

CHAPTER 50
INSOLVENCY LAW

- Article 1. General Provisions.
- Article 2. Suspension of Payments.
- Article 3. Voluntary Insolvency.
- Article 4. Involuntary Insolvency.
- Article 5. Assignees.
- Article 6. Classification and Preference of Creditors.
- Article 7. Partnerships and Corporations.
- Article 8. Proof of Debts.
- Article 9. Compositions.
- Article 10. Discharge.
- Article 11. Fraudulent Preferences and Transfers.
- Article 12. Miscellaneous.

ARTICLE 1
GENERAL PROVISIONS

- § 50000. Insolvency Law, Defined.
- § 50001. Jurisdiction of Superior Court.

§ 50000. Insolvency Law, Defined.

The provisions of this Part shall be known and may be cited as *The Insolvency Law* and in accordance with its provisions every insolvent debtor may be permitted to suspend payments or be discharged from his debt and liabilities.

SOURCE: CCP 1280. This entire part was enacted in 1953. Therefore, all references to the source herein will refer to the original enactment unless there has been a later amendment.

COMMENT: To the best of the Compiler's knowledge, as of March, 1990 no debtor has used this part since at least 1970. Rather, debtors seeking protection, or forced into it by creditors, have used the federal Bankruptcy Law, enforceable through the District Court of Guam. However, the federal Bankruptcy laws do recognize certain local exemptions, which may be found in this Chapter and elsewhere in this Title.

§ 50001. Jurisdiction of Superior Court.

The Superior Court shall have original jurisdiction in hearing and determining all causes, actions, and proceedings under this Part.

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

SOURCE: CCP § 1281. *Superior Court* inserted in place of *Island Court* pursuant to P.L. 12-85 and *Part* in place of *Title* to conform to the arrangement of this Title of the Guam Code Annotated.

ARTICLE 2
SUSPENSION OF PAYMENTS

- § 50050. State of Suspension of Payments. Petition. Inventory to be Filed.
- § 50051. Order for Meeting of Creditors. Injunction to be Issued to Debtor.
- § 50052. Fees Deposited for Filing Petition; Notice to Creditors.
- § 50053. Suspension of Execution Against Debtor.
- § 50054. Creditors Represented by Lawyers.
- § 50055. Meeting of Creditors.
- § 50056. Claimants Exempt. Agreement.
- § 50057. Agreements Rejected.
- § 50058. Agreements Made Effective.
- § 50059. Objections to Meetings of Creditors.
- § 50060. Failure of Debtor to Perform.

§ 50050. State of Suspension of Payments. Petition. Inventory to be Filed.

Any debtor who, possessing sufficient property to cover all his debts, be it an individual person, an association, or corporation, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared by the court in the state of suspension of payments.

The debtor shall annex to his petition a schedule and inventory as set forth in § 50101, § 50102, and § 50103 of this Part, in addition to the statement of his assets and liabilities and the proposed agreement he requests of his creditors.

SOURCE: CCP § 1285.

§ 50051. Order for Meeting of Creditors. Injunction to be Issued to Debtor.

Upon receiving and filing the petition with the schedule and documents mentioned in the next preceding section, the court shall make an order calling a meeting of creditors to take place in not less than two (2) weeks

nor more than three (3) months from the date of such order. This order shall designate the day, hour, and place of meeting of the creditors. The order shall be published by the means authorized for the publication of service and notices and for such periods as may be prescribed by the court. It shall contain an injunction forbidding the petitioning debtor from disposing of his property in any manner, except insofar as concerns the ordinary operations of commerce or of the industry in which the petitioner is engaged, and, further, from making any payments outside the necessary or legitimate expenses of his business or industry, so long as the proceedings relative to the suspension of payments are pending. For the purposes of this law said proceedings shall be considered to have been instituted from the date of the filing of the petition.

SOURCE: CCP § 1286.

§ 50052. Fees Deposited for Filing Petition; Notice to Creditors.

A copy of said order shall immediately be published by the clerk of the court, in the manner designated therein, for the number of times and in the form prescribed by the court, and the clerk shall cause a copy of said order to be delivered personally or to be sent forthwith by registered mail, postage prepaid, to all creditors named in the schedule. There shall be deposited with the clerk of the court the sum of ten dollars (\$10.00), which shall be paid to the Guam treasury for the filing and registration of the petition, including all proceedings until the legal process is completed, and, in addition, a sum sufficient to defray all expenses of publication ordered by the court, necessary postage and ten cents (\$0.10) for each copy, to be delivered personally or mailed to the creditors. The last-named sum is hereby constituted the legal fee for the personal delivery or mailing required by this section.

SOURCE: CCP § 1287.

§ 50053. Suspension of Execution Against Debtor.

If any execution be pending against the debtor it shall not be consolidated with this proceeding, but the course thereof shall be suspended before sale of property is made thereunder, provided the debtor makes a request therefor to the court before which the proceeding for suspension of payments is pending, unless the execution be against property especially mortgaged which is hereby exempted from the provisions of this section. The suspension ordered by virtue of this section shall lapse when three (3) months shall have passed without the proposed agreement being accepted

by the creditor or as soon as it is denied. No creditor other than those mentioned in § 50056 shall sue or institute proceedings to collect his claim from the debtor from the moment that suspension of payments is applied for and while the proceedings are pending.

SOURCE: CCP § 1288.

§ 50054. Creditors Represented by Lawyers.

Creditors may be represented at the meeting by one or more lawyers, or by any person duly authorized by power of attorney, which document shall be presented and be attached to the record.

Persons appearing for more than one creditor shall have only one personal vote, but the claims presented by them shall be taken into consideration for the purpose of arriving at the majority of the amount represented

SOURCE: CCP § 1289.

§ 50055. Meeting of Creditors.

Only creditors included in the schedule filed by the debtor shall be cited to appear and take part in the meeting mentioned in § 50051, and they shall be notified upon delivery or transmission to them of a copy of the order calling the meeting, to appear at the meeting with the written evidences of their respective claims, without which they shall not be admitted.

The presence of the creditors representing at least three-fifths (3/5) of the liabilities shall be necessary for holding a meeting. The meeting shall be held on the day and at the hour and place designated, the judge of the Superior Court acting as president, and the clerk of the court as secretary thereof, subject to the following rules:

(a) The clerk shall prepare for insertion in the minutes of the meeting a statement of the persons present and their claims; the judge shall examine the written evidences of the claims and the powers of attorney, if any. If the persons present who have complied with the foregoing rules represent at least three-fifths (3/5) of the liabilities, the judge shall declare the meeting open for business.

(b) The petition of the debtor, the schedule of debts and of property, the statement of assets and liabilities, and the proposed agreement filed therewith shall be read forthwith by the clerk, and the discussion shall be opened.

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

(c) The debtor may modify his proposition or propositions in view of the results of the debate, or insist upon the ones already made, and the judge without further discussion shall clearly and succinctly place these several propositions before the meeting for a vote thereupon.

(d) The vote shall be taken by a call of names and shall be inserted in the minutes; a majority vote shall rule.

(e) To form a majority it is necessary:

(1) That two-thirds ($2/3$) of the creditors voting unite upon the same proposition;

(2) That the claims represented by said majority vote amount to at least three-fifths ($3/5$) of the total liabilities of the debtor mentioned in the petition.

(f) After the result of the voting has been announced, all protests made against the majority vote shall be admitted and stated in the record, and the meeting shall be closed.

(g) The minutes of the meeting, containing a succinct statement of all proceedings had therein, shall be drawn up, and there shall be inserted therein, the proposition or propositions voted upon, which, after having been read and approved, shall be signed by the judge together with all persons taking part in the voting. If any such persons shall be unable to write, any person present shall sign, at their request, and the clerk shall certify to all of the above.

SOURCE: CCP § 1290.

§ 50056. Claimants Exempt.

Persons having claims for personal labor, maintenance, expenses of last illness and funeral, of the wife or children of the debtor, incurred in the sixty (60) days immediately preceding the filing of the petition, and the persons having legal or contractual mortgages, may refrain from attending the meeting and from voting therein. Such persons shall not be bound by any agreement determined upon at such meeting, but if they should join in the voting they shall be bound in the same manner as are the other creditors.

SOURCE: CCP § 1291.

§ 50057. Agreements Rejected.

The proposed agreement shall be deemed rejected if the number of creditors required for holding a meeting does not voluntarily attend thereat,

or if the two majorities mentioned in § 50055(e) are not in favor thereof, even if the negative vote itself does not receive such majority.

SOURCE: CCP § 1292.

§ 50058. Agreements Made Effective.

