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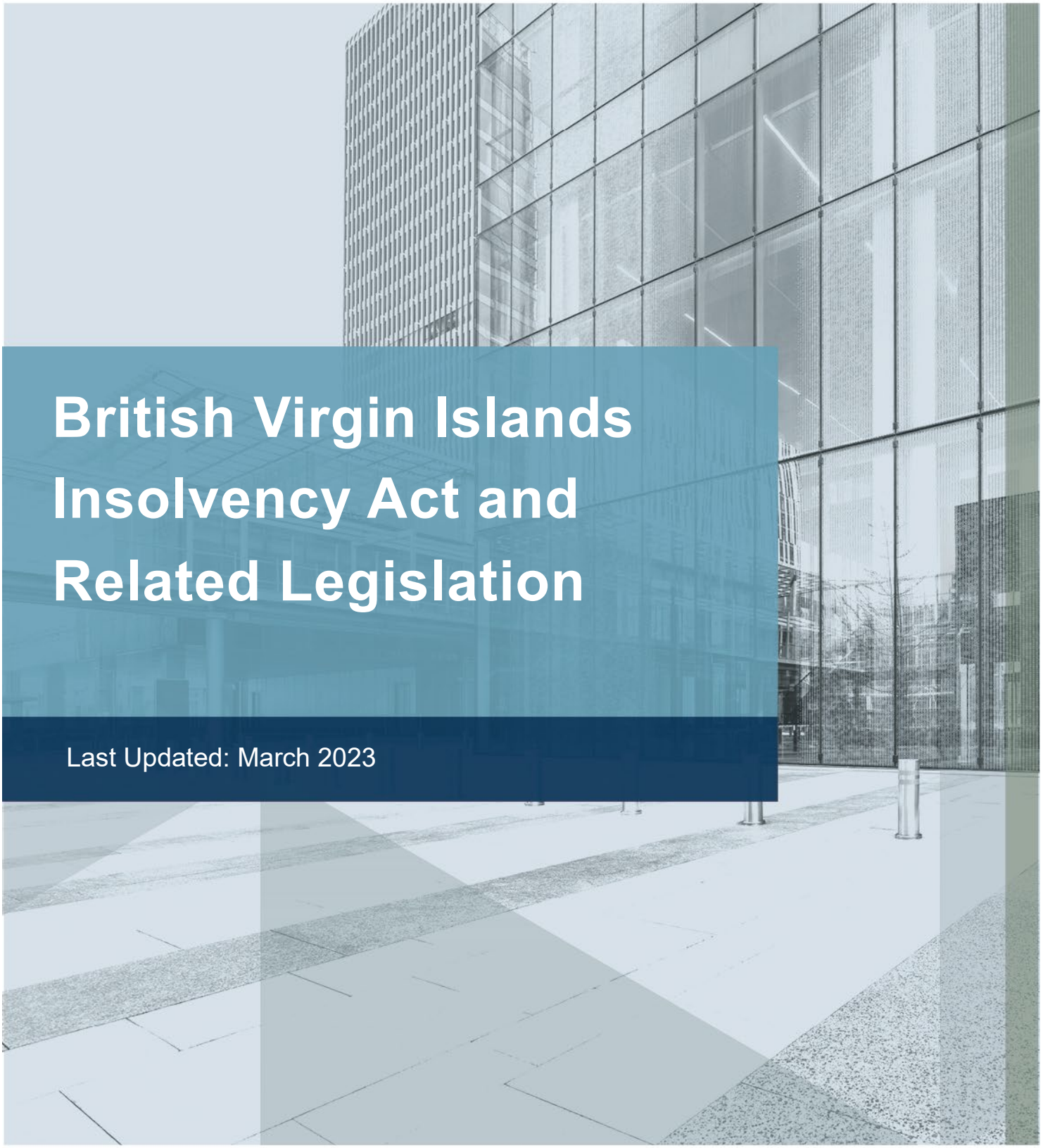

British Virgin Islands Insolvency Act and Related Legislation

Last Updated: March 2023

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Preface

As a service to our clients, we have prepared this compendium of the Insolvency Act, Revised Edition 2020 together with related regulations and rules, incorporating all amendments to date.

This version of the compendium takes into account changes and updates to the legislation as set out in the 2020 Revisions.

The most recent update includes amendments to the Insolvency Act, Revised Edition 2020 made by the Insolvency (Amendment) Act, 2022, amendments to the Insolvency Rules, Revised Edition 2020 made by the Insolvency (Amendment) Rules, 2023, and amendments to the Insolvency Code of Practice, Revised Edition 2020 made by the Insolvency (Amendment) Code of Practice, 2023, all in force 1 March 2023.

The Insolvency Act, 2003 and the Insolvency (Amendment and Consequential Provisions) Act, 2004 were proclaimed in force as of August 16, 2004. The Insolvency (Transitional Provisions) Regulations, 2004 (the "Regulations") deal with transitional matters. The Regulations provide that the Court may make an order in respect of a transaction entered into or created prior to the commencement date (which is deemed to be August 16, 2004) only to the extent it could have made such order under the former law. The Regulations define "former law" as the enactments and rules of law repealed, amended or modified by the Insolvency Act, 2003, the Insolvency Rules, 2004 and any regulations made under the Insolvency Act, 2003. It is a matter of interpretation whether the significant amendments resulting from the Insolvency (Amendment and Consequential Provisions) Act are included in the definition of “former law”.

Part III of the Insolvency Act, which encompasses sections 74 through 114, contains the provisions dealing with administration orders, these provisions have not yet been brought into force.

The provisions of Part XVIII of the Insolvency Act, 2003 are not in force. This Part, which encompasses sections 436 through 465, contains the provisions dealing with cross-border insolvency. The Government of the British Virgin Islands has stated that these provisions will not be brought into force until such time as there is a “level playing field” with respect to the UNCITRAL model on cross-border insolvency, meaning that the model be adopted by many jurisdictions. It is not anticipated that the provisions of Part XVII will come into force any time in the foreseeable future.

Conyers Dill & Pearman

British Virgin Islands

Revised: March 2023

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VIRGIN ISLANDS

INSOLVENCY ACT

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(Acts 5 of 2003, 11 of 2004, 16 of 2004, 19 of 2006, 1 of 2008 and 16 of 2022)

[Commencement: 16 August 2004, except Parts III and XVIII, which are not in force]

An Act to reform the law relating to the insolvency of companies and foreign companies, limited partnerships, partnerships and individuals and to provide, in particular, for a mechanism for insolvent persons to enter into arrangements with their creditors, an administration procedure for companies, the receivership of companies and foreign companies, the liquidation of companies, foreign companies, limited partnerships and partnerships, the making of bankruptcy orders against individuals, the licensing and regulation of insolvency practitioners, the penalization and redress of wrongdoing associated with insolvent persons, the disqualification of directors, the avoidance of certain transactions, cross border insolvency issues and other matters connected therewith.

PART I - PRELIMINARY PROVISIONS

1. Short title

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

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"administration order" has the meaning specified in section 76;

"administrative receiver" has the meaning specified in section 142;

"administrator", in relation to a company, means an administrator appointed under section 79;

"arrangement" means a company creditors' arrangement under Part II, Division 2 or an individual creditors' arrangement under Part II, Division 3, as the case may be;

"articles" means—

(a) the articles of association of a company; or

(b) where the context permits, in the case of a foreign company the articles of association, by-laws or such other document having the same effect by whatever name called;

"asset" includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"bank" means a regulated person that is licensed under the Banks and Trust Companies Act, Revised Edition 2020, to carry on banking business as defined in section 2(1) of that Act;[1]

"bankrupt" means an individual against whom a bankruptcy order is made under Part XII;

"bankruptcy trustee" means the person appointed by the Court to be the trustee of the assets of a bankrupt;

"bankrupt's estate" has the meaning specified in section 313;

"board", in relation to a body corporate, means—

(a) the board of directors, committee of management, council or other governing authority of the body corporate; or

(b) if the body corporate has only one director, that director;

"business day" means any day other than a Saturday, Sunday or public holiday in the Virgin Islands;

"charge" includes a mortgage, a fixed charge and a floating charge, whether crystallised or not;

"chargee" means the holder of a charge and includes a person in whose favour a charge is to be given or executed under an agreement, whether on demand or otherwise;

"chattel leasing agreement" means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

"Civil Procedure Rules" means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

"Commission" means the Financial Services Commission established under the Financial Services Commission Act, 2001;

"Companies Act" means the Companies Act, 1885;

"company" has the meaning specified in section 3;

"connected person"—

(a) in relation to a company or a foreign company has the meaning specified in section 5(1), and

(b) in relation to an individual has the meaning specified in section 5(3);

"Court" means the High Court;

"court rate" means the rate of interest specified in section 7 of the Judgments Act;

"creditor" and "secured creditor" have the meanings specified in section 9;

"creditors' committee" means a committee appointed under section 421;

"director" has the meaning specified in section 6;

"disqualification order" has the meaning specified in section 260(1);

"disqualification undertaking" has the meaning specified in section 260(2);

"document" means a document in any form and includes—

(a) any writing or printing on any material;

(b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;

(c) books and drawings; and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

"dollar" or "$" means the lawful currency for the time being of the United States of America;

"eligible insolvency practitioner" means an insolvency practitioner who is eligible to act in relation to a company, foreign company or individual in accordance with section 482;

"floating charge" means a charge created by a company or a foreign company which is, or as created was, a floating charge;

"foreign company" means a body corporate that is incorporated, registered or formed outside the Virgin Islands but excludes a company within the meaning of section 3;

"insolvency practitioner" means a person acting in a capacity specified in section 474(1);

"insolvent"—

(a) in relation to a company or a foreign company, has the meaning specified in section 8(1); and

(b) in relation to an individual, has the meaning specified in section 8(2);

"Insurance Act" means the Insurance Act[2];

"insurance company" means a company or a foreign company that holds, a licence under the Insurance Act or that at any time has held a licence under the repealed Insurance Act 1994[3];

"interim supervisor" means the person appointed as the interim supervisor under a proposal for an arrangement;

"International Business Companies Act" means the International Business Companies Act, 1984;

"International Tax Authority" means the International Tax Authority established under section 3(1) of the International Tax Authority Act, Revised Edition 2020; [4]

"liability" has the meaning specified in section 10;

"licensed insolvency practitioner" means a person holding a licence to act as an insolvency practitioner issued under section 476;

"liquidator", in relation to a company or a foreign company, means a liquidator appointed under section 159;

"member", in relation to a company, includes—

(a) a member of a company limited by guarantee; and

(b) a person to whom shares in a company have been transferred or transmitted by law, even though that person is not a member of the company within the meaning of the Companies Act;

"memorandum" means—

(a) the memorandum of association of a company; or

(b) where the context permits, in the case of a foreign company its memorandum of association or other constituting document, by whatever name called;

"officer", in relation to a body corporate, includes a director and secretary of that body corporate but does not include an administrator, liquidator, receiver, supervisor or interim supervisor;

"Official Receiver" means the Official Receiver appointed under section 488; [5]

"preferential claim" means a claim of a type prescribed by the Rules as a preferential claim;

"preferential creditor" means a creditor having a preferential claim;

"prescribed" means prescribed by the Rules or the Regulations made under section 486[6] and "prescribed form" means a form specified in the Rules or those Regulations[7];

"prescribed priority" means—

(a) in a liquidation, the priority for the payment of the costs and expenses of a liquidation prescribed in the Rules; and

(b) in a bankruptcy, the priority for the payment of the costs and expenses of a bankruptcy prescribed in the Rules;

"public document" has the meaning specified in section 13;

"receiver" means the receiver of the whole or any part of the assets of a company or a foreign company and includes—

(a) a manager and a receiver and manager;

(b) a receiver of income; and

(c) an administrative receiver;

"receiver appointed out of court" means a receiver appointed in the exercise of a power conferred by a debenture or other instrument;

"Registrar" means the Registrar of Corporate Affairs appointed under section 229 of the BVI Business Companies Act;[8]

"regulated person" means a person that holds a prescribed financial services licence;

"related company" means a company that is related to another company in accordance with section 5(2);

"remuneration" includes properly incurred expenses and disbursements;

"retention of title agreement" means any agreement for the sale of goods under which the seller reserves title in the goods until payment, but excludes an agreement that constitutes a charge on the goods;

"Rules" means the Insolvency Rules made under section 498 and, where appropriate, the Rules made under sections 499 and 500[9];

"security interest" includes a charge and a lien;

"statement of affairs" means a statement of the affairs of a company or a foreign company complying with section 277 and "verified statement of affairs" means a statement of affairs that has been verified by affidavit;

"statement of assets and liabilities" means a statement of the assets and liabilities of an individual complying with section 366 and "verified statement of assets and liabilities" means a statement of assets and liabilities that has been verified by affidavit;

"statutory demand" means a demand made under section 155;

"subsidiary" and "holding company" have the meanings specified in section 4;

"supervisor" means the person appointed to act as the supervisor of an arrangement under Part II;

"unlicensed financial services business" has the meaning specified in section 7; and

"VIDIC" means the Virgin Islands Deposit Insurance Corporation established under section 3(1) of the Virgin Islands Deposit Insurance Act, 2016, No. 7 of 2016; [10]

"Virgin Islands court" means any court having jurisdiction in the Virgin Islands.

(2) References in this Act or in the Rules to the "venue" for any proceeding, attendance before the Court or for a meeting are to the time, date and place for the proceeding, attendance or meeting.

3. Meaning of "company"

Unless this Act expressly provides otherwise, "company" means—

(a) a company incorporated under the Companies Act;

(b) an international business company incorporated or continued under the International Business Companies Act; or

(c) a company within the meaning specified in section 3(1) of the BVI Business Companies Act.[11]

4. Meaning of "subsidiary" and "holding company"

(1) A company is a "subsidiary" of another company, its "holding company", if that other company—

(a) holds a majority of the voting rights in it;

(b) is a member of it and has the right to appoint or remove a majority of its board;

(c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,

or if it is a subsidiary of a company which is itself a subsidiary of that other company.

(2) For the purposes of subsection (1), "company" includes a foreign company and any other body corporate.

5. Meaning of "connected person" and "related company"

(1) In relation to a company, "connected person" means any one or more of the following—

(a) a promoter of the company;

(b) a director or member of the company or of a related company;

(c) a beneficiary under a trust of which the company is or has been a trustee;

(d) a related company;

(e) another company one of whose directors is also a director of the company;

(f) a nominee, relative, spouse or relative of a spouse of a person referred to in paragraphs (a) to (c);

(g) a person in partnership with a person referred to in paragraphs (a) to (c); and

(h) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

(2) A company is related to another company if—

(a) it is a subsidiary or holding company of that other company;

(b) the same person has control of both companies; and

(c) the company and that other company are both subsidiaries of the same holding company.

(3) In relation to an individual, "connected person" means any one or more of the following—

(a) a relative, spouse or relative of a spouse of the individual;

(b) a person in partnership with the individual;

(c) a relative or spouse of a person in partnership with the individual;

(d) a company in respect of which he or she is a connected person under subsection (1);

(e) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

(4) For the purposes of this section, "company" includes a foreign company and any other body corporate.

6. Meaning of "director"

(1) Subject to subsection (3), "director", in relation to a body corporate, includes—

(a) a person occupying or acting in the position of director by whatever name called;

(b) a person in accordance with whose directions or instructions a director or the board of a body corporate may be required or is accustomed to act; and

(c) a person who exercises, or is entitled to exercise, or who controls, or is entitled to control, the exercise of powers which, apart from the memorandum or articles, would fall to be exercised by the board.

(2) Notwithstanding subsection (1)—

(a) a person is not to be regarded as a director of a body corporate by reason only that a director or the board act on advice given by him or her in a professional capacity; and

(b) a person acting as an insolvency practitioner in relation to a company or a foreign company is not to be regarded as a director of the company or foreign company by virtue of his or her acting in that capacity.

(3) In Parts IX and X, "director" has the meaning specified in this section with the deletion of subsection (1)(c).

7. Meaning of "unlicensed financial services business"

A person carries on unlicensed financial services business if he or she carries on an activity for which a prescribed financial services licence is required without having such a licence authorising him or her to carry on the activity.

8. Meaning of "insolvent"

(1) A company or a foreign company is insolvent if—

(a) it fails to comply with the requirements of a statutory demand that has not been set aside under section 157;

(b) execution or other process issued on a judgment, decree or order of a Virgin Islands court in favour of a creditor of the company is returned wholly or partly unsatisfied; or

(c) either—

(i) the value of the company's liabilities exceeds its assets; or

(ii) the company is unable to pay its debts as they fall due.

(2) An individual is insolvent if—

(a) he or she fails to comply with the requirements of a statutory demand that has not been set aside under section 157; or

(b) execution or other process issued on a judgment, decree or order of a Virgin Islands court in favour of a creditor of the individual is returned wholly or partly unsatisfied.

9. Meaning of "creditor", "secured creditor" etc.

(1) A person is a creditor of another person (the debtor) if he or she has a claim against the debtor, whether by assignment or otherwise, that is, or would be, an admissible claim in—

(a) the liquidation of the debtor, in the case of a debtor that is a company or a foreign company; or

(b) the bankruptcy of the debtor, in the case of a debtor who is an individual.

(2) A creditor is a secured creditor of a debtor if he or she has an enforceable security interest over an asset of the debtor in respect of his or her claim.

(3) An unsecured creditor is a creditor who is not a secured creditor.

10. Meaning of "liability"

(1) For the purposes of this Act, "liability" means a liability to pay money or money's worth including a liability under an enactment, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution, and "liability" includes a debt.

(2) A liability may be present or future, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Act, an illegal or unenforceable liability is deemed not to be a liability.

11. Admissible claims

(1) For the purposes of this section, "relevant time" means the time of the commencement of the liquidation of a company or a foreign company or the commencement of the bankruptcy of an individual, as the case may be.

(2) Subject to section 12, the following liabilities are admissible as claims in the liquidation of a company or foreign company or in the bankruptcy of an individual[12]—

(a) liabilities of the company, foreign company or individual at the relevant time;

(b) liabilities of the company, foreign company or individual arising after the relevant time by virtue of any obligation incurred before the relevant time; and

(c) any interest that may be claimed in accordance with this Act or the Rules.

(3) For the purposes of determining whether a liability in tort is an admissible claim in the liquidation of a company or foreign company or in the bankruptcy of an individual, the company, foreign company or individual is deemed to become subject to that liability by reason of an obligation incurred at the time the cause of action accrued.

12. Non-admissible claims

The following liabilities are not admissible claims in the liquidation of a company or a foreign company or the bankruptcy of an individual[13]—

(a) an obligation arising under a confiscation order made under—

(i) the Drug Trafficking Offences Act; or

(ii) the Proceeds of Criminal Conduct Act;

(b) a liability that, under any enactment or rule of law, is of a type that is not claimable, whether on grounds of public policy or otherwise; and

(c) such other liabilities or claims as may be prescribed.

13. Meaning of "public document"

(1) Subject to subsection (3), a "public document", in relation to a person, means a document of, or purporting to be issued, published or signed by or on behalf of that person that—

(a) in the case of a company or foreign company, is required or permitted to be filed with the Registrar under—

(i) this Act or the Rules;

(ii) the Companies Act;

(iii) the International Business Companies Act; or

(iv) the BVI Business Companies Act;[14]

(b) is issued, published or signed under, or for the purposes of, this Act or the Rules or any other enactment; or

(c) is issued or signed in the course of, or for the purposes of, a particular transaction or dealing.

(2) Without limiting subsection (1), "public document" includes a business letter, statement of account, invoice, receipt, order for goods, order for services or an official notice of, or purporting to be issued, published or signed by, or on behalf of, that person.

(3) A document is not a public document if it is applied, or intended or required to be applied, to goods or to any container, package or wrapping within which goods are, or are intended to be, supplied for a purpose connected with the supply of those goods.

PART II - CREDITORS' ARRANGEMENTS

DIVISION 1 - INTERPRETATION

14. Interpretation for and scope of this Part

(1) In this Part—

"arrangement" has the meaning specified in section 15;

"debtor" means a company or individual proposing an arrangement;

"nominated insolvency practitioner" means the insolvency practitioner nominated as the interim supervisor under a proposal—

(a) by the board of a company;

(b) by the administrator or liquidator of a company, where the company is in administration or liquidation; or

(c) by an individual debtor; and

"proposal" means a proposal for an arrangement.

(2) Where the context allows, a reference in this Part—

(a) to a proposal includes the proposal as amended; and

(b) to the rejection of a proposal includes the deemed rejection of a proposal.

15. Arrangements

(1) An arrangement is a compromise between a debtor and its or his or her creditors, the implementation of which is supervised by a supervisor acting as a trustee or otherwise.

(2) Without limiting subsection (1), an arrangement may—

(a) cancel all or any part of, or vary, a liability of the debtor;

(b) vary the rights of the debtor's creditors or the terms of a debt; and

(c) include any other provision that may be prescribed.

(3) Varying a liability or the terms of a debt under subsection (2)(a) or (b) may include—

(a) varying, adding or cancelling rights to interest; and

(b) varying the dates upon which a liability, or part of a liability, becomes due for payment.

(4) An arrangement shall not, except with the written agreement of the secured creditor or the preferential creditor concerned—

(a) affect the right of a secured creditor of the debtor to enforce his or her security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than he or she would receive in a liquidation or bankruptcy of the debtor had it commenced at the time of approval of the arrangement.

(5) An arrangement does not effect a release of any surety or co-debtor of the debtor unless the terms of the arrangement expressly provide otherwise.

16. Remuneration of supervisor and interim supervisor

A supervisor and an interim supervisor is entitled to be paid remuneration for his or her services consisting of—

(a) any disbursements made by the interim supervisor prior to the approval of the arrangement, and any remuneration for his or her services as such agreed between himself or herself and—

(i) in the case of a company, the board or, where it is in liquidation, the administrator or liquidator; or

(ii) in the case of an individual, the debtor; and

(b) any fees, costs, charges or expenses which—

(i) are sanctioned by the terms of the arrangement, or

(ii) would be payable, or correspond to those which would be payable, in an administration or liquidation (in the case of a company) or in a bankruptcy (in the case of an individual).

17. Fixing of remuneration by Court

(1) Notwithstanding the terms of the arrangement, on the application of a person referred to in subsection (4), the Court may review and fix the amount paid or to be paid by way of remuneration to a supervisor or an interim supervisor.

(2) Subject to subsection (3), the Court's power under subsection (1)—

(a) extends to fixing the remuneration for any period before the making of the order or the application for it;

(b) is exercisable notwithstanding that the supervisor or interim supervisor has died or ceased to act before the making of the application or the order; and

(c) extends to requiring the supervisor or interim supervisor[15] or his or her personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by the supervisor or interim supervisor as remuneration exceeds that fixed by the Court for the period concerned.

(3) The power conferred by subsection (2)(c) may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(4) Application to the Court for an order under subsection (1) may be made by any of the following persons—[16]

(a) the supervisor or interim supervisor; or

(b) the company or—

(i) if the company is in liquidation, its liquidator, or

(ii) if the company is in administration, its administrator.

(5) In fixing the remuneration of a supervisor or interim supervisor under this section, the Court shall apply the general principles specified in section 432.

18. Commission's rights in respect of a regulated person

Where a proposal is made, or an arrangement approved, in respect of a regulated person—

(a) every notice or other document required to be sent to a creditor of the debtor under this Part shall also be sent to the Commission; and

(b) unless the applicant is the Commission, notice shall be given to the Commission of any application to the Court under this Part.

DIVISION 2 - COMPANY CREDITORS' ARRANGEMENT[17]

19. Interpretation and scope of Division

(1) In this Division, "proposal period" means the period from the appointment of the interim supervisor to the approval or rejection by the creditors of the proposed arrangement.

(2) A foreign company may not propose or enter into an arrangement under this Division.

PROPOSAL AND INTERIM SUPERVISOR

20. Proposal for an arrangement by board

(1) The board of a company, other than a company that is in liquidation or in administration, may propose an arrangement and nominate an interim supervisor to act in relation to the proposed arrangement if—

(a) it believes on reasonable grounds that the company is insolvent or is likely to become insolvent; and

(b) it has passed a resolution—

(i) stating its belief that the company is insolvent or is likely to become insolvent;

(ii) approving a written proposal containing the information prescribed; and

(iii) nominating an eligible insolvency practitioner to be appointed as interim supervisor.

(2) A director who votes in favour of a resolution under subsection (1) without having reasonable grounds for believing that the company is insolvent or is likely to become insolvent commits an offence.

21. Appointment of interim supervisor by board

(1) Where the board of a company has passed a resolution under section 20(1)(b), it shall provide the nominated insolvency practitioner with—

(a) a copy of the resolution passed;

(b) a copy of the proposal approved by the board;

(c) a statement of affairs made up to a date no earlier than 2 weeks prior to the date of the resolution; and

(d) a notice of intention to appoint the nominated insolvency practitioner as interim supervisor.

(2) The nominated insolvency practitioner may accept appointment as interim supervisor by delivering a copy of the notice referred to in subsection (1)(d), endorsed in accordance with the Rules, to the board within 5 business days of the date when the resolution was passed under section 20(1)(b).

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when he or she delivers the endorsed notice to the board.

(4) A resolution passed under section 20(1)(b) lapses and is of no effect if the insolvency practitioner nominated in the resolution is not appointed in accordance with this section within 5 business days of the date when the resolution was passed.

22. Appointment of interim supervisor, company in administration or liquidation

(1) Where a company is in administration or liquidation, the administrator or liquidator may make a proposal and appoint another eligible insolvency practitioner as the interim supervisor.

(2) Where the administrator or liquidator intends to appoint another eligible insolvency practitioner as interim supervisor, he or she shall provide him or her with—

(a) a notice of intention to appoint him or her as interim supervisor; and

(b) a written proposal containing the information prescribed.

(3) The nominated insolvency practitioner may accept appointment as interim supervisor by delivering the notice referred to in subsection (2)(a), endorsed in accordance with the Rules, to the administrator or liquidator.

(4) The appointment of an interim supervisor under this section takes effect from the time when the endorsed notice of intention to appoint is received by the administrator or liquidator.

23. Administrator or liquidator acting as interim supervisor

(1) An administrator or liquidator who intends to make a proposal may, instead of appointing another eligible insolvency practitioner as interim supervisor, act as the interim supervisor himself or herself.

(2) Where the administrator or liquidator intends to act as the interim supervisor himself or herself he or she shall—

(a) prepare a written proposal containing the information prescribed; and

(b) sign a notice of intention to act as interim supervisor.

(3) The appointment of the administrator or liquidator as interim supervisor under this section takes effect on the date of the notice of intention to act as interim supervisor.

24. Notification of appointment of interim supervisor

(1) The interim supervisor shall, within 2 business days of his or her appointment—

(a) file a notice of appointment as interim supervisor with the Registrar; and

(b) if the company is a regulated person, file a copy of the notice of his or her appointment with the Commission.

(2) An interim supervisor who contravenes subsection (1) commits an offence.

25. Functions of interim supervisor and power to obtain information

(1) The functions of an interim supervisor are—

(a) to prepare a report on the proposal for the creditors;

(b) to carry out any duties assigned to him or her by this Act or the Rules;

(c) in the case of an interim supervisor appointed by the board or by the administrator or liquidator of a company, to undertake such functions and duties as he or she may agree to undertake with the board or with the administrator or liquidator; and

(d) in the case of an interim supervisor appointed by the board of a company, to monitor the affairs of the company, including the conduct of its business, during the proposal period.

(2) Where an interim supervisor is appointed by the board or by the administrator or liquidator of a company, every officer of the company or the administrator or liquidator of the company, as the case may be, shall—

(a) provide to the interim supervisor such documents, information and explanations as he or she may reasonably require for the purposes of enabling him or her to exercise his or her functions; and

(b) give the interim supervisor such assistance as he or she may reasonably require.

(3) On the application of the interim supervisor, the Court may make an order requiring an officer of the company to comply with subsection (2).

(4) An officer of a company who fails to comply with an order of the Court made under subsection (3) commits an offence.

26. Amendment of proposal before creditors' meeting

(1) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may amend or withdraw[18] a proposal in accordance with the Rules—

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of a creditors' meeting has been given under section 27; or

(c) after notice of a creditor's meeting has been given under section 27 but before the date fixed for the meeting.

(2) The Board of a company may not amend or withdraw[19] a proposal unless it has passed a resolution to do so.

(3) A proposal cannot be amended or withdrawn[20] otherwise than in accordance with this section or section 31.

MEETING OF CREDITORS

27. Calling creditors' meeting

(1) The interim supervisor shall—

(a) prepare a written report on the proposal complying with the Rules;

(b) call a meeting of creditors for a date no later than 28 days after the commencement of the proposal period for the purposes of considering whether to approve the proposal;

(c) send to each creditor, together with the notice of the meeting, a copy of the proposal, his or her report on the proposal and a copy of the company's statement of affairs;

(d) cause the creditors' meeting to be advertised;

(e) send a copy of the notice of the creditors' meeting, together with copies of the documents sent to creditors, to every member of the company; and

(f) send to every director of the company a copy of the notice of the meeting, together with copies of the documents sent to creditors.

(2) Where a proposal is amended under section 26(1)(b), this section and section 28 applies to the amended proposal as if it were the original proposal.

(3) An interim supervisor who contravenes subsection (1) commits an offence.

28. Interim supervisor may require certain persons to attend creditors' meeting

(1) If the interim supervisor considers that it is reasonable to require the presence at a creditors' meeting called under section 27 of a person specified in subsection (4), the interim supervisor may, by notice, require the person to attend the meeting.

(2) In determining whether it is reasonable to require a person to attend the creditors' meeting, the matters that the interim supervisor shall have regard to include—

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by him or her in attending the meeting, unless the interim supervisor is prepared to pay those expenses;

(c) the distance that he or she would be required to travel to attend the meeting; and

(d) the time that it would take him or her to travel to and from and attend the meeting.

(3) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to that person at least 14 days prior to the date of the meeting and shall be accompanied by copies of the documents required to be sent to creditors under section 27(1)(c).

(4) Subsection (1) applies to an officer of the company and to any person who, at any time during the 2 years prior to the date of the notice, was an officer of the company.

(5) A person commits an offence if—

(a) he or she receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, he or she fails to attend the meeting.

29. Attendance of members and directors at creditors' meeting

(1) Subject to subsection (2), each member and director of a company is entitled to attend the creditors' meeting and, with the permission of the chairman, to address the meeting, but not to vote in that capacity at the meeting.

(2) The chairman of the creditors' meeting may, if he or she thinks fit, exclude any present or former director or other officer from attendance at the meeting, either completely or for any part of it.

(3) Subsection (2) applies whether or not the present or former director or other officer—

(a) is also a member; or

(b) has been sent a notice requiring him or her to attend the meeting.

30. Business to be conducted at creditors' meeting

(1) At the meeting called under section 27, the creditors may resolve—

(a) to approve the proposal, with or without amendment, and appoint the interim supervisor, or another eligible insolvency practitioner, to be the supervisor of the arrangement;

(b) to adjourn the meeting to a date no later than 3 months after the commencement of the proposal period; or

(c) to reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if—

(a) the proposal does not comply with section 15(4);

(b) the proposal has been amended without the consent of the board or, in the case of a company in administration or liquidation, its administrator or liquidator; or

(c) the proposal has been amended otherwise than in accordance with section 26 or section 31.

(3) The proposal is deemed to be rejected, and the creditors' meeting concluded, if—

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) On the rejection of a proposal the proposal period ends and the appointment of the interim supervisor is terminated.

(5) References in this section to a meeting include, where the meeting is adjourned, the adjourned meeting.

