate the licensing of trustees and supervise the administration of all estates and matters to which this Act applies, including estates administered by the Government trustee*".

Your Committee noted that the Government trustee would be a statutorily appointed position and therefore, there is no requirement to license the Government trustee. Your Committee was informed that what was suggested in the proposed regulations was that the Supervisor might be consulted in regard to the appointment to the post of Government trustee. *Your Committee is of the view that the Supervisor should have general oversight of the Government trustee and suggests that the proposed wording made by the FSC should therefore be amended to reflect this.*

It was suggested that a provision should be included in this clause to make it clear that one of the functions of the Supervisor would be to fix the remuneration of the trustee in accordance with section 271. However, concern was raised that the Supervisor should not have a prescriptive role in terms of setting fees, rather, if the parties involved (creditors/debtor and trustee) were unable to resolve an issue related to the fees, that the Supervisor would assist in resolving that issue. It was also pointed out that the matter of the remuneration of the trustee was covered under clause 271 and therefore, it would be repetitive to insert that provision in clause 221. *Your Committee agrees that in order to link the provisions at clause 271 and those of any other applicable clauses, clause 221(1) should be amended to make it clear that the powers of the Supervisor are in accordance with the provisions of this Act.*

Sub-clause (2)
Your Committee agrees with the recommendation made by the PSOJ that it should be clearly stated that sub-clause (2)(b) does not apply in the case of the Government trustee in respect of the requirement to provide security. It was further suggested that the words "the deposit of one or more continuing guarantee bonds" should be deleted from this provision as clause 247 of the Bill spoke to the form that this security would take. Your Committee therefore agrees that this provision should be amended to state: "*except where the trustee is the Government trustee, require as security for the due accounting of all property received by trustees and for the due and faithful performance by the trustees of their duties in the administration of estates to which they are appointed at such rate as the Minister may, by order prescribe...*" *Your Committee further agrees that the words "in the manner prescribed in section 247"* should be inserted after the word "security" in order to link these two provisions.

Your Committee considered the recommendation for the word "amount" to be changed to "rate" but decided that the provision should speak to "*an amount computed in such manner as the Minister may prescribe*." It was expected that in

determining the amount, the Minister would act based on the advice of the Supervisor who would have a good understanding of the realities of the market.

Concern was raised that although reference was being made to the Minister in this clause as well as in other clauses of the Bill, there was no definition of "Minister" in the Bill. It was suggested that such a definition should be included, particularly given the fact that currently, the Government trustee was under the Ministry of Justice, the Supervisor of Insolvency would fall under the Ministry with portfolio responsibility for the legislation and that there might be some things that might need to be prescribed by other Ministers such as the Minister of Finance. Your Committee was of the view that the definition of "Minister" under the Interpretation Act should suffice but recommends that these concerns should be brought to the attention of the Cabinet Office so that appropriate action could be taken in the event that there are any changes in portfolio responsibilities that might impact any these entities.

Concern was raised by the FSC concerning what could be done by the Supervisor to ensure compliance on the part of the Government trustee in the event that it failed to carry out its functions or failed to follow a directive from the Supervisor. Your Committee was told that based on the proposed amendments to the Bill, the Government trustee, whose appointment was treated as a standard Public Service appointment made by the Governor-General on the recommendation of the Public Services Commission, would be subject to the direction of the Supervisor as regulator, and therefore, where the Government trustee refused to comply with the directives of the Supervisor, the matter would be reported to the Public Services Commission. Consequently, your Committee agrees that no change is necessary to the Bill to address this concern.

During its deliberations on clause 198, your Committee decided that that clause be deleted and the substance of that provision be incorporated in clause 221(2)(c). *As such, your Committee recommends that clause 221(2)(c) be amended by inserting the words "or a bankrupt" after the word "receiver," in line 4.* This would allow the Supervisor to be able to conduct investigations in relation to a bankrupt, should this become necessary. The FSC was of the view that this power to investigate should not be applicable to the "bankrupt" but to the "insolvent person" which was the broadest category. They however deferred to the Committee's decision.

Clause 222 - Access to trustee's account

Sub-clause (1)

Your Committee agrees to the following recommendations made by the PSOJ:
(i) that the words "on his behalf" should be deleted from line 2;
(ii) the words "banking accounts in line 3 should be deleted and replaced with the words "documents relating to the bank accounts"; and
(iii) the reference to "banking accounts" in lines 5-6 should be changed to "bank accounts".

Sub-clause (3)

Your Committee agrees that the word "of" in line 4 should be changed to "the".

Clause 223 - Suspected Offences

Sub-clause (2)

Your Committee agrees that the words "with respect to" in line 2 of sub-clause (2)(c) should be moved to the margin to form the closing words of paragraphs (a), (b) and (c).

Sub-clause (5)
Your Committee agrees that the word "of" should be inserted before the word "law" in line 4.

Sub-clause (7)
Your Committee agrees that the reference to "section 126" should be changed to "section 172".

New sub-clause
It was brought to your Committee's attention that clause 223 deals with the investigation of possible criminal offences and therefore, the consequence of this investigation could not merely be that the person could be examined under oath as would be the case based on the present provisions of this clause. The question was therefore raised as to what the Supervisor would be required to do after completing his investigations. *Your Committee agrees to the insertion of a new sub-clause to provide that the Supervisor may refer any matter arising from his powers under this section to the Director of Public Prosecutions or any other appropriate authority.* The point was made that apart from the Director of Public Prosecutions, other bodies such as the Financial Investigations Division, the Corruption Prevention Commission or the integrity Commission might have jurisdiction over the particular matter that was investigated by the Supervisor.

Clause 224 - Maintenance of public records
Sub-clause (1)
Your Committee was informed that generally, the time period for maintaining public records was seven years and that based on the provisions in respect of retention periods as well as the fact that the limitation for claims was six years, the time period in sub-clause (1) could not be less than seven years. *Your Committee agrees that the words "five years or such other period" in line 3 should be changed to "seven years or such longer period...*"

During the deliberations on clause 78 of the Bill, your Committee agreed that a copy of the certificate of performance should be registered with the Supervisor and would become one of the records maintained by the Supervisor. *Your Committee therefore agrees that an amendment should be made to clause 224 to reflect this.*

New provision # 1
Your Committee was told that a qualification was needed in clause 224 to indicate that this provision would not be limiting any other provision of law requiring the archiving or other retention of public records. *Your Committee recommends an amendment to reflect this change.*

New provision # 2
During the discussions on clause 273 of the Bill, a decision was taken by your Committee that in instances where an application for discharge of the trustee was given by the Supervisor, that this should also be a matter of public record, subject to disclosure under clause 224. *Your Committee therefore recommends an appropriate amendment to clause 224 to reflect this, if as currently worded, the clause would not cover this.*

New provision # 3
During the deliberations on clause 51, your Committee suggested that there should be provision in the Bill for sensitive commercial information and other private information in a proposal to be exempt from disclosure. *Your Committee was also of the view that the amendment to achieve this should be made under clause 224 of the Bill and therefore recommends that a provision should be added to this clause to allow*

for rules to be prescribed around issues of access to the record of proposals, redaction of sensitive material such as trade secrets and matters of personal security, among others. It was further agreed that the Rules that are being developed to govern the legislation would address the details. It was stated that the Supervisor could develop rules governing search criteria, and restriction of access, and that the forms could be developed in a way that indicates what information is available in a search record or a register.

Clause 225 - Government trustees

Your Committee agrees that the typographical error in the marginal note should be corrected.

Sub-clause (1)(a)

A suggestion was made by the PSOJ that the reference to "in the Supreme Court and the Resident Magistrate's Courts throughout the island" should be deleted. *Your Committee accepts this proposal and recommends an amendment to reflect this change.*

During the discussion on the above proposal, your Committee was informed that the intention was that the Government trustee would be on the same level as the Administrator General. Your Committee was also told that in Canada, the Insolvency legislation expressly states that the Government trustee was an officer of the Court. Your Committee sought to ascertain whether there was currently a statutory requirement for the Government trustee to be an Attorney-at-Law and was advised that whilst there was no such stated requirement in the Statute, in practice, for cost reasons, the person appointed could be a Attorney-at-Law as currently obtains. Your Committee was of the opinion that the Government trustee was a trustee like any other trustee, and should therefore not have to be a Lawyer as this was not required of other trustees. *Consequently, there should be no provision in the legislation requiring that the Government trustee must be a Lawyer. Your Committee however, accepts the proposal made that the trustee should be deemed to be an Officer of the Court, and recommends an amendment to reflect this.* It was felt that this would allow the Court to have jurisdiction over the work/function of the trustee, and that a similar provision existed under the Administrator General's Act, where the Administrator was deemed to be an officer of the Court.

Sub-clause (2)

The PSOJ was of the view that in light of the decision taken by your Committee that the Government trustee should be regulated by the Supervisor in the same manner as trustees generally, sub-clause (2) should be expanded to indicate that the Government trustee would also be regulated by the Supervisor in respect of the administration of estates. Your Committee was of the view that this concern had been addressed in the amendments to clause 221(2) and therefore, it was unnecessary to include such a provision in clause 225.

New Sub-clause (4)

Your Committee agrees to the insertion of a new sub-clause to indicate that the fees in respect of the Government trustee would be prescribed and that it would be subject to negative resolution.

Clause 226 - Commissions and fees to be paid

It was suggested and your Committee agrees that the words "and remuneration other than salary" should deleted and that the word "and" should be inserted before the word "fees" in line 1.

Clause 227 - Reimbursement of expenses of Government trustee

Your Committee agrees that line 1 of this clause should be amended to speak to "Government trustee".
Your Committee further agrees that based on this amendment, the definition of "trustee" in clause 2 of the Bill should be amended to provide "...and shall include the Government trustee".

Your Committee accepts the recommendation made that the words "or Resident Magistrate, as the case may be" should be deleted from lines 4-5 of this clause.

Your Committee further agrees that the words "reasonably and" should be inserted before the words "properly incurred" in line 6.

Clause 228 - Applications for licence as trustee
Sub-clause (1)
The OTB made a recommendation that consideration should be given to the qualifications of the trustees who would be licensed under the Act. During the discussion on this suggestion, it was noted that there was in fact no eligibility criteria for trustees in the Bill. Your Committee was however informed that these criteria would be set out in the regulations, which would include among other things, whether the person holds an LLB or a Practising Certificate and is practising in a specific area. It was also stated that these persons might be required to undertake some Courses in the Law on Insolvency, etc. Your *Committee therefore agrees that provision should be made at the appropriate section of the Bill for the prescribing of eligibility of qualifying criteria for trustees.* Your Committee further agrees that the details should be placed in the regulations.

The suggestion made by the ICAJ that someone who wishes to obtain a licence to act as trustee should make this application to a proposed Joint Legal Council was not accepted by your Committee, which is not in favour of having such a body set up under the Act.

Sub-clause (3)
The proposal made by the PSOJ for clause 228(3) to be amended by making reference to "sections 230 and 231" was not accepted by your Committee as it was felt that the current reference was in fact the correct one.

Clause 229 - Form of licence
Your Committee accepts the proposal made by both the PSOJ and the OTB that the words "subject to the approval of the Minister" should be deleted as it was felt that the Minister should not be involved in the process of approving individual licences.

Sub-clause (2)
The recommendation made by the ICAJ for clause 229(2) to be modified to speak to the Supervisor, *the Institute or the Council* is not accepted by your Committee.

Clause 230 - Payment of Fees
Your Committee agrees that no change was necessary to this clause.

Clause 231 - Validity, cancellation and suspension of trustee licence
Sub-clause (2)
*Your Committee agrees to the suggestion to change the word "shall" to "<u>may</u>" in line 1 of sub-clause (2)(b)*to give the Supervisor a discretionary power to reinstate a trustee who has become bankrupt as opposed to making this a mandatory requirement.

The ICAJ's recommendation to make reference to the Supervisor, *the Institute, or the Council* in sub-clause (2) is not accepted.

Sub-clause (3)

Your Committee accepts the proposal from the PSOJ for a new sub-clause (3)(d) to be added to provide: "the trustee, either before providing the security provided by section 247(1) or after providing the security but at any time knowing the security is not in force and fails to take steps within a reasonable time to put in place a new security acts as or exercises any of the powers of trustee". Your Committee was told that this provision was being removed from clause 299(1)(b) because it should not be treated as a criminal offence. Rather, it should be added as one of the grounds on which the Supervisor could exercise his power to suspend or cancel a trustee's licence under clause 231(3).

Sub-clauses (4) and (5)

The proposal made by the ICAJ for these provisions to be amended to speak to the Supervisor, *the Institute, or the Council* is not accepted.

Clause 232 - Trustee prohibited from acting in specified circumstance

Sub-clause (1)

Your Committee was of the view that the references to "Court" in this provision should be changed to "Supervisor", so that it was the Supervisor who would address these matters since the licensing was done by the Supervisor.

Your Committee also agrees to the following changes:

(i) That sub-clause (1)(a)(iii) should be amended to state: "an immediate relative of the debtor or of any director or officer of the debtor; or"

(ii) That sub-clause (1)(b)(ii) should be modified to read: "an immediate relative of the trustee under a trust indenture referred to in sub-paragraph (i)".

