
INSOLVENCY ACT, 2013

(Act No.4 of 2013)

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INSOLVENCY ACT, 2013

(Act No. 4 of 2013)



A BILL

OF

AN ACT to repeal the Bankruptcy and Insolvency Act, Cap 13 and to consolidate the law relating to bankruptcy of individuals, winding up of companies and company reorganisation and for matters connected therewith and incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1.(1) This Act may be cited as the Insolvency Act, 2013.

Short title and
commencement

(2) Part VIII of this Act shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“administrator” means the person appointed as administrator of a company in reorganisation under section 206(1);

“articles” has the meaning assigned to it under the Companies Act;

“assets” means any property in which a person has an interest or over which the person has any rights;

“attorney” means an attorney-at-law as defined under the Legal Practitioners Act;

“bankrupt” means a person who has been declared bankrupt;

“bankruptcy demand” means a demand referred to under section 5;

“charge”—

(a) means a right or interest in relation to property owned by a debtor by virtue of which a creditor of the debtor is entitled to claim payment in priority to other creditors; and

(b) includes a fixed or a floating charge;

“Civil Code” means the Civil Code of Seychelles Act;

“Court” means the Supreme Court of Seychelles;

“contributory” has the meaning assigned to it by section 127;

“commencement of winding up” has the meaning assigned to it by sections 101 and 148;

“Companies Act” means the Companies Act, 1972;

“company” has the meaning assigned to it under the Companies Act;

“composition” means a post bankruptcy composition referred to in section 81;

“creditors’ voluntary winding up” has the meaning assigned to it by section 146(1)(a);

“debtor” means—

- (a) a person against whom a bankruptcy petition has been filed under Part II; or
- (b) a company in the course of being wound up by the Court or by way of creditors’ voluntary winding up;

“Deputy Official Receiver” means the Deputy Official Receiver appointed under section 353(1)(b);

“director” in relation to a company, has the meaning assigned to it under the Companies Act;

“financial institution” has the meaning assigned to it under the Financial Institutions Act;

“Land Registrar” includes —

- (a) the Land Registrar appointed under the Land Registration Act; or
- (b) the Registrar of Deeds appointed under the Mortgage and Registration Act;

“members’ voluntary winding up” has the meaning assigned to it by section 146(1)(b);

“Minister” means the Minister responsible for Finance;

“officer” in relation to a company, has the meaning assigned to it under the Companies Act;

“Official Receiver” means the Official Receiver appointed under section 353(1)(a);

“promoter” means any person engaged in the formation of a company, or in raising money to enable a company to be formed or to acquire any assets or an existing business, or in negotiating the acquisition of any assets or an existing business by or for a company, but does not include a person who acts only in a professional capacity on behalf of a promoter;

“provable debt” has the meaning assigned to it by section 293;

“Provisional Receiver” means the Provisional Receiver appointed under section 18;

“prescribed” means prescribed by way of regulations;

“property” means land, movables, whether tangible or not, debts, claims, rights of action, licences, concessions, patents, copyright, trademarks, designs, knowledge and information which has been confidentially communicated or which is protected by law similarly to intangible movables, all other choses in action of any kind whatsoever, and the capital of a company which has not been called or paid up or credited as paid up;

“Registrar” means the Registrar of Companies;

“relative”, in relation to a person, means—

- (a) his or her parent, spouse, child, brother or sister;
- (b) the parent, child, brother or sister of his or her spouse,

and includes a nominee or trustee of a person referred to in paragraph (a) or (b);

“secured creditor” means a person holding a charge on or over property owned by a debtor;

“Securities Act” means the Securities Act, 2007;

“special manager” has the meaning assigned to it by section 130;

“spouse”, in relation to a person, includes a person with whom the person has a relationship in the nature of marriage;

“undistributed money” means any money —

- (a) received by the Official Receiver or a liquidator from the realisation of the assets of a debtor; and
- (b) required to be paid to any person under sections 338 to 343, but which cannot be distributed for any reason.

“usher” means an usher of the Court;

“winding up resolution” has the meaning assigned to it by section 146(11);

PART II - BANKRUPTCY

Sub-Part I – Declaration of Bankruptcy

3. A person, other than a company, may be declared bankrupt by a bankruptcy order made by the Court on the petition of the person or creditors of the person in accordance with the provisions of this Part.

Declaration of
bankruptcy

4.(1) A person referred to in subsection (2) may apply to the Court for a bankruptcy order where —

Creditor's
petition

- (a) the debtor owes the creditor SCR25,000 or more or, where two or more creditors joined in the same petition, the debtor owes a total of SCR25,000 or more;
- (b) one of the grounds referred to in subsection (3) exists;
- (c) the debt is for a specific sum; and

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- (d) the debt is payable immediately or at a specified future time.

(2) (a) Subject to paragraph (b), a petition for a bankruptcy order may be made by —

- (i) a creditor;
- (ii) where there are two or more creditors, the creditors jointly; or
- (iii) the duly authorised representative of the creditors.

(b) A secured creditor may petition the Court for a bankruptcy order where —

- (i) the petition contains a statement that he or she is willing, in the event of a bankruptcy order being made, to give up his or her security for the benefit of all the bankrupt's creditors; or
- (ii) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement of the estimated value of the security for the secured part of the debt at the date of the petition, and the creditor has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least SCR25,000.

(3) (a) The Court shall not make a bankruptcy order on a creditor's petition unless the Court is satisfied that one of the following grounds is established —

- (i) failure of the debtor to comply with a bankruptcy demand;
- (ii) debtor's departure from Seychelles with intent to defeat or delay payment to a creditor;

(iii) notification in writing by the debtor to a creditor or creditors that he or she has suspended, or proposes to suspend, payment of his or her debts; or

(iv) admission to creditors that the debtor is unable to pay his or her debts due.

(b) There shall be an admission for the purposes of subsection (3) (a) (iv) where the debtor, at a meeting of creditors, admits that he or she is unable to pay his or her debts due and —

(i) a majority in number and value of the creditors present at the meeting require the debtor to file a petition for a declaration of bankruptcy; and

(ii) the debtor having agreed to file a petition for a declaration of bankruptcy fails to do so within 2 working days after the meeting.

(4) A debtor against whom a bankruptcy order may be made shall be domiciled in Seychelles, and —

(a) be present in Seychelles on the day on which the application for a bankruptcy order is presented; or

(b) have, at any time during the period of 3 years preceding the day on which the petition for a bankruptcy order is presented —

(i) been ordinarily resident, or had a place of residence, in Seychelles; or

(ii) carried on business in Seychelles.

(5) For the purposes of subsection (4) (b) (ii), “carrying on business” includes the carrying on of business by —

(a) a partnership of which the debtor is a member; and

(b) an agent or manager of the debtor or of such partnership referred to in paragraph (a).

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- (6) A petition by a creditor for a bankruptcy order shall —
- (a) be supported by affidavit of the creditor or some other person having knowledge of the facts;
 - (b) be served on the debtor; and
 - (c) call on the debtor to show cause at the hearing of the petition as to why the debtor should not be declared bankrupt.

(7) A petition under this section shall not be withdrawn except with leave of the Court on such terms as it may determine.

Bankruptcy
demand

5.(1) A bankruptcy demand referred to in section 4(3) (a) (i) shall —

- (a) require the debtor, in relation to the judgment debt or the sum ordered to be paid under a final order or the amount otherwise claimed to be owing, to —
 - (i) pay the amount owing, including any interest to the date of payment of a debt that carries interest, plus costs;
 - (ii) give security for the amount owing that satisfies the creditor or the Court; or
 - (iii) compromise the amount owing on terms that satisfy the Court or the creditor;
- (b) state the consequences if the debtor fails to comply with the bankruptcy demand; and
- (c) be served on the debtor in Seychelles or, with the Court's permission, outside Seychelles.

(2) The bankruptcy demand may authorise an agent to act on behalf of the creditor where the demand requires —

- (a) any payment to be made to the creditor; or
- (b) any other step to be taken that involves the creditor.

(3) A bankruptcy demand shall not be invalidated by reason that the amount owing by the debtor has been overstated unless —

- (a) the debtor notifies the creditor in writing that he or she disputes the validity of the demand because it overstates the amount owing; and
- (b) the debtor makes that notification within the time specified in the demand for the debtor to comply with the demand.

6.(1) There shall be a failure to comply with a bankruptcy demand where —

Failure to
comply with
bankruptcy
demand

- (a) a creditor has obtained a final judgment or a final order against the debtor for any amount;
- (b) execution of the judgment or order has not been stayed by a Court;
- (c) the debtor has, within 42 days prior to the date of the petition for a bankruptcy order, been served with a bankruptcy demand;
- (d) the debtor has not, within the period specified in subsection (2), —
 - (i) complied with the requirements of the bankruptcy demand; or
 - (ii) satisfied the Court that he or she has a cross-claim against the creditor;
- (e) the debtor is indebted to the creditor in relation to a provable debt; and
- (f) the bankruptcy demand notifies the debtor that if the debtor disputes the debt or claims that any indebtedness on the part of the debtor to the creditor is less than SCR25,000, the debtor may appear before the Court in opposition to any petition filed by the creditor to have the debtor declared bankrupt and show cause that —

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- (i) he or she is not indebted to the creditor; or
 - (ii) the amount owed to the creditor is less than SCR25,000.

(2) The period referred to in subsection (1)(d) is —

- (a) where the debtor is served with the bankruptcy demand in Seychelles, 14 days after service; or
- (b) where the debtor is served with the bankruptcy demand outside Seychelles, the time specified in the order of the Court permitting service outside Seychelles.

(3) In this section, —

- (a) a creditor who has obtained a final judgment or a final order includes a person who is for the time being entitled to enforce a final judgment or final order;
- (b) where a Court has given permission for enforcing an arbitration award that the debtor pay money to the creditor —
 - (i) final order includes the arbitration award; and
 - (ii) proceedings includes the arbitration proceedings in which the award was made;
- (c) a “cross-claim” means a counter-claim, set-off or cross-demand that —
 - (i) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and
 - (ii) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

7.(1) The Court may stay or adjourn the hearing of a petition conditionally or unconditionally —

Adjournment
of creditor's
petition or
refusal to
declare
bankruptcy

- (a) for the purpose of obtaining further evidence;
- (b) to direct the Official Receiver to prepare a report under section 15 on whether the debtor should make an offer to the creditor; or
- (c) for any other just cause.

(2) The Court may refuse to declare the debtor bankrupt where —

- (a) the creditor has failed to establish any one of the grounds referred to in section 4(3)(a);
- (b) the creditor has failed to establish that the debtor has been served with the bankruptcy demand;
- (c) the debtor satisfies the Court that he or she is able and willing to pay his or her debts; or
- (d) it is just and equitable or there is other sufficient cause that the debtor should not be declared bankrupt.

8. Where the creditor's petition for a bankruptcy order is based on the ground that the debtor failed to comply with a bankruptcy demand, and the debtor has appealed the judgment or order underlying the bankruptcy demand, and the appeal is still to be determined, the Court may —

Judgment
under appeal

- (a) stay the creditor's petition for a bankruptcy order;
or
- (b) refuse the petition.

9.(1) Where the debtor appears in opposition to a creditor's petition and avers that he or she does not owe a debt to the creditor or owes a debt to the creditor which is less than SCR25,000, the Court may, instead of refusing the petition, stay the petition so that the question of the existence or amount of the debt can be determined at a trial.

Underlying
debt not
determined

(2) Where the petition is based on the ground set out in section

6(1)(e) and (f), the Court shall have jurisdiction for the trial of any question in relation to the existence or amount of the debt.

(3) Where the petition is based on any ground other than the grounds set out in section 6(1)(e) and (f), the trial in relation to a debt of less than SCR25,000 shall, unless the Court orders otherwise, be heard in the Magistrate's Court.

(4) The Court may, prior to making an order to stay the hearing of the petition, require the debtor to give security to the creditor for any debt that may be established as owing by the debtor to the creditor, and for the costs of establishing the debt.

Court's power
where more
than one
petition or
more than one
debtor

10.(1) Where there is more than one petition for a bankruptcy order, and one petition has been stayed or adjourned by the Court, the Court may, for good cause shown, make a bankruptcy order on the petition that has not been stayed or adjourned.

(2) Where the Court makes a bankruptcy order under subsection (1), the Court shall dismiss the petition as has been stayed or adjourned on such terms as the Court thinks appropriate.

(3) Where a creditor's petition for a bankruptcy order relates to more than one debtor, the Court may refuse to make an order in relation to one or more of the debtors without affecting the petition in relation to the remaining debtor or debtors.

Order on
offer to
creditors

11.(1) Where the debtor has made an offer to his or her creditors under section 88, the debtor or the representative of the debtor's creditors or any creditor may apply to the Court for an order on the offer made by the debtor.

(2) On hearing the application under subsection (1), the Court may —

- (a) order that the offer is not a ground for making a bankruptcy order;
- (b) stay or refuse the petition for a bankruptcy order;
- (c) order that any other petition for a bankruptcy order shall not be filed;

-
- (d) make any order as to costs as the Court thinks appropriate; or
 - (e) where it orders that costs shall be paid to the creditor who has applied for the bankruptcy order, order that the costs shall be paid out of the debtor's estate.

12.(1) The Court may substitute the creditor who filed the petition for a bankruptcy order by another creditor, where — Substitution of creditor

- (a) the creditor who filed the petition has not proceeded with due diligence or at the hearing of the petition offers no evidence; and
- (b) the debtor owes the other creditor SCR25,000 or more.

(2) The creditor who has been substituted under subsection (1), shall file another petition for a bankruptcy order and may rely on the grounds for the declaration of bankruptcy on which the first petition was based.

13.(1) Subject to subsection (2), a debtor may file a petition with the Court for a bankruptcy order on the ground that he or she is unable to pay his or her debts where he or she has combined debts of SCR25,000 or more. Debtor's petition

(2) The Court shall not accept a petition by a debtor for a bankruptcy order unless it is accompanied by a statement of the affairs of the debtor which is not, in the Court's opinion, incorrect or incomplete.

(3) A debtor shall not withdraw his or her petition after presentation without leave of the Court.

(4) The statement of affairs referred to in subsection (2) shall show the particulars of the debtor's assets, debts, liabilities, creditors, securities held by, or privileges to which, the creditors are entitled and such other information as the Court may require.

14.(1) Where the ground set out in section 13(1) is established, the Court shall make a bankruptcy order against the debtor unless it is of the opinion that it would be appropriate in the circumstances to direct the Bankruptcy order on debtor's petition

Official Receiver to prepare a report under section 15 on whether the debtor should make an offer to his or her creditors, in which case the Court shall adjourn the petition.

(2) A bankruptcy order made on a debtor's petition shall have the same effect as a bankruptcy order made on a creditor's petition.

Report of
official
receiver

15.(1) Where the Court directs the Official Receiver to prepare a report under sections 7(1)(b) or 14(1), the Official Receiver shall, within 14 days submit to the Court a report as to whether the debtor is willing to make an offer to his or her creditors in accordance with section 88.

(2) A report referred to in subsection (1) shall state —

- (a) whether, in the opinion of the Official Receiver, a meeting of the debtor's creditors should be summoned to consider the debtor's offer; and
- (b) where in the Official Receiver's opinion such a meeting should be summoned, the date, time and place for the meeting.

(3) In considering a report under this section, the Court may —

- (a) where it feels that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's offer, make an order for the appointment of the Official Receiver as Provisional Receiver under section 18; or
- (b) where it feels it would be inappropriate to make an order under paragraph (a), make a bankruptcy order.

(4) An order made under subsection (3)(a) shall cease to have effect at the expiry of such period as the Court may specify for the purpose of enabling the debtor's offer to be considered by his or her creditors.

(5) Where a report referred to under subsection (1) states that a meeting of the debtor's creditors should be summoned, the Official Receiver shall, unless the Court otherwise directs, summon the meeting for the date, time and place proposed in his or her report.

16.(1) Two or more debtors, who are carrying on a business as partners, may file a joint petition for a bankruptcy order.

Debtors' joint petition where partnership exists

(2) When a petition under subsection (1) is filed, the debtors shall be declared bankrupt jointly and severally.

17.(1) Where the Court makes a bankruptcy order, the Court may, if the conditions referred to under subsection (2) are satisfied, issue a certificate for the expeditious administration of the bankrupt's estate.

Expeditious administration

(2) The conditions under which a certificate for expeditious administration of the bankrupt's estate may be issued are that —

- (a) the aggregate amount of the bankruptcy debts so far unsecured would be less than SCR25,000; and
- (b) the debtor has not, within the period of 5 years preceding the date on which the petition for a bankruptcy order is filed, been declared bankrupt or made a composition with his or her creditors in satisfaction of his or her debts or an offer to his or her creditors.

(3) The Court may revoke a certificate for expeditious administration of the debtor's estates where it appears to it that, on any ground existing at the time the certificate was issued, the certificate should not to have been issued.

(4) Where a certificate for expeditious administration of the bankrupt's estates is issued —

- (a) the Official Receiver may dispense with the first meeting of creditors provided for in section 24;
- (b) no fee shall be allowed to any attorney except on the certificate of the Court that the presence of an attorney was necessary; and
- (c) the bankrupt shall be discharged after 2 years.

Sub-Part II – Provisional Receiver

18.(1) Where a creditor's petition for a bankruptcy order has been

Appointment of Official Receiver as Provisional Receiver

filed but not yet considered by the Court, a creditor of the debtor may apply to the Court for an order appointing the Official Receiver as Provisional Receiver of all or part of the debtor's property.

(2) The Court may make an order under subsection (1) at any time before it makes a bankruptcy order.

(3) As part of the order under subsection (1) or, on the subsequent application of a creditor or the Official Receiver, the Court may authorise the Official Receiver to —

- (a) take possession of any property;
- (b) sell any perishable property or property that is likely to fall rapidly in value;
- (c) control the debtor's business or property as directed by the Court; or
- (d) exercise any of the powers vested in him or her by section 65 or 66.

(4) An order for the Official Receiver to control the debtor's business shall be confined to the extent necessary, in the Court's opinion, for conserving the debtor's property.

(5) (a) The appointment of the Official Receiver as Provisional Receiver of the debtor's property shall be advertised by the Official Receiver in such manner as may be prescribed.

(b) A creditor shall not commence or continue any execution process against the property of the debtor after the appointment of the Official Receiver as Provisional Receiver has been advertised.

(c) A creditor or any other interested person may apply to the Court for an order allowing the commencement or continuation of an execution process, and the Court may make an order on such terms as it thinks appropriate.

Sub-Part III – Effect of Declaration of Bankruptcy

19.(1) The date and time of a declaration of bankruptcy, and the commencement of a bankruptcy, shall be the date and time when the Court

Date of
declaration of
bankruptcy and
disqualification
of bankrupt

made the bankruptcy order.

(2) The Court shall record on the bankruptcy order the date and time when the order was made.

(3) The Court shall notify the Official Receiver as soon as practicable after a bankruptcy order is made.

(4) It shall be presumed that an act was done, or a transaction was entered into or effected, after the date of a declaration of bankruptcy, unless anything to the contrary is proved.

(5) Except where a declaration of bankruptcy is the subject of an appeal —

- (a) a person may not later assert that the declaration of bankruptcy was not valid or that a prerequisite for declaration of bankruptcy was absent; and
- (b) the declaration of bankruptcy shall be binding on every person.

(6) Where a debtor is declared bankrupt, he or she shall, subject to this Act, be disqualified from being elected or appointed to any public office.

(7) The disqualification referred to in subsection (2) shall be removed and shall cease when the declaration of bankruptcy is cancelled, or the debtor obtains his or her discharge with a certificate from the Court to the effect that his or her bankruptcy was caused by misfortune without any misconduct on his or her part.

(8) The Court may grant or refuse to grant a discharge certificate as it thinks fit and a debtor may appeal the Court's decision refusing such certificate.

20.(1) On a declaration of bankruptcy by the Court —

- (a) the Official Receiver shall advertise the declaration of bankruptcy under subsections (2);
- (b) the bankrupt shall file with the Official Receiver a statement of his or her affairs under section 23(1), if the bankrupt has not already done so;

Procedure
following
declaration
of
bankruptcy

-
- (c) the Official Receiver shall call a meeting of the bankrupt's creditors under section 24;
 - (d) proceedings to recover certain debts are stayed under section 21; and
 - (e) execution process may not be commenced or continued after the declaration of bankruptcy is advertised under section 22.

(2) Subject to subsection (3), the Official Receiver shall, advertise the declaration of bankruptcy of a bankrupt in the prescribed manner.

(3) The Court may order that the Official Receiver shall not advertise the declaration of bankruptcy if the bankrupt has appealed the bankruptcy order.

Stay of
proceedings

21.(1) Subject to subsection (2), upon a declaration of bankruptcy all proceedings to recover any debt provable in the bankruptcy shall be stayed.

(2) On the application of any creditor or other person interested in the bankruptcy, the Court may allow proceedings commenced prior to the date of the declaration of bankruptcy to continue on such terms as the Court thinks appropriate.

Execution
process after
declaration of
bankruptcy

22.(1) A creditor shall not commence or continue an execution, attachment or other process and shall not have any remedy against the bankrupt's property or person, for the recovery of a debt provable in the bankruptcy, after the Official Receiver has —

- (a) advertised the bankruptcy order under section 20(2); or
- (b) given notice of the bankruptcy order to the creditor.

(2) After advertisement of the declaration of bankruptcy or notice by the Official Receiver to the creditor, a creditor shall not seize or sell any property by way of distress for rent due by the bankrupt, but he or she may continue with the distress procedure if it has started.

23.(1) After a declaration of bankruptcy, the bankrupt shall file with the Official Receiver a statement of his or her affairs in accordance with section 13(4) except where he or she has filed a statement under section 13(2).

Statement
of affairs

(2) Where no statement of affairs has been filed or the statement of affairs filed is incomplete or incorrect, the Official Receiver shall, as soon as practicable after a declaration of bankruptcy, send to the bankrupt a notice stating —

- (a) that the bankrupt shall file a statement of affairs in accordance with section 13(4); and
- (b) the time when the statement of affairs shall be filed.

(3) The Official Receiver shall send the notice to the address of the bankrupt stated in the petition for a bankruptcy order or the bankrupt's last known address.

(4) The bankrupt shall file his or her statement of affairs with the Official Receiver within 14 days of the declaration of bankruptcy or, as the case may be, after receiving the Official Receiver's notice under subsection (2).

(5) At any time after filing a statement of affairs with the Official Receiver, the bankrupt may file additional or amended statement of affairs.

24.(1) Subject to section 17(4), the Official Receiver shall, after a declaration of bankruptcy, call a first meeting of the bankrupt's creditors, unless there are special circumstances, not less than 5 weeks after the declaration of bankruptcy, by sending a notice of the time and place of the meeting by ordinary post to —

First meeting
of creditors

- (a) the bankrupt, at the bankrupt's address stated in the application for a bankruptcy order or his or her last known address;
- (b) each creditor named in the bankrupt's statement of affairs, at the address given in the statement of affairs or at any other address that the Official Receiver believes is the creditor's address; and
- (c) any other creditor known to the Official Receiver.

(2) The Official Receiver shall advertise the time and place of the meeting in such manner as may be prescribed.

(3) The Official Receiver may not call the first meeting of the creditors where he or she —

- (a) decides that the meeting should not be called; or
- (b) sends to each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Official Receiver, a notice in accordance with subsection (5); and
- (c) does not receive, within 10 working days after the Official Receiver's notice was sent, written notice from a creditor requiring the Official Receiver to call the meeting.

(4) In deciding whether the meeting should not be called, the Official Receiver shall consider —

- (a) the bankrupt's assets and liabilities;
- (b) the likely result of the bankruptcy; and
- (c) any other relevant matter.

(5) The Official Receiver's notice to creditors under subsection (3) (b) shall state —

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

(6) Subject to subsection (7), the Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

(7) The Official Receiver shall call a subsequent meeting of creditors if required to do so by one-quarter in number and value of the creditors who have proved their debts.

(8) Sections 282 to 294 shall, to the extent applicable, apply to meetings of creditors under this section.

(9) A meeting of creditors and the resolutions passed at the meeting are valid notwithstanding that some creditors did not receive the notice of the meeting, unless the Court otherwise orders.

25.(1) The creditors at a meeting held in pursuance of section 24 (1) or (6) may pass a resolution —

Appointment of expert or committee to assist Official Receiver

- (a) appointing an expert to assist the Official Receiver in the administration of the bankrupt's estate; and
- (b) providing for the expert's remuneration out of the bankrupt's estate.

(2) The creditors at a meeting of creditors, held in pursuance of section 24(1) or (6) may, pass a resolution appointing a committee to assist the Official Receiver in the administration of the bankrupt's estate and the Court may approve any remuneration of the members of the committee out of the bankrupt's estate.

26. A creditor or an attorney or accountant acting for the creditor, who has lodged a proof of debt may at any reasonable time inspect and take extracts or copies of —

Access to information regarding debtor's estate

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

27. Where a bankrupt dies after a declaration of bankruptcy, the bankruptcy continues in all respects as if the bankrupt were alive.

Bankrupt's death after declaration of bankruptcy

Sub-Part IV –Bankrupt’s Estate

Bankrupt’s
estate

28.(1) Subject to subsections (2) and (3), a bankrupt’s estate shall comprise of —

- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and
- (b) any property which, pursuant to this Part, forms part of the bankrupt’s estate or is treated as forming part of his or her estate.

(2) Subsection (1) shall not apply to —

- (a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him or her in his or her employment, business or vocation up to a maximum value assessed by the Official Receiver of SCR10,000 or such other amount as may be prescribed or agreed to by resolution of the creditors;
- (b) such clothing, bedding, furniture, household equipment and provisions as are necessary to satisfy the basic domestic needs of the bankrupt and his or her family, up to a maximum value assessed by the Official Receiver of SCR10,000 or such other amount as may be prescribed or agreed by resolution of the creditors; and
- (c) property held by the bankrupt on trust for any other person.

(3) Property —

(a) in relation to a bankrupt, includes reference to any power exercisable by the bankrupt over or in respect of property in or outside Seychelles for the bankrupt’s benefit;

(b) which forms part of the bankrupt’s estate shall be subject to the rights of any person other than the bankrupt, and a secured creditor may take possession of and realise or otherwise deal with property

over which he or she has a charge, disregarding any rights the secured creditor has given up under section 4 (2) (b) (i) and any rights which have otherwise been given up in accordance with section 302 or in such manner as may be prescribed.

29. On a declaration of bankruptcy by the Court, the bankrupt's estate shall vest in the Official Receiver without the need for any conveyance, assignment or transfer.

Vesting in
Official
Receiver

30. Subject to section 31, during the period from the date of presentation of a bankruptcy petition up to the discharge of the bankrupt —

Property
acquired by
debtor after
declaration of
bankruptcy

- (a) all property in or outside Seychelles that the bankrupt acquires or that passes to the bankrupt shall vest in the Official Receiver; and
- (b) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's benefit shall vest in the Official Receiver.

31.(1) A transaction between the bankrupt and any other person under which, after declaration of bankruptcy, the bankrupt acquires property, or property passes to the bankrupt shall be valid against the Official Receiver where —

Transaction
in good faith
and for value

- (a) the other person deals with the bankrupt in good faith and for value; and
- (b) the transaction is completed without an intervention by the Official Receiver.

(2) Where the other person is the bankrupt's bank, a transaction dealing with the bankrupt for value includes —

- (a) the receipt by the bank of any money, security, or negotiable instrument from the bankrupt or by the bankrupt's order or direction;
- (b) a payment by the bank to the bankrupt or by the bankrupt's order or direction; and
- (c) the delivery by the bank of a security or negotiable

instrument to the bankrupt or by the bankrupt's order or direction.

(3) A payment of money or delivery of property by a legal representative to, or under direction of, the bankrupt is a transaction for value under subsection (2).

Rights under
execution or
attachment

32.(1) Where a creditor has commenced execution against movable property of a debtor, or has attached any debt due to him or her, the creditor shall not be entitled to retain the benefit of the execution or attachment against the Official Receiver, unless the execution or attachment is completed prior to the declaration of bankruptcy and the notice of the presentation of any petition for a bankruptcy order by or against the debtor.

(2) For the purposes of this section, an execution against goods is completed by seizure and sale, and an attachment of a debt is completed by receipt of the debt.

Duties of
usher as to
goods seized

33.(1) (a) Where movables of a debtor are taken in execution and prior to their sale notice is served on the usher that a bankruptcy order has been made against the debtor, the usher shall, on request, deliver the goods to the Official Receiver who may sell the goods or part thereof for the purpose of satisfying the charge.

(b) The costs of execution shall be a charge on the goods delivered.

(2) (a) Where movables of a debtor are sold in execution of a judgment for a sum exceeding SCR10,000, the usher shall deduct the costs of the execution from the proceeds of the sale, and pay the balance to the cashier of the Court who shall retain it for a period of 14 days.

(b) Where during the period referred to in paragraph (a), the cashier of the Court is served with a notice of a bankruptcy petition having been presented against or by the debtor, the cashier of the Court shall hold the proceeds on trust to pay to the Official Receiver.

(c) Where no such notice of a bankruptcy petition is served on the cashier of the Court within the period referred to in paragraph (a) or where notice having been served, the debtor is not declared bankrupt on such petition or on any other petition of which the

cashier of the Court has notice, the cashier of the Court may deal with the proceeds as if no notice had been served on him or her.

(3) A person who purchases the goods in good faith from the usher shall acquire a good title against the Official Receiver.

34. Subject to sections 318 to 336, nothing in this Act shall, in the case of a bankruptcy, invalidate —

*Bona fide
transaction
without
notice*

- (a) any payment by the bankrupt to any of his or her creditors;
- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration; or
- (d) any contract, dealing or transaction by or with the bankrupt for valuable consideration,

where —

- (i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before declaration of bankruptcy; and
- (ii) the person to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, had no notice of the presentation of a petition for a bankruptcy order, at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction.

35.(1) Any interest of the bankrupt in any immovable property shall on a declaration of bankruptcy vest in the Official Receiver without any need for conveyance, assignment or transfer.

*Interest in
immovable
property*

(2) The sale of any immovable property or interest in immovable property which vests in Official Receiver shall be effected in accordance with section 65 and the Immovable Property (Judicial Sale) Act

shall not apply to the sale.

Transfer of
shares and
other
securities

36.(1) The Official Receiver may transfer the following property belonging to the bankrupt in the same manner as the bankrupt could have transferred it had the bankrupt not been declared bankrupt —

- (a) securities in a company;
- (b) securities of the Government;
- (c) securities issued by a local authority;
- (d) shares in ships; and
- (e) any other property transferable in the records of a company, office, or person.

(2) A person whose act or consent is required for the transfer of the property referred to in subsection (1) (a) to (e) shall, on the Official Receiver's request, do such act or give such consent required to complete the transfer.

(3) In the case of a transfer by the Official Receiver of securities in a company, a shareholder to whom the securities is to be offered for sale under the memorandum and articles of the company and who agrees to purchase shall pay reasonable price for the securities, whether or not the memorandum and articles provides a procedure for fixing the price.

(4) The Official Receiver may disclaim any liability under shares owned by the bankrupt in any company if the transaction is set aside in accordance with sections 324 and 325.

Goods on
hire
purchase

37.(1) Where a bankrupt purchased goods under a hire purchase agreement before declaration of bankruptcy and a creditor —

- (a) took possession of the goods within 21 days before declaration of bankruptcy, and is still in possession of the goods after declaration of bankruptcy; or
- (b) takes possession of the goods after declaration of bankruptcy,

the creditor shall not sell, dispose or part with the possession of the goods, until 28 days after the date of declaration of bankruptcy, unless the Official Receiver consents in writing to the creditor selling or disposing or parting with the possession of the goods before the expiry of that period.

(2) The Official Receiver may, notwithstanding any provision of the hire purchase agreement —

- (a) within 28 days from the date of declaration of bankruptcy, introduce a buyer for the goods and the bankrupt's indebtedness to the creditor shall be reduced to the extent of the amount paid by the buyer to the creditor for the goods; or
- (b) at any time before the creditor sells or agrees to sell the goods following the expiry of the period of 28 days from the date of declaration of bankruptcy, settle the bankrupt's obligations as debtor and retain the goods as part of the bankrupt's estate.

(3) Where —

- (a) a creditor has taken possession of goods purchased under a hire purchase agreement, whether before or after declaration of bankruptcy of the debtor; and
- (b) the Official Receiver has not taken any action under subsection (2),

the creditor may prove in the bankruptcy for the amount that the creditor was entitled to recover from the bankrupt as debtor.

(4) Where —

- (a) a bankrupt purchased goods under a hire purchase agreement before declaration of bankruptcy; and
- (b) at the time of declaration of bankruptcy the creditor —
 - (i) has not taken possession of the goods; or
 - (ii) has taken possession of the goods and has not sold or disposed of or parted with possession of the goods,

the creditor may assign the goods to the Official Receiver, and, if he or she does so, may prove in the bankruptcy for the net balance due to the creditor under the agreement.

Sub-Part V – Duties of Bankrupt

General
duties
of
bankrupt

38. A bankrupt shall, to the extent possible, assist in the realisation of his or her property and the distribution of the proceeds amongst his or her creditors, and shall —

- (a) provide a complete and accurate list of his or her property, creditors and debtors and such other information regarding his or her property as the Official Receiver may require;
- (b) appear before the Official Receiver whenever called upon to do so and, if required by the Official Receiver, confirm any statement by affidavit;
- (c) disclose to the Official Receiver as soon as practicable any property which may be acquired by him or her before his or her discharge and which would be divisible amongst his or her creditors;
- (d) furnish to the Official Receiver such information as may be required regarding his or her expenditure and sources of income after declaration of bankruptcy;
- (e) execute such power of attorney, transfer or other instrument, in relation to his or her property and the distribution of the proceeds amongst his or her creditors, as may be required by the Official Receiver, prescribed or directed by the Court;
- (f) deliver, on demand, to the Official Receiver any of his or her property in his or her possession and control that is divisible amongst his or her creditors;
- (g) deliver, on demand, to the Official Receiver any property that is acquired by him or her before his or her discharge; and

-
- (h) immediately notify the Official Receiver in writing of any change of his or her address, employment or name.

39.(1) A bankrupt shall provide the Official Receiver with the information and details that are necessary to prepare a statement of the financial position of the bankrupt's estate.

Financial
information
to be
provided

(2) Where required by the Official Receiver, the bankrupt shall, within a reasonable time of declaration of bankruptcy, prepare and deliver to the Official Receiver full, true and detailed accounts and statements of his or her financial position showing particulars of —

- (a) trading and stocktaking; and
- (b) profit and losses during the period of 3 years preceding his or her declaration of bankruptcy.

(3) For the purposes of subsection (2), —

- (a) the Official Receiver shall give the bankrupt full access to the bankrupt's books and papers in the Official Receiver's possession; and
- (b) where the Official Receiver thinks it necessary, the bankrupt shall be assisted by an accountant at the expense of the bankrupt's estate.

Sub-Part VI – Control of Bankrupt

40.(1) Where required by the Official Receiver, a bankrupt shall pay an amount or periodic amounts during the bankruptcy as a contribution towards payment of the bankrupt's debts on such terms and conditions as the Official Receiver may direct.

Financial
contribution
to payment
of debts

(2) The Official Receiver shall, before requiring a bankrupt to make a payment under subsection (1), —

- (a) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities and prospects; and
- (b) make reasonable allowance for the maintenance of the bankrupt and his or her dependents.

(3) The Court may, on the application of the bankrupt or any creditor, —

- (a) vary, suspend or cancel the bankrupt's obligations to make a payment under subsection (1); or
- (b) remit any arrears owed by the bankrupt.

(4) Where the bankrupt defaults in making any payment required under subsection (1), the burden shall be on the bankrupt in any proceedings arising out of the default to show that the default was not malicious.

Bankrupt
may not
enter
business

41. An undischarged bankrupt shall not, without the consent of the Official Receiver or the Court, directly or indirectly —

- (a) enter into, carry on, or take part in the management or control of any business;
- (b) be employed by a relative of the bankrupt; or
- (c) be employed by a company, trust, trustee, or any partnership or unincorporated association that is carrying on a business that is managed or controlled by a relative of the bankrupt.