31. Amendment or withdrawal[21] of proposal at creditors' meeting

(1) Where, at a meeting called under section 27, the creditors wish to approve an amended proposal that has not been amended in accordance with section 26, the meeting shall be adjourned for sufficient time to enable the chairman of the meeting to give all creditors of the company not present or represented at the meeting at least 2 business days' notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 30 applies to the adjourned meeting—

(3) Subsection (1) does not apply if—

(a) every creditor who was given notice of the meeting under section 27 is present or represented at the meeting; or

(b) the chairman certifies in writing that an amendment is to correct minor errors or is otherwise not material.

(4) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may withdraw a proposal at a creditors' meeting called under section 27 in accordance with the Rules.[22]

32. Report on outcome of creditors' meeting

(1) The chairman of a creditors' meeting called under section 27 shall, within 4 business days of the conclusion of the meeting, prepare a report complying with subsection (2).

(2) A report prepared under subsection (1) shall—

(a) state whether the proposal was approved or rejected or withdrawn[23] and, if approved, with what modifications, if any;

(b) set out the resolutions put to the meeting, and the decision on each one;

(c) list the creditors, with their respective values, who were present or represented at the meeting; and[24]

(d) [deleted][25]

(e) include such further information, if any, that the chairman considers should be made known to creditors.

(3) The chairman shall—

(a) send a copy of his or her report to every creditor and every member of the company; and

(b) file a copy of his or her report with the Registrar.

(4) For the purposes of subsection (1), a creditors' meeting is concluded if—

(a) the creditors resolve either to approve or reject the proposal; or

(b) the proposal is withdrawn in accordance with section 31(4) or is[26] deemed to be rejected.

(5) A person who contravenes subsection (1) or subsection (3) commits an offence.

33. Notification of appointment of supervisor

(1) The supervisor shall, within 2 business days of his or her appointment—

(a) file a notice of appointment as supervisor with the Registrar; and

(b) if the company is a regulated person, file a copy of the notice of his or her appointment with the Commission.

(2) A supervisor who contravenes subsection (1) commits an offence.

34. Effect of approval of proposal

(1) Where a proposal is approved at a creditors' meeting, the arrangement is binding on the company and on each member and each creditor of the company as if he or she was a party to the arrangement.

(2) For the purposes of subsection (1), a person is a creditor of the company—

(a) where the company is in administration or liquidation at the time that the proposal is approved, if he or she was a creditor at the commencement of the administration or liquidation, as the case may be; or

(b) in any other case, if he or she has a claim against the company that would be an admissible claim in the liquidation of the company commencing at the time of the approval of the arrangement.[27]

IMPLEMENTATION OF ARRANGEMENT

35. Supervisor to be given possession of assets included in arrangement.

(1) After the approval of an arrangement the board or, where appropriate the administrator or liquidator, shall forthwith take all necessary steps to put the supervisor into possession of the assets included in the arrangement.

(2) The supervisor shall, on taking possession of the assets included in the arrangement—

(a) where, at the time of approval, the company is in administration or liquidation—

(i) promptly discharge any sums due to the administrator or liquidator under the Act or the Rules; or

(ii) provide the administrator or liquidator with a written undertaking to discharge any such sums out of the assets as soon as practicable; and

(b) where, at the time of approval, the company is in liquidation, promptly discharge any sums due to the preferential creditors.

(3) The supervisor shall, out of the assets included in the arrangement—

(a) discharge all guarantees properly given, or obligations properly entered into, by the administrator or liquidator for the benefit of the company or in the course of his or her duties;

(b) pay the administrator's or the liquidator's outstanding remuneration; and

(c) if as part of the arrangement, the administration order is to be discharged and the administrator released or the liquidation terminated by order of the Court under section 233[28], pay the costs of such discharge, release or termination[29].

(4) The following have equally ranking charges on the assets included in the arrangement, subject to the deduction of the proper costs and expenses of realisation—

(a) notwithstanding his or her release or discharge, the administrator or liquidator of a company in respect of any monies payable under subsections (2) and (3); and

(b) each preferential creditor in respect of any monies payable to him or her under subsection (2).

(5) In this section, "liquidator" and "administrator" includes, where appropriate, a former liquidator or administrator.

36. Supervisor's duty to keep accounting records

(1) Where an arrangement permits or requires the supervisor—

(a) to carry on the business of the company or trade on its behalf and in its name;

(b) to realise assets of the company; or

(c) otherwise to administer or dispose of any of its funds, he or she shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to his or her acts and dealings in and in connection with the arrangement.

(2) The supervisor shall retain the accounting records kept under subsection (1) for a period of not less than 6 years after the termination of the arrangement.

(3) A supervisor who contravenes this section commits an offence.

37. Supervisor to prepare and send out regular accounts and reports

(1) The supervisor shall prepare accounts of his or her receipts and payments, if any, and reports concerning the progress and efficacy of the arrangement covering the periods specified in subsection (2).

(2) The accounts and reports prepared under subsection (1) shall cover—

(a) the period of 12 months following the supervisor's appointment;

(b) each subsequent period of 12 months; and

(c) where the supervisor ceases to act as supervisor—

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he or she acted as supervisor for less than 12 months from the date of his or her appointment, to the date of his or her ceasing to act; and

(ii) the period from the date of his or her appointment to the date of his or her ceasing to act, unless prepared in accordance with subsection (2)(c)(i).

(3) The supervisor shall, within 60 days of the last day of the period covered by the accounts—

(a) file a copy of the accounts and his or her report with the Registrar; and

(b) send a copy of the accounts and his or her report to—

(i) the company;

(ii) each creditor of the company who is bound by the arrangement[30]; and

(iii) each member of the company.

(4) The Court, on the application of the supervisor, may dispense with the sending of the accounts and report prepared under subsection (1) to the members of the company.

(5) A supervisor who contravenes this section commits an offence.

38. Completion or premature termination[31] of arrangement

(1) Where an arrangement is completed or terminated prematurely[32], the supervisor shall, within 28 days of its completion or termination[33]—

(a) file a notice of completion or termination[34] with the Registrar; and

(b) send a notice of completion or termination[35] to the company and to each creditor of the company who is bound by the arrangement and each member[36] of the company.

(2) Where an arrangement is completed or terminated prematurely[37], the report prepared under section 37(2)(c) shall explain any material difference between the implementation of the arrangement and the proposal approved by the creditors.

(3) A supervisor who contravenes this section commits an offence.

MODIFICATION OF ARRANGEMENT

39. Supervisor may propose modification of arrangement

(1) In this section and in section 40—

(a) "creditor", in relation to an arrangement, means a creditor bound by that arrangement; and

(b) "proposal" means a proposal to modify an arrangement.

(2) If the supervisor of an arrangement considers it appropriate, he or she may propose a modification of the arrangement at a meeting of creditors called for such a purpose.

(3) The supervisor shall call a meeting of creditors under subsection (2) by sending to each creditor—

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Rules.

(4) The supervisor shall send a copy of the notice of the meeting and his or her report on the proposed modification to each member and director of the company.

40. Modification of arrangement

(1) Unless the Rules otherwise provide, sections 28, 29, 30 and 32 and the relevant Rules apply, with suitable modifications, to a meeting called under section 39.

(2) Where a proposal to modify an arrangement is approved—

(a) the modified arrangement is binding on the company and on each member and each creditor of the company as if he or she had agreed to the modification; and

(b) the provisions of this Division applicable to an arrangement apply to the modified arrangement.

(3) An arrangement may not be modified otherwise than in accordance with section 39 and this section.

APPLICATIONS TO COURT

41. Appointment of interim supervisor or supervisor by Court

(1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner, is appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made—

(a) where the supervisor or interim supervisor has failed to comply with a duty imposed upon him or her under this Division or has died, by the board of the company, or where it is in administration or liquidation by the administrator or liquidator;[38]

(b) where it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act, by the board of the company, or where it is in administration or liquidation by the administrator or liquidator, or by the supervisor or interim supervisor; or[39]

(c) where the licence of the insolvency practitioner appointed as supervisor or interim supervisor is suspended or revoked, by the Official Receiver.[40]

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

42. Application where arrangement approved or modified

(1) Where an arrangement is approved or modified, the Court may—

(a) on an application made by a person specified in subsection (2)—

(i) give directions to the supervisor in relation to any matter arising;

(ii) confirm, reverse or modify any act or decision of the supervisor; or

(iii) make such other order as it considers fit; or

(b) on an application made by the supervisor or, if appropriate the administrator or liquidator—

(i) discharge the administration order or terminate the liquidation under section 233[41]; and

(ii) give such directions regarding the administration or liquidation as it considers appropriate.

(2) Application under subsection (1)(a) may be made by the supervisor, by any administrator or liquidator, by a creditor, director or member of the company, by a surety of a liability of the company, by a co-debtor of the company, by a person affected by the arrangement or, where the company is a regulated person, by the Commission.

(3) The Court shall not make an order under subsection (1)(b)—

(a) until a period of 28 days after the chairman's report is filed under section 32(3); or

(b) at any time when an application under section 43, or an appeal in respect of such an application,[42] is outstanding or during the period within which such an appeal may be brought.

43. Application on grounds of unfair prejudice

(1) An application may be made by a person specified in subsection (2) for an order under subsection (3) on one or both of the following grounds—

(a) that an arrangement approved or modified by the creditors unfairly prejudices the interests of a member, creditor, surety or co-debtor of the company; or

(b) that there has been a material irregularity at or in relation to the meeting at which the arrangement was approved or modified.

(2) An application for an order under subsection (3) may be made by—

(a) a member, creditor, surety or co-debtor of the company;

(b) the supervisor or the person who, immediately prior to the approval of the arrangement, acted as interim supervisor;

(c) where the company is in administration, the administrator;

(d) where the company is in liquidation, the liquidator; or

(e) where the company is a regulated person, the Commission.

(3) Where it is satisfied as to either of the grounds specified in subsection (1), the Court—

(a) may revoke or suspend—

(i) any decision approving or modifying the arrangement; or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity; and

(b) may give a direction to any person—

(i) for the calling of a further meeting to consider any amended proposal for an arrangement that the board or the supervisor may make;

(ii) for the calling of a further meeting to consider any amended proposal for a modification of the arrangement that the supervisor may make; or

(iii) where there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the arrangement or for the modification of an arrangement.

(4) Where at any time after giving a direction under subsection (3)(b)(i) or (ii), the Court is satisfied that the board, or the supervisor, does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the arrangement or the modification of an arrangement.

(5) Where the Court, on an application under this section, gives a direction under subsection (3)(b) or revokes or suspends a decision under subsection (3)(a) or (4), the Court may give such supplemental directions as it considers fit and, in particular, directions with respect to things done under the arrangement since it, or any modification, took effect.

(6) Except as provided in this section, a decision taken at a meeting called under section 27 or 39 is not invalidated by any irregularity at or in relation to the meeting.

(7) Without limiting subsection (1)(a), the interests of a member, creditor, surety or co-debtor of the company are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

(8) Subject to subsection (9), no application under this section shall be made after the arrangement has been completed or has prematurely terminated.[43]

(9) A creditor who did not participate in the approval of an arrangement may make an application under this section after the completion of an arrangement if, when the arrangement was completed, he or she was unaware of the arrangement.[44]

(10) An application under subsection (9) shall be made within four weeks of the creditor first becoming aware of the arrangement.[45]

(11) For the purposes of this section, a creditor does not participate in the approval of an arrangement if, for whatever reason—

(a) he or she was not given notice of the meeting of creditors called to consider the proposal; and

(b) he or she did not attend the meeting at which the arrangement was approved, whether in person or by proxy.[46]

44. Application to Court by former supervisor or interim supervisor

Where an application may be made to the Court by a supervisor or an interim supervisor under sections 41,[47]42 or 43, an application may, with the leave of the Court, be made by the person who was the supervisor or interim supervisor immediately before—

(a) the termination of his or her appointment;

(b) the termination of the arrangement; or

(c) the termination of the proposal period, as the case may be.

OFFENCES

45. False representations etc.

An officer of a company who makes any false representation or who fraudulently does, or omits to do, anything for the purpose of obtaining the approval of the creditors of the company to an arrangement commits an offence.

DIVISION 3 - INDIVIDUAL CREDITORS' ARRANGEMENT

46. Interpretation for and scope of this Division

(1) In this Division—

"debtor" means an individual who intends to make or who has made a proposal under this Division; and

"interested person" means—

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest;

(b) in relation to an asset not belonging to a debtor which is used or occupied by or in the possession of the debtor, the owner or lessor of the asset;

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress; and

(d) in relation to a guarantee of a liability of the debtor, the person entitled to enforce the guarantee;

"proposal period" means the period from the appointment of the interim supervisor to the approval or rejection by the creditors of the proposed arrangement.

(2) An undischarged bankrupt may not make a proposal under this Division.

(3) Where the context allows, a reference in this Division to the extension of a moratorium period includes a further extension of the moratorium period.

PROPOSAL

47. Proposal

(1) A debtor who intends to make a proposal under this Division shall—

(a) nominate an eligible[48] insolvency practitioner to act as interim supervisor for the purposes of the proposal; and

(b) provide the nominated insolvency practitioner with—

(i) a copy of the proposal;

(ii) a statement of assets and liabilities made up to a date no earlier than 4 weeks prior to the date upon which it is provided to the nominated insolvency practitioner; and

(iii) a notice of intention to appoint the nominated insolvency practitioner as interim supervisor.

(2) The nominated insolvency practitioner may accept appointment as interim supervisor, by delivering to the debtor a copy of the notice referred to in subsection (1)(b), endorsed in accordance with the Rules.

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when he or she delivers the endorsed notice to the debtor.

(4) The appointment of an interim supervisor is not effective unless he or she accepts appointment under subsection (2) within 5 business days of the date of receiving the notice of intention to appoint him or her as interim supervisor from the debtor.

48. Notification of appointment of interim supervisor

(1) The interim supervisor shall, within 2 business days of his or her appointment file a copy of the notice of his or her appointment with the Official Receiver and, if the debtor is a regulated person, with the Commission.[49]

(2) An interim supervisor who contravenes subsection (1) commits an offence.

49. Functions of interim supervisor and power to obtain information

(1) The functions of an interim supervisor are—

(a) to prepare a report on the proposal for the Court;

(b) to carry out any duties assigned to him or her by this Act or the Rules or by the Court;

(c) to undertake such functions and duties as he or she may agree with the debtor; and

(d) to monitor the affairs of the debtor, including the conduct of any business carried on by the debtor, during the proposal period.

(2) For the purposes of enabling the interim supervisor to exercise his or her functions, a debtor shall—

(a) provide to the interim supervisor such documents, information and explanations as he or she may reasonably require; and

(b) give the interim supervisor such assistance as he or she may reasonably require.

(3) On the application of the interim supervisor, the Court may make an order requiring a debtor to comply with subsection (2).

(4) A debtor who fails to comply with an order of the Court made under subsection (3) commits an offence.

50. Amendment of proposal after appointment of interim supervisor

(1) A debtor may amend or withdraw[50] a proposal in accordance with the Rules—

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of a creditors' meeting has been given under section 58; or

(c) after notice of a creditors' meeting has been given under section 58 but before the date fixed for the meeting.

(2) A proposal cannot be amended or withdrawn[51] otherwise than in accordance with this section or section 60.

MORATORIUM

51. Application for moratorium order

(1) A debtor who intends to make a proposal may apply to the Court for a moratorium order under this section if—

(a) he or she is entitled to apply to the Court for a bankruptcy order under section 295;

(b) an eligible insolvency practitioner has accepted appointment as interim supervisor under the proposal in accordance with section 47;

(c) no previous application for a moratorium has been made by the debtor during the 12 months immediately preceding the date of the application; and

(d) he or she is not a regulated person.

(2) An application under subsection (1) shall be supported by an affidavit setting out the matters prescribed and exhibiting—

(a) a copy of the proposal provided to the interim supervisor under section 47(1)(b);

(b) a copy of the endorsed notice of appointment of the interim supervisor; and

(c) a statement of assets and liabilities.

(3) The debtor shall give 2 business days notice of the hearing of an application under this section to—

(a) the interim supervisor; and

(b) any creditor who, to his or her knowledge, has applied to the Court for a bankruptcy order against him or her.

52. Court may grant stay

(1) At any time when an application under section 51 for a moratorium order is pending, the Court may, on the application of the debtor or the interim supervisor, stay any action, execution or other legal process against the debtor or his or her assets.

(2) Any Virgin Islands court, or any tribunal in the Virgin Islands, in which proceedings are pending against a debtor may, on proof that an application under section 51 has been made by the debtor, either stay those proceedings or allow them to continue on such terms as it considers just.

53. Moratorium order

(1) The Court may make a moratorium order on an application under section 51 if it considers that it would be appropriate to do so for the purpose of facilitating the consideration of the debtor's proposal.

(2) Unless extended by the Court under this section, a moratorium order ceases to have effect at the end of the 14th day after the date upon which it is made.

(3) If the Court makes a moratorium order under subsection (1), it shall at the same time fix a venue for consideration of the interim supervisor's report under section 56, no later than the date of expiry of the moratorium order under subsection (2).

(4) In a case where the interim supervisor has failed to submit his or her report as required by section 56, the Court may, on the application of the debtor, direct that the moratorium order shall continue or, if it has ceased to have effect, be renewed for such further period as the Court may order.

(5) The Court may, on the application of the interim supervisor, extend the period for which the moratorium order has effect so as to enable the interim supervisor to have more time to prepare and submit his or her report under section 56.

(6) The Court may, at any time, discharge the moratorium order if it is satisfied, whether by reason of a report made to it by the interim supervisor under section 54 or otherwise—

(a) that the debtor has failed to comply with his or her obligations under section 49(2);

(b) that it would not be appropriate for a meeting of creditors to be called to consider the debtor's proposal; or

(c) that, for any other reason, it is appropriate for the moratorium order to be discharged.

(7) An order discharging the moratorium order may be made by the Court on the application of the debtor or the interim supervisor or on its own motion.

54. Duty of interim supervisor to report certain matters to the Court

The interim supervisor shall report to the Court forthwith if, at any time during the period when a moratorium order is in force—

(a) he or she forms the view that the proposed arrangement no longer has a reasonable prospect of being approved or implemented; or

(b) the debtor fails to comply with his or her obligations under section 49(2).

55. Effect of moratorium order

(1) In the period during which a moratorium order is in force in respect of a debtor—

(a) no application for a bankruptcy order against the debtor may be presented or proceeded with;

(b) no bankruptcy order may be made against the debtor;

(c) no steps may be taken to enforce any security interest over the debtor's assets, except with the leave of the Court;

(d) no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the debtor, including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) goods supplied subject to a retention of title agreement, except with the leave of the Court; and

(e) no proceedings, execution or other legal process may be commenced or continued or distress levied against the debtor or his or her assets, except with the leave of the Court.

(2) On an application for leave under subsection (1) (c) to (e), the Court may grant leave subject to such terms and conditions as it considers fit.

(3) Subsection (1) does not prevent or require the leave of the Court to be obtained for—

(a) the enforcement of a security interest on assets belonging to a debtor if, before the commencement of the moratorium period, an interested person lawfully—

(i) entered into possession or assumed control of the assets; or

(ii) entered into a binding agreement to sell the assets, for the purpose of enforcing the security interest on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a debtor[52] if, before the commencement of the moratorium period, an interested person lawfully entered into possession, or assumed control of those assets; or

(c) the exercise by a creditor of any set-off that he or she would have been entitled to exercise under section 150 if the debtor was in bankruptcy, the bankruptcy having commenced on the date that the moratorium order was made.

CONSIDERATION OF PROPOSAL

56. Interim supervisor's report on debtor's proposal

(1) An interim supervisor shall, before the end of the relevant time limit specified in subsection (3), file with the Court a report including the matters prescribed in the Rules.

(2) An interim supervisor shall file with the report—

(a) where the debtor made an application for a moratorium order under section 51 and the proposal has since been amended, a copy of the amended proposal; or

(b) where the debtor has not made an application for a moratorium order, copies of the documents referred to in section 51(2) (a) to (c).

(3) The relevant time limits for the purposes of subsection (1) are—

(a) where a moratorium order has been made, no less than 2 business days prior to the date of the hearing fixed under section 53(3);

(b) in any other case, within 14 days after the date of the appointment of the interim supervisor.

(4) The Court may, on the application of the interim supervisor, extend the period within which the interim supervisor shall submit his or her report under subsection (1) by such further period as it considers appropriate.

57. Extension of moratorium

(1) This section applies where a moratorium order is in force at the time when the interim supervisor files his or her report with the Court.

(2) If, on receiving the interim supervisor's report, the Court is satisfied that a meeting of creditors should be called to consider the debtor's proposal, the Court shall extend the period for which the

moratorium order is in force for such further period as it may specify for the purpose of enabling the debtor's proposal to be considered by his or her creditors in accordance with this Division and for the result of the creditors' meeting to be reported to the Court.

58. Calling creditors' meeting

(1) Unless the Court otherwise orders, where the interim supervisor has reported to the Court that a meeting of creditors should be called, he or she shall—

(a) call a meeting of creditors at the venue proposed in his or her report; and

(b) send to each creditor, together with the notice of the meeting, a copy of the debtor's proposal, his or her report on the proposal and a copy of the debtor's statement of assets and liabilities.

(2) An interim supervisor who contravenes subsection (1) commits an offence.

59. Decisions of creditors' meetings

(1) At the meeting called under section 58, the creditors may resolve—

(a) to approve the proposal, with or without amendment, and appoint the interim supervisor, or another eligible insolvency practitioner, to be the supervisor of the arrangement;

(b) to adjourn the meeting to a date no later than 28 days after the date for which the meeting was originally called; or

(c) to reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if—

(a) the proposal does not comply with section 15(4);

(b) the proposal has been amended without the consent of the debtor; or

(c) the proposal has been amended otherwise than in accordance with section 50 or section 60.

(3) The proposal is deemed to be rejected, and the creditors' meeting concluded, if—

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) Where a meeting of creditors is adjourned, the chairman shall forthwith file a notice of the adjournment with the Court and the Court may, on the application of the debtor or the interim supervisor, extend the period for which the moratorium order is in force for such further period as it may specify for the purpose of enabling the adjourned meeting to be held and for the result to be reported to the Court.

(5) References in this section and section 60 to a meeting include, where the meeting is adjourned, an adjourned meeting.

60. Amendment or withdrawal[53] of proposal at creditors' meeting

(1) Where, at a meeting held under section 59, the creditors wish to approve an amended proposal that has not been amended in accordance with section 50, the meeting shall be adjourned for sufficient time to enable the chairman of the meeting to give all creditors not present or represented at the meeting at least 2 business days notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 59 applies to the adjourned meeting.

(3) Subsection (1) does not apply—

(a) if every creditor who was given notice of the meeting under section[54] 58 is present or represented at the meeting; or

(b) if the chairman certifies in writing that an amendment is to correct minor errors or is otherwise not material.

(4) The debtor may withdraw a proposal at a creditors' meeting called under section 58 in accordance with the Rules.[55]

61. Report of decisions to Court

(1) The chairman of a creditors' meeting called under section 58 shall, within 4 business days of the date of the conclusion of the meeting—

(a) file with the Court a report of the meeting complying with subsection (2);

(b) file a notice of the arrangement with the Official Receiver; and

(c) if the debtor is a regulated person, file notice of the arrangement with the Commission.

(2) A report filed under subsection (1)(a) shall—

(a) state whether the proposal was approved or rejected or withdrawn[56] and, if approved, with what modifications, if any;

(b) set out the resolutions put to the meeting, and the decision on each one;

(c) list the creditors, with their respective values, who were present or represented at the meeting; and

(d) include such further information, if any, that the chairman considers should be made known to the Court.

(3) If a report filed under subsection (1)(a) states that the meeting has rejected the proposal or that it was withdrawn by the debtor under section 60(4)[57], any moratorium order in force is discharged with effect from the end of the fourth business day after the conclusion of the meeting unless the Court otherwise orders.

(4) The chairman of the meeting shall, as soon as practicable after filing his or her report with the Court, send a notice stating the result of the meeting to all creditors of the debtor.

(5) A person who contravenes subsection (1) or subsection (4) commits an offence.

62. Effect of approval

(1) Where the meeting of creditors called under section 58 approves the proposed arrangement, the arrangement—

(a) takes effect as if made by the debtor at the meeting; and

(b) is binding on the debtor and each creditor of the debtor as if he or she were a party to the arrangement.

(2) For the purposes of subsection (1), a person is a creditor of the debtor if he or she has a claim against the debtor that would be an admissible claim in the bankruptcy of the debtor commencing at the time of the approval of the arrangement.

(3) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by the arrangement has not been paid; and

(b) the arrangement did not come to an end prematurely, the debtor shall, at that time, become liable to pay to that person the amount payable under the arrangement.

(4) For the purposes of subsection (3), an arrangement comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement.

(5) Subject to section 72, any moratorium order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was filed with the Court under section 61 ceases to have effect at the end of that period.

(6) Where proceedings on an application for a bankruptcy order have been stayed by a moratorium order which ceases to have effect under subsection (5)[58], that application is deemed, unless the Court otherwise orders, to have been dismissed.

IMPLEMENTATION OF ARRANGEMENT

63. Supervisor to be given possession of assets included in arrangement.

After the approval of an arrangement the debtor shall forthwith take all necessary steps to put the supervisor into possession of the assets included in the arrangement.

64. Supervisor's duty to keep accounting records

(1) Where an arrangement permits or requires the supervisor—

(a) to carry on the debtor's business or trade on his or her behalf or in his or her name;

(b) to realise assets of the debtor; or

(c) otherwise to administer or dispose of any of the debtor's funds,

he or she shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to his or her acts and dealings in and in connection with the arrangement.

(2) The supervisor shall retain the accounting records kept under subsection (1) for a period of not less than 6 years after the termination of the arrangement.

(3) A supervisor who contravenes this section commits an offence.

65. Supervisor to prepare and send out regular accounts and reports

(1) The supervisor shall prepare accounts of his or her receipts and payments, if any, and reports concerning the progress and efficacy of the arrangement covering the periods specified in subsection (2).

(2) The accounts and reports prepared under subsection (1) shall cover—

(a) the period of 12 months following the supervisor's appointment;

(b) each subsequent period of 12 months; and

(c) where the supervisor ceases to act as supervisor—

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he or she acted as supervisor for less than 12 months from the date of his or her appointment, to the date of his or her ceasing to act; and

(ii) the period from the date of his or her appointment to the date of his or her ceasing to act, unless prepared in accordance with subparagraph (i).

(3) The supervisor shall, within 60 days of the last day of the period covered by the accounts—

(a) file a copy of the accounts and his or her report with the Court; and

(b) send a copy of the accounts and his or her report to—

(i) the Official Receiver[59];

(ii) the debtor; and

(iii) each creditor of the debtor who is bound by the arrangement[60].

(4) A supervisor who contravenes this section commits an offence.

66. Completion or premature termination[61] of arrangement

(1) Where an arrangement is completed or terminated prematurely[62], the supervisor shall, within 28 days of its completion or termination[63], file a notice of completion or termination[64] with the Court and send a copy of the notice to the debtor and to each creditor of the debtor who is bound by the arrangement[65].

(2) Where an arrangement is completed or terminated, the report prepared under section 65(2)(c)[66] shall explain any difference between the implementation of the agreement and the proposal approved by the creditors.

(3) A supervisor who contravenes this section commits an offence.

MODIFICATION OF ARRANGEMENT

67. Supervisor may propose modification of arrangement

(1) In this section and in section 68—

(a) "creditor", in relation to an arrangement, means a creditor bound by that arrangement; and

(b) "proposal" means a proposal to modify an arrangement.

(2) If the supervisor of an arrangement considers it appropriate, he or she may propose a modification of the arrangement at a meeting of creditors called for such a purpose.

(3) The supervisor shall call a meeting of creditors under subsection (2)[67] by sending to each creditor—

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Rules.

(4) The supervisor shall send a copy of the notice of the meeting and his or her report on the proposed modification to the debtor.

68. Modification of arrangement

(1) Subject to the exceptions specified in the Rules, sections 59 and 61 and the relevant Rules apply, with suitable modifications, to a meeting called under section 67.

(2) Where a proposal to modify an arrangement is approved—

(a) the modified arrangement is binding on the debtor and on each creditor of the debtor as if he or she had agreed to the modification; and

(b) the provisions of this Division applicable to an arrangement apply to the modified arrangement.

(3) An arrangement may not be modified otherwise than in accordance with section 67 and this section.

APPLICATIONS TO COURT

69. Appointment of interim supervisor or supervisor

(1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner[68], is appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made—

(a) where the interim supervisor has failed to submit the report required by section 56, on the application of the debtor;

(b) where the supervisor or interim supervisor has failed to comply with a duty imposed upon him or her under this Division or has died, by the debtor;

(c) where it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act, by the debtor or by the supervisor or interim supervisor; or

(d) where the licence of the supervisor or interim supervisor is suspended or revoked, by the Official Receiver.[69]

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

70. Application in respect of moratorium

(1) Where a moratorium order is or has been in force in respect of a debtor, the Court may, on an application made by the debtor, by the supervisor or interim supervisor, by a creditor, by a person affected by the moratorium or, where the individual is a regulated person, by the Commission—

(a) give directions to the supervisor or interim supervisor in relation to any matter arising in connection with the moratorium;

(b) confirm, reverse or modify any act or decision of the supervisor or interim supervisor;

(c) terminate the moratorium order and make such consequential provisions as it considers fit; or

(d) make such other order, whether in relation to the supervisor or interim supervisor, the debtor or otherwise as it considers fit.

(2) Without limiting subsection (1)(d), an order under that subsection—

(a) may require the debtor to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he or she has omitted to do;

(b) may require the calling of a meeting of creditors for the purpose of considering such matters as the Court may direct; and

(c) may make such provision as the Court considers necessary to protect the interests of one or more creditors in the period during which the moratorium order is in force.

(3) An application under subsection (1) may be made during the period in which the moratorium order is in force or after the moratorium order has been discharged.

(4) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the debtor in good faith and for value.

71. Application where arrangement approved or modified

(1) Where an arrangement is approved or modified, the Court may, on an application made by a person specified in subsection (2)—

(a) give directions to the supervisor in relation to any matter arising in connection with the arrangement;

(b) confirm, reverse or modify any act or decision of the supervisor; or

(c) make such other order as it considers fit.

(2) Application under subsection (1) may be made by the supervisor, by the debtor, by a creditor of the debtor, by a surety of a liability of the debtor, by a co-debtor of the debtor, by a person affected by the arrangement or, where the individual is a regulated person, by the Commission.

72. Application on grounds of unfair prejudice

(1) An application may be made by a person specified in subsection (2) for an order under subsection (3) on one or both of the following grounds—

(a) that an arrangement approved or modified by the creditors at a meeting called under section 58 unfairly prejudices the interests of a creditor, surety or co-debtor; or

(b) that there has been a material irregularity at or in relation to the meeting at which the arrangement was approved or modified.

(2) An application for an order under subsection (1) may be made by—

(a) the debtor;

(b) the supervisor or the person who, immediately prior to the approval of the arrangement, acted as interim supervisor;

(c) a creditor, surety or co-debtor of the debtor; or

(d) where the individual is a regulated person,[70] the Commission.

(3) Where it is satisfied as to either of the grounds specified in subsection (1), the Court may—

(a) revoke or suspend—

(i) any decision approving or modifying the arrangement; or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity;

(b) give a direction to any person—

(i) for the calling of a further meeting to consider any amended proposal for an arrangement that the supervisor or the debtor may make;

(ii) for the calling of a further meeting to consider any amended proposal for a modification of the arrangement that the supervisor may make;

(iii) where there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the arrangement or for the modification of an arrangement.