New paragraph (c)

The OTB recommended that the Bill should be amended to provide that a trustee should not be allowed to act with respect to a matter in which he has an interest because this could give rise to a conflict of interest given the level of influence he could exert over various creditors. Your Committee agrees with this point and is of the view that a trustee who has an interest in an estate should not be appointed as trustee for that estate as this would be inappropriate. The issue of whether a shareholder should be excluded from being a trustee was also raised. *Your Committee* made reference to what obtains in other jurisdictions and after much deliberation, *agrees that clause 232 of the Bill should be amended by adding a new paragraph (c) to provide: "where the trustee is a creditor of the debtor".*

Clause 233 - Code of Ethics

Your Committee agrees that no change is necessary to this clause.

Clause 234 - Cancelled licences

Your Committee agrees that no amendment should be made to this clause.

Clause 235 - Appointment or substitution of trustee by creditors

Your Committee agrees that no change is necessary to this clause.

Clause 236 - Rights of Supervisor where questionable trustee conduct

Sub-clause (1)

Concern was raised by the OTB that as currently worded, clause 236 would only apply to licensed trustees and not to the Government trustee. Your Committee was however

informed that based on the amendment made to the definition of "trustee" to include the Government trustee, clause 236(1) would also apply to the Government trustee.

Your Committee agrees that the words "the Supervisor may do one or more of the following" in paragraph (c) should be moved to the margin to form the closing words of paragraphs (a), (b) and (c).

Your Committee was of the view that the power in sub-clause (1)(c) to cancel or suspend a licence should not be applicable to the Government trustee. *Your Committee therefore agrees to the insertion of a new paragraph (1)(c)(iv) to state: "in the case of the Government trustee, make such recommendations to the Services Commission or other appropriate authority".*

Concern was then raised as to whether the Services Commission or other appropriate authority would have a reporting obligation to the Supervisor concerning the findings of their investigations given that actions might be triggered after such a report is made. *Your Committee therefore recommends the inclusion of a provision to provide that where a referral is made to the Services Commission or other appropriate authority, that body should report back to the Supervisor as to their findings and determination.*

A discussion was held under clause 239 as to whether the Supervisor should also have the power to remove a trustee from acting in respect of any estate that he was currently administering where the Supervisor has done his investigations and concluded that the trustee should be removed. *Your Committee recommends that a new sub-paragraph should be added to sub-clause (1)(c) to allow the Supervisor to remove a trustee from acting further in respect of any estate that the trustee is currently administering.*

The question was however raised as to what would occur in the event that it was the Government trustee that was being removed. *Your Committee subsequently agrees that the new sub-paragraph to be inserted under sub-clause (1)(c) should be modified by adding the words: "save where the person being removed is the Government trustee".*

Your Committee also agrees that a new sub-clause (2) should be inserted to state that where the power to remove, cancel or suspend is exercised by the Supervisor, the Government trustee should be appointed to act in respect of any estate that is impacted as a result of that removal or suspension or cancellation, subject to the power of the creditors to appoint someone else under section 235 of the Act. Your Committee further agrees that this should be subject to the proviso that where the power of removal is invoked in relation to the Government trustee, that another trustee should be appointed. In making this amendment, your Committee acknowledges the point made that it might prove difficult to find someone to act instead of the Government trustee since the latter was more likely to be appointed in cases where the estate has no funds.

Clause 237 - Hearing prior to action under section 236
Sub-clause (2)
Your Committee agrees that since there are no other procedures established in Jamaica for the conduct of hearings of a general proposition, *that the words "in this regard or in the absence of such rules, established in Jamaica for the conduct of hearings" should be deleted from sub-clause (2)(b) as proposed by the PSOJ.*

Sub-clause (3)
Your Committee agrees that the correct reference in this provision should be to subsection (2)(d).

Sub-clause (6)
Your Committee was of the view that the word "varied" was more appropriate in respect of the provision at sub-clause (6) and *therefore recommends that the word "reviewed" should be changed to "varied".*

Clause 238 - Protection of estate by Supervisor
Your Committee agrees that no amendment is necessary to this clause.

Clause 239 - Court removal of trustee
Your Committee also agrees that the word "licensed" should be deleted from line 2.

A suggestion was made that it should be either the Supervisor or the Court that should be able to carry out the role of removing the trustee. Your Committee accepts this proposal but is of the view that the amendment should be made to clause 236 of the Bill.

Clause 240 - Government trustee to act where no licensed trustee to do so
Your Committee agrees that no change is needed to this clause.

Clause 241 - Acts done in good faith
Your Committee agrees that no amendment is necessary to this clause.

Clause 242 - Corporate trustee
During deliberations on the proposal made by the PSOJ for the words "and officers all hold licenses as trustee" to be deleted, Committee Members were of the opinion that for the purposes of this clause, it would not make sense for officers to include directors. It was stated that if a corporate trustee was established, the directors might be non-executive officers, and the question was raised as to why they would have to be licensed. Whereas it was the general view that the managing director would have to be licensed as a trustee, non-executive directors should not have to be trustees. *Your Committee therefore agrees that clause 242 should be amended to state: "A body corporate may hold a license as trustee only if a majority of its officers hold licenses as trustees." Your committee further recommends that a definition of "officer" should be inserted in this clause to read: "For the purposes of this sub-section, "officer" means any persons who are employed or engaged in a managerial capacity but shall not include any non-executive directors."*

Clause 243 - Acts by corporate trustee
The question was raised as to how a body corporate could operate through a non-executive officer who holds a license as trustee. *Your Committee therefore agrees that the words "a director or" should be deleted from line 4.*

Your Committee also agrees that the definition of "officer" should also be applicable to this provision.

Clause 244 - Corporate trustee not a trust company
Your Committee agrees that no change is necessary to this clause.

Official Name

Clause 245 - Official name

Your Committee agrees that since this provision should also apply to a looming insolvent, the reference to "an insolvent person" should be changed to "a debtor".

Your Committee agrees that the word "re" in the penultimate line should be replaced by the words "in relation to".

Duties and Powers of Trustees

Clause 246 - Duty to act

Your Committee agrees that no amendment is necessary to this clause.

Clause 247 - Trustee to give security

Sub-clause (1)

This provision speaks to the form that the security referred to in clause 221(2)(b) should take. A recommendation was made by the PSOJ that the provision should be amended to indicate that it does not apply to the Government trustee, and that a link should also be made between this clause and clause 221 of the Bill. It was suggested further that all the words appearing after the word "insurance" in line 3 should be deleted as they were already incorporated under clause 221(2)(b). *Your Committee therefore agrees to the following rewording of sub-clause (1):*

"Every trustee other than the Government trustee shall upon appointment forthwith give security required under section 221(2)(b), in cash or by performance bond or professional indemnity insurance."

New sub-clause

The point was made however that professional indemnity insurance was not security unless it was pledged to the Supervisor, and it was suggested that the statute would therefore need to make it clear that the proceeds of the insurance policy should be available for the creditors generally. *Your Committee*, after exploring several options concerning how this could be achieved, *agrees that a new sub-clause should be inserted in clause 247 to provide that where the security takes the form of professional indemnity insurance, any claim arising from wrongdoing on the part of the trustee in respect of an estate resulting in proceeds being paid under that policy, those proceeds shall be held in trust for the benefit of the estate.*

Clause 248 - Delivery of property to trustee

A suggestion was made by the OTB that this clause should be amended to make it an offence if a person fails to deliver any property in his possession to the trustee. *Your Committee agrees that this should be an offence, but that the person would have to knowingly contravene this section. Your Committee further agrees that the amendment to address this should be made to clause 299 of the Bill. Consequently, no change is to be made to clause 248.*

Clause 249 - Protective measures

Your Committee questioned whether the term "take conservatory measures" in paragraph (a) was being used generally or whether it referred specifically to the property that was likely to depreciate rapidly. Your Committee also noted that the term generally meant preserving the assets rather than disposing of them. Concern was also expressed about the ambiguity of the word "summarily" in the context of the provision. *Your Committee therefore agrees that in order to clearly convey what the provision is intended to mean, clause 249(a) should be separated into paragraphs (a) and (b), which would read:*

"(a) take measures to protect the assets of the estate;
(b) take immediate steps to dispose of property that is perishable or likely to depreciate rapidly in value;"

As a consequential amendment, the existing paragraph (b) would be renumbered as paragraph (c).

Clause 250 - Legal proceedings to protect estate

Sub-clause (1)

Your Committee agrees to the insertion of the words "or other action" after the word "proceedings" in line 2.

Your Committee also agrees that the word "protest" in the marginal note to clause 250 should be changed to "protect".

Sub-clause (3)

The PSOJ questioned the relevance of this provision and suggested that it should be deleted from clause 250. *Your Committee agrees that this provision does not fit within the scheme of clause 250 and recommends that it be deleted from this section and placed as a free standing clause in this part of the Bill. Your Committee further agrees that the provision should be amended to make reference to the statement of affairs referred to in clause 194(e).*

The question was then raised concerning whether it was clear as to what would be the duty of the trustee in respect of this verification that is to be undertaken. Your Committee was told that in practice, having been presented with the statement of affairs, the trustee would then, as part of his own due diligence, examine the list of assets and liabilities and would seek to verify the information presented in the statement of affairs. *Your Committee further agrees that this should provision should be further modified to state:*
"The trustee shall take reasonable steps to verify the bankrupt's statement of affairs referred to in section 194(e)".

Clause 251 - Divesting of real property

Sub-clause (1)

Your Committee questioned the meaning of the words "quit claim", which were suggested to be deleted by the PSOJ. While examining this proposal, it was brought to your Committee's attention that the normal procedure in respect of the transaction being dealt with in this provision was to use an instrument of transfer or mortgage rather than by notice. *Your Committee therefore recommends that sub-clause (1) be reworded as follows:*
"*The trustee may, with permission of the inspectors, divest all or any part of the trustee's right, title or interest in any real property of the bankrupt by an instrument of renunciation in such form as the Registrar of Titles prescribes".*

Sub-clause (2)

Your Committee agrees that the word "notice" in line 2 should be changed to "instrument". It was also agreed that the word "title" should begin with a capital "T".

Sub-clause (3)

Your Committee agrees that the words "a notice" in line 1 should be changed to "an instrument". Your Committee also agrees that the word "documents" should be replaced by the words "right, title or interest". It was also agreed that the word "title" should begin with a capital "T".

Clause 252 - Initiation of criminal proceedings
Your Committee agrees that no change is necessary to this clause.

Clause 253 - Returns
The OTB was of the view that this clause should be amended by making it subject to the Companies Act in order to avoid creating any conflict with that Act. Your Committee is of the view that no such amendment is necessary.

Another issue raised was whether the trustee or liquidator would need to file outstanding tax returns in a case where there has been an assignment and the company is in the process of dissolution. The clarification was made that this would only be contemplated in a case where there was to be recovery and the trustee would be providing support in order to make a claim on the Tax Administration Jamaica for a refund. Your Committee was also told that this would only be done if, in making an assessment of what should be claimed as against the cost of filing that return, it was determined that it would be beneficial to do so.

Your Committee agrees that the word "statutory" should be placed before the word "returns" in line 1. Your Committee agrees that no further change is necessary to the clause.

Clause 254 - Regulators empowered to review records
Your Committee agrees that no change is necessary to this clause.

Clause 255 - Insure property
Your Committee agrees that no change should be made to this clause.

Clause 256 - Deposits
Sub-clause (5)
Your Committee agrees that this provision should be modified by deleting the words "under subsection (1)" in line 1 and by inserting the words "from a trust account for an estate" immediately after the word "trustee". Your Committee further agrees that the words "or by wire transfer from" should be inserted after the words "drawn on" in line 2.

Clause 257 - Maintenance of books and records
Sub-clause (1)
Your Committee agrees that the words "or received" should be inserted after the words "sent out" in paragraph (d).

Sub-clause (2)
Your Committee agrees that the word "estate" should be deleted from line 1 of this provision.

Sub-clause (3)
Your Committee agrees that the correct reference should be to "subsection (1)" and recommends an amendment to reflect this.

Clause 258 - Reporting by trustee
Sub-clause (2)
While discussing a proposal made by the PSOJ that this provision should be amended to speak to any reasonable costs related to same, your Committee sought to determine what these additional costs would cover. Your Committee was told that in certain instances, there would be no disbursements but rather, in compiling a report for example, a trustee would be using his own resources such as stationery and would therefore allocate such costs to the different estates being administered. *Your*

Committee therefore recommends that sub-clause (2) be expanded to speak to the actual costs of other physical resources of the trustee utilized in compiling the report or making copies thereof.