If the decision of the meeting be negative as regards the proposed agreement or if no decision is had in default of such number or of such majorities, the proceedings shall be terminated without recourse and the parties concerned shall be at liberty to enforce the rights which may correspond to them. If the decision is favorable to the debtor, it may be objected to within ten (10) days following the date of the meeting by any creditor who attended the meeting, and who dissented from and protested against the vote of the majority.

The opposition or objection to the decision of the majority favorable to the debtor shall be proceeded with as in any other incidental motion, the debtor and the creditors who shall appear declaring their purpose to sustain the decision of the meeting being the defendants. The court shall hear and pass upon such objection as soon as possible and in a summary manner, and in its order, which shall be final, it shall declare whether or not the decision of the meeting is valid. In case that the decision of the meeting is held to be null, the court shall declare the proceeding terminated and the parties concerned at liberty to exercise the rights which may correspond to them; and in case the decision of the meeting is declared valid, or when no opposition or objection to said decision has been presented, the court shall order that the agreement be carried out and the persons concerned shall be bound by the decision of the meeting. The court may issue all orders which may be proper to enforce the agreement on motion of any of the parties litigant. The order directing the agreement to be made effective shall be binding upon all creditors included in the schedule of the debtor who may have been properly summoned, but not upon creditors mentioned in § 50056 who failed to attend the meeting or refrained from voting therein, and their rights shall not be affected by the agreement unless they may have expressly or impliedly consented thereto.

SOURCE: CCP § 1293.

§ 50059. Objections to Meetings of Creditors.

The causes for which objection may be made to the decision of the meeting shall be:

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

(a) Defects in the call for the meeting, in the holding thereof, and in the deliberations had thereat which prejudice the rights of the creditors;

(b) Fraudulent connivance between one or more creditors and the debtor to vote in favor of the proposed agreement;

(c) Fraudulent conveyance of claims for the purpose of obtaining a majority.

SOURCE: CCP § 1294.

§ 50060. Failure of Debtor to Perform Agreement.

If the debtor fails wholly or in part to perform the agreement decided upon at the meeting of the creditors, all the rights which the creditors had against the debtor before the agreement shall revert in them. In such case the debtor may be made subject to the bankruptcy and insolvency proceedings in the manner established by the following Chapters of this Title.

SOURCE: CCP § 1295.

**ARTICLE 3
VOLUNTARY INSOLVENCY**

§ 50100. Petition for Voluntary Insolvency.

§ 50101. Schedule, What to Include.

§ 50102. Inventory, What to Include.

§ 50103. Affidavit of Petitioner.

§ 50104. Order of Court; Appointment of a Receiver.

§ 50105. Publication of Court Order.

§ 50100. Petition for Voluntary Insolvency.

An insolvent debtor, owing debts exceeding in amount the sum of One Thousand Dollars (\$1,000.00), may apply to be discharged from his debts and liabilities by petition to the Superior Court, Guam. In his petition he shall set forth his place of residence, the period of his residence therein immediately prior to filing said petition, his inability to pay all his debts in full, his willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors, and an application to be adjudged an insolvent. He shall annex to his petition a schedule and

inventory in the form hereinafter provided. The filing of such petition shall be an act of insolvency.

SOURCE: CCP § 1300.

§ 50101. Schedule, What to Include.

Said schedule must contain a full and true statement of all his debts and liabilities, together with a list of all those to whom, to the best of his knowledge and belief, said debts or liabilities are due, the places of residence of his creditors and the sum due each, the nature of the indebtedness or liability and whether founded on written security, obligation, contract or otherwise, the true cause and consideration thereof, the time and place when and where such indebtedness or liability accrued, a declaration of any existing pledge, lien, mortgage, judgment, or other security for the payment of the debt or liability, and an outline of the facts giving rise or which might give rise to a cause of action against such insolvent debtor.

SOURCE: CCP § 1301.

§ 50102. Inventory, What to Include.

The inventory must contain, besides the creditors, an accurate description of all the real and personal property, estate, and effects of the petitioner, including his homestead, if any, together with a statement of the value of each item of said property, estate, and effects and its location, and a statement of the encumbrances thereon. All property exempt by law from execution shall be set out in said inventory with a statement of its valuation, location, and the encumbrances thereon, if any. The inventory shall contain an outline of the facts giving rise, or which might give rise, to a right of action in favor of the insolvent debtor.

SOURCE: CCP § 1302.

§ 50103. Affidavit of Petitioner.

The petition, schedule, and inventory must be verified by the affidavit of the petitioner, annexed thereto, and shall be in form substantially as follows:

"I, _____, do solemnly swear that the schedule and inventory now delivered by me contain a full, correct, and true discovery of all my debts and liabilities and of all goods, effects, estate, and property of whatever kind or class to me in any way belonging. The inventory also contains a full, true, and correct statement of all debts owing or due me, or to any person

or persons in trust for me and of all securities and contracts whereby any money may hereafter become due or payable to me or by or through which any benefit or advantage whatever may accrue to me or to my use, or to any other person or persons in trust for me. The schedule contains a clear outline of the facts giving rise, or which might give rise, to any cause of action in my favor. I have no lands, money, stock, or estate, reversion, or expectancy, or property of any kind, except that set forth in said inventory. I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owe I have not, directly or indirectly, concealed, fraudulently sold, or otherwise fraudulently disposed of any part of my real or personal property, estate, effect, or rights of action, and I have not in any way compounded with any of my creditors in order to secure such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any matter any creditor to whom I am indebted. So help me God."

SOURCE: CCP § 1303.

§ 50104. Order of Court; Appointment of a Receiver.

Upon receiving and filing said petition, schedule, and inventory, the court shall make an order declaring the petitioner insolvent, and directing a commissioner of a district to take possession of, and safely keep, until the appointment of a receiver or assignee, all the deeds, vouchers, books of account, papers, notes, bonds, bills, and securities of the debtor, and all his real and personal property, estate, and effects, except such as may be by law exempt from execution. Said order shall further forbid the payment to the debtor of any debts due to him and the delivery to the debtor, or to any person for him, of any property belonging to him, and the transfer of any property by him, and shall further appoint a time and place for a meeting of the creditors to choose an assignee of the estate. The order shall be published in the manner and form used in Guam for such times and periods as the court may prescribe. The time appointed for the election of an assignee shall not be less than two (2) weeks, nor more than three (3) months, from the date of the order of adjudication. Upon the granting of the order, all civil proceedings pending against the said insolvent shall be stayed. When a receiver is appointed, or an assignee chosen, as provided by this Title, the commissioner shall there-upon deliver to such receiver or assignee, as the case may be, all the property, assets, and belongings of the

**7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW**

insolvent which have come into his possession, and he shall be allowed and paid as compensation for his services the same expenses and fees as would by law be collectible if the property had been levied upon and safely kept under attachment.

SOURCE: CCP § 1304.

§ 50105. Publication of Court Order.

A copy of the court's order shall immediately be published by the clerk of said court, for the number of times and for such periods as prescribed by the court. A copy of said order shall be delivered personally or sent by the clerk forthwith by registered mail, postage prepaid, to all creditors named in the schedule. There shall be deposited with the clerk of the court the sum of ten dollars (\$10.00), which shall be paid into the Guam treasury on commencing such proceedings and, in addition, a sum of money sufficient to defray the expense of the publication ordered by the court, necessary postage, and ten cents (\$0.10) for each copy, to be delivered personally or mailed to the creditors. The last-named sum is hereby constituted the legal fee for the personal delivery or mailing required by this section.

SOURCE: CCP § 1305.

**ARTICLE 4
INVOLUNTARY INSOLVENCY**

- § 50150. Acts of Insolvency, What Constitute.
- § 50151. Undertaking Required.
- § 50152. Court Order for Hearing.
- § 50153. Service Upon Debtor.
- § 50154. Defendant to File Motions or Answer.
- § 50155. Court Order, What to Include. Stay of Proceedings Against Debtor. Appointment of an Assignee or Receiver.
- § 50156. Publication of Court Order.
- § 50157. Court Order: When Debtor Resides Out of Guam; Undertaking Required.
- § 50158. Bonds, Conditions; Exceptions.
- § 50159. Sale of Property; Deposit of Proceeds.

§ 50150. Acts of Insolvency, What Constitute.