Search and
seizure of
property

42.(1) Notwithstanding any other enactment, the Court may issue a search warrant to the Official Receiver where there is reason to believe that any relevant property is concealed in any premises or place.

(2) The warrant under subsection (1) may authorise the Official Receiver as well as any person required to assist him or her, to —

- (a) enter and search any premises or place;
- (b) seize and take possession of any relevant property; and
- (c) where necessary, use reasonable force to enter the locality, premises or place.

(3) Where authorised by a warrant issued by the Court, the Official Receiver as well as any other person required to assist him or her, may —

-
- (a) seize any of the bankrupt's property in the custody or possession of the bankrupt or of any other person;
 - (b) with a view to seize the bankrupt's property —
 - (i) break open any building or room of the bankrupt where the bankrupt is believed to be found;
 - (ii) break open any building or receptacle of the bankrupt where the bankrupt's property is believed to be found; and
 - (iii) take possession of the bankrupt's property found in the building, room or receptacle.

(4) Where the Official Receiver is satisfied that a person, other than the bankrupt, is entitled to any relevant property, the Official Receiver may retain possession of the property for a period of 28 days from the date on which he or she first receives notice that the person claims to be entitled to the property, or such further period as the Court may allow.

(5) The Official Receiver may copy or extract any information relating to the property, conduct or dealings of the bankrupt from any document, computer, facsimile machine or other electronic equipment containing such information.

43. Notwithstanding any other enactment, the Official Receiver may require a bankrupt and any of his or her relatives to vacate any land or building that is part of the property vested in the Official Receiver, and the bankrupt and any of his or her relatives shall comply with the request.

Vacate
property
vested in
Officer
Receiver

44. A bankrupt may, at any convenient time, inspect and take extracts or copies of —

Right to
inspect
document

- (a) his or her accounting records;
- (b) his or her answers to questions put to him or her by the Official Receiver;
- (c) his or her statement of affairs;
- (d) all proofs of debt;

-
- (e) the minutes of any creditors' meeting; and
 - (f) the record of any examination of the bankrupt.

No power of recovery of property or release or discharge

45. Subject to sections 30 and 31, after declaration of bankruptcy, a bankrupt and any person, other than the Official Receiver, who claims through or under the bankrupt, shall not recover, or give release or discharge in relation to, any property forming part of the bankrupt's estate.

Defeating beneficial interest

46.(1) After a declaration of bankruptcy, a bankrupt shall not execute a power of appointment, or any other power vested in the bankrupt, where the result is to defeat or destroy any contingent or other estate or interest in any property to which the bankrupt may otherwise be entitled at any time before his or her discharge.

(2) The restriction imposed on the bankrupt by subsection (1) shall, subject to sections 30 and 31 apply before and after the bankrupt is discharged.

Bankrupt's bank accounts

47.(1) Where a bank ascertains that a customer of the bank is an undischarged bankrupt, it shall —

- (a) as soon as practicable, notify the Official Receiver of any account that the bankrupt holds with the bank; and
- (b) not pay any money out of the account, except as provided under subsection (2).

(2) The bank may pay money out of the account where —

- (a) the bank is authorised by an order of the Court or directed by the Official Receiver to do so; or
- (b) the bank has notified the Official Receiver that the bank holds such an account and has not, within 1 month of such notice, received any instructions from the Official Receiver.

Allowance to bankrupt

48.(1) After a declaration of bankruptcy, the Official Receiver may make an allowance out of the property of a bankrupt to the bankrupt,

or any dependent of the bankrupt, for the support of the bankrupt and his or her dependents.

(2) After a declaration of bankruptcy, the Official Receiver may allow a bankrupt to retain, for the immediate maintenance of the bankrupt and his or her dependents, any money up to a maximum of SCR10,000 or such sum as may be prescribed that the bankrupt has in his or her possession or in a bank account at the time of declaration of bankruptcy.

49.(1) The Official Receiver may at any time, before or after a bankrupt's discharge —

Examination
of bankrupt
and others

- (a) summon any of the persons specified in subsection (2) to appear before him or her to be examined on oath; and
- (b) require that person to produce and surrender to the Official Receiver any document in his or her possession or control that relates to the bankrupt's property or dealings.

(2) The persons referred to in subsection (1) are —

- (a) the bankrupt;
- (b) the bankrupt's spouse;
- (c) a person known or suspected to possess any of the bankrupt's property or any document relating to the affairs or property of the bankrupt;
- (d) a person believed to owe the bankrupt money;
- (e) a person believed to be able to give information regarding —
 - (i) the bankrupt; or
 - (ii) the bankrupt's trade, dealings, property, income from any source, or expenditure; and

-
- (f) a trustee of a trust of which the bankrupt is a settlor or of which the bankrupt is or has been a trustee.

(3) The examination of a person under this section shall be recorded in writing and signed by the person examined.

(4) Where a person summoned under subsection (1) does not appear at the appointed time and has no reasonable excuse for his or her non-appearance, the Court may —

- (a) on the Official Receiver's application, by warrant, have him arrested and brought for examination before the Court; and
- (b) where the Court thinks that his or her evidence is necessary for the purposes of the bankrupt's estate, order him or her to pay all the expenses arising out of his or her arrest and examination.

(5) Subject to subsection (4), a person who is summoned by the Official Receiver for examination shall be paid such expenses for attending the examination as may be prescribed.

(6) A person shall not, without the Court's permission, publish a report of —

- (a) any examination of a person summoned by the Official Receiver; or
- (b) any matter arising in the course of that examination.

(7) On the Official Receiver's application, the Court may permit publication of a report on such conditions as the Court may impose.

(8) Subsections (1) to (7) shall apply where the Official Receiver has been appointed as the Provisional Receiver of all or part of a debtor's property under section 18, and references in those sections to the bankrupt shall be read as if they were references to the debtor.

50.(1) The Court shall hold a public examination of a bankrupt where, at any time before an order for the bankrupt's discharge is made, there is filed with the Court a statement by the Official Receiver, or a copy

of a creditors' ordinary resolution, requiring that the bankrupt should be publicly examined.

(2) A copy of the resolution referred to in subsection (1) shall be certified by the Official Receiver or the chairperson of the meeting at which it was passed.

(3) Every public examination of the bankrupt shall be conducted in accordance with the provisions of sections 51 to 63.

51.(1) If a public examination of the bankrupt is required under section 50, the Official Receiver shall serve the bankrupt with a notice stating —

Notice of
public
examination

- (a) that the Official Receiver's statement or the creditor's resolution has been filed with the Court;
- (b) that the bankrupt is required to be publicly examined; and
- (c) the time and place of the examination.

(2) The Official Receiver shall, at least 7 days prior to the date of the public examination —

- (a) advertise the examination in a daily newspaper; and
- (b) send a notice of the examination to each creditor.

52. The Court shall hold the public examination of the bankrupt at least 7 days after service of the notice on the bankrupt under section 51(1).

Time for
holding
public
examination

53. Prior to the public examination of the bankrupt, the Official Receiver shall file with the Court a report on —

Official
Receiver to
file report
before public
examination

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

54.(1) The bankrupt shall attend the public examination, and may

Conduct of
public
examination

be examined as to his or her conduct, dealings, and property.

(2) The bankrupt shall, in a public examination, be examined under oath and shall answer all questions that the Court may ask or allow to be asked.

(3) The following persons may examine the bankrupt —

- (a) the Official Receiver or attorney for the Official Receiver; and
- (b) any creditor who has proved a claim or attorney for the creditor.

Record of
public
examination

55.(1) The public examination of the bankrupt shall be recorded in writing in such manner as the Court directs.

(2) The record of the examination shall be —

- (a) read over to, and signed by, the bankrupt;
- (b) available for inspection by any creditor or the creditor's attorney at all reasonable times.

When public
examination
ends

56. The public examination of a bankrupt shall end when the Court is satisfied that the bankrupt's conduct, dealings and property have been sufficiently investigated and makes an order that the examination has been completed.

Bankrupt's
failure to
attend public
examination

57. If the bankrupt does not appear for the examination at the appointed time and has no reasonable excuse for his or her non-appearance, the Court may —

- (a) on the Official Receiver's application, by warrant, cause the bankrupt to be arrested and brought before the Court for examination, and
- (b) where the Court is of the opinion that the bankrupt's evidence was necessary for the purposes of the bankrupt's estate, order the bankrupt to pay all the expenses arising out of the arrest and examination.

58. Subject to section 57(b), a bankrupt who attends a public examination shall be paid such expenses for attending the examination as may be prescribed.

Bankrupt's expenses in attending public examination

59.(1) If authorised by the Court, the Official Receiver or a person appointed by the Official Receiver may, in relation to a company that is controlled by the bankrupt or an associate examine —

Official Receiver may examine company documents, personnel, and shareholders

- (a) the documents of the company;
- (b) any person who is or has been a director, employee, or shareholder of the company, under oath about the company's affairs.

(2) The examination of a person under subsection (1)(b) shall be recorded in writing and signed by the person examined

60. For the purposes of section 59, —

Company controlled by bankrupt or associate

- (a) a company is controlled by the bankrupt if the bankrupt or his or her nominee has the power to appoint or remove all the directors of the company or such number of directors holding together a majority of the voting rights at meetings of directors of the company;
- (b) associate means any of the following —
 - (i) the spouse of the bankrupt;
 - (ii) a relative of the bankrupt;
 - (iii) the spouse of a lineal ancestor or descendant of the bankrupt.

61. A person who is examined or questioned under this Act shall answer all questions relating to the bankrupt's conduct, dealings, and property.

Person to answer all questions during examination

62.(1) Subject to subsection (2), a statement made by a person examined or questioned in a public examination of the bankrupt shall not be admissible in criminal proceedings against the person.

Non-admissibility of statements in criminal proceedings

(2) A statement made by a person examined or questioned in a public examination of the bankrupt shall be admissible if —

- (a) the person was examined or questioned under oath and is charged with perjury in relation to the statement; or
- (b) in the case of the bankrupt, the bankrupt is charged with an offence under section 359 (1)(c).

Representation

63.(1) A person who is examined under this Act may be represented by an attorney.

(2) The person may be examined by his or her attorney, and any answers provided shall form part of the examination.

Documents
and other
records

64.(1) The Official Receiver may, by notice in writing, require a bankrupt, the bankrupt's spouse, or any other person to deliver to him or her any document relating to the dealings or property of the bankrupt in his or her possession or control.

(2) A person may not, as against the Official Receiver, withhold possession of, or claim a privilege or lien over —

- (a) a deed or instrument that belongs to the bankrupt; or
- (b) accounting records, accounts, receipts, bills, invoices, or other papers relating to the bankrupt's accounts, trade, dealings, or business.

Sub-Part VII – Powers and Duties of Official Receiver

Official
Receiver's
powers in
relation to
bankrupt's
property

65.(1) The Official Receiver may, on such terms as he or she thinks appropriate, —

- (a) sell the bankrupt's property by public auction or public tender or by private contract;
- (b) buy in at an auction of the bankrupt's property; or
- (c) rescind or vary a contract for the sale of the bankrupt's property.

(2) The Official Receiver shall not sell the bankrupt's property prior to the first creditors' meeting, except where —

- (a) the property is perishable or likely to diminish in value;
- (b) in the Official Receiver's opinion, the sale of the property may be prejudiced by delay; or
- (c) expenses are likely to be incurred due to any delay, and prior to selling the property the Official Receiver consults a creditor or creditors whom the Official Receiver considers to be representative of the interests of creditors.

(3) Where the Official Receiver sells the bankrupt's property by public auction or public tender, the Official Receiver —

- (a) may instruct a licensed auctioneer to conduct the sale; and
- (b) shall ensure that the sale is advertised at least twice at an interval of 7 days between the advertisements in two daily newspapers and notice of the sale is given to the bankrupt in each case not less than 14 days prior to the date of the sale.

(4) Subject to the provisions of this Act, the Official Receiver may sell the following property of the bankrupt by private contract —

- (a) perishable property or property that is likely to diminish in value;
- (b) property that is unsold after being offered for sale by public auction or public tender;
- (c) property that the Official Receiver considers unnecessary or inadvisable to sell by public auction or public tender, because of its nature, situation, value or other special circumstance;
- (d) property authorised by a resolution of creditors to be sold by private contract in accordance with the authority given by the creditors; and

-
- (e) company securities, Government securities and local authority securities, if sold on a securities market operated by a securities exchange licensed under the Securities Act.

(5) A sale of a bankrupt's property by the Official Receiver under this section shall not be —

- (a) challenged except on the ground of fraud; and
- (b) affected by lack of authority to sell, the improper or irregular exercise of the power of sale.

Official
Receiver's
general powers
in relation to
bankruptcy

66. The Official Receiver shall have the power to —

- (a) hold property;
- (b) commence, continue, discontinue and defend legal proceedings;
- (c) with the leave of the Court, continue in the Official Receiver's name legal proceedings commenced by the bankrupt before declaration of bankruptcy;
- (d) refer a dispute to arbitration;
- (e) compromise debts, claims and liabilities, present or future, actual or contingent, ascertained or not, subsisting or believed to subsist between the bankrupt and any person, on whatever terms as agreed;
- (f) make a compromise or an arrangement with creditors, or persons claiming to be creditors, in respect of debts provable in the bankruptcy;
- (g) accept as consideration for the sale of any of the bankrupt's property money to be paid in the future, on terms, including security, that the Official Receiver thinks appropriate;
- (h) make a compromise or an arrangement in respect of a claim that arises out of or is incidental to, the

bankrupt's property, whether it is a claim by the Official Receiver or a claim by a person against the Official Receiver;

- (i) carry on the bankrupt's business if it is necessary or advantageous in order to dispose of it, and for that purpose may employ and pay any person, including the bankrupt;
- (j) use money in the bankrupt's estate for the repair, maintenance, upkeep or renovation of the bankrupt's property, whether or not the work is necessary to salvage the property;
- (k) borrow money whether with or without providing security over the bankrupt's property;
- (l) employ any person to do anything that must be done in the course of the administration of the bankruptcy, including the receipt and payment of money;
- (m) appoint an attorney;
- (n) prove and draw a dividend in respect of any debt due to the bankrupt;
- (o) if any of the bankrupt's property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances, divide it in its existing form among the creditors according to its estimated value;
- (p) give receipts and sign discharges and releases for any money that the Official Receiver receives, so that the person who pays the money is effectively discharged from any responsibility for how the money is used;
- (q) execute a power of attorney, deed or any other document for the purpose of carrying into effect the provisions of this Act;

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- (r) exercise any authority or power or do any act in relation to the bankrupt's property that the bankrupt could have exercised or done if he or she was not bankrupt; or
 - (s) in respect of any particular estate of the bankrupt —
 - (i) appoint an agent to act for the Official Receiver;
 - (ii) delegate to that agent any or all of the powers conferred by this section;
 - (iii) revoke the agent's appointment; and
 - (iv) fix the agent's remuneration, which shall be paid out of the bankrupt's estate.

Bank
account and
investment

67.(1) The Official Receiver shall have a bank account and pay into such account all money that he or she receives in the capacity of Official Receiver.

(2) The Official Receiver may invest money that is not immediately required to be paid out in the administration of an estate in an investment of a type approved by the Minister, and shall credit to that estate the interest or dividends that accrue on the investment.

Official
Receiver's
discretion

68.(1) The Official Receiver shall, in exercise of his or her powers in the administration of a bankrupt's property, have regard to the resolutions of the creditors passed at the creditors' meetings.

(2) The Official Receiver or a creditor may apply to the Court for directions where the Official Receiver or creditor believes that a resolution of the creditors —

- (a) conflicts with the provisions of this Act or any other enactment; or
- (b) is unjust or unfair.

Sub-Part VIII – End of Bankruptcy

Discharge
from
bankruptcy

69.(1) Subject to section 17(4)(c) and this section, a bankrupt is

discharged from bankruptcy 3 years from the date of declaration of bankruptcy.

(2) A bankrupt shall not be discharged under subsection (1) where —

- (a) the Official Receiver or a creditor has objected under subsection (4) and the objection has not been withdrawn at the expiry of 3 years after declaration of bankruptcy;
- (b) the bankrupt has to be publicly examined under section 50 and that examination has not taken place; or
- (c) the bankrupt is undischarged from an earlier bankruptcy.

(3) The discharge of a bankrupt under this section shall have the same effect as if the Court made an order for the bankrupt's discharge.

(4) The Official Receiver or a creditor may, with the permission of the Court, object to the discharge of a bankrupt under this section.

(5) (a) An objection to the discharge of a bankrupt may be withdrawn.

(b) A bankrupt is discharged on the withdrawal of an objection —

- (i) at the expiry of 3 years after declaration of bankruptcy; and
- (ii) where there is no other objection to the discharge that has not been withdrawn.

70.(1) A bankrupt may, at any time, apply to the Court for an order of discharge, unless the Court has previously refused an application for a discharge, and specified the date when the bankrupt may apply again.

Application
for discharge

(2) The Official Receiver shall, as soon as practicable after the expiry of 3 years from the date of declaration of bankruptcy, summon the bankrupt to be publicly examined by the Court concerning his or her discharge, and the Court shall conduct the examination where —

-
- (a) the Official Receiver or a creditor has objected to the bankrupt's automatic discharge;
 - (b) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or
 - (c) the bankrupt has been required to be publicly examined under section 50 and that examination has not taken place.

Official
Receiver's
report

71.(1) The Official Receiver shall prepare a report and file it with the Court where —

- (a) the bankrupt has applied for a discharge; or
- (b) the Official Receiver has summoned the bankrupt to be examined under section 59(1).

(2) The report of the Official Receiver under subsection (1) shall include —

- (a) the bankrupt's affairs;
- (b) the causes of the bankruptcy;
- (c) the bankrupt's performance of his or her duties under this Act;
- (d) the manner in which the bankrupt has complied with an order of the Court;
- (e) the bankrupt's conduct before and after declaration of bankruptcy; and
- (f) any other matter that would assist the Court in making a decision as to the bankrupt's discharge.

Notice of
opposition to
discharge

72.(1) Where a creditor intends to oppose to the discharge of the bankrupt on a ground that is not stated in the Official Receiver's report, the

creditor shall give notice of opposition to the Official Receiver and the bankrupt.

- (2) The notice under subsection (1) shall —
- (a) set out the ground for opposing the discharge; and
 - (b) be given within the prescribed time.

73.(1) Where the Court hears an application for discharge, or conducts the examination of the bankrupt under section 59(1), the Court may, having regard to all the circumstances of the case, —

Grant or
refusal of
discharge

- (a) discharge the bankrupt immediately;
- (b) discharge the bankrupt on such conditions as it thinks appropriate;
- (c) discharge the bankrupt and suspend the order for a period of time;
- (d) discharge the bankrupt, with or without conditions, at a specified future date; or
- (e) refuse an order of discharge, in which case the Court may specify the earliest date when the bankrupt may apply again for discharge.

(2) Where the Court discharges the bankrupt on the condition that the bankrupt consents to any judgment, and the bankrupt consents, the Court may vary the judgment as it thinks appropriate.

74.(1) The Court may, where it makes an order of discharge or at any earlier time, prohibit the bankrupt from doing any of the following acts after discharge without the Court's permission —

Engaging in
business
after
discharge

- (a) entering into, carrying on, or taking part in the management or control of any business or class of business;
- (b) being a director of, or being concerned in, or taking part, directly or indirectly in, the management of any company;

-
- (c) being employed by a relative of the bankrupt; or
 - (d) being employed by a company, trust or trustee, or a partnership or incorporated association carrying on any business that is managed or controlled by a relative of the bankrupt.

(2) The Court may make an order under subsection (1) for a specified period or otherwise and may at any time vary or cancel the order.

Rescission
of order of
discharge

75.(1) The Court may, on the application of the Official Receiver or a creditor, rescind the discharge of a bankrupt at any time before the expiry of 2 years after —

- (a) in the case of an absolute discharge, the discharge;
- (b) in the case of a discharge that is conditional or suspended, the discharge takes effect.

(2) The Court may rescind a discharge of a bankrupt under subsection (1), where —

- (a) the bankrupt has been given notice of the application; and
- (b) the Court is satisfied that facts have been established that —
 - (i) were not known to the Court when it made the order of discharge; and
 - (ii) had the Court known of them, it would have been justified in refusing a discharge or discharging the bankrupt conditionally.

(3) The Court shall not rescind a discharge where the facts relied on in the application, at the time when the Court made an order discharging the bankrupt —

- (a) were known to the applicant; or
- (b) could have been known if the applicant had inquired with reasonable diligence.

(4) The rescission of a discharge shall not prejudice or affect any right or remedy that any person, other than the bankrupt, would have had if the discharge had not been rescinded.

(5) Any property that has been acquired by the bankrupt after discharge and that is vested in the bankrupt at the date of the rescission shall —

- (a) vest in the Official Receiver subject to any encumbrance; and
- (b) be applied by the Official Receiver to pay debts that the bankrupt has incurred since the date of the discharge.

(6) Where the Court rescinds a discharge, the Court may, at any time, make a new order of discharge, whether absolute, suspended, or conditional.

76.(1) A bankrupt who is unable to comply with the condition of his or her discharge may apply to the Court for an absolute discharge.

Absolute
discharge

(2) The Court may discharge the bankrupt absolutely where it is satisfied that the bankrupt's inability is due to circumstances for which the bankrupt should not reasonably be held responsible.

77.(1) On discharge of a bankrupt, the bankrupt is released from all debts provable in the bankruptcy except those listed in subsection (2).

Release
from debts

(2) The bankrupt shall not be released from —

- (a) a debt or liability incurred by fraud or breach of trust to which the bankrupt was a party;
- (b) a debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;
- (c) a judgment debt or an amount payable for which the bankrupt is liable under section 40 or 73; or
- (d) an amount payable under a maintenance order.

78.(1) A discharge of a bankrupt shall be conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

Other
consequences
of discharge

(2) A discharge of a bankrupt shall not release any person who, at the date of declaration of bankruptcy, was —

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

(3) A discharged bankrupt shall assist the Official Receiver, as required by the Court or the Official Receiver, in the realisation and distribution of the bankrupt's property that is vested in the Official Receiver.

(4) Where the Court has refused to discharge a bankrupt or discharged a bankrupt or suspended the discharge, that information shall be entered in the public register maintained by the Official Receiver.

(5) The Official Receiver shall not be sued in relation to any publication made under this section in good faith and with reasonable care.

Cancellation
of declaration
of bankruptcy

79.(1) The Court may, on the application of the Official Receiver or any interested person, cancel a declaration of bankruptcy where the Court —

- (a) considers that the bankrupt should not have been declared bankrupt;
- (b) is satisfied that the bankrupt's debts have been fully paid or satisfied;
- (c) considers that the liability of the bankrupt to pay his or her debts should be reviewed because there has been a substantial change in the bankrupt's financial circumstances since the date of declaration of bankruptcy; or
- (d) has approved a post-bankruptcy composition under sections 81 to 86.

(2) In the case of an application on one of the grounds referred to in subsection (1) (a) to (c) by an applicant other than the Official Receiver —

- (a) a copy of the application shall be served on the Official Receiver in such manner and within such time as the Court may direct; and
- (b) the Official Receiver may appear at the hearing of the application as a party to the proceedings.

(3) A declaration of bankruptcy shall be cancelled —

- (a) in the case of an application on the ground specified in subsection (1)(a), from the date of declaration of bankruptcy;
- (b) in the case of an application on one of the grounds specified in subsection (1)(b) to (d), from the date of the Court's order of cancellation.

(4) In the case of an application for cancellation on the ground that the declaration of bankruptcy should not have been made because of a defect in form or procedure, the Court may, in addition to cancelling the declaration of bankruptcy, correct the defect and order a new hearing of the application for declaration of bankruptcy.

(5) Where the Court cancels the declaration of bankruptcy on one of the grounds specified in subsection (1)(a) to (c), the Court may, on the Official Receiver's application, fix an amount as reasonable remuneration for the Official Receiver's services and order that it be paid, in addition to any costs that may be awarded.

80.(1) On the cancellation of a declaration of bankruptcy, all property of the bankrupt vested in the Official Receiver on bankruptcy and not sold or disposed of by the Official Receiver shall revest in the bankrupt without the need for any conveyance, transfer, or assignment.

Consequences
of cancellation

(2) Any contract, sale, disposition, or payment duly made or anything duly done by the Official Receiver before the cancellation of a declaration of bankruptcy —

- (a) shall not be affected by the cancellation; and

-
- (b) shall have effect as if it had been made or done by the bankrupt while no declaration of bankruptcy was in force.

Sub-Part IX – Post Bankruptcy Composition

Resolution to
accept
composition

81.(1) The creditors of a bankrupt may accept a post-bankruptcy composition in satisfaction of the debts due to them from the bankrupt by passing a special resolution that contains the terms of the composition.

(2) The notice of the meeting to pass the special resolution shall —

- (a) state the terms of the composition; and
- (b) be accompanied by a report of the Official Receiver.

Procedure
for approval
of
composition

82.(1) The Court may, on being satisfied with the terms of the composition, approve the composition.

(2) A composition approved by the Court shall bind all the creditors in respect of provable debts due to them by the bankrupt.

(3) The Court may refuse to approve a composition where it considers that —

- (a) section 81 has not been complied with;
- (b) the terms of the composition are not reasonable or are not calculated to benefit all the creditors;
- (c) the bankrupt is guilty of misconduct that justifies the Court in refusing, qualifying, or suspending the bankrupt's discharge;
- (d) the composition does not provide for the payment, before any other debts are paid, of debts that have priority under section 340;
or
- (e) there are other reasons for not approving composition.

(4) The bankrupt or the Official Receiver may apply to the Court to approve a composition.

(5) Notice of the application under subsection (4) shall be given to each creditor.

(6) Prior to approving a composition the Court shall —

- (a) obtain a report from the Official Receiver as to the terms of the composition and the bankrupt's conduct; and
- (b) hear any objection by or on behalf of a creditor.

(7) The Court may, where it approves a composition, correct or supply any formal or accidental error or omission without altering the substance of the composition.

(8) As soon as practicable after the Court has approved a composition, the bankrupt and the Official Receiver shall execute the terms of the composition.

(9) The Court shall, where it has approved the composition, on payment to the Official Receiver of such commission as may be prescribed —

- (a) direct that the composition is entered and filed with the Court; and
- (b) cancel the declaration of bankruptcy.

(10) A cancellation of a declaration of bankruptcy under subsection (9)(b) shall not revest the bankrupt's property in the bankrupt in accordance with section 80(1).

(11) Where the Court has approved the composition and cancelled the declaration of bankruptcy, the bankrupt's property to which the composition relates vests and shall be dealt with as provided for in the composition.

83.(1) A bankrupt who makes a composition with his or her creditors remains liable for the unpaid balance of a debt where —

Unpaid
balance of
debt obtained
by fraud

-
- (a) the bankrupt, by means of fraud —
 - (i) incurred or increased the debt; or
 - (ii) on or before the date of the composition, obtained forbearance on the debt; and
 - (b) the creditor has not agreed to the composition.

(2) In subsection (1) (b), a creditor does not agree to the composition solely by proving the debt and accepting payment of a distribution of the assets in the estate.

Time for
approval and
execution of
composition

84.(1) (a) The Court shall approve the composition under section 81 (1) within 1 month after the special resolution referred to in section 81 is passed.

(b) The bankrupt shall execute the deed of composition within 10 working days after the Court approves the composition or within such time as the Court may allow.

(2) Where a composition is not approved or executed within the time referred to in subsection (1) —

- (a) immediately on the expiry of the period referred to in subsection (1), the proceedings in the bankruptcy shall resume as if there had been no special resolution in terms of section 81 accepting a composition; and
- (b) the period referred to in subsection (1) shall not be taken into account in the calculation of any period of time specified for any purpose of this Act.

Endorsement
of
composition
by Court

85.(1) The Court shall, after the deed of composition has been entered on the file of the Court, —

- (a) endorse on the deed that it has been entered and filed with the Court; and
- (b) if requested by the Official Receiver, deliver the deed to the Official Receiver.

(2) The Official Receiver shall, as soon as practicable after the deed of composition has been entered in the file of the Court —

- (a) take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate registry or office, and then return the deed to the file of the Court; and
- (b) subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition, as the case may be, of —
 - (i) the bankrupt's property; or
 - (ii) so much of the bankrupt's property as the Official Receiver possesses and that, under the composition, reverts in the bankrupt or the trustee.

86. The Court may —

Enforcement
of
composition

- (a) on the application of a creditor, order that default in payment of any composition approved by the Court be remedied; or
- (b) on the application of an interested person, enforce the provisions of any composition approved by the Court.

PART III - ALTERNATIVE TO FORMAL BANKRUPTCY

87. For the purposes of this Part —

Interpretation

- (a) “debt” means a debt provable in an insolvent's bankruptcy;
- (b) “insolvent” means a person who has not been formally declared bankrupt, but who is unable to pay his or her debts as they become due.

88.(1) An insolvent may make an offer to his or her creditors for the payment or satisfaction of his or her debts.

Offer by
insolvent

(2) The offer under subsection (1) may include an offer —

-
- (a) to assign all or any of the insolvent's property to a representative for the benefit of the creditors;
 - (b) to pay the insolvent's debts by installments;
 - (c) to compromise the insolvent's debts at less than 100 cents in the rupee;
 - (d) to pay the insolvent's debts at a future time; or
 - (e) for any other arrangement for the satisfaction of the insolvent's debts.

(3) The offer under subsection (1) may include any condition for the benefit of the creditors and be accompanied by a security or guarantee.

(4) The offer under subsection (1) shall be —

- (a) in the prescribed form; and
- (b) accompanied by a statement of affairs that complies with section 13(4);
- (c) signed by the insolvent; and
- (d) endorsed by the person who is willing to act as representative for the creditors, and include a statement by the person that he or she is willing to act as representative.

Filing of
offer
with
Court

89.(1) The offer shall be filed with the Court and the creditors' representative referred to in section 88(4)(d) shall become the Provisional Receiver.

(2) The insolvent shall not, while waiting for the decision of the creditors and the Court, withdraw the offer or any security or guarantee tendered, unless he or she obtains the prior permission of the Court.

(3) The time when the offer is filed with Court shall be the time when the claims of creditors are determined for the purposes of an offer under this Part.

90.(1) The Provisional Receiver shall, as soon as practicable, call a meeting of creditors by posting to every known creditor at the creditor's last known address —

Meeting of
creditors
to consider
offer

- (a) a notice of the date, time, and place of the meeting;
- (b) a summary of the insolvent's assets and liabilities;
- (c) a copy of the offer and particulars of any security or guarantee;
- (d) a form of proof of debt; and
- (e) a postal vote in the prescribed form.

(2) A creditor who has proved a claim in the prescribed manner may vote on the offer by sending a postal vote to the Provisional Receiver prior to or at the meeting of creditors.

(3) Where the Provisional Receiver receives a postal vote prior to or at the meeting, the postal vote shall have effect as if the creditor had been present and voted at the meeting.

(4) The Provisional Receiver shall be the chairperson of the meeting of creditors.

(5) The creditors may, at the meeting of creditors, —

- (a) examine the insolvent;
- (b) accept the offer with or without amendment by passing a resolution that sets out the offer in its final form; and
- (c) confirm the Provisional Receiver as receiver, or appoint another person who is willing to act as receiver, in which case that person becomes the receiver.

(6) The resolution accepting the offer shall be decided by a majority in number and 75 per cent in value of the creditors who —

- (a) vote; and

-
- (b) are personally present or are represented at the meeting by proxy.

(7) Where the insolvent consents, the creditors may include in the offer terms for the supervision of the insolvent's affairs.

(8) Where the creditors at a meeting under this section do not accept the offer —

- (a) the Provisional Receiver shall return the offer to the Court with his or her signed endorsement "Not accepted by creditors"; and
- (b) the Court shall cancel the offer.

Court to
approve offer
after
acceptance
by creditors

91.(1) After the offer has been accepted by the creditors, the receiver shall, as soon as practicable —

- (a) apply to the Court for approval of the offer; and
- (b) send notice of the hearing of the application to the insolvent and to every known creditor.

(2) The Court shall, prior to approving an offer to the insolvent's creditors, hear any objection that is made by or on behalf of a creditor.

(3) The Court may refuse to approve the offer where it considers that —

- (a) any provision of this Part has not been complied with;
- (b) the terms of the offer are not reasonable or are not calculated to benefit the creditors; or
- (c) for any other reason it is not expedient that the offer be approved.

(4) The Court shall not approve an offer to the insolvent's creditors where it does not provide for the payment, before any other debts are paid, of —

-
- (a) the debts having priority under section 340 if the insolvent was declared bankrupt;
 - (b) the receiver's fees and expenses that are properly incurred by the receiver in respect of the offer; and
 - (c) costs incurred by a person other than the insolvent in organising and conducting a meeting of creditors for the purpose of voting on an offer to the insolvent's creditors.

(5) When approving the offer, the Court may correct or supply any formal or accidental error or omission, without altering the substance of the offer.

(6) An offer to an insolvent's creditors that is approved by the Court is binding on all the creditors whose debts are provable under this Part and are affected by the terms of the offer.

92.(1) Subject to subsection (3), a creditor whose debt is provable under this section shall not take any of the steps listed in subsection (2) in respect of the debt —

Enforcement

- (a) after the Court has approved the offer; and
- (b) when the offer is in force.

(2) The steps referred to in subsection (1) are —

- (a) filing a creditor's application for the insolvent's declaration of bankruptcy;
- (b) proceeding with a creditor's application for the insolvent's declaration of bankruptcy that was filed before the offer was filed;
- (c) enforcing any civil remedy against the insolvent or his or her property; and
- (d) commencing any legal proceedings in respect of the debt.

(3) A creditor may take any of the steps listed in subsection (2)

with the permission of the Court on such terms as the Court thinks appropriate.

Duties of
insolvent and
receiver

93.(1) After the Court has approved the offer, —

- (a) the insolvent shall take all steps necessary to put the offer into effect; and
- (b) the receiver shall —
 - (i) take control of the property that is the subject of the offer;
 - (ii) administer and distribute the property according to the terms of the offer; and
 - (iii) generally, give effect to the offer.

(2) The receiver may sell the property that is the subject of the offer —

- (a) where the offer specifies the mode of sale, according to the terms of the offer; or
- (b) where the offer does not specify the mode of sale, according to section 65.

(3) The receiver shall file with the Court a summary of receipts and payments —

- (a) for each period of 6 months following the Court's approval of the offer, within 1 month after the expiry the period; and
- (b) for the period between the last period of 6 months and the date when the receiver ceases to act, within 1 month after the receiver ceased to act.

Cancellation
or variation of
offer

94.(1) The Court may, at any time after it has approved an offer to an insolvent's creditors, where it is satisfied that a ground referred to in subsection (2) applies —

-
- (a) on the application of the receiver or any creditor, vary or cancel the offer;
 - (b) if asked to do so by the applicant or any other creditor, declare the insolvent bankrupt.

(2) The grounds referred to in subsection (1) are —

- (a) the insolvent's statement of affairs accompanying the offer did not substantially set out the true position or the insolvent gave wrong or misleading answers at his or her examination, and it was unlikely that the offer would have been accepted if the insolvent had disclosed the true facts;
- (b) the insolvent has failed to carry out or comply with the terms of the offer;
- (c) the creditors generally will suffer injustice or undue delay if the offer proceeds; and
- (d) for any other reason the offer should be varied or cancelled.

(3) On cancellation of the offer, unless the Court otherwise orders, all property of the insolvent vested in the receiver and not sold or disposed of by the receiver shall vest, without the need for any conveyance, transfer, or assignment —

- (a) in the insolvent; or
- (b) if the Court cancels the offer and declares the insolvent bankrupt, in the Official Receiver.

(4) An order cancelling the offer, or cancelling the offer and declaring the insolvent bankrupt, shall not prejudice or affect the validity of any contract, sale, disposition, or payment duly made or anything duly done under the offer when it was in force.