Clause 259 - Documents to be provided to the Supervisor
Sub-clause (1)
A recommendation was made for sub-clause (1)(a)(iii) to be deleted because the time for delivery of the final statement of receipts and disbursements did not seem to be appropriate. Your Committee was however of the view that this would be occurring towards the end of the process and therefore, from a timing perspective, there did not appear to be any inconsistencies. *Your Committee therefore agrees that sub-paragraph (iii) should be retained without amendment.*

The point was made that given the scheme of the Act, only certain matters were referred to the Court. This meant that there might be an administration in which the Court was not involved, and therefore this requirement to file these documents in Court should be removed from this clause. *Your Committee* was however told that the requirement would still be needed in circumstances where the Court is involved and therefore *agrees to the expansion of sub-paragraph (b) to provide: "to the extent that such documents may be relevant to any proceedings that are before the Court".*

Clause 260 - Report to Supervisor where trustee no longer acting
Your Committee agrees that the words "the trustee or the legal representative of the trustee of the trustee shall, within such time as is fixed by the Supervisor" should be moved to the margin to form the closing words of paragraphs (a), (b) and (c).

Clause 261 - permission to take specified action
Sub-clause (1)
Your Committee agrees that for the purpose of clarity, the words "in relation to an estate under the trustee's administration" should be inserted after the word "things" in the chapeau of sub-clause (1).

Concern was raised by the OTB about the practicability of the trustee having to obtain the permission of the inspectors in order to act in respect of all the matters listed in sub-clause (1) and suggested that the acts mentioned at paragraphs (a), (b), (h), (i) and (l) should be removed from the list. In considering this proposal, your Committee examined similar provisions in the Companies Act and the Canadian Insolvency legislation. Several suggested amendments were made but your Committee eventually decided that the scheme outlined in this provision should not be changed. Your Committee notes the concern expressed by the OTB, which it feels could be addressed by the establishment of some general protocols at the outset between the Inspectors and the trustee that would enable the trustee to act in a normal, efficient manner without having to obtain the permission of the inspectors on every occasion.

In order to protect purchasers from the trustee, your Committee however agrees that a provision, similar to what was included in the Banking Services Act, should be inserted in clause 261 to state that failure to obtain permission from the inspectors shall not, without more, invalidate or affect the enforceability of any contract or transaction entered into by the trustee in good faith in respect of any of the matters set out in section 261(1) against or by a third party.

Concern was raised as to whether the disclaimer in paragraph (k) should be applicable to *any* property as it was felt that this might have implications for taxes such as property tax. Your Committee does not agree that any limitation should be placed on this

provision as it was an existing power that applies in insolvency, which allows the liquidator to disclaim onerous property.

Your Committee further agrees that all the paragraphs should remain in their existing form in sub-clause (1).

Clause 262 - Power to make advances, borrow etc.

Sub-clause (2)

The PSOJ made a proposal that in order to indicate that sub-clause (2) was not limiting the transactions which are permitted under sub-clause (1), the words "save and except for those mentioned at subsection (1)" should be inserted. Upon closer examination of sub-clause (2), the question was raised as to why an exception should be created for the transactions in subsection (1) if sub-clause (2) only relates to those matters. Your Committee was told that if for example a person borrowed one million dollars and the creditors subsequently imposed a limit of eight hundred thousand dollars and that person was unable to come up with that two hundred thousand dollars cash, then he might not be in compliance with the new limit established by the creditors. Therefore, an exception would have to be created for those transactions already authorized in sub-clause (1). *Your Committee therefore agrees that sub-clause (2)(b) should be redrafted to read:*

"The creditors or inspectors may by resolution limit –

(a) the amount of the obligations that may be incurred, or the advances that may be made or moneys that may be borrowed by the trustee; or

(b) limit the period of time during which the business of the bankrupt may be carried on by the trustee."

Your Committee further agrees that a provision should be inserted to make it clear that subsection (2) is without prejudice to any transaction entered into pursuant to subsection (1).

Sub-clause (3)

Your Committee agrees that the word "on" should be inserted after the word "carrying" in line 1.

Clause 263 - Trustee not required to operate business

Your Committee agrees that commas should be inserted after the words "where" and "opinion".

Clause 264 - Order for sale of assets

In examining this clause, the question was raised concerning whether trustees are generally allowed to benefit from a trust. Your Committee was told that this provision would apply in a situation where fees were outstanding to the trustee and all efforts to sell the assets or property had failed, and consequently, the property would then be vested in the trustee personally as compensation for those outstanding fees. The suggestion was also made that the provision should be limited to the trustee's interest in respect of the fees or costs due to him, and that provision should be made for what should be done with the excess amount. In view of these comments, *your Committee agrees that:*

(i) The marginal note of clause 264 should be changed to speak to "Reimbursement of costs and payment of advances"

(ii) Either sub-clause (1) is to be modified to state: "Where it may be necessary for reimbursing the trustee for any costs that may be owing to the trustee or of any moneys that the trustee may have advanced for the benefit of an estate, the Court may make an order providing for the sale of any or all of the assets of the estate of the

Bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds from the sale shall be used for the purpose..." or
Sub-clause (2) should be modified to speak to: "...the Court may make an order vesting in the trustee personally any or all of the assets of the estate to the extent required for reimbursing the trustee for any costs that may be owing to the trustee or of any moneys that the trustee may have advanced for the benefit of an estate, and on the making of the order the rights to those assets and the interests of the creditors and of the bankrupt in the assets, shall be determined and ended."

Your Committee also agrees that the words "if a sale is not successfully concluded pursuant to subsection (1)" should be inserted at the beginning of sub-clause (2).

Clause 265 - Application for directions by trustee
Your Committee agrees that no amendment is necessary to this clause.

Clause 266 - Redirection of mail
Sub-clause (2)
The PSOJ questioned whether this provision was necessary given that if a person was not operating a business from his home then it was unlikely that his mail would be directed there, and therefore, sub-clause (2) should be deleted. Your Committee however agrees that the provision should remain in the Bill as there might be circumstances where the bankrupt's residence was different from his place of business and he should not be deprived of being able to receive his mail.

Clause 267 - Former trustee to pass accounts
Sub-clause (1)
Based on suggested amendments to this provision made by the PSOJ, your Committee spent a considerable length of time trying to determine whether the term "pass the accounts" meant that these accounts were to be filed with the Court. Your Committee examined other related provisions of the Bill such as clause 258, and determined that the scheme of the Bill did not appear to contemplate the periodic filing of accounts. Your Committee also considered the equivalent provision in the Canadian legislation which in addition to what was included in sub-clause (1), also included provision for the passing to the Court of "a statement of receipts and disbursements that contains an account of all monies received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all monies disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all the bankrupt's property that has not been sold or realized, setting out the reasons why the property has not been sold or realised and the disposition made of the property". There was also a requirement for the trustee to deliver to the substituted trustee all the property of the estate together with the books, records statement of receipts etc.

Your Committee was also informed that in practice, under the current Companies Act regime, for a company that was in liquidation, the receiver was required to file the accounts after twelve months, as it was expected that the process would be completed within this time period, and then every six months thereafter, until the process was in fact completed. It was noted however that in respect of the provision in the Bill, a trustee might be substituted at any time after the six month filing had been done and the new trustee ought to be able to be presented with the accounts up to the point at which he was taking over from the former trustee. It was further pointed out that the Canadian legislation made provisions for the six month filing of accounts in their Rules. After further consideration, *your Committee agrees that:*

(i) The term "shall pass forthwith" should be retained in sub-clause (1)
(ii) As suggested by the PSOJ, the words "or its" should be deleted from line 2
(iii) The reference to "Court" should be changed to "Supervisor" and
(iv) The word "of" should be deleted from the penultimate line.

Sub-clause (2)
The PSOJ submitted that there should not be a need to file the minutes with the Court, and therefore suggests the deletion of sub-clause (2)(a). *Your Committee accepts this proposal and therefore recommends that the provision be deleted.*

The issue of whether the remuneration and disbursements mentioned in sub-clause (2)(d) should be approved by the Supervisor was raised. Your Committee was told that based on the scheme of the Act, this would be done by either the creditors or the Supervisor. *Your Committee therefore recommends that the words "by the Court" should be deleted from this provision and replaced by the words "in accordance with this Act" to give the latitude for the relevant body to make the approval where appropriate.*

Clause 268 - Application to Court by aggrieved party
Your Committee agrees that no change is necessary to this clause.

Clause 269 - Trustee refusing to act
Sub-clause (1)
Both the PSOJ and the OTB proposed that provision should also be made for notice to be served on the trustee. *Your Committee therefore agrees that the words "trustee and to" should be inserted after the word "the" in line 6.*

Sub-clause (2)
It was suggested that it was inappropriate to vest property at the stage where the creditor has obtained permission to take proceedings, and that sub-clause (2) should be deleted. Your Committee was told that having obtained permission from the Court to take the proceedings, this provision was giving the creditor priority in respect of any proceeds from the judgement, to the extent of his claim. Clarification was made that the entire proceeds from the judgement would belong to the bankrupt's estate, however, the creditor was being given the right to set off any claim he had against the bankrupt's estate before handing over the surplus to the estate. *Your Committee therefore agrees that this sub-clause should not be deleted.*

Sub-clause (3)
In order to clarify that the creditor was only entitled to the amount of his claim against the bankrupt's estate, *your Committee agrees to the insertion of the words "against the estate of the bankrupt" after the word "claim in line 2.*

The Consultant made the point that the proceeds, if any, recovered by the creditor(s) were not the property of the estate. Your Committee was told that the creditor was required to turn over to the estate any proceeds recovered after the payment of costs and the claims of the creditor(s). Your Committee was further informed that it was common practice for the Court to require that the creditor bringing the application to give notice to, and allow other creditors to participate in, the proceeding by sharing the costs. Creditors that participated were entitled to also share the benefit by having their claims paid out of any proceeds recovered. *Your Committee* carefully considered these points and *agrees that clause 269 should be further amended to make it clear that other creditors have the right to participate by contributing to the cost of taking the proceeding; and that all the creditors who participate*

are entitled to share in the benefits in such manner as they may agree or if they don't agree, as the Court may direct.

Clause 270 - Duties of Trustee to remedy environmental conditions or damage
Sub-clauses (2) and (3)
The issue was raised concerning how subsections (2) and (3) of this clause worked together, and that the wording of sub-clause (2) was also unclear. Your Committee noted that the provision in the Bill was taken directly from the Barbados legislation, and subsequently made reference to the Canadian legislation in an attempt to seek further clarity. Your Committee observed that the Canadian provisions were much clearer, and limited the exemption related to the liability of the trustee to pre-appointment liabilities. *Your Committee therefore agrees that the existing sub-clause (2) should be deleted and replaced by the provision in the Canadian legislation, which should be modified to state:*
"Despite anything in any law, if a trustee in that position carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability including one as a successor employer –

(a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and

(b) *that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.*"

Sub-clauses 4 to 10
Concern was raised by the PSOJ as to whether sub-clauses 4 through 10 should be in the same provision as clauses 1 to 3, and suggested that they should be separated. However, upon closer examination of sub-clauses 4 to 10, *your Committee found them to be complicated, difficult to follow and unnecessary in the context of the Jamaican situation and agrees that they should be deleted from the Bill.*

Clause 271 - Determination of fees
Sub-clause (2)
Your Committee agrees that the reference to "Court" in this provision should be changed to "Supervisor".

Your Committee also agrees that sub-clause (2) should be amended to speak to the fixing of fees for the trustee in the situation where there was no meeting of the creditors due to a lack of quorum. The reworded sub-clause (2) would read:
"where the remuneration of the trustee has not been fixed under subsection (1) or there is no quorum for a meeting, the trustee shall apply to the Supervisor for direction ...."

Clause 272 - Property incapable of realization
Your Committee agrees that no amendment is to be made to this clause.

Clause 273 - Trustee to apply for discharge
It was brought to your Committee's attention that this clause speaks to *all* the trustee's applications for discharge being dealt with by the Court. Your Committee was of the view that this was unnecessary and was not in keeping with the general thrust of the legislation. The general consensus was that in cases where the trustee was appointed by the Court or where the administration of the process was being carried out in the Court, that the Court should deal with the application for discharge by the trustee and that in all other circumstances, this should be dealt with by the Supervisor. *Your*

Committee therefore agrees that all the references in this clause to "Court" should be changed to "Supervisor", save in instances where the trustee is appointed by the Court.

The suggestion was made that those matters that were dealt with by the Supervisor should also be made public records, in keeping with the current practice in respect of those matters that went through the Court process. *Your Committee therefore agrees with the proposal made and recommends that clause 224 of the Bill should be amended if necessary to facilitate this.*

The PSOJ proposed that a requirement should be included to provide that where an order of discharge was given by the Court, a copy of this order should be filed with the Supervisor [by the trustee]. *Your Committee recommends an amendment to reflect this.*

Sub-clause (4)
Your Committee agrees that the word "and" in line 2 should be changed to "or".

Sub-clause (5)
Based on the amendment made to clause 273 to provide that either the Court or the Supervisor could deal with the application for discharge, *your Committee agrees that sub-clause (5) should be amended to reflect that the notice of objection should also be filed with the Supervisor, where appropriate.*

Sub-clause (7)
Your Committee agrees that the words "the results of" should be replaced by the words "liability for" in line 3.