An adjudication of insolvency may be made on the petition of two or more creditors, and the amount of which credits or demands are in the aggregate not less than one thousand dollars (\$1,000.00); provided, that none of said creditors has become a creditor by assignment, however made, within thirty (30) days prior to the filing of said petition. Such petition must be filed in the Superior Court. The following shall be considered acts of insolvency, and the petition for insolvency shall set forth one or more of such acts:

1. That such person is about to depart or has departed from Guam, with intent to defraud his creditors;
2. That being absent from Guam, with intent to defraud his creditors, he remains absent;
3. That he conceals himself to avoid the service of legal process for the purpose of hindering or delaying or defrauding his creditors;
4. That he conceals, or is removing, any of His property to avoid its being attached or taken on legal process;
5. That he has suffered his property to remain under attachment or legal process for three (3) days for the purpose of hindering or delaying or defrauding his creditors;
6. That he has confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying or defrauding any creditor or claimant;
7. That he has willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying or defrauding his creditors;
8. That he has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors;
9. That he has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits with intent to delay, defraud, or hinder his creditors;
10. That he has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance, or transfer of his estate, property, rights, or credits;

11. That being a merchant or tradesman he has generally defaulted in the payment of his current obligations for a period of thirty (30) days;

12. That for a period of thirty (30) days he has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and,

13. That an execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment. The petitioner may, from time to time, by leave of the court, amend and correct the petition, so that the same shall conform to the facts, such amendments to relate back to and be received as embraced in the original petition.

SOURCE: CCP § 1310.

§ 50151. Undertaking Required.

The said petition shall be accompanied by an undertaking, approved by the court, with at least two (2) sureties, in such penal sum as the court shall direct, conditioned that if the petition in insolvency be dismissed by the court, or withdrawn by the petitioner, or if the debtor shall not be declared insolvent, the petitioners will pay to the debtor alleged in the petition to be insolvent, all costs, expenses, and damages occasioned by the proceedings in insolvency, together with a reasonable counsel fee to be fixed by the court. The court may, upon motion, direct the filing of an additional bond, with different sureties, when deemed necessary.

SOURCE: CCP § 1310a.

§ 50152. Court Order for Hearing.

Upon the filing of such creditors' petition, the court shall issue an order requiring such debtor to show cause, at a time and place to be fixed by said court, why he should not be adjudged an insolvent debtor; and at the same time, or thereafter, upon good cause shown therefor, said court may make an order forbidding the payment of any debts, and the delivery of any property belonging to such debtor to him or to any other person for his use or benefit or the transfer of any property by him.

SOURCE: CCP § 1311.

§ 50153. Service Upon Debtor.

A copy of the petition, with a copy of the order to show cause, shall be served on the debtor' in the same manner as is provided by law for the

service of summons in civil actions, but such service shall be made at least five (5) days before the time fixed for the hearing; provided, that if, for any reason, the service is not made, the order may be renewed, and the time and place of hearing changed by supplemental order of the court. Whenever the debtor on whom service is to be made resides out of Guam; or has departed from Guam; or cannot after due diligence be found within Guam; or conceals himself to avoid the service of the order to show cause, or any other process or orders in the matter; or is a foreign corporation having no managing or business agent, cashier, or secretary within Guam upon whom service can be made and such facts are shown to the court by affidavit, such court shall make an order that the service of such order, or other process, be made by publication, in the same manner, and with the same effect, as service of summons by publication in ordinary civil actions.

SOURCE: CCP § 1312.

§ 50154. Defendant to File Motions or Answer.

At the time fixed for the hearing of said order to show cause, or at another time to which such hearing may be adjourned, the debtor must answer the petition, or may file motions do dismiss for the same causes as are provided for such motions as in other proceedings. If the motion is overruled, the debtor shall immediately answer the petition. Such answer shall contain a specific denial of the material allegations of the petition controverted by him, and shall be sworn to; and the issues raised thereon shall be promptly tried and disposed of. If, upon such trial, the issues are found in favor of the respondent, the proceedings shall be dismissed, and the respondent shall be allowed all costs, counsel fees, expenses, and damages sustained by reason of the proceedings therein. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court.

SOURCE: CCP § 1313. Reference to demurrers changed to motions to dismiss since demurrers have been abolished by the Guam Rules of Civil Procedure, Rule 7(c).

§ 50155. Court Order, What to Include. Stay of Proceedings Against Debtor. Appointment of an Assignee or Receiver.

If the respondent shall make default, or if, after trial, the issues are found in favor of the petitioners, the court shall make an order adjudging that said respondent is, and was at the time of filing the petition, an insolvent debtor and that the debtor was guilty of the acts and things charged in the petition, or such of them as the court may find to be true; and shall require said debtor, within such time as the court may designate, not to exceed three (3) days, to file in court the schedule and inventory provided

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

for in § 50101 and § 50102 of this Title, duly verified as required of a petitioning debtor; provided, that in the affidavit of the insolvent debtor, touching his property and its disposition, he shall not be required to swear that he has not made any fraudulent preference or committed any other act in conflict with the provisions of law; but he may do so if he desires.

The order shall further direct a commissioner, or the receiver, if one has been theretofore appointed, to take possession of and safely keep, until the appointment of an assignee, all the deeds, vouchers, books of accounts, papers, notes, bills, bonds, and securities of the debtor, and all his real and personal property, estate, and effects, except such as may be by law exempt from execution.

The order shall further forbid the payment to the debtor of any debts due to him, and the delivery to the debtor, or any person for him, of any property belonging to him, and the transfer of any property by him, and shall further appoint a time and place for a meeting of the creditors to choose an assignee of the estate. Said order shall be published as often as may be prescribed by the court.

The time appointed for the election of an assignee shall not be less than two (2) weeks nor more than three (3) months from the date of the order of adjudication. Upon the granting of the said order, all civil proceedings pending against the said insolvent shall be stayed. When an assignee is chosen as provided in this Chapter, the commissioner or receiver, if there be one, shall thereupon deliver to such assignee all the property, estate, and belongings of the insolvent, which have come into his possession, and he shall be allowed and paid as compensation for his services the same expenses and fees as would by law be collectible if the property had been levied upon and safely kept under attachment.

SOURCE: CCP § 1314.

§ 50156. Publication of Court Order.

A copy of the order provided for in the last preceding section shall immediately be published by the clerk of the court in the usual manner for the number of times and as prescribed by the court. Upon the filing, at any time before the date set for such meeting, of the schedule required by said last preceding section, a copy of said order shall be delivered personally or sent by the clerk forthwith by registered mail, postage prepaid, to all creditors named in said schedule. If said schedule is not filed prior to the day fixed for the election of an assignee, publication of said order as herein

required shall be of itself sufficient notice to the creditors of the time and place appointed for the election of an assignee. No order of adjudication upon creditor's petition shall be entered unless there be first deposited, in addition to the costs of commencing said proceedings, a sum of money sufficient to defray the expense of the publication ordered by the court, necessary postage, and ten cents (\$0.10) for each copy to be delivered personally or mailed to the creditors. The last-named sum is hereby constituted the legal fee for the personal delivery or mailing required by this section.

SOURCE: CCP § 1315.

§ 50157. Court Order: When Debtor Resides Out of Guam; Undertaking Required

. In all cases where the debtor resides out of Guam; or has departed from Guam; or cannot, after due diligence, be found within Guam; or conceals himself to avoid service of the order to show cause, or any other preliminary process or orders in the matter; or is a foreign corporation having no managing or business agent, cashier, or secretary within Guam upon whom service or orders and process can be made, and it therefore becomes necessary to obtain service of process and order to show cause, as provided in § 50153 of this Title, then the petitioning creditors, upon submitting the affidavits requisite to procure an order of publication, and presenting a bond in double the amount of the aggregate sum of their claims against the debtor, shall be entitled to an order of the court directing a commissioner to take into his custody a sufficient amount of property of the debtor to satisfy the demands of the petitioning creditors and the costs of the proceedings. Upon receiving such order of the court to take into custody property of the debtor, it shall be the duty of the commissioner to take possession of the property and effects of the debtor, not exempt from execution, to an extent sufficient to cover the amount provided for, and to prepare, within three (3) days from the time of taking such possession, a complete inventory of all the property so taken, and to return it to the court as soon as completed. The time for taking the inventory and making return thereof may be extended for good cause shown to the court. The commissioner shall also prepare a schedule of the names and residences of the creditors, and the amount due each, from the books of the debtors, or from such other papers or data of the debtor available as may come to his possession, and shall file such schedule list of creditors and inventory with the clerk of the court.

SOURCE: CCP § 1316.

§ 50158. Bonds, Conditions; Exceptions.

