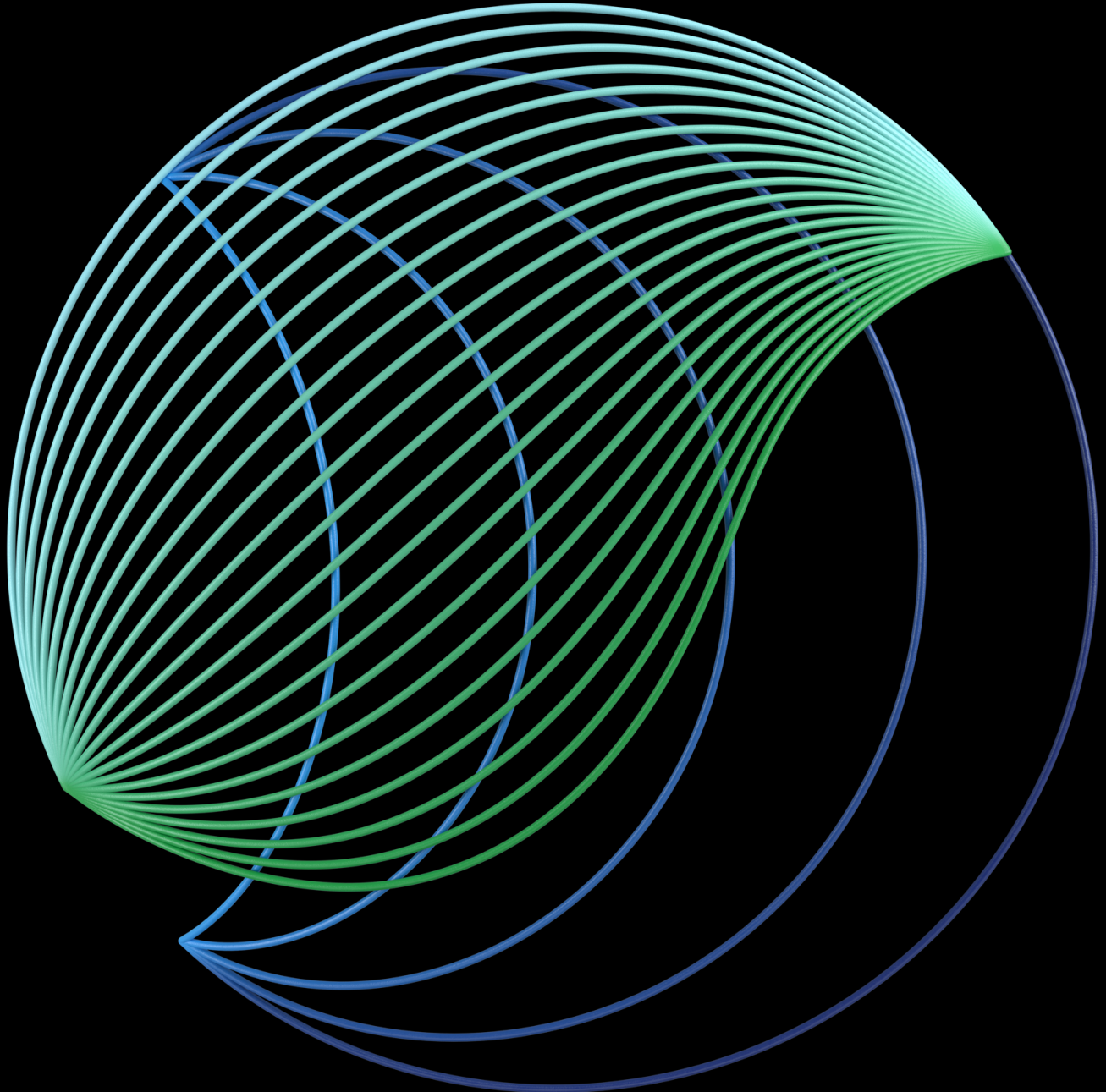




Receivership and Personal Bankruptcy in Bermuda

Deloitte Bermuda | Financial Advisory | August 2023



This report provides an overview and explanation of the various sections of the Bermuda Bankruptcy Act 1989 (the “Act”), with regards to the powers and duties of the Official Receiver/Trustee for the estate of the bankrupt.

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Receiving Order

A receiving order is made if a debtor commits an act of bankruptcy. The Court may, upon a bankruptcy petition being presented by a creditor or debtor, make a receiving order. This order is for the protection of the estate. The relevant sections of the Act are 5 – 15.

A creditor is not entitled to present a bankruptcy petition against a debtor unless:

- The debt is more than \$5,000;
- The debt is a liquidated sum payable immediately or at a future date;
- An act of bankruptcy has occurred within three months prior; or
- The debtor is domiciled in Bermuda within a year.