Sub-clause (9)
The PSOJ suggested and *your Committee agrees that the reference to "section 236(1)" should be changed to "this Act".*

Sub-clause (11)
Your Committee agrees that the current provision in the Bill should be deleted and replaced by the following: "Notwithstanding his discharge, the former trustee shall perform such tasks as may be reasonably required of him for the full administration of the estate." The point was made that the provision is intended to cover both the case where a trustee has been discharged and a new trustee has taken over and where the end of the administration process has been reached and there is no new trustee in place.

Part X. *Courts and Procedure*
Jurisdiction of Courts

Clause 274 - Jurisdiction of Supreme Court
Your Committee agrees that the word "Act" should be deleted from line 4 and that the words "Bankruptcy" and "Insolvency" should begin with lower case letters.

Clause 275 - Title of insolvency matters
Your Committee is of the view that this clause should be deleted from the Bill and that these matters should be addressed in the regulations, taking into consideration the fact that some of the matters outlined in the clause would not relate to Court proceedings. *Your Committee recommends an amendment to reflect this change.*

Clause 276 - General power of Court

The question was raised as to whether the intention of this provision was that the Court, notwithstanding what is traditionally understood to be the order of priorities, would decide *all* matters of priorities. Your Committee agrees that it would have to be done in accordance with all applicable law, as the issue of priorities was not a discretionary matter for the Court. *Your Committee therefore recommends the insertion of the words "in accordance with applicable law" after the word "priorities" in line 2.*

There was uncertainty as to the meaning of the words "for the purpose of doing complete justice or making a complete distribution of property in any such case", and *your Committee agrees that they should be deleted and replaced by a reference to 'in furtherance of the overriding objective of the Act".*

Your Committee also discussed the matter of the treatment of priorities in an insolvency situation and how the provisions in the Bill relate to the provisions of other Acts such as the Companies Act and the Security Interests in Personal Property (SIPP) Act in situations where there are competing security interests. Your Committee was told that the provisions of the Bill should govern the treatment of priorities in respect of an insolvency. Your Committee accepts this point, but is also of the view that consideration must also be given to the priority rules under other legislation. Committee Members felt that where there are competing security interests registered under the (SIPP) Act, it is the SIPP Act that should determine whether purchase money security interests should rank ahead of generally filed security interests and how those secured creditors' claims are to be reconciled. Similarly, it was not envisioned that the provisions of the Bill would trump the provisions of the Companies Act regarding who would have priority in instances where there are first and second mortgages.

Clause 277 - Proceeding not invalidated by defect or irregularity

Your Committee agrees that no amendment is necessary to this clause.

Clause 278 - Court may review, rescind or vary order

Your Committee agrees that no change should be made to this clause.

Clause 279 - Court may give leave to omit material or to send notices in alternative manner

The OTB suggested that in order to avoid unnecessary time and Court costs, that the Supervisor should be the entity which gives leave to omit material or use alternative methods of sending notices. Concern was however raised that there would be matters arising out of Court proceedings, in which case the Supervisor could not have such authority. *Your Committee agrees that the references to "Court" should be changed to "Supervisor" in clause 279 (1). Your Committee further agrees that a carve out provision should be included to clarify that this would not apply to any matters arising out of proceedings of the Court.*

Sub-clause (2)

Your Committee agrees with the suggestion made that this provision was sufficiently important and autonomous to be removed from clause 279 and placed as a separate, new provision in the Bill. Your Committee therefore recommends an amendment to reflect this. Your Committee also agrees that the words "or abridge" should be inserted after the word "extend" in line 2.

Your Committee further agrees that a new sub-clause should be added to the newly created clause to provide that in respect of matters over which the Supervisor has jurisdiction, it was the Supervisor that would have this power to extend or abridge the timing.

Clause 280 - Seizure of property of bankrupt
Your Committee agrees that no change is necessary to this clause.

Clause 281 - Evidence in Court
It was brought to your Committee's attention that the Evidence Act had been amended to incorporate more modern forms of taking evidence outside of our jurisdiction such as video conference and it was suggested that a similar amendment should be made to this clause. *Your Committee therefore recommends that the words "or any other means that the Court considers appropriate" should be inserted after the word "commission" in line 3.*

Clause 282 - Orders subject to appeal
Marginal Note
Your Committee accepts the proposal made for the marginal note to be amended by inserting the words "and decisions" after the word "Orders".

Sub-clause (2)
The PSOJ was of the view that in respect of this provision, the time should not begin to run until the person was made aware that he was entitled to appeal. They were also of the view that the appeal should also extend to any decision of a meeting of the creditors. *Your Committee therefore agrees:*
(i) That the words "or meeting of creditors" should be inserted after the word "trustee" in line 2; and
(ii) That sub-clause (2) should be extended to refer to "or such longer period as the Court may consider just and reasonable in the circumstances".

Clause 283 - Costs are in the discretion of the Court
Your Committee agrees that no change is necessary in respect of this clause.

Clause 284 - Application to Court where default
Your Committee was told that this clause was inelegantly worded and therefore difficult to follow. Upon closer examination of the clause, *your Committee agrees that the words "in addition to any other right or remedy provided for under this Act" should be relocated to either the beginning or the end of the clause.*

Clause 285 - Trustee not personally liable
Your Committee agrees that no change is necessary to this clause.

Part XI. *International Insolvencies*

Clauses 286 to 294
The Consultant recommended that in keeping with modern international trends, the provisions in the UNCITRAL Model Law relating to cross border insolvencies should be inserted in the Bill in place of the current provisions which were outdated. PricewaterhouseCoopers supported this recommendation, which they felt was a tidier and more modern approach that would facilitate harmonization of Jamaica's legislation with those of other countries which have adopted this model. *Your Committee agrees to the adoption of the provision of the UNCITRAL model, given that it represented an internationally accepted model. Your Committee further agrees that in order to have the flexibility to change these provisions in keeping with any changes that might be made in the future, the provisions should not be inserted in the Act itself but should be provided for in the regulations. Consequently, your Committee further recommends that clauses 286 to 294 should be deleted and a provision should be inserted in the Bill*

enabling the making of regulations specifically to deal with all aspects of international insolvencies.

Concern was however expressed by the PSOJ that the adoption of the UNCTITRAL Model law might require consequential amendments to be made other legislation such as the Judgments and Awards (Reciprocal Enforcement) Act and the Judgments (Foreign)(Reciprocal Enforcement) Act, as well as possible changes to Part 72 of the Civil Procedure Rules, as the Model Law sets out its own procedure for the recognition of a foreign insolvency proceeding and there is no requirement of reciprocity in that procedure. The Consultant was of the view that it was unlikely that the pieces of legislation identified would apply to foreign insolvency proceedings. *Your Committee however recommends that* since it was not known at this time whether or not these amendments would be necessary, *a provision should be inserted in the Bill to provide that the Minister may by order, subject to affirmative resolution, make consequential amendments to other Acts in order to give full effect to the regulations that will be made to embody the UNCITRAL Model law.*

Part XII. *Offences*

Clause 295 - Offences committed by bankrupt

Sub-clause (1)

Your Committee agrees that the words "after or" in line 1 of sub-clause (1)(d) should be deleted. Your Committee further agrees that the words "or at any time thereafter" should be inserted at the end of this paragraph.

Concern was raised as to why, in addition to being subject to committal proceedings, clause 295 would be making it a criminal offence if a bankrupt defaults on any of the duties listed in sub-clause (1). Your Committee agrees however that whereas committal proceedings might be the most efficacious way of ensuring enforcement, bankrupts should also know that failure to carry out these duties, which are crucial to the effective working of the entire statute, could lead to criminal proceedings under the Insolvency legislation. It was also pointed out that such provision was also made in the Canadian legislation, and that in the Jamaican context, any private complainant who wants to bring criminal proceedings would have to meet the standards set out in the Protocol published by the Director of Public Prosecutions (DPP) (based on international best practices) concerning how the decision to prosecute someone is made. It was stated further that if a fiat is given, the DPP has to ensure that the private prosecutor meets that standard as well.

Sub-clause (2)

Your Committee agrees that the correct reference should be to section 82. However, it was pointed out that there is no mention of an order of the Court in clause 82. It was further stated that in clause 84, which would be applicable, the references to the Court had been deleted. *Your Committee therefore recommends that the words "comply with an order of the Court made under section 81 or" should be deleted from sub-clause (2).*

Clause 296 - Offences committed by un-discharged bankrupt

Sub-clause (1)

It was brought to your Committee's attention that sub-clause (1) was attempting to capture both an individual and a company but that as currently worded, in respect of an individual, the provision would also capture one-off transactions such as supermarket purchases and the payment of school fees. The effect of that would be that for these transactions, which are not business related, the person would be required to disclose that he was an un-discharged bankrupt, and failure to do so would attract criminal penalties. It was felt that this would be inappropriate within this context.

Members were of the view that disclosure should only be required if the person was entering into a substantial business transaction or transactions which created exposure to the other party that would be involved. This would capture transactions such as entering into a lease or a business partnership or arrangement, among others. *Your Committee therefore agrees that sub-clause (1)(a) should be modified to state that it does not apply to transactions where the bankrupt is buying goods or services for cash or other consideration not involving credit pursuant to a one-off transaction.*

A suggestion was made by the OTB and the PSOJ that the threshold of ten thousand dollars in sub-clause (1)(a) should be increased to "twenty five thousand dollars". *Your Committee was however of the view that this amount was still too low and therefore recommends that the limit should be set at "fifty thousand dollars".*

Your Committee agrees with the recommendation made by the OTB and the PSOJ that the limit in respect of obtaining credit should be increased from ten thousand dollars to "twenty five thousand dollars".

Your Committee also agrees that the fine in clause 296 should be increased from ten thousand dollars to "one million dollars". The point was made that in the normal way that penalties are now being designed in legislation, a fine of ten thousand dollars was not comparable to one year imprisonment.

Your Committee also observed that various thresholds have been included in clause 296 as well as in other clauses of the Bill, which might need to be varied when appropriate. *Your Committee therefore recommends that the clause in the Bill which allows the Minister to vary penalties [clause 316], should be expanded to include "any other monetary amounts" in the Act.*

Clause 297 - Where bankrupt or person who has made proposal not keeping proper books

Sub-clause (1)

Your Committee agrees that the words "being a bankrupt or person" should be deleted from line 1 and that the words "any bankrupt" should be inserted after the word "proposal" in line 2.

The observation was made that clause 297 was poorly structured. *Your Committee consequently agrees that clause 297 should be redrafted by:*
(i) First stating the offence and thereafter,
(ii) Stating the penalty.

Clause 298 - False claims, unlawful fees and unlawful transactions

Sub-clause (2)

The OTB made the point that inspectors were usually creditors and that all payments to creditors should be made through the trustee. They expressed concern that as currently worded, sub-clause (2) implied that a payment could be made directly from the bankrupt or from someone acting on behalf of the bankrupt to an inspector. Upon closer examination of the provision, Members observed that as currently worded, its intent was not clear. Your Committee therefore recommends that sub-clause (2) should be separated into two paragraphs to clearly indicate that (i) the inspectors are prohibited from taking anything from the bankrupt or from any person acting on behalf of the bankrupt or (ii) from the trustee, any fee, commission or emolument other than or in addition to the regular fees provided for by the Act..."

Clause 299 - Offences by trustee and others

Sub-clause (1)

During the discussion on clause 231, your Committee agreed that the provision in clause 299(1)(b) should be inserted as a new paragraph under clause 231(2) of the Bill, to become one of the grounds on which the Supervisor could cancel or suspend a trustee's license.

Your Committee also considered whether this should be made a criminal offence but subsequently decided that it should not be. *It was therefore recommended that sub-clause (1)(b) should be deleted from clause 299.*

A suggestion was made by the OTB that the acts listed under sub-clause (1)(d) should not be offences punishable but rather, should be acts that could be penalised by action of the Supervisor. Your Committee observed that the first part of this provision dealing with failure to comply with any provisions of the Act appeared to be too broad. Your Committee also acknowledged that failure to comply with a court order is normally punishable by contempt proceedings. *Your Committee therefore agrees that all the words appearing after the word "Act" in line 3 of sub-clause (1)(d) should be deleted, as this should be dealt with by contempt of court proceedings.*

While examining clause 248 of the Bill it was suggested and your Committee agrees that it should be an offence for failing to comply with the provisions of clause 248 and that this amendment is to be made to clause 299. *Your Committee therefore agrees to the insertion of a provision to make it an offence for a person to knowingly contravene section 248 of the Act. Your Committee also agrees that this offence would attract a penalty of a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year, or to both.*

Sub-clause (2)

The PSOJ suggested that the provision at sub-clause (2) should be relocated under sub-clause (1) as the new sub-clause (1)(b). As a consequence, sub-clause (2) would be deleted from the Bill. *Your Committee agrees with these suggestions and recommends amendment to the Bill to reflect these changes.*

Sub-clause (3)

Your Committee agrees that the reference to "section 226 or 247" should be changed to "223".

Your Committee further agrees that sub-clause (3) should be deleted and its provision inserted as a new paragraph under sub-clause (1) of clause 299.