(5) Where the insolvent files an application for his or her own declaration of bankruptcy, the offer shall be cancelled as if it was cancelled by the Court.

PART IV – WINDING UP OF COMPANIES

Sub-part I - General

Modes of
winding up

- 95.(1)** The winding up of a company may be —
- (a) by an order of the Court; or
 - (b) voluntary.

Sub-part II - Winding Up by the Court

Grounds for
winding up by
the Court

- 96.** A company may be wound up by the Court if —
- (a) the company has by special resolution resolved that the company be wound up by the Court;
 - (b) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
 - (c) the company is unable to pay its debts;
 - (d) the company is a proprietary company and a ground exists on which the Court may make an order expelling a member, other than the petitioner, from membership of the company;
 - (e) the directors have acted in the affairs of the company in their own interests rather than in the interests of the shareholders as a whole, or in any other manner which is unfair or unjust to other shareholders;
 - (f) the directors or managers of the company have acted to conceal the assets of the company or remove the assets of the company outside the jurisdiction with intent to defeat the creditors;
 - (g) the period, if any, fixed for the duration of the company by its memorandum and articles has expired or the event, if any, on the occurrence of which the memorandum and articles provides that

the company is to be dissolved, has occurred; or

- (h) the Court is of opinion that it is just and equitable that the company should be wound up.

97. A company shall be deemed to be unable to pay its debts if —

Meaning
of
inability
to pay
debts

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding SCR 10,000 then due, has served on the company, by leaving it at the registered office of the company, a demand under his or her hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) execution or other process issued on a judgment, decree or order of the Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that —
- (i) the debts of the company immediately due exceed in total the value of the company's readily realisable assets, that is to say, its holdings of cash, bank notes, treasury bills, securities quoted on a securities exchange in Seychelles or on a recognised overseas securities exchange, and money deposited at a bank in Seychelles being money which is repayable on demand or upon not more than 14 days' notice; or
- (ii) the present value of all the debts and liabilities of the company after discounting the amount of those which are not immediately due at the rate of five per cent per annum from the date when they will or may become due exceeds the value of the company's readily realisable assets plus the present value of its other assets after

discounting the realisable value of those assets at the rate of five per cent per annum from the earliest date when it is likely that they would be realised if the company were wound up; or

- (d) the Court, taking into account the contingent and prospective liabilities of the company, is satisfied that the company is unable to pay its debts.

Petitioners

98.(1) A petition for the winding up of a company, whether or not it is being wound up voluntarily, shall be presented to the Court in accordance with the provisions of this section, by —

- (a) the company;
- (b) any creditor or creditors including any contingent or prospective creditor or creditors;
- (c) any shareholder;
- (d) any contributory or any person who is the heir of a deceased contributory or representative in bankruptcy of the estate of a contributory;
- (e) any debenture holder;
- (f) a liquidator;
- (g) where the company is in reorganisation, an administrator under section 220(2)(b);
- (h) two or more persons referred to in paragraphs (a) to (g) above; or
- (i) the Registrar under section 190(3) of the Companies Act.

(2) The petition for the winding up of a company on the ground set out in section 96(d) shall be presented by a shareholder of the company.

(3) Where a petition for the winding up of a company is presented by a contingent or prospective creditor, or a contributory who is not a shareholder or a member of the company, the Court shall not fix the petition for hearing until —

- (a) such security for cost has been given as the court thinks reasonable; and
- (b) a prima facie case for the winding up has been established to the satisfaction of the court.

(4) Where a company is being wound up voluntarily and a liquidator has not been appointed, a winding up petition may be presented by the Official Receiver or by any other person authorised under the provisions of this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(5) The person who applied to the Court for the winding up of a company may have a caution stating the date of the winding up petition and the name of the petitioner entered against every parcel of land of which the company is the registered proprietor under the Land Registration Act.

(6) The holder of a power of attorney of a person referred to in subsection (1) (b), (c) and (d), may present the petition accompanied by a copy of the power of attorney and a certificate signed by the attorney certifying that the power of attorney is current and has not been revoked.

99.(1) Where a person, other than a company, a liquidator or an administrator, presents a petition under section 98 and a winding up order is made, that person shall at his or her own cost prosecute all proceedings in the winding up until a liquidator is appointed.

Preliminary
costs

(2) The liquidator shall, unless the Court otherwise directs, reimburse the petitioner out of the assets of the company, the reasonable costs incurred by the petitioner under subsection (1).

(3) Where a winding up order is made on the petition of a company, a liquidator or an administrator, the costs incurred under subsection (1) shall, unless the Court otherwise directs, be paid out of the assets of the company as if they were the costs of any other petitioner.

100.(1) On hearing a winding up petition, the Court may —

Power of
Court on
presentation
of petition
for winding
up

-
- (a) allow the petition and make a winding up order;
 - (b) dismiss the petition;
 - (c) adjourn the hearing of the petition conditionally or unconditionally;
 - (d) in the case of a company in reorganisation, adjourn the petition under section 244(2); or
 - (e) make any order it thinks fit.

(2) The Court shall not refuse to make a winding up order on the ground that the assets of the company have been mortgaged or charged, or are subject to privileges under articles 2101, 2102 or 2103 of the Civil Code, to a total amount equal to, or in excess of, the value of those assets, or that the company has no assets.

(3) Subject to subsection (4), where the winding up petition is presented by a creditor, shareholder, contributory or debenture holder of the company on the ground that it is just and equitable that the company should be wound up, or by a shareholder of the company on the ground set out in section 96(d), the Court shall make a winding up order if it is of the opinion that —

- (a) the petitioner is entitled to relief either by winding up the company or by some other means; and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up.

(4) The Court shall not make a winding up order in the circumstances referred to in subsection (3), if it is of the opinion that some other remedy is available to the petitioner and that he or she is acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(5) The Court may at the hearing of a winding up petition, adjourn the petition for not more than 14 days and direct the Official Receiver to prepare a report for the Court, with a copy being provided to the company and the petitioner, as to whether it is appropriate in the

circumstances for the company to be placed in reorganisation under Part VI.

(6) Where the Court dismisses a winding up petition and considers that the petition is frivolous or vexatious and should not to have been brought, it may award costs against the petitioner.

101.(1) Where, prior to the presentation of a winding up petition to the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court otherwise directs, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commencement
of winding up
by the Court

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of presentation of the winding up petition.

102.(1) At any time after the presentation of a winding up petition, and before a winding up order is made, the company, or the petitioner or any of the petitioners, or any creditor, shareholder, contributory, liquidator, administrator or debenture holder, may, if any action or proceeding is pending against the company, apply to the Court to restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings on such terms as it thinks fit.

Stay of
proceedings

(2) When a winding up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be continued or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

103.(1) Any disposition of the assets of the company and any transfer of shares, or alteration in the status of the members or shareholders of the company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Avoidance of
disposition of
company's
property

(2) An application may, prior to or after the making of a winding up order, be made to the Court to sanction a transaction to which this section relates.

104.(1) The petitioner shall, within 7 days after the making of a winding up order —

Lodging and
service of
winding up
order

(a) deliver a copy of the order to the Official Receiver;

-
- (b) cause a copy of the order to be served on the secretary of the company or on such other person or in such manner as the Court directs; and
 - (c) deliver a copy of the order to the liquidator with a statement that the requirements of this section have been complied with.

(2) The company shall forward a copy of the winding up order to the Registrar, who shall make a minute thereof in the records relating to the company.

(3) A winding up order shall contain as part thereof an inhibition upon all dispositions of and dealings with land of which the company is the registered proprietor under the Land Registration Act, except dispositions and dealings by the liquidator in exercise of the powers conferred on him or her by this Act, and upon production of a copy of the winding up order, the officer responsible for keeping the land register shall enter the inhibition contained therein against every parcel of land of which the company is the registered proprietor.

Custody and
control or
vesting of
company's
assets

105.(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his or her custody, or under his or her control, all the assets to which the company is or appears to be entitled.

(2) Where a company is being wound up, the Court may on the application of the liquidator by order direct that all or any part of the assets of whatsoever description belonging to the company or held by trustees, agents or other persons on its behalf shall vest in the liquidator by his or her official name, and thereupon the assets to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his or her official name any action or other legal proceeding which relates to those assets or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

(3) On the service of an order appointing a provisional liquidator or liquidator on any financial institution, issuer of securities or any other person holding property or securities on behalf of or in the name of the company, institution, issuer of securities or person shall hold the

property for and at the discretion of the provisional liquidator or liquidator, as the case may be.

(4) Where an order is made under subsection (2), the liquidator shall, within 7 days after the order is made —

- (a) lodge with the Registrar a copy of the order; and
- (b) where the order relates to immovable property, deliver a copy of the order to the Land Registrar.

(5) An order under subsection (2) shall not have the effect of transferring or otherwise vesting immovable property until the appropriate entries are made with respect to the vesting by the Land Registrar.

106.(1) Where the Court has made a winding up order or appointed a provisional liquidator, the persons referred to under subsection (2) shall, unless the Court otherwise orders prepare and submit to the Official Receiver a statement of affairs of the company showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, the privileges to which they are respectively entitled, and such other information as the Official Receiver may require.

Statement
of affairs

(2) The statement under subsection (1) shall be made and supported by affidavit by one or more persons who are at the relevant date directors and by the secretary of the company, or by such of the following persons as the Official Receiver may, subject to the direction of the Court, require, being a person who —

- (a) is or has been an officer of the company;
- (b) has taken part in the formation of the company at any time within 1 year prior to the relevant date;
- (c) is or has been in the employment of the company, or has been in the employment of the company within the said period, and is in the opinion of the Official Receiver capable of giving the information required; or
- (d) is or has been within the said period an officer of or in the employment of a company, which is, or

within the said period was, an officer of the company to which the statement relates.

(3) The statement under subsection (1) shall be submitted within 14 days from the relevant date, or within such time as the Official Receiver or the Court may for special reasons appoint.

(4) The Official Receiver shall cause a copy of the statement referred to in subsection (1) to be delivered to the liquidator, if one has been appointed.

(5) Any person making or concurring in making the statement and declaration required by this section shall be allowed, and shall be paid by the Official Receiver, liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and declaration as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(6) Any person stating himself or herself, in writing, to be a creditor, shareholder, contributory or debenture holder of the company shall be entitled by himself or herself or by his or her agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to obtain a copy thereof or extract therefrom.

(7) In this section the expression “the relevant date” means in a case where a provisional liquidator is appointed, the date of his or her appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by
the Official
Receiver

107.(1) Where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement of affairs or, in the case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court —

- (a) as to the amount of capital issued, subscribed, and paid up of the company, and the estimated amount of its assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and

-
- (c) whether in his or her opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of its business.

(2) The Official Receiver may, if he or she thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his or her opinion any fraud or breach of duty has been committed by any person in its promotion or formation, or by any director or other officer of the company or by any other person in relation to the company since its formation, and any other matters which in his or her opinion it is desirable to bring to the notice of the Court.

108.(1) A receiver shall not be required to hand over to a liquidator any record or document that the receiver requires for the purpose of exercising any power or performing any function as receiver in relation to property of a company in winding up.

Documents
in
possession
of receiver

(2) A liquidator may, by notice in writing, require a receiver to —

- (a) make such record and document available for inspection at any reasonable time; and
- (b) provide copies, or extracts from, such record and document.

(3) The liquidator shall pay to the receiver reasonable expenses incurred in complying with a requirement of the liquidator under subsection (2).

(4) A receiver shall not, as against the liquidator of a company, claim or enforce a lien over a record or document of the company.

(5) This section shall not apply to a company in a members' voluntary winding up, unless the winding up has been converted into a creditors' voluntary winding up or a winding up by the Court.

109.(1) A person may be required to give a document to a liquidator under section 108 even where possession of the document creates a charge over property of a company.

Documents
creating
charge over
property

(2) Production of the document to the liquidator shall not prejudice the existence or priority of the charge, but the liquidator shall

make the document available to the person entitled to it for the purpose of dealing with or realising the charge or the secured property.

Duty to
identify
and deliver
property

110. A present or former director or employee of a company in winding up shall —

- (a) forthwith after the commencement of winding up, give the liquidator details of any property of the company in his or her possession or under his or her control; and
- (b) on being required to do so by the liquidator, forthwith or within such time as may be specified by the liquidator, deliver the property to the liquidator or such other person as the liquidator may direct, or dispose of the property in such manner as the liquidator may direct.

Provision of
essential
services

111.(1) For the purposes of this section — “essential service” means —

- (a) the retail supply of electricity;
- (b) the supply of water; or
- (c) telecommunications services.

(2) Notwithstanding any other enactment, a provider of an essential service shall not —

- (a) refuse to provide the service to a liquidator, or to a company in winding up, by reason of the company’s default in paying charges due for the service in relation to a period prior to the commencement of the winding up; or
- (b) make it a condition of the provision of the service to a liquidator, or to a company in winding up, that payment be made of outstanding charges due for the service in relation to a period prior to the commencement of the winding up.

(3) The charges incurred by a liquidator for the provision of an

essential service consist in expenses incurred by the liquidator for the purposes of section 341.

112.(1) The Court may appoint the Official Receiver or any other qualified person as provisional liquidator at any time after the presentation of a winding up petition, if —

Provisional
Liquidator

- (a) there are reasonable grounds to believe that the company is unable to pay its debts; or
- (b) any of the property of the company available to meet its debts is at risk of being removed from Seychelles.

(2) Where a provisional liquidator is appointed by the Court under subsection (1), the Court may restrict his or her powers in such manner as it thinks fit by the order appointing him or her or by a subsequent order, subject to any restriction so imposed, the provisional liquidator shall have the same powers and be subject to the same liabilities as a liquidator appointed after the making of a winding up order.

113.(1) The Court may appoint a liquidator or liquidators for the purpose of conducting the proceedings in winding up a company and performing such duties in relation to the winding up as are specified in this Act and such additional duties as the Court shall impose.

Appointment
of Liquidator

(2) If prior to making a winding up order in respect of a company the Court has appointed a provisional liquidator, he or she shall upon the making of the order continue to be the liquidator of the company unless and until the Court orders otherwise, and any restrictions on his or her powers imposed by the Court when he or she was the provisional liquidator shall cease to be operative.

(3) Where a winding up order is made —

- (a) the Official Receiver shall by virtue of his or her office become the provisional liquidator, and shall continue to act as such until he or she or another person becomes liquidator and is capable of acting as such;
- (b) unless the Court otherwise orders, the Official Receiver shall summon separate meetings of the

creditors and shareholders of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and shareholders, the Court shall decide the difference and make such order as the Court may think fit;
 - (d) where the court does not appoint a liquidator, the Official Receiver shall be the liquidator of the company;
 - (e) the Official Receiver shall by virtue of his or her office be the liquidator during any vacancy.
- (4) A liquidator shall be described —
- (a) where a person other than the Official Receiver is liquidator, by the style of “the liquidator”; and
 - (b) where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”,

of the particular company in respect of which he or she is appointed, and not by his or her individual name.

(5) A meeting of creditors under this section shall be called and conducted in accordance with section 126 and sections 282 to 294.

(6) Where the names and addresses of all creditors are not known to the Official Receiver, public notice of the meeting shall be advertised in at least one daily newspaper.

(7) The Official Receiver shall not be required to call a meeting of creditors under subsection (3) (b) where —

- (a) he or she considers, having regard to the assets and

liabilities of the company, the likely result of the winding up of the company and any other relevant matters, that no such meeting should be held; and

- (b) he or she gives notice in writing to the creditors stating —
 - (i) that he or she does not consider that a meeting should be held;
 - (ii) the reasons for his or her views; and
 - (iii) that no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 28 days after receiving the notice, requiring a meeting to be called; and
- (c) no notice requiring the meeting to be called is received by the Official Receiver within that period.

(8) A notice under subsection (7)(b) shall be given to every known creditor at the time the Official Receiver would have been required to send the report and notice referred to in that subsection if it were applicable.

114.(1) Where a person other than the Official Receiver is appointed liquidator, the person shall —

- (a) not act as liquidator until he or she has given —
 - (i) written notice of his or her appointment to the Registrar;
 - (ii) security for the proper performance of his or her duties in the prescribed manner to the satisfaction of the registrar of the Court; and
 - (iii) satisfactory evidence to the Official Receiver that he or she holds professional indemnity insurance; and

Provisions
as to
liquidator
other than
the Official
Receiver

-
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as the Official Receiver may require for the performance of his or her duties under this Act.

(2) Subsection (1) shall not apply to a provisional liquidator unless he or she continues to be the liquidator of the company after the winding up order is made.

115.(1) A person other than the Official Receiver who is appointed provisional liquidator or liquidator shall not be qualified for appointment where he or she —

- (a) is or has been an officer, auditor or employee of the company or any related corporation during the preceding 2 years;
- (b) is a minor, a bankrupt or a person under any mental impairment; or
- (c) has been a receiver of the company during the preceding 2 years.

(2) For the purposes of subsection (1)(a), an auditor means the auditor or partner of the audit firm appointed as auditor of the company.

(3) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(4) A vacancy in the office of a liquidator appointed by the Court, shall be filled by the Court.

(5) If more than one liquidator is appointed by the Court, the Court shall declare whether any act required or authorised to be done by the liquidator under the provisions of this Act is to be done by all or any one or more of the persons appointed.

(6) Every liquidator shall pay all money received by him or her into such bank as the Court may direct, and shall not pay any sums received by him or her as liquidator into his or her private bank account.

(7) If any liquidator at any time retains for more than 10 days a sum exceeding SCR5000, or such other amount as the Court in any particular case authorises him or her to retain, then, unless he or she explains the retention to the satisfaction of the Court, he or she shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all of such or part of his or her remuneration as the Court may think just, and to be removed from his or her office by the Court, and shall be liable to pay any expenses incurred by reason of his or her default.

(8) Sections 38 and 39 of the Companies Act shall apply to a liquidator, or to each of two or more liquidators, as though he or she or each of them were a managing director of the company.

116.(1) A provisional liquidator or liquidator other than the Official Receiver shall be entitled to receive remuneration approved by the Court on presentation of a claim, whether provisional or final, at such rates and intervals as may be determined.

Remuneration
of liquidator

(2) A liquidator other than the Official Receiver shall be entitled to receive such remuneration at such rates as may be determined —

- (a) subject to subsection (2)(b), by agreement between the liquidator and the committee of inspection;
- (b) failing such agreement or where there is no committee of inspection, but subject to subsection (4), by a resolution, passed at a meeting of creditors, by a majority of not less than 75 per cent in value and one half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, convened by the liquidator by a notice to each creditor accompanied by a statement of all expenses incurred by the liquidator and the amount of remuneration sought by him or her.

(3) Where the remuneration of a liquidator is determined in the manner specified in subsection (2)(a), the Court may, on the application of a shareholder or shareholders whose shareholding represents not less than 10 per cent of the issued capital of the company made within 14 days of determination, confirm or vary the determination.

(4) Where the remuneration of a liquidator is determined in the manner specified in subsection (2)(b) the Court may, on the application of the liquidator or a shareholder referred to in subsection (3), made within 14 days of determination, confirm or vary the determination.

Main duty of liquidator

117.(1) Subject to section 118, the main duty of the liquidator is to act in a reasonable and efficient manner so as to —

- (a) take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) where there are surplus assets remaining, distribute them, or the proceeds of the realisation of the surplus assets, in accordance with sections 347 to 348.

Liquidator not required to act in certain circumstances

118. Notwithstanding anything to the contrary in this Part —

- (a) except where a charge is surrendered or taken to be surrendered, a liquidator may carry out any duty or exercise any power in relation to property that is subject to a charge; and
- (b) where —
 - (i) a company is wound up by order of the Court; and
 - (ii) has no assets available for distribution to creditors of the company,

the liquidator shall not, without the consent of the Registrar, carry out any duty or exercise any power in connection with the winding up which is likely to involve incurring any expense.

Powers of liquidator

119.(1) The liquidator shall have power with the sanction of the Court or the committee of inspection to —

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

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- (b) carry on the business of the company, so far as may be necessary for the beneficial winding up of the company, and in doing so may borrow money whether with or without providing security over the company's assets;
 - (c) appoint a legal adviser or agent to assist him or her in the performance of his or her duties;
 - (d) pay any creditors in full if the assets of the company remaining in his or her hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
 - (e) make any compromise or arrangement with creditors or debenture holders or persons claiming to be creditors or debenture holders, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (f) compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator shall have power to —

- (a) sell the assets of the company, in whole or in part, by public auction or private contract;

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- (b) do all acts and to execute, in the name and on behalf of the company, all deeds, instruments, receipts, and other documents, and for that purpose to have instruments authenticated by notarial act;
 - (c) prove, rank, and claim in the bankruptcy, insolvency, or winding up of any contributory, for any amount owing to the company, and to receive dividends in the bankruptcy, insolvency, of winding up in respect of that amount;
 - (d) draw, accept, make, and endorse any bill of exchange, cheque or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, cheque or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
 - (e) raise on the security of the assets of the company any money required for the purposes of the winding up;
 - (f) take out in his or her official name letters of administration or representation to the estate of any deceased contributory, and to do in his or her official name any other act necessary for obtaining payment of any money due from a contributory or his or her estate or its assets which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or representation or to recover the money, be deemed to be due to the liquidator himself or herself;
 - (g) appoint an agent to carry on any business which the liquidator is unable to carry on by himself or herself;
 - (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor, shareholder, contributory or debenture holder, or the person on whose petition the winding up order was made, may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4) A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to give to him or her such record or document of the company in the person's possession or under the person's control as he or she may require.

(5) A liquidator may, by notice in writing, require —

- (a) a director or former director of the company;
- (b) a shareholder of the company;
- (c) a person who was involved in the promotion or formation of the company;
- (d) a person who is, or has been, an employee of the company;
- (e) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company; or
- (f) a person who is acting or has at any time acted as an attorney for the company,

to do any of the things specified in subsection (6).

(6) A person referred to in subsection (5) may be required to —

- (a) attend on the liquidator at such reasonable time or times and at such place, including a place of meeting of creditors, as may be specified in the notice;
- (b) provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator may require and be examined by the liquidator in connection with such affairs of the company; and

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- (c) assist in the winding up to the best of the person's ability.

(7) The Court may, on the application of the liquidator or a person referred to in subsection (5) (e) or (f), order that the person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under subsection (6).

(8) A person referred to in subsection (5)(e) or (f) shall not refuse to comply with a requirement of the liquidator under subsection (6) on the ground that —

- (a) an application to the Court to be paid remuneration or travelling or other expenses has not been made or determined;
- (b) remuneration or travelling or other expenses to which the person is entitled have not been paid in advance; or
- (c) the liquidator has not paid the person travelling or other expenses.

(9) Notes of the examination of a person under subsection (6) shall be taken down in writing and read over to or by and signed by the person examined, and shall be open to inspection by any creditor or contributory.

Control over
exercise of
liquidator's
powers

120.(1) The liquidator shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or shareholders at any meeting, or by the committee of inspection, and any directions given by the creditors or shareholders at any meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon meetings of the creditors or shareholders for the purpose of ascertaining their wishes, and it shall be his or her duty to summon meetings at such times as the creditors or shareholders by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by

shareholders of the company who are entitled to at least 10 per cent of the voting rights exercisable at meetings of shareholders, or by creditors whose debts and claims against the company admitted by the liquidator or by the Court amount to at least 10 per cent in value of all the debts and claim so admitted.

(3) The liquidator may apply to the Court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his or her own discretion in the winding up of the company's affairs.

(5) If any person is aggrieved by any act or decision of the liquidator, the person may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just.

121. Where a person other than the Official Receiver is appointed a provisional liquidator or liquidator, the Official Receiver —

Supervision
of liquidators
by Official
Receiver

- (a) shall take cognisance of the conduct of the liquidator and, if the liquidator does not faithfully perform his or her duties and duly observe all the requirements imposed on him or her by this Act with respect to the performance of his or her duties, or if any complaint is made to the Official Receiver by any creditor, shareholder, contributory or debenture holder in regard thereto, the Official Receiver shall inquire into the matter and take such action as he or she thinks fit;
- (b) may, at any time, require the liquidator to answer any inquiry and provide any information or documents in relation to any winding up in which he or she is engaged;
- (c) may apply to the Court to examine the liquidator or any person on oath concerning the winding up of the company;
- (d) may direct an investigation to be made of the books and vouchers of the liquidator.

122.(1) When a liquidator of a company has realised all the assets of the company, or so much of the assets of the company as can, in his or her opinion, be realised without protracting the winding up, has distributed a final dividend if any, to the creditors, adjusted the rights of the contributories among themselves, and made a final payment if any, to the contributories, or has resigned, or has been removed from his or her office, the Official Receiver shall, on his or her application, cause a report of his or her accounts to be prepared, and on complying with all the requirements of the Official Receiver, shall submit the report to the Registrar together with a recommendation that a release of the liquidator should or should not be granted, and the Registrar shall take the report and recommendation into consideration and shall also consider any objection by any creditor, shareholder, contributory, debenture holder or other interested person against the release of the liquidator, and shall either grant or withhold the release accordingly, subject to an appeal to the Court.

(2) Where the release of a liquidator is withheld, the Court may, on the application of any creditor, shareholder, contributory, debenture holder or other interested person, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he or she may have done or made contrary to his or her duty.

(3) An order of the Registrar releasing the liquidator shall discharge him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the company, or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his or her release shall operate as a removal from his or her office.

123.(1) When a winding up order has been made by the Court, it shall be the business of the separate meetings of creditors and shareholders summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator other than the Official Receiver, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and shareholders, the Court shall decide the difference and make such order as the Court may think fit.

124.(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors, debenture holders, shareholders and contributories other than shareholders of the company, or persons holding general powers of attorney from such persons, in such proportions as may be agreed on by the meetings of creditors and shareholders, or as, in the case of a difference, may be determined by the Court, and members of the committee appointed as creditors, debenture holders, shareholders, or contributories other than shareholders, shall as members of the committee represent the interests of all the persons who belong to the category by virtue of which they were respectively appointed.

Appointment
of members
of committee
and
proceedings
by it

(2) The committee shall meet at such times as it from time to time resolves, and failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator.

(5) If a member of the committee is declared bankrupt, or makes a post-bankruptcy composition with, or an offer to, his creditors, or is absent from five consecutive meetings of the committee without the leave of the members who together with himself or herself represent the creditors, shareholders, contributories or debenture holders as the case may be, his or her office shall become vacant.

(6) A member of the committee may be removed by an ordinary resolution passed by a meeting of creditors, if he or she represents creditors or debenture holders, or by an ordinary resolution passed by a meeting of shareholders if he or she represents shareholders or contributories, provided that at least 7 days' notice has been given of the meeting stating the purpose for which it is called.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of shareholders, as the case may require, to fill the vacancy, and the meeting may, by resolution, appoint another person who is qualified to be a member of the committee.

(8) For the purposes of subsection (7), vacancy occurs in respect of a person appointed to represent creditors or debenture holders, the vacancy shall be filled by a meeting of creditors, and in any other case it shall be filled by a meeting of shareholders.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Power of
Registrar
where no
committee of
inspection

125. Where in the case of a winding up there is no committee of inspection, the Registrar may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

Provisions as
to meetings
of
shareholders
and creditors

126.(1) The provisions of the Companies Act governing general meetings of a company which is not being wound up shall apply to meetings of shareholders of a company which is being wound up by the Court, except that —

- (a) no restrictions or limitations imposed by the memorandum or articles on the voting rights of any shareholder shall apply, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares shall not be entitled to vote or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their rights to vote imposed by the memorandum or articles of the company; and
- (b) a contributory, other than a shareholder, who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up shall be deemed to be a shareholder in place of the person who is the holder of the share.

(2) At meetings of creditors of a company that is being wound up by the Court —

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- (a) each creditor shall be entitled to vote in proportion to the amount of his or her debt or claim admitted by the liquidator or by the Court;
 - (b) unless this Act otherwise provides, a resolution shall be considered to have been passed and to be binding on all creditors of the company if more votes are cast in favour of the resolution than are cast against it;
 - (c) debenture holders shall be deemed to be creditors of the company for the amount of principal, redemption premium, interest and costs payable to each of them respectively, and the trustees for debenture holders, if any, shall be creditors only for the amount of any remuneration and of any costs and expenses due from the company to them personally;
 - (d) a quorum shall consist of creditors entitled in the aggregate to at least 10 per cent of the debts and claims against the company which have been admitted by the liquidator, but no quorum shall be required at an adjourned meeting; and
 - (e) a resolution passed at an adjourned meeting of creditors shall for all purposes be created as being passed on the date when it was in fact passed, and shall not be deemed to have been passed on any earlier date.

127. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Meaning of
Contributory

128.(1) Subject to subsections (2) to (6), in the event of a company being wound up, every present and past member and shareholder shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

Liability of
contributories

(2) A person shall not be liable to contribute to the asset of the company if he or she has ceased to be a member or shareholder for 1 year prior to the commencement of the winding up or in respect of any debt or liability of the company contracted after he or she ceased to hold office.

(3) A person referred to in subsection (2) shall not be liable to contribute to the assets of the company unless it appears to the Court that the existing members and shareholders are unable to satisfy the contributions required to be made by them in pursuance of this Act.

(4) Subject to the memorandum and articles, a member or shareholder shall not be required to make any contribution exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member or shareholder.

(5) Nothing in this Act shall invalidate any provision contained in any contract or guarantee whereby the liability of an individual member or shareholder of the company by the term of the contract or guarantee is reduced to less than the amount which he or she would be liable to contribute under this section if the company were wound up or is increased beyond that amount, and if any such contract is entered into or if any such guarantee is given, this section shall take effect as though it had not been entered into or given.

(6) A sum due to any member or shareholder of a company, in his or her capacity as member or shareholder, by way of dividends, profits, capital, redemption premiums or otherwise, shall not be deemed to be a debt of the company payable to that member or shareholder in a case of competition between himself or herself and any other creditor or claimant of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Enforcement
of liability of
contributories

129.(1) The liability of a contributory shall be deemed to be a debt accruing due from him or her at the time when the winding up commences, but payable at the times when calls are made for enforcing the liability.

(2) If a contributory dies either before or after he or she has been placed on the list of contributories, his or her heirs or the persons entitled to his or her estate shall be liable in due course of administration to contribute to the assets of the company in discharge of his or her liability, and shall be contributories accordingly.

(3) Subsection (2) shall not affect the right of any heir to renounce the estate of the deceased contributory or to accept it under the benefit of inventory.

(4) If the heirs or persons entitled to the estate of a deceased contributory makes default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment out of the estate of the deceased contributory for the money due.

(5) If a contributory becomes bankrupt, either before or after he or she has been placed on the list of contributories —

- (a) his or her trustee in bankruptcy or his or her assignee shall represent him or her for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his or her assets in due course of law, any money due from the bankrupt in respect of his or her liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his or her liability to future calls as well as calls already made.

(6) If a contributory is interdicted either before or after he or she has been placed on the list of contributories, subsection (5) shall apply as though he or she had become bankrupt, with the substitution, for references to a trustee in bankruptcy, for references to his or her tutor, or if he or she has no tutor, to a person appointed by the Court to represent him or her.

130.(1) Where the Official Receiver is the liquidator and is satisfied that the nature of the assets or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager himself or herself, he or she may apply to the Court which may appoint a special manager to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him or her by the Court.

Special
manager

(2) The special manager —

-
- (a) shall give such security and account in such manner as the Court directs;
 - (b) shall receive such remuneration as is fixed by the Court; and
 - (c) may at any time resign after giving not less than 1 month's written notice to the Official Receiver of his or her intention to resign, or on cause shown be removed by the Court.

Receiver
for
debenture
holders or
creditors

131. Where an application is made to the Court to appoint a receiver on behalf of debenture holders or other creditors of a company that is being wound up by the Court, the Court may grant the application on such terms as the Court thinks appropriate.

Stay of
winding up

132.(1) At any time after making an order for winding up a company, the Court may, on the application of the liquidator or the Official Receiver or any creditor, shareholder, contributory or debenture holder of the company, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up should be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section the Court may, prior to making an order, require the Official Receiver or the Registrar to furnish to the Court a report with respect to any facts or matters which are in his or her opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar who shall make a minute of the order in his or her records relating to the company.

Settlement
of list of
contributories

133.(1) As soon as may be practicable after making a winding up order in respect of a company, the Court shall settle a list of contributories from the company's register of members, with power to rectify the register of members where rectification is necessary, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or to adjust the rights of contributories, the

Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or liable for the debts of, others.

(3) The Court may settle a list of shareholders of the company in any case where it dispenses with the settlement of a list of contributories.

134.(1) The Court may make an order directing a contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or her or from the estate of the person whom he or she represents, excluding any money payable by him or her or the estate by virtue of any call in pursuance of this Act, and may —

Power of
Court in
relation to
contributories

- (a) in the case of a limited company, make a similar allowance to a director whose liability is unlimited or to his or her heir; and
- (b) in the case of any company, when all the creditors are paid in full, allow a contributory by way of set - off against any subsequent call any money due on any account to a contributory from the company.

(2) The Court may, prior to or after having ascertained the sufficiency of the assets of the company —

- (a) make a call on any contributory for the time being on the list of contributories, to the extent of his or her liability, for —
 - (i) the payment of any money which the Court considers necessary to satisfy the debts and liability of the company and the costs, charges and expenses of winding up; and
 - (ii) the adjustment of the rights of the contributories among themselves; and
- (b) make an order for payment of any call made, and,

in making a call, the Court may have regard to the probability that some of the contributories may, partly or wholly fail to pay the call.

(3) The Court may order any contributory or other person from whom money is due to the company to pay the amount due into the account of the liquidator with a bank named in the order instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(4) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that any money appearing to be due or ordered to be paid is due, and that any other relevant fact stated is true and correctly stated.

Power of
arrest

135. The Court may, at any time after the presentation of a petition for the winding up and before the making of a winding up order, where it has reasonable ground to believe that a contributory or a director or former director of the company is about to leave Seychelles or otherwise to abscond or to remove or conceal any of his or her property for the purpose of evading payment of a call or avoiding examination respecting the affairs of the company cause the contributory, director or former director to be arrested and his or her books and other movable property to be seized.

Delivery of
property to
liquidator

136. The Court may, at any time after making a winding up order in respect of a company, require any member, shareholder or contributory, or any director, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator any assets, or books and papers in his or her hands to which the company is *prima facie* entitled.

Examination
of directors,
officers, etc

137.(1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any director or officer of the company or person known or suspected to have in his or her possession any assets of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or assets of the company.

(2) The Court may examine any such person on oath

concerning the matters referred to in subsection (1), orally or on written interrogatories, and may reduce his or her answers to writing and require him or her to sign them.

(3) The Court may require any such person to produce any books and papers in his or her custody or power relating to the company, but, where he or she claims any right to retain books or papers produced by him or her, the production shall be without prejudice to that right, and the Court shall have jurisdiction in the winding up to determine all questions relating to that right.

(4) If any person so summoned, after being tendered a reasonable sum for his or her expenses, refuses to appear before the Court at the time appointed, not having a lawful impediment made known to the Court at the time of its sitting, and allowed by it, the Court may cause him or her to be apprehended and brought before the Court for examination.

138.(1) The Court may fix a time or times within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Miscellaneous
powers of
Court

(2) The Court may, in the event of the assets being insufficient to satisfy the debts and liabilities of the company, make an order as to the payment out of its assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the Court thinks just.

(3) The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the shareholders of the company or the persons claiming under them in accordance with their respective rights.

(4) The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors, shareholders, contributories or debenture holders as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors, shareholders, contributories and debenture holders.

139.(1) Where an order has been made for winding up a company by the Court, and —

Public
examination
of directors
etc

- (a) the Official Receiver has in any report to the Court made by him or her under this Act stated that in his

or her opinion a fraud or a serious breach of duty or serious misconduct has been committed by any person in the promotion or formation of the company, or by any director or officer of the company in relation to the company since its formation; or

- (b) a *prima facie* case is established by any creditor, shareholder, contributory or debenture holder of the company that a fraud or a serious breach of duty or serious misconduct has been committed by any such person,

the Court may direct the person to appear before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation, or the conduct of the business, of the company, or as to his or her conduct and dealings as an officer of the company.