(4) Where at any time after giving a direction under subsection (3)(b)(i), the Court is satisfied that the debtor does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the arrangement or the modification of the arrangement.

(5) Where the Court, on an application under this section gives a direction under subsection (3)(b) or revokes or suspends a decision under subsection (4), the Court may—

(a) direct that any moratorium order in place be continued or, if it has ceased to have effect, be renewed for such further period as the Court may order; and

(b) give such supplemental directions as it considers fit and, in particular, directions with respect to things done under the arrangement since it took effect.

(6) Except as provided in this section, a decision taken at a meeting called under section 58 or section 67[71] is not invalidated by any irregularity at or in relation to the meeting.

(7) Without limiting subsection (1)(a), the interests of a member, creditor, surety or co-debtor of the debtor[72] are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

(8) Subject to subsection (9), no application under this section shall be made after the arrangement has been completed or has prematurely terminated.[73]

(9) A creditor who did not participate in the approval of an arrangement may make an application under this section after the completion of an arrangement if, when the arrangement was completed, he or she was unaware of the arrangement.[74]

(10) An application under subsection (9) shall be made within four weeks of the creditor first becoming aware of the arrangement.[75]

(11) For the purposes of this section, a creditor does not participate in the approval of an arrangement if, for whatever reason—

(a) he or she was not given notice of the meeting of creditors called to consider the proposal; and

(b) he or she did not attend the meeting at which the arrangement was approved, whether in person or by proxy.[76]

MISCELLANEOUS

73. Register of arrangements

(1) The Official Receiver shall maintain a register of arrangements made under this Division and shall record in the register all matters that are required to be reported to him or her under this Division or under the corresponding Division in the Rules.

(2) A member of the public is entitled to inspect the register maintained under subsection (1) on payment of the prescribed fee.

OFFENCES

74. False representations etc.

(1) A debtor who makes any false representation or who fraudulently does, or omits to do, anything for the purpose of obtaining the approval of his or her creditors to an arrangement commits an offence.

(2) Subsection (1) applies whether or not the proposal is approved.

[PART III – ADMINISTRATION [PART III SECTIONS 75-114 NOT YET IN FORCE]

PRELIMINARY

[The provisions of Part III of the Insolvency Act, 2003 have not yet been brought into force. Part III of the Insolvency Act, which encompasses sections 74 through 114, contains the provisions dealing with administration orders.]

75. Interpretation for and scope of this Part

(1) In this Part—

"interested person" means—

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest;

(b) in relation to an asset not belonging to a company which is used or occupied by or in the possession of the company, the owner or lessor of the asset;

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress; and

(d) in relation to a guarantee of a liability of the company, the person entitled to enforce the guarantee;

"moratorium period" is the period specified in section 83(1).

(2) An administration order may not be made in respect of a foreign company.

ADMINISTRATION ORDERS

76. Meaning of administration order

(1) An administration order is an order directing that, during the period for which the order is in force, the business, assets and affairs of a company shall be managed by an administrator appointed by the Court with a view to achieving one or more of the following purposes—

(a) the rehabilitation of the company or of one or more companies in a group of companies of which the company is a member;

(b) the survival of all or any part of the company's undertaking as a going concern;

(c) a better return for the company's creditors than would result from an immediate liquidation;

(d) the approval of a creditors' arrangement under Part II;

(e) to facilitate an application, or the provision of cooperation, under Part XVIII or Part XIX.

(2) Where an administration order is made in respect of a company, that company is referred to in this Act as "in administration" until the discharge of the order.

(3) For the purposes of subsection (1)(a) a "group of companies" comprises a holding company and its subsidiaries.

(4) In subsection (3), "company" means any body corporate.

77. Court may make an administration order

(1) Subject to subsections (3) and (4), section 78(2) and section 79(2), the Court may, on application by a person specified in subsection (2), make an administration order in respect of a company if—

(a) it is satisfied that the company is or is likely to become insolvent; and

(b) it considers that there is a reasonable prospect that the making of the order will achieve one or more of the purposes specified in section 76(1).

(2) Application for an administration order may be made by one or more of the following—

(a) the company, or the board of the company[77];

(b) a creditor;

(c) the supervisor of an arrangement in respect of the company; and

(d) the Commission, where the company—

(i) is or has been a regulated person; or

(ii) is carrying on, or has carried on, unlicensed financial services business.

(3) An application for an administration order shall be served not less than 7[78] business days prior to the date fixed for the hearing—

(a) on any person who has appointed or is or may be entitled to appoint an administrative receiver for the company;

(b) if an administrative receiver has been appointed, on him or her;

(c) if the application is made by any person other than the company, on the company;

(d) if an application has been made for the appointment of a liquidator of the company, on the applicant and on any provisional liquidator of the company;

(e) [Repealed][79]

(f) [Repealed][80]

(g) on the Commission if—

(i) the company is or has been a regulated person; and

(ii) the applicant is not the Commission; and[81]

(h) on any other person prescribed by the Rules.[82]

(4) Without limiting section 496(2)(b), an administration order shall not be made unless service of the application has been effected on the persons specified in subsection (3)(a) to (g)[83].

(4A) The Court shall not abridge the time period specified in subsection (3) in respect of a person specified in subsection (3)(a) without that person's consent.[84]

(5) An application for an administration order may not be withdrawn except with the leave of the Court.

78. Application in respect of insurance companies

(1) Where an application for an administration order is made by the Commission in respect of an insurance company, for the purposes of section 77(1)(a), the insurance company is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency required under the Insurance Act, 2008[85].

(2) An application for an administration order may not be made in respect of an insurance company unless the Commission has consented in writing.

79. Powers of Court on hearing of application for administration order

(1) Subject to subsection (2), on the hearing of an application for an administration order, the Court may—

(a) make an administration order in respect of the company;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make any interim order or other order that it considers fit; or

(e) treat the application as an application for the appointment of a liquidator and make any order that it could make under section 167.

(2) Subject to section 80, an application for an administration order shall be dismissed if—

(a) the company is in liquidation;

(b) the Court is satisfied that a qualifying administrative receiver has been appointed for the company who, in accordance with section 142(2) is entitled to act, unless the Court is also satisfied—

(i) that the person by whom or on whose behalf the administrative receiver was appointed consents to the making of an order; or

(ii) that any security interest under which the administrative receiver was appointed would, if an administration order was made, be liable to be set aside as a voidable transaction under Part VIII; or

(c) in the case of an insurance company, the Commission has not consented in writing to the application being made.

(3) For the purposes of subsection (2), an administrative receiver is a qualifying administrative receiver if—

(a) he or she is a licensed insolvency practitioner, whether or not he or she has been appointed to act jointly with an overseas insolvency practitioner, within the meaning of section 473; and

(b) notice of his or her appointment has been filed with the Registrar under section 118(1) no later than the day before the date of the hearing of the application.[86]

(4) Where the Court makes an administration order it shall, at the same time, appoint an eligible insolvency practitioner to be the administrator of the company.

(5) If the Court makes an order under subsection (1)(c), it shall give directions as to the persons to whom, and how, notice is to be given.

80. Application where company in liquidation

(1) The liquidator of a company may apply to the Court for an administration order.

(2) If the Court makes an administration order on the application of the liquidator of a company—

(a) the Court—

(i) shall discharge the order appointing the liquidator;

(ii) shall make provision for such matters as may be prescribed;

(iii) may make such consequential provision as it considers appropriate; and

(iv) shall specify which of the powers of an administrator are to be exercisable by the administrator; and

(b) this Part has effect with such modifications as the Court may specify.

81. Effect of administration order

Where the Court makes an administration order—

(a) any application for the appointment of a liquidator shall be dismissed; and

(b) any administrative receiver of the company is deemed to have vacated office.

82. Notification and advertisement of administration order

(1) Where an administration order is made, the administrator shall—

(a) forthwith, after the making of the order, give notice of his or her appointment to—

(i) any person who has appointed, or who is or[87] may be entitled to appoint, an administrative receiver of the company;

(ii) any administrative receiver who has been appointed;[88]

(iii) if an application for the appointment of a liquidator is pending, to the applicant and to any provisional liquidator that may have been appointed; and[89]

(iv) such other person as may be prescribed by the Rules;[90]

(b) within 5 days of the making of the order—

(i) advertise the order and his or her appointment as administrator, and

(ii) file a notice of his or her appointment together with a sealed copy of the order with the Registrar and, if the company in administration is or has been a regulated person, with the Commission; and

(c) within 28 days of the order, send a notice in the prescribed form to the company and to every creditor of the company.

(2) An administrator who, without reasonable excuse, fails to comply with subsection (1) commits an offence.

MORATORIUM

83. Moratorium period

(1) Subject to subsection (2), a moratorium period in respect of a company commences on the filing of an application for an administration order and terminates on—

(a) the dismissal of the application for an administration order; or

(b) if an administration order is made, upon the discharge of that order.

(2) If an application for an administration order is filed at a time when an administrative receiver of the company is in office and the person by or on whose behalf the administrative receiver was appointed has not consented to the making of an order, the moratorium period does not commence unless and until—

(a) that person so consents in writing;

(b) the administrative receiver vacates or is deemed to vacate office; or

(c) an administration order is made.

84. Effect of moratorium

(1) Subject to subsections (3), (4) and (5), during the moratorium period—

(a) no order may be made and, notwithstanding paragraph (f), no resolution may be passed for the appointment of a liquidator or a provisional liquidator;

(b) no steps may be taken to enforce any security interest over the company's assets, except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(c) except with the leave of the Court or, if the company is in administration, with the consent of the administrator, no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the company, including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) goods supplied subject to a retention of title agreement;

(d) no proceedings, execution or other legal process may be commenced or continued or distress levied against the company or its assets except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(e) no share may be transferred and no alteration may be made in the status of the members of the company, whether by an amendment of the memorandum or articles or in any shareholders' or members' agreement or otherwise, except with the leave of the Court; and

(f) no resolution of the members may be passed except with the leave of the Court or, if the company is in administration, with the consent of the administrator.

(2) On an application for leave under subsection (1) (b) to (f), the Court may grant leave subject to such terms and conditions as it considers fit.

(3) During the period beginning with the commencement of the moratorium period and ending with the making of an administration order, subsection (1) does not prevent the appointment of an administrative receiver of the company, or require the leave of the Court for the appointment of an administrative receiver or limit or affect the carrying out by an administrative receiver of his or her functions.

(4) Subsection (1) does not prevent, or require the leave of the Court to be obtained for—

(a) the enforcement of a charge on assets belonging to a company if, before the commencement of the moratorium period, an interested person lawfully—

(i) entered into possession or assumed control of the assets; or

(ii) entered into a binding agreement to sell the assets, for the purpose of enforcing the charge on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a company if, before the commencement of the moratorium period, an interested person lawfully entered into possession, or assumed control of those assets;[91]

(c) the exercise by a creditor of any set-off that he or she would have been entitled to exercise under section 150 if the company was in liquidation, the liquidation having commenced at the time that the moratorium period commenced; or[92]

(d) the filing of an application for the appointment of a liquidator under Part VI.[93]

(5) Notwithstanding subsection (1)(a), the Court may make an order during the moratorium period—

(a) appointing a liquidator on the grounds specified in section 162(1)(c); or

(b) appointing a provisional liquidator on an application for the appointment of a liquidator on the grounds specified in section 162(1)(c).

(6) On making an order under subsection (5), the Court shall either—

(a) discharge the administration order and make such consequential provision as it considers fit; or

(b) order that the appointment of the administrator shall continue to have effect.

(7) If the Court makes an order under subsection (6)(b), it may also—

(a) specify which of the powers of an administrator are to be exercisable by the administrator;

(b) order that this Part has effect with such modifications as the Court may specify; and

(c) make such consequential provision as it considers fit.

85. Preservation of charged and other assets

(1) During the period beginning with the commencement of the moratorium period in respect of a company and ending with the making of an administration order against it or the dismissal of the application[94]*, the company may not, without the written consent of the interested person concerned, or the leave of the Court granted under section 86, dispose of or otherwise deal with—*

(a) any assets subject to a charge, other than a floating charge;

(b) any assets subject to a floating charge, otherwise than in the ordinary course of business; or

(c) any assets in the company's use, occupation or possession of which another person is the owner or lessor, including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) subject to subsection (1A),[95] *goods supplied subject to a retention of title agreement.*

(1A) Subsection (1)(c)(ii) does not prevent a company disposing of or dealing with goods supplied subject to a retention of title agreement in the ordinary course of business.[96]

(2) A company that contravenes subsection (1) commits an offence.

86. Disposal of perishable assets during moratorium period

(1) This section applies during the period beginning with the commencement of the moratorium period and ending with—

(a) the making of an administration order; or

(b) the dismissal of the application for an administration order.

(2) Where any assets referred to in section 85(1) are perishable assets, the Court may, on the application of the company, make an order permitting the company to dispose of those assets.

(3) Where the Court makes an order under subsection (2) permitting a company to dispose of assets that are subject to a floating charge, the holder of the security interest has the same priority in respect of any assets of the company directly or indirectly representing the assets disposed of as he or she would have had in respect of the assets subject to the security interest.

(4) It shall be a condition of an order made under subsection (2) permitting a company to dispose of assets referred to in section 85(1) that are not subject to a floating charge, that—

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make good the deficiency;

shall be applied towards discharging the sums payable to the interested person concerned.

(5) Where a condition under subsection (4) relates to two or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (4)(b) shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(6) Where the Court makes an order under subsection (2) it may make such consequential orders as it considers fit, including—

(a) giving directions as to the conduct of the disposal;

(b) making provision for the protection of the proceeds of the disposal.

(7) Where an order is made under subsection (2), the company shall, within 14 days of the date of the order, file with the Registrar a notice in the prescribed form together with a sealed copy of the order.

(8) A company commits an offence if it—

(a) contravenes subsection (7), without reasonable excuse; or

(b) fails to comply with a condition imposed under this section.

ADMINISTRATORS

87. General duties of administrator

(1) An administrator shall, on his or her appointment, take into his or her custody or under his or her control the assets to which the company in administration is or appears to be entitled.

(2) The administrator shall manage the business, assets and affairs of the company—

(a) in furtherance of the purposes set out in the administration order;

(b) after the approval of proposals under section 102, in accordance with those proposals; and

(c) in accordance with any directions that may be given by the Court.

(3) In performing his or her functions and undertaking his or her duties under this Act, an administrator acts as an officer of the Court.[97]

(4) Whilst a company is in administration, the directors and other officers of the company remain in office and their powers, functions and duties continue except to the extent that—

(a) they are inconsistent with the powers, functions and duties of the administrator; or

(b) the administrator otherwise directs in writing.[98]

(5) Notwithstanding subsection (4), a director may exercise a power inconsistent with the powers, functions and duties of the administrator if the administrator authorises the exercise of that power in writing.

(6) Any power conferred on the company in administration whether by an enactment, its memorandum or articles or otherwise, which could be exercised so as to interfere with the exercise by the administrator of his powers, shall not be exercised without the written consent of the administrator.[99]

88. Duty to prepare report

(1) The administrator of a company shall, within 60 days of the commencement of the administration, prepare a report as to whether, in his or her opinion, further enquiries are desirable with respect to—

(a) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(b) possible claims under sections 254 to 256.

(2) The administrator shall send a copy of the report prepared under subsection (1)—

(a) to each creditor of the company; and

(b) if in his or her report he or she states that further enquiries are desirable with respect to a matter referred to in subsection (1), to the Official Receiver.

89. Duty to report to Commission

(1) Subject to subsection (2), if it appears to the administrator of a company that the company is carrying on or has carried on unlicensed financial services business, he or she shall as soon as reasonably practicable report the matter to the Commission.

(2) Subsection (1) does not apply where the administration order was made on the application of the Commission.

(3) Where the administrator makes a report to the Commission under subsection (1) he or she shall, for the purposes of section 105, treat the company as if it was a regulated person.

90. General powers of administrator

(1) The administrator of a company may—

(a) remove any director of the company;

(b) appoint a person to be director of the company, whether to fill a vacancy or not;

(c) call a meeting of the members or the creditors of the company;

(d) require a receiver, other than a qualifying administrative receiver, to vacate office;

(e) do anything necessary for the management of the business, assets and affairs of the company;

(f) apply to the Court for directions in respect of the administration of the company;

(g) use the company's seal; and

(h) do all acts on behalf of the company and execute any deed, receipt or other document in the name of the company.

(2) Without limiting subsection (1), the administrator has the powers specified in Schedule 1.

(3) The following persons are not concerned to inquire whether the administrator is acting within his or her powers—

(a) a person dealing with the administrator in good faith and for value; and

(b) a person who acquires any interest in assets of the company in administration from a person referred to in paragraph (a) in good faith and for value.

(4) The acts of an administrator of a company are valid notwithstanding any defect in his or her nomination, appointment or qualifications.

(5) Where a receiver is required to vacate office under subsection (1)(d) the Court[100], on the application of the administrator or the receiver, may make such directions as it considers appropriate, including directions as to—

(a) the terms upon which assets are to be passed to the administrator;

(b) the payment of the debts of preferential creditors; and

(c) the payment of the remuneration of the receiver.

91. Power to deal with assets subject to floating charge

(1) The administrator of a company may dispose of any assets of the company that are subject only to a floating charge, whether or not the charge has crystallised.

(2) Where assets are disposed of or otherwise dealt with under subsection (1), the holder of the security interest has the same priority in respect of any assets of the company directly or indirectly representing the assets disposed of as he or she would have had in respect of the assets subject to the security interest.

92. Application to Court to deal with other charged assets

(1) The Court may, on the application of the administrator, make an order authorising the administrator to dispose of—

(a) assets of the company that are subject to a security interest that is not a floating charge; and

(b) assets that are being used or occupied by or in the possession of the company but of which some other person is the owner or lessor, including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) goods supplied subject to a retention of title agreement, if it considers that the disposal of the assets, with or without other assets, would be likely to promote one or more of the purposes specified in the administration order.

(2) The administrator shall give 5 business days notice of an application under subsection (1) to—

(a) the holder of the charge over; or

(b) the owner or lessor of,the assets in respect of which the application is made.

(3) It shall be a condition of an order under subsection (1) that—

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make

good the deficiency, shall be applied towards discharging the sums payable to the interested person concerned.

(4) Where a condition under subsection (3) relates to 2 or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (3)(b) shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(5) Where an order is made under subsection (1), the administrator shall—

(a) forthwith serve a sealed copy of the order on the holder of the charge or the owner or lessor of the goods, as the case may be; and

(b) within 14 days of the date of the order, file a notice in the prescribed form with the Registrar.

(6) An administrator commits an offence if he or she—

(a) contravenes subsection (5), without reasonable excuse; or

(b) fails to comply with a condition imposed under this section.

93. Administrator as agent of company

When performing a function or exercising a power as administrator of a company in administration, the administrator acts as the company's agent.

94. Removal and resignation of administrator

(1) The Court may, on the application of the creditors' committee, a creditor or the Official Receiver[101] or on its own motion, remove an administrator from office.

(2) An administrator—

(a) may resign in such circumstances as may be prescribed or with the leave of the Court; and

(b) shall resign if he or she ceases to be an eligible insolvency practitioner.

(3) Unless, in accordance with this section, he or she has previously resigned or been removed from office, an administrator[102] ceases to hold office with effect from the date that an administration order is discharged.

95. Appointment of replacement administrator[103]

(1) Where the administrator of a company dies or is removed or resigns under section 94 and no administrator is appointed in his or her place, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one administrator remaining in place, may appoint an eligible insolvency practitioner as administrator in his or her place; or

(b) if the administrator who has died or is removed or resigned was the sole administrator of the company, shall appoint an eligible insolvency practitioner in his or her place.[104]

(2) An application under subsection (1) may be made—

(a) by any continuing administrator;

(b) by the creditor's committee, if any;[105]

(c) where there is no administrator or no creditor's committee, by the company in administration, the board of the company or a creditor of the company; or[106]

(d) by the Official Receiver.[107]

(3) The provisions of this Act and the Rules applicable to giving notice of and advertising an administration order apply to an order of the Court filling a vacancy under subsection (1).

96. Remuneration of administrator

(1) The administrator of a company is entitled to receive remuneration for his or her services as administrator.

(2) The remuneration payable to an administrator shall be fixed applying the principles set out in section 432.

97. Administrator to have charge over assets of company

(1) The administrator and, where he or she has vacated office, the former administrator,[108] *has the following charges on the assets of the company in his or her possession or control or, in the case of a former administrator, that were in his or her possession or control immediately before vacating office*[109]*—*

(a) a first ranking charge for any sums payable in respect of debts or liabilities incurred during the administration of the company[110]*, under contracts entered into by him or her or a predecessor of his or hers in the carrying out of the functions of administrator; and*

(b) a second ranking charge for his or her remuneration.

(2) Subject to subsection (3), the charges specified in subsection (1)—

(a) rank in priority to any floating charge to which the assets of the company may be subject; and

(b) continue to subsist after the termination of the administration.

(3) Where a debenture or other instrument creates a fixed charge and a floating charge over the assets of a company, subsection (2)(a) does not apply to any assets of the company that are subject to the fixed charge.

(3A) For the purposes of subsection (1)(a)—

(a) any action taken or omitted to be taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) an administrator is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within 14 days after the date of his or her appointment.[111]

(4) A liability arising out of a contract of employment adopted by an administrator, or his or her predecessor, is a debt or liability for the purposes of subsection (1)(a)[112] *if—*

(a) it is a liability to pay a sum by way of wages or salary or a contribution to an occupational pension scheme; and

(b) it is in respect of services rendered wholly or partly after the adoption of the contract,but not otherwise.

(5) For the purposes of subsection (4)—

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or salary in respect of services rendered in that period;

(b) a sum payable in lieu of holiday is deemed to be wages or salary in respect of services rendered in the period by reference to which the holiday entitlement arose; and

(c) that part of the liability representing payment in respect of services rendered before the adoption of the contract of employment shall be disregarded.

98. Release of administrator

(1) A person who ceases to be the administrator of a company, may apply to the Court for his or her release and the Court may grant the release unconditionally or upon such conditions as it considers proper, or it may withhold it.

(2) If the Court withholds the release, it may make a compensation order against the former administrator under section 254.

(3) Subject to subsection (5), where a former administrator is released under this section, he or she is discharged from all liability in respect of any act or default of his or hers in relation to the administration of the company.

(4) An order for the release of a former administrator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(5) Subsection (3) does not prevent the Court from making an order under section 254 against an administrator who has been released under this section.

(6) An administrator who obtains his or her release under this section shall file a notice in the prescribed form with the Registrar.

99. Statement of affairs

(1) In this section, "relevant person" has the meaning set out in section 275.

(2) The administrator of a company may require one or more relevant persons to prepare and submit to him or her a statement of affairs.

(3) Subject to section 280, the administrator shall file with the Court each statement of affairs and each affidavit of concurrence that he or she receives.

ADMINISTRATOR'S PROPOSALS

100. Administrator's proposals and creditors' meeting

(1) Subject to subsection (3), the administrator shall—

(a) prepare a report setting out his or her proposals for the achievement of one or more of the purposes in the administration order;

(b) call a meeting of creditors for a date no later than 60 days after the date of the administration order for the purpose of considering whether to approve his or her proposals;

(c) send a copy of his or her report, to each creditor together with the notice of the meeting;

(d) send a copy of the notice calling the meeting and his or her report to each member of the company or advertise the meeting and report in accordance with the Rules[113];

(e) file a copy of the notice calling the meeting together with his or her report with the Registrar; and

(f) cause the creditors' meeting to be advertised.

(2) The report prepared by the administrator under subsection (1)(a) shall contain the matters prescribed by the Rules.

(3) The administrator is not required to call a meeting of creditors under subsection (1)(b) where—

(a) he or she is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full; and

(b) the report prepared under subsection (1)(a) contains a statement that—

(i) the administrator is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full, and

(ii) the administrator does not intend to call a meeting of creditors under this section.

(4) Notwithstanding subsection (3), if requested to do so by creditors whose debts amount to at least 10%in value of the total debts of the company, the administrator shall call a meeting of creditors to be held no later than 30 days after the date upon which he or she receives the request.

(5) A request for a meeting under subsection (4) must be delivered to the administrator in the manner and within the period prescribed.

(6) An administrator who contravenes subsection (1) commits an offence.

101. Attendance at meeting of directors and others

(1) If the administrator considers that it is reasonable to require the presence at a creditors' meeting called under section[114] 100 of a person specified in subsection (4), the administrator may, by notice, require the person to attend.

(2) In determining whether it is reasonable to require a person to attend the creditors' meeting, the matters that the administrator shall have regard to include—

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by him or her in attending the meeting, unless the administrator is prepared to pay those expenses;

(c) the distance that he or she would be required to travel to attend the meeting; and

(d) the time that it would take him or her to travel to and from and attend the meeting.

(3) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to that person at least 14 days prior to the date of the meeting and shall be accompanied by a copy of his or her report on his or her proposals.

(4) Subsection (1) applies to any officer of the company and any person who, at any time during the 2 years prior to the date of the notice, was an officer of the company.

(5) A person commits an offence if—

(a) he or she receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, he or she fails to attend the meeting.

102. Consideration of proposals by creditors

(1) At the creditors' meeting called under section 100, the creditors may resolve to—

(a) approve the administrator's proposals, with or without amendment;

(b) reject the proposals; or

(c) adjourn the meeting.

(2) A resolution to approve the administrator's proposals is invalid and of no effect if—

(a) the proposals have been amended without the consent in writing of the administrator; or

(b) the proposal has been amended otherwise than in accordance with section 103.

(3) The administrator shall, within 14 days of the conclusion of a meeting called under section 100—

(a) report the result of the meeting to the Court and file a copy of that report with the Registrar; and

(b) send a notice setting out the result of the meeting to every creditor.

(4) The report and notice required under subsection (3) shall have annexed to it details of—

(a) the proposals considered at the meeting and of any amendments to those proposals that were considered; and

(b) such proposals and amendments as were approved.

(5) If the creditors resolve not to approve the administrator's proposals or fail to pass one of the resolutions specified in subsection (1), the Court may, by order—

(a) discharge the administration order and make such consequential provisions as it considers fit;

(b) adjourn the hearing, conditionally or unconditionally; or

(c) make an interim order or any other order that it considers fit.

(6) An administrator who contravenes subsection (3) commits an offence.

103. Amendment of proposals at creditors' meeting

(1) Where, at a meeting called under section 100, the creditors wish to approve an amended proposal, the meeting shall be adjourned for sufficient time to enable the administrator to give all creditors not present or represented at the meeting at least 2 business days notice—

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 102 applies to the adjourned meeting.

(3) Subsection (1) does not apply if—

(a) every creditor who was given notice of the meeting under section 100 is present or represented at the meeting; or

(b) the chairman of the meeting certifies in writing that an amendment is to correct minor errors or is otherwise not material.

104. Modification of proposals

(1) Where proposals have been approved under section 102 and the administrator subsequently considers that they should be substantially modified, he or she shall—

(a) prepare a report setting out his or her proposed modifications;

(b) call a meeting of creditors for the purpose of considering the report;

(c) send a copy of his or her report to each creditor together with the notice of the meeting;

(d) send a copy of the notice convening the meeting together with his or her report to each member of the company or advertise the meeting and report in accordance with the Rules[115];

(e) file a copy of the notice calling the meeting together with his or her report with the Registrar; and

(f) cause the creditors' meeting to be advertised.

(2) At the creditors' meeting referred to in subsection (1), the creditors may resolve to—

(a) approve the administrator's proposed modifications to the proposals, with or without amendment;

(b) reject the proposed modifications; or

(c) adjourn the meeting.

(3) Section 102(2) applies to the creditors' approval of the administrator's proposed modifications to the proposal under this section and if the creditors wish to amend the administrator's proposed modifications, section 103 applies.

(4) The administrator shall, within 14 days of the date of the meeting held under subsection (1)—

(a) report the result of the meeting to the Court and file a copy of the report with the Registrar; and

(b) send a notice setting out the result of the meeting to every creditor.

(5) The report and notice required under subsection (4) shall have annexed to it details of—

(a) the modifications to the proposal considered at the meeting and of any amendments to those modified proposals that were considered; and

(b) such proposals and amendments as were approved.

(6) An administrator who contravenes subsection (4) commits an offence.

MISCELLANEOUS

105. Commission's rights where company a regulated person

Where a company in administration is or has been a regulated person—

(a) every notice or other document required to be sent to a creditor of the company under this Part shall also be sent to the Commission; and

(b) notice shall be given to the Commission of any application to the Court under this Part in respect of the company.

106. Administrator's duty to keep accounting records

(1) An administrator shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions of the company in administration.

(2) The administrator shall retain the accounting records kept under subsection (1) for a period of not less than 6 years after the termination of the administration.

(3) An administrator who contravenes this section commits an offence.

107. Administrator to prepare and send out regular accounts and reports

(1) An administrator shall prepare—

(a) accounts of the receipts and payments of the company in administration; and

(b) a report on the progress of the administration, covering the periods specified in subsection (2).

(2) The accounts and report prepared under subsection (1) shall cover—

(a) the period of 6 months following his or her appointment;

(b) each subsequent period of 6 months; and

(c) where he or she ceases to act as administrator—

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he or she acted as administrator for less than 6 months from the date of his or her appointment, to the date of his or her ceasing to act; and

(ii) the period from the date of his or her appointment to the date of his ceasing to act, unless prepared in accordance with subparagraph (i).

(3) An administrator shall, within 60 days of the last day of the period covered by the accounts and report—

(a) file a copy of the accounts and report with the Court and with the Registrar;

(b) send a copy of the accounts and report to each member of the creditors' committee, if any; and

(c) if the company is or has been a regulated person file a copy of the accounts and report with[116] the Commission.

(4) An administrator who contravenes this section commits an offence.

108. Notification

(1) Where a company is in administration, every document of a type specified in subsection (2) shall—

(a) state that the company is in administration; and

(b) specify the name of the administrator.

(2) Subsection (1) applies to—

(a) every public document issued by or on behalf of the company; and

(b) every public document issued by or on behalf of the administrator of the company on which the name of the company appears.

(2A) A failure to comply with subsection (1) does not affect the validity of the document.[117]

(3) If subsection (1) is contravened the company, and each officer or administrator of the company who causes, permits or acquiesces in the contravention, commits an offence.

109. Meetings of creditors

(1) The administrator shall call a meeting of creditors if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) he or she is directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Rules by 10%in value of the creditors of the company.

110. Discharge or variation of administration order

(1) The administrator of a company may, at any time, apply to the Court for the administration order to be discharged or to be varied to add to or change the purposes specified in the administration order.

(2) An administrator shall make an application under subsection (1) if—

(a) he or she considers that the purposes specified in the order have been achieved or are incapable of achievement; or

(b) he or she is required to do so by a meeting of creditors.

(3) On the hearing of an application under subsection (1), the Court may discharge or vary the administration order and make such consequential provision as it considers fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it considers fit, including an order under section 111.

111. Appointment of liquidator or dissolution of company on discharge of administration order

(1) Where the Court makes an order for the discharge of an administration order made in respect of a company and the Court is satisfied that the company is insolvent—

(a) the Court may make an order for the appointment of an eligible insolvency practitioner to be the liquidator of the company; or

(b) if it is satisfied that no useful purpose would be served by the appointment of a liquidator, the Court may dissolve the company.

(2) The Court may appoint the administrator of a company to be the liquidator under subsection (1)(a).

(4) An order under subsection (1)(a) takes effect as an order made under section 162 on the application of the company.

(5) Where an order is made for the appointment of a liquidator under this section, Part VI applies to the liquidation of the company.

112. Filing copy of discharge order with Registrar

(1) Where an administration order is discharged or varied, the administrator or where the order is discharged the person who, immediately before the discharge, was the administrator of the company shall, within 14 days of the date of the order effecting the variation or discharge, file a copy of the order with the Registrar.