Sub-clause (4)

The PSOJ submitted to your Committee that sub-clause (4) did not belong in clause 299 and should therefore be deleted. It was suggested further that if needed, the provision should be inserted under clause 304 of the Bill. *Your Committee* observed that the Criminal Justice Reform Act would normally address these issues, and *therefore agrees that sub-clause (4) should be deleted.*

Sub-clause (5)

Your Committee agrees that the correct reference in this provision should be to "paragraph (1)(g).

Sub-clause (6)
Your Committee agrees to the deletion of this provision, which seeks to criminalize every breach of the Act. This provision, which was not limited to a trustee but includes 'every person', was thought to be contrary to the spirit of the legislation. Your Committee was also reminded that there was already provision under sub-clause (1)(d) of clause 299 which addresses the failure on the part of the trustee to observe or comply with any provision of the Act.

Clause 300 - Removal of property
Your Committee accepts the PSOJ's proposal that clause 300 should be deleted and replaced by the following which is a clearer and simpler provision:
"A person, except the trustee, who removes or attempts to remove the property or part thereof in section [103] out of the charge or possession of the bankrupt, the trustee or other custodian of the property, except with the written permission of the trustee – is guilty of an offence and is liable on summary conviction to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both".

Clause 301 - Invalid trustee licence
Your Committee agrees that no amendment is necessary to this clause.

Clause 302 - Trustee acting outside authority
Your Committee accepts the PSOJ's proposal that the term of imprisonment should be changed to one year.

Clause 303 - Offence committed by corporation
The question was raised as to whether the words "or any person who has or has had, directly or indirectly, control in fact of the corporation" were needed in this provision, given the difficulty in interpreting what it was meant to convey. *Your Committee agrees that this clause should be redrafted, using the standard form of drafting that is normally used for body corporates.*

Clause 304 - Court may make order for community service
It was recommended and accepted that clause 299(4) should be deleted and that the offence for failing to perform the community service ordered should be incorporated under clause 304. Your Committee was also told that the Criminal Justice Reform Act provides for community service orders as well as for failure to comply with those orders, and that it also dealt with some practical considerations on how one could impose the community service orders. *It was therefore proposed and your Committee agrees that clause 304 should be amended to make reference to relevant provisions of the Criminal Justice Reform Act.*

The point was made however that since the Criminal Justice Reform Act only referred to community service orders imposed under section 10 of that Act, it was unclear as how a community service order imposed by the Court under clause 304 of the Bill would be carried out in relation to the practical considerations built into the Criminal Justice Reform Act. *It was suggested and agreed that some of the provisions of the Criminal Justice reform Act would have to be modified for the purposes of clause 304 of the Bill. It was further agreed that under clause 304, provision should be made for the applicable penalty, which would be a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both.* The reference to an indictable offence which was previously included under clause 299(4) would not apply.

Clause 305 - Variation of order made under section 257

Your Committee was told this provision, which was tied to clause 304 where a person has been convicted of an offence under the Act, was giving power to a person or the Attorney General to vary a sentence given by the Court. It was suggested that no process should be built into the Insolvency legislation to allow someone to vary a punishment imposed by the Court, rather than pursuing an appeal against the punishment. Your Committee was also told that there was an existing regime under the Criminal Justice Reform Act to deal with these matters and therefore, there was no need to set up a separate system. *Your Committee therefore agrees that clause 305 should be deleted.*

Clause 306 - Court may make an order regarding damages

Concern was raised that although this clause made provision for the Court to sentence someone and then assess compensation for a loss to some other third party, there was no guideline as to how the Judge would assess this loss or damage in the context of a criminal matter. Your Committee was of the view that since a breach of the Act would typically involve some form of misappropriation of property or resources, there would most likely be a complainant who has suffered loss from it. Therefore, the provision in clause 306 was a good one to be included in the legislation as it represents a restitution type remedy for the persons affected. In order to address the concern raised however, it was suggested that the clause could be modified to allow for (a) a case in which an order can be made at the time of sentencing and (b) a case in which the Court determines how it is going to assess damages. *Your Committee therefore agrees that the clause should be modified by inserting the words "or after holding an enquiry to assess any amount payable under this section" after the word "imposed" in line 4.*

Clause 307 - Trustee to report to the Police

Sub-clause (1)

Your Committee accepts the proposal to insert the word "reasonable" before the word "grounds" in line 1.

Your Committee also agrees that in sub-clause (1)(b), the words "that for any special reason an investigation should be had in connection with that estate" should be deleted and replaced by the following: "for any special reason there should be an investigation in connection with that estate".

Your Committee further agrees that the words "it is the duty of the trustee to" should be moved to the margin to form the closing words of paragraphs (a) and (b).

It was also suggested and your committee agrees that the word "to" at the beginning of sub-clause (1)(b)(ii) should be deleted.

Sub-clause (3)

Your Committee does not agree to the proposed insertion of the word "reasonable" before the word "ground" in line 3, as it was felt that this was unnecessary.

Clause 308 - Substance of offence sufficient

Your Committee agrees that no amendment is necessary to this clause.

Clause 309 - Time for commencement of action

Your Committee agrees that no change should be made to this clause.

Clause 310 - Power respecting bankruptcy rules
Your Committee accepts the proposal made by the PSOJ that the marginal note should be deleted and replaced with "Rules of Court".

Your Committee agrees to the suggested deletion of the words "upon and percentages" in line 3 of paragraph (c).

Clause 311 - Gazette or local daily newspaper to be evidence of facts
Sub-clauses (1) and (2)
The PSOJ submitted to your Committee that the fact that the notice has been placed in the Gazette or newspaper should be conclusive evidence that it has been published to the world. They therefore suggested that the existing sub-clauses (1) and (2) should be replaced by the following provision: "The production of a copy of the Gazette or local daily newspaper containing any notice inserted in the Gazette or local newspaper in pursuance of this Act shall be conclusive evidence in all legal proceedings". It was however brought to your Committee's attention that this matter was already covered by section 31(2) of the Interpretation Act which provides that the production of a copy of the Gazette containing any regulations shall be prima facie evidence in all courts and for all purposes of the due making and tenure of such regulations. *Your Committee therefore agrees that sub-clauses (1) and (2) should be deleted, so that the provisions in the Interpretation Act would apply.*

Based on these amendments, *your Committee also agrees that the marginal note of clause 311 should be amended.*

Clause 312 - Acts by corporations, firms and individuals of unsound mind
Your Committee agrees that clause 312 should be deleted as it is not necessary in the Jamaican context.

Clause 313 - Vacating of seat in House of Representatives
Your Committee agrees that clause 313 should be deleted as it is not in conformance with section 41(4) of the Constitution.

Clause 314 - Leave of the Court required to pursue certain actions
Your Committee agrees with the suggestion made *that a new sub-clause should be added to clause 314 to provide that:*
"In considering whether to grant leave under sub-section (1), the Court shall consider:

(a) the impact of the proposed proceedings on the efficient and fair administration of the estate of a bankrupt; or
(b) whether the proceedings appear to be frivolous or vexatious; or
(c) *any other factors that the Court considers relevant in the circumstances".*

Your Committee was told that these matters would guide the practitioners in seeking the leave of the Court and would be set out in the Affidavit.

Your Committee accepts the Consultant's proposal that Section 314 should be amended to include receivers.

Clause 315 - Regulations
Sub-clause (2)
Your Committee agrees with the suggestion made *to amend sub-clause (2) to provide that if the regulations impose custodial sentences, they should be*

subject to affirmative resolution. This amendment would ensure that these regulations would be subject to parliamentary oversight.

As a consequence, *sub-clause (1) should also be redrafted to identify certain subject areas, which would assist in creating the division between the various types of breaches such as administrative, procedural and egregious breaches.*

In discussions on clause 193 which deals with the requirement for counselling to be offered to individual bankrupts, your Committee took a decision that in relation to someone who was already in *bankruptcy*, no requirement should be placed in the Act at this time for them to have to receive counselling. Instead, provision should be made in the regulations that as a condition of automatic discharge under section 205, the person should undergo some form of counseling or training. *Your Committee therefore agrees that a paragraph should be inserted in the regulations making section of the Bill to provide that regulations would be prescribed requiring someone who was a bankrupt to undergo counseling/training prior to the automatic discharge under section 205.*

Clause 316 - Minister may amend monetary penalties and Schedules

In order to allow the Minister to vary the different thresholds and other amounts provided for in the legislation from time to time when the need arises, *your Committee recommends that this clause should be amended to include "any other monetary amounts" in the Act.*

Clause 317 - Review of Act by Parliamentary Committee

The suggestion made by the OTB that the Act should be reviewed within two or three years was not accepted as it was felt that based on the current wording of clause 317, the review could take place at any time prior to but not later than five years.

Clause 318 - Transitional

Your Committee agrees with the proposal made by the PSOJ *that a new sub-clause should be inserted in clause 318 to provide that: "The Court may on the application of any interested person direct that any proceedings referred to in subsection (1) shall continue and be determined pursuant to this Act and any regulations thereunder, subject to such modifications as the Court may deem appropriate."* Your Committee was of the view that this would allow for an existing bankruptcy to come under this new Act, which could be advantageous to the bankrupt.

Sub-clause (2)

Your Committee observed that the term "transitional period" was not used in clause 318 and that there was no need to make such a reference in the context of this Act. *Consequently, it was agreed that sub-section (2) should be deleted.*

Sub-clause (3)

Your Committee was told that the intent of this provision is that a person who was practising in an office equivalent to that of a trustee may continue after the appointed day without a licence as long as he applies within six months, and that once he has applied, he can continue until his application has been adjudicated. This provision was similar to a provision that has been included in the Charities Act and *your Committee recommends that sub-clause (3) be redrafted along the lines of that provision in the Charities Act.*

The question was raised as to whether six months was an appropriate time frame in the context of this Insolvency Act. *Your Committee therefore agrees that the time frame should be "six months or such longer period as the Minister may by order prescribe".*

Clause 319 - Repeal
Your Committee agrees that no amendment is necessary to this clause.

Clause 320 - Amendments to the Companies Act. Second Schedule
It was brought to your Committee's attention that the Second Schedule that lists the changes to the Companies Act is incomplete and therefore needs to be reviewed. It was stated that the Companies Act would have to be amended to make it clear that anything that involves insolvency is to be addressed by the Insolvency Act. The process for commencing the winding up of a company would remain under the Companies Act, and the provisions relating to receivers and receiverships, among others, would also not be retained.

The Consultant sought clarity on whether the intention was to remove the winding-up provisions of the *Companies Act*. Clarification was made that the provisions in the Companies Act in relation to schemes of arrangement would continue to apply. *The PSOJ suggested that perhaps a provision could be included in the Bankruptcy and Insolvency Bill to clearly indicate that persons could also utilize the schemes of arrangement provision which exists under the Companies Act. Your Committee agrees with this suggestion and asked the CPC to determine where in the Bill such provision should be appropriately inserted.*

D. Other Proposals Made to Your Committee

Sale of Property
A proposal was made by the Consultant that the Bill should prohibit the out-of-the-ordinary-course sale of property by a person that has filed a notice of intention or proposal. He informed your Committee that since the creditors were stayed from taking enforcement steps, the debtor should not be allowed to engage in these types of sale. *Your Committee accepts the Consultant's recommendation.*

Equity Claims
Your Committee was told that the Canadian Bankruptcy and Insolvency Act was amended in 2009 to address equity claims, with the effect that equity claims were now subordinated to other creditors. He recommended that the Bill should by enshrining in the legislation the manner in which equity claims were to be treated in an insolvency. He *recommended that the definition of "equity claims" in the Canadian legislation be adopted,* which would ensure that equity claim was subordinated to debt in an insolvency, and that debt holders must be paid in full before payment could be made in respect of equity claims. The FSC however, did not agree with this proposal, expressing concern that this might have ramifications for a mutual fund, both in terms of the CIS product and the Pension Fund. They suggested that there should be a carve out for mutual fund companies under the legislation. *Your Committee is of the view that no exception is to be made for equity claims in respect of mutual funds, and therefore recommends that the Consultant's recommendation be accepted.*

Amendments to Other legislation
Your Committee acknowledges that consequential amendments would have to be made to a number of other legislation which have provisions that make specific references to the Bankruptcy Act in order to ensure that they are rationalised. Some of

these Acts include the Proceeds of Crime Act, the Motor Vehicle Insurance (Third-Party) Risks Act, among others. *Your Committee agrees that in order to address this, a provision should be inserted in the Bill that would allow the Minster to, by order, make consequential amendments to other Acts.*

Non-application of the Debtor's Act

A suggestion was made that it should be clearly stated in the Bill that the provisions of the Debtor's Act do not apply. Your Committee was informed however that the underlying assumption in the Debtor's Act is that a person can pay his debt but refuses to do so, and therefore, that legislation did not impact the Insolvency Act in any way. *Your Committee however, not being familiar with the Debtor's Act, recommends that the Debtor's Act should be examined and a determination made as to whether it should be repealed.*