(2) The Official Receiver shall take part in the examination, and for that purpose may employ an attorney.

(3) The liquidator, where the Official Receiver is not the liquidator, any creditor, shareholder, contributory or debenture holder of the company, and the Registrar, may take part in the examination personally or by an attorney.

(4) The person referred to in subsection (1) shall be examined on oath and shall answer all questions as the Court may put or allow to be put to him or her.

(5) A statement made by a person examined under this section shall not be admissible in criminal proceedings against the person except on a charge for perjury in relation to the statement.

(6) A person ordered to be examined under this section shall be entitled at his or her own cost, before his or her examination, to be furnished with a copy of any report by the Official Receiver which contains allegations against him or her, and may at his or her own cost employ an attorney, who shall be at liberty to put to him or her such questions as the Court may deem just for the purpose of enabling him or her to explain or qualify any answer given by him or her:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him or her, it shall be the duty of the Official Receiver to appear at the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used as evidence in proceedings under this Act, and shall be open to inspection by any person, without payment of a fee, at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination at all reasonable times.

140. Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the heirs, estate or assets of any contributory or debtor, for the recovery of any call or other sums.

Powers of
Court
cumulative

141. Provision may be made by regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters relating to a company which is being wound up by the Court, namely —

Delegation
of Court's
powers to
liquidator

- (a) holding and conducting meetings to ascertain the wishes of creditors and shareholders of the company;
- (b) settling lists of contributories and rectifying of register of members where required, and collecting and applying the assets of the company;
- (c) paying, delivery, surrender or transfer of money, assets, books or papers to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the authorisation of the committee of inspection.

Pooling of
assets of
related
companies

142.(1) On the application of a liquidator, creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that —

- (a) a company that is, or has been, related to a company in winding up shall pay to the liquidator any claim made in the winding up; or
- (b) where two or more related companies are in winding up, the winding up in respect of each company shall proceed together as if they were one company to the extent that the Court orders and subject to such terms as the Court may impose.

(2) The Court may make such order or give such directions to facilitate giving effect to an order made under subsection (1) as it thinks appropriate.

Guidelines
for orders on
pooling of
assets

143.(1) In deciding whether it is just and equitable to make an order under section 142(a), the Court shall have regard to the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related company.

(2) In deciding whether it is just and equitable to make an order under section 142(b), the Court shall have regard to —

- (a) the extent to which any of the companies took part in the management of any of the other companies;
- (b) the conduct of any of the companies towards the creditors of any of the other companies;
- (c) the extent to which the circumstances that gave rise to the winding up of any of the companies are attributable to the actions of any of the other companies; and

-
- (d) the extent to which the business of the companies have been combined.

(3) The Court shall not make an order under section 142 on the ground that the creditors of a company in winding up relied on the fact that another company is, or was, related to the company in winding up.

144.(1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

Dissolution
of companies

(2) The liquidator shall, within 14 days of the date of the dissolution order, deliver a copy to the Registrar who shall enter in his or her records a minute of the dissolution of the company.

145.(1) Orders made by the Court in a winding up by the Court under this Act may be enforced in the same manner as orders made in any action pending in the Court.

Enforcement
and appeals
from Court
orders

(2) An appeal from any order or decision made or given in the winding up of a company by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court.

Sub-Part III - Voluntary Winding Up

146.(1) A voluntary winding up of a company may be —

Resolutions
for voluntary
winding up

(a) a creditors' voluntary winding up commenced by —

(i) an ordinary resolution passed by the shareholders at a general meeting of the company where the company is unable to pay its debts, or where the period, if any fixed, for its duration by its memorandum or articles expires, or the event, if any, occurs, on the occurrence of which the memorandum or articles provides that the company is to be dissolved; or

(ii) a resolution passed by the creditors of the company in terms of section 231(1)(c), if the company is in reorganisation under Part VI; or

-
- (b) a members' voluntary winding up, commenced by a special resolution passed by the shareholders at a general meeting of the company where the company is solvent.

(2) Where a petition for winding up has been presented to the Court on the ground that a company is unable to pay its debts, the company shall not, without leave of the Court, resolve that it be wound up voluntarily.

(3) Any member or shareholder of the company may within 14 days after the passing of a resolution under subsection (1) (b) apply to the Court for an order cancelling the resolution on the ground that the company was able to pay its debts at the date of the passing the resolution.

(4) Section 136 of the Companies Act shall apply to a resolution passed by a general meeting under this section with the substitution of a period of 14 days for the period of 1 month mentioned in subsection (1) thereof.

(5) The fact that an application is made to the Court under subsections (2) or (4) shall not prevent the winding up resolution from taking effect, unless the Court otherwise orders, but no further steps to wind up the company other than holding a meeting of creditors and the appointment of a liquidator and a committee of inspection shall be taken until all such applications are disposed of by the Court, and until such time the liquidator shall not exercise any of his or her powers, except his or her power to take possession of the company's assets and to recover debts and other sums due to it, other than amounts payable by contributories as such.

(6) Where it appears to the directors of a company that the company is unable to pay its debts, the directors may, before holding a meeting for the passing of the special resolution referred to in subsection (1)(a)(i) —

- (a) lodge with the Registrar a declaration and deliver a copy thereof to the Official Receiver, stating that —
- (i) the company cannot by reason of its liabilities continue its business; and
 - (ii) meetings of the company and of its creditors have been summoned for a date not later

than 1 month of the date of the declaration;
and

- (b) appoint a person to be the provisional liquidator who shall, subject to such limitations and restrictions as may be prescribed, have and may exercise all the functions and powers of a liquidator in a creditors' winding up.

(7) The appointment of a provisional liquidator shall continue for 1 month from the date of his or her appointment or for such further period as the Official Receiver may allow or until the appointment of a liquidator, whichever first occurs.

(8) The company shall, within 14 days, give notice of the appointment of a provisional liquidator and lodging of the declaration in one daily newspaper and in the *Gazette*.

(9) A provisional liquidator shall be entitled to receive remuneration in accordance with the provisions of this Act.

(10) For the purpose of this section a company is unable to pay its debts if the Court would have jurisdiction to order it to be wound up by the Court on the ground that it is unable to pay its debts.

(11) In this Act, the expression "a winding up resolution" means a resolution that a company shall be wound up voluntarily passed under subsection (1) (a) (i) or (b), but shall not include a resolution passed under subsection (1) (a) (ii).

147. When a company has passed a winding up resolution it shall within 7 days after the passing of the resolution —

Notice of
winding up
resolution

- (a) give notice of the resolution in one daily newspaper and in the *Gazette*; and
- (b) lodge with the Registrar, a copy of the winding up resolution and inform him or her of the time and date on which it was passed.

148. A voluntary winding up of a company shall commence —

Commencement
of voluntary
winding up

- (a) where a provisional liquidator is appointed under

section 146(6)(b) before a winding up resolution is passed, at the time when a declaration under section 146(6) is lodged with the Registrar; and

- (b) in every other case, at the time of the passing of the winding up resolution.

Effect of
voluntary
winding up

149.(1) A company shall, from the commencement of the winding up, cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up of the company.

(2) Notwithstanding anything to the contrary in its memorandum or articles, a company shall continue to be a body corporate until it is dissolved.

Avoidance of
transfer of
shares etc

150. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration
of solvency

151.(1) Where it is proposed to wind up a company voluntarily as a members' voluntary winding up, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, shall, at a meeting of the directors held before the date on which notices of the meeting at which the winding up resolution is to be proposed are sent out, make a written declaration signed by them to the effect that they —

- (a) have made a full inquiry into the affairs of the company; and
- (b) have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) A declaration made under subsection (1) shall have no effect unless —

- (a) it is made within 5 weeks immediately preceding the date of the passing of the winding up resolution

and is delivered to the Registrar for registration before that date; and

- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration, not being a date earlier than 3 months prior to the date of the declaration; and
- (c) the winding up resolution is passed as a special resolution.

(3) If the company is wound up in pursuance of a resolution passed within a period of 5 weeks after the making of the declaration under subsection (1), but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his or her opinion.

152.(1) The company, in a general meeting, shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to the persons appointed.

Appointment
and powers
of liquidator

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in a general meeting, or the liquidator otherwise determines.

(3) If more than one liquidator is appointed, the resolution appointing them shall state whether they shall exercise their powers jointly or separately and individually.

153.(1) If a vacancy occurs by death, resignation otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Vacancy in
office of
liquidator

(2) For the purpose of subsection (1), a general meeting may be convened by any shareholder or contributory or, if there were more than one liquidator, by any of the continuing liquidators.

(3) The meeting shall be held in such manner as provided under the Companies Act, or by the company's memorandum or articles or

in such manner as, on application of any shareholder, contributory or a continuing liquidator, the Court may direct.

(4) Where a company in a general meeting failed to fill a vacancy under subsection (1), any creditor or contributory of the company may apply to the Court for the appointment of the Official Receiver as provisional liquidator of the company and, if appointed by the Court, the Official Receiver shall act as provisional liquidator of the company until further order of the Court made on application by the company following a resolution in a general meeting nominating a liquidator for appointment by the Court.

Conversion of
a member's
voluntary
winding up
into a
creditor's
voluntary
winding up

154.(1) If, in the case of a member's voluntary winding up, the liquidator has reasonable cause to believe that the company will not be able to pay its debts in full within the period stated in the declaration made under section 151, he or she shall forthwith summon a meeting of the creditors of the company, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Except where the meeting of creditors resolves that the winding up shall continue as a members' voluntary winding up, the winding up shall, as from the date when the liquidator calls the meeting of creditors, become a creditors' voluntary winding up, and the meeting of creditors shall have the same powers as a meeting of creditors held under section 157.

First meeting
of creditors

155.(1) In the case of a creditors' winding up, the directors shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the winding up resolution is to be proposed, and shall cause notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the notices of the meeting of the company.

(2) The directors shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall —

- (a) give the creditors at least 7 days' notice of the meeting; and
- (b) send to each creditor with the notice, a statement showing the names of all creditors and the amount of their claims.

(3) The company shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting once in the *Gazette* and at least once in one daily newspaper.

(4) The directors of the company shall —

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company, the estimated amount of their claims, the securities they respectively hold for their claims, and the privileges to which they are respectively entitled under articles 2101, 2102 and 2103 of the Civil Code to be laid before the meeting of creditors; and
- (b) appoint one of their number to preside at the said meeting.

(5) Subject to subsection (6), the director so appointed shall attend and preside at the meeting of creditors and disclose to the meeting the company's affairs and the circumstances leading to the proposed winding up.

(6) The creditors may appoint one of the creditors or the director appointed under subsection (4)(b) to preside at the meeting.

(7) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

156. Section 126 shall apply to meetings of creditors in a creditors' voluntary winding up as it applies to meetings of creditors in a winding up by the Court.

Meetings of
creditors
generally

157.(1) The creditors and the shareholders of the company at their respective meetings referred to in section 155 may nominate a person to be the liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the shareholders of the company nominate different persons, the person nominated by the creditors

Liquidator in
creditor's
voluntary
winding up

shall be the liquidator, and if no person is nominated by the creditors, the person nominated by the shareholders shall be the liquidator.

(2) Where different persons are nominated, any director, shareholder or creditor or debenture holder of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order —

- (a) directing that the person nominated as liquidator by the shareholders of the company shall be the liquidator instead of, or jointly with, the person nominated by the creditors; or
- (b) appointing some other persons to be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection or, if there is no such committee, the creditors, approve the continuance thereof.

(5) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy and for this purpose a meeting of the creditors may be summoned by any two creditors.

Committee
of inspection

158.(1) The creditors at a meeting summoned pursuant to section 155 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, whether creditors or not.

(2) Where a committee of inspection is appointed, the shareholders of the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in a general meeting, appoint such number of persons, as they think fit, not exceeding five.

(3) The creditors may, if they think fit, resolve that all or any

of the persons so appointed by the shareholders of the company shall not be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as members in place of the persons mentioned in the resolution.

(4) A committee of inspection appointed under this section shall meet at least once in every year.

(5) Subject to the provisions of this section, the provisions of section 124, with the exception of subsection (1), shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court, with the substitution of references to shareholders of the company for references therein to shareholders and contributories.

159.(1) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of a creditors' voluntary winding up shall be void.

Property and
proceedings

(2) After the commencement of a voluntary winding up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court thinks appropriate.

Sub-part IV - Provisions Applicable to all Forms of Voluntary Winding Up

160.(1) Where there is no liquidator acting in a voluntary winding up, the Court may appoint a liquidator.

Power of
Court to
appoint and
remove
liquidator

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

(3) A shareholder, creditor or the liquidator may at any time before the dissolution of a company apply to the Court to review the amount of the liquidator's remuneration.

161.(1) The liquidator may —

Powers of
liquidator

(a) in the case of a members' voluntary winding up,

with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by section 119 (1) (d), (e) and (f) to a liquidator in a winding up by the Court;

- (b) exercise any of the other powers exercisable by a liquidator in a winding up by the Court;
- (c) exercise the power of the Court in a winding up by the Court of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court in a winding up by the Court to make calls; and
- (e) summon general meetings of the company for any purpose he or she may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) Where more than one liquidator is appointed, any power may be exercised by a liquidator designated at the time of their appointment, or in default of such determination, by at least two liquidators.

Power of Court to determine questions and to exercise powers of the Court in winding up by the Court

162.(1) The liquidator or any creditor, shareholder, contributory or debenture holder of the company may apply to the Court to —

- (a) determine any question arising in the winding up of the company; or
- (b) exercise all or any of the powers which the Court may exercise if the company was being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of the power will be just and beneficial, may

accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) Without prejudice to the generality of the powers conferred on the Court by this section, the Court may make an order —

- (a) staying any actions or other proceedings pending in any Court against the company at the commencement of the winding up;
- (b) preventing the bringing of any action or proceedings against the company after the commencement of the winding up unless leave of the Court is first obtained;
- (c) directing that a liquidator shall be released from all liability in respect of any act done, or default made, by him or her in the winding up of the affairs of the company or otherwise in relation to his or her conduct as liquidator;
- (d) revoking any release granted under the last foregoing paragraph on the ground that it was obtained by fraud or by the suppression or concealment of any material fact; and
- (e) directing that a public examination shall be held under section 139 of any person whose public examination could be ordered under that section if the company were wound up by the Court.

163. The voluntary winding up of a company shall not affect the power of the Court to order that the company shall be wound up by the Court on the application of any person who may present a petition under section 98, but on the hearing of the petition the Court shall —

- (a) take into account the wishes of the creditors of the company, and may direct that a meeting of creditors shall be held to ascertain their wishes;
- (b) except where the petition is presented by a creditor or a debenture holder of the company, take into

Order that
company in
voluntary
liquidation
shall be
wound up by
the Court

account the wishes of the shareholders of the company, and may direct that a general meeting or a meeting of a class of shareholders shall be held to ascertain their wishes;

- (c) ascertain whether the creditors, shareholders, contributories or debenture holders of the company will benefit if the Court makes an order that the company shall be wound up by the Court, and take into account the additional cost of a winding up by the Court in comparison with the value of any such benefit; and
- (d) ascertain whether there is any matter relating to the promotion or management of the company or the conduct of its affairs into which an inquiry should be made, and whether such an inquiry can more conveniently be made if the company is wound up by the Court.

Annual
meeting of
shareholders
and creditors

164.(1) Where a voluntary winding up continues for more than 1 year, the liquidator shall at the expiry of the first year from the commencement of the winding up and of each succeeding year but not later than 3 months, summon a general meeting of the company or in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, and shall lay before the meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent at the same time as the notices of the meeting of the company are sent.

Final
meeting and
dissolution in
voluntary
winding up

165.(1) Where the affairs of the company have been fully wound up, the liquidator shall as soon as possible —

- (a) make up an account showing how the winding up has been conducted and the property of the company has been disposed of; and
- (b) call a general meeting of the company, or in the case of a creditors' voluntary winding up a meeting

of the company and the creditors, and shall lay the account before the meeting.

(2) A meeting under subsection (1) shall be called by advertisement in the *Gazette* and published in at least one daily newspaper which shall —

- (a) specify the time, place and object of the meeting; and
- (b) be published at least 1 month prior to the meeting.

(3) The liquidator shall within 7 days of the meeting lodge a notice of the meeting and a copy of the account with the Registrar, and deliver a copy of the notice to the Official Receiver.

(4) Subject to subsection (6), the company shall be dissolved on the expiry of 3 months after the notice has been lodged and, if a quorum is reached, a copy of the notice has been delivered to the Official Receiver.

(5) The Court may, on the application of the liquidator or of such other person as the Court thinks fit, direct that the date at which the dissolution of the company is to take effect shall be deferred for such time as the Court thinks fit.

(6) The person on whose application an order under subsection (5) is made shall, within 14 days, lodge a copy of the order with the Registrar and deliver a copy to the Official Receiver.

166. In connection with general meetings of a company which is being wound up voluntarily —

- (a) no restrictions or limitations imposed by the memorandum or articles on the voting rights of any shareholders shall apply at such meetings, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares shall not be entitled to vote, or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their right to vote imposed by the memorandum or articles of the company; and

Provisions as to general meetings of company in voluntary liquidation

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- (b) a contributory other than a shareholder who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up

shall be deemed to be a shareholder in place of the person who is the holder of the share.

Sub-Part V - Provisions Applicable to All Modes of Winding Up

Disqualification of body corporate from appointment as liquidator

167. A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

Validity of acts of liquidator and disposition of property

168.(1) The acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

(2) Any assignment, transfer, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be valid in favour of any person taking the property bona fide and for value and without notice of the defect or irregularity.

(3) Any person who makes or permits a disposition of property to a liquidator shall not incur any liability and shall be indemnified out of the assets of the company notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to the person.

Fraudulent trading

169.(1) If in the course of the winding up of a company it appears that any business of the company has been carried on —

- (a) with intent to defraud creditors of the company or the creditors of any other person, or for any fraudulent purpose; or
- (b) with reckless disregard of the company's obligation to pay its debts and liabilities; or
- (c) with reckless disregard of the insufficiency of the

company's assets to satisfy its debts and liabilities,

the court, on the application of the Official Receiver or the liquidator or any creditor, shareholder, contributory or debenture holder of the company, may, if it thinks it proper, declare that any of the directors or officers, whether past or present, of the company, or any other persons who were knowingly parties to the carrying on of the business in manner stated in paragraphs (a) to (c), shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct, and may order the amount of such debts or other liabilities to be paid to the persons to whom they are respectively owed or to the liquidator for the benefit of the creditors of the company generally.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director, officer or other person under the declaration a charge on any debt or obligation payable by the company to him or her, or on any hypothecation, mortgage or charge, or any interest in any hypothecation, mortgage or charge, on any assets of the company held by or vested in him or her, or any company or person on his or her behalf, or any person claiming as assignee from or through the director, or such a company or person, and the court may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2), the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, officer or other person the debt, obligation, hypothecation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for money or money's worth paid or given in good faith by any person who had at the time no notice of any of the matters on the ground of which the declaration is made.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

170.(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, liquidator, or any officer of the

Misfeasance
proceedings

company, has misapplied or retained or become liable or accountable for any money or assets of the company, or has been guilty of any wrong doing or breach of duty in relation to the company, the court may, on the application of the Official Receiver, or of the liquidator, or of any shareholder, contributory, creditor or debenture holder, enquire into the conduct of the promoter, director, liquidator, or officer, and compel him or her to repay or restore the money or assets or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, wrongdoing, or breach of duty as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

Ascertainment
of wishes of
creditors,
members etc

171. The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the shareholders, contributories, creditors and debenture holders of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of shareholders, contributories, creditors, or debenture holders to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairperson of any such meeting and to report the result to the court.

Affidavits
etc

172.(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Seychelles or elsewhere before any court, judge or person lawfully authorised to take and receive affidavits or sworn declarations.

(2) All courts, judges, magistrates, and other persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge or person, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Enforcement
of the
provisions of
the
memorandum

173. If by the memorandum of a company it is provided that upon the winding up of the company any assets remaining after the debts and liabilities of the company and the costs and expenses of the winding up have been discharged shall be applied otherwise than by being distributed among the shareholders and contributories of the company, such assets shall be applied accordingly, and the Attorney-General may take

proceedings for the application of such assets in the manner directed by the memorandum of the company, or for a purpose similar to the application directed by the memorandum if that application cannot be carried out.

174. Where a company has been dissolved, after being wound up by the court or voluntarily, the court may at any time within 12 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, rescinding the dissolution, and upon a copy of the order being delivered to the Registrar the company shall, subject to any directions by the court, be deemed to have continued in existence as if it had not been dissolved.

Avoidance of dissolution

(2) It shall be the duty of the person on whose application the order was made, within 14 days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration a copy of the order.

PART V - RECEIVERS AND MANAGERS

Sub-Part I – Appointment, Termination of Appointment and Remuneration of Receivers

175.(1) A receiver —

Meaning of receiver and manager

- (a) means a person appointed to take possession and control of property in receivership and to deal with it as directed in the instrument of appointment or by the Court in the order of appointment; and
- (b) includes a person appointed as a receiver and manager.

(2) A manager means a person appointed to carry on a company's business and dispose of its undertaking.

176.(1) A receiver may be appointed —

Appointment of a receiver

- (a) under any instrument that confers on the person entitled to the benefit of the instrument the power to appoint a receiver; or
- (b) by the Court,

whether or not he or she is empowered to sell any of the property in receivership, but does not include a mortgagee in possession who personally or as or through an agent exercises a power to —

- (i) receive income from mortgaged property;
- (ii) enter into possession or assume control of mortgaged property; or
- (iii) sell or otherwise dispose of mortgaged property.

(2) An instrument that creates a charge in respect of property and undertaking of a company may confer on the chargee the power to appoint a receiver or a receiver and manager of the property and undertaking or of that part which is secured by the charge.

Qualification
of receiver

177.(1) A person shall not be appointed as a receiver or manager of any property of a company if he or she —

- (a) is not qualified to be a liquidator;
- (b) is a creditor of the company;
- (c) is or has been within the period of 2 years immediately preceding the commencement of the receivership been a director, officer or auditor of the chargee of the property in receivership or of any corporation which is a related company of the chargee;
- (d) has or has within the period of 2 years immediately preceding the commencement of the receivership had an interest, direct or indirect, in a share issued by the company;
- (e) is a person in respect of whom an order for his or her removal as a liquidator has been made or is prohibited from acting as a liquidator;
- (f) is a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.

(2) A body corporate shall not be appointed or act as a receiver or manager.

178.(1) Where an instrument confers on the person entitled to the benefit of the instrument the power to appoint a receiver or a receiver and manager, the person may appoint a receiver or a receiver and manager by an instrument in writing signed by him or her or on his or her behalf.

Appointment
of receiver
under
instrument

(2) A receiver or a receiver and manager appointed by, or under a power conferred by, an instrument, shall be the agent of the company, unless the instrument expressly provides otherwise.

(3) A receiver or a receiver and manager may be appointed under this section —

- (a) notwithstanding any other enactment; and
- (b) whether or not the property in respect of which the receiver or receiver and manager is appointed includes immovable property.

(4) A person appointed as receiver may act as receiver and manager unless the instrument appointing him or her excludes appointment as manager.

(5) The power conferred by an instrument to appoint a receiver includes, unless the instrument expressly provides otherwise, the power to appoint —

- (a) two or more receivers;
- (b) a receiver additional to a receiver in office; and
- (c) a receiver to succeed a receiver whose office has become vacant.

179.(1) The Court may appoint a receiver or a receiver and manager on the application of a person entitled to the benefit of the instrument or of any other interested person and on notice to the company, where the Court is satisfied that —

Appointment
of receiver
by Court

- (a) the company has failed to pay a debt due to the chargee or has otherwise failed to meet any obligation to the chargee, of which any principal

money borrowed by the company or interest is in arrears for more than 21 days;

- (b) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security or charge; or
- (c) it is necessary to do so to ensure the preservation of the secured property for the benefit of the person entitled to the benefit of the instrument.

(2) A receiver or receiver and manager may be appointed under this section —

- (a) notwithstanding any other enactment; and
- (b) whether or not the property in respect of which the receiver is appointed includes immovable property.

(3) A person appointed by the Court as a receiver shall be appointed receiver and manager unless the Court directs that the person is to be appointed as a receiver.

Notice of
appointment
of receiver

180.(1) A receiver shall, within 10 days after being appointed —

- (a) give written notice of his or her appointment to the company;
- (b) give public notice of his or her appointment, including —
 - (i) the receiver's full name;
 - (ii) the date and time of the appointment;
 - (iii) the receiver's office address; and
 - (iv) a brief description of the property in receivership; and
- (c) send a copy of the notice to the Registrar.

(2) Where the appointment of the receiver is in addition to that of a receiver who already holds office or is in place of a person who has vacated office as receiver, every notice under this section shall state that fact.

181.(1) Where a receiver or manager of any property of a company has been appointed, every agreement entered into, and every document issued, by or on behalf of the company or the receiver or liquidator and on which the name of the company appears shall state clearly that a receiver or manager has been appointed.

Notice of
receivership

(2) A failure to comply with subsection (1) shall not affect the validity of the agreement or document.

182.(1) The office of a receiver shall become vacant if the person holding office resigns, dies or becomes disqualified under section 177.

Vacancy in
office of
receiver

(2) A receiver appointed under a power conferred by an instrument may resign office by giving not less than 7 days' written notice of his or her intention to resign to the person by whom he or she was appointed.

(3) If, for any reason other than resignation, a vacancy occurs in the office of a receiver, written notice of the vacancy shall forthwith be delivered to the Registrar by the person vacating office or, if that person is unable to act, by his or her legal representative.

(4) A receiver appointed by the Court shall not resign without obtaining the leave of the Court.

(5) A person vacating the office of receiver shall, where practicable, provide such information and give such assistance in the conduct of the receivership to his or her successor as that person reasonably requires.

(6) If a person appointed to be a receiver or manager becomes disqualified under section 177 or under any provision contained in the instrument of appointment, another person may be appointed in his or her place by the persons who are entitled to make the appointment or by the Court, but a receivership shall not terminate or be interrupted by the occurrence of the disqualification.

(7) On the application of a person appointed to fill a vacancy in

the office of receiver, the Court may make any order as it considers necessary or desirable to facilitate the performance of his or her duties.

183.(1) The Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person appointed as receiver or manager of any assets of the company for the benefit of debenture holders.

(2) The power of the Court under the subsection (1) shall, where no previous order has been made under that subsection —

- (a) extend to fixing the remuneration for any period before the making of the order or of the application;
- (b) be exercisable notwithstanding that the receiver or manager has ceased to act before the making of the order; and
- (c) where the receiver or manager has been paid or has retained for his or her remuneration for any period before the making of the order any amount in excess of the amount fixed for period, extend to requiring him or her to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by this paragraph shall not be exercised in respect of any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be exercised.

(3) The Court may from time to time on an application made by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

(4) This section shall apply whether the receiver was appointed prior to or after the commencement of this Act, and to periods prior to, as and to periods after, the commencement of this Act.

(5) This section shall not apply if the receiver is appointed by the Court, and the Court fixes his or her remuneration by the order

appointing him or her by a subsequent order made on his or her application.

Sub-Part II – Powers and Duties of Receivers

184.(1) Subject to the provisions of this section, a receiver shall have the power to do all things necessary or convenient to be done for or in connection with, or incidental to, the attainment of the objectives for which the receiver was appointed.

Powers of
the receiver

(2) Without prejudice to the generality of subsection (1), and subject to any provision of the order of the Court by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed to —

- (a) enter into possession and take control of property of the company in accordance with the terms of that order or instrument;
- (b) lease, let on hire or dispose of property of the company;
- (c) grant options over property of the company on such conditions as the receiver thinks fit;
- (d) borrow money on the security of property of the company;
- (e) insure property of the company;
- (f) repair, renew or enlarge property of the company;
- (g) convert property of the company into money;
- (h) carry on any business of the company;
- (i) take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company;

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- (j) demand and recover, by action or otherwise, income of the property in receivership;
 - (k) issue receipts for income recovered;
 - (l) inspect at any reasonable time books or documents that relate to the property in receivership and that are in the possession or under the control of the company;
 - (m) exercise, on behalf of the company, a right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company;
 - (n) change the registered office or address for service of the company;
 - (o) execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company;
 - (p) draw, accept, make and endorse a bill of exchange or promissory note;
 - (q) use a seal of the company;
 - (r) engage or discharge employees on behalf of the company;
 - (s) appoint an attorney, accountant or other professionally qualified person to assist the receiver;
 - (t) appoint an agent to do any business that the receiver is unable to do, or that is unreasonable to expect the receiver to do, in person;
 - (u) where a debt or liability is owed to the company to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, receive dividends and to assent to a

proposal for a composition or a scheme of arrangement;

- (v) make or defend an application for the winding up of the company; and
- (w) refer to arbitration any question affecting the company.

(3) The receiver's powers in relation to property of a company conferred by this section shall not affect any right in relation to that property of any person other than the company.

(4) In this section, a reference, in relation to a receiver, to property of a company is, unless the contrary intention appears, a reference to the property of the company in relation to which the receiver was appointed.

(5) The remedies given by this section shall be in addition to, and not in derogation of, any other powers and remedies conferred on the trustees of the debenture trust deed or on the debenture holders by the debentures or the debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security, shall be exercisable on the occurrence of any of the events specified in section 73 (1) of the Companies Act, or in the case of a general floating charge, in section 73 (1) or (2) of the Companies Act:

Provided that a manager of the business or of any of the assets of the company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) A receiver may, subject to the Court order by which, or the instrument under which the receiver was appointed, exercise the receiver's powers and authorities to the exclusion of the board of directors or company.

(7) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the instrument under which, or the order of the Court by which, they are appointed expressly provides otherwise.

185.(1) Where there are two or more floating charges subsisting

Precedence
among
receivers

over the property of the company, a receiver may be appointed by virtue of every such charge.

(2) A receiver appointed by, or on the application of, the holder of a floating charge which has priority over any other floating charge by virtue of which a receiver has been appointed, has the power conferred on the receiver by this Act to the exclusion of any other receiver.

(3) Where two or more floating charges rank equally with one another, and two or more receivers have been appointed by virtue of the charges, the receivers so appointed are deemed to have been appointed as joint receivers and shall act jointly unless the instrument of appointment or each of the respective instruments of appointment otherwise provides.

(4) Subject to subsection (6), the powers of a receiver, appointed by or on the application of the holder of a floating charge, are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority over the charge to such an extent as may be necessary to enable the receiver second mentioned to exercise his or her powers under this Act.

(5) Any power under subsection (4) to suspend may be exercised again when the prior floating charge ceases attach to the property subject to the charge, or when the appointment of a receiver under the prior floating charge ceases in respect of that property, whichever first occurs.

(6) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him or her to release any part of the property of the company from his or her control until he or she receives from the receiver superseding him or her a valid indemnity, subject to the limit of the value of such part of the property as is subject to the charge by virtue of which he or she was appointed, in respect of any expenses, charges and liabilities he or she may have incurred in the performance of his or her functions as receiver.

(7) The suspension of the powers of a receiver under subsection (4) shall not cause the floating charge by virtue of which he or she was appointed to cease to attach to the property in respect of which he or she was appointed.

(8) Nothing in this section shall prevent the same receiver from being appointed by virtue of two or more floating charges.

186.(1) A receiver may execute in the name and on behalf of the company every document necessary or incidental to the exercise of the powers of the receiver.

Execution of documents

(2) A document signed on behalf of a company by a receiver shall be deemed to have been validly signed on behalf of the company for the purposes of the Companies Act.

(3) Notwithstanding any other enactment, or the memorandum and articles of a company, where the instrument under which a receiver is appointed empowers him or her to execute a document and to use the company's common seal for that purpose, the receiver may execute the document in the name and on behalf of the company by affixing the company's seal to the document and attesting the affixing of the seal.

187.(1) A receiver shall exercise his or her powers in good faith, in a manner which he or she believes on reasonable grounds to be in the interests of the person in whose interest he or she was appointed.

Exercise of powers of receiver

(2) When acting in accordance with subsection (1), a receiver shall exercise his or her powers with reasonable regard to the interests of—

- (a) the company;
- (b) persons claiming, through the company, interests in the property in the receivership;
- (c) unsecured creditors of the company; and
- (d) sureties who may be called upon to fulfil obligations of the company.

(3) A receiver shall not be bound to act in accordance with the directions of the person appointing him or her and any such failure shall not be regarded as being in breach of the duty referred to in subsection (1).

(4) A receiver who exercises a power of sale of property in a receivership owes a duty to the company to obtain the best price reasonably obtainable at the time of sale.

(5) Notwithstanding any other enactment or anything contained in the instrument by or under which a receiver is appointed —

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- (i) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by subsection (4) that the receiver was acting as the company's agent or under a power of attorney from the company; and
 - (ii) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the company in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (4).

(6) A receiver shall keep money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(7) A receiver shall at all times keep accounting records that correctly record and explain all receipts, expenditure and other transactions relating to the property in receivership.

(8) The accounting records kept under subsection (7) shall be retained by the receiver for not less than 6 years after the receivership ends.

(9) The receiver shall, in claiming remuneration, be entitled to include the reasonable costs of storage of records required to be kept by this section.

Statement of
Company's
Affairs

188.(1) Within 14 days after receipt of the notice of appointment of receiver, or such longer period as may be allowed by the receiver, the company shall prepare and submit to the receiver a statement as to the affairs of the company.

(2) The receiver shall within 2 months after receipt of the statement under subsection (1) send to —

- (a) the Registrar and, if he or she was appointed by the Court, to the Court, a copy of the statement and of any comments he or she considers fit to make thereon, and in the case of the Registrar a summary

of the statement and of his or her comments, if any, thereon; and

- (b) the company, a copy of any such comments under paragraph (a) or, if he or she does not see fit to make any comments, a notice to that effect; and
- (c) the trustees of the debenture trust deed covering the debentures in respect of which he or she was appointed, a copy of the statement and such comments; and
- (d) the holders of all debentures belonging to the same class as the debentures in respect of which he or she was appointed, a copy of the said summary.

(3) The receiver shall within 2 months, or such longer period as the Court may allow after the expiry of the period of 12 months from the date of his or her appointment and of every subsequent period of 12 months, and within 2 months or such longer period as the Court may allow after he or she ceases to act as receiver of the assets of the company, send to the Registrar, to the trustees of the trust deed covering the debentures in respect of which he or she was appointed, and to the holders of all debentures belonging to the same class as the debentures in respect of which he or she was appointed, an abstract in the prescribed form showing his or her receipts and payments during that period of 12 months or, where he or she ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his or her so ceasing, and the aggregate amounts of his or her receipts and of his or her payments during all preceding periods since his or her appointment.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver dying or ceasing to act, except that, where subsection (2) applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) to the receiver shall, subject to subsection (5) include references to his or her successor and to any continuing receiver.

(5) If the company is being wound up, this section and section 189 shall apply notwithstanding that the receiver and the liquidator are the same person, subject to such modifications arising from that fact.

(6) Nothing in subsection (2) shall prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times which, he or she may be required to do so apart from that subsection.

189.(1) The statement as to the affairs of a company required by section 188 to be submitted to the receiver, or his or her successor, shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement of affairs shall be submitted by, and be verified by the signed declaration of, one or more persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such persons hereafter in this subsection mentioned as the receiver, or his or her successor, subject to the direction of the Registrar, may require to submit and verify the statement, that is to say, persons who —

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within 1 year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;
- (d) are or have been within the said year officers of or in the employment of a company which is, or within the said year was, the holding company or a subsidiary of the company to which the statement relates.

(3) Any person making or verifying the statement of affairs or any part of it shall be allowed, and shall be paid by the receiver, or his or her successor, out of his or her receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver, or his

or her successor, may consider reasonable, subject to an appeal to the Court.