(2) A person who contravenes subsection (1) commits an offence.

PROTECTION OF INTERESTS OF CREDITORS AND MEMBERS

113. Application in respect of moratorium period

(1) During the period beginning with the commencement of the moratorium period and ending with the making of an administration order, the Court may, on an application made by a creditor or member of the company, by a person affected by section 84 or, where the company is or has been a regulated person, by the Commission—

(a) give directions in relation to any matter arising in connection with that section; or

(b) make such other order as it considers fit.

(2) Without limiting subsection (1), an order under that subsection may—

(a) regulate the management by the directors of the company's affairs, business and assets during the remainder of the moratorium period;

(b) require the directors to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained they have omitted to do;

(c) require the calling of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; and

(d) make such provision as the Court considers necessary to protect the interests of one or more creditors of the company during the moratorium period.

(3) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

114. Application on grounds of unfair prejudice

(1) At any time when an administration order is in force, an application may be made by a creditor or member of a company or, where the company is or has been a regulated person by the Commission for an order under subsection (2) on one or both of the following grounds—

(a) that the company's affairs, business and assets are being, or have been, managed by the administrator in a manner which unfairly prejudices the interests of the member or creditor; or

(b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.

(2) Subject to subsections (3) and (4), where it is satisfied as to either of the grounds specified in subsection (1), the Court may make such order as it considers fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim or any other order that it considers fit.

(3) An order under subsection (2) shall not prejudice or prevent—

(a) the implementation of proposals approved by the creditors under section 102; or

(b) where the application for the order was made more than 28 days after the approval of any proposals or revised proposals under section 102 or 104, the implementation of those proposals or revised proposals.

(4) Without limiting subsection (2), an order under that subsection may—

(a) regulate the management by the administrator of the company's affairs, business and assets;

(b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he or she has omitted to do;

(c) require the calling of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; and

(d) discharge the administration order and make such consequential provision as the Court considers fit.

(5) Section 91 is not to be taken as prejudicing an application to the Court under this section.

PART IV – RECEIVERSHIP

PRELIMINARY

115. Interpretation for and scope of this Part

(1) In this Part, unless the context otherwise requires, "company" means the company in respect of whose assets a receiver is or may be appointed.

(2) This Part applies to a receiver appointed—

(a) by the Court;

(b) under a debenture or other instrument; or

(c) under or in accordance with any other enactment.

(3) Unless this Act expressly states otherwise, where, in respect of a receiver appointed by the Court (other than as an administrative receiver), there is a conflict between this Act and the provisions of any other enactment or rule of law or the Civil Procedure Rules, the provisions of the enactment or rule of law or the Civil Procedure Rules, as the case may be, shall prevail.

(4) Where an administrative receiver is appointed in respect of a company, that company is referred to in this Act as "in administrative receivership".

GENERAL

116. Persons not to be appointed or act as receiver

(1) Subject to subsection (2), the following persons are not eligible to be appointed as receiver in respect of a company and shall not accept appointment or act as such a receiver—

(a) a mortgagee of any assets of the company;

(b) a person who is, or within the previous 2 years has been—

(i) an officer or employee of a mortgagee of any assets of the company; or

(ii) a shareholder in or member of the company or a related company;

(c) a person who, pursuant to section 477 is disqualified from holding a licence;

(d) a person who, in an insolvency proceeding, would not be eligible to act as an insolvency practitioner in respect of the company pursuant to section 482(2);

(e) a body corporate;[118]

(ea) the Official Receiver; and[119]

(f) such other persons as may be prescribed.

(2) The Court may appoint—

(a) the Official Receiver; or

(b) such other person specified in[120] subsection (1), as a receiver, other than an administrative receiver.

(3) A person who accepts or purports to accept appointment or acts or purports to act as a receiver contrary to subsection (1) commits an offence.

117. Appointment of joint receivers

(1) A power conferred by a debenture or other instrument to appoint a receiver includes the power to appoint—

(a) 2 or more joint receivers;

(b) an additional receiver to act jointly with the receiver in office; and

(c) a receiver to succeed a receiver who has vacated office, unless the debenture or other instrument expressly provides otherwise.

(2) Joint receivers may act jointly or severally unless the instrument under which, or the Court order by which, they are appointed expressly provides otherwise.

(3) Unless the context otherwise requires, in this Act and the Rules, "receiver" and "administrative receiver" includes 2 or more persons appointed as joint receivers or joint administrative receivers, as the case may be.

118. Notice of appointment

(1) A receiver shall forthwith upon being appointed—

(a) send a notice of his or her appointment to the company; and

(b) file a notice of his or her appointment—

(i) with the Registrar; and

(ii) if the company is or has been a regulated person, with the Commission.

(2) In addition to complying with subsection (1), an administrative receiver shall—

(a) subject to subsection (3), within 5 business days after being appointed, cause a notice of his or her appointment to be advertised; and

(b) within 28 days after being appointed, send a notice of his or her appointment to all creditors of the company in receivership.

(3) Subsection (2)(a) does not apply to a receiver appointed—

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act.

(4) A receiver who contravenes subsection (1) and an administrative receiver who contravenes subsection (2) commits an offence.

119. Notification of receivership

(1) Where a company is in receivership, every document to which subsection (2) applies shall contain a statement that a receiver has been appointed.

(2) Subsection (1) applies to—

(a) where the company is in administrative receivership,[121] every public document issued by or on behalf of the company;[122]

(b) where the company is in administrative receivership,[123] every public document issued by or on behalf of the receiver or any liquidator of the company on which the name of the company appears; and[124]

(c) where a receiver is appointed in relation to a specific asset or specific assets, every public document issued by or on behalf of the company, or the receiver, that relates to that asset or those assets.[125]

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) A person who contravenes subsection (1), or who causes, permits or acquiesces in a contravention of subsection (1), commits an offence.

120. Vacation of office

(1) The office of receiver becomes vacant if the person holding the office—

(a) dies;

(b) resigns;

(c) vacates his or her office in accordance with subsection (2); or

(d) is removed from office in accordance with section 123.

(2) A receiver appointed out of court shall vacate his or her office forthwith if he or she ceases to be eligible to act as a receiver in accordance with section 116(1).

(3) Where a receiver resigns, vacates office in accordance with subsection (2) or is removed from office under section 123[126], he or she shall, as soon as practicable, give notice to—

(a) the person who appointed him or her and any joint receiver[127];

(b) the company; or—

(i) if the company is in liquidation, its liquidator; and

(ii) if the company is in administration, its administrator; and

(c) the members of the creditors' committee, if any.

(4) A receiver appointed by the Court shall as soon as practicable notify the Court if he or she ceases to be eligible to act as a receiver in accordance with section 116(1).

(5) Where a receiver resigns, vacates office in accordance with subsection (2) or is removed from office under section 123, he or she shall, within 7 days of ceasing to hold office, give notice in the prescribed form to the Registrar and, where the company in respect of which he or she was appointed is, or has been, a regulated person, to the Commission.[128]

(6) Where a receiver vacates office, unless the Court otherwise orders—

(a) his or her remuneration; and

(b) any indemnity to which he or she is entitled out of the assets of the company, shall be charged on and paid out of any assets of the company that are in his or her custody or under his or her control at that time in priority to any security interest held by the person by or on whose behalf he or she was appointed.

(7) A person who contravenes subsections (2), (3), (4) or (5) commits an offence.

121. Assistance to be provided by receiver vacating office

(1) A person vacating the office of receiver shall provide such information and give such assistance in the conduct of the receivership as is reasonably required by any remaining joint receiver or his or her successor.

(2) If a person vacating the office of receiver fails to provide information or give assistance as required under subsection (1) the Court may, on the application of the remaining joint receiver or successor, order the person vacating office to provide such information and give such assistance as is reasonably required within such time as is specified in the order.

(3) A person who fails to comply with an order made under subsection (2) commits an offence.

122. Resignation of receiver

(1) The resignation of an administrative receiver appointed out of court is not effective unless he or she has given not less than 7 days notice of his or her intention to resign to—

(a) the person who appointed him or her;

(b) the company in receivership, or if it is in liquidation, its liquidator; and

(c) the members of the creditors' committee, if any.

(2) Unless the Court otherwise orders, the resignation of a receiver appointed by the Court is not effective unless he or she has given at least 7 days notice of his or her intention to resign to the Court and to such other persons as may be specified by the Court.

(3) A notice given under subsection (1) shall state the date upon which the receiver intends his or her resignation to take effect.

123. Removal of receiver

(1) A receiver appointed out of court, other than an administrative receiver, may be removed—

(a) in accordance with the charge or other instrument under which he or she was appointed; or

(b) by order of the Court.

(2) A receiver appointed by the Court and an administrative receiver may be removed by order of the Court, but not otherwise.

(3) Application to the Court for the removal of a receiver under subsection (1) or subsection (2) may be made by—

(a) the company; or—

(i) if the company is in liquidation, its liquidator; and

(ii) in the case of a receiver who is not an administrative receiver, if the company is in administration, its administrator;

(b) the board of the company;

(c) the person by or on whose behalf the receiver was appointed;

(d) a creditor of the company;[129]

(da) where the company is or has been a regulated person, by the Commission; or[130]

(e) any other person who the Court is satisfied has a legitimate interest in the removal of the receiver.

(4) An application to the Court for the removal of a receiver under this section shall specify the grounds upon which the removal of the receiver is being sought and shall be served on the receiver at least 5 business days prior to the date fixed for the hearing of the application.

124. Co-operation with receiver

(1) Where a receiver is appointed, the company and every officer of the company shall—

(a) make available to the receiver all books, documents and information relating to the assets in respect of which the receiver has been appointed in its or his or her possession or under its or his or her control;

(b) if required to do so by the receiver, verify by statutory declaration that the books, documents and information are complete and correct; and

(c) give the receiver such assistance as he or she may reasonably require.

(2) On the application of the receiver, the Court may make an order requiring the company or an officer of the company to comply with subsection (1).

(3) A person who fails to comply with an order of the Court made under subsection (2) commits an offence.

125. Duty to report to Commission

If it appears to a receiver that the company in respect of which he or she was appointed is carrying on or has carried on unlicensed financial services business, he or she shall as soon as reasonably practicable report the matter to the Commission.

126. Agency

(1) A receiver appointed out of court, other than an administrative receiver, is deemed to be the agent of the company unless the charge or instrument under which he or she was appointed expressly provides otherwise.

(2) Subject to subsection (3), an administrative receiver is deemed to be the agent of the company in receivership.

(3) If a liquidator is appointed in respect of a company in receivership, the agency of any receiver, including an administrative receiver, terminates with immediate effect.

127. Powers of receiver, other than administrative receiver

(1) A receiver has the powers expressly or impliedly conferred on him or her—

(a) in the case of a receiver appointed out of court, by the charge or other instrument by which he or she was appointed; or

(b) in the case of a receiver appointed by the Court, by the Court order under which he or she was appointed.

(2) Unless the charge or other instrument under which, or Court order by which, he or she was appointed expressly provides otherwise, a receiver may—

(a) demand and recover, by action or otherwise, income of the assets in respect of which he or she was appointed;

(b) issue receipts for income recovered;

(c) manage, insure, repair and maintain the assets in respect of which he or she was appointed; and

(d) exercise, on behalf of the company, a right to inspect books or documents that relate to the assets in respect of which he or she was appointed in the possession or under the control of a person other than the company.

(3) This section does not apply to an administrative receiver.

128. General duties of receivers

(1) The primary duty of a receiver is to exercise his or her powers—

(a) in good faith and for a proper purpose; and

(b) in a manner he or she believes, on reasonable grounds, to be in the best interests of the person in whose interests he or she was appointed.

(2) To the extent consistent with subsection (1), a receiver shall exercise his or her powers with reasonable regard to the interests of—

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which he or she was appointed; and

(d) the company.

(3) Where a receiver appointed out of court acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver is not in breach of the duty specified in subsection (1)(b), but is nevertheless liable for any breach of the duties specified in subsection (1)(a) and subsection (2).

129. Powers of sale and proceeds of sale

(1) A receiver who exercises a power of sale of assets in respect of which he or she was appointed owes a duty to—

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which he or she was appointed; and

(d) the company, to obtain the best price reasonably obtainable at the time of sale.

(2) A receiver shall keep money relating to the assets in respect of which he or she was appointed separate from other money received in the course of, but not relating to, those assets and from other money held by him or her or under his or her control.

(3) Notwithstanding any other enactment or rule of law to the contrary or anything contained in the debenture or other instrument by which a receiver was appointed—

(a) it is not a defence in proceedings against a receiver for a breach of the duty imposed by subsection (1) that the receiver was acting as the agent of the company or under a power of attorney from the company; and

(b) a receiver is not entitled to compensation or an indemnity from the assets in respect of which he or she was appointed or the company in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (1).

130. Liabilities of receivers

(1) Subject to subsections (2) and (3), a receiver is personally liable—

(a) on any contract entered into by him or her in the performance of his or her functions; and

(b) for the payment of wages or salary, including amounts due for holidays and absence due to sickness or other good cause, sums payable in lieu of holiday and[131] contributions to an occupational pension scheme that, during the period of the receivership, accrue under a contract of employment adopted by him or her in the performance of those functions.

(2) A receiver appointed out of court is not personally liable on a contract referred to in subsection (1)(a) to the extent that the contract excludes or limits his or her liability.

(3) Where a receiver is appointed by the Court, other than as an administrative receiver, unless the Court orders otherwise, all contracts of employment are terminated with immediate effect and subsection (1)(b) does not apply.

(4) For the purposes of subsection (1)(b) —

(a) any action taken or omitted to be taken within the period of 14 days after a receiver's appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) a receiver is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within 14 days after the date of his or her appointment.[132]

(5) A receiver is entitled to an indemnity in respect of his or her liability under subsection (1) out of the assets in respect of which he or she was appointed.

(6) Nothing in this section—

(a) imposes any liability on a receiver for wages or salary, including amounts due for holidays or absence due to sickness, or contributions to an occupational pension scheme, in respect of services rendered prior to the commencement of the receivership;

(b) limits any right to indemnity that the receiver would have apart from this section;

(c) limits the liability of a receiver on a contract entered into without authority; or

(d) confers on a receiver a right to an indemnity in respect of his or her liability on a contract entered into without authority.

131. Payment of debts out of assets subject to a floating charge

(1) This section applies where a receiver is appointed on behalf of the holder of a floating charge.

(2) If the company is not in liquidation, its preferential creditors shall be paid out of the assets coming into the hands of the receiver in priority to any claims for principal or interest in respect of—

(a) the debenture or other instrument under which the receiver is appointed; and

(b) any other debenture or other instrument of the company secured by a floating charge.

(3) Payments made under this section shall be recouped, as far as possible, out of the assets of the company available for payment of unsecured creditors.

132. Court directions

(1) On the application of a person referred to in subsection (2), the Court may, in relation to any matter arising in connection with the performance of the functions of a receiver, make one or more of the following orders—

(a) an order giving such directions as it considers appropriate;

(b) an order declaring the rights of persons before it; and

(c) such other order as it considers just.

(2) Application to the Court for an order under subsection (1) may be made by any of the following persons—

(a) the receiver;

(b) the person by whom or on whose behalf the receiver was appointed;

(c) a person in whose interest the receiver is acting; and

(d) where the company in receivership is or has been a regulated person, the Commission.

133. Further provisions with respect to an order under section 132

The power of the Court to make an order under section 132—

(a) is in addition to any other powers that may be exercised by the Court whether under this Act or any other enactment or in its inherent jurisdiction;

(b) may be exercised notwithstanding that the receiver may have died or ceased to act as receiver before the making of the application or the order; and

(c) notwithstanding anything in the Civil Procedure Rules to the contrary, includes the power to vary or amend an order that the Court has already made.

134. Remuneration of receivers

(1) Subject to subsection (3), a receiver appointed under a debenture or other instrument is entitled to be paid remuneration for his or her services—

(a) in accordance with the terms of that debenture or other instrument; or

(b) as agreed with the person on whose behalf he or she was appointed.

(2) A receiver appointed by the Court or in accordance with any other enactment is entitled to be paid such remuneration as the Court may order or the other enactment may provide for[133].

(3) On the application of a person referred to in subsection (6), the Court may review and fix the amount paid or to be paid by way of remuneration to a receiver in accordance with subsection (1).

(4) Subject to subsection (5), the Court's power under subsection (3)—

(a) extends to fixing the remuneration for any period before the making of the order or the application for it;

(b) is exercisable notwithstanding that the receiver has died or ceased to act before the making of the application or the order; and

(c) extends to requiring him or her or his or her personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by a receiver as remuneration exceeds that fixed by the Court for the period concerned.

(5) The power conferred by subsection (4)(c) may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(6) An application to the Court for an order under subsection (3) may be made by any of the following persons —

(a) the receiver;

(b) the company; or—

(i) if the company is in liquidation, its liquidator; and

(ii) if the company is in administration, its administrator;

(c) a person claiming through the company an interest in the assets in respect of which the receiver was appointed; and

(d) if the company in receivership is or has been a regulated person, the Commission.

(7) In fixing the remuneration of a receiver under this section, the Court shall apply the general principles specified in section 432.

135. Accounting records

(1) A receiver shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to the assets in respect of which he or she has been appointed.

(2) The accounting records kept under subsection (1) shall be retained for a period of not less than 6 years after the receivership ends.

136. Receivership accounts to be filed with Registrar

(1) A receiver shall prepare accounts of his or her receipts and payments covering the periods specified in subsection (2).

(2) Accounts prepared under subsection (1) shall cover the following periods—

(a) the period of 12 months following the receiver's appointment;

(b) each subsequent period of 6 months;

(c) where the receiver ceases to act as receiver—

(i) the period from the end of the period covered by the last accounts required to be filed under this section, or if he or she acted as receiver for less than 12 months from the date of his or her appointment, to the date of his or her ceasing to act; and

(ii) the period from the date of his or her appointment to the date of his or her ceasing to act, unless filed in accordance with subparagraph (i).

(3) The accounts prepared under subsection (1) shall—

(a) comprise an abstract showing all receipts and payments during the period covered by the accounts; and

(b) within 30 days of the last day of the period covered by the accounts—

(i) be filed with the Registrar; and

(ii) if the company in receivership is or has been a regulated person, with the Commission.

(4) A receiver appointed by the Court shall, in addition to complying with subsection (3), file at Court accounts in such form, covering such periods and within such time as the Court may order.

(5) In respect of a receiver appointed by the Court—

(a) the obligations imposed by this section are additional—

(i) to any obligations or requirements concerning receivership accounts contained in the Civil Procedure Rules[134]; and

(ii) to any order made with respect to receivership accounts by the Court; and

(b) the Court may set aside the application of subsections (1), (2) and (3) to such extent and on such terms and conditions as it considers fit.

(6) The Registrar may, on the application of a receiver, extend the period for the filing of accounts under this section for a period of, or where he or she grants more than one extension, for an aggregate period not exceeding 3 months.

(7) A receiver who contravenes this section commits an offence.

(8) Nothing in this section affects or limits the duty of a receiver to prepare and render proper accounts imposed otherwise than by this section.

137. Enforcement of duty to make returns

(1) If a receiver—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is required to file, deliver, make or give under this Act or any other enactment fails to make good the default within 14 days after the service on him or her of a notice requiring him or her to do so; or

(b) being a receiver appointed out of court, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his or her receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him or her the Court may, on an application being made to it, order the receiver to make good the default within such time as may be specified in the order or, in respect of a default referred to in subsection (1)(a), may relieve the receiver of the obligation, in whole or in part.

(2) An application to the Court may be made—

(a) in respect of a default referred to in subsection (1)(a), by the Registrar, a member or creditor of the company, its board or, if appropriate, its liquidator or administrator or the Commission; and

(b) in respect of a default referred to in subsection (1)(b), by the liquidator of the company.

(3) The Court may order that the receiver pay the costs of and incidental to an application under subsection (1).

(4) This section does not affect the operation of this Act or any other enactment that may impose penalties on receivers in respect of a default of the type referred to in subsection (1).

(5) A receiver who fails to comply with an order made under this section commits an offence.

138. Completion of receivership

On the completion of his or her receivership, a receiver shall forthwith—

(a) give notice to—

(i) the company, or if it is in administration or liquidation, the administrator or liquidator;

(ii) in the case of an administrative receiver, the creditors' committee, if any; and

(iii) if the company is or has been a regulated person, to the Commission; and

(b) file a notice of completion with the Registrar and, if the company is or has been a regulated person, with the Commission.

RECEIVERS APPOINTED OUT OF COURT

139. Appointment of receiver out of court

(1) The appointment of a receiver out of court shall be made in writing.

(2) Subject to subsection (3), the appointment of a receiver out of court takes effect from the time upon which the receiver receives the written notice of appointment.

(3) The appointment of a receiver out of court is not effective unless the receiver accepts it before the end of the next business day following the day on which he or she receives the written appointment.

(4) Where 2 or more joint receivers are appointed out of court—

(a) the joint appointment takes effect from the time that all joint receivers receive the written appointment; and

(b) the joint appointment is not effective unless each receiver accepts the appointment in accordance with subsection (3).

(5) Where a receiver is appointed out of court, whether as a sole or joint receiver, he or she shall, if he or she accepts the appointment, within 7 days confirm his or her acceptance in writing to the person who appointed him or her.

(6) Subsection (5) does not apply where an appointment is accepted in writing.

(7) For the purposes of this section—

(a) a person receives a written appointment if the appointment is received on his or her behalf; and

(b) an acceptance or confirmation of acceptance of an appointment as a receiver under this section may be given by any person authorised for that purpose by the appointee.

(8) A written acceptance or confirmation of acceptance of an appointment of a receiver out of court shall state—

(a) the time and date of receipt of the notice of appointment; and

(b) the time and date of the acceptance.

140. Execution of documents

Where a receiver appointed out of court, other than an administrative receiver, is authorised to execute documents in the name of or on behalf of a company, whether under a power of attorney or otherwise, that authority continues in respect of documents necessary or incidental to the receiver's powers notwithstanding that the company may go into liquidation.

141. Invalid appointment

(1) Where the appointment of a person as a receiver appointed out of court is invalid the Court may, if it is satisfied that the receiver acted honestly and reasonably, order the person by whom or on whose behalf the receiver was appointed to indemnify the receiver against any liability which arises solely by reason of the invalidity of the appointment.

(2) The Court may exercise its powers under subsection (1) subject to such terms and conditions as it considers fit.

ADMINISTRATIVE RECEIVERS

142. Meaning of "administrative receiver"

(1) In this Act, "administrative receiver" means a receiver of the whole, or substantially the whole, of the business, undertaking and assets of a company—

(a) appointed out of court by or on behalf of the holder of a debenture or other instrument of the company secured by a floating charge, whether or not that debenture or other instrument is also secured by one or more other security interests; or

(b) appointed by the Court as an administrative receiver under section 143.

(2) Where 2 or more persons have the right, under different instruments, to appoint an administrative receiver

(a) each may appoint an administrative receiver, but only one administrative receiver may act in relation to the company at any time; and

(b) the administrative receiver appointed on behalf of the person whose security interest ranks highest in priority, is entitled to act as administrative receiver.

143. Appointment of administrative receiver by Court

(1) Where the Court appoints a receiver who would, had he or she been appointed out of Court, be an administrative receiver, the Court may, in the order under which the receiver is appointed, specify that the receiver is an administrative receiver.

(2) Where the Court appoints a receiver as an administrative receiver under subsection (1), unless and to the extent that the Court otherwise orders or that this Act provides to the contrary, the provisions of this Act that apply to administrative receivers apply to that receiver.

(3) The Court shall not appoint a receiver as an administrative receiver if there is an administrative receiver acting in relation to the company.

144. Powers of administrative receiver

(1) Notwithstanding any provision in the memorandum or articles, an administrative receiver may, unless the debenture or other instrument by which he or she was appointed provides otherwise—

(a) execute all documents necessary or incidental to the exercise of his or her powers in the name of and on behalf of the company in receivership; and

(b) use the company's seal.

(2) Unless and to the extent that the debenture or other instrument by which an administrative receiver is appointed provides otherwise, the powers conferred on an administrative receiver of a company by the debenture or other instrument by which he or she was appointed include the powers specified in Schedule 1.

(3) References in Schedule 1 to the assets of the company are to that part of the assets of the company in respect of which the receiver is appointed.

(4) A person dealing with the administrative receiver of a company in good faith and for value is not concerned to enquire whether he or she is acting within his or her powers.

145. Power to dispose of charged assets

(1) In this section, "relevant assets", in relation to the administrative receiver, means the assets of which he or she is or, but for the appointment of some other person as the receiver of part of the company's assets, would be the receiver.

(2) Where on an application by an administrative receiver, the Court is satisfied that the disposal, with or without other assets, of any relevant assets which are subject to a security interest would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the assets as if they were not subject to the other security interest.

(3) Subsection (2) does not apply in the case of any security interest held by the person by or on whose behalf the administrative receiver was appointed, or of any security interest to which a security interest so held has priority.

(4) It shall be a condition of an order made under subsection (2) that—

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on the sale of the assets in the open market by a willing vendor (the open market value), such sums as may be required to make good the deficiency, shall be applied towards the sums secured by the security interest.

(5) Where a condition imposed pursuant to subsection (4) relates to 2 or more security interests, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those security interests in the order of their priorities.

(6) Where, following the disposal of assets under this section, subsection (4)(b) applies, the administrative receiver, or any person to whom sums are to be paid under that subsection, may apply to the Court for a review of the Court's determination as to the open market value of the assets.

(7) On an application made under subsection (6), the Court may make a fresh determination as to the open market value of the assets disposed of and subsections (4) and (5) shall apply with the new open market value substituted for the original open market value.

(8) An application under subsection (6) shall be made—

(a) in the case of the administrative receiver, within 14 days of the date of the disposal of the assets; or

(b) in the case of a person other than the administrative receiver, within 14 days of the date that he or she is notified by the administrative receiver of the sale.

(9) The administrative receiver shall file a copy of an order made under subsection (2) or subsection (7) with the Registrar within 14 days of the date of the order.

(10) An administrative receiver who contravenes subsection (9) commits an offence.

146. Statement of affairs

(1) In this section, "relevant person" has the meaning set out in section 275.

(2) An administrative receiver shall, as soon as practicable after his or her appointment, by notice, require one or more relevant persons to prepare and submit to him or her a statement of affairs of the company in administrative receivership.

147. Report by administrative receiver

(1) An administrative receiver shall, within 3 months of his or her appointment, prepare and file with the Registrar and, where appointed by the Court, with the Court, [135] a report as to—

(a) the events leading up to his or her appointment;

(b) the disposal or proposed disposal by him or her of any assets of the company and the carrying on by him or her of any business of the company;

(c) the amounts of principal and interest payable to the person by whom or on whose behalf he or she was appointed and the amounts payable to preferential creditors;

(d) the amount, if any, likely to be available for the payment of other creditors; and

(e) the persons who have submitted statements of affairs under section 146,[136] and containing such other information as may be prescribed.[137]

(2) A report prepared under subsection (1) shall include summaries of the statements of affairs submitted to him or her together with his or her comments thereon.

(3) The administrative receiver shall, within 14 days of filing the report prepared under subsection (1) with the Registrar—

(a) send a copy of the report to—

(i) the company in receivership or, if it is in liquidation, its liquidator; and[138]

(ii) [deleted][139]

(iii) where the company is or has been a regulated person, to the Commission;

(b) either send a copy of the report to each creditor of the company or[140] publish a notice in the prescribed form stating the address of an office to which creditors of the company may write for a copy of the report and at which the report can be inspected during normal office hours; and

(c) call a meeting of unsecured creditors.

(4) Where he or she is satisfied that the disclosure of information in a report prepared under this section would seriously prejudice the carrying out by him or her of his or her[141] functions, the administrative receiver may omit such information from his or her report.

(5) Where a liquidator is appointed after the administrative receiver has sent a copy of his or her report to the company under subsection (3)(a), he or she shall within 7 days of the date of appointment of the liquidator send a copy of his or her report to the liquidator.

(6) This section does not apply to a receiver appointed—

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act;

where subsections (1), (3) and (5) have been complied with by the existing administrative receiver or by his or her predecessor.

(7) An administrative receiver who fails to comply with this section commits an offence.

148. Application for permission not to call meeting of creditors

(1) An administrative receiver may apply to the Court for an order permitting him or her not to call a meeting of creditors under section 147(3)(c) and, subject to subsection (2), the Court may make such an order subject to such terms as it considers appropriate.

(2) The Court shall not make an order under subsection (1) unless—

(a) the administrative receiver has stated in his or her report prepared under 147(1) his or her intention of applying for the order;[142]

(b) the report has been sent to the persons referred to in section 147(3)(a) not less than 14 days prior to the date of the hearing of the application; and[143]

(c) where he or she publishes a notice under section 147(3)(b), he or she stated his or her intention to apply for the order in that notice.[144]

PART V - PROVISIONS APPLICABLE TO THE LIQUIDATION OF COMPANIES AND TO THE BANKRUPTCY OF INDIVIDUALS

149. Interpretation

(1) For the purposes of this Part— [145]

(a) "debtor" means a company in liquidation or an individual in bankruptcy;

(b) "insolvency proceeding" means in the case of a company, its liquidation and in the case of an individual, his or her bankruptcy; and

(c) "relevant time" means, in the case of a company, the commencement of its liquidation and, in the case of an individual, the commencement of his or her bankruptcy.

(2) In this Part, "company" includes a foreign company.[146]

150. Insolvency set-off

(1) Subject to section 435[147], where, before the relevant time, there have been mutual credits, mutual debts or other mutual dealings between a debtor and a creditor claiming or intending to claim in the insolvency proceeding—

(a) an account shall be taken of what is due from each party to the other in respect of those mutual credits, mutual debts or other mutual dealings, as at the relevant time;

(b) the sum due from one party shall be set-off against the sums due from the other party; and

(c) only the balance of the account, if any, may be claimed in the insolvency proceeding or is payable to the debtor, as the case may be.

(2) A creditor is not entitled to claim the benefit of a set-off under this section if he or she had actual notice that the debtor was insolvent—

(a) at the time he or she gave credit to the debtor or received credit from the debtor; or

(b) at the time he or she acquired any claim against the debtor or any part of or interest in such a claim.

(3) For the purposes of subsection (2), "insolvent" has the meaning specified in section 8 with the deletion of subsection (1)(c)(i) of that section.

(4) Where, before the relevant time, a creditor waives or agrees that he or she will not claim the benefit of a set-off under this section, that waiver or agreement takes effect notwithstanding subsection (1), except to the extent that a creditor who was not a party to the agreement, or has not agreed otherwise, is prejudiced.

151. Validity of agreements to subordinate debt

Where, before the relevant time, a creditor acknowledges or agrees that, in the event of a shortfall of assets, he or she will accept a lower priority in respect of a debt than that which he or she would otherwise have under this Act, that acknowledgement or agreement takes effect notwithstanding the provisions of

this Act, except to the extent that a creditor of the debtor who was not a party to the agreement is prejudiced.

152. Quantification of claims in liquidation and bankruptcy

(1) This section applies to the quantification of a claim in the liquidation of a company or the bankruptcy of an individual.

(2) The amount of a claim shall be quantified as at the relevant time.

(3) Where a claim is subject to a contingency or, for any other reason, the amount of the claim is not certain, the liquidator, or the bankruptcy trustee, shall—

(a) agree an estimate of the value of the claim as at the relevant time; or

(b) apply to the Court to determine the amount of the claim.

(4) On an application by the liquidator or the bankruptcy trustee under subsection (3)(b), the Court may—

(a) determine the amount of the claim itself; or

(b) determine a method to be used by the liquidator or the trustee for calculating the amount of the claim.