The Establishment of a Joint Insolvency Committee

The ICAJ was of the view that a Joint Insolvency Committee, consisting of the ICAJ, the General Legal Council and the Financial Services Commission, should be established as a panel where issues relating to fees, the manner in which Insolvency Practitioners operate, among others, could be referred. They felt that such a mechanism was needed in the Act, particularly in light of the expanded role of the Supervisor, and that the Supervisor could refer to this body when taking certain action. Your Committee however does not believe that this is the appropriate route to take at this time. *Your Committee is instead of the view that the Ministry of Industry, Investment and Commerce could establish an administrative Insolvency Advisory Committee to deal with these matters, should such a need arise.*

The treatment of credit card debt under the legislation

It was brought to your Committee's attention that at a forum held by stakeholders outside of Committee hearings, the issue was raised that similar to what obtains in the United States in respect of credit card debt, your Committee should consider making provision in the Bill to indicate that in an insolvency situation, certain creditors such as banks and other financial institutions should only be able to claim for the principal and not for the principal plus accumulated interest. Members of your Committee pointed out that currently, in Jamaica, credit card debt and the associated interest was a debt like any other, which was governed by a contract and was provable as unsecured debt in a bankruptcy or winding up. Your Committee also noted that the proposal was based on what obtains in another jurisdiction which operates differently from Jamaica in relation to credit. *Your Committee therefore notes the concern raised but is of the view that without the input of the banks and other financial institutions; in the absence of sufficient information and guidance on this matter; as well as insufficient knowledge of the implications that this could possibly have for the entire structure of the Act, it is not in a position at this time to take any decision on how credit card debt is to be treated in an insolvency. Your Committee further believes that this ought to be the subject of a policy proposal emanating from a ministry, which could then be considered when the review of the Act is being conducted.*

Protection of a mortgagee's home

Your Committee was asked to consider whether an exemption should be made in the Bill to deal with the treatment of the family home when the homeowner becomes insolvent or bankrupt, and what exemptions or protection could be offered in these circumstances. *Your Committee is of the view that this matter cannot be appropriately addressed at this time as it could have wide ranging implications for the real estate sector and for mortgagors such as the National Housing Trust and other mortgage lenders. Consequently, further research and information is needed before any decision can be taken in respect of this issue.*

3.0 OTHER RECOMMENDATIONS

Your committee wishes to recommend that given the extensive amendments being proposed to the Bill, that the Bill be withdrawn and a new Bill tabled incorporating the proposed changes arising from your Committee's deliberations.

4.0 THANKS AND COMMENDATION

Your committee is grateful to those persons who made the meetings possible. Your committee wishes to extend special commendation to the members of the PSOJ Insolvency Review Committee, who have done yeoman work on the legislation during its drafting stages and who have consistently given of their time and provided technical advice throughout the course of the deliberations on the Bill. Your Committee also expresses its gratitude to the Chief Parliamentary Counsel and his staff, the Attorney General and his staff, the staff of the Legal Reform Department, the representatives of the Ministry of Industry, Investment and Commerce as well as the special interest groups for their invaluable assistance and contribution to the discussions. Your Committee also wishes to thank Mr. E. Patrick Shea, Consultant, for the wealth of knowledge he provided in respect of the practical application of the insolvency legislation in Canada, which greatly assisted them to make critical decisions on certain clauses of the Bill.

Your committee also expresses thanks to the Clerk and the staff of the Houses of Parliament for their invaluable assistance in respect of the administrative and secretarial support provided and the courtesies extended during the debates.

Your committee also recognises the input of the members of the Press who so ably recorded and reported on its deliberation.

Houses of Parliament,
September, 2014

PART I. Preliminary	
Clause	Recommended Changes
Beginning of Act	Insert recommended introductory statement.
1	Change name of Act.
2	Amend definitions for the following: "*affidavit*", "bankrupt", *"corporation"*, "*date of initial bankruptcy event", "debtor", "insolvent person", "prescribed threshold", "Proposal", "receiver", "secured creditor" ,"trustee", "unsecured creditor"*
	Insert definitions for: "*company*", "*date of bankruptcy", "deposit-taking institutions" "person facing imminent insolvency".*
	• Delete first definition of "*goods"* • Delete definition of "*looming insolvent*", and change all usage to *"person facing imminent insolvency".*
2(4)(d)(i)	Amend to include other relations.

Part II. Acts of Bankruptcy	
Clause	Recommended Changes
3(1)(a)	Amend to ensure application of act regardless of where assignment is filed.
3(1)(b)	Correct typographical errors
	Ensure that the language in sub-clause (1)(b) should track the language used in clause 117(1) of the Bill.
3(1)(e)	Amend to increase time period as recommended.
3(1)(g)	Add closing words of paragraph.
3(3)	• Should be a separate item with its own heading. • Relocate to clause 30

Part III. Receiving Orders, Interim Receivers, Receivers and Creditors	
Clause	Recommended Changes
4(1)	Refer to *"application"* and *"applicant"* as this process is removed from the Courts.
4(2)(a)	Amend as recommended.
4(2)(c)	Reword entire paragraph.
4(2)(c)(ii)	Reword sub-clause to ensure consistency with the intent of the entire provision.
4(2)(c)(iii)	Insert new sub-clause as recommended.
4(3)	Reword clause entirely.
4(4)	Amend as recommended.
4(9)	Address this in the Rules.
5(2)	Select appropriate phrase for consistent use throughout bill.

7(1)	Insert wording as recommended.
7(2)	Insert wording as recommended.
8(a)	Correct typographical error as recommended.
9	Delete clause in its entirety and address it in the Rules.
11	Reword clause.
12(3)	Replace sub-clause entirely.
12(4)(b)	Amend for closing words of sub-clause (4).
15(1)	Reword to make it clear that it is speaking to an application by the secured creditor who intends to issue the notice.
18(1)	Specify who may act under this clause.
20(2)(a)(i)	Insert wording to capture all the companies that are incorporated under the Companies Act that should give notice to the Registrar of Companies.
20(2)(a)(iii)	Amend to clarify that notice should be sent by way of advertisement, with the Supervisor having the discretion to determine otherwise.
20(2)(b)	Delete sub-clause.
21(h)	Correct typographical error.
21(i)	Delete sub-clause as it is identical to 21(c).
23	Delete clause entirely.
27(1)	Amend to allow other interested parties to apply for directions.
27(2)	Correct typographical error.
29	• Delete clause. • Amend clause 172 to address all relevant issues.

Part IV. Assignments

Clause	Recommended Changes
30	Provide that: Regulations contemplate that the assignment can be filed through the trustee, and also in the manner prescribed.
30(1)	Reword sub-clause as recommended.
30(2)	Delete existing sub-clause and replace with new recommended sub-clause.
30(3)(a)	Reword to address use of pronoun.
30(3)(e)	Insert this new sub-clause with the recommended wording.
30(4)	Delete existing sub-clause, and replace with new recommended sub-clause.
30(5)	Insert this new sub-clause after the existing one, providing acceptance of proposal upon compliance with requirements of this section of the Act.
30(6)	Delete existing sub-clause, and replace with new recommended sub-clause.
30(7)	Delete existing sub-clause, and replace with new recommended sub-clause.

30(8)	Delete existing sub-clause, and replace with new recommended sub-clause.
New provision	• Insert new sub-clause after 30(8) as recommended. • Provide that the certificate and vesting take place immediately when certificate is issued.
30(9)	Reword sub-clause.
30(10)	Amend as recommended.
30(11)	Change reference from *"insolvent person"*.
30(11)(b)	Delete sub-clause.
New provision	• Insert amended clause 3(3). • Amend to provide for the filing of an assignment with the Supervisor.
31(1)	Replace existing sub-clause with new recommended sub-clause.

Part V. Proposals

Clause	Recommended Changes
	Insert introductory scope provision.
New Provision	To contemplate other schemes of arrangement available under the relevant provisions of the Companies Act should be included as part of a proposal.
32(1)(a)	Delete sub-clause.
32(1)(b)	Delete sub-clause.
32(1)(c)	Replace *"debtor"* with appropriate terminology.
32(2)	Delete sub-clause.
33(1)(f)	Replace existing sub-clause with appropriate terminology.
33(2)	Insert recommended wording.
33(2)(b)	Delete the words *"a copy of the consent showing"*.
33(2)(c)	Delete sub-clause.
34	• Amend wording as recommended. • Outline in Regulations instances where notice does not have to be sent. • Provide that the Supervisor has discretion in determining whether notice is to be sent.
35	Clarify with respect to 33(2), so that that person who files proposal, files NoI.
35(1)	Extend time within which to file cash-flow projections, once a NoI has been filed. This change should be aligned with other dependent clauses, namely: *36, 45, 46, 56, 63 and 74*
36	• Relocate to a later part of the bill. • Provide that the Supervisor can extend the time for the filing of the documents required by section 35(1).
36(1)	Amend to reflect that a deemed assignment occurs upon failure to file within specified time frame of 35(1).

36(1)(a)	Align time-frame with clause 35.
36(4)	Refer to subsection 1(b)
36(5)(b)	Amend to require that the Supervisor be satisfied that the extension is justified under the circumstances.
37	Relocate to a later part in the bill.
37(1)	Replace *"a person under section 15(1)"* with the words "an interim receiver".
37(2)	Delete sub-clause.
38	Amend to reflect that the trustee is not obligated to participate in the preparation of the proposal.
40	Provide that should a secured creditor's position begin to erode, that creditor should be allowed to exercise his rights, notwithstanding the temporary stay.
40(1)(a)	Replace the reference to *"an insolvent person"*.
40(1)(b)(ii)	• Replace *"Affidavit"* with *"declaration*". • Relocate the words from "*verified…proposal*" to the floor of subparagraphs (i) and (ii).
40(2)	Delete sub-clause.
40(3)	• Delete the words: "*before…Court."* • Replace reference to section33(1) with reference to section 40
40(4)	Delete sub-clause.
41(4)	Insert clause 47.
42(2)	• Replace reference *to "section 47"* with *"section 56"*. • Replace reference to *section 33(1)* with "*section 40"*
42(2)(a)	Substitute references to *"sections 161 to 163"* with correct sections.
43	Amend clause as recommended.
45(1)	Reword to clarify and align with timelines of 56(1)
45(2)	• Reword as recommended. • Replace "trustee" in line 2 with "Supervisor" • Amend to refer to the sending of documents electronically.
45(2)(c)	Delete "after".
46	Replace *"affirm"* with *"decide"*.
47	• Amend to reflect that the court may determine the proper classification of creditors. • Relocate to clause 41 as sub-clause (4).
49	• Replace reference to *"insolvent person"* with *"debtor*". • Provide that the creditors may agree to include in the proposal the need for the debtor to undertake training and counselling.
51	Amend entire clause to provide that the supervisor has the authority to issue directives to the trustee.

51(3)	Reword as recommended.
52(1)	Replace *"interim receiver"* with *"trustee".*
52(4)	Replace the words "interim receiver" with "trustee" and replace the word "trustee" with "interim receiver" wherever they appear in this sub-clause.
53	Provide that sensitive information be exempt from disclosure under clause 224.
53(1)	Amend to provide that a record be filed with the Registrar of Companies.
55	Change the reference to be section 270(10).
56(1)	Insert recommended amendments.
56(2)	Amend as recommended.
56(3)	Delete *"assessed".*
56(5)	Replace *"sent to the creditors"* with the words *"received by the secured creditor"*.
56(6)	Delete sub-clause
57	No change recommended.
60	Delete clause entirely.
62(2)(c)	Change reference to be section 64.
62(3)	Delete *"the debtor"* in line 2.
62(4)	Delete sub-clause.
62(5)(b)	Insert appropriate words to address concern of missing words.
63(1)	Amend as recommended.
63(2)(a)	Amend as recommended.
63(2)(b)	• Insert new paragraph (b). • At end of existing paragraph (b), insert recommended closing words.
63(3)	Insert this new sub-clause as recommended.
63(2)(b)(ii)	• Replace *"assignment"* with *"certificate".* • Delete reference to *"section 126"* • Insert recommended timeframe for meeting. Amend 74(2) similarly.
New provision	Provide that if a proposal is rejected, the security or guarantee lapses or is withdrawn.
64	Amend to provide that the proposal is 'deemed' approved by the Court, taking into account the considerations recommended.
64(1)	Amend to provide that where the proposal is accepted, it is registered with the Supervisor as recommended.
64(1)(b)	• Replace reference to "*debtor"* with *"insolvent person".* • Relocate the words *"but does not release…person."* to a new provision in the same clause
65	Delete existing clause.
New	Insert new clause as recommended.