In all cases where property is taken into custody by the commissioner, as provided in the preceding section, if it does not embrace all the property and effects of the debtor not exempt from execution, any other creditor or creditors of the debtor, upon giving bond to be approved by the court in double the amount of their claims, singly or jointly, shall be entitled to similar orders, and to like action, by the commissioner, until all claims be provided for, if there be sufficient property or effects. All property taken into custody by the commissioner by virtue of the giving of any such bonds shall be held by him for the benefit of all creditors of the debtor whose claims shall be duly proved, and as provided in this section. The bonds provided for in this and the preceding section to procure the order for the custody of the property and effects of the debtor shall be conditioned that if, upon final hearing of the petition in insolvency, the court shall find in favor of the petitioners, such bonds and all of them shall be void; if the decision be in favor of the debtor, the proceedings shall be dismissed and the debtor, his heirs, administrators, executors, or assigns shall be entitled to recover such sum of money as shall be sufficient to cover the damages sustained by him, not to exceed the amount of the respective bonds. Such damages shall be fixed and allowed by the court if either the petitioners or the debtor shall appeal from the decision of the court, upon final hearing of the petition the appellant shall be required to give undertaking to the successful party in a sum double the amount of the value of the property in controversy, and for the costs of the proceedings. Such undertaking shall be approved by the court.

Any person interested in the estate may except to the sufficiency of the sureties on such bond or bonds. When excepted to, the petitioner's sureties, upon notice to the person excepting of not less than two (2) nor more than five (5) days, must justify as to their sufficiency; and upon failure to justify, or if others in their places fail to justify at the time and place appointed, the judge shall issue an order vacating the order to take the property of debtor into the custody of the commissioner, or denying the appeal, as the case may be.

SOURCE: CCP § 1317.

§ 50159. Sale of Property; Deposit of Proceeds.

If, in any case, proper affidavits and bonds are presented to the court asking for and obtaining an order of publication and an order for the custody of the property of the debtor, as provided in § 50157 and § 50158 of this Article, and thereafter the petitioners shall make it appear satisfactorily to the court that the interest of the parties to the proceedings will be subserved by a sale thereof, the court may order such property to be sold in the same manner as property is

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

sold under execution, the proceeds to be deposited with the Treasurer of Guam to abide the result of the proceedings.

SOURCE: CCP § 1318.

ARTICLE 5
ASSIGNEES

§ 50200. Filing and Proof of Claims; Exceptions to Creditors Permitted to Vote.

§ 50201. Election of an Assignee; Bond Required.

§ 50202. Court to Appoint Assignee.

§ 50203. Delivery of Debtor's Property to Assignee.

§ 50204. Assignee Right to Recover.

§ 50205. Filing of Schedule and Inventory.

§ 50206. Resignation of the Assignee.

§ 50207. Power of Assignee.

§ 50208. Embezzlement by Person, Having Notice of Proceedings.

§ 50209. Conversion of Property into Cash; Sale.

§ 50210. Sale of Perishable Property.

§ 50211. Outstanding Assets of Debtor, Sale or Compromise.

§ 50212. Costs Allowed Assignee.

§ 50213. Assignee to Render Accounts; Audit of.

§ 50214. Funds for Distribution.

§ 50215. Dividends Declared, Not to be Stayed.

§ 50216. Failure of Assignee to Render Accounts; Duty of Court.

§ 50217. Assignee Discharge; Final Account.

§ 50200. Filing and Proof of Claims; Exceptions to. Creditors permitted to Vote.

No creditor shall be entitled to vote for the election of an assignee unless he shall have filed his claim in the office of the clerk of the court at least two (2) days prior to the time appointed for such election. All claims shall contain a statement showing the amount and nature of the claim and security, if any. The claim shall be verified by the claimant, or his duly authorized agent or attorney. No claim barred by the statute of limitations shall be proved or allowed against the estate of an insolvent debtor for any purpose. Any person interested in the estate of the insolvent may file exceptions to the legality or good faith of any claim, by setting forth specifi-

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

cally in writing his interest in the estate, and the ground of his objection to such claim. Such exceptions shall be verified by the affidavit of the party objecting, or his duly authorized agent or attorney, and the affidavit shall set out that such exceptions are not made for the purpose of delay and are made in good faith in the best interest of said estate. Exceptions to any claim must be filed with the clerk of the court at least one (1) day before the time appointed for the election of an assignee, and such exceptions shall be heard and disposed of by the court, on affidavit or other evidence, in a summary manner, before the election of an assignee. No creditor or claimant who holds any mortgage, pledge, or lien of any kind whatever as security for the payment of his claim or attachment or execution on property of the debtor duly recorded and not dissolved under this Title shall be permitted to vote at the election of the assignee any part of his secured claim unless he shall first have the value of such security fixed as provided in § 50356 of this Chapter, or shall surrender to the commissioner or receiver of the estate of the insolvent debtor, if there be a receiver, all such property, or assign such lien to such commissioner or receiver. The surrender or assignment of such security or lien shall be for the benefit of all creditors of the estate of the insolvent. The value of such security, if fixed by the court, shall be so fixed at least one (1) day before the day appointed for the election of an assignee, in which event the claimant may prove his demand as provided in this section for any unsecured balance, subject to the filing of exceptions as in all other claims.

SOURCE: CCP § 1320.

§ 50201. Election of an Assignee; Bond Required.

At a meeting of the creditors in open court, or if the court is not in session, in the presence of the judge or the clerk of court, those being entitled to vote, as provided by the preceding section, shall proceed to the election of an assignee. The majority of the creditors who have proven their claims, such majority being both in number and amount, must concur for the election of an assignee. The clerk of the court must keep minutes of the deliberations of the creditors, and of the election and appointment of the assignee, and enter the same upon the records of the court, and, in the absence of the judge, shall send a copy of such record to him at the place where he may be found. The assignee shall file, within five (5) days, unless the time be extended by the court, with the clerk, a bond, in an amount to be fixed by the court, to the government of Guam, with two or more sufficient sureties, approved by the court, and conditioned upon the faithful

performance of the duties devolving upon him. The bond shall not be void upon the first recovery, but may be sued upon from time to time by any person aggrieved, in his own name, until the whole penalty be exhausted. The sureties on such bond may be required to justify as to their sufficiency upon the application of any party interested.

SOURCE: CCP § 1321.

§ 50202. Court to Appoint Assignee.

If, on the day appointed for the meeting, creditors do not attend, or fail or refuse to elect an assignee, or if, after election, the assignee shall fail to qualify within the proper time, or if a vacancy occurs by death or otherwise, the court shall appoint an assignee and fix the amount of his bond.

SOURCE: CCP § 1321a.

§ 50203. Delivery of Debtor's Property to Assignee.

As soon as the assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under seal of the court, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process, as the property of the debtor. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. It shall also dissolve any attachment levied within one (1) month next preceding the commencement of the insolvency proceedings and vacate and set aside any judgment entered in any action commenced within thirty (30) days immediately prior to the commencement of insolvency proceedings any shall vacate and set aside any execution issued thereon and shall vacate and set aside any judgment entered by default or consent of the debtor within thirty (30) days immediately prior to the commencement of the insolvency proceedings.

SOURCE: CCP § 1322.

§ 50204. Assignee Right to Recover.

The assignee shall have the right to recover all the estate, debts, and effects of said insolvent. If, at the time of the commencement of proceedings in insolvency, an action is pending in the name of the debtor,

for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall be allowed and admitted to prosecute the action in like manner and with like effect as if it had been originally commenced by him. If there are any rights of action in favor of the insolvent for damages, on any account, for which an action is not pending, the assignee shall have the right to prosecute the same with the same effect as the insolvent might have done himself if no proceedings in insolvency had been instituted. If any action or proceeding in which the insolvent is the defendant is pending at the time of the adjudication, the assignee may defend the same in the same manner and with like effect as it might have been defended by the insolvent. In a suit prosecuted or defended by the assignee, a certified copy of the assignment made to him shall be conclusive evidence of his authority to sue or defend.

SOURCE: CCP § 1323.

§ 50205. Filing of Schedule and Inventory.

The assignee shall, within one (1) month after the making of the assignment to him, cause the same to be recorded in the registry of lands, etc., and the record of such assignment, or a duly certified copy thereof, shall be conclusive evidence thereof in all courts. If the schedule and inventory required by this section have not been filed by the debtor, the assignee shall within one (1) month after his election, prepare and file such schedule and inventory from the best information he can obtain, and shall thereupon personally deliver notice or send same by registered mail, postage prepaid, to all creditors named in such schedule, whose claims have not been filed, to forthwith prove their demands.

SOURCE: CCP § 1324.

§ 50206. Resignation of the Assignee.