190.(1) The period within which a person is required to prepare a report under section 188 may be extended, on application of the person, by —

Extension of
time for
preparing
reports

- (a) the Court, where the person was appointed by the Court;
- (b) the Registrar, where the person was appointed by or under an instrument.

191.(1) If any receiver of any property of a company —

Enforcement
of Receivers'
duty to make
returns

- (a) defaults in filing, delivering or making any return, account or other document, or in giving any notice which a receiver is by law or by order of the Court required to file, deliver, make or give, or fails to make good the default within 14 days after the service on him or her of a notice requiring him to do so; or
- (b) having been appointed under section 179 or under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his or her receipts and payments and to vouch the same and to pay over to the liquidator any amount shown by the accounts as payable to him or her,

the Court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

(2) In the case of any default referred to subsection (1) (a), an application for the purposes of this section may be made by any shareholder, member, creditor or debenture holder of the company or by the Registrar, and in the case of any such default referred to in subsection (1)(a), the application shall be made by the liquidator, and the order of the Court made on the application may provide that all costs of, and incidental, to, the application shall be borne by the receiver.

Validity of
acts of
receiver

192.(1) Subject to subsection (2), the act of a receiver is not invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorised to do the act.

(2) A transaction entered into by a receiver is not invalid merely because the receiver was not validly appointed or is not authorised to enter into the transaction unless the person dealing with the receiver has, or should have, by reason of his or her relationship with the receiver or the property in relation to which the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

Consent of
mortgagee to
sale of
property

193.(1) Where the consent of a mortgagee is required for the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorising the sale of the property, either by itself or together with other assets.

(2) The Court may, on application under subsection (1), make such order as it thinks appropriate authorising the sale of the property by the receiver where it is satisfied that —

- (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
- (b) the sale —
 - (i) is in the interests of the company or its creditors; and
 - (ii) will not substantially prejudice the interests of the mortgagee.

(3) An order under this section shall be made in accordance with article 2200 of the Civil Code on such terms as the Court thinks appropriate.

Duty to
notify
breaches of
Acts

194.(1) A receiver who considers that the company or any director or officer of the company has committed an offence against the Companies Act shall forthwith report that fact to the Registrar.

(2) The report made under subsection (1), and any communication between the receiver and the Registrar relating to that report shall be protected by absolute privilege.

195. A person who held office as receiver shall, within 10 working days after he or she ceases to act as receiver, send or deliver to the Registrar a notice, in writing, that he or she has ceased to act as receiver.

Notice of
end of
receivership

196.(1) Subject to the rights of any of the persons referred to in subsection (2), a receiver shall pay moneys received by him or her to the person entitled to the benefit of the charge by virtue of which he or she was appointed in or towards satisfaction of the debt secured by the charge.

Preferential
claims

(2) The following persons shall be entitled to payment out of the property of a company in receivership in priority to the person entitled to the benefit of the charge, and in the following order of priority —

- (a) first, the receiver for his or her expenses and remuneration and any indemnity to which he or she is entitled from out of the property of the company;
- (b) second, any amounts secured by any charge that ranks in priority to the charge in relation to which the receiver was appointed; and
- (c) third, where the company is in winding up, the persons entitled to preferential claims to the extent and in the order of priority required in section 340.

(3) The receiver shall hold and retain from any property of a company subject to the charge or any proceeds of realisation of such property, sufficient funds or value of property to discharge any claims for the benefit of the persons entitled.

197.(1) Subject to subsection (2), a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company in winding up unless the Court otherwise orders.

Powers of
receiver on
liquidation

(2) After the commencement of the winding up of a company, a receiver shall not be appointed in respect of the property of the company except under an order of the Court on such terms as the Court thinks appropriate.

(3) A receiver holding office in respect of property referred to in subsections (1) and (2), may act as the agent of the company —

-
- (a) with the written approval of the Court; or
 - (b) with the written consent of the liquidator.

(4) A debt or liability incurred by a company through the acts of a receiver who is acting as the agent of the company in accordance with subsection (2) is not a cost, charge or expense of winding up.

Sub-Part III – Liability of Receiver

Liability of
receivers

198.(1) A receiver of property of a company shall be personally liable —

- (a) on any contract entered into by him or her in the performance of his or her functions, except in so far as the contract otherwise provides, and shall be entitled in respect of that liability to an indemnity out of the property of which he or she was appointed to be receiver; and
- (b) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his or her appointment if notice of the termination of the contract is not lawfully given within 14 days after the date of appointment.

(2) The terms of a contract referred to in subsection (1)(a) may exclude or limit the personal liability of the receiver other than a receiver appointed by the Court.

(3) The Court may, on the application of a receiver, made before the end of the period of 14 days, extend the period within which notice of the termination of a contract is required to be given under subsection (1)(b) and may extend the period on such terms and conditions as the Court thinks fit.

(4) Subject to subsection (6), a receiver is personally liable, to the extent specified in subsection (5), for rent and any other payments due under an agreement subsisting at the date of his or her appointment relating to the use, possession or occupation by the company of property in receivership.

(5) The liability of a receiver under subsection (4) is limited to that portion of the rent or other payments which is attributed to the period commencing 14 days after the date of appointment of the receiver and ending on —

- (a) the date on which the receivership ends; or
- (b) the date on which the company ceases to use, possess or occupy the property, whichever first occurs.

(6) The Court may, on the application of a receiver —

- (a) limit the liability of the receiver to a greater extent than specified in subsection (5); or
- (b) excuse the receiver from the liability under subsection (4).

(7) Nothing in subsection (4) or (5) —

- (a) shall be taken as giving rise to an adoption by the receiver of an agreement referred to in subsection (4); or
- (b) shall render a receiver liable to perform any other obligation under the agreement.

(8) A receiver is entitled to an indemnity out of the property in receivership in respect of his or her personal liability under this section.

(9) Nothing in subsection (8) shall be taken as limiting any right to an indemnity which the receiver would but for subsection (8), or as limiting his or her liability on contracts entered into without authority, or as conferring any right to indemnity in respect of that liability.

199.(1) The Court may, subject to such terms and conditions as it deems fit, relieve a person who has acted as a receiver from any personal liability incurred in the course of the receivership where it is satisfied that—

- (a) the liability was incurred merely by reason of a defect in the appointment of the receiver or in the instrument or order of the Court by or under which the receiver was appointed; and

Relief from
liability

-
- (b) the receiver acted honestly and reasonably and should, in the circumstances, be excused.

(2) A person in whose interests a receiver was appointed is liable, subject to such terms as the Court thinks appropriate, to the extent to which the receiver is relieved from liability under subsection (1).

Sub-Part IV – Control of Receiver

Court
supervision
of receiver

200. A receiver may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his or her functions, and on any such application the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, or may order any person to do or abstain from doing anything, as the Court thinks just or necessary in the circumstances.

Termination
or limitation
of
receivership
by the Court

201.(1) The Court may, on the application of the company, a liquidator or administrator of the company, order that a receiver shall —

- (a) cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership; or
- (b) as from a specified date, act only in respect of specific assets forming part of the property in receivership.

(2) An order may be made under subsection (1) where the Court is satisfied that —

- (a) the purpose of the receivership has been satisfied so far as possible; or
- (b) circumstances no longer justify its continuation.

(3) Unless the Court otherwise orders, a copy of an application made under this section shall be served on the receiver not less than 5 working days prior to the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1) —

-
- (a) may be made on such terms as the Court thinks appropriate; and
 - (b) shall not affect a security or charge over the property in respect of which the order is made.

(5) The Court may, on the application of any person who applied for or is affected by the order, rescind or amend an order under this section.

202. The Court may, on making an order removing, or having the effect of removing, a receiver from office, make such order as it thinks fit —

Order for protection of property in receivership

- (a) for preserving the property in receivership; and
- (b) requiring the receiver for that purpose to make available to any person specified in the order any information and document in the possession or under the control of the receiver.

PART VI – COMPANY REORGANISATION

Sub-Part I – General

203. “Company reorganisation” means the administration of the business, property and affairs of a company in a way that —

Company reorganisation

- (a) provides the opportunity for the company, or as much as possible of its business, to continue in existence; or
- (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company’s creditors and shareholders than would result from the immediate winding up of the company.

204.(1) For the purposes of this Part —

Interpretation and application of Part VI

“company” includes a partnership, the assets of which in its balance sheet for its last financial year have a value of at least SCR10,000 or more, or such other amount as may be prescribed;

“director” in relation to a partnership means a partner;

“enforcement process”, in relation to property, means —

- (a) execution against that property; or
- (b) any other enforcement process in respect of that property that involves a Court or an usher;

“insolvent”, in relation to a company, means a company that is unable to pay its debts, as and when they become due and payable;

“winding up” in relation to a partnership means declaration of bankruptcy in bankruptcy.

(2) This Part shall not apply to —

- (a) a financial institution;
- (b) an insurance business as defined under the Insurance Act.

Sub-Part II – Commencement and Termination of Reorganisation

Commencement
and termination
of
reorganisation

205.(1) The reorganisation of a company commences when an administrator is appointed.

(2) Subject to subsection (3), reorganisation of a company ends where —

- (a) a rescue plan is executed by the company and the plan’s administrator;
- (b) the company’s creditors resolve that the company reorganisation should end;
- (c) the company’s creditors appoint a liquidator by a resolution passed at a meeting to determine the future of the company; or
- (d) any of the circumstances set out in subsection (3) occurs.

-
- (3) The reorganisation of a company shall end, where —
- (a) the Court, on being satisfied that the company is solvent, or that for any other reason the reorganisation should end, orders that the reorganisation ends, on the date specified in the order or, if no date is specified, on the date when the order is made;
 - (b) no meeting to determine the future of the company has been held under section 224(1)(b), or no application has been made under section 229(2) to extend the period for convening the meeting within the period referred to in section 229(1), at the expiry of the said period;
 - (c) an application has been made to the Court after the expiry of the period referred to in section 229(1) for convening a meeting to determine the future of the company, on the date when the application is refused or otherwise disposed of without extending the said period;
 - (d) at a meeting to determine the future of the company no resolution has been passed for the company to execute a rescue plan, at the close of the meeting;
 - (e) the company fails to execute a proposed rescue plan within the time allowed by the Court under section 249 (2), on the expiry of the said period; or
 - (f) the Court appoints a liquidator or a provisional liquidator, at the time when the order is made.

Sub-Part III – Appointment of Administrator

206.(1) Subject to subsection (2), a natural person may be appointed as administrator of a company.

Appointment
of
administrator

(2) A person shall not be appointed as administrator where he or she is disqualified from being appointed as a liquidator, unless the Court otherwise directs.

(3) A person shall not be appointed as administrator unless he or she has consented in writing and has not withdrawn his or her consent at the time of appointment, and that consent is filed with the Registrar.

(4) Subject to subsection (5), an administrator may be appointed by —

- (a) the company;
- (b) where the company is in winding up, the liquidator;
- (c) where a provisional liquidator has been appointed, the provisional liquidator;
- (d) a secured creditor holding a charge over the whole, or substantially the whole, of the company's property; or
- (e) the Court.

(5) Where a company is in reorganisation, an administrator may be appointed by —

- (a) the Court;
- (b) the creditors, as a replacement administrator for an administrator that the creditors have removed; or
- (c) where the first administrator has died, resigned from office or become disqualified, the person who appointed the first administrator.

(6) (a) A company may appoint an administrator under subsection (4) (a) where the directors have resolved that —

- (i) the company, in the opinion of the directors voting for the resolution, is insolvent or is likely to become insolvent; and
- (ii) an administrator of the company should be appointed.

-
- (b) A company in winding up shall not appoint an administrator.

(7) (a) The liquidator or provisional liquidator of a company may appoint an administrator under subsection (4) (b) or (c) where he or she has reasonable grounds to believe that the company is insolvent, or is likely to become insolvent, and any of the conditions referred to in subsection (9) (a) to (d) are applicable.

(b) The liquidator or provisional liquidator may appoint himself or herself as administrator if he or she obtains —

- (i) the prior permission of the Court; or
- (ii) in the case of a liquidator, the approval of the company's creditors in the form of a resolution passed at a creditors' meeting.

(c) A liquidator or provisional liquidator shall not appoint a person as administrator who is a business or professional partner, employer, or employee, of the liquidator or provisional liquidator unless the appointment has been approved by the company's creditors in the form of a resolution passed at a creditors' meeting.

(8) (a) A person who holds a charge over the whole, or substantially the whole, of a company's property, or the receiver appointed by that person, may appoint an administrator where the charge has become enforceable.

(b) The secured creditor or receiver shall not appoint an administrator where the company is in winding up.

(9) The Court may appoint an administrator on the application of a creditor, the liquidator if the company is in winding up or the Registrar where it is satisfied that the company is or is likely to become insolvent, and —

- (a) the continued existence of the company or the sale of the assets as a going concern are reasonably capable of being achieved in the event of an administrator being appointed;
- (b) a more advantageous realisation of the assets of the company and any related company may be

achieved than in the case of an immediate winding up;

- (c) the appointment of an administrator may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the company or any related company; or
- (d) it is just and equitable to do so.

(10) The appointment of an administrator under this section shall be in writing and state the date from which the appointment shall take effect.

(11) An administrator who is appointed to a company in winding up may apply to the Court for an order for the winding up to resume.

(12) The appointment of an administrator may not be revoked, except where he or she is removed by the Court or by the creditors.

Appointment
of multiple
administrators

207.(1) Two or more persons may be appointed as administrators in any case where the provisions of this Act provides for the appointment of an administrator.

(2) Where two or more persons are appointed as administrators —

- (a) an administrator's function or power may be performed or exercised by any one of them, or by any two or more of them jointly, except so far as the order, instrument, or resolution appointing them otherwise provides; and
- (b) a reference in this Act to an administrator refers to the administrator or administrators as the context requires.

Remuneration
of
administrator

208.(1) An administrator may be paid such remuneration as approved by a resolution of the creditors passed at a meeting of the company's creditors or as the Court may direct under subsection (2).

(2) The Court may, on the application of the administrator, an officer of the company, a creditor, or a shareholder, fix or review the administrator's remuneration to such amount as is reasonable in the circumstances.

(3) A creditor or shareholder may make an application under subsection (2) with the leave of the Court.

209. The office of administrator shall become vacant where the administrator —

Vacancy in
office of
administrator

- (a) resigns;
- (b) dies;
- (c) becomes disqualified; or
- (d) is removed by the Court.

210.(1) An administrator may resign from office by giving a notice in writing to the company and to the person who appointed him or her .

Resignation or
removal of
administrator
from office

(2) An administrator may be removed from office —

- (a) by the Court, on the application of a creditor, the liquidator if the company is in winding up or the Registrar;
- (b) by a resolution of creditors passed at the first meeting of the creditors; or
- (c) by a resolution of creditors passed at a meeting of creditors convened to consider whether to remove to administrator.

(3) The creditors shall not remove an administrator from office by a resolution passed at a meeting of creditor unless —

- (a) the resolution appoints another person as administrator who is not disqualified to be appointed; and
- (b) the person named in the resolution as the new

administrator has, before the resolution is considered, tabled at the meeting —

- (i) a signed written consent to act as administrator; and
- (ii) a statement of non-interest.

New
administrator to
fill vacancy due
to resignation,
death or
disqualification

211.(1) The person who appointed an administrator may appoint a replacement administrator to fill a vacancy that occurs where the administrator —

- (a) resigns;
- (b) dies; or
- (c) becomes disqualified.

(2) The appointment of a replacement administrator by a company, without prejudice to subsection (1), shall be made by a resolution of the directors.

Creditors to
consider
appointment
of replacement
administrator

212.(1) A replacement administrator, unless appointed by the Court, shall convene a meeting of the creditors at which the creditors may vote to remove the replacement administrator and appoint another person in his or her place.

(2) The meeting shall be held not later than 7 days after the date on which the replacement administrator is appointed.

(3) The replacement administrator shall convene the meeting by —

- (a) giving written notice of the meeting to company's creditors; and
- (b) publishing a notice of the meeting in a daily newspaper.

(4) The replacement administrator shall take the steps set out in subsection (3) within 2 working days prior to the date fixed for the meeting.

Sub-Part IV – Functions and Powers of Administrator

213.(1) The functions of the administrator shall be to —

Administrator's
functions

- (a) take control of the company's business, property, and affairs;
- (b) investigate the company's affairs and consider possible ways of rescuing the company's business in the interests of creditors, employees and shareholders;
- (c) carry on the business and manage the property and affairs of the company with the objective of rescuing the company's business in the interests of creditors, employees and shareholders;
- (d) terminate or dispose of all or part of the company's business, and may dispose of any of the company's property; and
- (e) perform any function that the company or any of its officers could perform if the company was not in reorganisation.

(2) (a) Every administrator shall file a statement of accounts with the Registrar for each of the following periods —

- (i) the period of 6 months, or such shorter period as the administrator may decide, after the day on which the administrator was appointed;
- (ii) each subsequent period of 6 months during which the administrator holds office; and
- (iii) the period between the last of the period referred to in subparagraph (ii) and the day on which the administrator vacates office.

(b) An administrator shall file the statement of accounts within 28 days after the expiry of the period in question.

-
- period —
- (c) The statement of accounts shall show for each
 - (i) the administrator's receipts and payments; and
 - (ii) the aggregate of the administrator's receipts and payments from the day on which the administrator was appointed.

(3) Any payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator —

- (a) is valid and effectual for the purpose of this Act; and
- (b) if the company is in winding up, shall not be set aside in the winding up.

Powers of
administrator

214.(1) An administrator shall have the powers necessary to carry out the functions and duties of administrator under this Act, including the power to —

- (a) commence, continue, discontinue, and defend legal proceedings;
- (b) continue, to the extent necessary for the reorganisation, the business of the company; and
- (c) appoint an agent to do anything that the administrator is unable to do.

(3) An administrator, when performing a function or exercising a power in the capacity of administrator, acts as an agent of the company.

Power of
administrat
or to obtain
post-
commence
ment
finance

215.(1) An administrator may, during the reorganisation of a company under this Part, obtain new financing for the purposes of continuing the business of the company and such financing —

- (a) may be secured to the lender by charging any asset of the company to the extent that it is not otherwise encumbered; and

-
- (b) shall be paid in the order of priority set out in subsection (2).

(2) All claims arising out of subsection (1) shall have priority in the order in which they were incurred over all unsecured claims against the company.

(3) If the company reorganisation is superseded by a winding up order by the Court or by a creditors' voluntary winding up, the priority conferred in terms of this section shall remain in force, except to the extent of any claims arising out of section 241.

Sub-Part V – Consequences of Reorganisation

216.(1) Subject to subsection (2), notwithstanding the appointment of an administrator to the company, the directors of the company shall continue in office.

Effect of
reorganisation
on company
officers

(2) Any director of a company in reorganisation shall not exercise or perform, or purport to exercise or perform, a function or power as an officer of the company except —

- (a) with the prior, written approval of the administrator; or
- (b) as expressly permitted by this Part.

217.(1) The appointment of an administrator shall not automatically terminate any employment contract to which the company is a party.

Effect of
reorganisation
on employees

(2) Subject to subsection (3), the administrator shall not be held personally liable for any obligation of the company under any contract of employment to which the company is a party, unless the administrator expressly adopts the contract in writing.

(3) The administrator shall be personally liable for payment of wages or salary that accrue under a contract of employment that was entered into before the administrator's appointment, unless the administrator has given notice of the termination of the contract within 21 days after appointment.

(4) The Court may, on the administrator's application, extend

the period of 21 days referred to in subsection (3), on such terms as the Court thinks appropriate.

Effect of
reorganisation
on dealing
with
company
property

218.(1) Any transaction or dealing by a company in reorganisation, or by a person acting on behalf of the company, that affects the company's property is void unless the transaction or dealing was entered into —

- (a) by the administrator, on behalf of the company and in his or her capacity as administrator;
- (b) with the prior written consent of administrator; or
- (c) in terms of an order of the Court.

(2) The Court may validate a transaction or dealing that is void under subsection (1).

(3) Subsection (1) shall not apply to a payment made by a bank —

- (a) out of an account kept by the company with the bank;
- (b) in good faith and in the ordinary course of the bank's business; and
- (c) on or prior to the day on which the bank was notified in writing by the administrator that the reorganisation has commenced or before the bank had reason to believe that the company was in reorganisation, whichever time is the earlier.

Effect of
reorganisation
on transfer of
shares

219.(1) Subject to subsections (2) and (3), a share in a company in reorganisation shall not be transferred and the rights or liabilities of a shareholder of the company shall not be altered.

(2) The administrator may consent to the transfer of a share in a company in reorganisation where he or she is satisfied that the transfer is in the best interests of the rescue of the company.

(3) The Court may make an order for —

- (a) the transfer of a share of a company in

reorganisation after the administrator has been asked to consent to the transfer and has refused or failed to respond for an unreasonable time;

- (b) altering the rights and liabilities of a shareholder in a company in reorganisation on good cause shown.

220.(1) As soon as practicable after the commencement of the reorganisation of a company, the administrator shall —

Investigation
of company's
affairs by
administrator

- (a) investigate the company's business, property, affairs, and financial circumstances; and
- (b) form an opinion as to whether it would be in the creditor's interest for the—
 - (i) company to execute a rescue plan;
 - (ii) reorganisation to end; or
 - (iii) company to be wound up.

(2) Where the administrator forms an opinion in accordance with subsection (1) (b) (iii), the company may be wound up by —

- (a) a resolution of the creditors in terms of section 231 (1) (c), in which case the winding up shall be dealt with as a creditors' voluntary winding up; or
- (b) failing a resolution of the creditors in terms of section 231 (1) (c), the Court on the petition of the administrator.

221.(1) The directors shall, within 7 days after the commencement of the reorganisation of a company, provide the administrator with a statement regarding the company's business, property, affairs and financial circumstances.

Directors'
statement

(2) The administrator may extend the period for compliance with the requirement of subsection (1).

- (3) The administrator shall table the directors' statement —

-
- (a) at the first meeting of the creditors; or
 - (b) where the administrator has extended the time for compliance by the directors, at the meeting convened to consider the future of the company.

Right to obtain documents and information

222. An administrator shall have the powers vested in a liquidator pursuant to section 119.

Report by administrator

223.(1) An administrator may lodge a report with the Registrar specifying any matter that, in his or her opinion, should be brought to the Registrar's notice.

(2) The administrator shall as soon as practicable, report the matter to the Registrar where he or she believes that —

- (a) any person who is or has been an officer or a shareholder of the company has committed an offence involving dishonesty; or
- (b) a person who has taken part in the formation, promotion, administration, management, or winding up of the company —
 - (i) has misapplied or retained or become liable or accountable for the company's money or property in Seychelles or elsewhere; or
 - (ii) is guilty of negligence, default, or breach of duty or trust in relation to the company.

(3) Where the administrator makes a report under subsection (2), the administrator shall provide the Registrar with such assistance as the Registrar may reasonably require by providing —

- (a) the required information;
- (b) access to documents; and
- (c) facilities for inspecting and copying documents.

(4) Where the Court is satisfied that the administrator should

make a report under subsection (2) and has not done so, the Court may, on the application of an interested person, direct the administrator to make a report.

224.(1) The administrator shall convene —

- (a) the first meeting of creditors for the appointment, if any, of a committee of inspection;
- (b) a meeting to determine the future of the company; and
- (c) such other meetings as may be required by the committee of inspection or the administrator.

Administrator
or to
convene
creditors'
meetings

(2) Sections 282 to 294 shall apply to creditors' meetings called under this Part as if references to "the liquidator" were references to "the administrator".

(3) At any meeting of creditors held under this Part, a resolution is passed if a majority in number representing 75 per cent in value of the creditors or class of creditors voting in person, or by proxy vote, votes in favour of the resolution.

(4) The administrator or his or her nominee shall be the chairperson of a creditors' meeting, and shall have a casting vote.

(5) The administrators of related companies may, with the consent of all the creditors, call meetings of creditors of their respective companies to be held at the same time and place.

(6) In the case of a joint meeting of the creditors of related companies, a creditor of a company in reorganisation may vote on a resolution that relates to the reorganisation of the company.

(7) For the purposes of subsection (5), a creditor consents to the joint meeting of the creditors of related companies where —

- (a) a notice that complies with subsection (8) accompanies the notice of meeting of creditors convened under subsection (1); and
- (b) the creditor has not objected to the joint meeting

within the time, and in the manner, specified in the written notice.

(8) The notice under this section shall —

- (a) be in writing; and
- (b) state —
 - (i) the administrator's postal and email addresses;
 - (ii) the names of the related companies in respect of which the joint meeting is to be held;
 - (iii) that the creditor may object to the joint meeting by sending a written objection to the administrator at the administrator's postal or email address within the time specified in the notice; and
 - (iv) that unless the creditor objects in accordance with the notice, the creditor will be taken to have agreed to the joint meeting.

Power of
Court
regarding
creditors'
meetings

225.(1) Where the Court is satisfied that a resolution at a meeting of creditors —

- (a) was passed, defeated, or required to be decided by a casting vote;
- (b) would not have been passed, defeated, or required to be decided by a casting vote if the vote cast by a particular related creditor were disregarded; or
- (c) it was passed or defeated —
 - (i) contrary to the interests of the creditors, or a class of creditors, as a whole;
 - (ii) to the prejudice of, or is reasonably likely to

prejudice, the interests of the creditor who voted for or against the resolution to an extent that is unreasonable having regard to the circumstances referred to in subsection (2),

the Court may, on the application of a creditor or the administrator —

- (A) set aside the resolution;
- (B) order that a new meeting be held to consider and vote on the resolution;
- (C) order that a specified related creditor or creditors shall not vote on the resolution or on a resolution to vary or amend it; or
- (D) make any order as the Court thinks appropriate.

(2) The circumstances referred to in subsection (1) (c) (ii) are —

- (a) the benefits accruing to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the resolution;
- (b) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and
- (c) any other related matter.

(3) For the purposes of this section —

“related creditor” means a creditor who is a related entity of the company in reorganisation;

“related entity”, in relation to the company in reorganisation, means a —

- (a) promoter;
- (b) relative or spouse of a promoter;

-
- (c) relative of a spouse of a promoter;
 - (d) director or shareholder;
 - (e) relative or spouse of a director or shareholder;
 - (f) relative of a spouse of a director or shareholder;
 - (g) related company;
 - (h) beneficiary under a trust of which the company in reorganisation is or has at any time been a trustee;
 - (i) relative or spouse of the beneficiary referred to in subparagraph (h);
 - (j) relative of a spouse of the beneficiary referred to in subparagraph (h);
 - (k) company, a director of which is also a director of the company in reorganisation; or
 - (l) trustee of a trust under which a person is a beneficiary, if that person is a related entity of the company in reorganisation under this subsection.

First creditors'
meeting

226.(1) The administrator shall convene the meeting of creditors under section 224(1)(a) to —

- (a) decide whether to appoint a committee of inspection and its members; and
- (b) decide whether to replace the administrator.

(2) The meeting shall be held within 10 days after the commencement of reorganisation of the company.

(3) The administrator shall call the first meeting of creditors by —

- (a) giving written notice of the meeting to as many of the company's creditors as disclosed by the records kept by the company, as is reasonably practicable; and

(b) publishing a notice of the meeting in a daily newspaper.

(4) The administrator shall take the steps set out in subsection (3) not less than 6 days prior to the meeting.

(5) The administrator shall table at the first meeting of creditors a statement of non-interest that complies with subsection (6).

(6) The statement of non-interest shall disclose whether the administrator, or a firm of which the administrator is a partner, has any relationship whether professional, business or personal with the company in reorganisation or any of its officers, shareholders or creditors.

(7) The administrator shall, prior to tabling the statement of non-interest, make such inquiries as are reasonably necessary for ensuring that the statement of non-interest is complete and accurate.

227.(1) The functions of the committee of inspection of a company in reorganisation are to —

Function of
committee of
inspection

(a) consult with the administrator about matters relating to the reorganisation; and

(b) receive and consider reports of the administrator.

(2) The committee may not give directions to the administrator, but the administrator shall report to the committee about matters relating to the reorganisation as and when the committee reasonably requires.

228. A person shall be eligible to become a member of the committee of inspection, if he or she is —

Membership
of committee
of inspection

(a) a creditor of the company;

(b) the agent of a creditor under a general power of attorney; or

(c) authorised in writing by a creditor.

229.(1) The administrator shall convene a meeting under section 224 (1) (b) to determine the future of the company within 28 days after the

Meeting to
determine
future of the
company

date on which the administrator is appointed or within such longer period as the Court may allow under subsection (2).

(2) The Court may, on the application of the administrator, extend the period for convening a meeting under subsection (1) —

- (a) if the application is made prior to the expiry of the said period; and
- (b) where the application is made after the expiry of the said period, the Court is satisfied that substantial injustice will result if the period is not extended.

(3) The administrator shall convene the meeting referred to in subsection (1) by —

- (a) giving written notice of the meeting to the company's creditors; and
- (b) publishing a notice of the meeting in a daily newspaper.

(4) The administrator shall take the steps set out in subsection (3) not less than 7 days before the meeting.

(5) The following documents shall accompany the notice referred to in subsection (3) (a) —

- (a) a report by the administrator as to —
 - (i) the company's business, property, affairs and financial circumstances; and
 - (ii) any other matter material to the creditors' decisions to be considered at the meeting; and
- (b) a statement setting out the administrator's opinion, with reasons for that opinion, as to whether it would be in the creditors' interests for the —
 - (i) company to execute a rescue plan;

(ii) reorganisation to end; or

(iii) company to be placed in winding up; and

(c) if a rescue plan is proposed, a statement setting out the details of the proposed plan.

(6) Subject to subsection (7), the directors of the company shall attend the meeting to determine the future of the company but shall not be required to answer questions at the meeting.

(7) A director may not attend the meeting to determine the future of the company where —

(a) the director has a valid reason for not attending; and

(b) the administrator or the creditors by a resolution have excused the director from attending.

(8) A director attending the meeting to determine the future of the company shall abstain from all or part of the remainder of the meeting if required to do so by a resolution of the creditors.

(9) The administrator and the directors of the company in reorganisation shall, before the creditors vote on any resolution in a meeting, inform the voting arrangement of which the administrator or a director, as the case may be, is aware that requires one or more creditors to vote in a particular way on any resolution that may be voted by the meeting.

230. The meeting to determine the future of the company may be adjourned to a date that is not later than 42 days after the first day on which the meeting was held, unless the Court, on the administrator's application, orders that the meeting be adjourned for later than 42 days.

Adjournment
of meeting to
determine the
future of the
company

231.(1) At a meeting to determine the future of the company, the creditors may resolve that —

(a) the company execute a rescue plan specified in the resolution;

(b) the reorganisation should end; or

Decisions
at meeting
to determine
the future
of the
company

-
- (c) unless the company is in winding up, the company should be wound up as a creditors' voluntary winding up, and appoint a liquidator.

(2) The resolution referred to in subsection (1) shall be carried out by a majority in accordance with section 224(3).

Proposed
rescue plan
not fully
approved

232.(1) Where, at a meeting to determine the future of the company, the creditors resolve that the company execute a rescue plan, but the proposed plan is not fully approved at the meeting, the administrator shall take the steps set out in 249.

(2) The administrator shall inform the creditors at the meeting to determine the future of the company that —

- (a) they have the right to inspect and comment on the draft plan; and
- (b) the administrator has the ultimate responsibility for drafting the plan and the executed plan may differ from the draft.

Sub-Part VI – Protection of Company's Assets

Charge
unenforceable

233. Subject to sections 242 to 246, during the reorganisation of a company, a person shall not enforce a charge over the property of the company, except with —

- (a) the written consent of the administrator; or
- (b) the permission of the Court.

Recovery of
property

234.(1) The owner or lessor of property used or occupied by, or in the possession of, the company, shall not take possession of the property or otherwise recover it, during the reorganisation of the company, except with —

- (a) the written consent of the administrator; or
- (b) the permission of the Court.

(2) Subsection (1) shall not prevent a person from giving a notice to the company under an agreement relating to property used or

occupied by, or in the possession of, the company.

235. The proceedings in a Court against the company or in relation to any of its property, during the reorganisation of the company, shall not be commenced or continued, except with —

Proceedings in Court

- (a) the written consent of the administrator; or
- (b) the permission of the Court on terms as the Court thinks appropriate.

236. An administrator shall not be liable in damages for a refusal to give an approval or consent for the purposes of this Part.

Refusal of administrator's consent

237. Any enforcement process in relation to the company's property, during the reorganisation of the company, shall not be commenced or continued except with the permission of the Court on such terms as the Court thinks appropriate.

Enforcement process

238.(1) Where the Registrar of the Court receives written notice that a company is in reorganisation, he or she shall not —

Duties of Registrar of Court in relation to company's property

- (a) take action to sell property of the company under an execution process;
- (b) pay to a person other than the administrator —
 - (i) proceeds of the sale of the company's property under an execution process;
 - (ii) money of the company seized under an execution process; or
 - (iii) money paid to avoid seizure or sale of property of the company under an execution process;
- (c) take action in relation to the attachment of a debt due to the company; or
- (d) pay to any person other than the administrator money received from the attachment of a debt due to the company.

(2) The Registrar of the Court shall deliver to the administrator any property of the company that is in his or her possession under an execution process.

(3) The Registrar of the Court shall pay to the administrator all proceeds or money referred to in subsection (1)(b) or (d) —

(a) in the possession of the Registrar of the Court; or

(b) paid to the Court that have not since been paid out.

(4) The costs of the execution or attachment shall be a first charge over property delivered under subsection (2) or proceeds or money paid under subsection (3).

(5) In order to give effect to a charge under subsection (4), the Registrar of the Court may retain, on behalf of the person entitled to the charge, so much of the proceeds or money as the Registrar of the Court thinks necessary.

(6) The Court may, where it is satisfied that it is expedient to do so, permit the Registrar of the Court to take action, or make a payment, that subsection (1) would otherwise prevent.

(7) Notwithstanding this section, a person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the company and the administrator.

239. For the purposes of any enactment relating to the effect of a *lis pendens* on purchasers or mortgagees, an application for the appointment of a liquidator to the company shall, during the reorganisation of a company, be taken to be pending and shall constitute a *lis pendens*.

Lis pendens

240. A guarantee of a liability of a company, during the reorganisation of the company, except with the Court's permission on such terms as the Court thinks appropriate, shall not be enforced against —

Liability of
director or
relative

(a) a director of the company who is a natural person;

(b) the spouse or relative or a person referred to in paragraph (a); or

-
- (c) any related company.

Sub-Part VII – Rights of Secured Creditors

241. For the purposes of section 242, —

Secured
creditors

“decision period”, in relation to a chargeholder and to a charge over property of a company in reorganisation, means the period that —

- (a) commences —
- (i) where notice of the appointment of an administrator is to be given to the chargeholder under section 273, on the day when the notice is given; or
 - (ii) in any other case, on the day when the reorganisation commences; and
- (b) ends on the expiry of the fourteenth day after the day on which the reorganisation commenced;

“enforce”, in relation to a secured creditor holding a charge over property of a company in reorganisation, includes —

- (a) appoint a receiver of property of the company under a power contained in an instrument relating to the charge;
- (b) obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge;
- (c) give notice converting a floating charge into a fixed charge;
- (d) enter into possession, or assume control, of that property;
- (e) appoint a person to enter into possession or assume control as agent for the secured creditor or for the company; or

-
- (f) exercise as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under an instrument relating to the charge, an enactment, or otherwise.

Leave to
enforce
security

242.(1) A secured creditor who is affected by the appointment of an administrator may, within 28 days after the appointment of the administrator, apply to the Court for leave to enforce his or her security.

(2) A secured creditor who makes an application to the Court under subsection (1) shall, on the day on which the application is filed with the Court, give notice of the application to the administrator.

(3) The administrator shall, within 7 days after receiving the application, file with the Court —

- (a) a notice as to whether the administrator supports or opposes the application along with reasons therefor; and
- (b) a report on the assets and liabilities of the company under reorganisation to the extent that are known to the administrator and a statement to the extent that the report on the assets and liabilities are incomplete to his or her knowledge.

(4) The Court shall, within 7 days after receiving the administrator's notice, conduct a hearing on the application.