(5) In the case of rent and other payments of a periodic nature, a claim may include any amounts due and unpaid at the relevant time and where, at the relevant time, a payment was accruing due, the claim may include so much as would have fallen due at that time if the liability had been accruing from day to day.

(6) A claim based on a liability that, at the relevant time, was not payable by the company until after the relevant time shall be discounted in accordance with the Rules.

(7) Interest may be included in a claim as provided by section 153.

153. Interest on claims

(1) Subject to sections 215 and 342, a claim in the liquidation of a company or the bankruptcy of an individual shall not include an amount for interest in respect of a period after the relevant time.

(2) If it was agreed between the debtor and a creditor that the debt on which the creditor's claim is based would bear interest, the claim may include interest, at the agreed rate, up to the relevant time.

(3) A claim made by a creditor other than one referred to in subsection (2) may include interest up to the relevant time if—

(a) the debt on which the claim is based is due by virtue of a written instrument and was payable at a certain time before the relevant time; or

(b) if, before the relevant time, the creditor made written demand on the debtor and the demand stipulated that interest would be payable on the debt from the date of the demand until payment of the debt.

(4) The amount of interest that may be included in a claim under this section is—

(a) in the case of a debt referred to in subsection (3)(a), interest at the court rate for the period from the date that the debt was payable to the relevant time; and

(b) in the case of a debt referred to in subsection (3)(b), interest at the court rate for the period from the date of the written demand to the relevant time.

154. Claim in currency other than dollars

(1) The amount of a claim based on a liability incurred or payable in a currency other than dollars shall be converted into dollars at the rate of exchange prevailing at the relevant time.

(2) For the purposes of subsection (1), the rate of exchange should be ascertained in such manner as may be prescribed.

155. Statutory demand

(1) A creditor may make demand on a person for payment of a debt owed by that person to him or her.

(2) A demand under subsection (1) shall—

(a) be in respect of a debt that is due and payable at the time of the demand and that is not less than the prescribed minimum;

(b) be in writing and shall specify the nature of the debt and its amount;

(c) be dated and shall be signed by the creditor or by a person authorised to make demand on the creditor's behalf;

(d) require the person to pay the debt or to secure or compound for the debt to the reasonable satisfaction of the creditor within 21 days of the date of service of the demand on him or her or such longer period as may be prescribed;[148]

(e) state that if the demand is not complied with, application may be made to the Court for the appointment of a liquidator or a bankruptcy[149] trustee, as the case may be;

(f) set out the rights of the person to make application to set the demand aside under section 156; and

(g) comply with and be served in accordance with the Rules.

(3) If the creditor making demand under subsection (1) is a secured creditor in respect of the debt, the full amount of the debt shall be specified in the demand, but—

(a) the demand shall specify the nature of the security interest, and the value which the creditor places on it at the date of the demand; and

(b) the amount claimed—

(i) shall be the full amount of the debt less the amount specified as the value of the security interest; and

(ii) shall equal or exceed the prescribed minimum.

156. Application to set aside statutory demand

(1) Where a person has been served with a statutory demand he or she may apply to the Court to set it aside.

(2) An application under subsection (1) shall be made within 14[150] days of the date of service of the demand on him or her.

(3) The Court may not extend the time for making or serving an application to set aside a statutory demand.

(4) Subject to an order of the Court under section 157, the time for compliance with the demand ceases to run as from the date upon which an application under subsection (1) is filed with the Court.

(5) A person applying to set aside a statutory demand under this section shall give 7 days notice of the hearing to the creditor or, where a person is named in the demand as the person with whom communications in respect of the demand should be made, to that person.

157. Hearing to set aside statutory demand

(1) The Court shall set aside a statutory demand if it is satisfied that—

(a) there is a substantial dispute as to whether—

(i) the debt; or

(ii) a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum, is owing or due;

(b) the person on whom the statutory demand was served has a reasonable prospect of establishing a set-off, counterclaim or cross claim in an amount equal to or greater than the amount specified in the demand less the prescribed minimum; or

(c) the creditor holds a security interest in respect of the debt claimed and the value of the security interest is equal to or greater than the amount specified in the demand less the prescribed minimum.

(2) The Court may set aside a statutory demand if it is satisfied that substantial injustice would otherwise be caused—

(a) because of a defect in the demand, including a failure to comply with section 155(3); or

(b) for some other reason.

(3) Where the Court is satisfied that the security interest of a secured creditor has been under-valued in the statutory demand, the Court may require the creditor to amend the demand accordingly, but without prejudice to his or her right to make application for the appointment of a liquidator or for[151] a bankruptcy order, as the case may be.

(4) If, on hearing an application to set aside a statutory demand, the Court is satisfied that there are no grounds for setting aside the statutory demand, it may extend the time for compliance with the statutory demand.

(5) If the Court dismisses an application to set aside a statutory demand, it shall make an order authorising the creditor to make application for the appointment of a liquidator or for[152] a bankruptcy order, as the case may be.

(6) Having considered the evidence before it on a hearing under this section, the Court may either summarily determine the application or adjourn it giving such directions as it considers fit.

PART VI - LIQUIDATION

PRELIMINARY

158. Application of this Part to Official Receiver

Where the Official Receiver is appointed as the liquidator or provisional liquidator of a company, the provisions of this Act that apply to a liquidator apply to the Official Receiver, as liquidator, unless otherwise provided.

159. Appointment of liquidator

(1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as liquidator—

(a) of a company, on an application under section 162; or

(b) of a foreign company, on an application under section 163.

(2) Subject to subsection (5) and[153] section 161, the members of a company may, by a qualifying resolution, appoint an eligible insolvency practitioner as liquidator of the company.

(3) For the purposes of subsection (2), a resolution is a "qualifying resolution" if it is passed at a properly constituted meeting of the company by a majority of 75%, or if a higher majority is required by the memorandum or articles, by that higher majority, of the votes of those members who are present at the meeting and entitled to vote on the resolution.

(4) The members of a foreign company may not appoint a liquidator under this Part and any resolution of the members of a foreign company that purports to appoint a liquidator under this Part is void and of no effect.

(5) The members of a company that is a regulated person may not appoint a liquidator under subsection (2) unless at least 5 business days written notice of the resolution, or such shorter period of notice as[154]

(a) the VIDIC, in the case of a regulated person that is a bank; or

(b) the Commission, in the case of any other regulated person,

may agree to accept in writing, has been given to the VIDIC or the Commission, as the case may be.[155]

(6) A resolution passed in contravention of subsection (5) is void and of no effect.[156]

160. Duration of liquidation

The liquidation of a company commences at the time at which a liquidator is appointed as provided in section 159 and continues until it is terminated in accordance with section 232 and, throughout this period, the company is referred to in this Act as "in liquidation".

161. Appointment of liquidator by members

(1) The members of a company may not appoint a liquidator of the company if—

(a) an application to the Court to appoint a liquidator has been filed and served[157] but not yet determined;

(b) a liquidator has been appointed by the Court; or

(c) the person to be appointed liquidator has not consented in writing to his or her appointment, and a resolution to appoint a liquidator in the circumstances referred to in paragraphs (a), (b) or (c) is void and of no effect.

(2) Where the members resolve to appoint a liquidator under section 159(2), the company shall, as soon as practicable, give the liquidator notice of his or her appointment.

(3) The members of a company may not appoint the Official Receiver as liquidator of the company, and any resolution of the members that purports to do so is void and of no effect.

(3A) The acts of a liquidator appointed in breach of subsection (1)(a) carried out in good faith are valid provided that he or she is not aware of the breach.[158] [159]

(4) A company that contravenes subsection (2) commits an offence.

APPOINTMENT OF LIQUIDATOR BY COURT

162. Appointment of liquidator by Court[160]

(1) The Court may, on application by a person specified in subsection (2), appoint a liquidator of a company under section 159(1) if—

(a) the company is insolvent;

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(c) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Subject to subsections (3), (4), (5), (5A) and (5B), an application under subsection (1) may be made by one or more of the following—[161]

(a) the company;

(b) a creditor;

(c) a member;

(d) the supervisor of a creditors' arrangement in respect of the company;

(e) the Commission;

(f) the International Tax Authority;[162]

(g) the VIDIC; and[163]

(h) the Attorney General. [164] [165]

(3) An application under subsection (1)(a) by a member may only be made with the leave of the Court, which shall not be granted unless the Court is satisfied that there is a prima facie case that the company is insolvent.

(4) An application to appoint a liquidator under subsection (1)(c) may only be made by the Commission, the International Tax Authority, the VIDIC or the Attorney General. [166] [167]

(5) The Commission may only make an application to appoint a liquidator under subsection (1)(c) if the company concerned is, or at any time has been, a regulated person or the company is carrying on, or at any time has carried on, unlicensed financial services business[168].

(5A) The International Tax Authority shall only make an application to appoint a liquidator under subsection (1)(c) if the company has been the subject of a determination by the International Tax Authority pursuant to section 10 of the Economic Substance (Companies and Limited Partnerships) Act to the effect that it has been carrying on a relevant activity in breach of the economic substance requirements or has been found to be in breach of the Mutual Legal Assistance (Tax Matters) Act, 2003; [169] [170]

(5B) The VIDIC shall only make an application to appoint a liquidator under subsection (1)(c) if the company that is a bank is in financial distress or is placed into resolution and the VIDIC is empowered, in accordance with rules prescribed under section 7(2)(c) of the Virgin Islands Deposit Insurance Act, to act as liquidator of a member institution or such member institution's holding company or subsidiary which becomes insolvent. [171]

(6) Where a creditors[172] arrangement has terminated, the person who, immediately before the termination of the arrangement, was the supervisor is treated as the supervisor for the purposes of this section.

(7) An applicant may, in his or her application under this section, propose an eligible insolvency practitioner as liquidator of the company.

(8) Where an order is made under section 159(1) at a time when an arrangement is in force in respect of the company, the Court may appoint the supervisor of the arrangement as liquidator of the company.

(9) For the purposes of subsection (5B) [173]

(a) "financial distress" and "member institution" shall be construed in accordance with section 2 of the Virgin Islands Deposit Insurance Act; and

(b) "resolution" shall be construed in accordance with section 2(1) of the Banks and Trust Companies Act.

163. Appointment of liquidator of a foreign company

(1) The Court may, on application by a person specified in section 162(2), appoint a liquidator of a foreign company under section 159(1) if the Court is satisfied that the company has a connection with the Virgin Islands and—

(a) the company is insolvent;

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed;

(c) the Court is of the opinion that it is in the public interest for a liquidator to be appointed;

(d) the company is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

(e) the company has ceased to carry on business; or

(f) the company is carrying on business only for the purpose of winding up its affairs.

(2) For the purposes of subsection (1), a foreign company has a connection with the Virgin Islands only if—

(a) it has or appears to have assets in the Virgin Islands;

(b) it is carrying on, or has carried on, business in the Virgin Islands; or

(c) there is a reasonable prospect that the appointment of a liquidator of the company under this Part will benefit the creditors of the company.

(3) An application for the appointment of a liquidator of a foreign company may be made—

(a) notwithstanding that the company has been dissolved or has otherwise ceased to exist under or by virtue of the laws of any other country; and

(b) whether or not the company is or has been registered under Part IX of the Companies Act, 1885 or Part XI of the BVI Business Companies Act.[174]

(3A) An application to appoint a liquidator under subsection (1)(c) may only be made by the Commission, the International Tax Authority, the VIDIC or the Attorney General.[175] [176] [177]

(3B) The Commission may only make an application to appoint a liquidator under subsection (1)(c) if the foreign company concerned is or at any time has been, a regulated person or the company is carrying on, or at any time has carried on, unlicensed financial services business".[178].[179]

(3C) The International Tax Authority shall only make an application to appoint a liquidator under subsection (1)(c) if the foreign company has been the subject of a determination by the International Tax Authority pursuant to section 10 of the Economic Substance (Companies and Limited Partnerships) Act

to the effect that it has been carrying on a relevant activity in breach of the economic substance requirements. [180]

(3D) The VIDIC shall only make an application to appoint a liquidator under subsection (1) (c) if the company that is a bank is in financial distress or is placed into resolution and the VIDIC is empowered, in accordance with rules prescribed under section 7(2)(c) of the Virgin Islands Deposit Insurance Corporation Act, to act as liquidator of a member institution or such member institution's holding company or subsidiary which becomes insolvent. [181]

(4) Subject to the modifications and exceptions set out in Schedule 3, the provisions of this Part apply to an application to appoint a liquidator of a foreign company and to the liquidation of a foreign company.

(5) For the purposes of subsection (3D) [182]

(a) "financial distress" and "member institution" shall be construed in accordance with section 2 of the Virgin Islands Deposit Insurance Act; and

(b) "resolution" shall be construed in accordance with section 2(1) of the Banks and Trust Companies Act.

164. Withdrawal of application

An application for the appointment of a liquidator may not be withdrawn except with the leave of the Court.

165. Advertisement of application

(1) Unless the Court otherwise orders, an application for the appointment of a liquidator shall be advertised—

(a) if the company is the applicant, not less than 7 days before the date set for the application to be heard; or

(b) if the company is not the applicant, not less than 7 days after service of the application on the company and not less than 7 days before the date set for the application to be heard.

(2) If the application is not advertised in accordance with this section and the Rules, the Court may dismiss it.

166. Substitution of applicant

(1) In the circumstances specified in subsection (2), the Court may, by order, substitute as applicant in an application for the appointment of a liquidator, a creditor or member who is entitled to make such an application.

(2) The Court may make a substitution order under subsection (1) where the original applicant is a member or creditor of the company and the Court considers it appropriate to do so—

(a) because the applicant applies to withdraw the application or consents to it being dismissed;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

167. Court's power on hearing of an application

(1) On the hearing of an application for the appointment of a liquidator, the Court may—

(a) appoint a liquidator under section 159(1);

(b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers fit.

(2) The Court shall not refuse to appoint a liquidator of a company merely because—

(a) the assets of the company are subject to a security interest in respect of an amount equal to or greater than the value or amount of the assets;

(b) the company has no assets; or

(c) where the applicant is a member, if the order were made, no assets of the company would be available for distribution among the members.

(3) Where an application to appoint a liquidator is made by a member under section 162(1)(b), if the Court is of the opinion that—

(a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and

(b) in the absence of any other remedy it would be just and equitable to appoint a liquidator, it shall appoint a liquidator unless it is also of the opinion that some other remedy is available to the applicant and that he or she is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy.

(4) An application for the appointment of a liquidator shall be dismissed if the company is in liquidation, a liquidator having been appointed by the members under section 159(2).[183]

168. Period within which application shall be determined

(1) Subject to subsection (2), an application for the appointment of a liquidator shall be determined within 6 months after it is filed.

(2) The Court may, upon such conditions as it considers fit, extend the period referred to in subsection (1) for one or more periods not exceeding 3 months each if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

(4) Section 496(1)(a) shall not apply to the time periods specified in this section.[184]

169. Expenses of an arrangement

Where a liquidator of a company is appointed and, at the date that the application was filed, an arrangement was being supervised by a supervisor, the remuneration of the supervisor is a first charge on the assets of the company.

INTERIM RELIEF

170. Appointment of provisional liquidator[185]

(1) Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, the Court may, on application by a person specified in subsection (2), appoint

the Official Receiver or an eligible insolvency practitioner as provisional liquidator of the company on the grounds specified in subsection (4).

(2) Subject to subsection (3), an application under subsection (1) may be made by one or more of the following—[186]

(a) the applicant for the appointment of a liquidator;

(b) the company;

(c) a creditor;

(d) a member;

(e) the Commission;

(f) the International Tax Authority; [187]

(g) the VIDIC; and

(h) the Attorney General [188]

(3) An application under subsection (1) by a member may only be made with the leave of the Court.

(4) The Court may appoint a provisional liquidator under subsection (1) if—

(a) the company, in respect of which the application to appoint a liquidator has been made, consents; or

(b) the Court is satisfied that the appointment of a provisional liquidator—

(i) is necessary for the purpose of maintaining the value of assets owned or managed by the company; or

(ii) is in the public interest.

(5) The Court may appoint a provisional liquidator on such terms as it considers fit and may, as a condition precedent to the appointment, require the applicant to deposit at Court, or otherwise secure to the satisfaction of the Court,[189] such sum as the Court considers reasonable to cover the remuneration of the provisional liquidator.

171. Rights and powers of provisional liquidator

(1) Subject to subsection (2), a provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which he or she was appointed.

(2) The Court may limit the powers of a provisional liquidator in such manner and at such times as it considers fit.

172. Remuneration of provisional liquidator

(1) The provisional liquidator of a company is entitled to be paid such remuneration as the Court may order applying the general principles specified in section 432.

(2) Subject to subsections (4) and (5), the remuneration of the provisional liquidator is payable out of the assets of the company.

(3) Where a liquidator is appointed, the remuneration of the provisional liquidator shall be paid in accordance with the prescribed priority.

(4) If a liquidator is not appointed, the Court may order the applicant for the appointment of the provisional liquidator to pay or contribute to the remuneration and expenses of the provisional liquidator if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in applying for the appointment of the provisional liquidator.

(5) If the assets of the company are not sufficient to pay the remuneration of the provisional liquidator, the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the appointment of the provisional liquidator.

(6) Unless the Court otherwise orders, where subsection (4)(a) applies, the provisional liquidator may retain out of the company's assets such sums or assets as are, or may be, required for meeting his or her remuneration.

173. Termination of appointment of provisional liquidator

(1) The Court may, on the application of the provisional liquidator or of any person specified in section 170(2) or on its own motion, terminate the appointment of a provisional liquidator.

(2) If the Court has not previously terminated the appointment of a provisional liquidator under subsection (1), it terminates on the determination by the Court of the application to appoint a liquidator.

(3) On the termination of the appointment of a provisional liquidator, the Court may give such directions or make such order with respect to the accounts of his or her administration, or to any other matters, as it considers appropriate.

174. Power to stay or restrain proceedings etc.

(1) Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, a person specified in section 170(2) may—

(a) where any action or proceeding is pending against the company in the Court, the Court of Appeal or the Privy Council, apply to the Court, the Court of Appeal or the Privy Council, as the case may be, for a stay of the action or proceeding; and

(b) where any action or proceeding is pending against the company in any other Virgin Islands court or tribunal in the Virgin Islands, apply to the Court for a stay of the action or proceeding.

EFFECT OF LIQUIDATION

175. Effect of liquidation

(1) Subject to subsection (2), with effect from the commencement of the liquidation of a company—

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part or authorised by the liquidator[190];

(c) unless the Court otherwise orders, no person may—

(i) commence or proceed with any action or proceeding against the company or in relation to its assets; or

(ii) exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the company;

(d) unless the Court otherwise orders, no share in the company may be transferred;

(e) no alteration may be made in the status of or to the rights or liabilities of a member, whether by an amendment of the memorandum or articles or otherwise;

(f) no member may exercise any power under the memorandum or articles, or otherwise, except for the purposes of this Act; and

(g) no amendment may be made to the memorandum or articles of the company.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

(3) Anything or matter done or purported to be done in contravention of subsection (1) is void and of no effect.

176. Restriction on execution or attachment

(1) Subject to subsections (2) and (3), a creditor is not entitled to retain the benefit of any execution process, distress or attachment over or against the assets of a company in liquidation unless the execution, process or attachment is completed before the first occurring of the commencement of the liquidation and—

(a) where the liquidator was appointed by the members under section 159(2), the date upon which the creditor had notice of the calling of the meeting at which the resolution was proposed; or

(b) where the liquidator was appointed by Court, the date upon which the application to appoint the liquidator was filed.

(2) A person who, in good faith and for value, purchases assets of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company.

(3) The Court may set aside the rights conferred on a liquidator under subsection (1) to the extent and subject to such terms as it considers fit.

(4) For the purposes of this section—

(a) an execution or distraint against personal property is completed by seizure and sale;

(b) an attachment of a debt is completed by the receipt of the debt; and

(c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

177. Duties of officer in execution process

(1) Subject to subsection (6), where—

(a) assets of a company are taken in an execution process; and

(b) before completion of the execution process the officer charged with the execution process receives notice that a liquidator or a provisional liquidator of a company has been appointed, he or she, on being required by the liquidator or provisional liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the liquidator.

(2) The costs of the execution process are a first charge on any asset delivered or transferred to the liquidator under subsection (1) and the liquidator may sell all or some of the assets to satisfy that charge.

(3) Subject to subsections (4) and (6), if in an execution process in respect of a judgement for a sum exceeding $500, assets of a company are sold or money is paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of 14 days.

(4) If—

(a) within the period of 14 days referred to in subsection (3), the officer has notice that—

(i) an application for the appointment of a liquidator of the company has been filed; or

(ii) a meeting of the members of the company has been called at which a resolution to appoint a liquidator is to be proposed; and

(b) a liquidator is appointed in respect of the company, the officer shall deduct the costs of execution from the amount that he or she has retained under subsection (3) and pay the balance to the liquidator.

(5) A liquidator to whom money has been paid under subsection (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the rights conferred on a liquidator under this section to the extent and subject to such terms as it considers fit.

NOTICE OF APPOINTMENT AND FIRST MEETINGS OF CREDITORS

178. Notice of appointment of liquidator

(1) The liquidator of a company shall, within 14 days of the date of his or her appointment—

(a) advertise his or her appointment in accordance with the Rules;[191]

(b) file notice of his or her appointment with the Registrar;

(c) serve notice of his or her appointment on the company in respect of which he or she was appointed; and

(d) if he or she has been appointed in respect of a company that is or has been a regulated person, serve notice of his or her appointment on the Commission.

(2) A liquidator who contravenes subsection (1) commits an offence.

179. Liquidator to call first meeting of creditors

(1) Subject to section 183, the liquidator of a company shall call a meeting of the creditors of the company (the first creditors' meeting) to be held within 21[192] days of the date of his or her appointment—

(a) by sending a notice of the meeting to every creditor not less than 7 days before the date upon which the meeting is to be held; and

(b) by advertising the meeting.

(2) During the period before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with—

(a) a list of the creditors of the company known to the liquidator; and

(b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors meeting and, if appointed by the members, shall report to the meeting on any exercise by him or her of his or her powers since his or her appointment.

(4) At the first creditors' meeting, the creditors may—

(a) in the case of a liquidator appointed by the members, appoint another liquidator in his or her place; or

(b) in the case of a liquidator appointed by the Court, resolve to make application to the Court for the appointment of another liquidator in his or her place; and

(c) in either case, appoint a creditors' committee.

(5) A liquidator who contravenes subsections (1), (2) or (3) commits an offence.

180. Application to Court by members

Where at a meeting held under section 179 the creditors appoint a liquidator in the place of the liquidator appointed by the members, a director, member or creditor of the company may apply to the Court for an order that—

(a) the person appointed by the members is appointed liquidator; or

(b) some other insolvency practitioner is appointed as liquidator, in either case, instead of or jointly with the liquidator appointed by the creditors.

181. Application of sections 178 and 179

(1) Subject to subsection (2), sections 178 and 179 do not apply to a liquidator appointed to act—

(a) with an existing liquidator; or

(b) in place of a liquidator who has died or otherwise ceased to act.

(2) Where the first liquidator of a company dies or ceases to act before sections 178 and 179 have been fully complied with, those sections apply to his or her successor and any continuing liquidator until the sections have been fully complied with.

182. Restrictions on powers of liquidator appointed by members

Notwithstanding section 186, in the case of a liquidator appointed by the members of a company, during the period before the holding of the first creditors' meeting called under section 179, the powers of the liquidator are limited to—

(a) taking into his or her custody and control all the assets to which the company is or appears to be entitled;

(b) disposing of perishable goods and other assets the value of which is likely to diminish if they are not immediately disposed of;

(c) doing all such things as may be necessary to protect the company's assets; and

(d) exercising such other of the powers conferred on a liquidator by section 186 as the Court may, on his or her application, sanction.

183. Court appointed liquidator may dispense with creditors' meeting

A liquidator appointed by the Court is not required to call a meeting of creditors under section 179 if—

(a) he or she considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;

(b) he or she gives notice to the creditors stating—

(i) that he or she does not consider it necessary for a meeting to be held;

(ii) the reasons for his or her view; and

(iii) that a meeting will not be called unless 10%in value of the creditors give written notice to the liquidator within 10 days of receiving the notice, that they require a meeting to be called; and

(c) no notice requiring a meeting to be held is received by him or her.

LIQUIDATORS

184. Status of liquidator

(1) In performing his or her functions and undertaking his or her duties under this Act, a liquidator, whether appointed by resolution of the members or by the Court, acts as an officer of the Court.

(2) A liquidator is the agent of the company in liquidation.

185. General duties of liquidator

(1) The principal duties of a liquidator of a company are—

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Act; and

(c) if there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Act.

(2) The liquidator shall, subject to this Act and the Rules, use his or her own discretion in undertaking his or her duties.

(2A) If it appears to the liquidator that the company has carried on unlicensed financial services business, he or she shall as soon as reasonably practicable report the matter to the Commission.[193]

(2B) Where the liquidator makes a report to the Commission under subsection (2A) he or she shall—

(a) send to the Commission a copy of every notice or other document that he or she is required under this Part to send to a creditor or the Court; and

(b) notify the Commission of any application made to the Court in or in connection with the liquidation.[194]

(3) A liquidator also has the other duties imposed by this Act and the Rules and such duties as may be imposed by the Court.

186. General powers of liquidator

(1) A liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator under this Act and the powers conferred on him or her by this Act.

(2) Without limiting subsection (1), a liquidator has the powers specified in Schedule 2.

(3) The Court may provide that certain powers may only be exercised with the sanction of the Court—

(a) where the liquidator is appointed by the Court, on his or her appointment or subsequently; or

(b) where the liquidator is appointed by the members, at any time.

(4) Where a liquidator disposes of any assets of the company to a person connected with the company, he or she shall notify the creditors' committee, if any, of such disposition.

(5) The liquidator of a company, whether or not appointed by the Court, may at any time apply to the Court for directions in relation to a particular matter arising in the liquidation.

(6) The acts of a liquidator of a company are valid notwithstanding any defect in his or her nomination, appointment or qualifications.[195]

187. Removal of liquidator[196]

(1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if—

(a) the liquidator—

(i) is not eligible to act as an insolvency practitioner in relation to the company;

(ii) breaches any duty or obligation imposed on him or her by or owed by him or her under this Act, the Rules or the Regulations made under section 486 or, in his or her capacity as liquidator, under[197] any other enactment or law in the Virgin Islands, ;or

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that—

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the liquidator has an interest that conflicts with his or her role as liquidator; or

(iii) that for some other reason he or she should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by—[198]

(a) the creditors' committee;

(b) a creditor or member of the company;

(c) the International Tax Authority, if the appointment was made on its application;

(d) the VIDIC, if the appointment was made on its application; or

(e) the Official Receiver.

(3) Where the Court removes a liquidator from office under this section—

(a) if, following his or her removal, there is at least one liquidator remaining in office, the Court may appoint an eligible insolvency practitioner as[199] liquidator in his or her place; or

(b) if the liquidator removed was the sole liquidator of the company, the Court shall appoint the Official Receiver or an eligible insolvency practitioner as[200] liquidator in his or her place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers fit.

188. Resignation of liquidator

(1) A liquidator of a company—

(a) shall resign if he or she is no longer eligible to act as an insolvency practitioner in relation to the company; but

(b) otherwise may only resign in accordance with this section.

(2) Where a liquidator resigns under subsection (1)(a), he or she shall send a notice of his or her resignation to the creditors of the company to the Registrar[201] and to the Official Receiver and, if he or she was appointed by the Court, to the Court and his or her resignation takes effect from the date that the notice is received by the Official Receiver[202].

(3) A liquidator may resign in accordance with subsection (5)—

(a) if he or she intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him or her of his or her duties; or

(c) on the grounds of ill health.

(4) Notwithstanding subsection (3), where joint liquidators are appointed in respect of a company, one or more of the joint liquidators may resign in accordance with subsection (5) if—

(a) all the joint liquidators are of the opinion that it is no longer necessary or expedient for the resigning liquidator or liquidators to continue in office; and

(b) at least one of them will remain in office.

(5) Where the liquidator of a company intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he or she shall call a meeting of creditors for the purpose of accepting his or her resignation as liquidator.

(6) If the creditors resolve to accept the resignation of a liquidator, they may appoint an eligible insolvency practitioner as liquidator in his or her place.[203]

(6A) If the creditors refuse or fail to accept the resignation of the liquidator, he or she may apply to the Court for leave to resign in accordance with the Rules.[204]

(7) This section does not apply to the Official Receiver when acting as the liquidator of a company.

189. Appointment of replacement liquidator[205]

(1) Where the liquidator of a company dies or resigns under section 188 and no liquidator is appointed in his or her place, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one liquidator remaining in place, may appoint an eligible insolvency practitioner as liquidator in his or her place; or

(b) if the liquidator who has died or resigned was the sole liquidator of the company, shall appoint the Official Receiver or an eligible insolvency practitioner in his or her place.[206]

(2) An application under subsection (1) may be made—

(a) by any continuing liquidator;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

(3) Where the Official Receiver is the liquidator of a company, an eligible insolvency practitioner may be appointed in his or her place—

(a) on the application of the Official Receiver, by the Court; or

(b) with the consent of the Official Receiver, by resolution of the creditors at a meeting called by the Official Receiver for that purpose.[207]

(4) An application may be made under subsection (3) notwithstanding that the Court has refused to make an appointment on a previous application by the Official Receiver.[208]

190. Remuneration of liquidator

The remuneration payable to the liquidator of a company shall be fixed applying the principles set out in section 432.

191. Notification of liquidation

(1) Where a company is in liquidation, every document of a type specified in subsection (2) shall—

(a) state that the company is in liquidation; and

(b) specify the name of the liquidator.

(2) Subsection (1) applies to—

(a) every public document issued by or on behalf of the company;

(b) every public document issued by or on behalf of the liquidator of the company or a receiver of the assets of that company on which, in either case, the name of the company appears.

(3) If subsection (1) is contravened the company, and each officer, receiver or liquidator of the company who causes, permits or acquiesces in the contravention, commits an offence.

192. Vesting of assets in liquidator

(1) On the application of the liquidator of a company, the Court may order that all or any part of the assets of the company, or held by trustees on its behalf, shall vest in the liquidator from the date of the order.

(2) On the making of an order under subsection (1), the assets covered by the order vest in the liquidator by his or her official name.

(3) The liquidator of a company 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 the vested assets or which it is necessary to bring or defend for the purposes of liquidating the company and recovering its assets.

MEMBERS

193. Settlement of list of members

(1) Subject to subsection (7), the liquidator[209] of a company shall, as soon as practicable after his or her appointment, settle a list of the members of the company containing the information and in the form prescribed.

(2) Forthwith after settling the list of members, the liquidator shall give notice to every person included in the list that he or she has done so in accordance with the Rules.

(3) If a person objects to any entry in, or exclusion from, the list of members as settled by the liquidator which is not accepted by the liquidator, he or she may apply to the Court for an order removing the entry to which he or she objects or, as the case may be, modifying the entry.

(4) An application under subsection (3) shall be made within 21 days of the service on the applicant of the liquidator's notice declining to accept the objection.

(5) The liquidator of a company is not personally liable for the costs incurred by a person in an application under subsection (3) unless the Court makes an order to that effect.

(6) The liquidator may from time to time vary or add to the list of members as previously settled by him or her and any variation or addition is subject, as regards any person affected, to the provisions of the Act and the Rules applicable to the settling of the list.

(7) The liquidator is not required to settle a list of members under this section if it appears to him or her that it will not be necessary to require any member to contribute to the assets of the company or to adjust the rights of members.[210]

194. Rectification of register of members

(1) If it appears to the liquidator of a company that the register of members of the company should be rectified, he or she may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may rectify the register of members of the company.