Any assignee may at any time, by a writing filed in court, resign his appointment, having first settled his accounts and delivered all the deeds, vouchers, books of account, notes, bills, bonds, and securities of the debtor and all his real and personal property, estate, and effects to such successor as the court shall appoint; provided, that if in the discretion of the court the circumstances of the case require it, upon good cause being shown, the court may, at any time before such settlement of account and delivery of the estate shall have been completed, revoke the appointment of such assignee and appoint another in his stead. The liability of the outgoing assignee, or of

the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment of another in his stead.

SOURCE: CCP § 1325.

§ 50207. Power of Assignee.

The said assignee shall have power:

1. To sue and recover all the estate, assets, debts, and claims, belonging to or due to such debtor; and no set-off or counterclaim shall be allowed in any such suit for debts contracted by the insolvent within thirty (30) days immediately preceding the filing of the petition of insolvency except in case of creditors specified in § 50252 of this Chapter.

2. To take into his possession all the estate of such debtor, except property exempt by law from execution, whether attached or delivered to him, or afterwards discovered, and all books, vouchers, evidence of indebtedness, and securities belonging to him.

3. In case of a nonresident or absconding or concealed debtor, to demand and receive of every commissioner who shall have attached any of the property of such debtor, or who shall have in his possession any moneys arising from the sale of such property and moneys, on paying his lawful costs and charges for attaching and keeping them.

4. From time to time to sell at public auction after advertisement in the manner provided by subsections 1, 2, and 3 of § 23113 of this Title, upon order of the court, any of the estate, real and personal, which has come into his possession and which is vested in him as such assignee, and on such sales to execute the necessary conveyances and bills of sale.

5. To redeem all valid mortgages and conditional contracts, and all valid pledges of personal property, and to satisfy any judgments which may be an encumbrance on any property sold by him or to sell such property, subject to such mortgage, contract, pledges, judgments, or liens.

6. To settle all matters and accounts between such debtor and his debtors, subject to the approval of the court.

7. Under the order of the court or judge appointing him, to compound with any person indebted to such debtor, and thereupon discharge all demands against such persons.

8. To recover from any person receiving a conveyance, gift, transfer, payment, or assignment, made contrary to any provision of this Title, the property thereby transferred or assigned; or in case a redelivery of the property cannot be had, to recover the value thereof, with damages for the detention.

SOURCE: CCP § 1326.

§ 50208. Embezzlement by Person, Having Notice of Proceedings.

If any person, before the assignment is made, having notice of the commencement of the proceedings in insolvency, or having reason to believe that insolvency proceedings are about to be commenced, embezzles or disposes of any of the moneys, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property so embezzled or disposed of, to be recovered for the benefit of the insolvent's estate.

SOURCE: CCP § 1327.

§ 50209. Conversion of Property into Cash; Sale.

The assignee shall as speedily as possible convert the estate, real and personal, into money. He shall keep a regular account of all moneys received by him as assignee, to which every creditor or other person interested therein may, at all reasonable times, have access. No private sales of any property of the estate of an insolvent debtor shall be valid unless made under the order of the court, upon a petition in writing, which shall set forth the facts showing it to be necessary. Upon filing the petition, notice of the hearing thereof of at least ten (10) days shall be given by publication and mailing, in the same manner as is provided in § 50105. If it appears that a private sale is for the best interests of the estate, the court shall order it to be made.

SOURCE: CCP § 1328.

§ 50210. Sale of Perishable Property.

In all cases when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or is liable to deteriorate in value, or is disproportionately expensive to keep, and that the insolvent's estate will suffer if sufficient time elapses for the giving of notice, the court may order the same to be sold in such manner and at such time as may be deemed most expedient, under the direction of the

commissioner, receiver, or assignee, as the case may be, who shall hold the funds received in place of the property sold until further order of the court.

SOURCE: CCP § 1329.

§ 50211. Outstanding Assets of Debtor, Sale or Compromise.

Outstanding debts, or other property due or belonging to the estate, which cannot be collected and received by the assignee without reasonable or inconvenient delay or expense, may be sold and assigned in like manner as the remainder of the estate. If there are any rights of action for damages in favor of the insolvent prior to the commencement of the insolvency proceedings, the same may, with the approval of the court, be compromised.

SOURCE: CCP § 1330.

§ 50212. Costs Allowed Assignee.

Assignees shall be allowed all necessary expenses in the care, management, and settlement of the estate, and shall be entitled to charge and receive for their services commissions upon all sums of money coming to their hands and accounted for by them, as follows: For the first one thousand dollars (\$1,000.00), at the rate of seven percent (7%); for all above that sum and not exceeding ten thousand dollars (\$10,000.00), at the rate of five percent (5%); and for all above that sum, at the rate of four percent (4%); provided, however, that if the person acting as assignee was receiver of the property of the estate pending the election of an assignee, any compensation allowed him as such receiver shall be deducted from the compensation to which he otherwise would be entitled as such assignee; and provided further, that if there should be two or more assignees the court shall order an equitable division of the compensation herein provided, and if for any reason an assignee's term is completed before the final settlement of the estate and a successor is appointed, the court shall not allow to any such assignee prior to the settlement of the estate an amount exceeding four percent (4%) of the sums of money coming into his hands. Upon the final settlement of the estate an equitable distribution of the compensation of the assignee shall be made.

SOURCE: CCP § 1331.

§ 50213. Assignee to Render Accounts; Audit of.

At the expiration of three (3) months from the appointment of the assignee in any case, or as much earlier as the court may direct, a time and place shall be fixed by the court at which the assignee shall file just and true

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

accounts of all his receipts and payments with proper vouchers, verified by his oath, and a statement of the property outstanding, specifying the causes of its remaining outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his possession, and shall accompany the same with an affidavit that notice by registered mail has been given to all creditors named in the schedule filed by the debtor or the assignee that said accounts will be heard at a time specified in such notice, which time shall not be less than two (2) weeks nor more than three (3) months from the filing of such accounts. At the hearing the court shall audit the accounts of the assignee, and any person interested may appear and file exceptions thereto and contest the same. The court thereupon shall confirm said accounts if they shall be found to be correct, or order the same corrected if errors shall be found therein.

The court shall also, in such hearing, determine the property which must be deducted from the estate as another's under the provisions of § 50250 of this Chapter, and the right of the claimants to participate in the dividend, and may order a dividend paid to those creditors whose claims have been proven and allowed. The decision of the court theretofore rendered as to whether any claimant was entitled to vote for an assignee shall not be conclusive upon the right of the claimant to share in such dividend; but all claimants who were so allowed to vote shall participate in such dividend unless objections were filed to the same prior to such hearing.

If any objections have been filed against any claim, or if any claimant was refused the right to vote, the court shall determine said objections and the rights of all such claimants in such hearing and refuse or allow the same before the declaration of a dividend. Thereafter, further accounts, statements, and dividends shall be made in like manner as often as occasion requires; provided however, that it shall be the duty of the assignee to file his final account within one (1) year from the date of the order of adjudication, unless the court, after notice to creditors, shall grant further time, upon a satisfactory showing that great loss and waste would result to the estate by reason of the conversion of the property into money within said time, or that it has been impossible to do so by reason of litigation.

SOURCE: CCP 1331.

§ 50214. Funds for Distribution.

The court may at any time, upon the motion of any two or more creditors, require the assignee to file his accounts in the manner and upon

giving the notice specified in the preceding section, and if he has funds subject to distribution he may be required to distribute them without delay.

SOURCE: CCP § 1332.

§ 50215. Dividends Declared, Not to be Stayed.

Whenever a dividend has been duly declared, the distribution of it shall not be stayed or affected by reason of debts being subsequently proved, but any creditor proving such a debt shall be entitled to a dividend equal to those already received by the other creditors before any other dividend is made to the latter, if the failure to prove such claim shall not have resulted from his own neglect.

SOURCE: CCP § 1333.

§ 50216. Failure of Assignee to Render Accounts; Duty of Court.

Should the assignee refuse or neglect to render his accounts as required by § 50213 and § 50214 of this Chapter, or refuse or neglect to pay over a dividend when he shall have, in the opinion of the court, sufficient funds for that purpose, or shall neglect or mismanage the estate in any manner whatever or violate any of the provisions of this Chapter, the court shall immediately discharge such assignee from his trust, and shall appoint another in his place. The assignee so discharged shall forthwith deliver over to the assignee appointed by the court all the funds, property, books, vouchers, or securities belonging to the insolvent, and he shall not be entitled for his services to the compensation provided in § 50213.

SOURCE: CCP § 1334.

§ 50217. Assignee Discharge; Final Account.