(5) The Court may, at the hearing under subsection (4), —

- (a) make a determination on the application; or
- (b) where it considers that it is essential to receive further information and reports from the secured creditor or the administrator in order to effectively determine the application, adjourn the hearing for a period of not later than 21 days.

(6) The Court, when determining the secured creditor's application, may make an order granting leave to the secured creditor to

enforce the secured creditor's security over the property of the company where it is satisfied that in all the circumstances of the case serious prejudice will be caused to the secured creditor if the application is not granted which outweighs the prejudice caused to other creditors arising from granting the application.

(7) The Court may make an order under subsection (6) on such terms as the Court thinks appropriate, including —

- (a) making an order that the secured creditor, the receiver, or any other person involved in the enforcement of the security shall not perform specified functions or exercise specified powers except as permitted by further order of the Court;
- (b) limiting the enforcement of the security to specified property; or
- (c) directing that the enforcement of security by a creditor by any sale of property of the company shall be conducted in the manner laid down by the Court or subject to any further leave or directions from the Court.

(8) A secured creditor who is granted leave to enforce his or her security under this section shall, from time to time at intervals not exceeding 3 months, report to the administrator on the enforcement of his or her security and the proceeds thereby recovered by the secured creditor.

(9) The Court may, in the case of perishable property, on an application under this section, make an order granting leave to a secured creditor to forthwith enforce his or her security so far as it is a security over perishable property and to hold any proceeds that are recovered by the secured creditor on trust for the administrator pending the hearing and an order under subsection (6).

(10) Nothing in this section shall prevent a person from giving a notice under a security agreement.

243.(1) Where, prior to the commencement of the reorganisation of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it —

Recovery of
property before
reorganisation

-
- (a) entered into possession of, or assumed control of, property used or occupied by, or in the possession of, the company; or
 - (b) exercised any other power in relation to the property,

sections 233 and 234 shall not prevent the receiver or other person from performing a function, or exercising a power in relation to the property.

(2) Section 218 shall not apply in relation to a transaction or dealing that affects the property and is entered into in the performance or exercise of a function or power of the receiver or other person.

Appointment
of liquidator
to company in
reorganisation

244.(1) A liquidator may be appointed to a company in reorganisation —

- (a) by the Court, on a petition under section 98; or
- (b) by resolution of the creditors at a meeting to determine the future of the company or at a meeting convened under section 261 to consider the termination of a rescue plan.

(2) The Court may adjourn an application under section 100(1)(d) for the appointment of a liquidator of a company in reorganisation where it is satisfied that it is in the interests of the company's creditors that the company continue in reorganisation rather than be placed in winding up.

(3) The Court shall not appoint a provisional liquidator of a company in reorganisation where it is satisfied that it is in the interests of the company's creditors for the company to continue in reorganisation instead of appointing a provisional liquidator.

(4) The appointment by the Court of a liquidator to a company in reorganisation ends the reorganisation.

(5) In the case of the appointment by the creditors of a liquidator to a company in reorganisation, the administrator shall be the liquidator where —

-
- (a) the creditors' resolution does not nominate a person for appointment;
 - (b) the person nominated is disqualified from acting as liquidator or has not consented to the appointment in writing; or
 - (c) the person nominated is for any other reason unable or unwilling to act as liquidator.

(6) (a) Where a liquidator is appointed to a company in reorganisation under a rescue plan, the person in control of the company immediately before the appointment of the liquidator shall as soon as practicable lodge with the Registrar —

- (i) a copy of the administrator's report accompanied with the notice to creditors of the meeting to determine the future of the company; and
- (ii) a further report updating the administrator's report with any matter of which the officer is aware that —
 - (A) are not referred to in the administrator's report, or have changed since that report; and
 - (B) affect the financial position of the company.

(b) Where there is no administrator or plan administrator acting when the company is in winding up, the directors of the company at the date of commencement of winding up shall take the steps specified in subsection (6)(a) as if they were the administrator.

245. Any payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator of a company in reorganisation, shall not be set aside in the winding up of the company.

Act of
administrator

246.(1) An administrator may sell existing shares in the company —

Administrator
may sell shares

-
- (a) with the consent of the shareholder in question; or
 - (b) where the shareholder does not consent, with the permission of the Court given on an application of the administrator.

(2) The shareholder, a creditor, or the Registrar may oppose an application by the administrator for the Court's permission.

Sub-Part VIII – Rescue Plan

Rescue plan

247.(1) When the creditors, at a meeting convened to determine the future of the company, resolve that the company execute a rescue plan, the administrator shall prepare a document that sets out the terms of the plan.

- (2) The document referred to in subsection (1) shall state —
 - (a) the name of the administrator;
 - (b) the property of the company, whether or not it is owned by the company when it executes the plan, that will be available to pay creditors;
 - (c) the nature and duration of any moratorium period for which the plan provides;
 - (d) the extent to which the company shall be released from its debts;
 - (e) the conditions, if any, for the plan to come into operation;
 - (f) the circumstances in which the plan terminates;
 - (g) the order in which the proceeds of realisation of the property referred to in subsection (2)(b) shall be distributed among creditors who are bound by the plan, after the charges and expenses properly incurred in the reorganisation, including the remuneration of the administrator, have been paid out of the assets of the debtor in priority to all other claims; and

-
- (h) the day, which shall not be later than the day when the reorganisation commenced, on or prior to which the creditors' claims should have arisen if they are to be admissible under the plan.

(3) The document shall include every provision specified under this Act relating to the rescue plan, except those provisions which are expressly excluded in the document.

248.(1) A rescue plan shall be deemed to be executed when it is executed by the company in reorganisation and the administrator. Execution of plan

(2) The period for the execution of the plan shall be —

- (a) 21 days from the date of its approval at a meeting convened to determine the future of the company; or
- (b) such further period as the Court may allow on an application, for an extension of the period referred to in paragraph (a), made prior to the expiry of the said period.

(3) The company shall not execute a plan unless the board of the company has, by resolution, authorised the plan to be executed by the company or on its behalf.

(4) Subsection (3) applies notwithstanding section 216, but shall not limit the functions and powers of the administrator of the company.

249.(1) Where, at a meeting to determine the future of the company, the creditors resolve that the company execute a rescue plan, but the proposed plan is not fully approved at the meeting, — Procedure if plan not fully approved

- (a) the administrator shall draft the complete plan and circulate it to the creditors within 14 days after the meeting; and
- (b) the creditors may inspect the plan for a period of 3 days, not including any Saturday or public holiday, after the end of the period specified in paragraph (a); and

-
- (c) the company and the administrator shall execute the plan within 2 working days at the expiry of the period specified in paragraph (b).

(2) The Court may extend the period referred to in subsection (1)(a) up to 10 working days, on an application made by the administrator, within that period.

(3) The Court may extend the period referred to in subsection (1)(c) up to two days, not including any Saturday or public holiday, on an application made by the administrator within that period.

Act of
creditor

250. A person shall not, in so far as he or she would be bound by a plan if it had already been executed, —

- (a) do anything inconsistent with the plan, except with the permission of the Court; or
- (b) do any act that is prohibited under section 254, during the period between a resolution passed at the meeting to determine the future of the company that the company execute a rescue plan and the earlier of —
 - (i) execution of the plan by the company and the administrator; or
 - (ii) expiry of the period during which the plan may be executed.

Company's
failure to
execute plan

251. Where the creditors, at a meeting to determine the future of the company, have passed a resolution that the company execute a rescue plan, and the company fails to do so within the period for execution, the administrator shall —

- (a) apply for the appointment of a liquidator to the company; or
- (b) if the company is in winding up, apply for the winding up to resume.

Effect of
plan

252. A rescue plan binds —

-
- (a) the creditors of the company, to the extent provided by section 253;
 - (b) the company;
 - (c) the officers and shareholders of the company; and
 - (d) the administrator.

253.(1) A rescue plan shall bind all creditors including secured creditors in respect of claims that arise on or prior to the day specified in the plan.

Extent to
which plan
binds
creditors

(2) A secured creditor shall not realise or otherwise enforce his or her charge except so far as —

- (a) the plan provides for the secured creditor to realise or enforce his or her charge and the secured creditor at the meeting to determine the future of the company voted in favour of the resolution as a result of which the company executed the plan; or
- (b) the Court makes an order to that effect under section 255.

(3) The owner or lessor of property used or occupied by the company or in its possession shall not exercise his or her rights in relation to the property, except —

- (a) where the plan provides for the exercise of rights in relation to an owner or a lessor of property who, at the meeting convened to determine the future of the company, voted in favour of the resolution as a result of which the company executed the plan; or
- (b) by an order of the Court made under section 255.

254.(1) A person who is bound by a rescue plan shall not, when the plan is in force —

Prohibited
acts

- (a) apply, or continue with an application, to the Court for the appointment of a liquidator of the company;

-
- (b) except with the Court's permission, commence or continue proceedings against the company or in relation to any of its property; or
 - (c) except with the Court's permission, commence or continue an enforcement process against the company's property.

(2) In this section, "property" includes property used or occupied by the company, or in its possession.

Enforcement
of charge or
recovery of
property

255.(1) The Court may, at any time after creditors have resolved at a meeting convened to determine the future of the company that a rescue plan be executed, order that —

- (a) a secured creditor may realise or otherwise enforce his or her charge; or
- (b) the owner or lessor of property that is used or occupied by the company or in its possession may take possession of the property or otherwise recover it or exercise rights in relation to it.

(2) The Court may make an order under subsection (1) on such terms as the Court thinks appropriate, if it is satisfied that —

- (a) the order will not adversely affect the purposes of the plan; and
- (b) having regard to the terms of the plan and the order, and any other relevant matters, the interests of the creditor, property owner or lessor affected by the order, will be seriously prejudiced to an extent that outweighs prejudice to other creditors if an order is not made.

(3) An application for an order under this section may be made where the plan has not been executed by the administrator.

Effect of plan
on
company's
debts

256.(1) A rescue plan releases the company from a debt in so far as —

- (a) the plan provides for the release; and

(b) the creditor concerned is bound by the plan.

(2) The release of the company from a debt under subsection (1) shall not discharge or otherwise affect the liability of —

(a) a guarantor of the debt; or

(b) a person who has indemnified the creditor concerned against default by the company in relation to the debt.

257.(1) The Court may rule on the validity of a rescue plan if there is doubt, on a specific ground, whether the plan —

Court may
rule on
validity of
plan

(a) was entered into in accordance with this Part; or

(b) complies with this Part.

(2) An application under this section may be made by —

(a) the administrator;

(b) a shareholder or creditor of the company; or

(c) the Registrar.

(3) On an application under this section —

(a) the Court may declare the plan void; or

(b) if the plan is void for contravention of this Part, the Court may validate the plan, where the Court is satisfied that —

(i) a provision of this section was substantially complied with; and

(ii) no injustice will result for any person bound by the plan if the contravention is disregarded.

(4) The Court may, where it declares that a provision of the plan is void, vary the plan if the administrator consents.

Variation of
plan by
creditors

258.(1) The creditors may vary a rescue plan by a resolution passed at a meeting convened under section 262, provided that the variation shall not be materially different from the proposed variation set out in the notice of the meeting.

(2) A creditor of a company in reorganisation may apply to the Court for an order cancelling the variation of the rescue plan by the creditors.

(3) On the application made under subsection (2), the Court may —

- (a) cancel or confirm the variation, on specified conditions (if any); and
- (b) make any other order that the Court thinks appropriate.

Termination
of plan

259. A rescue plan may be terminated —

- (a) by the Court under section 260;
- (b) by a resolution of the creditors under section 261;
or
- (c) where the plan specifies circumstances in which the plan will terminate, on the occurrence of such circumstances.

Termination
of plan by
Court

260.(1) The Court may terminate a rescue plan on the application of —

- (a) the company;
- (b) a creditor;
- (c) the administrator; or
- (d) any other interested person.

(2) The Court may terminate a rescue plan where it is satisfied that —

- (a) an information breach has occurred;

-
- (b) there has been a material contravention of the plan by a person bound by it;
 - (c) effect cannot be given to the plan without injustice or undue delay;
 - (d) the plan or a provision of the plan or an act done or proposed to be done under the plan is or is likely to be —
 - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors; or
 - (ii) contrary to the interests of the company as a whole;
 - (e) the plan should be terminated for some other reason.

(3) The Court shall not terminate the plan without taking into account the rights of third parties.

(4) In this section —

“information breach” means —

- (a) giving of false or misleading information about the company’s business, property, affairs, or financial circumstances —
 - (i) to the administrator or a creditor; or
 - (ii) in a report or statement that accompanies a notice of meeting at which a resolution that the company execute a rescue plan was passed; or
- (b) an omission from the report or statement referred to in subsection (4)(a)(ii), where the information or the omission, as the case may be, can reasonably have been expected to be material to the creditors in deciding whether to vote in favour of the resolution that the company execute the rescue plan.

Termination
of plan by
creditors

261.(1) The creditors, by a resolution passed at a meeting convened under section 262 may terminate a plan if there has occurred a material breach of the plan that has not been rectified.

(2) The creditors may appoint a liquidator where the notice of the meeting sets out a proposed resolution that a liquidator be appointed to the company.

Creditors'
meeting to
consider
proposed
variation or
termination
of plan

262.(1) The administrator —

- (a) may at any time convene a meeting of the creditors of the company to consider a variation to, or the termination of, the plan; and
- (b) shall convene a meeting if requested in writing by creditors whose claims against the company are not less than 10 per cent of the value of the total value of all creditors' claims.

(2) The administrator shall convene the meeting by —

- (a) giving written notice to the creditors of the company; and
- (b) publishing a notice of the meeting in a daily newspaper.

(3) The administrator shall take the steps set out in subsection (2) not less than 7 days prior to the meeting.

(4) The notice given to the creditors shall set out any resolution for varying or terminating the plan that is to be considered by the meeting.

(5) The administrator shall preside at the meeting.

(6) The meeting may be adjourned from time to time.

Sub-Part IX – Liability of Administrator

Liability
for debt

263.(1) An administrator is not liable for the debts of the company except as provided in this Part.

(2) An administrator is liable for debts that he or she incurs, in the performance or exercise, or purported performance or exercise, of any of his or her functions and powers as administrator, for —

- (a) the purpose of funding the company;
- (b) any services rendered; or
- (c) any property hired, leased, or occupied.

(3) Subsection (2) shall have effect notwithstanding any agreement to the contrary, but without prejudice to the administrator's rights against the company or any other person.

(4) An administrator is liable, to the extent specified in subsection (5), for the rent and other payments due by the company under an agreement —

- (a) made prior to the commencement of the reorganisation; and
- (b) relating to the use, possession, or occupation of property by the company.

(5) An administrator is liable for rent and other payments that accrue in the period —

- (a) commencing 7 days after the commencement of the reorganisation; and
- (b) during which —
 - (i) the company continues to use or occupy, or be in possession of, the property; and
 - (ii) the reorganisation continues; and
- (c) ending on the earliest of the following —
 - (i) the end of the reorganisation;
 - (ii) the giving of a notice under section 264;
 - (iii) the appointment of a receiver of the

property where an order is made under section 255 permitting a secured creditor or owner of property to enforce a charge or exercise rights in relation to property;

- (iv) the appointment of an agent by a secured creditor of the property, under the provisions of a charge over the property, to enter into possession or to assume control of the property where an order is made to that effect under section 255; or
- (v) where a secured creditor takes possession or assumes control of the property under the provisions of a charge over the property where an order is made to that effect under section 255.

(6) An administrator shall not be deemed, because of subsection (5) —

- (a) to have adopted the agreement; or
- (b) to be liable under the agreement except as set out in subsection (5).

(7) This section shall not affect the liability of the company for rent and other payments due under the agreement.

Non-use
notice

264.(1) An administrator shall not be liable under section 263 for any period during which a non-use notice is in force, which —

- (a) is given by the administrator to the owner or the lessor of the property within 7 days after the commencement of the reorganisation;
- (b) specifies the property to which it relates; and
- (c) states that the company does not propose to use the property or otherwise exercise any rights in relation to it.

(2) A notice under subsection (1) ceases to have effect where —

- (a) the administrator revokes it by written notice to the owner or lessor, or
- (b) the company exercises, or purports to exercise, a right in relation to the property.

(3) For the purposes of subsection (2)(b), the company does not exercise, or purport to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company —

- (a) uses the property; or
- (b) asserts a right, as against the owner or the lessor, to continue to occupy or be in possession.

(4) A notice under this section shall not affect the company's liability for rent and other payments.

(5) The Court may exempt an administrator from liability for rent and other payments under this section, but the Court's order shall not affect the company's liability.

265.(1) An administrator shall be indemnified out of the company's property for —

Administrator's
indemnity

- (a) any personal liability incurred in the due performance of his or her duties, but not a personal liability incurred in bad faith or negligently; and
- (b) the remuneration to which the administrator is entitled.

(2) Subject to section 266, the administrator's right under subsection (1) has priority over —

- (a) all the company's unsecured debts; and
- (b) debts of the company having priority under section 340.

(3) An administrator has a lien over the company's property to secure a right of indemnity under this section.

(4) A lien under subsection (3) has priority over a charge to the same extent as the right of indemnity has priority over debts secured by the relevant charge.

Sub-Part X – Powers of Court

Court's
general
power

266.(1) The Court may make any order as it thinks appropriate as to the operation of this Part in relation to a company.

(2) The Court may, subject to such conditions as it may think fit, terminate a reorganisation pursuant to subsection (1) where it is satisfied that the reorganisation should end —

- (a) because the company is solvent;
- (b) because the provisions of this Part are being abused; or
- (c) for some other reasons.

(3) The Court may make an order under this section on the application of —

- (a) the company;
- (b) a creditor of the company;
- (c) the administrator;
- (d) the Registrar; or
- (e) any interested person.

Order to
protect
creditors
during
reorganisation

267. On the application of the Registrar or creditors of the company, the Court may make such order on such conditions as it thinks necessary to protect the interests of the creditors of the company during reorganisation.

Court may
rule on
validity of
administrator's
appointment

268. If there is doubt, on a specific ground, as to the validity of

the appointment of a person as administrator, any of the following persons may apply to the Court for a ruling on the validity of the appointment —

- (a) the person appointed;
- (b) the company; or
- (c) any of the creditors of the company.

269.(1) An administrator may apply to the Court for directions in relation to the performance or exercise of any of his or her functions and powers.

Administrator
may seek
directions

(2) An administrator may apply to the Court for directions in relation to the operations of, or giving effect to, the plan.

270.(1) The Court may make any order it thinks appropriate where it is satisfied that —

Court may
supervise
administrator

- (a) an administrator's management of the company's business, property, or affairs is prejudicial to the interests of some or all of the company's creditors or shareholders; or
- (b) an administrator's conduct or proposed conduct has been or is or is likely to be prejudicial to those interests.

(2) An application under this section may be made by—

- (a) a creditor or shareholder of the company; or
- (b) the Registrar.

271.(1) The Court may order an administrator to remedy his or her default.

Order to
remedy
default

(2) An order may be made under this section where —

- (a) the administrator has failed, as required by this Act or any other enactment, to make or file any return, account, or other document or to give a notice, and has not remedied the default within 14 days after service on him or her of a notice by a shareholder

or creditor of the company requiring that the default be remedied; or

(b) the administrator has failed, after being required at any time by the liquidator of the company to do so —

(i) to render proper accounts of, and to provide appropriate vouchers for his or her receipts and payments as administrator; or

(ii) to pay to the liquidator an amount properly payable to the liquidator.

(3) An application under this section may be made by —

(a) in the case of a default referred to in subsection (2)(a), a shareholder or creditor of the company;

(b) in the case of a default referred to in subsection (2)(b), the liquidator; or

(c) the Registrar.

Court's power
when office of
administrator
is vacant

272.(1) The Court may make such order as it thinks appropriate where it is satisfied that, in the case of a company in reorganisation, or in the case of a rescue plan that is in force, the office of the administrator is vacant or no administrator is acting.

(2) An application under this section may be made by —

(a) a creditor or shareholder of the company; or

(b) the Registrar.

(3) The Court may make an order under this section in relation to a person who is or has been the administrator of a company in reorganization, on the application of —

(a) the company or a shareholder of the company;

(b) a creditor of the company;

-
- (c) the administrator of the company;
 - (d) the Registrar; or
 - (e) any interested person.

(4) (a) In this section, “failure to comply” means a failure of an administrator to comply with a relevant duty arising —

- (i) under this Act or any other enactment; or
- (ii) under any order or direction of the Court.

(b) In paragraph (a), “relevant duty” includes the duty of a person in his or her capacity as liquidator of a company.

(5) A copy of every order made under subsection (1) shall, within 10 working days after the order is made, be delivered by the applicant to the Registrar who shall keep it on a file indexed by reference to the name of the administrator or plan administrator.

Sub-Part XI – Notices

273.(1) An administrator appointed by a company or by the liquidator or provisional liquidator or by a secured creditor shall —

Notice of
appointment

- (a) before the end of the next working day after his or her appointment, lodge a notice of the appointment with the Registrar;
- (b) not later than 3 working days after his or her appointment, publish a notice of the appointment in the *Gazette*; and
- (c) as soon as practicable, and in any event not later than the end of the next working day after appointment, give written notice of the appointment to —
 - (i) each person who holds a charge over the whole, or substantially the whole, of the company’s property; or
 - (ii) each person who holds two or more charges

over the property of the company where the property of the company subject to the charges together is the whole, or substantially the whole, of the company's property.

(2) A secured creditor who appoints an administrator under section 206 shall give written notice of the appointment to the company as soon as practicable and in any event before the end of the next working day.

Notice of execution of rescue plan **274.** As soon as practicable after a rescue plan is executed, the administrator shall —

- (a) send to each creditor a written notice of the execution of the plan;
- (b) publish the notice in a daily newspaper; and
- (c) file a copy of the plan with the Registrar.

Notice of failure to execute rescue plan **275.** Where a company does not execute a rescue plan within the specified period, the administrator shall as soon as practicable —

- (a) publish a notice of the failure in a daily newspaper; and
- (b) file a copy of the notice with the Registrar.

Notice of termination of rescue plan by creditors **276.** Where the creditors terminate a rescue plan, the administrator shall as soon as practicable —

- (a) send a notice of the termination to each of the creditors;
- (b) publish the notice in a daily newspaper; and
- (c) file a copy of the notice with the Registrar.

Notice of fact of reorganisation **277.(1)** A company shall set out, in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company, after the company's name where it first appears —

-
- (a) for as long as the company is in reorganisation, the words “under reorganisation”; and
 - (b) for as long as a rescue plan is in force, the expression “subject to rescue plan”.

(2) The Court may, on an application by the company, exempt the company from the requirement in subsection (1)(b).

278.(1) A company in reorganisation that changes its name less than 6 months prior to the appointment of the administrator shall, in any document of the company where its name appears, include its former name.

Notice of
change of
name

(2) Where a company to which subsection (1) applies is in reorganisation placed in winding up, the liquidator shall, in any document of the company where its name appears, include also its former name.

Sub-Part XII – Effect of contravention of Part VI

279. Any contravention of this Part shall not affect the validity of any act done under this Part, unless the Court otherwise orders.

Effect of
contravention

PART VII - PROVISIONS APPLICABLE TO BANKRUPTCY AND WINDING UP

Sub-Part I – Meetings

280. A meeting of creditors may be held by —

Holding
meetings of
creditors

- (a) assembling together the creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting; or
- (b) means of audio, radio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting.

281.(1) A notice of meeting, in writing, shall be sent to every creditor and other person entitled to attend the meeting at least 5 days prior to the meeting, stating —

Notice of
meeting

- (a) the time and place of every meeting to be held

under section 280(a); or

- (b) the time and method of communication for every meeting to be held under section 280(b); or
- (c) the time and address for the return of voting papers for every meeting to be held under section 280(a) or (b).

(2) The notice under subsection (1) shall —

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it;
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each such resolution and voting and mailing instructions.

(3) Any irregularity in or a failure to receive a notice of a meeting of creditors shall not invalidate anything done by the meeting, where —

- (a) the irregularity or failure is not material; or
- (b) all the creditors entitled to attend and vote at the meeting attend the meeting without objection to the irregularity or failure; or
- (c) all such creditors agree to waive the irregularity or failure.

(4) Where the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(5) An adjourned meeting shall be held at the same place unless another place is specified in the resolution for the adjournment.

(6) Where a meeting of creditors under section 282 is adjourned for less than 1 month, it shall not be necessary to give notice of

the time and place for the adjourned meeting other than by announcement at the meeting which is adjourned.

282.(1) In the case of a bankruptcy, the Official Receiver or his or her nominee appointed by the Official Receiver shall preside at the meetings.

Chairperson
of meeting

(2) In the case of a winding up of a company, the liquidator or his or her nominee present at the meeting held in accordance with section 280 shall preside at the meeting.

(3) In the case of a winding up of a company, where there is no liquidator or any nominee of the liquidator present at the meeting, the creditors participating shall choose one of the creditors to preside at the meeting.

283.(1) The quorum for a meeting of creditors shall be —

Quorum

- (a) three creditors who are entitled to vote at the meeting or their proxies present; or
- (b) where the number of creditors entitled to vote at the meeting does not exceed three, the creditors who are entitled to vote or their proxies present.

(2) Where there is no quorum within 30 minutes after the time appointed for the meeting, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the chairman may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies shall form the quorum.

284.(1) At any meeting of creditors, not being a meeting held for the purposes of subsection (2), a resolution is adopted where a majority in number and value of the creditors voting in person or by proxy vote in favour of the resolution.

Voting

(2) At any meeting of creditors required to be passed as a special resolution, the resolution is passed where a majority in number representing 75 per cent in value of the creditors voting in person or by proxy in vote favour of the resolution.

(3) The creditor presiding at the meeting shall not have a casting vote.

Proxies

285.(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) A proxy of a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.

(3) A proxy shall be appointed by notice in writing signed by the creditor and the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding 1 year.

(4) A proxy shall not be effective in relation to a meeting unless a copy of the notice of appointment is given to the Official Receiver or his or her nominee, the liquidator or where no liquidator is acting, to the person who gave notice of the meeting, at least 48 hours prior to the meeting.

Official
Receiver or
liquidator to
report to
meeting

286. If the Official Receiver or liquidator attends a creditors' meeting or an adjournment of the meeting, the Official Receiver or liquidator shall —

- (a) report on the administration of the debtor's estate;
- (b) give any creditor any further information as the creditor may require; and
- (c) in the case of a bankruptcy, if required, produce all accounting records, deeds and papers in the Official Receiver's possession that relate to the bankrupt's property.

Attending a
creditors'
meeting

287.(1) A person may attend a creditors' meeting by —

- (a) being present in person at the time and place appointed for the meeting; or
- (b) means of an audio or audio-visual link, so that all persons participating in the meeting can simultaneously hear and be heard, if the official receiver or liquidator makes it available.

(2) A creditor may attend by proxy on any resolution to be tabled at the meeting.

288.(1) In the case of a bankruptcy, the bankrupt shall, if required by the Official Receiver, attend all creditors' meetings by being present in person or by means of an audio or audio-visual link.

Bankrupt may be required to attend creditors meeting

(2) The Official Receiver, the chairperson of the creditors' meeting, a creditor or a representative of a creditor may examine the bankrupt as to his or her property, conduct or dealings.

(3) The chairperson of the meeting shall allow such questions that relate to the bankrupt's property, conduct or dealings.

(4) The bankrupt shall sign a statement of the bankrupt's evidence given during the examination if required to do so by the Official Receiver or the chairperson of the meeting.

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

Attendance by non-creditors

(a) the Official Receiver or liquidator;

(b) the creditors attending the meeting voting by ordinary resolution.

290.(1) The chairperson of a meeting of creditors shall ensure that minutes are kept of all proceedings.

Minutes

(2) Minutes which have been signed by the chairperson of the meeting shall be evidence of the proceedings.

291. A body corporate which is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

Corporations may act by representatives

292. Subject to the provisions of this Act, a meeting of creditors may regulate its own procedure.

Regulate own proceedings

Sub-Part II – Proof of Debts

293.(1) A provable debt is a present, future, certain or contingent debt or liability which a creditor may prove against a debtor in a bankruptcy or a winding up of a company —

Provable debt and proof of debt

-
- (a) at the time of declaration of bankruptcy or in the case of a company on the commencement of winding up; or
 - (b) after declaration of bankruptcy but prior to discharge or in the case of a company after the commencement of winding up and prior to dissolution, by reason of an obligation incurred by the debtor prior to declaration of bankruptcy or dissolution as the case may be.

(2) A fine, penalty, order for restitution, or other order for the payment of money that has been made following a conviction for an offence shall not be —

- (a) a provable debt; and
- (b) discharged when the debtor, in the case of bankruptcy, is discharged from bankruptcy.

(3) A proof of debt is a document that a creditor submits, to the Official Receiver in the case of a bankruptcy or to a liquidator in the case of winding up of a company, for the purpose of proving the debt.

(4) A debt is proved when a decision is made by the Official Receiver or liquidator to admit the debt as being a debt provable in the bankruptcy.

Procedure
for proving
debts

294.(1) Sections 301 to 323 shall govern the manner in which a proof of debt is to be submitted and is to be examined and the procedure to be followed in relation to proving debts, including the options available to, and the procedure to be followed by, a secured creditor.

(2) A proof of debt shall comply with such other requirement as may be prescribed.

Uncertain
proof

295.(1) Where a proof of debt is subject to a contingency, or is for damages, or where for some any other reason the amount of the debt is uncertain, the Official Receiver or liquidator may estimate the amount of the debt.

(2) The Court shall determine the amount of an uncertain debt

on the application of —

- (a) the Official Receiver or liquidator, where the Official Receiver or liquidator chooses not to estimate the amount; or
- (b) a creditor, where the Official Receiver or liquidator has estimated the amount and the creditor is aggrieved by the estimate.

296.(1) A proof of debt that is, but for a bankruptcy or a winding up, payable on expiry of 6 months after the date of declaration of bankruptcy or winding up order is treated as a proof for the present value of the debt.

Proof of debt payable after declaration of bankruptcy or winding up

(2) The present value of the debt is calculated by deducting interest at the prescribed rate for the period from the date of declaration of bankruptcy or winding up to the date when the debt is payable.

297.(1) In the case of mutual credits, mutual debts, or other mutual dealings between a debtor and a person, —

Mutual credit and set-off

- (a) account shall be taken of what is due from one party to the other in respect of the credits, debts, or dealings;
- (b) an amount due from one party to the other shall be set off against an amount due from the other party; and
- (c) the balance of the account may be proved in a bankruptcy or a winding up and is payable to the Official Receiver or liquidator, as the case may be.

(2) A person, other than a related person, is not entitled under this section to claim the benefit of a set-off arising from —

- (a) a transaction made within the specified period, being a transaction by which the person gave credit to the debtor or the debtor gave credit to the person; or
- (b) the assignment, within the specified period, to the person of a debt owed by the debtor to another

person, unless the person proves that, at the time of the transaction or assignment, he or she did not have reason to suspect that the debtor was unable to pay his or her or its debts as they became due.

(3) A related person is not entitled under this section to claim the benefit of a set-off arising from —

- (a) a transaction made within the restricted period, being a transaction by which the related person gave credit to the debtor or the debtor gave credit to the related person; or
- (b) the assignment within the restricted period to the related person of a debt owed by the debtor to another person, unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the debtor was unable to pay his or her or its debts as they became due.

(4) This section shall not apply to an amount paid or payable by a shareholder —

- (a) as consideration, or part consideration, for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.

(5) In this section —

“related person” means —

- (a) a related company; and
- (b) includes a director of a company in winding up;

“restricted period” means the period of 2 years prior to declaration of bankruptcy or commencement of winding up;

“specified period” means the period of 6 months prior to the date of a declaration of bankruptcy or the commencement of winding up.

298.(1) A claim may include interest up to the date of declaration of bankruptcy or commencement of winding up —

Interest on
claims

- (a) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on the claim; or
- (b) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) Where any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on the claims from the date of declaration of bankruptcy or commencement of winding up to the date on which each claim is paid, and where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) Where any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1) from the date of declaration of bankruptcy or the commencement of winding up to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subsection (1)(a) or subsection (1)(b), as the case may be, and, where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

299.(1) Every creditor shall prove his or her debt as soon as may be practicable after declaration of bankruptcy or commencement of winding up.

Proof of
claim

(2) A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Receiver in the case of a bankruptcy or to the liquidator in the case of a winding up of a company, an affidavit verifying the debt.

(3) (a) The affidavit may be made by the creditor or by a person authorised by or on behalf of the creditor.

(b) Where the affidavit is made by a person authorised

by or on behalf of the creditor, it shall state his or her authority and means of knowledge.

(4) (a) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be sustained.

(b) The Official Receiver or liquidator may at any time call for the production of the vouchers.

(5) The affidavit shall state whether the creditor is a secured creditor.

(6) A creditor shall bear the cost of proving his or her debt, unless the Court otherwise orders.

(7) A creditor who lodged a proof debt shall be entitled to inspect and examine the proofs of other creditors prior to the first meeting, of creditors and at all reasonable times.

(8) A creditor proving his or her debt shall deduct from the debt —

- (a) all trade discounts;
- (b) any discount which he or she may have agreed to allow for payment in cash in excess of 5 per cent of on the net amount of his or her claim.

Proof of
claim by
secured
creditors

300.(1) A secured creditor may exercise one of the following options —

- (a) realise property subject to a security, if entitled to do so; or
- (b) value the property subject to the security and prove in the bankruptcy as an unsecured creditor for the balance due, if any, after deducting the amount of the valuation; or
- (c) surrender the security to the Official Receiver or liquidator for the general benefit of the creditors and prove in the bankruptcy or winding up as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the option in subsection (1) (a) whether the creditor has exercised the option in subsection (1) (b).

(3) The Official Receiver or liquidator may at any time, by notice in writing, require a secured creditor, within 1 month after receipt of the notice, to —

- (a) choose one of the options in subsection (1); and
- (b) if the creditor chooses the options in subsection (1)(b) or (c), exercise the option within 1 month.

(4) A secured creditor who has been served with a notice under subsection (3) and fails to comply with the notice —

- (a) is treated as having surrendered the security to the Official Receiver or liquidator under the option in subsection (1)(c) for the general benefit of the creditors; and
- (b) may prove as an unsecured creditor for the whole debt.

301.(1) A secured creditor who realises property subject to a security may prove as an unsecured creditor for any balance due after deducting the net amount realised.

Secured
creditor
realises
property

(2) Subsection (1) shall not apply if the Official Receiver or liquidator has accepted a valuation and proof of debt under section 304.

(3) A secured creditor who realises property subject to a security shall account to the Official Receiver or liquidator for any surplus remaining after the following amounts have been paid —

- (a) the amount of the debt;
- (b) interest payable on the debt up to the time when it is paid;
- (c) any payments to the holder of any other security in the property.

302.(1) This section applies where a secured creditor values the

Secured
creditor
values
property

property subject to the security and proves as an unsecured creditor for the balance due.

(2) The valuation of the property subject to the security and the proof of debt shall —

- (a) be made in the prescribed form;
- (b) contain full particulars of the valuation and the debt;
- (c) contain full particulars of the security, including the date when it was given; and
- (d) identify any documents that substantiate the debt and the security.

(3) The creditor shall produce any document referred to in subsection (2)(d) if required by the Official Receiver or liquidator.

Secured
creditor does
not realise or
surrender
security

303. Where a secured creditor does not realise or surrender his or her security, he or she shall in accordance with section 304, prior to ranking for dividend, state in his or her proof the particulars of his or her security, the date when it was given, and the value at which he or she assesses it, and shall be entitled to receive a dividend in respect of the balance due to him or her after deducting the value so assessed.

Secured
creditor
amends
value or
subsequently
realises
security

304.(1) Where a creditor has valued his or her security under section 302, he or she may at any time amend the valuation and proof on showing to the satisfaction of the Official Receiver or liquidator or the Court that the valuation and proof were made bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation, but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court may order, unless the Official Receiver or liquidator allows the amendment without application to the Court.