195. Liability of members limited

(1) Unless the memorandum of a company provides that the liability of a member is unlimited, the liability of a member to contribute to the assets of a company in liquidation for the payment of its liabilities, for the expenses of the liquidation and for the adjustment of the rights of the members between themselves is limited to—

(a) any amount unpaid on a share held by the member, including any liability for calls; and

(b) any liability expressly provided for in the memorandum or articles, including such contribution as the member of a company limited by guarantee, or by shares and guarantee, may have undertaken to make in the event of the company being wound up.

(2) Subsection (1) does not affect—

(a) any liability of the member to pay or repay monies to the company imposed by a provision of this Act, or the BVI Business Companies Act[211]; or

(b) any liability of a member to the company under a contract, including a contract for the issue of shares, or for any tort, breach of fiduciary duty or other actionable wrong committed by the member.

196. Liability of past members

(1) For the purposes of this section, a "past member" of a company is a person who ceased to be a member of the company at any time during the period of one year before the commencement of the liquidation of the company.

(2) Unless the Court is satisfied that the members of a company are able to discharge the liabilities set out in 195(1), a past member of a company in liquidation is liable to contribute to the assets of the company for the purposes specified in that subsection to the same extent as a member.

(3) Notwithstanding subsection (2), a past member is not liable to contribute to the assets of the company in respect of any liability of the company contracted after he or she ceased to be a member.

197. Dividends payable to member

A member, and a past member, of a company may not claim in the liquidation of the company for a sum due to him or her in his or her character as a member, whether by way of dividend, profits, redemption proceeds or otherwise, but such sum is to be taken into account for the purposes of the final adjustment of the rights of members and, if appropriate, past members between themselves.

198. Liability where limited company becomes unlimited company

(1) This section applies where an unlimited company in liquidation was at some former time registered as a limited company.

(2) A person who ceased to be a member of a company before the company became registered as an unlimited company, and has not since become a member of the company, is liable to contribute to the assets of the company only to the extent that he or she would have been liable had the company remained registered as a limited company.

199. Liability where unlimited company becomes limited company

(1) This section applies where a limited company in liquidation was at some former time registered as an unlimited company.

(2) Notwithstanding section 196, if a company referred to in subsection (1) goes into liquidation within the period of one year from the date on which it was registered as a limited company, a person who was a member of the company at the date of its registration as a limited company is liable, without limit, to contribute to the assets of the company in respect of liabilities contracted before that time.

200. Liability of personal representative

The personal representatives of a member or past member who has died are liable to contribute out of his or her estate to the assets of the company under sections 195, 196, 198 and 199 to the same extent as the member.

201. Effect of member or past member becoming bankrupt

The liquidator of a company is entitled to submit a claim in the bankruptcy or liquidation of any member or past member of the company in respect of any contribution that the member or past member is required to make under sections 195, 196, 198 and 199.

202. Status of personal representatives or bankruptcy trustee[212]

The personal representatives and the bankruptcy trustee[213] of a member or past member of a company in liquidation are entitled to make any application to Court, or take any such other action, as could be made or taken by the member or past member.

203. Insurance and other contracts not affected

Nothing in this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract.

204. Power of liquidator to enforce liability of member or past member

(1) The liquidator of a company may—

(a) if a member is liable to calls, make calls on that member; and

(b) if a member or past member is liable to the company, as a member, require him or her, by notice in writing, to discharge that liability.

(2) A call made under subsection (1)(a) shall be in writing and shall specify the amount of, or balance due in respect of, the call.

(3) The liability of a member under subsection (1) includes a liability of the estate of the person he or she represents.

(4) In the case of an unlimited company, a member may set-off against a liability under subsection (1)(b) any money due to him or her or to the estate which he or she represents, from the company on

any independent dealing or contract with the company, but not any money due to him or her as a member of the company in respect of any dividend or profit.

(5) The liquidator may enforce the liability of a member under subsection (1) only if that member is on the list of members settled by him or her under section 193.

205. Summary remedy against members and past members

(1) The liquidator may apply to the Court for an order under this section if—

(a) a member of a company fails to comply with a call made under section 204(1)(a); or

(b) a member or past member fails to satisfy a liability when required to do so under 204(1)(b).

(2) On an application under subsection (1), the Court may order a member or past member to pay to the company any money due from him, or due from the estate of the person who he represents in accordance with section 204(1).

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, together with interest at the official rate, any money due on any account whatever to a member from the company may be allowed to him by way of set-off against any subsequent call.

206. Order under section 205 to be conclusive evidence

An order made against a member under section 205 is, subject to any right of appeal, conclusive evidence that the money, if any, ordered to be paid is due.

207. Distribution of assets of company

(1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in liquidation shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying the preferential claims admitted by the liquidator in accordance with the provisions for the payment of preferential claims prescribed;

(c) after payment of the preferential claims, in paying all other claims admitted by the liquidator; and

(d) after paying all admitted claims, in paying any interest payable under section 215.

(2) Subject to section 151, the claims referred to in subsection (1)(c) rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be distributed to the members in accordance with their rights and interests in the company.

(4) For the purposes of this Act, assets held by a company in liquidation on trust for another person are not assets of the company.

CLAIMS

208. Claims having priority over floating charges

(1) So far as the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay—

(a) the costs and expenses of the liquidation in accordance with the prescribed priority, and

(b) the preferential creditors, those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

209. Claims by unsecured creditors

(1) An unsecured creditor may make a claim against a company in liquidation by submitting to the liquidator a written claim, signed by him or her or on his or her behalf.

(2) The liquidator may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his or her claim by affidavit;

(b) to provide further particulars of his or her claim; or

(c) to provide him or her with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (6A), as soon[214] as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the liquidator may have imposed under subsection (2), the liquidator shall either admit or reject the claim in whole or in part.

(4) If the liquidator rejects the claim, whether in whole or in part, he or she shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the liquidator under subsection (2).

(6) The liquidator shall not admit a claim against the company unless it has been made in accordance with this section.

(6A) The liquidator is not required to admit or reject claims under subsection (3) at any time when it appears to him or her that the company has insufficient assets to enable a distribution to be made to unsecured creditors.[215]

(7) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim, commits an offence.

210. Variation, withdrawal and expunging of claims

(1) A claim made under section 209 may—

(a) be amended or withdrawn by the creditor at any time before the liquidator has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the liquidator at any time after the liquidator has admitted it.

(2) The Court, on the application of the liquidator or, where the liquidator declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

211. Claims by secured creditors

(1) A secured creditor may—

(a) value the assets subject to the security interest and claim in the liquidation of a company as an unsecured creditor for the balance of his or her debt; or

(b) surrender his or her security interest to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole of his or her debt, but he or she is not obliged to do either.

(2) A secured creditor may, at any time apply to the liquidator to amend the value that he or she placed on the security interest in his or her claim.

(3) If, on receiving an application under subsection (2), the liquidator is satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed, he or she may permit the secured creditor to amend the value that he or she places on the security interest.

(4) If the liquidator of a company is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)(a) or on an amendment under subsection (3), he or she may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the liquidator or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the liquidator are entitled to bid for and purchase them.

212. Redemption of security interest by liquidator

(1) Where a secured creditor has claimed in the liquidation of a company under section 211(1)(a), the liquidator may at any time give notice to the creditor that he or she proposes at the expiration of 28 days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within 21 days of the date of the notice, apply to the liquidator to revise the value that he or she places on the security interest in accordance with section 211(2).

(3) At the expiration of 28 days from the date of the notice under subsection (1), the liquidator may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the liquidator to amend the value that he or she places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the liquidator to permit him or her to amend the value that he or she places on his or her security interest, and that appeal has not been determined.

(4) Where, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his or her security interest is amended, whether with the consent of the liquidator or on appeal to the Court, the liquidator may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the liquidator, require him or her to elect whether or not to exercise his or her power to redeem under this section.

(6) Where a notice to elect is served on a liquidator under subsection (5), he or she is not entitled to redeem the security interest unless he or she does so within 6 months of the date of service of the notice on him or her or within such extended period as the Court may allow.

213. Realisation of security interest by secured creditor

(1) Where a secured creditor realises his or her security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he or she shall account to the liquidator for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) Where a secured creditor realises his or her security interest and the net amount realised is not sufficient to satisfy the liability secured—

(a) if the creditor has previously valued his or her security interest and claimed in the liquidation for the balance under section 211(1)(a), the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the liquidation as an unsecured creditor for the balance of the secured liability.

(3) For the purposes of this section, the secured liability includes contractual interest payable to the secured creditor on the liability up to the time of its satisfaction.

214. Surrender for non-disclosure

(1) Subject to subsection (2), if a secured creditor omits to disclose his or her security interest when submitting a claim in the liquidation of a company, he or she shall surrender his or her security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his or her security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct—

(a) that he or she is not required to surrender his or her security interest; and

(b) that he or she values his or her security interest and amends his or her claim accordingly.

215. Interest after commencement of liquidation

(1) Interest is payable on any claim in the liquidation of a company in respect of the period after the commencement of the liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the liquidation of a company shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the liquidation.

(3) Subject to section 151, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally and if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(4) The rate of interest payable under this section is the greater of—

(a) the court rate; and

(b) the rate that would be applicable to the claim if a liquidator of the company had not been appointed.

DISTRIBUTIONS

216. Power to exclude creditors not claiming in time

(1) Where the liquidator of a company has sufficient funds to make a distribution, he or she shall, subject to the retention of such sums as may be necessary for his or her remuneration and the other

costs and expenses of the liquidation[216], by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims to him or her.

(2) Where the liquidator sends a notice to creditors under subsection (1), a creditor who does not submit a claim on or before the date specified in the notice is excluded from[217] the benefit of any distribution on or after that date that is made before he or she submits his or her claim.

(3) Where the liquidator makes more than one distribution, subsections (1) and (2) apply to each distribution.[218]

DISCLAIMER

217. Liquidator may disclaim onerous property

(1) For the purposes of this section, "onerous property" means—

(a) an unprofitable contract; or

(b) assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to section 219, the liquidator of a company may, by filing a notice of disclaimer with the Court, disclaim any onerous property of the company even though he or she has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A liquidator who disclaims onerous property shall, within 14 days of the date on which the disclaimer notice is filed, give notice to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A liquidator who contravenes subsection (3) commits an offence.

218. When disclaimer takes effect

(1) Subject to subsection (2), a disclaimer takes effect on the date when the notice of disclaimer is filed at Court.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the liquidator is aware of their addresses, to every person claiming under the company as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 221 with respect to that property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer shall take effect.

(3) Where the Court gives a direction under subsection (2)(b), it may also, instead of or in addition to any order it makes under section 221, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers fit.

219. Notice to liquidator to elect whether to disclaim

(1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the liquidator, require him or her to elect whether or not to disclaim the property.

(2) Where a notice to elect is served on a liquidator, he or she is not entitled to disclaim the property under section 217 unless he or she does so within 28 days of the date of service of the notice on him or her or within such extended period as the Court may allow.

220. Effect of disclaimer

(1) A disclaimer of onerous property under section 217—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) except so far as is necessary to release the company from liability, does not affect the rights or liabilities of any other person.

(2) A person suffering loss or damage as a result of a disclaimer of onerous property under section 217 may claim in the liquidation of the company as a creditor for the amount of the loss or damage.

221. Vesting orders and orders for delivery

(1) Subject to section 222, if a liquidator disclaims onerous property under section 217, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer.

(2) On an application under subsection (1), the Court may, on such terms as it considers fit, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer; or

(c) a trustee for a person referred to in paragraph (a) or (b).

(3) The Court shall not make an order in respect of a person specified in subsection (2)(b), or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage suffered by a person for the purposes of section 220(2).

(5) Subject to subsection (6), where a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) Where another Virgin Islands enactment—

(a) requires the transfer of property vested by an order under this section to be registered, and

(b) that enactment enables the order to be registered, on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

222. Vesting orders in respect of leases

(1) Where the Court makes an order under section 221 vesting property of a leasehold nature in a person claiming under the company in liquidation as an underlessee or a mortgagee, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him or her at the commencement of the liquidation.

(2) Where the property vested by an order under section 221 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) Where no underlessee or mortgagee is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the company, to perform the lessee's covenants in the lease; and

(b) where a vesting order is made under paragraph (a), may vest the property free from all estates, encumbrances and interests created by the company.

(4) Where an underlessee or a mortgagee declines to accept a vesting order made subject to subsection (1), he or she is excluded from all interest in the property.

223. Land subject to rentcharge

Where land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after he or she, or some person claiming title under or through him or her, has taken possession or control of the land or has entered into occupation of it.

224. Disclaimer presumed valid

Unless it is proved that a liquidator has breached his or her duty to give notice under section 217(3) or that he or she has otherwise breached his or her duties under this Act or the Rules with regard to disclaimer, a disclaimer of property by the liquidator is presumed to be valid and effective.

INVESTIGATION OF ASSETS AND AFFAIRS OF COMPANY

225. Statement of affairs

(1) In this section, "relevant person" has the meaning specified in section 275.

(2) The liquidator or provisional liquidator of a company may require one or more relevant persons to prepare a statement of affairs of the company in accordance with Part XI, Division 2.

(3) Subject to section 280, the liquidator or provisional liquidator shall file with the Court each statement of affairs and each affidavit of concurrence that he or she receives.

(4) Subsection (3) does not apply to a liquidator appointed by the members of a company.[219]

226. Preliminary report[220]

(1) The liquidator of a company shall, within 60 days of the commencement of the liquidation, prepare a preliminary report covering, to the best of his or her knowledge and belief, the following matters—

(a) in the case of a company with share capital, the amount of capital issued, subscribed and paid up;

(b) the assets and liabilities of the company;

(c) if the company has failed, the causes of the failure; and

(d) whether, in his or her opinion, further enquiries are desirable with respect to—

(i) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(ii) possible claims under Part IX.

(2) The liquidator shall send a copy of the report prepared under subsection (1) —[221]

(a) to each creditor of the company;

(b) if in his or her report he or she states that further enquiries are desirable with respect to a matter referred to in subsection (1)(d), to the Official Receiver;

(c) to the Commission, if the company is a regulated person; and

(d) to the International Tax Authority or the VIDIC, if the application for the appointment of the liquidator under section 162 was made by the International Tax Authority or the VIDIC, as the case may be.

(3) Subsection (2)(b) does not apply to the Official Receiver when he or she is acting as the liquidator of a company.

(4) The Court may, on the application of the liquidator, extend the period specified in subsection (1) on such terms and conditions as it considers fit.

227. Duty of Official Receiver concerning report under section 226

Where the Official Receiver receives a report under section 226, he or she shall carry out such investigation, if any, as he or she considers appropriate.

MISCELLANEOUS PROVISIONS

228. Liquidator to call meetings of creditors

(1) The liquidator shall call a meeting of the creditors of a company in liquidation if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) he or she is directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Rules by 10%in value of the creditors of the company.

229. Recession of contracts by the Court

(1) On the application of a person who is, as against the liquidator of a company, entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court considers just.

(2) Any damages payable to a person under an order made under subsection (1) may be claimed by him or her as a debt in the liquidation of the company.

230. Inspection of books by creditors

(1) At any time after the appointment of a liquidator of a company, the Court may, on such terms as it considers appropriate, make an order for the inspection of specified books, records and documents of the company that are in its possession.

(2) Application for an order under subsection (1) may be made by a creditor or member of the company.

231. Enforcement of liquidator's duties

(1) In this section, "specified person" means—

(a) the Official Receiver;

(b) a creditor of a company in liquidation; or

(c) a member of a company in liquidation.

(2) If a liquidator fails to file any notice, return, account or other document, a specified person may serve a notice on the liquidator requiring him or her to remedy the default.

(3) If a liquidator fails to remedy the default specified in a notice served under subsection (1) within 14 days of service of the notice on him or her, any specified person may apply to the Court for an order that the liquidator remedy the default within such time as the Court may specify.

(4) The Court may order that the costs of and incidental to an application under this section are payable by the liquidator personally.

(5) A liquidator who fails to comply with an order made under subsection (3) commits an offence.

(6) This section does not prejudice any other provision of this Act or any other enactment.

TERMINATION OF LIQUIDATION

232. Termination of liquidation

The liquidation of a company terminates on the first occurring of—

(a) the making by the Court of an order terminating the liquidation under section 233, or such later date as may be specified in the order;

(b) the filing by the liquidator of a certificate of compliance with the provisions of section 234(2), as modified by the Court under section 234(4), if appropriate; or

(c) the making by the Court of an order under section 234(4) exempting the liquidator from compliance with 234(2), or such later date as may be specified in the order.

233. Order terminating liquidation[222]

(1) The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company, the International Tax Authority, the VIDIC or the Official Receiver.[223]

(3) Before making an order under subsection (1), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(5) Where the Court makes an order under subsection (1), the company ceases to be in liquidation and the liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) Where the Court makes an order under subsection (1), the person who applied for the order shall, within 10 days of the date of the order, file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6) commits an offence.

234. Completion of liquidation[224]

(1) In this section "Register" means, as appropriate—

(a) the register of international business companies maintained by the Registrar under the International Business Companies Act;

(b) the register of companies maintained by the Registrar under the Companies Act; or

(c) the Register of Companies maintained by the Registrar under the BVI Business Companies Act.[225]

(2) As soon as practicable after completing his or her duties in relation to the liquidation of a company, the liquidator shall—[226]

(a) prepare and send to every creditor of the company whose claim has been admitted and to every member of the company—

(i) his or her final report, complying with subsection (3), and a statement of realisations and distributions[227] in respect of the liquidation;

(ii) a summary of the grounds upon which a creditor or member may object to the striking of the company from the Register; and

(b) file with the Registrar a copy of the final report and the statement of[228] realisations and distributions sent to the creditors and members of the company; and

(c) if the liquidation relates to a company that is a regulated person, send to the Commission a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company; and

(d) if the liquidator was appointed on the application of the International Tax Authority or the VIDIC under section 162, send to the Authority or the VIDIC, as the case may be, a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company.

(3) The final report of a liquidator shall contain a statement—

(a) that all known assets of the company have been disclaimed, realised or distributed without realisation;

(b) that all proceeds of realisation have been distributed; and

(c) that there is no reason why, in his or her opinion, the company should not be struck from the Register, and dissolved.

(4) On the application of the liquidator, the Court may on such terms and conditions as it considers just—

(a) exempt the liquidator from compliance with subsection (2)(a); or

(b) modify the application of the provisions of subsection (2) to the liquidator.

235. Release of liquidator

(1) A person who ceases to be the liquidator, or provisional liquidator, of a company may apply to the Court for his or her release and the Court may grant the release unconditionally or upon such conditions as it considers fit, or it may withhold it.

(2) If the Court withholds the release, it may make a compensation order against the former liquidator under section 254.

(3) Subject to subsection (5), where a former liquidator is released under this section, he or she is discharged from all liability in respect of any act or default of his or her in relation to the administration of the company.

(4) An order for the release of a former liquidator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(5) Subsection (3) does not prevent the Court from making an order under section 254 against a liquidator who has been released under this section.

(6) Where the Official Receiver ceases to be liquidator and another liquidator is appointed in his or her place, the Official Receiver obtains his or her release—

(a) from the appointment of the new liquidator; or

(b) such later date as the Court may determine.

(7) A liquidator who obtains his or her release under this section shall file a notice in the prescribed form with the Registrar.

236. Dissolution

The Rules shall provide for the dissolution of a company on the termination and completion of the liquidation of the company.

PART VII - LIQUIDATION OF INSURANCE COMPANIES

237. Interpretation for and scope of this Part

(1) In this Part—

"property and casualty business" and "life and health business"[229] have the meanings specified in section 2(1) of the Insurance Act;

"property and casualty insurance company" [230] means an insurance company that is or was[231] authorised by its licence to carry on property and casualty business[232] only;

"life and health insurance company" [233] means an insurance company that is or was[234] authorised by its licence to carry on life and health business[235] , whether or not it is or was[236] also authorised to carry on property and casualty business [237] .

(2) Subject to subsection (3), this Part applies, with such modifications as are necessary, to a company or a foreign company that has at no time held a licence as an insurer issued under the Insurance Act or the repealed Insurance Act, 1994[238] but which, immediately before the appointment of a liquidator, was required to hold a licence as an insurer issued under the Insurance Act or the repealed Insurance Act, 1994[239].[240]

(3) Section 239 does not apply to a company specified in subsection (2).[241]

238. Liquidation of insurance companies [242]

(1) The provisions of this Act relating to the liquidation of companies and foreign companies are modified in respect of insurance companies to the extent specified in this Part. [243]

(2) The liquidator of an insurance company has a duty to obtain and consider such actuarial advice as is appropriate to enable him or her to properly conduct the liquidation of the company.[244]

(3) The Cabinet may, on the advice of the Commission, make Regulations with respect to the liquidation of insurance companies.[245]

(4) Subject to subsection (5), the Regulations made under subsection (3) may—

(a) modify or exclude the provisions of this Act and the Rules relating to the liquidation of companies in respect of insurance companies; and

(b) make different provision for different persons, circumstances or cases.[246]

(5) Regulations made under subsection (3) shall not modify or exclude the provisions of this Part.[247]

239. Appointment of liquidator by members

(1) The members of a life and health insurance company[248]may not appoint a liquidator under Part VI.

(2) The members of a property and casualty insurance company[249], that is not a foreign company, may only appoint a liquidator under Part VI if the Commission has given its prior written consent to the appointment.

(3) Any resolution of the members—

(a) of a life and health insurance company[250] to appoint a liquidator under Part VI in contravention of subsection (1); or

(b) of a property and casualty insurance company[251] to appoint a liquidator under Part VI in contravention of subsection (2), is void and of no effect.

(4) Where the members of a[252] property and casualty insurance company[253] appoint a liquidator in accordance with this section, without limiting section 178(1)(a), the Commission may by notice in writing direct the liquidator to advertise his appointment in such manner as is specified in the notice.

(5) A liquidator who fails to advertise his or her appointment in accordance with a direction of the Commission issued under subsection (4) commits an offence.

240. Application for appointment of liquidator by Court

(1) For the purposes of sections 162(1)(c) and 163(1)(c), the public interest includes the interests of the policyholders of an insurance company.

(2) For the purposes of this Act, an insurance company is deemed to be insolvent if it is not in compliance with section 12(2) of the Insurance Act.[254]

(3) On an application for the appointment of a liquidator under this section or under sections 162 or 163[255], evidence that an insurance company has at any time prior to the date of the application been insolvent is, unless the contrary is proved, evidence that the company continues to be insolvent.

(4) This section is in addition to, and not in substitution for, sections 162 and 163[256].

241. Reduction of contracts as alternative to winding up

Where on an application for the appointment of a liquidator, the Court is satisfied that an insurance company is insolvent, it may reduce the amount of the insurance company's contracts on such conditions as it considers just, instead of appointing a liquidator.

242. Continuation of life and health business[257] by liquidator appointed by Court

(1) The liquidator of a life and health insurance company[258] shall, unless the Court otherwise orders, carry on the life and health[259] business of the company [260] with a view to it being transferred as a going concern to another insurance company, whether in existence or to be incorporated for the purpose.

(2) In carrying on the insurance company's life and health business[261] under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the liquidation, but he or she shall not effect any new contracts of insurance.

(3) On the application of the liquidator of a life and health insurance company[262] , the Court may by order reduce the amounts of the contracts made by the company in the course of carrying on its life and health business. [263]

(4) An order under subsection (3) may be made subject to such conditions as the Court considers appropriate.

(5) Without limiting section 186 or Schedule 2, the liquidator of a life and health insurance company[264] may appoint an actuary to investigate and report to him or her on the life and health business[265] of the company and, if appropriate, to conduct actuarial valuations of the business.

243. Protection of segregated funds and assets

(1) In the liquidation of a life and health insurance company[266] , the assets of the segregated funds of the company shall first be applied to meet the company's life and health liabilities[267] attributable to such funds.

(2) If the value of the assets referred to in subsection (1) exceeds the amount of the life and health insurance liabilities[268] of the company attributable to the segregated funds, the excess is an asset of the company available for distribution in accordance with this Act.

(3) Where the Court makes an order under section 254(3) in respect of a life and health insurance company[269] requiring a person to repay, restore or account for money or other assets, to pay compensation to the company or to pay interest to the company, the Court shall, insofar as the delinquency relates to assets belonging to the company's segregated funds, order that the money, assets or contribution is to be treated for the purposes of subsection (1) as assets of those funds.

PART VIII - VOIDABLE TRANSACTIONS

244. Interpretation for this Part

(1) In this Part—

"insolvent liquidation" means a liquidation of a company where the assets of the company are insufficient to pay its liabilities and the expenses of the liquidation;

"insolvency transaction" has the meaning specified in subsection (2);

"officer holder" means—

(a) in the case of a company in administration, its administrator; and

(b) in the case of a company in liquidation, its liquidator;[270]

"onset of insolvency" means—

(a) the date on which the application for the administration order was filed, where a company is in administration or is[271] in liquidation and the liquidator was appointed by the Court immediately following the discharge of an administration order;

(b) the date on which the application for the appointment of the liquidator was filed, where a company is in liquidation and the liquidator was appointed by the Court in circumstances other than those set out in paragraph (a); or

(c) the date of the appointment of the liquidator, where a company is in liquidation and the liquidator was appointed by the members.

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a floating charge that is voidable under section 247; and

(d) an extortionate credit transaction.

"vulnerability period" means—

(a) for the purposes of sections 245, 246 and 247—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing 2 years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(b) for the purposes of section 248, the period commencing 5 years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator;

(2) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the company is insolvent; or

(b) it causes the company to become insolvent.

(3) For the purposes of subsection (2), "insolvent" has the meaning specified in section 8(1) with the deletion of paragraph (c)(i).

(4) This Part applies in respect of—

(a) a company that is in administration; and

(b) a company and a foreign company that is in liquidation and, where appropriate, "company" includes a foreign company.

245. Unfair preferences

(1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the company going into insolvent liquidation, will be better than the position he or she would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where a transaction entered into by a company within the vulnerability period has the effect specified in subsection (1)(c) in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

246. Undervalue transactions

(1) Subject to subsection (2), a company enters into an undervalue transaction with a person if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and

(c) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if—

(a) the company enters into the transaction in good faith and for the purposes of its business; and

(b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where a company enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)(a) or subsection (1)(b), unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

247. Voidable floating charges

(1) Subject to subsection (2), a floating charge created by a company is voidable if—

(a) it is created within the vulnerability period; and

(b) it is an insolvency transaction.

(2) A floating charge is not voidable to the extent that it secures—

(a) money advanced or paid to the company, or at its direction, at the same time as, or after, the creation of the charge;

(b) the amount of any liability of the company discharged or reduced at the same time as, or after, the creation of the charge;

(c) the value of assets sold or supplied, or services supplied, to the company at the same time as, or after, the creation of the charge; and

(d) the interest, if any, payable on the amount referred to in paragraphs (a) to (c) pursuant to any agreement under which the money was advanced or paid, the liability was discharged or reduced, the assets were sold or supplied or the services were supplied.

(3) For the purposes of this section, where a company creates a floating charge in favour of a connected person within the vulnerability period, unless the contrary is proved, it is presumed that the charge was an insolvency transaction.

(4) For the purposes of subsection (2)(c), the value of assets or services sold or supplied is the amount in money which, at the time they were sold or supplied, could reasonably have been expected to be obtained for the sale or supply of the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which the assets or services were sold or supplied to the company.

248. Extortionate credit transactions

A transaction entered into by a company[272] within the vulnerability period for, or involving the provision of, credit to the company is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

249. Orders in respect of voidable transactions

(1) Subject to section 250, where it is satisfied that a transaction entered into by a company is a voidable transaction the Court, on the application of the office holder[273]—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers fit for restoring the position to what it would have been if the company had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the office holder[274] of any sums paid by the company to that person by virtue of the transaction;

(iii) the surrender by any person to the office holder[275] of any asset held by him or her as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)(b), an order under that paragraph may—

(a) require any assets transferred as part of the transaction to be vested in the company;

(b) require any assets to be vested in the company if it represents in any person's hands the application either of the proceeds of sale of assets transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the company or the liability of the company under any contract;

(d) require any person to pay, in respect of benefits received by him or her from the company, such sums to the office holder[276] as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any assets and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to submit a claim[277] in the liquidation of the company in such amount as the Court considers fit; and

(h) require the company to make a payment or transfer assets to any person affected by an order made under subsection (1).

(3) Subject to section 250, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he or she is the person with whom the company in question entered into the transaction.

250. Limitations on orders under section 249

(1) This section applies to an order made under section 249(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in assets that was acquired in good faith and for value from a person other than the company, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the office holder[278], except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he or she was a creditor of the company.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph (a) or (b), it is presumed, unless the contrary is proved, that he or she acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of—

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if—

(a) in the case of a company in administration, he or she had notice of the filing of the application on which the administration order was made;

(b) in the case of a company where a liquidator was appointed immediately following the discharge of an administration order, he or she had notice of the filing of the application on which the administration order was made or the filing of the application on which the order appointing a liquidator was made; or

(c) in the case of a company where a liquidator was appointed in circumstances other than those set out in paragraph (b), he or she had notice of the filing of the application on which the order appointing a liquidator was made.

251. Recoveries

Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 249 are deemed to be assets of the company available to pay unsecured creditors of the company.

252. Remedies not exclusive

The provisions of this Part apply without prejudice to the availability of any other remedy, even in relation to a transaction that the company had no power to enter into.

PART IX - MALPRACTICE

253. Interpretation for this Part.

In this Part—

(a) a company or a foreign company goes into insolvent liquidation if a liquidator is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation; and

(b) a relevant company is a company or a foreign company that has gone into insolvent liquidation.

254. Summary remedy against delinquent officers and others

(1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (3) where it is satisfied that a person specified in subsection (2) —

(a) has misapplied or retained, or become accountable for any money or other assets of the company; or

(b) has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) An order under subsection (3) may be made against a person—

(a) who is or has been an officer of the company;

(b) who has acted as liquidator of the company;

(c) who, in the case of a relevant company that is not a foreign company, has acted as administrator, administrative receiver, supervisor or interim supervisor of the company; or

(d) who, not being a person falling within paragraphs (a) or (b), is or has been concerned in the promotion, formation, management, liquidation or dissolution of the company.

(3) Where subsection (1) applies, the Court may make one or more of the following orders against the person—

(a) that he or she repays, restores or accounts for the money or other assets, or any part of it;

(b) that he or she pays to the company as compensation for the misfeasance or breach of duty such sum as the Court considers just; and

(c) that he or she pays interest to the company at such rate as the Court considers just.

(4) The Court shall not make an order under subsection (3) unless it has given the person the opportunity—

(a) to give evidence, call witnesses and bring other evidence in relation to the application; and

(b) to be represented, at his own expense, by a legal practitioner who may put to him or her, or to other witnesses, such questions as the Court may allow for the purpose of explaining or qualifying any answers or evidence given.

(5) Application may not be made for an order under this section against a liquidator or an administrator who has been released, except with the leave of the Court.

(6) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

255. Fraudulent trading

(1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) where it is satisfied that, at any time before the commencement of the liquidation of the company, any of its business has been carried on—

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose.

(2) Where subsection (1) applies, the Court may declare that any person who was knowingly a party to the carrying on of the business in such manner is[279] liable to make such contribution, if any, to the company's assets as the Court considers proper.

256. Insolvent trading

(1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) against a person who is or has been a director of the company if it is satisfied that—

(a) at any time before the commencement of the liquidation of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(b) he or she was a director of the company at that time.