Preparatory to the settlement of the estate, the assignee shall file his final account in the court, accompanying the same with an affidavit that a notice by registered mail has been given to all creditors who have proved their claims, that he will apply for a settlement of his account and for a discharge from all liability as assignee at a time specified in such notice, which time shall not be less than two (2) weeks nor more than three (3) months from such filing. At the hearing the court shall audit the account, and any person interested may appear and file exceptions in writing and contest the same. The court thereupon shall settle the account, and order a dividend of any portion of the estate, if any, remaining undistributed, and shall discharge the assignee, subject to compliance with the order of the court, from all liability as assignee to any creditor of the insolvent.

SOURCE: CCP § 1335.

ARTICLE 6
CLASSIFICATION AND PREFERENCE OF CREDITORS

§ 50250. Property Exempt From Disposition for the Benefit of Creditors.

§ 50251. Creditors, Paid Pro Rata.

§ 50252. Preferred Claims.

§ 50250. Property Exempt from Disposition for the Benefit of Creditors.

Merchandise, effects, and any other kind of property found among the property of the insolvent, the ownership of which has not been conveyed to him by a legal and irrevocable title, shall be considered to be the property of other persons and shall be placed at the disposal of its lawful owners on order of the court made at the hearing mentioned in § 50213, or at any ordinary hearing, if the assignee or any creditor whose right in the estate of the insolvent has been established shall petition in writing for such hearing and the court in its discretion shall so order, the creditors, however, retaining such rights in said property as belong to the insolvent, and subrogating him whenever they shall have complied with all obligations concerning said property. The following shall be included in this section:

1. All the separate property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues and profits thereof, as provided in 19 GCA §§ 6111 - 6114.

2. Property and effects deposited with the insolvent, or administered, leased, rented, or held in trust by him.

3. Merchandise in the possession of the insolvent, on commission, for purchase, sale, forwarding, or delivery.

4. Bills of exchange or promissory notes without endorsement or other expression transferring ownership remitted to the insolvent for collection and all others acquired by him for the account of another person, drawn, or endorsed to the remittor direct.

5. Money remitted to the insolvent, otherwise than on current account, and which is in his possession for delivery to a definite person

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

in the name and for the account of the remitter or for the settlement of claims which are to be met at the insolvent's domicile.

6. Amounts due the insolvent for sales of merchandise on commission, and bills of exchange and promissory notes derived therefrom in his possession, even when the same are not made payable to the owner of the merchandise sold, provided it is proven that the obligation to the insolvent is derived therefrom and that said bills of exchange and promissory notes were in the possession of the insolvent for account of the owner of the merchandise to be cashed and remitted, in due time, to the said owner; all of which shall be a legal presumption when the amount involved in any such sale shall not have been credited on the books of both the owner of the merchandise and of the insolvent.

7. Merchandise bought on credit by the insolvent so long as the actual delivery thereof has not been made to him at his store or at any other place stipulated for such delivery, and merchandise the bills of lading or shipping receipts of which have been sent him after the same has been loaded by order of the purchaser and for his account and risk.

In all cases arising under this section assignees may retain the merchandise so purchased or claim it for the creditors by paying the price thereof to the vendor.

8. Goods or chattels wrongfully taken, converted, or withheld by the insolvent if still existing in his possession or the amount of the value thereof.

SOURCE: CCP § 1340.

§ 50251. Creditors, Paid Pro Rata.

All creditors, except those whose claims are mentioned in the next following section, whose debts are duly proved and allowed, shall be entitled to share in the property and estate pro rata, after the property belonging to other persons referred to in the last preceding section has been deducted therefrom, without priority or preference whatever; provided, that any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the debtor, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held, for the benefit of the party entitled thereto, as the court may direct.

SOURCE: CCP § 1341.

§ 50252. Preferred Claims.

The following shall be preferred claims which shall be paid in the order named:

(a) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;

(b) Necessary funeral expenses of the debtor, or of his wife, or children who are under their parental authority and have no property of their own, when approved by the court;

(c) Debts, taxes, and assessments due the government of Guam;

(d) Debts for personal services rendered the insolvent by clerks, laborers, or domestic servants during the sixty (60) days immediately preceding the commencement of proceedings in insolvency, not to exceed two hundred dollars (\$200.00) for each claimant.

SOURCE: CCP § 1342.

ARTICLE 7
PARTNERSHIPS AND CORPORATIONS

§ 50300. Partnerships.

§ 50301. Corporations.

§ 50300. Partnerships.

A partnership, during the continuation of the partnership business, or during its dissolution until final settlement thereof, may be adjudged insolvent, either upon the petition of the partners, or any one of them, or upon petition of two or more creditors of the partnership qualified as provided in § 50150 of this Chapter. The court shall issue an order appointing a receiver therefor and rendering the property of the partnership and the separate property of each of the partners liable in accordance with the provisions of this Chapter and in accordance with the provisions of the Civil Code.

SOURCE: CCP § 1345.

§ 50301. Corporations.

The provisions of this Chapter shall apply to associations and corporations and upon the petition of any officer of any association or corporation, duly authorized by the vote of the board of directors or trustees, at a meeting specially called for that purpose, or by the assent in writing of a majority of the directors or trustees, as the case may be, or upon a creditor's petition made and presented in the manner provided in respect to debtors, like proceedings shall be had and taken as are provided in the case of debtors; provided, that in case the articles of association or by-laws of any association or corporation provide a method for such proceedings, such method shall be followed. All the provisions of this section which apply to the debtor, or set forth his duties, examination, and liabilities, or prescribe penalties, or relate to fraudulent conveyances, payments and assignments, apply to each and every officer of any association or corporation in relation to the same matters concerning the corporation. Whenever any corporation is declared insolvent, its property and assets shall be distributed to the creditors; but no discharge shall be granted to any corporation. The provisions of the section shall not apply to any corporation as to which there is any special provision of law for its liquidation in case of insolvency.

SOURCE: CCP § 1346.

**ARTICLE 8
PROOF OF DEBTS**

- § 50350. What May Be Proved.
- § 50351. Debtor as Endorser, Surety, Bail or Guarantor.
- § 50352. Contingent Debts and Liabilities.
- § 50353. Persons Liable as Surety, etc., for Debtor.
- § 50354. Rent.
- § 50355. Mutual Debts and Credits; Set-off.
- § 50356. Creditor Holding Mortgage or Lien.
- § 50357. Creditor Waives Rights of Action.
- § 50358. Creditors Accepting Preference may not Prove.
- § 50359. Examination of the Debtor.

§ 50350. What May Be Proved.

All debts due and payable from the debtor at the time of the adjudication of insolvency, and all debts then existing but not payable until a future time, a discount being made if no interest is payable by the terms of the contract, may be proved against the estate of the debtor.

SOURCE: CCP § 1350.

§ 50351. Debtor as Endorser, Surety, Bail or Guarantor.

If the debtor is bound by endorser, surety, bail or guarantor, upon any bill, bond, note or other specialty or contract, or for any debt of any person, and his liability shall not have become absolute until after the adjudication of insolvency, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared.

SOURCE: CCP § 1351.

§ 50352. Contingent Debts and Liabilities.

In all cases of contingent debts and contingent liabilities, contracted by the debtor and not herein otherwise provided for, the creditor may make claim therefor and have his claim allowed, with right to share in the dividends, if the contingency shall happen before order of the final dividend, or he may, at any time, apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall be done in such manner as the court shall order, and it shall be allowed for the amount so ascertained.

SOURCE: CCP § 1352.

§ 50353. Persons Liable as Surety, Etc., for Debtor.

Any person liable as bail, surety, or guarantor, or otherwise, for the debtor, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor, if he shall have proved the same, although such payments shall have been made after the proceedings in insolvency were commenced; and any person so liable for the debtor, and who has not paid the whole of said debt, but is still liable for the same, or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same in the name of the creditor.

SOURCE: CCP § 1353.

§ 50354. Rent.

Where the debtor is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof, up to the time of the insolvency, as if the same became due from day to day, and not at such fixed and stated periods.

SOURCE: CCP § 1354.

§ 50355. Mutual Debts and Credits; Set-off.

In all cases of mutual debts and mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed and paid. But no set-off or counterclaim shall be allowed of a claim in its nature not provable against the estate; provided, that no set-off or counterclaim shall be allowed in favor of any debtor to the insolvent of a claim purchased by or transferred to such debtor within thirty (30) days immediately preceding the filing, or after the filing of the petition by or against the insolvent.

SOURCE: CCP § 1355.

§ 50356. Creditor Holding Mortgage or Lien.