(2) Where a valuation has been amended in accordance with subsection (1), the creditor shall forthwith repay any surplus dividend which he or she may have received in excess of that to which he or she would have been entitled on the amended valuation, or as the case may be, shall be entitled to be paid out of any money for the time being available

for dividend, any dividend or share of dividend which he or she may have failed to receive by reason of the inaccuracy of the original valuation, prior to the money being made applicable to the payment of any future dividend, but he or she shall not be entitled to disturb the distribution of any dividend declared prior to the date of the amendment.

(3) Where a creditor after having valued his or her security subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(4) Where a secured creditor does not comply with this section, he or she shall be excluded from all share in any dividend.

(5) A secured creditor shall not receive more than the full amount of his or her claim in principal and interest.

305.(1) A secured creditor who has surrendered a security under section 300 (1) (c) may, with the leave of the Court or the Official Receiver or liquidator and subject to such terms and conditions as the Court or the Official Receiver or liquidator may impose, —

Withdrawal
of surrender
or new proof
of claim by
secured
creditor

(a) withdraw the surrender and rely on the security; or

(b) submit a new proof under section 300.

(2) Subsection (1) shall not apply if the Official Receiver or liquidator has realised the property subject to the security.

306. Where a debtor was at the date of declaration of bankruptcy or on the commencement of winding up, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contract, against the properties respectively liable on the contracts.

Debtor
liable
under
distinct
contracts

307. Where any rent or other payment falls due at stated periods, and the declaration of bankruptcy or commencement of winding up occurs at any time other than one of the periods, the person entitled to the rent or payment may prove for a proportionate part of the said rent or payment up to the date of the declaration of bankruptcy or commencement of winding up as if the rent or payment accrued from day to day.

Claims for
rent

No interest
agreed on
claim

308. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for and which is overdue at the date of the declaration of bankruptcy or commencement of winding up and provable in the bankruptcy or winding up, the creditor may prove for interest at a rate not exceeding 4 per cent per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Proof of
claims not
yet
payable

309. A creditor may prove for a debt not payable at the date of declaration of bankruptcy or on commencement of the winding up as if it were payable presently and may receive dividends equally with the other creditors, deducting only a rebate of interest at the rate of 4 per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Official
Receiver or
liquidator to
examine
claims

310.(1) The Official Receiver in the case of a bankruptcy or liquidator in the case of a winding up shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it.

(2) Where the Official Receiver or liquidator rejects a proof he or she shall, as soon as practicable, state in writing to the creditor the grounds of the rejection.

Examination
regarding
proof of debt

311.(1) The Official Receiver or liquidator may summon for examination a person who —

- (a) has submitted or made a proof of debt;
- (b) has made a declaration or statement as part of the proof of debt;
- (c) is capable of giving evidence concerning a proof of debt or the debt to which the proof relates.

(2) The Official Receiver or liquidator may, under oath, examine any person under subsection (1).

(3) If a person summoned under this section fails to attend, or attends but refuses, in an examination before the Official Receiver or liquidator, to be sworn, or refuses to give evidence, without any reasonable excuse, the Court may on the application of the Official Receiver or liquidator —

- (a) have the person who fails to attend the examination, by warrant arrested and brought for examination by the Court; and
- (b) order the person to pay all the expenses arising out of his or her arrest and examination if the Court thinks that his or her evidence was necessary in deciding the proof of debt.

312.(1) The debtor or any creditor may give the Official Receiver or liquidator notice to admit or reject a proof of debt.

Notice to
admit or reject
proof of debt

(2) If, within 10 working days after receipt of the notice, the Official Receiver or liquidator has not made a decision under subsection (1), the Court may, on the application of the debtor or the creditor —

- (a) admit or reject the proof of debt; or
- (b) make any order that it thinks appropriate.

313.(1) Where a creditor is dissatisfied with the decision of the Official Receiver or liquidator in respect of a proof of debt, the Court may, on the application of the creditor, reverse or vary the decision.

Court's power
to reverse,
vary, expunge
or reduce
proof of debt

(2) The Court may expunge or reduce the amount of a debt on the application of —

- (a) a creditor if the Official Receiver or liquidator declines to interfere in the matter; or
- (b) a debtor, in the case of a composition or scheme.

314.(1) The Court may, on the application of the Official Receiver or liquidator, the bankrupt or any creditor, make an order cancelling a proof of debt or reducing its amount, if it considers that the proof of debt was improperly admitted.

Proof of
debt
improperly
admitted

(2) The Court shall not make an order under subsection (1) unless the creditor who submitted the proof has been served with the application.

Court's power
where proof
of debt
rejected

315.(1) A creditor whose proof of debt has been rejected by the Official Receiver or liquidator may apply to the Court for an order modifying or reversing the decision of the Official Receiver or liquidator as the case may be.

(2) The creditor shall make the application under subsection (1) within 15 working days after the creditor receives the Official Receiver or liquidator's notice of rejection of the proof of debt, or within such time the Court may allow.

(3) The Court may —

- (a) reverse or modify the Official Receiver's or liquidator's decision in whole or in part; or
- (b) confirm it.

(4) A creditor shall not have the right to prove for a debt or liability that has been rejected by the Official Receiver or liquidator, unless the Court has made an order under subsection (3) (a) or the creditor has made an application under this section.

Procedures
for
applications
to Court

316.(1) If the application under sections 313, 314 and 315 is made by a person other than the Official Receiver or liquidator, the Official Receiver or liquidator, as the case may be, shall be made a party to the proceedings and served with a copy of the application.

(3) The debtor and any creditor may give notice to the Court hearing the application, who on such notice shall become parties to the proceedings.

(4) The Court may, on hearing an application under sections 313, 314 or 315, if it thinks appropriate, order that —

- (a) any costs of a creditor be added to the creditor's proof of debt;
- (b) any costs of any party to the proceeding be paid out of the debtor's estate; and

-
- (c) any costs be paid by any party to the proceedings, except the Official Receiver or liquidator.

317. For the purposes of performing any duty in relation to a proof of debt, the Official Receiver or liquidator may administer oath and take affidavit.

Official Receiver or liquidator may administer oath

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

Secured creditor's security void

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

319. A person who obtained an order for costs against the debtor prior to declaration of bankruptcy may prove for the amount of the costs when the costs are fixed, even where the amount is fixed after declaration of bankruptcy.

Pre-bankruptcy costs

320.(1) If the debtor, at the time of declaration of bankruptcy, is a shareholder of a company that is not in winding up, the company may prove for —

Debtor is shareholder of company

- (a) the amount of unpaid calls on the debtor made prior to declaration of bankruptcy in respect of the debtor's shares; and
- (b) the value of the liability to calls to be made in the period of 1 year after declaration of bankruptcy.

(3) The value referred to in subsection (2)(b) shall be estimated —

- (a) as agreed by the Official Receiver and the company; or
- (b) if the Official Receiver and the company cannot agree, as directed by the Court.

(4) This section shall not affect the provisions of sections 127

to 129 in the event that the company is wound up.

Proof of debt
by surety

321.(1) This section applies if a person —

- (a) is, at the time of declaration of bankruptcy or commencement of winding up, as the case may be, surety or liable for a debt or liability of the debtor; and
- (b) discharges the debt or liability, even after declaration of bankruptcy or commencement of winding up, as the case may be.

(2) If the creditor has submitted a proof of debt for the debt or liability, the surety may stand in the creditor's place in respect of the proof.

(3) If the creditor has not submitted a proof of debt for the debt or liability, the surety may —

- (a) prove for the payment that the surety has made as if the payment were a debt, without undoing dividends paid to the creditor in the bankruptcy or winding up; and
- (b) receive dividends paid subsequently.

Power to
disclaim
onerous
property

322.(1) Subject to section 310, the Official Receiver or a liquidator may disclaim onerous property if the Official Receiver or liquidator has taken possession of it or, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(2) A disclaimer under this section —

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

(3) The Official Receiver or a liquidator who disclaims

onerous property shall, within 28 days after the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the Official Receiver or liquidator, affected by the disclaimer.

(4) A person suffering loss or damage as a result of a disclaimer under this section may —

- (a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of an order made by the Court under subsection (4)(b); or
- (b) apply to the Court for an order that the disclaimed property be given to or vested in that person.

(5) The Court may make an order under subsection (4)(b) where it is satisfied that it is just that the property should be vested in the applicant.

(6) For the purposes of this section, “onerous property” means —

- (a) an unprofitable contract; or
- (b) the property of a company which cannot be sold, or not readily sold, or which may give rise to a liability to pay money or perform an onerous act.

323. Where a person whose rights are likely to be affected by a disclaimer of onerous property gives the Official Receiver or the liquidator, notice in writing requiring the Official Receiver or the liquidator to elect, prior to the close of such date as is stated in the notice, not being a date that is less than 28 days after the date on which the notice is received by the Official Receiver or liquidator, whether to disclaim the onerous property, the Official Receiver or liquidator shall not disclaim the onerous property unless he or she does so prior to the close of that date.

Requirement
to elect
whether to
disclaim

324.(1) A transaction by a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where it —

Voidable
preference

- (a) is a voidable preference; and
- (b) was made within 2 years immediately prior to

declaration of bankruptcy or commencement of the winding up.

(2) (a) A voidable preference referred to in subsection (1) (a) is a transaction by the debtor that —

- (i) is made at a time when the debtor is unable to pay his or her debts due; and
- (ii) enables a person to receive more towards satisfaction of a debt by the debtor than the person would receive, or would be likely to receive, in the bankruptcy or winding up.

(b) “transaction” referred to in subsection (2)(a) means any of the following acts by the debtor —

- (i) conveying or transferring the debtor’s property;
- (ii) creating a charge over the debtor’s property;
- (iii) incurring an obligation;
- (iv) undergoing an execution process;
- (v) paying money, including money paid in accordance with a judgment or an order of a Court; or
- (vi) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

(3) For the purposes of subsection (1), a transaction that is made within 6 months immediately prior to the debtor’s declaration of bankruptcy or commencement of winding up is presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his or her debts due.

(4) Where —

-
- (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor, including a relationship to which other persons are parties; and
 - (b) in the course of the business relationship, the level of the debtor's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the business relationship, then —
 - (i) subsection (1) applies in relation to all the transactions forming part of the business relationship as if they constituted a single transaction; and
 - (ii) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction voidable by the Official Receiver or liquidator where the effect of applying subsection (1) in accordance with subparagraph (b) (i) is that the single transaction referred to in subparagraph (b)(i) is taken to be an insolvent transaction voidable by the Official Receiver or liquidator.

325.(1) A charge over any property or undertaking of a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where — Voidable charge

- (a) the charge was given within 2 years immediately prior to the date of the debtor's declaration of bankruptcy or the commencement of winding up; and
- (b) immediately after the charge was given, the debtor was unable to pay his or her or its debts due.

(2) A charge given by a debtor under an agreement made before the period of 2 years immediately prior to the date of declaration of bankruptcy or commencement of winding up may not be set aside under subsection (1).

326.(1) A charge may not be set aside under section 325 where the Charge or security for new consideration

charge secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the charge holder to the debtor at the time when, or at any time after, the charge was given.

(2) A charge or security may not be set aside under section 325 where the charge is a substitute for an existing charge that was given by the debtor more than 2 years prior to the date of declaration of bankruptcy or commencement of winding up, except to the extent that—

- (a) the amount secured by the substituted charge is greater than the amount that was secured by the existing charge; or
- (b) the value of the property subject to the substituted charge at the date of substitution was greater than the value of the property subject to the existing charge at that date.

Presumption
that debtor
unable to pay
debts due

327. A debtor who gives a charge within 6 months immediately prior to the date of declaration of bankruptcy or the commencement of the winding up is presumed, unless the contrary is proved, to have been unable to pay his or her or its debts due immediately after giving the charge.

Security for
unpaid
purchase price
given after
sale of
property

328. Where a debtor, after purchasing property, has within 2 years immediately prior to the date of declaration of bankruptcy or the commencement of the winding up given the seller a charge over the property, section 325 shall not affect the charge to the extent that it charges or secures unpaid purchase money, whether it is unpaid in relation to the property over which the charge is given or some other property, or the charge was given not later than 21 days after the date of the sale of the property to the debtor.

Appropriation
of payment by
debtor to
charge holder

329.(1) Where a debtor has made a payment to a charge holder after the debtor has given a charge to which section 325 or section 327 applies, the debtor's payment shall be credited as far as is necessary towards —

- (a) repayment of the money actually advanced or paid by the charge holder to the debtor when or after the debtor gave the charge;
- (b) payment of the actual price or value of property

sold by the charge holder to the debtor when or after the debtor gave the charge; or

- (c) payment of any other liability of the debtor to the charge holder, including in respect of any other valuable consideration given in good faith when or after the debtor gave the security.

(2) This section shall not apply to any payment received by a bank in good faith in the ordinary course of business and without negligence.

Sub-Part III – Voidable Transactions

330.(1) Subject to subsection (2), every disposition of property made by a debtor within 5 years immediately prior to the date of declaration of bankruptcy or commencement of winding up with intent to defraud a creditor may be set aside by the Court on the application of the Official Receiver or a liquidator.

Disposition
of property
with intent to
defraud a
creditor

(2) This section shall not —

- (a) apply to any estate or interest in property disposed to a purchaser in good faith not having at the time of the disposition notice of the intention to defraud any creditor;
- (b) limit or affect any remedy or right available to a creditor under article 1167 of the Civil Code.

331.(1) A gift by a debtor to another person may be set aside by the Court on the application of the Official Receiver or a liquidator where —

Voidable gift

- (a) the debtor made the gift within 2 years immediately prior to the date of declaration of bankruptcy or commencement of winding up; and
- (b) the debtor was unable to pay his or her or its debts due immediately after making the gift.

(2) A gift that is made within 6 months immediately prior to the date of the debtor's declaration of bankruptcy or commencement of winding up is presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his or her or its debts due.

332.(1) The procedure set out in this section applies to —

- (a) a voidable preference;
- (b) a voidable charge;
- (c) disposition of property with intent to defraud a creditor; and
- (d) a voidable gift.

(2) To initiate the process of setting aside a voidable transaction, the Official Receiver or liquidator shall, as soon as practicable, serve a notice that meets the requirements set out in subsection (3) on —

- (a) the other party to the transaction; and
- (b) any other party from whom the Official Receiver or liquidator intends to recover property or sum of money.

(3) The notice under subsection (2) shall —

- (a) be in writing;
- (b) state the Official Receiver's or liquidator's address;
- (c) specify the voidable transaction to be set aside;
- (d) describe the property or state the amount that the Official Receiver or liquidator wishes to recover;
- (e) state that the person named in the notice may object to the setting aside of the transaction if the person sends a written notice of objection to the Official Receiver or liquidator within 28 days after the notice has been served on the person; and
- (f) state that the transaction will be set aside as against the person named in the notice if the person does not object.

(4) A voidable transaction is automatically set aside as against

a person named in the notice if the person has not objected and the Official Receiver or liquidator sends a notice that the transaction has been set aside to the person not later than 5 working days after the expiry of the time limit specified in subsection (3)(e).

(5) A notice of objection under subsection (3)(e) shall state the reasons for objection.

(6) The Court may, on the application of the Official Receiver or liquidator, set aside the voidable transaction in any case where a person named in the notice has given a notice of objection under subsection (4).

333.(1) On setting aside a voidable transaction, the Court may make an order for —

Court may
order re-
transfer or
payment

- (a) transferring back to the Official Receiver or liquidator, any property of the debtor, or any interest in the property, that was transferred under the transaction; or
- (b) payment to the Official Receiver or liquidator of a sum of money, not exceeding the value of the property at the time when the transaction was set aside, as the Court thinks appropriate.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) is in addition to any other right and remedy available to the Official Receiver or liquidator.

334. The Court shall not make an order setting aside a transaction under sections 330 or 331 against a person where the person proves that, when he or she received the property —

Limits on
recovery

- (a) he or she acted in good faith;
- (b) a reasonable person in his or her position would not have suspected that the debtor was, or was likely to be, unable to pay his or her due debts; and
- (c) he or she gave value for the property or altered his or her position in the reasonably held belief that the

transfer of the property to him or her was valid and not likely to be set aside.

Transaction
with debtor
for inadequate
or excessive
consideration

335.(1) Where, within the period of 2 years prior to the date of declaration of bankruptcy or commencement of the winding up, a debtor has acquired a business or property from, or the services of —

- (a) a person who was, at the time of the acquisition, a nominee or relative of or a trustee for, or a trustee for a relative of, the debtor, or in the case of a debtor that is a company, a director of the company;
- (b) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the acquisition, had control of the company;
- (c) in the case of a debtor that is a company, another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative, of a director of the company; or
- (d) in the case of a debtor that is a company, another company that was, at the time of the acquisition, a related company, the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property or services at the time of the acquisition.

(2) Where, within a period of 2 years prior to the date of declaration of bankruptcy or commencement of winding up, a debtor has disposed of a business or property, provided a guarantee or services, or, in the case of a debtor that is a company, has issued shares, for the benefit of —

- (a) a person who was, at the time of the disposition, provision or issue a nominee or relative of or a trustee for, or a trustee for a relative of, the debtor

or in the case of a company a director of the company;

- (b) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the disposition, provision or issue, had control of the company;
- (c) in the case of a debtor that is a company, another company that was, at the time of the disposition, provision or issue, controlled by a director of the company or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) in the case of a debtor that is a company, another company that, at the time of the disposition, provision or issue, was a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the business, property or services, or the value of shares at the time of the disposition, provision or issue exceeded the value of any consideration received by the debtor.

(3) For the purposes of this section, the value of a business or property includes the value of any goodwill attaching to the business or property.

336.(1) On the application of the Official Receiver or a liquidator, the Court may order the beneficiary of a contribution made by the debtor to the beneficiary's property to pay the value of the contribution to the Official Receiver or liquidator.

Court may
order
beneficiary
to pay value

(2) The Court may make an order under subsection (1) where —

- (a) the debtor was not paid an adequate amount in money or money's worth for the contribution;
- (b) the value of the debtor's assets was reduced by the contribution; and
- (c) the debtor made the contribution —

-
- (i) within 2 years prior to the date of declaration of bankruptcy or commencement of winding up; or
 - (ii) within 5 years prior to the date of declaration of bankruptcy or commencement of winding up and the beneficiary is not able to prove that the debtor, either at the time of the contribution or at any later time prior to the date of declaration of bankruptcy or commencement of winding up, was able to pay the debtor's debts due.

(3) For the purposes of this section and section 337 a debtor has made a contribution to the beneficiary's property where he or she has —

- (a) erected buildings on, or otherwise improved, land or any other property of the beneficiary;
- (b) bought land or property in the beneficiary's name;
- (c) provided money to buy land or other property in the beneficiary's name or on the beneficiary's behalf; or
- (d) paid instalments for the purchase of, or towards the purchase of, any land or any other property in the recipient's name or on the recipient's behalf.

Court's power
in relation to
debtor's
contribution

337.(1) The Court may ascertain the value of a debtor's contribution, including any payment of legal expenses, interest, rates, and other expenses or charges, for the purposes of section 336 and order the beneficiary to pay the value to the Official Receiver or liquidator.

(2) The Court may order the beneficiary to pay less than the value of the contribution, or refuse to order the beneficiary to make any payment, where —

- (a) the beneficiary acted in good faith and has altered his or her or its position in the reasonably held belief that the debtor's contribution was valid and

that the beneficiary was not likely to become liable to repay it in full or in part; or

- (b) in the Court's opinion, it is unfair that the beneficiary should repay all or part of the contribution.

(3) Where the Court orders that the beneficiary shall repay a debtor's contribution, the Court may, in the same or a subsequent order—

- (a) direct the Official Receiver or liquidator to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and
- (b) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

338. The Official Receiver or the liquidator shall use money repaid under section 337 in the following order —

Use of
repayment of
debtor's
contribution
to property

- (a) first, keep as much of the sum received as the Official Receiver or liquidator needs, when added to the other assets in the debtor's estate, to pay the creditors in full including interest;
- (b) second, if there is a surplus after the creditors have been paid in full pay as much of the surplus to the beneficiary of the property to which the debtor has contributed as the Official Receiver or liquidator first retained; and
- (c) third, pay any balance to the debtor after the Official Receiver or liquidator has taken the steps referred to in paragraphs (a) and (b).

339.(1) All costs, charges and expenses properly incurred in the bankruptcy or the winding up, including the remuneration of the liquidator or the Official Receiver, shall be payable out of the assets of the debtor in priority to all other claims.

Application of
debtor's
assets

(2) Subject to the payment of the costs and expenses of the winding up, the satisfaction of the liabilities of the bankrupt or company which are preferential payments, and the rights of creditors who are

entitled to securities or to privileges under articles 2102 and 2103 of the Civil Code, the property of a debtor shall, on its bankruptcy or winding up, be applied in satisfaction of its liabilities rateably, and, subject to such application shall —

- (a) in the case of a company, be distributed among the shareholders in proportion to the nominal values of their respective shares; and
- (b) in the case of a bankrupt, be paid to the bankrupt.

Sub-Part IV – Distribution of Assets and Payments to Creditors

Preferential
payments

340.(1) In a bankruptcy or a winding up there shall be paid in priority to all other debts or claims against the company —

- (a) all income tax and other taxes assessed on the bankrupt or the company up to the 31st day of December next preceding the date on which the bankruptcy or winding up order was made or the winding up resolution was passed, whichever is the earlier, but not exceeding in the whole one year's assessment, the year for which priority is claimed being selected by the Revenue Commissioner;
- (b) all wages or salary, whether or not earned wholly or in part by way of commission, of any clerk or servant in respect of services rendered to the bankrupt or the company during 4 months next prior to the date on which the bankruptcy or winding up order was made or the winding up resolution was passed, whichever is the earlier, and all wages, whether payable for time or for piece work of any workman or labourer in respect of services rendered, being a sum which in the case of any one claimant does not exceed the prescribed minimum wage;

(2) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause, or in respect of a period for which notice of dismissal has or should have been given under

the Employment Act, shall be deemed to be wages in respect of services rendered to the bankrupt or the company during that period.

(3) Any person who —

- (a) lends money to a bankrupt or a company to enable the bankrupt or the company to satisfy, in whole or in part, a debt or claim which is, or which if not so satisfied will be, a debt or claim to which priority is given by subsection (1); or
- (b) guarantees or gives security for the payment of any such debt or claim, and prior to or after a bankruptcy or winding up order is made or a winding up resolution is passed in respect of a company, satisfies the debt or claim, in whole or in part, by paying it himself or herself or by the security given by him or her being realised,

shall, in the bankruptcy of the bankrupt or winding up of a company, be entitled to priority under subsection (1) for the amount of the loan made by him or her, or for an indemnity in respect of the guarantee or security given by him or her, to the extent that the amount of the debt or claim which was satisfied out of the loan, or by the person, or out of the security given by him or her, has been diminished.

(4) For the purpose of subsection (4) —

- (a) a loan shall include any form of advance and an overdraft at a bank;
- (b) a person shall be deemed to have given a guarantee or security if —
 - (i) he or she is personally liable to satisfy a debt or claim by a rule of law or an enactment;
 - (ii) any of his or her assets may be seized, distrained upon or sold in order to satisfy the debt or claim;
 - (iii) any of his or her assets are charged with the

debt or claim or are ordered to be sold by order of any Court in order to satisfy it;

- (c) a person who lends money to a bankrupt or a company to enable it to pay any of its debts, or who gives a guarantee or security in respect of all its debts, or all its debts of a particular class, shall be deemed to have made a loan to enable it to satisfy debts or claims to which priority is or will be given by subsection (1), or to have guaranteed or given security for such debts or claims, to the extent that the loan is actually used to satisfy such debts or claims, or to the extent that the guarantor or the person giving the security satisfies them, or to the extent that they are satisfied by the realisation of the security, whether the contract of loan or guarantee or the instrument creating the security expressly refers to such debts or claims; and
- (d) a security shall be deemed to be realised if any of the assets subject to it are sold or are ordered by a Court to be sold, or if a receiver is appointed in respect of any of the assets, or if the person entitled to the security takes possession of any of the assets.

(5) The debts and claims to which priority is given by subsections (1) and (4) shall —

- (a) rank equally among themselves and be paid in full, unless the assets of the bankrupt or the company are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of all its debts and liabilities are insufficient to meet them, have priority over the claims of creditors and debenture holders secured by general floating charges created by the company, and be paid accordingly out of any property comprised in or subject to such charges.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by subsections (1) and (4) shall be discharged forthwith so far as the assets of the bankrupt or the company are sufficient to meet them:

Provided that nothing contained in this subsection shall give any priority to the costs and expenses of the winding up over the amounts secured by a general floating charge created by the company.

(7) In the event of a landlord or other person having distrained or enforced a privilege under article 2102 of the Civil Code on any goods or effects of the company within 3 months next prior to the date of a bankruptcy or winding up order or winding up resolution, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or over which the privilege is exercised or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

341.(1) After paying the preferential claims referred to section 340, the Official Receiver or liquidator shall apply the money received by him or her from the realisation of the property of the debtor, in satisfaction of all other claims.

Payment of
remaining
money to
general
creditors

(2) The preferential claims referred to in subsection (1) rank equally among themselves and shall be paid in full, unless the money is insufficient to meet them, in which case they abate in equal proportions, and interest shall be paid on such claims to the extent and in the manner provided for in section 298.

(3) Where, prior to the date of declaration of bankruptcy or commencement of winding up, a creditor agrees to accept a lower priority in respect of a debt than it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.

(4) Distribution and payment to general creditors shall be made by way of declaration of dividends under sections 343 to 346.

Payment of
surplus to
debtor

342. After paying the claims referred to in section 341, the Official Receiver or liquidator shall, subject to section 338, pay any surplus to the debtor.

Declaration of
dividends

343.(1) After payment of all preferential claims subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the Official Receiver or liquidator shall, as soon as practicable, declare and distribute, in the prescribed manner, dividends among the creditors who have proved their debts to his or her satisfaction.

(2) Any dividend declared by the Official Receiver or liquidator shall, subject to this section, consist of all money in his or her possession at the time of the declaration of the dividend.

(3) The first dividend, if any, shall be declared and distributed within 6 months after the appointment of the Official Receiver or liquidator, unless the Official Receiver or liquidator, after consulting the committee of inspection, if any, is satisfied that there is sufficient reason for postponing the declaration of the dividend to a later date.

(4) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than 6 months.

Right of
personal
creditors of
partners

344.(1) The personal estate of every partner of a partnership shall accrue and be paid to the personal creditors of that partner, and the creditors of the partnership shall not receive any dividend out of the separate estate of the partner, until all the creditors of the partner have received the full amount of their respective debts.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his or her separate debts.

(3) Where there is a surplus of the separate estates, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Where there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(5) For the purposes of this section, the respective estates of the partnership and of each partner shall be administered together by the Official Receiver, but separate accounts shall be kept by the Official Receiver in relation to each estate.

345. Any creditor who has not proved his or her debt prior to the declaration of any dividend shall be entitled to be paid out of any money for the time being in the possession of the Official Receiver or liquidator, any dividend he or she may have failed to receive prior to the money being made applicable to the payment of any future dividend, but he or she shall not be entitled to disturb the distribution of any dividend declared before his or her debt was proved on the ground that he or she has not participated in it.

Right of
creditor who
has proved
debt late

346.(1) Where the Official Receiver or a liquidator has converted into money all the property of a debtor, or so much of it as can, in the joint opinion of himself or herself and of any committee of inspection, be realised without needlessly protracting the bankruptcy or winding up, he or she shall declare a final dividend, and give notice to the creditors whose claims have been rejected by him or her, that if such claims are not admitted by the Court within such period as may be fixed by the Court, he or her will proceed to declare a final dividend without regard to their claims.

Final
dividend

(2) After the expiry of the period referred to in subsection (1), or where the Court, on application of any creditor, grants further time for establishing the creditor's claim, then on the expiry of such further time, the final dividend shall be distributed among the creditors who have proved their claims, without regard to the claim of any other person.

(3) Where the Court admits any claim which may have been rejected by the Official Receiver or liquidator, the holder of the claim shall be entitled to be paid out of all available property in the hands of the Official Receiver or liquidator, any dividend to which he or she would have been entitled if his or her claim had not been rejected by the Official Receiver or liquidator.

(4) No action or suit for a dividend shall lie against the Official Receiver or liquidator, but if the Official Receiver or liquidator refuses to pay any dividend the Court may, if it thinks fit, order the Official Receiver or liquidator to pay the dividend, and also to pay out of his or her own money interest on it for the time that it is withheld, and the costs of the application.

Undistributed
money

347.(1) The Official Receiver or a liquidator shall on termination of the bankruptcy or winding up pay any undistributed money into the registry of the Court.

(2) The Official Receiver or a liquidator shall hold any undistributed money paid into the registry of the Court subject to the claim of any person who appears to be entitled to the money.

(3) After the expiry of 12 months from the date on which undistributed money is paid into the registry of the Court the Official Receiver or liquidator shall, notwithstanding any other enactment, transfer any undistributed money that has not been claimed by a person into the general fund of the registry of the Court.

(4) Undistributed money transferred into the general fund of the registry of the Court —

- (a) is deemed to be one common and general fund; and
- (b) may be applied without discrimination in accordance with section 348.

Application
of funds

348.(1) Funds held in the general fund of the registry of the Court may be used —

- (a) for distribution, in relation to the bankruptcy or winding up from which the undistributed money came, to any person who remains to be paid as set out in section 347 (2);
- (b) for the purposes of this Act, to the extent and in the manner allowed by this Act;
- (c) to replace, to the extent of the deficiency, any money misappropriated by an Official Receiver or liquidator or any person employed under the provisions of this Act; and
- (d) to meet the costs of any investigation into the circumstances of the bankruptcy or winding up, or of any Court proceedings, obtaining legal advice, or employing an accountant or other expert in

circumstances where the Official Receiver determines that the creditors of a bankrupt or company are unable to pay those costs, or it would be unfair or inequitable that they should do so and it is in the interest of creditors and the public interest to meet these costs from the funds held in the registry of the Court.

- (2) The allocation of funds for the purposes of subsection (1)(d) shall be in the discretion of the Official Receiver and application may be made to him or her by any liquidator for that purpose.

PART VIII - CROSS-BORDER INSOLVENCY

349.(1) For the purposes of this Part —

Interpretation

“insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency, whether personal or corporate, in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise the proceeding, for the purpose of reorganisation or winding up;

“Model Law” means the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997.

- (2) In interpreting this Part, reference may be made to —

- (a) the Model Law;
- (b) any document, relating to the Model Law, from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law.

350.(1) The Minister shall, before this Part comes into operation, be satisfied that there is sufficient reciprocity in dealing with insolvencies with jurisdictions that have trading or financial connections with the Republic, or that it is otherwise in the public interest to bring it into operation.

Application of
Model Law

(2) Subject to section 351(3), the Rules set out in the Schedule shall apply to this Part.

Designated
foreign
insolvency
proceedings

351.(1) The Minister may make regulations designating the insolvency proceedings in a foreign country to which this Part shall apply and prescribing such matters as may be necessary for the proceedings.

(2) The Minister shall, before making regulations under subsection (1), be satisfied that —

- (a) the Republic and the foreign country are parties to an agreement for the mutual recognition of insolvency proceedings; and
- (b) the level of recognition given to the interests of Seychelles' debtors and creditors in an insolvency proceeding in the foreign country and the terms of the agreement referred to in paragraph (a) provide appropriate protection for the interests of debtors and creditors in Seychelles.

(3) Regulations made under subsection (1) may amend the Schedule in relation to a designated insolvency proceeding.

Power to
make rules

352. The Chief Justice may make rules for —

- (a) the practice and procedure of the Court under this Part;
- (b) the manner in which an application under the Schedule shall be made to the Court; and
- (c) generally, giving effect to this Part.

PART IX - ADMINISTRATION

Appointment
of Official
Receiver and
Deputy
Official
Receivers

353.(1) The Chief Justice shall, on such terms and conditions as he or she may determine, appoint —

- (a) a person having prescribed qualifications as Official Receiver; and

-
- (b) if necessary, one or more persons having prescribed qualifications as Deputy Official Receivers.

(2) The Official Receiver and Deputy Official Receivers shall be officers of the Court.

(3) The Deputy Official Receivers shall discharge their duties and exercise their powers subject to the control and direction of the Official Receiver.

(4) Any Deputy Official Receiver may act on behalf of or in the place of the Official Receiver and when acting shall have all the authority and powers of the Official Receiver.

354.(1) The Official Receiver may sue and be sued in the name of “The Official Receiver of the property of - inserting the name of the bankrupt or of the company which is the subject of a winding up order”, and in that name may do all acts necessary or expedient to be done in the execution of his or her office.

Office and
name of
Official
Receiver

(2) The Official Receiver or a Deputy Official Receiver, may —

- (a) administer oath and take declarations; and
- (b) appear in Court and examine a bankrupt or the directors of a company in winding up or any other person who appears in proceedings under this Act.

(3) The Official Receiver may execute all documents by signing his or her private name under the official name, or may affix a seal to any document, but nothing in this subsection shall prevent the Official Receiver from affixing the seal of his or her office to any document.

355.(1) A person shall not act or continue to act as Official Receiver in relation to the estate of any debtor of which he or she is a creditor, not being a creditor in the capacity of Official Receiver in the property of any other bankrupt or the liquidator of any company, if the creditors declare by resolution that they do not wish him or her to act or continue to act as Official Receiver.

Disqualification
of Official
Receiver in
relation to estate
of debtor

(2) Where the Official Receiver is disqualified under subsection (1), the Registrar shall appoint a Deputy Official Receiver to the estate of the debtor.

PART X - OFFENCES

Sub-Part I – Offences by Bankrupt

Offences in
relation to
debts

- 356.(1)** Any bankrupt who —
- (a) did not, when contracting a debt, expect to be able to pay —
 - (i) the debt when it fell due for payment;
 - (ii) all his or her debts when they fell due for payment; and
 - (iii) all his or her other debts, including future and contingent debts; or
 - (b) has materially contributed to, or increased, the extent of his or her inability to pay his or her debts due by gambling, by rash and hazardous speculations, by unjustifiable spending or by extravagance in living,

commits an offence, and shall, on conviction, be liable to a fine not exceeding SCR100,000 and to imprisonment for a term not exceeding 2 years.

(2) For the purposes of subsection (1), a person shall be rebuttably presumed to have committed an offence if, when contracting the debt, he or she had no reasonable ground to believe that he or she would be able to pay the debt when it fell due for payment and pay all his or her other debts, including future and contingent debts.

Offences
involving
fraud

- 357.(1)** Any bankrupt who —
- (a) conceals or removes any part of his or her property —
 - (i) within 2 months prior to any unsatisfied judgment or order for payment of money is obtained against him or her; or

-
- (ii) at any time after an unsatisfied judgment or order for payment of money has been obtained against him or her;
 - (b) with intent to defraud a creditor, makes, or causes to be made, any gift, disposition, or transfer of, or security interest in, his or her property; or
 - (c) within 2 years prior to a petition for declaration of his or her bankruptcy is filed or at any time after the petition has been filed, —
 - (i) conceals any part of his or her property to the value of SCR10,000 or such other value as may be prescribed, or more;
 - (ii) conceals any debt due to, or from, him or her; or
 - (iii) fraudulently removes any part of his or her property to the value of SCR10,000 or such other value as may be prescribed, or more,

commits an offence.

(2) Any bankrupt who, within 2 years prior to his or her declaration of bankruptcy, makes or produces a written statement to a person who —

- (a) is at the time a creditor; or
- (b) becomes a creditor as a result of the statement made or produced to the person,

where he or she knows or believes the statement is not a true and fair statement of his or her affairs, commits an offence.