provision	
67	Delete *"if"*.
68	Reword entirely to reflect amendments made to relevant and/or dependent clauses.
69	Reword entirely to reflect amendments made to relevant and/or dependent clauses.
69(2)	• Amend to provide that an aggrieved creditor can appeal to the court, notwithstanding the scoping provision to be inserted at the beginning of this Part of the Bill. • Delete "or *are not calculated to benefit the general body of creditors".*
69(3)	Delete sub-clause.
69(4)	Delete sub-clause.
69(5)	Amend to provide that the Supervisor will not accept the registration of proposal unless it provides for the things covered in section 172.
69(5)(a)	• Replace the reference to *section 172(d)* with reference to *172(1)(b)(i), (ii) and (iii)*. • Reword to provide that the Supervisor can decline registration of proposal if it does not make certain provisions.
69(7)	Amend sub-clause as recommended.
70	Amend marginal heading, and reword clause as recommended.
71	Amend, to take into consideration the changes made to the proposal process.
72(1)	Amend to make the provisions recommended.
73(1)	• Replace sub-clause with similar section of Barbados' Act. • Replace reference to *"Court"* with *"Supervisor".*
74(1)	Replace *"annulment"* with *"assignment".*
74(2)	Amend timeframe to 21 days, and replace reference to *"section 126".*
77(1)	Amend to reflect changes recommended.
77(3)	Insert *"not"* after *"may"* in line 3.
77(7)	Insert *"and (5)"* after *"subsection (1)".*
77(8)	Relocate definition from this clause to sub-clause (10).
77(9)	• Expand to contemplate where a deemed assignment, or certificate of assignment has arisen. • Replace *"insolvent person"* with *"a debtor"*.
77(9)(b)	Remove words appearing after *"filed"* in line 1 to the margin to form the closing words of paragraphs (a) and (b).
77(10)	Expand definition of *"repurchase agreements"* as recommended.
New Provision	Provide that a repurchase agreement will not be declared void, where an investor enters into such an agreement prior to the beginning of bankruptcy proceedings.
78	Amend to reflect that the Supervisor should register receipt of trustee's report.
79	• Insert similar Canadian provisions to address the issue of debtor in possession financing

	• Delete *"to proposal"* in line 1.
Part VI. Effect of Bankruptcy on Property of Bankrupt	
Clause	Recommended Changes
80(1)(c)	Insert this new paragraph to provide that the underlying assets which are the subject of a repurchase agreement are excluded from the estate of an insolvent person.
81	• Amend to clarify that this provision deals with individuals. • Relocate definition of "total income" from 84(5)(a).
82	• Amend to clarify that this provision deals with individuals. • Insert provision that the trustee's investigations are carried out as soon as practically possible.
83	• Amend to clarify that this provision deals with individuals.
83(2)	Amend to reflect changes recommended.
84(1)	Delete sub-clause.
84(2)	Amend to clarify that it is the Supervisor that can make that determination.
84(3)	Make subparagraphs (a), (b) and (c) a part of 84(2).
84(3)(b)	Amend to reflect that all words appearing after *"a person"* in line 2 form the closing words of the subparagraph, including subparagraph (c).
84(5)(a)	Relocate definition of *"total income"* to clause 81.
84(5)(b)	Relocate provision as it is applicable to Part VI, and not just the clause.
85(1)	• Replace reference to *"any interested person"* in line 1 with *"the trustee or Supervisor*". • Replace reference to *"section 83"* with *"section 84".* • Amend to ensure third party compliance with direction of trustee or Supervisor.
86(2)	• Amend to include amounts earned after the bankruptcy date. • Replace reference to "*the bankruptcy"* with *"the date of the initial bankruptcy event".*
87	Relocate clauses 87-90, as they deal with before a proposal is filed.
87(1)	• Address omissions and refer to Canadian legislation. • Insert recommended redraft.
87(1)(a)	Amend to reflect the formulation presented in the Canadian legislation.
87(2)(b)	• Insert comma after "*section 19".* • Replace *"enforce*" with "*from enforcing".*
88	• Relocate provision. • Insert new clause as recommended. • Insert provision to preserve the rights of a party to a repurchase agreement.
88(2)	As a consequential amendment to the redrafted sub-clause, delete *"a title transfer credit support agreement".*
89	Relocate clause.
90	Relocate clause.

92(1)	Amend to reflect that a certificate of assignment is issued by the Supervisor.
92(3)	Insert new sub-clause to clarify that a creditor is treated as unsecured if he does not perfect his security interest at the start of bankruptcy.
94(1)	• Link sub-clause 91(1) with this one. • Amend to clarify that the receiving order is certified by the Court.
96(1)(b)	• Insert "*in respect of word*" after "*trustee".* • Insert "or personal property" after "property" in line 3. • Amend to provide that the trustee should make a SIPP filing within fifteen days of his appointment. • Move words appearing after the word "Supervisor" in line 1 to the margin to form the closing words of paragraphs (a) and (b).
96(2)	Insert "or property" after "of any land or charge" wherever they appear.
96(6)	Delete "*property"* in last line.
100(1)	Replace "*banker"* and *"bank"* with "*financial institution*" wherever they appear in this provision.
100(3)	Amend sub-clause as recommended.
102(a)	Remove *"be personally liable"* and place at end of chapeau so that it applies to both paragraph (a) and (b).
102(b)	Move words appearing after the word *"property"* to the margin to form the closing words of (a) and (b).
103	Delete "*ownership*" in marginal note.
103(3)	Insert *"unless"* before "*the claimant"* in line 1.
104	Delete clause.
105	Delete clause.
107(1)	Reword with assistance from Canadian legislation.
113(1)(b)	Amend to reflect definition of "date of bankruptcy".
117	Insert new sub-clause to provide that the subsection shall not apply in the cases recommended.
117(1)(d)	Move words appearing after "insolvent person" in paragraph (d) back to the margin.
118	Replace "*three months*" with "*six months".*
119(1)	• Delete "*Discharge of"* from line 3. • Delete "*foregoing"* from line 5.
119(4)	Insert new provision to ensure that trustee knows of and gives consent to transactions regarding the bankrupt's estate.
121(1)	Determine whether *"the"* should be changed to *"such"*
123(1)	Amend to reflect *"share capital"* instead of *"capital stock".*
123(7)(b)	Move all the words appearing after the word *"insolvent"* in the last to the margin to form the closing words of paragraphs (a) and (b).
124(2)	Amend to reflect new meaning of "*becomes bankrupt*"

125	Replace "*initial bankruptcy event"* with "*annulment*".
Part VII. Administration of Estates	
Clause	Recommended Changes
	Insert introductory paragraph to outline scope.
126(1)(b)	• Amend as recommended. • Amend Form 19 as recommended.
126(4)(a)	Insert *"and"* after *"creditors"*.
126(4)(b)	Insert *"at the request of the trustee"* after *"may"* in line 2.
126(5)	Delete sub-clause.
126(6)	• Delete sub-clause. • Determine whether the provisions included here, could be relocated elsewhere in the Bill.
126(7)	Delete sub-clause.
127(b)	Insert commas as recommended.
127(c)	Delete existing subparagraph and replace with new one as recommended.
128(1)(a)	Insert *"or the Supervisor"* after *"Court"*.
128(1)(c)	Insert new subparagraph as recommended.
131	Reword as recommended.
133	Insert provision in clause 271(2) to provide that trustee can apply to Supervisor for direction in fixing remuneration in the event that no quorum is reached at first meeting.
134	Insert *"other than as provided for in section 133"* at the beginning.
136(1)	• Replace *"chairman of any meeting of creditors"* with *"trustee"* in line 1. • Insert *"at or before a meeting of creditors"* after *"claim"* in line 2.
136(2)	Replace references to *"chairman"* with "*trustee"*.
136(3)	Replace references to "*chairman"* with "*trustee"*.
145	Reword to clarify intent of provision.
145(4)	Replace *"on the board of*" with *"among the".*
147(1)(a)	Replace *"and"* with *"or"*.
148	Replace reference to *"Court"* with *"Supervisor".*
149	Reorganize clause to clearly convey intent of provision.
149(3)	• Replace reference to *"Court"* with *"Supervisor".* • Replace *"inspector"* with *"trustee"* in line 6.
150(b)	Move words appearing after *"them"* back to the margin to form the closing words of paragraphs (a) and (b).
151(2)	• Provide in clause 222 that the Supervisor can obtain information from the

	trustee on behalf of a creditor in relation to matters concerning that creditor. • Provide that a creditor as an interested person can go to Court to seek an order in relation to that matter.
153(1)	Insert *"Pursuant to section 247"* at the beginning.
158(1)	Add an *"s"* to the word *"prove"* in line 1.
161(c)	Move words appearing after "bankrupt" back to the margin to form closing words of paragraphs (a), (b), and (c).
166	Replace reference to "*trustee"* in line 2 with "*creditor".*
172	Redraft as recommended, using Australian legislation on circulating assets" for guidance.
175	Amend as recommended.
181	• Amend marginal note. • Provide that the costs incurred by the trustee in collecting on the policy are deductible from the policy.
181(2)	Insert this new sub-clause to provide that a creditor who has suffered injury and has a valid claim against the estate has a right over other creditors.
182	• Delete clause entirely. • Insert provision in clause 225 for the Minister to set the fees to be charged by the government trustee for the provision of the services outlined in the existing clause.
187	Provide that Supervisor can make determination.
187(2)	• Amend as recommended. • Conflate with sub-clause 5, as recommended.
187(3)	Amend as recommended.
187(4)	Amend as recommended.
187(6)	Replace *"Registrar"* with *"Supervisor".*
New Provision	Insert new sub-clause to provide that a notice of discharge is to be filed with the Supervisor in the time specified.
189	Provide that the Supervisor gives notice of unclaimed dividends.
189(1)	Delete *"and undistributed funds that the trustee possesses"* from line 3.
189(2)	Delete *"and funds".*
190(c)	• Amend to reflect that a notice of bankruptcy is to be circulated in local newspaper. • Amend to reflect that if it is a company, notice should be filed with the Registrar of Companies.
Part VIII. Bankrupts	

Clause	Recommended Changes
193	Amend regulations to require counselling under section 205.
194(b)(i)	Insert *"and"* after "*bankrupt*".
194(e)	Replace reference to "*Supervisor"* with "*trustee"*.
194(e)(v)	• Delete the words "*or the Supervisor, as the case may be"* from lines 3-4. • Move words appearing after "trustee" back to the margin to form closing words of 194(e). • Replace reference to "*Supervisor"* with "*trustee"* in line 7.
194(h)	Extend 5-year limitation period.
194(l)	Insert *"to assist the trustee"* after *"effort*" in line 1.
194(m)	Insert *"by the trustee"* after "*required"* in line 2.
195	Replace reference to "*Supervisor"* with "*trustee"*.
196	Insert *"is"* after *"imprisonment or"* in lines 1-2.
196(a)	Delete *"in"* from line 1.
196(c)	Move words appearing *"Act"* in line 1 to the margin to form the closing words for (a), (b) and (c).
197(1)	• Amend as recommended. • Provide that a mandatory initial examination be conducted by the trustee. • Require that the trustee file notes with the court regarding previous examinations done on the bankrupt.
197(2)	• Delete sub-clause. • Incorporate note-making requirement under 196(3)(a).
197(3)(a)	Amend as recommended.
197(4)	Amend as recommended.
198	• Delete clause. • Amend 221(2)(c) to include the provisions of this clause.
199	Provide that the trustee files in Court any notes form examinations done on any person outside of Court.
199(1)	Delete *"on ordinary resolution… inspectors,"*
199(1)(a)	• Delete *"before the Registrar".* • Further amend as recommended.
199(1)(a)(i)	Delete subparagraph.
199(1)(b)	Replace "*order*" with *"require"*.
199(2)	Relocate to Section of Act dealing with Powers of Supervisor.
199(3)	Relocate to Section of Act dealing with Powers of Supervisor.
200(2)	• Delete reference to *"the Registrar".* • Provide that the trustee can apply to the Court to have persons in clauses 197, 199, and 200 cooperate.

202	• Replace reference to "*section 197"* with "*section 194".* • Replace reference to "*Supervisor"* with "*trustee"* in line 2. • Insert *"or an order"* after *"a summons"* in lines 3 and 5.
203(1)	Insert "*is"* after "*Part"* in line 2.
204	Amend to provide that the seized books and records are turned over to the trustee.
205(1)	Replace "*whereof"* in line 1 with "*where*".
205(1)(a)	Amend time period referenced.
205(1)(c)	Amend time period referenced.
205(1)(d)	Amend time period referenced.
205(1)(f)	Replace *"the trustee"* with *"such person may"* in line 2.
205(1)(g)	Amend time period referenced.
205(2)	Amend time period referenced.
206	Amend to relocate details of procedures of discharge in Regulations and Rules of Court. Further amend as recommended.
206(9)	Following from redrafted clause above, relocate sub-clause to Part of Act dealing with discharge of trustee.
206(10)	Following from redrafted clause above, relocate sub-clause to Part of Act dealing with discharge of trustee.
207(1)(f)	• Replace *"justify"* with *"be relevant to"*. • Reorder existing paragraph to become (g).
New Provision	• Reword 208(1) and insert to become new paragraph (f). • Amend as recommended.
207(6)	Delete *"at or before the time… discharge"* so that the timing will be dealt with by the Rules of Court.
207(7)	Delete *"at or before the time… discharge"* so that the timing will be dealt with by the Rules of Court.
208	Provide for an informal dispute resolution process as recommended.
208(8)	Amend to reflect that Supervisor issues discharge upon receiving request from trustee.
212	• Expand scope of clause to include person's conduct during bankruptcy. • Make provisions for impact on other legislation. • Provide that the regulators are able to access information on bankrupt in carrying out their duties.
212(1)	Delete *"by misfortune".*
219	Replace "*entered*" in line 4 with "*filed"*.
220	No change recommended at this time.
221(1)	• Amend to clarify that the Supervisor has general oversight of the trustee. • Expand provision as recommended. • Amend to clarify that the powers of the Supervisor are in accordance with the provisions of the Act.