When a creditor has a mortgage, or pledge of real or personal property of the debtor, or a lien thereon, for securing the payments of a debt owing to him from the debtor, or an attachment or execution on property of the debtor duly recorded and not dissolved under this Title, he shall be admitted as a creditor for the balance of the debt only, after deducting the value of such property, such value to be ascertained by agreement between him and the receiver, if any, and if no receiver, then upon such sum as the court may decide to be fair and reasonable, before the election of an assignee, or by a sale thereof, to be made in such manner as the court shall direct; or the creditor may release or convey his claim to the receiver, if any, or if no receiver then to the commissioner, before the election of an assignee, or to the assignee if an assignee has been elected upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon, and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, or delivered up, or its value fixed, the creditor shall not be allowed to prove any part of his debt, but the assignee shall deliver to

the creditor all such property upon which the creditor holds a mortgage, pledge, or lien, or upon which he has an attachment or execution.

SOURCE: CCP § 1356.

§ 50357. Creditor Waives Rights of Action.

No creditor, proving his debt or claim, shall be allowed to maintain any suit therefor against the debtor, but shall be deemed to have waived all right of action and suit against him, and all proceedings already commenced or any unsatisfied judgment already obtained thereon shall be deemed to be discharged and surrendered thereby; and after the debtor's discharge, upon proper application and proof to the court having jurisdiction, all such proceedings shall be dismissed, and such unsatisfied judgments satisfied of record; provided, that no valid lien existing in good faith thereunder shall be thereby affected. A creditor proving his debt or claim shall not be held to have waived his right of action or suit against the debtor when a discharge has been refused or the proceedings have been determined without discharge. No creditor whose debt is provable under this Chapter shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor, or the assignee be stayed to await the determination of the court on the question of discharge; provided, that if amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid.

SOURCE: CCP § 1357.

§ 50358. Creditors Accepting Preference May not Prove.

Any person who shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this Chapter, shall not be allowed to prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend thereon, until he shall have surrendered to the assignee all property, money, benefit or advantage received by him under such preference.

SOURCE: CCP § 1358.

§ 50359. Examination of the Debtor.

The court may, upon the application of the assignee, or of any creditor, or without any application, before or after adjudication in insolvency, examine upon oath the debtor in relation to his property and estate and may examine any other person tendering or making proof of the claims, and may subpoena witnesses to give evidence relating to such matters. All examination of witnesses shall be had and depositions shall be taken in accordance with and in the same manner as is provided in other cases by this Code.

SOURCE: CCP § 1359.

ARTICLE 9 COMPOSITIONS

§ 50400. Compositions: When and How Made.

§ 50401. Hearing and Confirmation.

§ 50400. Compositions: When and How Made.

An insolvent debtor may offer terms of composition to his creditors after, but not before, he has filed in court a schedule of his property and list of his creditors as provided in this Chapter. An application for the confirmation of a composition may be filed in insolvency court after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims and after the consideration to be paid by the insolvent debtor to his creditors and the money necessary to pay all debts which have priority and the costs of proceedings have been deposited in such place as shall be designated by and subject to the order of the court.

SOURCE: CCP § 1360.

§ 50401. Hearing and Confirmation.

A time shall be fixed by the court for the hearing upon an application for the confirmation of a composition, and for the hearing of such objections as may be made to its confirmation. The court shall confirm a composition if satisfied that (1) it is for the best interest of the creditors; (2) that the insolvent debtor has not been guilty of any of the acts, or of a failure to perform any of the duties which would create a bar to his discharge; and (3) that the offer and its acceptance are in good faith, and have

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. Upon the confirmation of a composition, the consideration shall be distributed as the judge directs, and the case dismissed, and the title to the insolvent debtor's property shall revert in him. Whenever a composition is not confirmed, the estate in insolvency shall be administered as herein provided. The court may, upon application of a party in interest, filed at any time within six (6) months after the composition has been confirmed, set the same aside, and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioner since the confirmation of such composition.

SOURCE: CCP § 1361.

**ARTICLE 10
DISCHARGE**

§ 50450. Application for Discharge by Debtor.

§ 50451. When Not to be Granted; When Valid.

§ 50452. Creditor to File Objections.

§ 50453. Form of Discharge.

§ 50454. No Discharge Created by Fraud or Embezzlement.

§ 50455. Effect of Discharge.

§ 50450. Application for Discharge by Debtor.

At any time after the expiration of three (3) months from the adjudication of insolvency, but not later than one (1) year from such adjudication, unless the property of the insolvent debtor has not been converted into money, the debtor may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given to all creditors who have proved their debts to appear on a day appointed for that purpose and show cause why a discharge should not be granted to the debtor; said notice shall be given by registered mail and by publication at least once a week for six (6) weeks; provided, that if no debts have been proven, such notice shall not be required.

SOURCE: CCP § 1364.

§ 50451. When Not to be Granted; When Valid.

No discharge shall be granted, or if granted, no discharge will be valid:

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

1. If the debtor shall have sworn falsely in the affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in insolvency, in relation to any material fact concerning his estate or his debts or to any other material fact; or

2. If he has concealed any part of his estate or effects, or any books or writing relating thereto; or

3. If he has been guilty of fraud or willful neglect in the care or custody of his property or in the delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this Chapter; or

4. If, within one (1) month before the commencement of such proceedings, he has procured his real estate, goods, moneys, or chattels to be attached or seized on execution; or

5. If he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made, or been privy to the making of, any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; or

6. If he has given any fraudulent preference, contrary to the provisions of this Title, or has made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has admitted a false or fictitious debt against his estate; or

7. If, having knowledge that any person has proven such false or fictitious debt, he has not disclosed the same to his assignee within one (1) month after such knowledge; or

8. If, being a merchant or tradesman, he has not kept proper books of account in Arabic numerals and in accordance with the provisions of law; or

9. If he, or any other person on his account, or in his behalf, has influenced the action of any creditor, at any stage of the proceedings, by any pecuniary consideration or obligation; or

10. If he has, in contemplation of becoming insolvent, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is, or may be, under liability for him, or for the purpose of

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

preventing the property from coming into the hands of the assignee, or of being distributed under this Title in satisfaction of his debts; or

11. If he has been convicted of any misdemeanor under this Title, or has been guilty of fraud, contrary to the true intent of this Title; or

12. In case of voluntary insolvency, has received the benefit of this or any other law of insolvency or bankruptcy within six (6) years next preceding his application for discharge; or

13. If insolvency proceedings in which he could have applied for a discharge are pending by or against him in the court. Before any discharge is granted, the debtor shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this Chapter as grounds for withholding such discharge or as invalidating such discharge, if granted.

SOURCE: CCP § 1365.

§ 50452. Creditor to File Objections.

Any creditor opposing the discharge of a debtor shall file his objections thereto, specifying the grounds of his opposition, and after the debtor has filed and served his answer thereto, which pleading shall be verified, the court shall try the issue or issues raised, according to the practice provided by law in civil actions.

SOURCE: CCP § 1366.

§ 50453. Form of Discharge.

If it shall appear to the court that the debtor has in all things conformed to his duty under this Chapter, and that he is entitled under the provisions thereof to receive a discharge, the court shall grant him a discharge from all his debts, except as hereinafter provided, and shall give him a certificate thereof, under the seal of the court, in substance as follows:

In the Superior Court, Guam.

Whereas, _____ has been duly adjudged insolvent under the insolvency law of Guam, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said _____ be forever discharged from all debts and claims, which by said insolvency law are made provable against his estate, and which existed on the _____ day of _____, on which the petition of

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

adjudication was filed by (or against) him, excepting such debts, if any, as are by said insolvency law excepted from the operation of a discharge in insolvency.

Given under my hand, and the seal of the court, this _____ day of _____, 19 ____

Attest: _____,

Clerk.

(SEAL) _____,

Judge.

SOURCE: CCP § 1367.

§ 50454. No Discharge Created by Fraud or Embezzlement.

No debt created by the fraud or embezzlement of the debtor, or by his defalcation as a public officer or while acting in a fiduciary capacity, shall be discharged under this Chapter, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt. No discharge granted under this Chapter shall release, discharge, or affect any person liable for the same debt, for or with the debtor, either as partner, joint contractor, endorser, surety, or otherwise.

SOURCE: CCP § 1368.

§ 50455. Effect of Discharge.