(3) Any bankrupt who, within 2 years prior to a petition for declaration of his or her bankruptcy is filed or at any time after the petition has been filed, —

- (a) conceals, destroys, mutilates, or falsifies, or is a party to the concealment, destruction, mutilation, or

falsification of any book or document affecting, or relating to his or her property or affairs;

- (b) makes, or is a party to the making of, any false entry in any book or document affecting, or relating to his or her property or affairs;
- (c) fraudulently parts with, alters, or makes any omission, or is a party to fraudulently parting with, altering, or making any omission in, any document affecting, or relating to his or her property or affairs;
- (d) prevents the production of any book, document, paper, or writing affecting, or relating to his or her property or affairs to any person to whom he or she has an obligation under this Act to produce the book, document, paper, or writing; or
- (d) attempts to account for any part of his or her property by fictitious losses or expenses,

commits an offence.

(4) Any bankrupt who, within 12 months prior to a petition for declaration his or her bankruptcy is filed or at any time after the petition has been filed, —

- (a) obtains property on credit and has not paid for the property;
- (b) obtains property on credit —
 - (i) by a false representation or other fraud;
 - (ii) by a false statement of financial position or other false statement of his or her affairs; or
 - (iii) under the false pretence of carrying on business and dealing in the ordinary course of trade; or

-
- (c) pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary course of trade, any property that he or she has obtained and has not paid for,

commits an offence.

(5) Any bankrupt who makes a false representation or is found guilty of any other fraud for the purposes of obtaining the consent of a creditor to any agreement with reference to his or her affairs or his or her bankruptcy, commits an offence.

(6) Any bankrupt who, within 12 months prior to a petition for declaration of his or her bankruptcy is filed or at any time after the petition has been filed, departs from Seychelles and takes with him or her any part of his or her property to the value of SCR10,000 or such other value as may be prescribed, or more, that should, by law, to be divided among his or her creditors, commits an offence.

(7) It shall be a defence for —

- (a) a person charged with an offence under subsections (2), (3)(e) or (6) if he or she proves that, at the material time, he or she had no intent to defraud;
- (b) a person charged with an offence under subsection (3)(a), (b) or (d) if he or she proves that, at the material time, he or she had no intent to conceal his or her state of affairs.

(8) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding SCR200,000 and to imprisonment for a term not exceeding 3 years.

358.(1) Any bankrupt who, for any period during the 3 years prior to his or her declaration of bankruptcy, is reasonably expected, having regard to his or her occupation or transactions for the period, to keep a record of those transactions, and fails to keep and preserve a proper record of the transactions, commits an offence and shall, on conviction, be liable to a fine not exceeding SCR50,000 and to imprisonment for a term not exceeding 1 year.

Failure to
keep proper
record

(2) Any bankrupt who, with intent to conceal the true state of his or her affairs, fails to keep and preserve a proper record of his or her

transactions, commits an offence and shall, on conviction, be liable to a fine not exceeding SCR200,000 and to imprisonment for a term not exceeding 3 years.

(3) For the purposes of subsections (1) and (2), —

- (a) a bankrupt shall be deemed not to have kept a proper record of his or her transactions if, being engaged in any trade or business, he or she has not kept the necessary books and accounts;
- (b) a bankrupt shall be deemed not to have preserved a proper record of his or her transactions if he or she has not preserved —
 - (i) the records listed in subsection (4), if applicable;
 - (ii) a record of all goods purchased in the course of his or her business, with the original invoices; and
 - (iii) a daily record of all goods sold on credit.

(4) In subsection (3)(a), “necessary books and accounts” means the books and accounts that are necessary to explain the bankrupt’s transactions and financial position in his or her trade or business, and includes —

- (a) a book or books containing day to day entries , in sufficient detail, of all cash received and paid out; and
- (b) if his or her trade or business has involved dealing in goods, —
 - (i) a record of all goods sold and purchased;
 - (ii) detailed stock sheets of annual and other stock takings showing the quantity and the valuation he or she made of each item of stock on hand; and

-
- (c) if his or her trade or business has involved his or her services, details of those services.

359.(1) Any bankrupt who —

Other
offences

- (a) without reasonable excuse contravenes sections 23(1), 38, 39, 40, 41, 74 or 78(3);
- (b) refuses or neglects to answer fully and truthfully all questions put to him or her at any examination held under this Act;
- (c) wilfully misleads the Official Receiver in any statement made to the Official Receiver in the course of the administration of his or her affairs, whether orally or in writing or in any answer to any question put to him or her;
- (d) after becoming aware that any person has filed a false proof in the bankruptcy, fails to disclose that fact immediately to the Official Receiver;
- (e) within 2 years prior to his or her bankruptcy, at a time when he or she was unable to pay his or her debts as they fell due, given, with intent to defraud his or her creditors, any voidable preference to any of his or her creditors;
- (f) within 3 years after his or her declaration of bankruptcy and without having obtained the prior consent of the Official Receiver, departs from Seychelles;
- (g) obtains a final order of discharge, or before a suspended order of discharge takes effect —
 - (i) solely, or jointly with another person, obtains credit of SCR10,000 or such amount as may be prescribed, or more; or
 - (ii) incurs liability to any person of SCR10,000 or such amount as may be prescribed, or more, for the purpose of obtaining credit for another person; or
- (h) acts as a director of a company,

commits an offence and shall, on conviction, be liable to a fine not exceeding SCR100,000 and to imprisonment for a term not exceeding 1 year.

- (2) It shall be a defence for —
- (a) a person charged with an offence under subsection (1)(g)(i) if he or she proves that, before obtaining the credit, he or she informed the person giving the credit that he or she was an undischarged bankrupt;
 - (b) a person charged with an offence under subsection (1)(g)(ii) if he or she proves that, before incurring the liability, the person giving the credit was informed the person incurring the liability that he or she was an undischarged bankrupt.

Sub-Part II – Offences Relating to Winding Up

Offences by
officer or
contributory

360.(1) Every person who, is or has been an officer or a contributory of a company which is being wound up, —

- (a) does not to the best of his or her knowledge and belief fully and truly disclose to the liquidator all the property of the company and how and to whom and for what consideration and when the company disposed of any part of that property, except such part as has been disposed of in the ordinary course of the business of the company;
- (b) does not deliver to the liquidator, —
 - (i) all the assets of the company in his or her custody, control or possession and which he or she is required by the liquidator to deliver; or
 - (ii) all books and papers in his or her custody, control or possession belonging to the company and which he or she is required by the liquidator to deliver ;

-
- (c) within 12 months prior to the commencement of the winding up or at any time thereafter —
- (i) has concealed any part of the property of the company to the value of SCR10,000 or more, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of SCR10,000 or more;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any document affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any document affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulently parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

-
- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;
 - (d) makes any material omission in any statement relating to the affairs of the company;
 - (e) knowing or believing that a false debt has been proved by any person, fails for a period of 28 days to inform the liquidator of that fact;
 - (f) prevents the production of any document affecting or relating to the property or affairs of the company;
 - (g) within 12 months prior to the commencement of winding up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
 - (h) within 12 months prior to the commencement of winding up or at any time thereafter has been found guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

commits an offence and shall, on conviction, be liable to a fine not exceeding SCR100,000 and to imprisonment for a term not exceeding 2 years and to , and the Court may order that the person being convicted shall not for a period not exceeding 5 years from the date of the order be a promoter or director of a company or be directly or indirectly concerned in the management of a company as may be specified in the order.

(2) It shall be a defence for a person charged under subsection (1)(a) or (b) or (c) *(i)*, *(vii)* or *(viii)* if he or she proves that he or she had no intent to defraud, and to a charge under subsection (1) (c) *(iii)* or *(iv)* or

(e) if he or she proves that he or she had no intent to conceal the state of affairs of the company or to defeat the purpose of this Act.

(3) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1) (c) (viii), every person who takes in the pawn or pledge or otherwise receives the property knowing that it has been pawned, pledged or disposed of in the circumstances referred to in (1) (c) (viii), commits an offence and shall, on conviction, be liable to the penalties applicable to subsection (1).

(4) Any director of a company who makes a declaration under section 151 without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall, on conviction, be liable to a fine not exceeding SCR10,000 or to imprisonment for not more than 2 years, or to both such fine and imprisonment.

361.(1) Subject to subsection (2), any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his or her appointment or nomination, or to securing or preventing the appointment or nomination of a person, other than himself or herself, as the liquidator of the company, commits an offence and shall, on conviction, be liable to a fine not exceeding SCR100,000 and to imprisonment for a term not exceeding 2 years.

Inducement to
appointment
as liquidator

(2) The negotiation or discussion in good faith of remuneration for undertaking the appointment shall not constitute a contravention of subsection (1).

362.(1) Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any documents or securities or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person commits an offence and shall, on conviction, be liable to a fine not exceeding SCR100,000 or to imprisonment for a term not exceeding 2 years.

Interference
with
documents

Offences
relating to
Phoenix
company

363.(1) Subject to section 364, except with the leave of the Court, a director of a failed company shall not, for a period of 5 years after the commencement of the winding up of a failed company —

(a) be a director of a phoenix company; or

-
- (b) be directly or indirectly concerned or take part in the promotion, formation or management of a phoenix company; or
 - (c) be directly or indirectly concerned in or take part in the carrying on of a business that has the same or substantially the same name as the failed company's pre-winding up name or a similar name.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding SCR1,000,000 and to imprisonment for a term not exceeding 5 years.

(3) Any person who contravenes subsection (1)(a) or (b) shall be personally liable for all of the relevant debts of the phoenix company.

(4) Any person who is involved in the management of a phoenix company shall be personally liable for all of the relevant debts of the company where —

- (a) the person acts or is willing to act on instructions given by another person; and
- (b) at the time, the person knows that the other person is contravening subsection (1)(a) or (b) in relation to the company.

(5) Any liability under subsections (3) and (4) is joint and several.

(6) For the purposes of subsections (3) and (4), a person who, being involved in the management of a company who, has at any time acted on instructions given by a person whom he or she knew, at the time, was in contravention of subsection (1) is presumed, until proof to the contrary is shown, to have been willing at any later time to act on any instructions given by the person.

(7) For the purposes of this section —

“director of a failed company” means a person who was a director of a failed company at any time during the period

of 12 months prior to the commencement of the winding up of the company;

“failed company” means a company that was wound up at a time when it was unable to pay its debts due;

“phoenix company”, in relation to a failed company, means a company which, at any time prior to or within 5 years after the commencement of the winding up of the failed company or within such other prescribed period, is incorporated with or changes its name to the name of the failed company or a name that is substantially the same as the name of the failed company;

“pre-winding up name” means any name, including any trading name, of a failed company during the period of 12 months prior to the commencement of winding up of the company;

“relevant debt” means —

- (a) in subsection (4), the debts and liabilities incurred by the phoenix company while the person liable was involved in the management of the company and the phoenix company was known by a pre-winding up name of a failed company or a similar name; and
- (b) in subsection (5), the debts and liabilities incurred by the phoenix company when a person was acting or was willing to act on the instructions of another person and the phoenix company was known by a pre-winding up name of a failed company or a similar name.

“similar name” means a name that is so similar to a pre-winding up name of a failed company as to reasonably suggest an association with the company.

Exception
to section
363

364.(1) Section 363(1) and (2) shall not apply to a person named in a successor company notice.

(2) A successor company notice is a notice by a successor company that —

- (a) is sent by the successor company to all creditors of the failed company for which the successor company has an address;
- (b) specifies —
 - (i) the name and registered number of the failed company;
 - (ii) the circumstances in which the business has been acquired by the successor company;
 - (iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on the business;
 - (iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on the business; and
- (c) states, in respect of a person named in the notice —
 - (i) his or her full name;
 - (ii) the duration of his or her directorship of the failed company; and
 - (iii) the extent of his or her involvement in the management of the failed company.

(4) A person shall not contravene a prohibition in section 363(1) for the temporary period set out in subsection (5) if the person applies to the Court within 5 working days after the commencement of winding up of the failed company for an order exempting the person from the prohibition.

(5) The temporary period in subsection (4) is the period commencing on the date of the commencement of winding up of the failed company and ending on the earlier of —

(a) the expiry of 42 days after the commencement of winding up; and

(b) the date on which the Court makes the order of exemption.

(6) The prohibitions in section 363 (2) (a) and (b) shall not apply in respect of a phoenix company that has been known by the same name or names as the failed company's pre- winding up name or are similar names where —

(a) it has been known by the name or those names for not less than 12 months prior to the commencement of winding up; and

(b) it has not been dormant during the period referred to in paragraph (a).

(7) For the purposes of subsection (6) (b), a company has not been dormant if transactions that are required by the Companies Act to be recorded in the company's accounting records have occurred during the period.

365.(1) Any person who, without reasonable excuse, makes default in complying with the requirements of section 106, he or she shall be liable to a fine of SCR10,000 and a further fine of SCR500 for every day during which the default continues.

Offence relating to statement of affairs

(2) Any person who gives affidavit in support of the whole or part of the statement submitted in pursuance of section 106 —

(a) knowing that any fact or matter contained therein or in the part thereof which he or she gives is false, misleading or incomplete; or

(b) recklessly without reasonable grounds for believing that the facts or matters contained therein or in the part thereof which he or she gives are true; or

(c) knowing that any material particular which should be contained therein or in the part thereof which he or she gives has been omitted,

commits an offence and shall, on conviction, be liable to a fine not exceeding SCR10,000 or to imprisonment for a term not exceeding 2 years or, or to both such fine and term of imprisonment .

(3) Any person untruthfully so stating himself or herself to be a creditor, shareholder, contributory or debenture holder of the Company under section 106(3) shall be guilty of a contempt of Court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly

Offence relating to dissolution

366. A liquidator who makes default in complying with the requirements of section 144(2) shall be liable to a fine of SCR500 for every day during which he or she is in default.

Offence relating to notice of winding up

367. (1) If default is made in complying with section 147, the company and every officer of the company who is in default shall be liable to a fine of SCR500 for every day during which the default continues.

(2) For the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Offence relating to members voluntary winding up

368. A liquidator who fails to comply with section 154 shall be liable to a fine not exceeding SCR10,000.

Offence relating to creditors' voluntary winding up

369. If default is made by —

- (a) the company in complying with section 155 (1), (2) or (3);
- (b) the directors of the company in complying with section 155 (4);
- (c) any director of the company in complying with section 155 (5),

the directors or director in default shall be liable to a fine of SCR 10,000.

Offence relating to annual meetings

370. A liquidator who fails to comply with section 164 within three months after the expiry of each anniversary of the commencement of winding up, he or she shall be liable to a fine of SCR10,000.

371.(1) A liquidator who fails to comply with section 165(3), shall be liable to a fine of SCR10,000.

Offence relating to final meeting

(2) A person who fails to comply with subsection 165(6) shall be liable to a fine of SCR500 for every day during which the default continues.

(3) A liquidator fails to call a general meeting of the company or a meeting of creditors as required by section 165 shall be liable to a fine not exceeding SCR10,000.

372.(1) A body corporate which acts as liquidator of a company contrary to section 167 shall be liable to a fine not exceeding SCR10,000.

Failure to comply with sections 167, 169(1) and 174(2)

(2) Where any business of a company is carried on with such intent or for such purpose as is mentioned in section 169 (1), every director or officer of the company and any other person who was knowingly a party to the carrying on of the business in manner aforesaid, shall, whether the company is wound up, commits an offence and shall be liable, on conviction, to a fine not exceeding SCR500,000 and to imprisonment for a term not exceeding 5 years.

(3) A person who fails to comply with section 174(2), shall be liable to a fine of SCR500 for every day during which the default continues.

Sub-Part III – Offences Relating to Receivership

373.(1) Any liquidator of the company or any receiver or manager of any property of the company who knowingly and willfully authorizes or permits the default in complying with the requirements of section 181 (1) commits an offence and shall be liable to a fine of SCR10,000.

Offences relating to receivership

(2) Any person who acts as a receiver or manager of any property of a company while disqualified by section 177 commits an offence and shall be liable to a fine not exceeding SCR10,000.

(3) A receiver who makes default in complying with the requirements of section 188, shall be liable to a fine not exceeding SCR 500 for every day during which the default continues.

(4) Any person who, without reasonable excuse makes default in complying with the requirements of section 189, shall be liable to a fine not exceeding SCR500 for every day during which the default continues.

Sub-Part IV – Miscellaneous Offences

False or
misleading
statement

- 374.** Any person who —
- (a) for the purposes of or in connection with any application under this Act;
 - (b) in purported compliance with any requirement imposed by or under this Act; or
 - (c) in relation to any report to the Court or to a liquidator, receiver or administrator or the Official Receiver,

furnishes information knowing it to be false or misleading in a material respect, or recklessly furnishes information which is false or misleading in a material respect or intentionally omits to disclose any matter or thing without which any application, report or information is misleading in a material respect, commits an offence and shall, on conviction, be liable to a fine not exceeding SCR500,000 and to imprisonment for a term not exceeding 2 years.

Creditor's
fraudulent
act

375. Where a creditor, or a person claiming to be a creditor, in any bankruptcy proceeding, willfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he or she commits an offence and shall, on conviction, be liable to a fine not exceeding SCR500,000 and to imprisonment for a term not exceeding 2 years.

Dealing
with
company
property

- 376.(1)** A company officer who —
- (a) purports, on the company's behalf, to enter into a transaction or dealing that is void under section 218(1); or
 - (b) is in any other way knowingly concerned in, or party to, the void transaction or dealing, whether —
 - (i) by act or omission; or
 - (i) directly or indirectly,

commits an offence and shall, on conviction, be liable to a fine not exceeding SCR500,000 and to imprisonment for a term not exceeding 2 years.

(2) The Court may order a company officer who is convicted of an offence under subsection (1) to compensate any person, including the company, who has suffered loss as a result of the act or omission constituting the offence.

377. Any person who —

False proof
by creditor

- (a) makes, or authorises the making of, a proof under section 293(3) that is false or misleading in a material particular knowing that it is false or misleading; or
- (b) omits, or authorises the omission of, from a proof under section 293(3) any matter knowing that the omission makes the proof false or misleading,

commits an offence and shall, on conviction, be liable to a fine not exceeding SCR 500,000 and to imprisonment for a term not exceeding 2 years.

378. A person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding SCR 5,000.

General
penalty

379. Where a debtor has committed an offence under this Act, he or she shall not be exempt from being charged for the offence by reason that he or she has obtained his or her discharge or that a composition or other scheme of arrangement has been accepted or approved.

Liability
after
discharge or
composition

PART XII - MISCELLANEOUS PROVISIONS

380.(1) (a) The Court shall have power to try and determine all questions of ownership relating to movable or immovable property claimed by or from the Official Receiver or a liquidator, and to decide and determine any debt or claim due to or from the bankrupt or company in winding up.

Powers of
Court

(b) The Court may refer the parties to the competent Court to have any contested matter adjudicated upon on an issue framed by it.

(2) The Court may at any time amend any process or proceeding under this Act on such terms as the Court thinks appropriate.

(3) Subject to any rules of the Court, the Court may, in any matter, take the whole or any part of the evidence either *viva voce* or by interrogatories or upon affidavit or by commission abroad.

(4) For the purposes of approving the composition or scheme by joint debtors, the Court may, if it thinks fit and on the report of the Official Receiver or a liquidator that it is expedient to do so, dispense with the public examination of one of such joint debtors if he or she is unavoidably prevented from attending the examination by illness or absence abroad.

(5) Where two or more bankruptcy petitions or petitions for winding up are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks appropriate.

(6) Where a petitioner for a bankruptcy order or an order for winding up does not proceed with due diligence on the application, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the place of the creditor who filed the petition.

(7) A defect or irregularity in the appointment or election of a receiver, liquidator or member of a committee of inspection shall not invalidate any act done by him or her in good faith.

Irregularity
in
proceedings

381.(1) A proceeding under this Act shall not be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused by such circumstance which cannot be remedied by an order of the Court.

(2) The Court may, if it thinks appropriate, make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3) Notwithstanding subsections (1) and (2), or any other provision of this Act, where an omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors, has occurred in the management or administration of a company whereby a provision of this Act has been contravened, or whereby there has been default in observing of the memorandum and articles of a company or whereby any proceedings at or in connection with any meeting of the company or of the directors of any assembly purporting to be such a meeting have been rendered ineffective, including the failure to make or lodge with the Registrar of any declaration of insolvency, the Court —

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to nullify or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;
- (b) shall before making any such order satisfy itself that such an order would not do injustice to the company or to any member or creditor;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court may, on good cause shown,, extend or reduce any period of time for doing any act or taking any proceeding under this Act or any regulations made under this Act on such terms as the justice of the case may require, and any such extension may be ordered although the application is made after the expiry of the period of time originally allowed.

Power to
grant relief

382.(1) Where in any proceedings before the Court for negligence, default or breach of duty against a person to whom this section applies, it appears to the Court that he or she is or may be liable in respect thereof, but that he or she acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his or her appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him or her either wholly or partly from his or her liability on such terms as the Court thinks appropriate.

(2) This section shall apply to a —

- (a) director or officer of a company;
- (b) person employed by a company as auditor;
- (c) person who is a receiver or manager or liquidator or administrator appointed under this Act.

Fees of
Official
Receiver

383.(1) (a) The Official Receiver may charge such fees as may be prescribed, out of the debtor's estate.

(b) The fees charged by the Official Receiver under paragraph (a) shall be —

- (i) paid into the consolidated fund; and
- (ii) a preferential claim.

(2) Subject to subsection (1), necessary disbursements made by the Official Receiver when acting under this Act, the amount of these disbursements shall be settled by the Court, shall be paid out of the estate, if sufficient, and otherwise shall be payable by the petitioning creditor and recoverable upon a certificate of the amount allowed by the Court.

Immunity

384. No action shall lie against the Official Receiver and Deputy Official Receivers in respect of any act done or omitted to be done by the Official Receiver and Deputy Official Receivers in the execution, in good faith, of its or his or her functions under this Act.

385. Every notice, petition and other documents required to be served on a company under this Act, shall be served at the registered office of the company, or if there is no registered office then at the principal or last known principal place of business of the company if any such can be

Service of
documents on
company

found, by leaving a copy with any shareholder or any member, officer or employee of the company there, or in case no such shareholder, member, officer or employee can be found there by a leaving at such registered office or principal place of business or by serving it on such shareholder, member, officer or employee of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator if any appointed for the purpose of winding up, winding the affairs of the company.

386. In the case of the death of a bankrupt or his or her spouse, or of a witness whose evidence has been received by the Court in any proceedings under this Act, the deposition of the person so deceased, purporting to be sealed, or an office copy thereof purporting to be sealed, shall be admitted as *prima facie* evidence of the matters deposed to in the deposition.

Deposition as
evidence

387. Notwithstanding any other enactment where —

- (a) a person is declared bankrupt; or
- (b) a company is wound up,

Time of
payment in
bankruptcy or
winding up

any payment, settlement or transaction shall have effect having regard to the time at which the Official Receiver or liquidator is appointed as recorded on the bankruptcy order in the case of bankruptcy and as required to be recorded in the case of a company winding up.

388. The provisions of this Act shall be in addition to and not in derogation of the provisions of the Companies Act.

Act in addition
to Companies
Act

389.(1) The Minister may make regulations —

- (a) for giving effect to the provisions of this Act;
- (b) to amend the Schedule.

Regulations

(2) Without limiting the generality of subsection (1), the Minister may make regulations to provide —

- (a) for the taking of fees and levying of charges;
- (b) that any person who contravenes the regulations shall commit an offence under the Act and shall, on

conviction, be liable to a fine not exceeding SCR 500,000 and to imprisonment for a term not exceeding 2 years;

- (c) for any matter which is required to be prescribed under this Act;

Repeal

390. The Bankruptcy and Insolvency Act, Cap 13 is hereby repealed.

Savings
and
transitional
provisions

391.(1) Notwithstanding the repeal of the Bankruptcy and Insolvency Act, Cap 13, any fee, charge or sum paid or unpaid under the Bankruptcy and Insolvency Act on the date immediately prior to the coming into operation of the relevant provisions of this Act shall, in respect of the corresponding period, be deemed to have been paid or unpaid under this Act.

(2) (a) Any person appointed under the repealed Act and holding office at the commencement of this Act, shall remain in office as if he or she had been appointed under this Act.

(b) Any act made, executed, issued or passed under the repealed Act and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, executed, issued or passed, under this Act.

(c) All proceedings, judicial or otherwise commenced and pending immediately prior to the commencement of this Act under the repealed Act, shall be deemed to have commenced and may be continued under the repealed Act.

(d) A person may continue to act as liquidator or receiver or manager of the property of a company if his or her appointment was validly made before the commencement of this Act.

(3) A person appointed as Official Receiver under section 214 of the Companies Act, 1972 shall continue to act as Official Receiver as if appointed under this Act, until such time that another person is appointed as Official Receiver under this Act.

SCHEDULE

(sections 351)

RULES APPLYING TO CROSS-BORDER INSOLVENCY PROCEEDINGS

Preamble

The purpose of this Schedule is to provide effective mechanisms for dealing with cases of cross-border insolvency so far as to promote the objectives of —

- (a) co-operation between courts and other competent authorities of Seychelles and foreign states involved in cases of cross-border insolvency;
- (b) providing greater legal certainty for trade and investment;
- (c) providing the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and interested persons, including the debtor;
- (d) providing protection and maximisation of the value of the debtor's assets; and
- (e) facilitating the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Chapter I – General provisions

Article 1 – Scope of application

(1) Except as provided in paragraph (2) of this article, this Schedule applies where —

- (a) assistance is sought in Seychelles by a foreign court or a foreign representative in connection with a foreign proceeding; or
- (b) assistance is sought in a foreign state in connection with a Seychelles insolvency proceeding; or
- (c) a foreign proceeding and a Seychelles insolvency proceeding in respect of the same debtor are taking place concurrently; or

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- (d) creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participation in, a Seychelles insolvency proceeding.

(2) This Schedule does not apply to financial institutions.

Article 2 – Definitions

For the purposes of this Schedule —

- (a) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or winding up;
- (b) “foreign main proceeding” means a foreign proceeding taking place in the state where the debtor has the centre of its main interests;
- (c) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a state where the debtor has an establishment within the meaning of sub-paragraph (f) of this article;
- (d) “foreign representative” means a person or body, including one appointed to administer the reorganisation or the winding up of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;
- (e) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) “establishment” means any place of operations where the debtor carries out a non-transitory

economic activity with human means and goods or services;

- (g) “insolvency administrator” means —
- (i) the Official Receiver or liquidator under this Act; or
 - (ii) a receiver within the meaning of this Act; or
 - (iii) a liquidator appointed under any other Act; or
 - (iv) an administrator appointed under Part VI of this Act for the reorganisation of a company.
- (h) Seychelles insolvency proceedings means a collective judicial or administrative proceeding pursuant to the law in Seychelles relating to the bankruptcy, winding up, receivership or reorganisation of a debtor, or the reorganisation of the debtor’s affairs, under which the assets and affairs of the debtor are administered, or the assets of the debtor are or will be realised for the benefit of secured or unsecured creditors.

Article 3 – International obligations of Seychelles

No action may be taken under this Schedule that conflicts with an obligation of Seychelles arising out of any treaty or other form of agreement to which Seychelles is a party with one or more other states.

Article 4 – Court to have jurisdiction

The functions referred to in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the Court.

*Article 5 – Authorisation of insolvency administrator to act
in a foreign state*

An insolvency administrator is authorised to act in a foreign state on behalf

of a Seychelles insolvency proceeding, as permitted by the applicable foreign law.

Article 6 – Public policy exception

(1) Nothing in this Schedule prevents the Supreme Court from refusing to take an action governed by this Schedule if the action would be manifestly contrary to the public policy of Seychelles.

(2) Before the Court refuses to take an action under paragraph (1) of this article, the Court shall consider whether it is necessary for the Attorney- General to appear and be heard on the question of the public policy of Seychelles.

Article 7 – Additional assistance under other laws

Nothing in this Schedule limits the power of a court or an insolvency administrator to provide additional assistance to a foreign representative under other laws of Seychelles.

Article 8 – Interpretation

In the interpretation of this Schedule, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

**Chapter II – Access of foreign representatives and creditors
to courts in Seychelles**

Article 9 – Right of direct access

A foreign representative is entitled to apply directly to the Court.

Article 10 – Limited jurisdiction

The sole fact that an application pursuant to this Schedule is made to the Supreme Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

*Article 11 – Application by a foreign representative to commence a
Seychelles insolvency*

A foreign representative is entitled to apply to commence a Seychelles insolvency proceeding if the conditions for commencing such a proceeding are otherwise met.

Article 12 – Participation of a foreign representative in a Seychelles insolvency proceeding

Upon recognition by the Court of a foreign proceeding, the foreign representative is entitled to participate in a Seychelles insolvency proceeding regarding the debtor.

Article 13 – Access of foreign creditors to a Seychelles insolvency proceeding

(1) Subject to paragraph (2) of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a Seychelles insolvency proceeding as creditors in Seychelles.

(2) Paragraph (1) of this article shall not affect the ranking of claims in a Seychelles insolvency proceeding or the exclusion of foreign tax and social security claims from such a proceeding.

Article 14 – Notification to foreign creditors of a Seychelles insolvency proceeding

(1) Whenever, under a Seychelles insolvency proceeding, notification is to be given to creditors in Seychelles, such notification shall also be given to the known creditors that do not have addresses in Seychelles. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall —

- (a) indicate a reasonable time period for filing claims and specify the place for their filing;
- (b) indicate whether secured creditors need to file their secured claims; and

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- (c) contain any other information required to be included in such a notification to creditors pursuant to the laws of Seychelles and the orders of the Court.

Chapter III – Recognition of a foreign proceeding and relief

Article 15 – Application for recognition of a foreign proceeding

(1) A foreign representative may apply to the Court for recognition of the foreign proceedings in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by —

- (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of Seychelles.

Article 16 – Presumptions concerning recognition

(1) If the decision or certificate referred to in paragraph (2) of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (a) of article 2 and that the foreign

representative is a person or body within the meaning of sub-paragraph (d) of article 2, the Court is entitled to so presume.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual is presumed to be the centre of the debtor's main interests.

Article 17 – Decision to recognise a foreign proceeding

(1) Subject to article 6, a foreign proceeding shall be recognised if —

- (a) the foreign proceeding is a proceeding within the meaning of sub-paragraph (1) of article 2;
- (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (d) of article 2;
- (c) the application meets the requirements of paragraph (2) of article 15; and
- (d) the application has been submitted to the Court.

(2) The foreign proceeding shall be recognised —

- (a) as a foreign main proceeding if it is taking place in the state where the debtor has the centre of its main interests; or
- (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (f) of article 2 in the foreign state.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) As soon as practicable, after the Court recognises the foreign proceeding under paragraph (1) of this article, the foreign

representative shall notify the debtor, in the prescribed form, that the application has been recognised.

(5) The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18 – Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Court promptly of —

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Article 19 – Relief that may be granted upon application for recognition of a foreign proceeding

(1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including —

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realisation of all or part of the debtor's assets located in Seychelles to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (c) any relief mentioned in paragraph (1)(c) and (d) of article 21.

(2) As soon as practicable, after the Court grants relief under paragraph (1) of this article, the foreign representative shall notify the debtor, in the prescribed form, of the relief that has been granted.

(3) Unless extended under paragraph (1)(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20 – Effects of recognition of a foreign main proceeding

(1) Upon recognition by the Court of a foreign proceeding that is a foreign main proceeding —

- (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended.

(2) Paragraph (1) of this article does not prevent the Court, on the application of any creditor or interested person, from making an order, subject to such conditions as the Court thinks fit, that the stay or suspension does not apply in respect of any particular action or proceeding, execution, or disposal of assets.

(3) Paragraph (1) (a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Paragraph (1) of this article does not affect the right to request the commencement of a Seychelles insolvency proceeding or the right to file claims in such a proceeding.

Article 21 – Relief that may be granted upon recognition of a

foreign proceeding

(1) Upon recognition by the Court of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—

- (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities, to the extent they have not been stayed under paragraph (1)(a) of article 20;
- (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of article 20;
- (c) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1)(c) of article 20;
- (d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Seychelles to be a foreign representative or another person designated by the Court; and
- (f) extending relief granted under paragraph (1) of article 19.

(2) Upon recognition by the Court of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Seychelles to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Seychelles are adequately protected.

(3) In granting relief under this article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the laws of Seychelles, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

Article 22- Protection of creditors and other interested persons

(1) In granting or denying relief under article 19 or article 21, or in modifying or terminating relief under paragraph (3) of this article, the Supreme Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under article 19 or article 21 to conditions it considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under article 19 or article 21, or at its own motion, modify or terminate such relief.

(4) The Court shall, on application of the statutory receiver, terminate the relief granted under article 19 or article 21 if —

- (a) an application for recognition has been made in respect of a debtor that is financial institution licensed under the Financial Institutions Act;
- (b) the Court has granted that application or the Court has granted relief under article 19; and
- (c) the debtor is placed in statutory receivership.

Article 23 – Actions to avoid acts detrimental to creditors

(1) Upon recognition by the Court of a foreign proceeding, the foreign representative has standing to initiate any action that an insolvency administrator may take in respect of a Seychelles insolvency proceeding that relates to a transaction (including any gifts or improvement of property

or otherwise), security, or charge that is voidable or may be set aside or altered.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the laws of Seychelles, should be administered in the foreign non-main proceeding.

(3) To avoid any doubt, nothing in paragraph (1) of this article affects the doctrine of relation back as it is applied in Seychelles.

*Article 24 – Intervention by a foreign representative in Seychelles
insolvency proceeding*

Upon recognition by the Court of a foreign proceeding, the foreign representative may, provided the requirements of the laws of Seychelles are met, intervene in any proceeding in which the debtor is a party.

**Chapter IV – Co-operation with foreign courts and foreign
representative**

*Article 25 – Co-operation and direct communication between the Court
and foreign courts or foreign representatives*

(1) In matters referred to in paragraph (1) of article 1, the Court shall co-operate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

*Article 26 – Co-operation and direct communication between the
insolvency administrator and foreign courts or foreign representatives*

(1) In matters referred to in paragraph (1) of article 1 an insolvency administrator shall, in the exercise of its functions and subject to the supervision of the Court, co-operate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency administrator is entitled, in the exercise of

its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27 – Forms of co-operation

Co-operation referred to in articles 25 and 26 may be implemented by any appropriate means, including —

- (a) appointment of a person or body to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) co-ordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the co-ordination of proceedings; and
- (e) co-ordination of concurrent proceedings regarding the same debtor.

Chapter V – Concurrent proceedings

Article 28 – Commencement of a Seychelles insolvency proceeding after recognition of a foreign main proceeding

After recognition by the Court of a foreign main proceeding, a Seychelles insolvency proceeding may be commenced only if the debtor has assets in Seychelles; the effects of that proceeding shall be restricted to the assets of the debtor that are located in Seychelles and, to the extent necessary to implement co-operation and co-ordination under articles 25, 26 and 27 to other assets of the debtor that, under the laws of Seychelles, should be administered in that proceeding.

Article 29 – Co-ordination of a Seychelles insolvency proceeding and a foreign proceeding

Where a foreign proceeding and a Seychelles insolvency proceeding are taking place concurrently regarding the same debtor, the Court shall seek co-operation and co-ordination under articles 25, 26 and 27, and the following shall apply —

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- (a) when the Seychelles insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed—
 - (i) any relief granted under article 19 or article 21 must be consistent with the Seychelles insolvency proceeding; and
 - (ii) if the foreign proceeding is recognised in Seychelles as a foreign main proceeding, article 20 does not apply;
 - (b) when the Seychelles insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceedings—
 - (i) any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the Seychelles insolvency proceeding; and
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of article 20 shall be modified or terminated pursuant to paragraph (2) of article 20 if inconsistent with the Seychelles insolvency proceeding; and
 - (c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the laws of Seychelles, should be administered in the foreign non-main proceeding or concerns information required in that proceed.

Article 30 – Co-ordination of more than one foreign proceeding

In matters referred to in paragraph (1) of article 1, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek co-operation and co-ordination under articles 25, 26 and 27, and the following shall apply —

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- (a) any relief granted, under article 19 or article 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
 - (b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding; and
 - (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31 – Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a Seychelles insolvency proceeding, proof that the debtor is insolvent.

Article 32 – Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state may not receive a payment for the same claim in a Seychelles insolvency proceeding regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment to the creditor has already received.