	• Link provisions at 271(1).
221(2)	• Amend as recommended.
221(2)(b)	• Insert "*"in the manner prescribed in section 247"* after *"security"* to link the two provisions. • Amend to speak to: *"an amount computed in such manner as the Minister may prescribe*."
221(2)(c)	Insert the words "*or a bankrupt*" after the word "*receiver,*" in line 4.
222	Provide that Supervisor can seek information from trustee on behalf of a creditor in relation to a matter concerning that creditor.
222(1)	• Delete *"on his behalf"* from line 2. • Replace *"banking accounts"* in line 3 with the words *"documents relating to the bank accounts".* • Replace *"banking accounts"* in lines 5-6 with *"bank accounts"*.
221(3)	Replace "*of"* with "*the"* in line 4.
223(2)(c)	Move "*with respect to"* in line 2 to the margin to form the closing words of paragraphs (a), (b) and (c).
223(5)	Insert *"of"* before *"law"* in line 4.
223(7)	Replace reference to *"section 126"* with *"section 172".*
New provision	Insert new sub-clause to provide that the Supervisor may turn over any matter arising to the Director of Public Prosecutions or other appropriate authority.
224	Provide that certificate of performance is registered with Supervisor, and is one of a number of records maintained by the Supervisor.
224(1)	Extend time period to align with limitation for claims.
New provision	• Insert new provision to provide that this provision does not limit any other law regarding retention of public records. • Amend to provide that where an application for discharge of the trustee was given by the Supervisor, this is a matter of public record, subject to disclosure under the clause. • Provide that sensitive commercial information and other private information in a proposal be exempt from disclosure.
225	Correct typographical error in marginal note.
225(1)(a)	• Delete "*in the Supreme Court and the Resident Magistrate's Courts throughout the island*". • Amend to reflect that the trustee should be an Officer of the Court.
225(4)	New provision: provide that the fees of the Government Trustee are prescribed and subject to negative resolution.
226	Delete *"and remuneration other than salary",* and insert "and" before *"fees"* in line 1.
227	• Insert *"Government"* before *"Trustee"* in line 1. • Delete "*or Resident Magistrate, as the case may be*" from lines 4-5. • Insert "*reasonably and"* before "*properly incurred*" in line 6.
228(1)	• Provide that there are eligibility criteria for trustees, and insert in appropriate section of bill. • Address in regulations the details of the criteria.

229	Delete "*subject to the approval of the Minister".*
231(2)(a)	Replace *"shall"* with "*may"* in line 1.
231(3)(d)	Relocate new sub-clause as recommended from 299(1)(b).
232(1)	Replace references to *"Court"* in this provision with *"Supervisor"*.
232(1)(a)(iii)	Amend as recommended.
232(1)(b)(ii)	Amend as recommended.
232(2)(c)	Insert new subparagraph to contemplate where a trustee is a creditor of the debtor, and has a conflict of interest regarding an estate.
236(1)(c)	Move the words "*the Supervisor …the following*" in paragraph (c) to the margin to form the closing words of paragraphs (a), (b) and (c).
236(1)(c)(iv)	Insert this new subparagraph to contemplate that the Government Trustee cannot cancel or suspend a trustee's licence.
New Provision	• Consequent to amendment above, provide that the appropriate authority reports to the Supervisor. • Insert new subparagraph to allow Supervisor to remove trustee from administering estate except in case of Government Trustee.
236(2)	Insert new provision as recommended.
237(2)(b)	Delete *"in this regard…of hearings".*
237(3)	Replace reference to *"2(c)"* with *"2(d)"*.
237(6)	Replace "*reviewed"* with "*varied"*.
239	Delete *"licensed*" from line 2.
242	Amend as recommended.
243	• Delete "*a director or"* from line 4. • Make definition of "*officer"* applicable to this provision.
245	• Replace reference to "*insolvent person"* with "*debtor"*. • Replace "*re"* with "*in relation to"*.
247(1)	• Delete words appearing after "*insurance"* in line 3 as they are already incorporated under clause 221(2)(b) • Reword as recommended.
New provision	Insert new provision to contemplate where the security takes the form of professional indemnity insurance.
249(a)	Separate paragraph as recommended.
249(b)	Re-order to become paragraph (c) in keeping with amendment above.
250	Correct typographical error in margin.
250(1)	Insert the words *"or other action"* after the word *"proceedings"* in line 2.
250(3)	• Delete sub-clause from this clause, and relocate as an independent clause. • Amend as recommended.
251(1)	Reword as recommended.

251(2)	• Replace *"notice"* in line 2 with *"instrument"*. • Begin *"titles"* with a capital *"T"*.
251(3)	• Replace *"notice"* with *"instrument"*. • Begin *"titles"* with a capital *"T"*. • Replace *"documents"* with *"right, title or interest"*.
253	Insert *"statutory"* before *"returns"* in line 1.
256(5)	• Replace the words *"under subsection (1)"* in line 1 with the words "*from a trust account for an estate*". • Insert *"or by wire transfer from*" after "*drawn on"* in line 2.
257(1)(d)	Insert "*or received"* after *"sent out"*.
257(2)	Delete "*estate"* from line 1.
257(3)	Replace reference to "*subsection (2)"* with "*subsection (1)"*.
258(2)	Expand provision as recommended.
259(1)(b)	Amend as recommended.
260(1)	Move the words *"the trustee or the legal representative…by the Supervisor"* to the margin to form the closing words of paragraphs (a), (b) and (c).
261(1)	• Insert *"in relation to an estate under the trustee's administration"* after the word *"things"*. • Insert provision recommended.
262(2)(b)	Amend as recommended.
New Provision	Insert provision to clarify that subsection (2) is without prejudice to any transaction entered into pursuant to subsection (1).
262(3)	Insert "*on"* after "*carrying"*.
263(a)	Insert commas where recommended.
264	Amend marginal note as recommended.
264(1)	Amend as recommended.
264(2)	Insert "*if a sale is not successfully concluded pursuant to subsection (1)"* at the beginning.
267(1)	• Delete *"or its" from* line 2. • Replace reference to *"Court"* with *"Supervisor"*. • Delete "*of"* in penultimate line.
267(2)(a)	Delete sub-clause.
267(2)(d)	Replace *"by the Court"* with the words *"in accordance with this Act"*.
269	Amend to provide that creditors have the right to participate, and are entitled to share in the benefits.
269(1)	Insert *"trustee and to"* after *"the"* in line 6.
269(3)	Insert "*against the estate of the bankrupt*" after *"claim"* in line 2.
270(2)	Replace existing sub-clause with Canadian provision as recommended.

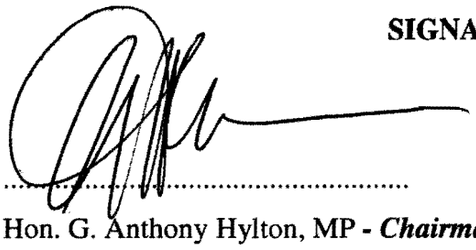
270(4)	Delete sub-clause.
270(5)	Delete sub-clause.
270(6)	Delete sub-clause.
270(7)	Delete sub-clause.
270(8)	Delete sub-clause.
270(9)	Delete sub-clause.
270(10)	Delete sub-clause.
271(2)	• Replace references to *"Court"* in this provision with *"Supervisor"*. • Amend as recommended.
273	• Replace references to *"Court"* in this clause with *"Supervisor"*, except where trustee is appointed by the Court. • Amend clause 224 to provide that where an application for discharge of the trustee was given by the Supervisor, this is a matter of public record, subject to disclosure under the clause. • Amend to provide that where an order of discharge was given by the Court, a copy of this order should be filed with the Supervisor by the trustee.
273(4)	Replace *"and"* in line 2 with *"or".*
273(5)	Amend to reflect that the notice of objection should also be filed with the Supervisor where appropriate.
273(7)	Replace "*the results of"* with the words *"liability for"* in line 3.
273(9)	Replace reference to *"section 236(1)"* with *"this Act".*
273(11)	Replace existing provision with new one as recommended.
Part X. Courts and Procedure	
Clause	Recommended Changes
274	Delete *"Act*" from line 4 and begin the words *"Bankruptcy"* and *"Insolvency"* with lower case letters.
275	Delete clause and address provisions in the Regulations.
276	• Insert *"in accordance with applicable law"* after the word *"priorities"* in line 2. • Replace *"for the purpose of doing complete justice or making a complete distribution of property in any such case"* with *'in furtherance of the overriding objective of the Act".*
279(1)	• Replace references to *"Court"* in this provision with *"Supervisor"*. • Insert provision to clarify that this would not apply to any matters arising out of proceedings of the Court.
279(2)	• Insert "or abridge" after the word "extend" in line 2. • Relocate sub-clause as an independent clause.
New Provision	As a consequential amendment to the above, provide that the Supervisor would have this power to extend or abridge the timing.
281(1)	Insert *"or any other means that the Court considers appropriate* after the word *"commission"* in line 3.

282	Amend marginal note as recommended.
282(2)	• Insert *"or meeting of creditors*" after the word *"trustee"* in line 2. • Extend sub-clause as recommended.
284	Relocate *"in addition to any other right or remedy provided for under this Act*" in line 3 to either the beginning or end of clause.
Part XI. International Insolvencies	
Clause	Recommended Changes
286 -294	• Delete clauses. • Insert provision enabling the making of regulations to address the adoption of UNCITRAL Model Law • Insert provision allowing the Minister to, by order, subject to affirmative resolution, make consequential amendments to other Acts, to give effect to these regulations.
Part XII. Offences	
Clause	Recommended Changes
295(1)(d)	• Delete *"after or"* in line 1. • Insert *"or at any time thereafter"* at the end of this paragraph.
295(2)	Delete "*comply with an order of the Court made under section 81 or".*
296	Increase fine in closing words of clause as recommended.
296(a)	• Amend as recommended. • Increase amount in line 3 as recommended.
296(b)	Increase amount in line 1 as recommended.
297(1)	• Delete "*being a bankrupt or person*" from line 1. • Insert the words "*any bankrupt*" after the word *"proposa*l" in line 2. • Amend wording as recommended.
298(2)	Separate into 2 paragraphs as recommended.
299	Provide that it is an offence if person knowingly fails to deliver property in his possession to trustee. (section 248)
299(1)(b)	Relocate provision to 231(3)
299(1)(d)	Delete words appearing after "*Act"* in line 3.
299(2)	Relocate to become new sub-clause 1(b).
299(3)	• Replace reference to *"section 226 or 247"* with "*section 223".* • Relocate this sub-clause under sub-clause 1.
299(4)	• Delete sub-clause. • Relocate provisions if needed to clause 304.
299(5)	Amend the reference in this provision to be *"paragraph (1)(g)".*
299(6)	Delete sub-clause.
300	Delete existing clause, and insert new clause as recommended.
302	Change term of imprisonment as recommended.

303	Reword for clarity.
304	• Amend to refer to relevant provisions of the Criminal Justice Reform Act, and consequentially amend the Criminal Justice Reform Act. • Provide for the applicable penalty – a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or both.
305	Delete clause.
306(1)	Insert the words *"or after holding an enquiry to assess any amount payable under this section"* after the word *"imposed"* in line 4.
307(1)	Insert "*reasonable*" before "*grounds*" in line 1.
307(1)(b)	• Replace *"that for any special reason... with that estate"* with "*for any special reason there should be an investigation in connection with that estate".* • Move *"it is the duty of the trustee to"* to the margin to form the closing words of paragraphs (a) and (b).
307(1)(b)(ii)	Delete "*to"* from beginning.
310	Amend marginal note as recommended.
310(c)	Delete *"upon and percentages"* in line 3.
311	Amend marginal note based on the following amendments.
311(1)	Delete sub-clause.
311(2)	Delete sub-clause.
312	Delete clause.
313	Delete clause.
314	• Amend section to include receivers. • Add new sub-clause as recommended.
315	Provide regulations that govern conditions of automatic discharge, regarding counselling/training, in accordance with section 205.
315(1)	Amend sub-clause as recommended.
315(2)	Amend sub-clause as recommended.
316	Amend to include any other monetary amounts.
318	Insert new sub-clause as recommended.
318(2)	Delete sub-clause.
318(3)	• Redraft along the lines of similar provision in Charities Act. • Amend time frame as recommended.
320	Provide that existing schemes of arrangement under the Companies Act can be utilized, in an appropriate part of the Bill.
Other Recommendations	
Sale of	Provide that the out-of-the-ordinary-course sale of property by a person that has filed a

Property	notice of intention or proposal is prohibited.
Other Legislation	Provide that the Minister can make consequential amendments to other Acts.
Debtor's Act	Determine whether it needs to be repealed.
Establish committee	Make provision for an Insolvency Advisory Committee.

SIGNATURE OF MEMBERS



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