A discharge, duly granted under this Title, shall, with the exceptions aforesaid, release the debtor from all claims, debts, liabilities, and demands set forth in his schedule, or which were or might have been proved against his estate in an insolvency, and may be pleaded by a simple averment that on the day of its date such discharge was granted to him, setting forth the same in full, and the same shall be a complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be prima facie evidence in favor of such fact and of the regularity of such discharge; provided however, that any creditor whose debt was proved or provable against the estate in insolvency who shall see fit to contest the validity of such discharge on the ground that it was fraudulently obtained and who has discovered the facts constituting the fraud subsequent to the discharge, may, at any time within one (1) year after the date thereof, apply to the court which granted it to set it aside and annul it.

SOURCE: CCP § 1369.

ARTICLE 11
FRAUDULENT PREFERENCES AND TRANSFERS

§ 50500. Transfers, Etc., Defraud Creditors.

§ 50500. Transfers, Etc., Defraud Creditors.

If any debtor being insolvent, or in contemplation of insolvency, within thirty (30) days before the filing of a petition by or against him, with a view to giving a preference to any creditor or person having a claim against him or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, mortgage, assignment, transfer, sale, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, to anyone, the person receiving such payment, pledge, mortgage, assignment, transfer, sale or conveyance, or to be benefited thereby, or by such attachment or seizure, having reasonable cause to believe that such debtor is insolvent, and that such attachment, sequestration, seizure, payment, pledge, mortgage, conveyance, transfer, sale, or assignment is made with a view to prevent his property from coming to his assignee in insolvency, or to prevent the same from being distributed ratably among his creditors, or to defeat the object of, or in any way hinder, impede, or delay the operation of or to evade any of the provisions of this title, such attachment, sequestration, seizure, payment, pledge, mortgage, transfer, sale, assignment, or conveyance is void, and the assignee, or the receiver, may recover the property, or the value thereof, as assets of such insolvent debtor.

If such payment, pledge, mortgage, conveyance, sale, assignment, or transfer is not made in the usual and ordinary course of business of the debtor, or if such seizure is made under a judgment which the debtor has confessed or offered to allow, that fact shall be prima facie evidence of fraud.

Any payment, pledge, mortgage, conveyance, sale, assignment, or transfer of property of whatever character made by the insolvent within one (1) month before the filing of a petition in insolvency by or against him, except for a valuable pecuniary consideration made in good faith, shall be void.

7 GCA CIVIL PROCEDURE
CH. 50 INSOLVENCY LAW

All assignments, transfers, conveyances, mortgages, or encumbrances of real estate shall be deemed under this section, to have been made at the time the instrument conveying or affecting such realty was filed for record in the Department of Land Management.

SOURCE: CCP § 1370.

**ARTICLE 12
MISCELLANEOUS**

- § 50550. Death of Debtor.
- § 50551. Statute of Limitations, When Not to Run.
- § 50552. Creditor May be Represented by Attorney.
- § 50553. Exemption for Certain Property.
- § 50554. Insolvency Proceedings, When Deemed Commenced.
- § 50555. Receivers.
- § 50556. Attachment.
- § 50557. Costs.
- § 50558. Dismissal.
- § 50559. Appeal to Supreme Court.

§ 50550. Death of Debtor.

If any debtor shall die after the order of adjudication, the proceedings shall be continued and concluded in like manner and with like effect and validity as if he had lived.

SOURCE: CCP § 1372.

§ 50551. Statute of Limitations, When Not to Run.

Pending insolvency proceedings by or against any person, partnership, association, or corporation, no statute of limitations shall run upon a claim of or against the estate of the debtor.

SOURCE: CCP § 1373.

§ 50552. Creditor May be Represented by Attorney.

Any creditor, at any stage of the proceedings, may be represented by his attorney or duly authorized agent, and the attorney or agent, properly authorized, shall be entitled to vote at any creditors' meeting as and for his principal.

SOURCE: CCP § 1374.

§ 50553. Exemption for Certain Property.

It shall be the duty of the court having jurisdiction of the proceedings, upon petition and after hearing, to exempt and set apart, for the use and benefit of said insolvent, such real and personal property as is by law exempt from execution, and also a homestead; but no such petition shall be heard as aforesaid until it is first proved that notice of the hearing of the application therefor has been duly given by the clerk, by causing such notice to be posted in at least three public places in the town or city at least ten (10) days prior to the time of such hearing, which notice shall set forth the name of said insolvent debtor, and the time and place appointed for the hearing of such application, and shall briefly indicate the homestead sought to be exempted or the property sought to be set aside; and the decree must show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of that fact.

SOURCE: CCP § 1375.

§ 50554. Insolvency Proceedings, When Deemed Commenced.

The filing of a petition by or against a debtor upon which or upon an amendment of which an order of adjudication in insolvency may be made, shall be deemed to be the commencement of proceedings in insolvency under this Chapter.

SOURCE: CCP § 1376.

§ 50555. Receivers.

Upon the filing of either a voluntary or involuntary petition in insolvency, a receiver may be appointed by the court in which the proceeding is pending, at any time before the election of an assignee, when it appears by the verified petition of a creditor that the assets of the insolvent, or a considerable portion thereof, have been pledged, mortgaged, transferred, assigned, conveyed, or seized, on legal process, in contravention or violation of the provisions of § 50500 of this Chapter, and that it is necessary to commence an action to recover the same. The appointment, oath, undertaking, and powers of such receiver shall in all respects be regulated by the laws of Guam applicable to receivers. When an assignee is chosen, and has qualified, the receivers shall forthwith return to court an account of the assets and property which have come into his possession, and of his disbursements, and a report of all actions or proceedings commenced by him for the recovery of any property belonging

to the estate, and the court shall thereupon summarily hear and settle the receiver's account, and shall allow him a just compensation for his service and his expenses, including a reasonable attorney's fee, whereupon the receiver shall deliver all property, assets, or effects remaining in his hands, to the assignee who shall be substituted for the receiver in all pending actions or proceedings.

SOURCE: CCP § 1377.

§ 50556. Attachment.

When an attachment has been made and is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor, the plaintiff may prove the legal costs and disbursements of the suit, and of the keeping of the property, and the amount thereof shall be a preferred debt.

SOURCE: CCP § 1378.

§ 50557. Costs.

In all contested matters in insolvency the court may, in its discretion, award costs to either party to be paid by the other, or to either or both parties to be paid out of the estate, as justice and equity may require. In awarding costs, the court may issue execution therefor. In all involuntary cases under this Title, the court shall allow the petitioning creditors out of the estate of the debtor, if any adjudication of insolvency be made, as a preferred claim, all legal costs and disbursements incurred by them in that behalf.

SOURCE: CCP § 1379.

§ 50558. Dismissal.

If no creditor files written objection, the court may, upon the application of the debtor, if it be a voluntary petition, or of the petitioning creditors if a creditor's petition, dismiss the petition and discontinue the proceedings at any time before the appointment of an assignee, upon giving not less than two (2) weeks nor more than three (3) months notice to the creditors, in the same manner that notice of the time and place of election of an assignee is given; provided however, that by written consent of all creditors filed in the court the proceedings may be dismissed at any time. After the appointment of an assignee, no dismissal shall be made without the consent of all parties interested in or affected thereby.

SOURCE: CCP § 1380.

§ 50559. Appeal to Supreme Court.

An appeal may be taken to the Supreme Court in the following cases:

1. From an order granting or refusing an adjudication of insolvency and, in the latter case, from the order fixing the amount of costs, expenses, damages, and attorney's fees allowed the debtor;
2. From an order made at the hearing of any account of an assignee, allowing or rejecting a creditor's claim, in whole or in part, when the amount in dispute exceeds three hundred dollars (\$300.00);
3. From an order allowing or denying a claim for property not belonging to the insolvent presented under § 50250 of this Chapter;
4. From an order settling an account of an assignee;
5. From an order against or in favor of setting apart homestead or other property claimed as exempt from execution; [or]
6. From an order granting or refusing a discharge to the debtor.

The provisions of this Title shall govern appeals under this Chapter, except that when an assignee has given an official undertaking and appeals from a judgment or order in insolvency, his official undertaking stands in the place of an undertaking on appeal, and the sureties thereon are liable on such undertaking; provided however, that an interlocutory appeal shall not stay proceedings unless a written undertaking be entered into on the part of the appellant, with at least two sureties, in such an amount as the court may direct, but not less than double the value of the property involved, to the effect that if the order appealed from be affirmed, or the appeal dismissed, appellant will pay all costs and damages which the adverse party may sustain by reason of the appeal and the stay of proceedings.

SOURCE: CCP § 1381. Reenacted by P.L. 21-147 (eff. 5/1/93).

NOTE: This section was amended by P.L. 12-85 to direct all appeals to the Supreme Court of Guam. It was reenacted by P.L. 21-147 to reflect the post-*Olsen* Supreme Court of Guam.