Publishing receiving order – Section 13

- Notice of a receiving order should state the name, address, description of the debtor, the date of the order, the Court by which the order is made, along with the date of the petition and shall be published in the Gazette in the prescribed manner.

Powers of Receivers

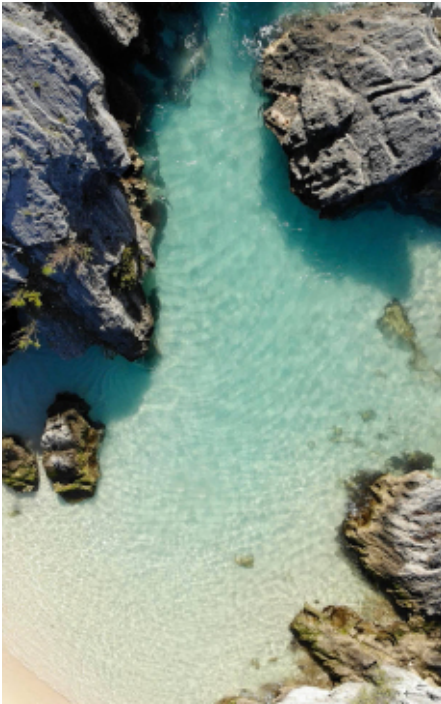
Receivers are appointed by the Court. The duties of the Receiver relate to the conduct of the debtor and the administration of their estate.

Power to appoint interim receiver – Section 10

- The Court may, at any time after the presentation of the petition, and before a receiving order is made, appoint the Official Receiver to be interim Receiver of the property of the debtor and direct them to take immediate possession.

Duties of Official Receiver as regards the debtor’s conduct – Section 75

- Investigate the conduct of the debtor and report to the Court;
- Provide assistance in relation to the prosecution of any fraudulent debtor.



Duties of Official Receiver as to debtor’s estate – Section 76

- Receivers must authorize the special manager to raise money or make advances for the purposes of the estate in the interest of creditors;
- They may summon and oversee the first meeting of creditors and issue forms of proxy for use at the meetings;
- Report to the creditors with any proposal which the debtor may have made with respect to the mode of liquidating the affairs.
- Advertise the receiving order, the date of the first creditors’ meeting, the debtor’s public examination and such other matters as may be necessary to advertise;
- To act as a trustee during any vacancy in the office of trustee.

What is Bankruptcy in Bermuda?

Acts of Bankruptcy – Section 3

A debtor commits an act of bankruptcy in each of the following cases:

- If he makes a transfer or assignment of his property to a trustee for the benefit of his creditors;
- If he makes a fraudulent transfer of his property;
- If he makes any transfer of his property or creates any charge thereon, which would under the Bankruptcy Act be void if he were adjudged bankrupt;
- If with intent to delay creditors, he departs Bermuda, remains out of Bermuda, departs his dwelling-house, or otherwise makes himself absent;
- If execution against him has been imposed by seizure of his goods under process in an action in any Court;
- If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- If a creditor has obtained a final judgement or final order against him for any amount; and
- If the debtor gives notice to any of his creditors that he has suspended or intends to suspend payment of his debts.

Adjudication of Bankruptcy – Section 20

Once a receiving order is made, the next steps should be as follows:

1. The creditors will decide if the debtor should be adjudged bankrupt;
2. Notice of the adjudication will be published in the Royal Gazette;
3. A trustee is appointed to take charge of the bankrupt’s property;
4. A Committee of Inspection (the “COI”) may be formed to oversee the administration of the property by the trustee; and
5. The trustee will then perform their duties to assist in distributing the Bankrupt’s assets amongst the creditors.

Appointment of trustee – Section 23

- After a debtor is adjudged bankrupt, the creditors ordinarily appoint a person who is fit, whether a creditor or not, to fill the office of the trustee. However, the creditor’s may resolve to leave the appointment of the trustee to the COI;
- The appointment of the trustee is then reported to the Court, who will ultimately have the final decision; and
- If, at the end of four (4) weeks, negotiations for a composition or scheme are still ongoing, then within seven (7) days following those negotiations, the creditors’ need to confirm their unwillingness to accept, or for the Court to accept the composition or scheme.

Committee of inspection – Section 246

Key points
Creditors who qualify to vote, may at their first or any subsequent meeting by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt’s property by the trustee.
The COI shall consist of no more than five and no less than three persons, possessing one or other of the following: <ul style="list-style-type: none">• Being a creditor or holder of a general proxy or general power of attorney from a creditor;• If a creditor intends to give a general proxy or general power of attorney but no such person is qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been duly lodged before the time appointed for the meeting.
A member of the COI may be represented by another person duly authorised by him for that purpose.
A person acting as a representative shall hold a letter of authority entitling him to act either generally or specifically. The letter shall be signed by or on behalf of the committee member.
If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court on the application of the trustee.