(2) Subject to subsection (3), where subsection (1) applies, the Court may order that the person concerned makes such contribution, if any, to the company’s assets as the Court considers proper.

(3) The Court shall not make an order against a person under subsection (2) if it is satisfied that after he or she first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he or she took every step reasonably open to him or her to minimise the loss to the company’s creditors.

(4) For the purposes of subsections (1) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he or she ought to reach and the steps reasonably open to him or her which he or she ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he or she does not carry out but which has[280] been entrusted to him or her.

(6) Nothing in this section affects section 255.

257. Recoveries under sections 255 and 256

Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 255 or section 256 are deemed to be assets of the company available to pay unsecured creditors of the company.

258. Ancillary orders

(1) Where the Court makes an order under section 255 or section 256, it may [281] give such directions or make such further order as it considers proper for giving effect to the order.

(2) Without limiting subsection (1), the Court may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the company to him or her, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him or her, or any person on his or her behalf, or any person claiming as assignee from or through the person liable or any person acting on his or her behalf; and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

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

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under either section 255 or 256 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest on the debt shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 255 and 256 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

PART X - DISQUALIFICATION ORDERS AND UNDERTAKINGS

259. Interpretation for this Part

(1) In this Part "voluntary liquidator" means—

(a) a liquidator appointed by the directors or members of an international business company; or[282]

(b) a voluntary liquidator within the meaning specified in section 2 of the BVI Business Companies Act.[283]

(2) For the purposes of this Part, a company becomes insolvent if—

(a) an administration order is made in respect of the company;

(b) an administrative receiver of the company is appointed;

(c) a liquidator of the company is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation; or

(d) a liquidator is appointed by the Court on the ground specified in section 162(1)(c).

260. Disqualification orders and undertakings

(1) A disqualification order is an order that a person shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A disqualification undertaking is an undertaking in writing given by a person to the Official Receiver that he or she will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, a person engages in a prohibited activity if—

(a) he or she is a director of a company;

(b) he or she acts as the voluntary liquidator of a company;

(c) he or she acts as the receiver of the assets of a company;

(d) he or she acts as an insolvency practitioner;[284] or

(e) in any way, whether directly or indirectly, he or she is concerned with or takes part in the promotion, formation or management of a company; or

(f) he or she undertakes any activity prescribed as a prohibited activity. [285]

(4) A person is a "disqualified person" for the period in which—

(a) a disqualification order has effect against him or her; or

(b) a disqualification undertaking is in place in respect of him or her.

(5) The period specified in a disqualification order, or disqualification undertaking, made against or in respect of a person, runs concurrently with the period specified in any other disqualification order or disqualification undertaking made against or in respect of that person.

261. Application for disqualification order

(1) Subject to subsection (2), the Official Receiver may apply to the Court for a disqualification order against a person under section 262.

(2) An application for a disqualification order may not be made more than 6 years after the date on which the company concerned became insolvent.

262. Hearing of application for disqualification order

(1) On an application under section 261, the Court may, make a disqualification order against a person—

(a) who has been convicted on indictment—

(i) of an offence in connection with the promotion, formation, management or dissolution of a company that is or becomes insolvent; or

(ii) of an offence under this Act that relates to a company that at any time becomes insolvent, whether the person was convicted before or after the company became insolvent;

(b) who has had an order under section 255 or section 256 made against him or her; or[286]

(c) who is or has been a director, voluntary liquidator or receiver of a company that is or becomes insolvent, whether while he or she was a director, voluntary liquidator or receiver or subsequently; and—

(i) has been guilty of fraud in relation to the company or of any misfeasance or breach of duty as a director, voluntary liquidator or receiver of the company;

(ii) where the Court is of the opinion that the person's conduct as director, voluntary liquidator or receiver, either taken alone or taken together with his or her conduct as a director, voluntary liquidator or receiver of any other company or companies, makes him or her unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution.[287]

(d) [deleted][288]

(2) For the purposes of subsection (1)(c), "receiver" means a receiver other than an administrative receiver.

(3) The reference in subsection (1)(c)(ii) to a person's conduct as a director, voluntary liquidator or receiver of a company includes that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(4) The Court shall, on making a disqualification order, specify the period for which the order has effect.

(5) The period referred to in subsection (4) shall commence on a date no earlier than the date of the order and no later than 28 days after the date of the order and shall not exceed 10 years.

(6) A person against whom an application for a disqualification order is made may appear and give evidence or call witnesses on the hearing of the application.

263. Matters for determining unfitness of directors

Without limiting section 262(1)(c)(ii), in determining whether a person's conduct as a director, voluntary liquidator or receiver of a company makes him or her unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution, the Court shall, as respects his or her conduct as a director, voluntary liquidator or receiver of that company, have regard in particular to—

(a) any misfeasance or breach of any fiduciary or other duty by him or her in relation to the company;

(b) any misapplication or retention by him or her of, or any conduct by the director giving rise to an obligation to account for, any money or other assets of the company;

(c) the extent of his responsibility for the company entering into any transaction liable to be set aside under Part VIII;

(d) in the case of a director—

(i) where the company or the board has persistently failed to comply with the BVI Business Companies Act[289], as the case may be, the extent of his or her responsibility for such failure;

(ii) the extent of his or her responsibility for the causes of the company becoming insolvent; and

(iii) the extent of his or her responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(e) his or her failure to comply with any obligation imposed on him or her under this Act; and

(f) in the case of a voluntary liquidator, any failure to comply with section 209 or 210 of the BVI Business Companies Act[290].

264. Disqualification undertaking

(1) A person against whom a disqualification order could be made under section 262 may offer the Official Receiver a disqualification undertaking, whether or not the Official Receiver has made an application against him or her under that section.

(2) The Official Receiver may accept an offer made to him or her under subsection (1) if he or she considers that—

(a) there is a reasonable prospect that, on the hearing of an application under section 262, the Court would make a disqualification order against the person offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A disqualification undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed 10 years.

265. General provisions concerning disqualification orders and undertakings

(1) A disqualification order may be made, or a disqualification undertaking accepted, on grounds which are or include matters other than criminal convictions, notwithstanding that the person concerned may be criminally liable in respect of those matters.

(2) Where the Court makes a disqualification order, or the Official Receiver accepts a disqualification undertaking, the Official Receiver shall, within 14 days of the date of the order or of his or her acceptance of the undertaking, file a notice in the prescribed form with the Registrar.

266. Variation of disqualification order or undertaking

(1) The Court may, on the application of a disqualified person, vary a disqualification order or a disqualification undertaking.

(2) Without limiting subsection (1), an order under that subsection may—

(a) reduce the period for which the disqualification order, or undertaking, is in force; or

(b) in the case of a disqualification undertaking, provide for it to cease to be in force.

(3) An application for an order under subsection (1) shall be served on the Official Receiver no less than 14 days prior to the date of the hearing and the Official Receiver shall appear or be represented and is entitled to call or give evidence at the hearing.

(4) Where the Court varies a disqualification order or undertaking, the Official Receiver shall, within 14 days of the date of the order, file a notice in the prescribed form with the Registrar.

267. Offence provisions

A disqualified person who engages in a prohibited activity commits an offence.

268. Liability for engaging in prohibited activity

(1) A disqualified person incurs personal liability for the debts of a company in accordance with subsection (2) if, without the leave of the Court—

(a) he or she is involved in the management of a company; or

(b) as a person involved in the management of a company, he or she acts on the instructions of a person he or she knows to be a disqualified person or an undischarged bankrupt.

(2) Subject to subsection (3), the liability of a person to whom subsection (1) applies is—

(a) to a liquidator of the company for every outstanding liability; and

(b) to a creditor of the company for a liability to that creditor;, incurred by the company at a time when subsection (1) applies to him or her.

(3) A creditor may not take action against a person under subsection (2)(b) if the company is in liquidation.

(4) For the purposes of subsection (1), a person is involved in the management of a company if—

(a) he or she is a director of the company; or

(b) he or she is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he or she knew at that time to be a disqualified person or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

269. Official Receiver to appear on certain applications

The Official Receiver shall appear and call the attention of the Court to any matters which seem to him or her to be relevant, and may himself or herself give evidence or call witnesses on the hearing of—

(a) an application by the Official Receiver for a disqualification order;

(b) an application made by any person for leave under this Part.

270. Register of disqualification orders

(1) The Registrar shall register in a Register of Disqualification Orders and Undertakings to be maintained by him or her for the purpose of—

(a) each disqualification order or undertaking in respect of which notice is filed under section 265; and

(b) each variation of a disqualification order or undertaking in respect of which notice is filed under section 266.

(2) When a disqualification order or undertaking ceases to be in force, the Registrar shall delete the entry from the Register.

(3) The Register of Disqualification Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a disqualified person by virtue of an entry in the Register of Disqualification Orders.

271. Duties of office holders[291]

(1) If it appears to the liquidator, administrator or administrative receiver of a company that the conduct of a director or former director of the company, either taken alone or taken together with his or her conduct as a director of any other company or companies, makes him or her unfit to be concerned in the management of companies, he or she shall, as soon as practicable,[292] prepare a written report in the

prescribed form and send it to the Official Receiver and, if the company is a regulated person, to the Commission as well. [293]

(2) The Official Receiver may by notice in writing require a liquidator, administrator or administrative receiver who has sent him or her a report under subsection (1) to—

(a) provide him or her with such information or explanations or

(b) to produce such books, records or other documents, as he or she may reasonably require for considering or preparing an application for an order under section 262.

(3) If a liquidator, administrator or administrative receiver fails to comply with a notice issued under subsection (2), the Court may, on the application of the Official Receiver, make an order directing compliance within the period specified in the order.

(4) The Court may order that the costs of and incidental to an application under subsection (3) shall be borne by the person against whom the order is made.

(4A) A liquidator, administrator or administrative receiver who prepares a report under subsection (1) shall not disclose the report to the creditors' committee, if any, or to any person other than the Official Receiver.[294]

(4B) Subsection (4A) does not prevent a liquidator, administrator or administrative receiver disclosing the report to any person properly employed or appointed by him or her, or acting for him or her, in the liquidation, administration or administrative receivership.[295]

(4C) A report provided to the Official Receiver under subsection (1) shall, in the absence of fraud or malice, be absolutely privileged for the purposes of the law of defamation.[296]

(4D) Subsection (4C) shall not apply to the extent that the liquidator, administrator or administrative receiver, or a person to whom the report is disclosed under subsection (4B), discloses the report to another person in breach of subsection (4A).[297]

(5) A person who fails to comply with an order made under subsection (3) commits an offence.

PART XI - GENERAL PROVISIONS WITH REGARD TO COMPANIES THAT ARE INSOLVENT OR IN LIQUIDATION

DIVISION 1 - GENERAL

272. Interpretation

(1) Subject to subsection (2), in this Part "office holder", in respect of a company, means its administrator, its liquidator, its provisional liquidator or its administrative receiver.

(2) In Division 3[298], "office holder" has the meaning specified in section 281[299].

273. Application to Court concerning office holder

A person aggrieved by an act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder.

274. Company's books

Where a company is in administration or liquidation, all documents of the company and of the administrator or liquidator are, as between the members of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

274A. Order to deliver assets and documents[300]

(1) Where any person has in his or her possession or control any assets or documents to which the company appears to be entitled, the Court may, on the application of the office holder, require that person forthwith, or within such period as the Court may direct, to pay, deliver, convey, surrender or transfer the assets or documents to the office holder.[301]

(2) Subsection (3) has effect where the office holder—

(a) seizes or disposes of any asset which is not an asset of the company; and

(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he or she is entitled, whether in pursuance of an order of the Court or otherwise, to seize or dispose of that asset.[302]

(3) In the circumstances specified in subsection (2), the office holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office holder's own negligence; and [303]

(b) has a lien on the asset, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal. [304]

DIVISION 2 - STATEMENT OF AFFAIRS

275. Interpretation for this Division

(1) In this Division—[305]

"office holder" [REPEALED] [306]

"relevant period" means the period of 2 years prior to—

(a) in the case of a company in administration, the date of the administration order;

(b) in the case of a company in liquidation, the date of the appointment of the liquidator;

(c) where a provisional liquidator has been appointed, the date of his or her appointment, and

(d) where an administrative receiver has been appointed, the date of his or her appointment;

"relevant person" means—

(a) a person who is or who, within the relevant period, has been an officer of the company;

(b) a person who is or who, within the relevant period, has been in the employment of the company and who, in the office holder's opinion is capable of providing the information required;

(c) a person who is or who, within the relevant period, has been an officer of or in the employment of a company which is an officer of the company; or

(d) a person who, within the relevant period, has promoted the formation of the company.

(2) For the purposes of the definition of "relevant person", "employment" includes employment under a contract for services.

276. Notice to be given by office holder

(1) Where, pursuant to a provision in this Act, an office holder requires a relevant person to prepare a statement of affairs and submit it to him or her, he or she shall send a notice to that person in the prescribed form.

(2) A notice sent under subsection (1) shall specify a date by which the statement of affairs is to be delivered to him or her, which shall be no earlier than 24 days after the date upon which the notice is sent to the relevant person.

277. Statement of Affairs

(1) A statement of affairs shall be in the prescribed form and contain the particulars prescribed.

(2) Without limiting subsection (1), the following particulars shall be set out in a statement of affairs—

(a) the assets and liabilities of the company;

(b) the names and addresses of the creditors of the company;

(c) the security interests held by creditors of the company and the dates upon which the security interests were created; and

(d) such further information as may be prescribed.

(3) Subject to section 278, a relevant person required by an office holder to prepare and submit a statement of affairs shall verify the statement of affairs by affidavit and submit the statement of affairs to the office holder, together with the verifying affidavit, on or before the date specified in the notice sent to him or her under section 276(1).

(4) A relevant person who, without reasonable excuse, contravenes subsection (3) commits an offence.

278. Affidavit of concurrence

(1) A relevant person required by an office holder to prepare and submit a statement of affairs may, instead, submit an affidavit of concurrence complying with the Rules.

(2) A relevant person who submits an affidavit of concurrence to an office holder on or before the date specified in the notice sent to him or her does not commit an offence under section 277(4).

279. Release from duty to submit statement of affairs

(1) An office holder or the Court may, in accordance with the Rules—

(a) release a person from an obligation imposed on him or her to prepare and submit a statement of affairs; or

(b) extend the period of time for the submission of the statement of affairs.

(2) An order of the Court under this section may be made subject to such terms and conditions as the Court considers fit.

280. Application for order of limited disclosure

(1) Where an office holder considers that it would prejudice the conduct of the insolvency proceeding for the whole or part of a statement of affairs submitted to him or her to be disclosed, he or she may apply to the Court for an order of limited disclosure in respect of the statement of affairs, or any specified part of it.

(2) The Court may, on an application under subsection (1), order that the statement of affairs or, as the case may be, the specified part of it—

(a) in the case of an administrative receivership, is not to be open to inspection otherwise than with leave of the Court; or

(b) in any other case, is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with leave of the Court.

(3) An order of the Court under subsection (2) may include directions as to the delivery of documents to the Registrar and the disclosure of relevant information to other persons.

DIVISION 3 - INVESTIGATION OF INSOLVENT COMPANY'S AFFAIRS

OFFICE HOLDER'S POWERS

281. Interpretation for this Division

In this Division—

"relevant period" has the meaning specified in section 275;

"office holder", in respect of a company, means its administrator, its liquidator or its provisional liquidator and, in respect of a company in administration or liquidation or in respect of which a provisional liquidator has been appointed, includes the Official Receiver[307];

282. Power to obtain information

(1) An[308] office holder may, by notice in writing, require a person specified in subsection (2)—

(a) to provide him or her with such information concerning the company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs as he or she reasonably requires;

(b) to attend on him or her at such reasonable time and at such place as may be specified in the notice; or

(c) to be examined on oath or affirmation by him or her, or by his or her legal practitioner, on any matter referred to in paragraph (a).

(2) A notice under subsection (1) may be sent to—

(a) an officer or former officer of the company;

(b) a member or former member of the company;

(c) a person who was involved in the promotion or formation of the company;

(d) a person who is, or within the relevant period has been, employed by the company, including a person employed under a contract for services;

(e) a person who is, or at any time has been, a receiver, accountant or auditor of the company;

(f) a person who is or who, at any time has been, an officer of or in the employment of a company which is an officer of the company; or

(g) if the office holder is the Official Receiver or[309] a liquidator or provisional liquidator to any person who has acted as administrator, liquidator or provisional liquidator of the company.

(3) A person who receives a notice under subsection (1) and who, without reasonable excuse, fails to comply with the notice, commits an offence.

283. Examination by office holder

(1) This section applies to the examination of a person under section 282(1)(c) by an office holder.

(2) The office holder, or the legal practitioner conducting the examination on his or her behalf, may administer an oath to, or take the affirmation of, a person to be examined.

(3) A person required to be examined is entitled to be represented by a legal practitioner.

(4) The office holder shall ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

EXAMINATION BEFORE COURT

284. Application for examination before Court

(1) Where a company is in liquidation, an application may be made to the Court, ex parte, by the liquidator or by the Official Receiver, for an order that a person specified in subsection (2) appear before the Court for examination concerning the company, or a connected company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected company.

(2) An application under subsection (1) may be made in respect of—

(a) a person specified in section 282(2);[310] or

(b) any other person who the applicant considers is capable of giving information concerning the company or a connected company; or[311]

(c) any other person who the applicant knows or suspects has in his or her possession or control any asset of the company or is indebted to the company.[312]

(3) An application under subsection (1) shall state whether the applicant seeks a public or a private examination.

285. Order for examination

(1) In this section, "examinee" means the person to be examined before the Court.

(2) On hearing an application made under subsection 284, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (1)—

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his or her possession or control that relate to the company, or a connected company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected company;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he or she does not appear before the Court as required by the order; and

(f) where the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) Where the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, where the liquidator is not the Official Receiver

(a) if the applicant is the liquidator of the company, send a sealed copy of the order[313] to the Official Receiver; or

(b) if the applicant is the Official Receiver, send a sealed copy of the order[314] to the liquidator of the company.

(5) Where an order under subsection (2) is for the public examination of an examinee, the applicant shall give not less than 14 days notice of the examination to each creditor and member of the company.

(6) The Court may as part of an order made under this section, or at any subsequent time, make one or more of the following directions—

(a) a direction specifying the matters upon which the examinee may be examined; and

(b) a direction specifying the procedures to be followed at the examination.

286. Conduct of examination

(1) This section applies to an examination held pursuant to an order made under section 285.

(2) An examinee shall be examined on oath and he or she shall answer such questions as the Court may put, or allow to be put to him or her.

(3) Subject to subsection (2), an examination is conducted by the applicant, or by his or her legal practitioner, and the person examined is entitled to be represented by a legal practitioner who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him or her.

(4) The examinee may also be examined—

(a) if the applicant is the Official Receiver, by the liquidator; or

(b) if the applicant is the liquidator of the company, by the Official Receiver.

(5) At a public examination questions may, with the leave of the Court, be put to the examinee by any creditor or member of the company present at the examination or by the legal practitioner representing such creditor or member.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 287, the written record of an examination is admissible in evidence in any proceedings under this Act other than proceedings for a disqualification order under Part X[315].

287. Incriminating answers and admissibility of record

(1) An examinee is not excused from answering a question put to him or her by an office holder under section 282 or at an examination held pursuant to an order made under section 285 on the ground that the answer may incriminate him or her or tend to incriminate him or her.

(2) The record of an examination held under section 282 or pursuant to an order made under section 285 is not admissible as evidence in any criminal proceedings against the examinee except where he or she is charged with the offence of perjury.

288. Offence

(1) A person who, without reasonable excuse, fails to attend an examination ordered to be held under section 285, commits an offence.

(2) Where a person without reasonable excuse fails at any time to attend an examination ordered to be held under section 285, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his or her examination, the Court may cause a warrant to be issued to a police officer or a prescribed officer of the Court—[316]

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Rules, until such time as the court may order.

DIVISION 4 - OFFENCE PROVISIONS

289. Fraudulent conduct

(1) Where a liquidator of a company is appointed under section 159, a person who is or has been an officer of the company is deemed to have committed an offence if, at any time whilst an officer or[317] during the period of 12 months preceding the commencement of the liquidation, he or she has—

(a) made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of any execution against the company's assets; or

(b) has concealed or removed any of the company's assets since, or within, 60 days of the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person is not guilty of an offence under this section—

(a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the liquidation; or

(b) if he or she proves that, at the time of the conduct constituting the offence, he or she had no intent to defraud the company's creditors.

PART XII - BANKRUPTCY

PRELIMINARY

290. Interpretation.

In this Part—

"bankrupt" means the individual against whom a bankruptcy order is made;

"bankruptcy offence" means an offence under Part XIII;

"debtor" means the individual to whom an application for a bankruptcy order relates;

"prescribed minimum" means the minimum amount of the debt for which a statutory demand may be issued under section 155; and

"trustee" means the bankruptcy trustee of a bankrupt.

291. Application of this Part to Official Receiver

Where the Official Receiver is appointed as the trustee of a bankrupt, the provisions of this Act that apply to a trustee apply to the Official Receiver, as trustee, unless otherwise provided.

BANKRUPTCY ORDER

292. Meaning and duration of bankruptcy order

(1) A bankruptcy order is an order of the Court vesting the assets of an individual in a bankruptcy trustee appointed by the Court for the purposes of division amongst his or her creditors in accordance with this Part.

(2) The bankruptcy of an individual commences at the time at which the bankruptcy order is made and continues until it is terminated by the discharge of the bankrupt under section 376 or 379.

(3) Throughout the period referred to in subsection (2), the individual is referred to in this Act as "in bankruptcy".

293. Conditions for making of bankruptcy order

(1) The Court shall not make a bankruptcy order against a debtor under this Part unless it is satisfied—

(a) that on the date that the application was filed[318], the debtor—

(i) was ordinarily resident in the Virgin Islands;

(ii) was personally present in the Virgin Islands;

(iii) was carrying on business in the Virgin Islands, either personally or by means of an agent or manager;

(iv) was a member of a partnership carrying on business in the Virgin Islands by means of a partner or partners or of an agent or manager; or

(v) had a place of residence or a place of business in the Virgin Islands;

(b) that the debtor has or appears to have assets in the Virgin Islands; or

(c) that there is a reasonable prospect that the making of a bankruptcy order will benefit the creditors of the debtor.

(2) For the purposes of subsection (1)(a)(iii) and (iv), a debtor or a partnership is deemed to be carrying on business in the Virgin Islands if liabilities incurred in the course of a business formerly carried on in the Virgin Islands remain unpaid.

294. Persons who may apply for a bankruptcy order

Application to the Court for a bankruptcy order in respect of a debtor may be made—

(a) by the debtor himself or herself under section 295;

(b) by a creditor of the debtor, or by one or more of his or her creditors jointly, under section 296[319]; or

(c) by the supervisor of an arrangement or by a creditor of the debtor under section 301. [320]

295. Application by debtor

(1) The Court may make a bankruptcy order against a debtor on the application of the debtor himself or herself if it is satisfied—

(a) that the debtor is unable to pay his or her debts as they fall due;

(b) that the unsecured liabilities of the debtor exceed the prescribed minimum; and

(c) that, if a bankruptcy order is made, the value of the debtor's assets available for distribution to his or her unsecured creditors will exceed the prescribed minimum.

(2) An application for a bankruptcy order filed by a debtor under subsection (1) shall be accompanied by a verified[321] statement of his or her assets and liabilities.

296. Creditor's application

(1) A creditor's application for a bankruptcy order shall be made in respect of a liability or liabilities where, at the time of the application—

(a) the amount of the liability, or the aggregate amount of the liabilities, exceeds the prescribed minimum; and

(b) the liability, or each of the liabilities, is for a liquidated sum payable to the applicant creditor immediately.

(2) An application under subsection (1) may not be made in respect of a liability incurred outside the Virgin Islands unless the liability is payable by the debtor to the creditor by virtue of a judgment or award enforceable by execution in the Virgin Islands.

297. Substitution of applicant

(1) In the circumstances specified in subsection (2), the Court may, by order, substitute as applicant in a creditor's application for a bankruptcy order, a creditor—

(a) who has given notice of his or her intention to appear at the hearing of the application in accordance with the Rules;

(b) who would otherwise have been entitled to make such an application on the date that the original application was made; and

(c) who consents to being substituted as the applicant.

(2) The Court may make a substitution order under subsection (1) if it considers it appropriate to do so—

(a) because the applicant applies to withdraw the application or consents to it being dismissed;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

298. Application by secured creditor

(1) Where the applicant for a bankruptcy order is a secured creditor, he or she shall in his or her application state the full amount of the liability of the debtor to him or her and—

(a) state that he or she is willing, in the event of a bankruptcy order being made, to give up his or her security interest for the benefit of the other creditors of the bankrupt; or

(b) give an estimate of the value of his security interest and make the application in respect of the full amount of the liability of the debtor to him or her less the estimated value of his or her security interest.

(2) In a case falling within subsection (1)(b), the secured creditor is treated as an unsecured creditor in respect of the unsecured liability of the debtor to him or her.

299. Secured creditor failing to disclose security interest

(1) Subject to subsection (2), a secured creditor who fails to disclose his or her security interest in an application for a bankruptcy order against a debtor is, in the event that a bankruptcy order is made on the application, deemed to have given up his or her security interest for the benefit of the other creditors of the bankrupt.

(2) If on the application of a secured creditor the Court is satisfied that the failure of the creditor to disclose his or her security interest was inadvertent or due to an honest mistake, it may disapply subsection (1) subject to such terms and conditions as it considers appropriate.

(3) Where subsection (1) applies, the secured creditor concerned—

(a) is not entitled to enforce his security interest against the estate of the bankrupt or to retain any proceeds from the realisation of the security interest; and

(b) shall execute such document of release as is required by the trustee or account and pay over to the trustee all proceeds from any realisation of his security interest.

(4) Where a secured creditor fails to execute a document of release as required by subsection (2)(b), the trustee may apply to the Court for an order that the trustee may execute the document on his or her behalf and, where the Court makes such an order, the execution of the document by the trustee takes effect as if executed by the secured creditor.

(5) A secured creditor who fails to account or pay to the trustee the proceeds from any realisation of his or her security interest in accordance with subsection (3)(b) commits an offence.

300. Hearing of creditor's application

(1) Subject to subsection (2), the Court may make a bankruptcy order on an application made under section 296 if it is satisfied that the debtor is insolvent within the meaning of section 8(2) and—

(a) where the debtor has failed to comply with the requirements of a statutory demand, the demand was made by the creditor making the application; or

(b) where execution or other process has been returned unsatisfied, the debt is payable to the creditor making the application.

(2) The Court shall not make a bankruptcy order under subsection (1) unless it is satisfied that—

(a) the debt, or one of the debts, in respect of which the application is made is a debt which, having been payable at the date of the application, has neither been paid nor secured nor compounded for; and

(b) where the debtor does not appear at the hearing, he or she has been served with the application.

(3) The Court may dismiss an application made under section 296 if—

(a) it is not satisfied with the proof of the liability or liabilities in respect of which the application is made;

(b) it is not satisfied with the proof of the service of the application on the debtor;

(c) it is satisfied that the debtor is able to discharge all his or her liabilities;

(d) it is satisfied that the debtor has made an offer to secure or compound for a liability in respect of which the application is made, the acceptance of which would have required the dismissal of the application and that offer has been unreasonably refused by the creditor making the application; or

(e) it is satisfied that for some other sufficient reason, a bankruptcy order ought not to be made.

(4) Nothing in section 296 or in this section limits the power of the Court, in accordance with the rules, to authorise a creditor's application to be amended by the omission of any creditor or liability.

(5) Where an application is amended under subsection (4), the Court may order that the application is proceeded with as if anything done for the purposes of this section or section 296 had been done only by or in relation to the remaining creditors or debts.

301. Application where individual creditors' arrangement in place

(1) Where an individual creditors' arrangement has been approved under Part II and has not been completed or otherwise come to an end, the Court may make a bankruptcy order against a debtor on the application of the supervisor or a creditor bound by the arrangement if it is satisfied—

(a) that the debtor has failed to comply with his or her obligations under the arrangement; or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of assets and liabilities or other document supplied by the debtor under Part II to any person; or

(ii) was otherwise made available by the debtor to his or her creditors at or in connection with a meeting summoned under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the [322] arrangement have been reasonably required of him or her by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on an application under subsection (1), any remuneration of the supervisor is a first charge on the bankrupt's estate.

302. Consolidation of applications

Where 2 or more applications for bankruptcy orders are presented against the same debtor, the Court may consolidate the proceedings or any of them on such terms as it considers fit.

303. Withdrawal of application

An application for a bankruptcy order may not be withdrawn except with the leave of the Court.

304. Court's powers on hearing of application for bankruptcy order

On the hearing of an application for a bankruptcy order under section 295, section 296 or section 301, the Court may—

(a) make a bankruptcy order;

(b) if it appears appropriate to do so on the grounds that there has been a contravention of the Rules or for any other reason, dismiss the application or stay proceedings on the application on such terms and conditions as it considers fit;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers fit.

305. Appointment of bankruptcy trustee

Where the Court makes a bankruptcy order [323], it shall appoint either the Official Receiver or an eligible insolvency practitioner to be the bankruptcy trustee of the bankrupt.

306. Period within which application shall be determined

(1) Subject to subsection (2), an application for a bankruptcy order shall be determined within 3 months after it is filed.

(2) The Court may, upon such conditions as it considers fit, extend the period referred to in subsection (1) for a period of, or where it grants more than one extension for an aggregate period not exceeding, 3 months if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

INTERIM RELIEF

307. Protection of assets after application for bankruptcy order

(1) Where an application for a bankruptcy order has been filed in respect of a debtor but not yet determined or withdrawn, the Court may, if it considers it necessary for the protection of the debtor's assets—

(a) make an order directing the Official Receiver or an eligible insolvency practitioner to take control of—

(i) the debtor's assets, or any part of them; and

(ii) such books or other documents of the debtor as may be specified in the order; and

(b) make any other order in relation to the debtor's assets.

(2) An application for an order under subsection (1) may be made by—

(a) the applicant for the bankruptcy order;

(b) the debtor himself or herself; or

(c) any creditor of the debtor.

(3) An order under subsection (1) may be made on such terms as it considers fit and may, as a condition precedent, require the applicant to deposit at Court such sum as the Court considers reasonable to cover the remuneration of the Official Receiver or the insolvency practitioner appointed.

(4) An order under subsection (1) remains in effect until the earlier of—

(a) the discharge of the order by the Court of its own motion or on the application of—

(i) the Official Receiver or eligible insolvency practitioner appointed under subsection (1)(a), or

(ii) any person specified in subsection (2); or

(b) the determination or withdrawal of the application for a bankruptcy order, whereupon the appointment of the Official Receiver or insolvency practitioner is terminated.

(5) On the order ceasing to have effect, the Court may give such directions or make such order with respect to the accounts of the administration of the appointee, or to any other matter, as it considers appropriate.

308. Effect of order under section 307

Whilst an order under section 307(1) is in effect, unless the leave of the Court has been obtained—

(a) no steps may be taken to enforce any security interest over the debtor's assets;

(b) no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the debtor; including—

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) goods supplied subject to a retention of title agreement; and

(c) no proceedings, execution or other legal process may be commenced or continued or distress levied against the debtor or his assets.

309. Remuneration of person appointed under section 307

(1) The Official Receiver or the insolvency practitioner directed to take control of a debtor's assets under section 307(1) is entitled to be paid such remuneration as the Court may order applying the general principles specified in section 432[324].

(2) Subject to subsections (3) and (4), the remuneration ordered to be paid under subsection (1) is payable—

(a) where a bankruptcy order is not made, out of the assets of the debtor;

(b) where a bankruptcy order is made,[325] out of the bankrupt's estate in accordance with the prescribed priority.