Power to accept composition or scheme – Section 25

- Creditors may, by a 75% majority vote, accept a proposal for a composition in satisfaction of the debts due to them, or for a scheme of arrangement of the bankrupt’s affairs;
- If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and entrusting the property of the bankrupt to him or in such other person as the Court may appoint.

Discharge of bankrupt – Sections 30 – 32

1. The bankrupt is discharged after expiration of a period of fifteen (15) years from the commencement of bankruptcy.
2. The bankrupt may apply to the Court to be discharged. The Court will then set a hearing for the application. The Court shall also consider the report of the Official Receiver as to the bankrupt’s conduct and affairs. The Court may either grant or refuse an order of discharge.
3. The bankrupt may also be discharged on application of the Official Receiver. Again, the Court shall also consider the report of the Official Receiver as to the bankrupt’s conduct and affairs.

Priority of debts – Section 39

- During distribution of the property of the bankrupt the following is to be paid in priority to all other debts:
 - o All taxes, municipal rates and land taxes due at the date of the receiving order;
 - o All wages or salary of any employee of the bankrupt in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding five thousand dollars; and
 - o All wages of any labourer not exceeding five thousand dollars for any kind of work rendered to the bankrupt during two months before the receiving order.
- If a deceased person died insolvent, as if he were bankrupt, the date of his death is substituted for the date of the receiving order;
- All debts proved in the bankruptcy will be paid pari passu after the debts which are ranked in priority are settled; and
- If there is any surplus after payment of debts mentioned, it shall be applied in payment of interest on all debts proved in the bankruptcy.

Powers of trustee to deal with property – Section 57

- Trustees may sell all or any part of the property of the bankrupt either by public auction or private contract.

Powers exercisable with permission of committee of inspection (“COI”) – Section 58

- Trustees may carry on the business of the bankrupt as it may be beneficial for the winding up;
- Defend any action or other legal proceedings relating to the property of the bankrupt;
- Employ an attorney or other agent to undertake proceedings to carry out business that may be sanctioned by the COI; and
- Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of debts.

Powers of Trustees

Trustees are Court appointed. The duties of the trustees include realizing the assets and following this, then provide a sum for living expenses, pay liabilities to creditors in accordance with their priority and distribute any amounts remaining (after all creditors are paid) to the debtor.

Discretionary powers of trustees – Section 80

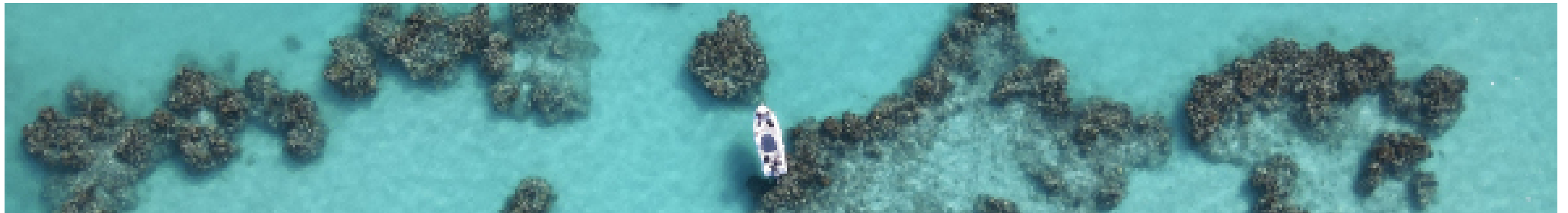
- The trustees must follow the directions that may have been determined by creditors at any general meeting or by the committee of inspection;
- The trustee may call a general meeting at any time to determine the wishes of creditors;
- The trustees can apply to the Court for directions in relation to any matter arising in the bankruptcy;
- The trustees can use their own discretion to manage the estate and make distributions to creditors; and
- There may be a request for the trustee or the Official Receiver to call a meeting of the creditors, and accordingly the Trustee or the Official Receiver shall call such meeting within 14 days.

Liability of the trustee – Section 82

- Trustees may sell all or any part of the property of the bankrupt either by public auction or private contract.

Remuneration of trustee – Section 83

- The trustee's remuneration will be fixed by an ordinary resolution of creditors or COI and shall be in the nature of commission or percentage of realized assets;
- If 1/4 in number or value disagree with the resolution or if the Court determines that remuneration is unnecessarily large, the Court shall fix the amount of remuneration; and
- The resolution shall express what expenses the remuneration covers, and no liability shall attach to the bankrupt's estate or to the creditors, in respect of any expenses which remuneration is expressed to cover.



Books to be kept by trustee – Section 87

- The trustee shall keep proper books in which from time-to-time cause to be made entries or minutes of proceedings at meetings, and such other matters as may be prescribed, and any creditor of the bankrupt may inspect any such books subject to Court approval.

Powers of trustee to deal with property – Section 57

- Trustees may sell all or any part of the property of the bankrupt either by public auction or private contract.

Annual statement of proceedings – Section 88

- Every trustee in a bankruptcy may be prescribed, more than once a year during the process of the bankruptcy, to transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement.

Release of trustee – Section 92

- When the trustee has realized all property of the bankrupt or as much as he can and a final dividend has been distributed, the Court will, on application, cause a report on his account to be prepared and their complying with all requirements of the Court;
- An order of the Court releasing the trustee, will discharge him from all liability in respect of any act or omission of his or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee. However, any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Other relevant sections of the Bankruptcy Act

Bankruptcy Notices – Section 4

- Bankruptcy notices require that the debtor satisfy the conditions of the judgment or order by paying the judgment debt or other amount ordered to be paid.
- A bankruptcy notice may appoint a person to act on the creditor’s behalf regarding any payments or other actions that must be paid for or completed to the satisfaction of the creditor in accordance with the terms of the notice.



Bankruptcy Offenses – Sections 133 – 139

Reasons for Personal Bankruptcy
• Bankrupt absconding with property
• Fraudulent debtors
• Undischarged bankrupt obtaining credit
• Frauds by bankrupts
• Bankrupt guilty of gambling
• Bankrupts failing to keep proper accounts
• False claims

Bankruptcy Rules 1990

Notices to be in writing

- All notices required by the Act, or these Rules shall be in writing, unless such rules otherwise provide or the Court otherwise orders.

Filing, advertising, etc.

- The Registrar must file with the Court a copy of each issue of the Gazette containing an advertisement relating to any matter covered by the Act;
- The Registrar shall submit the advertisement and leave a copy of each local newspaper in which any advertisement relating to any subject under the Act is published by the Registrar, who shall file the copy;
- The Registrar must file a memorandum referencing and providing the date of any advertisements in the local papers relevant to any subject and must be filed by the Registrar with the proceedings in that matter (Form 189);
- The Registrar’s memorandum shall constitute prima facie proof that the advertisement to which it refers was duly published in the issue of the Gazette or paper referred to in the memorandum;
- If the Official Receiver must inspect the file of proceedings in any matter as part of the performance of his duties under the Act or these Rules, the Registrar must, unless the file is already required for use in Court or by him, provide the file to the Official Receiver upon request.

Appendix 1

Articles on Bermuda Bankruptcy procedures are linked below:
[Restructuring review of the Americas](#)
[Restructuring across borders](#)

Appendix 2

Examples of Royal Gazette Notices

1. Receiving Order Notice

IN THE SUPREME COURT OF BERMUDA
IN BANKRUPTCY
20XX: No. XX

IN THE MATTER OF THE BANKRUPTCY ACT 1989
AND IN THE MATTER OF [INSERT NAME OF DEBTOR] (THE "DEBTOR")

ADVERTISIEMENT OF
APPOINTMENT OF JOINT AND SEVERAL RECEIVERS

(Bankruptcy Act 1989, Section 13)

NOTICE is hereby given that on XX Month 20XX:

It was ordered that Official Receiver be replaced as Receiver of the estate of the Debtor by [Insert name of appointed Receivers] of Deloitte Ltd. as Joint and Several Receivers.

Dated [XX Month 20XX]

Deloitte Ltd
Joint and Several Receivers

Examples of Royal Gazette Notices

2. Bankruptcy Appointment Notice

IN THE SUPREME COURT OF BERMUDA
IN BANKRUPTCY
20XX: No. XX

IN THE MATTER OF THE BANKRUPTCY ACT 1989
AND IN THE MATTER OF [INSERT NAME OF DEBTOR] (THE "DEBTOR")

NOTICE OF BANKRUPTCY ORDER

TAKE NOTICE that pursuant to an Order of the Supreme Court of Bermuda dated [XX Month 20XX], the
Puisne Judge made a Bankruptcy Order against [Insert Debtor's name] formerly of [Address of Debtor].
[Insert name of appointed Trustees] of Deloitte Ltd were appointed Joint and Several Trustees in
Bankruptcy without a Committee of Inspection.

Dated [XX Month 20XX]

Deloitte Ltd
Joint and Several Trustees

Connect with our Financial Advisory team



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