(3) If a bankruptcy order is not made, the Court may order the applicant for the order under section 307 to pay or contribute to the remuneration of the Official Receiver or insolvency practitioner directed to take control of the assets under section 307(1) if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in making the application.

(4) If the assets of the debtor[326] are not sufficient to pay the remuneration ordered to be paid by the Court under subsection (1), the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the order under section 307.

(5) Unless the Court otherwise orders, where subsection (2)(a) applies, the Official Receiver, or the insolvency practitioner appointed under section 307, may retain out of the debtor's assets such sums or assets as are, or may be, required for meeting his remuneration.

310. Examination

The Official Receiver or the insolvency practitioner directed to take control of a debtor's assets under section 307(1) may apply for an order to examine the debtor under section 369, and sections 369 to 373 apply as if—

(a) references to the Official Receiver or the trustee were to the person directed to take control of the debtor's assets; and

(b) references to the bankrupt and to his or her estate were to the debtor and his or her assets.

EFFECT OF BANKRUPTCY

311. Effect of bankruptcy order

(1) On the making of a bankruptcy order, the assets comprised in the bankrupt's estate—

(a) vest in his or her trustee without any conveyance, assignment or transfer; and

(b) become divisible among his or her creditors in accordance with this Act.

312. Power to stay or restrain proceedings

(1) An order under subsection (2) or (3) may be made—

(a) after an application for a bankruptcy order has been filed against an individual but not yet determined; or

(b) whilst an individual is an undischarged bankrupt.

(2) At any time during either period specified in subsection (1)—

(a) the Court may stay any action, proceeding, execution, distress or other legal process against the person or the assets of the individual concerned; and

(b) any court in which proceedings are pending against any individual may[327] either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt that may be claimed in the bankruptcy shall—

(a) have any remedy against the assets or person of the bankrupt in respect of that debt; or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and in such terms as the court may impose.

(4) This section—

(a) does not affect the right of a secured creditor to enforce his or her security; and

(b) is subject to section 351 (enforcement procedures) and section 352 (limited right to distress).

BANKRUPT'S ESTATE

313. Definition of bankrupt's estate

(1) Subject to subsection (2), the bankrupt's estate comprises—

(a) all assets belonging to or vested in the bankrupt at the date of the bankruptcy order;

(b) assets claimed by the trustee under section 318 or 319; and

(c) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of assets as might have been exercised by the bankrupt for his or her own benefit at the date of the bankruptcy order.

(2) Subsection (1) does not apply to—

(a) assets held by the bankrupt on trust for any other person;

(b) 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 or business;

(c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his or her family; and

(d) any asset of the bankrupt which is excluded from his or her estate under any other enactment.

(3) The assets comprised in a bankrupt's estate are divisible amongst his or her creditors in accordance with this Part.

(4) Assets comprised in a bankrupt's estate are subject to the rights of any person other than the bankrupt in relation to those assets, whether as a secured creditor of the bankrupt or otherwise, but disregarding—

(a) any rights given up under section 298(1)(a); and

(b) any rights which have been otherwise given up in accordance with the rules.

(5) Unless the context otherwise requires, a reference in this Part to the assets of the bankrupt means the assets comprised in the bankrupt's estate.

314. Acquisition by trustee of control of bankrupt's estate

(1) A trustee shall forthwith after the making of a bankruptcy order take possession of—

(a) all documents which relate to the bankrupt's estate or affairs and which belong to him or her or are under his or her control, including documents which would be privileged from disclosure in any proceedings; and

(b) all assets of the bankrupt that are capable of manual delivery.

(2) A trustee is, in relation to and for the purposes of acquiring or retaining possession of the assets of the bankrupt, in the same position as a receiver of the assets appointed by the Court, and the Court may, on his or her application, enforce the acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock, shares or shares in a ship or any other assets transferable in the books of a company, office or person, the trustee may exercise the right to transfer the assets to the same extent as the bankrupt might have exercised it if he or she had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee.

(5) Notice of the deemed assignment of things in action under subsection (4)[328] need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself or herself, for protecting the priority of the trustee.

315. Goods subject to pledge etc.

(1) Where any goods of a bankrupt are held by any person by way of pledge, pawn or other security, the trustee of the bankrupt may, after giving notice of his or her intention to do so, inspect the goods.

(2) Where a person receives a notice under subsection (1), he or she is not entitled to realise his or her security unless he or she has given the trustee a reasonable opportunity to inspect the goods and, if the goods are comprised in the estate of the bankrupt, to exercise the bankrupt's right of redemption.

316. Duties of bankrupt in relation to his assets and affairs

(1) Where a bankruptcy order has been made, the bankrupt shall—

(a) make discovery of and deliver to his or her trustee all the assets comprised in his estate that are in his or her possession or control; and

(b) deliver to his or her trustee all documents in his or her possession or control which relate to his or her assets or affairs, including any documents which, in any proceedings, would be privileged from disclosure.

(2) Where the bankrupt is unable to deliver any assets comprised in his or her estate to his trustee, the bankrupt shall do everything reasonably required by his or her trustee to protect those assets.

(3) The bankrupt shall—

(a) give his or her trustee such information concerning his or her assets and affairs;

(b) attend on him or her at such times; and

(c) do all such other things, as his or her trustee may reasonably require for the purposes of carrying out his or her functions under this Act.

(4) If at any time after the time of the bankruptcy order any assets are acquired by, or devolve on, the bankrupt or there is an increase in the bankrupt's income, he or she shall, within the prescribed time period, give the trustee notice of the assets or of the increased income.

(5) Subsection (3) applies to a bankrupt after his or her discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he or she commits an offence.

317. Delivery up by other persons

(1) Any person who holds assets to the account of, or for, the bankrupt shall pay or deliver to the trustee the assets in his or her possession or under his or her control unless he or she is, by law, entitled to retain the assets against the bankrupt or the trustee.

(2) Any person who, without reasonable excuse, fails to comply with any obligation imposed by this section, commits an offence.

318. After-acquired assets

(1) Subject to sections 313(2) and 321, the trustee may by notice in writing served on the bankrupt claim for the bankrupt's estate any assets which have been acquired by, or have devolved upon, the bankrupt after the date of the bankruptcy order but prior to the date of his discharge.

(2) Subject to subsection (3), on the service of a notice under subsection (1) on the bankrupt, the assets to which the notice relates[329] vest in the trustee as part of the bankrupt's estate and the trustee's title to those assets relates back to the time at which the assets were acquired by, or devolved upon, the bankrupt.

(3) Where, whether before or after service of a notice under this section—

(a) a person acquires assets in good faith, for value and without notice of the bankruptcy, or

(b) a banker enters into a transaction in good faith and without such notice, the trustee is not in respect of those assets or that transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any assets derives from that person or banker.

(4) For the purposes of this section, a reference to "assets" does not include any asset which, as part of the bankrupt's income, may be the subject of an income payments order under section 322.

319. Vesting in trustee of certain items of excess value

(1) Subject to section 321, where—

(a) assets are excluded from the bankrupt's estate by virtue of section 313(2)(b) or (c), and

(b) it appears to the trustee that the realisable value of those assets or any of them exceeds the cost of a reasonable replacement,

the trustee may, by notice in writing served on the bankrupt, claim the asset or assets for the bankrupt's estate.

(2) On the service on the bankrupt of a notice under subsection (1), the assets to which the notice relates vest in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to those assets has relation back to the date of the bankruptcy order.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any assets vested in him or her under this section and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section, an asset is a reasonable replacement for another asset if it is reasonably adequate for meeting the needs met by the other asset.

320. Money provided in lieu of sale[330]

(1) A third party may offer the trustee a sum of money to enable the bankrupt to be left in possession of assets which would otherwise vest in the trustee under section 319.[331]

(2) The trustee may accept an offer made under subsection (1) if he or she is satisfied that it is a reasonable offer and that the estate will benefit to the extent of the value of the assets in question less the cost of a reasonable replacement.[332]

321. Time limit for notice under sections 318 or 319[333]

(1) Except with the leave of the Court, a notice may not be served—

(a) under section 318, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the assets in question had been acquired by, or had devolved upon, the bankrupt;

(b) under section 319[334], after the end of the period of 42 days beginning with the day on which the assets in question first came to the knowledge of the trustee.

(2) For the purposes of this section—

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his or her as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes to the knowledge of a person before he or she is the trustee, otherwise than under paragraph (a), is deemed to come to his or her knowledge on his or her appointment taking effect[335].

322. Income payments orders

(1) The Court may, on the application of the trustee, make an income payments order claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

(2) The Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payments of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order; or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) [DELETED][336]

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

(6) Subject to section 379(1)(c)(i), an income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his or her discharge.

(7) Subject to subsection (8), for the purposes of this section, the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or her or to which he or she from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and any payment under a pension scheme.

(8) The Rules may provide that pension payments paid to the bankrupt up to a maximum amount specified in the Rules are exempt from subsection (7).[337]

BANKRUPTCY TRUSTEE

323. Bankruptcy trustee officer of Court

In performing his or her functions and undertaking his or her duties under this Act, a bankruptcy trustee acts as an officer of the Court.

324. General duties of trustee

(1) The principal duties of a trustee are—

(a) to take possession of, protect and realise the bankrupt's estate; and

(b) to distribute the bankrupt's estate in accordance with this Act.

(2) Where the trustee is not the Official Receiver, he or she has a duty—

(a) to provide the Official Receiver with such information,

(b) to produce to the Official Receiver, and permit inspection by the Official Receiver of, such documents, and

(c) to give the Official Receiver such other assistance, as the Official Receiver may reasonably require for the purpose of enabling him or her to carry out his functions in relation to the bankruptcy.

(3) A trustee shall, subject to this Act and the Rules, use his or her own discretion in undertaking his duties.

(3A) If it appears to the trustee that the bankrupt is carrying on or has carried on unlicensed financial services business—

(a) he or she shall, as soon as reasonably practicable, report the matter to the Commission; and

(b) for the purposes of subsection (3B), he or she shall treat the bankrupt as a regulated person.[338]

(3B) Where the bankrupt is or has been a regulated person, the trustee shall—

(a) send to the Commission a copy of every notice or other document that he or she is required to file with the Court or to send to a creditor of the bankrupt; and

(b) unless the applicant is the Commission, give the Commission notice of any application made to the Court with respect to the bankruptcy, whether the application is made by him or her or by some other person.[339]

(4) A trustee also has the other duties imposed by this Act and the Rules and such duties as may be imposed by the Court.

325. Powers of trustee

(1) A trustee may—

(a) with the permission of the creditors' committee or court, exercise any of the powers specified in Part 1 of Schedule 4; and Schedule 4

(b) without that permission, exercise any of the general powers specified in Part 2 of Schedule 4.

(2) With the permission of the creditors' committee or the court, the trustee may appoint the bankrupt—

(a) to superintend the management of his or her estate or any part of it;

(b) to carry on his or her business, if any, for the benefit of his or her creditors; or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

(3) A permission given for the purposes of subsection (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Subject to subsection (5), where the trustee has done anything without the permission required by subsection (1)(a) or (2), the Court or the creditors' committee may, for the purpose of enabling him or her to meet his or her expenses out of the bankrupt's estate, ratify what the trustee has done.

(5) The creditors' committee shall not ratify the trustee's actions under subsection (4) unless it is satisfied that the trustee acted in a case of urgency and sought the committee's ratification without undue delay.

(6) Part 3 of Schedule 4 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his or her powers under this Part.

(7) Where the trustee, not being the Official Receiver, in exercise of the powers conferred on him or her by any provision in this Part—

(a) disposes of any asset comprised in the bankrupt's estate to an associate of the bankrupt, or

(b) employs a solicitor, he or she shall give notice to any creditors' committee of that exercise of his or her powers.

(8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his or her powers outside the Virgin Islands.

(9) The acts of the trustee of a bankrupt are valid notwithstanding any defect in his or her nomination, appointment or qualifications.[340]

326. Notice of appointment

(1) A trustee shall, within 14 days of the date of his or her appointment—

(a) advertise his or her appointment in accordance with the Rules;[341]

(b) serve notice of his or her appointment on the bankrupt;

(c) if he or she has been appointed in respect of an individual who is a regulated person, serve notice of his or her appointment on the Commission;

(d) send a notice of his or her appointment to every creditor of the bankrupt; and

(e) unless the Official Receiver is the trustee, file notice of his or her appointment with the Official Receiver.

(2) An advertisement under subsection (1)(a) and a notice under subsection (1)(d) shall set out the powers of the creditors under this Part to require him or her to call a meeting of creditors.

(3) A trustee who contravenes subsection (1) or (2) commits an offence.

327. Appointment of trustee in place of Official Receiver

(1) When the Official Receiver is the trustee of a bankrupt's estate the Court may, on his or her application, appoint an eligible insolvency practitioner to act as trustee in his or her place.

(2) An application may be made under subsection (1) notwithstanding that the Court has refused to make an appointment on a previous application by the Official Receiver.

328. Removal of trustee

(1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove a trustee from office if—

(a) the trustee—

(i) is not eligible to act as an insolvency practitioner in relation to the bankrupt;

(ii) breaches any duty or obligation imposed on him or her by or owed by him or her under this Act, the Rules or the Regulations made under section 486 or, in his or her capacity as trustee, under[342] any other enactment or law in the Virgin Islands; or

(iii) fails to comply with any direction or order of the Court made in relation to the bankruptcy; or

(b) the Court is satisfied that—

(i) the trustee's conduct of the bankruptcy is below the standard that may be expected of a reasonably competent trustee;

(ii) the trustee has an interest that conflicts with his or her role as trustee, or

(iii) that for some other reason he or she should be removed as trustee.

(2) An application to the Court to remove a trustee from office may be made by—

(a) the creditors' committee, if any;

(b) a creditor of the bankrupt; or

(c) the Official Receiver.

(3) Where the Court removes a trustee from office under this section—

(a) if, following his or her removal, there is at least one trustee remaining in office, the Court may appoint an eligible insolvency practitioner as[343] trustee in his or her place; or

(b) if the trustee removed was the sole trustee of the bankrupt[344], the Court shall appoint the Official Receiver or an eligible insolvency practitioner as[345] trustee in his or her place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers fit.

329. Resignation of trustee

(1) A trustee—

(a) shall resign if he or she is no longer eligible to act as an insolvency practitioner in relation to the bankrupt; but

(b) otherwise may only resign in accordance with this section.

(2) Where a trustee resigns under subsection (1)(a), he or she shall send a notice of his or her resignation [346], to the creditors of the bankrupt and to the Official Receiver, who shall file a copy of the notice with the Court, and his or her resignation takes effect from the date that the notice is filed by the Official Receiver with the Court[347].

(3) A trustee may resign in accordance with subsection (5) —

(a) if he or she intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him or her of his or her duties; or

(c) on the grounds of ill health.

(4) Notwithstanding subsection (3), where joint trustees are appointed, one or more of the joint trustees[348] may resign in accordance with subsection (5) if—

(a) all the joint trustees are of the opinion that it is no longer necessary or expedient for the resigning trustee or trustees to continue in office; and

(b) at least one of them will remain in office.

(5) Where a trustee intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he or she shall call a meeting of creditors for the purpose of accepting his or her resignation as trustee.

(6) If, at the meeting called under subsection (5), the creditors resolve to accept the resignation of the trustee, he or she shall send a notice of his or her resignation to the creditors of the bankrupt and to the Official Receiver, who shall file a copy of the notice with the Court, and his or her resignation takes effect from the date that the notice is filed by the Official Receiver with the Court[349.]

(6A) If the creditors refuse or fail to accept the resignation of the trustee, he or she may apply to the Court for leave to resign in accordance with the Rules.[350]

(7) This section does not apply to the Official Receiver when acting as the trustee of a bankrupt.

330. Appointment of replacement trustee[351]

(1) Where a trustee dies or resigns under section 329, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one trustee remaining in place, may appoint an eligible insolvency practitioner as trustee in his or her place; or

(b) if the trustee who has died or resigned was the sole trustee of the bankrupt, shall appoint the Official Receiver or an eligible insolvency practitioner in his or her place.[352]

(2) An application under subsection (1) may be made—

(a) by any continuing trustee;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

(3) Where there is a vacancy in the office of trustee, for whatever reason, the Official Receiver is trustee until the vacancy is filled.

331. Remuneration of trustee

The remuneration payable to a trustee shall be fixed applying the principles specified in section 432[353].

332. General control of trustee by the Court

(1) A person aggrieved by an act, omission or decision of a trustee may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the trustee.

(2) A trustee may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

ADMINISTRATION BY TRUSTEE

333. Meetings of creditors

(1) A trustee may at any time call a meeting of the creditors of the bankrupt—

(a) by sending a notice of the meeting by post to every creditor not less than 7 days before the date upon which the meeting is to be held; and

(b) by advertising the meeting.

(2) Notwithstanding subsection (1), the trustee shall call a meeting of creditors if—

(a) a meeting is requisitioned by the creditors of the bankrupt in accordance with subsection (3); or

(b) he or she is directed to do so by the Court.

(3) A creditors' meeting may be requisitioned in accordance with the Rules by 25% in value of the creditors of the bankrupt.

(4) The trustee may, if he or she considers it appropriate, by written notice, require the bankrupt to attend a creditors' meeting called under this section.[354]

(5) The bankrupt commits an offence if—

(a) he or she receives a notice to attend a creditors' meeting under subsection (4); and

(b) without reasonable excuse, he or she fails to attend the meeting.[355]

CLAIMS AND DISTRIBUTION OF ESTATE

334. Distribution of bankrupt's estate

(1) The bankrupt's estate shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the bankruptcy in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the bankruptcy, in paying the preferential claims admitted by the trustee in accordance with the provisions for the payment of preferential claims prescribed;

(c) after payment of the preferential claims, in paying all other claims admitted by the trustee; and

(d) after paying all admitted claims, in paying any interest payable under section 342.

(2) Subject to section 151, the claims[356] referred to in subsection (1)(c) rank equally and, if the bankrupt's estate is insufficient to meet them all in full, they shall be paid rateably.

335. Debts to spouse

Any claims in respect of credit provided by a person who was the bankrupt's spouse at the time of the bankruptcy order, whether or not he or she was the bankrupt's spouse at the time the credit was provided—

(a) rank in priority after the debts and interest specified in section 334(1); and

(b) are payable with interest at the rate specified in section 334(1)(d) in respect of the period during which they have been outstanding since the date of the bankruptcy order,

and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

336. Claims by unsecured creditors

(1) An unsecured creditor may make a claim in the bankruptcy of an individual by submitting to the trustee a written claim, signed by him or her or on his or her behalf.

(2) The trustee may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his or her claim by affidavit;

(b) to provide further particulars of his or her claim; or

(c) to provide him or her with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (7), as soon[357] as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the trustee may have imposed under subsection (2), the trustee shall either admit or reject the claim in whole or in part.

(4) If the trustee rejects the claim, whether in whole or in part, he or she shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the trustee under subsection (2).

(6) The trustee shall not admit a claim in the bankruptcy unless it has been made in accordance with this section.

(6A) The trustee is not required to admit or reject claims under subsection (3) at any time when it appears to him or her that there are insufficient assets in the bankrupt's estate to enable a distribution to be made to unsecured creditors.[358]

(7) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim, commits an offence.

337. Variation, withdrawal and expunging of claims

(1) A claim made under section 336 may—

(a) be amended or withdrawn by the creditor at any time before the trustee has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the trustee at any time after the trustee has admitted it.

(2) The Court, on the application of the trustee or, where the trustee declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

338. Claims by secured creditors

(1) A secured creditor may—

(a) value the assets subject to the security interest and claim in the bankruptcy as an unsecured creditor for the balance of his or her debt; or

(b) surrender his or her security interest to the trustee for the general benefit of creditors and claim in the bankruptcy as an unsecured creditor for the whole of his or her debt,

but he or she is not obliged to do either.

(2) A secured creditor may, at any time apply to the trustee to amend the value that he or she placed on the security interest in his or her claim.

(3) If, on receiving an application under subsection (2), the trustee is satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed, he or she may permit the secured creditor to amend the value that he or she places on the security interest.

(4) If the trustee is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)(a) or on an amendment under subsection (3), he or she may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the trustee or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the trustee are entitled to bid for and purchase them.

339. Redemption of security interest by trustee

(1) Where a secured creditor has claimed in a bankruptcy under section 338(1)(a), the trustee may at any time give notice to the creditor that he or she proposes at the expiration of 28 days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within 21 days of the date of the notice, apply to the trustee to revise the value that he or she places on the security interest in accordance with section 338(2).

(3) At the expiration of 28 days from the date of the notice under subsection (1), the trustee may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the trustee to amend the value that he or she places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the trustee to permit him or her to amend the value that he or she places on his or her security interest, and that appeal has not been determined.

(4) Where, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his or her security interest is amended, whether with the consent of the trustee or on appeal to the Court, the trustee may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the trustee, require him or her to elect whether or not to exercise his or her power to redeem under this section.

(6) Where a notice to elect is served on a trustee under subsection (5), he or she is not entitled to redeem the security interest unless he or she does so within six months of the date of service of the notice on him or her or within such extended period as the Court may allow.

340. Realisation of security interest by secured creditor

(1) Where a secured creditor realises his or her security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he or she shall account to the trustee for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) Where a secured creditor realises his or her security interest and the net amount realised is not sufficient to satisfy the debt secured—

(a) if the creditor has previously valued his or her security interest and claimed in the bankruptcy for the balance under section 338(1)(a)[359], the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the bankruptcy as an unsecured creditor for the balance of his or her debt.

(3) For the purposes of this section, the secured debt [360] includes contractual interest payable to the secured creditor on the debt up to the time of its satisfaction.

341. Surrender for non-disclosure

(1) Subject to subsection (2), if a secured creditor omits to disclose his or her security interest when submitting a claim in a bankruptcy, he or she shall surrender his or her security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his or her security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct—

(a) that he or she is not required to surrender his or her security interest; and

(b) that he or she values his or her security interest and amends his or her claim accordingly.

342. Interest after commencement of bankruptcy

(1) Interest is payable on any claim in a bankruptcy in respect of the period after the commencement of the bankruptcy in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the bankruptcy shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the bankruptcy.

(3) Subject to section 151, all interest[361] payable under this section ranks equally, whether or not the claims on which it is payable rank equally.

(4) The rate of interest payable under this section is the greater of—

(a) the court rate; and

(b) the rate that would be applicable to the claim if a bankruptcy order had not been made.

343. Distribution by means of dividend

(1) Whenever the trustee has sufficient funds in hand for the purpose, he or she shall, subject to the retention of such sums as may be necessary for his or her remuneration and the other costs and expenses of the bankruptcy, distribute dividends among the creditors whose claims[362] he or she has admitted.

(2) Before distributing a dividend under subsection (1), the trustee shall send each creditor a notice—

(a) stating that he or she intends to distribute a dividend; and

(b) fixing a date on or before which creditors shall submit their claims to him or her.[363]

(c) [deleted][364]

(d) [deleted][365]

(5) In determining the funds available for distribution to creditors by way[366] of a dividend, the trustee shall make provision—

(a) for any admissible debts which appear to him or her to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to submit their claims;

(b) for any admissible debts which are the subject of claims which have not yet been determined; and

(c) for disputed claims.

344. Claims by unsatisfied creditors

(1) A creditor who has not submitted his or her claim by the date fixed in the notice issued under section 343(2)[367] is not entitled to disturb, by reason that he or she has not participated in it, the distribution of that dividend[368], but—

(a) when that claim has been admitted, he or she is entitled to be paid out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he or she has failed to receive; and

(b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) Subject to section 346, where the trustee makes more than one distribution, section 343 and subsection (1) of this section apply to each distribution.[369]

345. Distribution of assets in specie

(1) Without prejudice to the provisions in this Act concerning disclaimer, the trustee may, with the permission of the creditors' committee or the Court, divide in their existing form amongst the bankrupt's

creditors, according to their estimated value, any assets which from their peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.

(3) Subject to subsection (4), where the trustee has done anything without the permission required by subsection (1), the Court or the creditors' committee may, for the purpose of enabling him or her to meet his or her expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee may only ratify the trustee's actions under subsection (3) if it is satisfied that the trustee acted in a case of urgency and that he or she has sought its ratification without undue delay.

346. Final distribution

(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the bankruptcy, he or she shall give notice in the prescribed manner either—

(a) of his or her intention to distribute[370] a final dividend; or

(b) that no dividend, or further dividend, will be distributed[371].

(2) A notice given under subsection (1) shall require claims against the bankrupt's estate to be established by a date specified in the notice (referred to in this section as "the final date").

(3) The Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(b) if he or she intends to distribute a final dividend,[372] distribute that dividend without regard to the claim of any person in respect of a claim not already admitted in the bankruptcy.

347. No action for dividend

No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the Court may, if it thinks fit, order him or her to pay it and also to pay out of his or her own money—

(a) interest on the dividend at the Court rate from the time it was withheld; and

(b) the costs of the application.

348. Right of bankrupt to surplus

(1) Subject to subsection (2), the bankrupt is entitled to any surplus remaining after payment in full of the costs, expenses and claims referred to in section 334(1).

(2) The Court may make an order directing the trustee not to distribute the surplus or any part of it to the bankrupt if, on the application of the Attorney General, it is satisfied that—

(a) proceedings under any enactment dealing with the confiscation of the proceeds of crime are pending; and

(b) the assets of the bankrupt may become subject to a confiscation order or to be required to meet some other order made in those proceedings.

(3) The Court may, on the application of the Attorney General or the bankrupt vary or revoke an order made under subsection (2).

349. Final meeting

(1) Where it appears to the trustee that the administration of the bankrupt's estate in accordance with this Act is for practical purposes complete and the trustee is not the Official Receiver, he or she shall call a final general meeting of the bankrupt's creditors to receive the trustee's report of his or her administration of the bankrupt's estate.

(2) The trustee may, if he or she thinks fit, call the final general meeting at the same time as giving notice under section 346 but, if called for an earlier date, the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(3) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

PRIOR TRANSACTIONS

350. Contracts to which bankrupt is a party

(1) Where a contract has been made with a person who subsequently becomes bankrupt, the Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(2) Any damages payable by the bankrupt by virtue of an order of the Court under this section are provable as a bankruptcy debt.

(3) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

351. Enforcements procedures

(1) Subject to section 312 and to this section, where the creditor of a bankrupt has, before the commencement of that bankruptcy—

(a) issued execution against the goods or land of the bankrupt; or

(b) attached a debt due to the bankrupt from another person, the creditor is not entitled, as against the bankruptcy trustee, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

(2) Where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the officer charged with the execution that a bankruptcy order has been made against that person[373]—

(a) that officer shall on request deliver the goods and any money seized or recovered in part satisfaction of the execution to the trustee; but

(b) the costs of the execution are a first charge on the goods or money so delivered and the trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6) below, where—

(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale; and

(b) before the end of the period of 14 days beginning with the day of the sale or payment the officer charged with the execution is given notice that a bankruptcy application has been filed in relation to that person; and

(c) a bankruptcy order is or has been made on that application;

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the officer charged with the execution shall—

(a) not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending an application for a bankruptcy order[374] of which he or she has been given notice under that subsection; and

(b) pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the trustee.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale;

(b) an execution against land is completed by seizure or by the appointment of a receiver;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee to claim goods from a person who has acquired them in good faith under a sale by an officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against assets which have been acquired by or have devolved upon the bankrupt since the commencement of the bankruptcy unless, at the time the execution is issued or before it is completed—

(a) the assets have been or are claimed for the bankrupt's estate under section 318 (after-acquired assets); and

(b) a copy of the notice given under that section has been or is served on the officer charged with the execution.

352. Distress, etc.

(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him or her from the bankrupt is available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy application relates and a bankruptcy order is subsequently made on that application, any amount recovered by way of that distress which—

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or

(b) is in respect of rent for a period or part of a period after the distress was levied, shall be held for the bankrupt as part of his or her estate.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual against whom a bankruptcy order is made[375] before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt''s estate as is available for the payment of preferential creditors by virtue of the surrender of payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Nothing in this Part affects any right to distrain otherwise than for rent, and any such right is at any time exercisable without restriction against assets comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.

(7) Any right to distrain against assets comprised in a bankrupt's estate is exercisable notwithstanding that the assets have vested in the trustee.

(8) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to claim[376] for any bankruptcy debt in respect of rent.

353. Unenforceability of liens on books, etc.

(1) A lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that such enforcement would deny possession of any books, papers or other records to the Official Receiver[377] or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to assets and are held as such.

GENERAL POWERS OF COURT

354. General control of Court

(1) Every bankruptcy is under the general control of the Court and, subject to anything to the contrary in this Act, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without limiting this Part, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered shall do all such things as he or she may be directed to do by the Court for the purposes of his or her bankruptcy or, as the case may be, the administration of that estate.

(3) The Official Receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

(4) A person who without reasonable excuse fails to comply with any obligation imposed on him or her by subsection (2) commits an offence.

355. Power of arrest

(1) In the cases specified in subsection (2) the Court may cause a warrant to be issued to a police officer or a prescribed officer of the Court—

(a) for the arrest of a debtor to whom an application for a bankruptcy order[378] relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered; and

(b) for the seizure of any documents, money or goods in possession of a person arrested under the warrant, and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Rules[379], until such time as the court may order.

(2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the filing of the application for a bankruptcy order[380] or the making of the bankruptcy order against him or her, it appears to the Court—

(a) that there are reasonable grounds for believing that he or she has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his or her debts or his or her appearance to an application for a bankruptcy order[381] or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or her or any examination of his or her affairs;

(b) that he or she is about to remove his or her goods with a view to preventing or delaying possession being taken of them by the trustee;

(c) that there are reasonable grounds for believing that he or she has concealed or destroyed, or is about to conceal or destroy, any of his or her assets or any documents which might be of use to his or her creditors in the course of his or her bankruptcy or in connection with the administration of his or her estate;

(d) that he or she has, without the leave of his or her trustee, removed any assets in his or her possession which exceed in value such sum as may be prescribed for the purpose of this paragraph; or

(e) that he or she has failed, without reasonable excuse, to attend any examination ordered by the Court.

356. Seizure of bankrupt's assets

(1) At any time after a bankruptcy order has been made, the Court may, on the application of the Official Receiver[382] or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any assets comprised in the bankrupt's estate which is, or any documents or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the assets, books, papers or records to the Official Receiver or trustee.

(2) Any person executing a warrant under this section may, for the purpose of seizing any assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the Court is satisfied that any assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs are concealed in any premises not belonging to him or her, it may issue a warrant authorising any police officer or prescribed officer of the Court to search those premises for the assets or documents.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

357. Re-direction of bankrupt's letters, etc.

(1) Where a bankruptcy order has been made, the Court may from time to time, on the application of the trustee of the bankrupt's estate, order the Post Office to re-direct and send or deliver to the trustee or otherwise any mail which would otherwise be sent or delivered to the bankrupt at such place or places as may be specified by the order.

(2) An order under this section has effect for such period, not exceeding 3 months, as may be specified in the order.

DISCLAIMER

358. Trustee may disclaim onerous property

(1) For the purposes of this section, "onerous property" means—

(a) an unprofitable contract; or

(b) an asset comprised in the bankrupt's estate which is unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to sections 360 and 361(2), a trustee may, by filing a notice of disclaimer with the Court, disclaim any onerous property comprised in the bankrupt's estate even though he or she has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A trustee who disclaims onerous property shall, within 14 days of the date on which the disclaimer notice is filed, give notice to every person whose rights are, to his or her knowledge, affected by the disclaimer.

(4) A trustee who contravenes subsection (3) commits an offence.

359. When disclaimer takes effect

(1) Subject to subsections (2) and (4), a disclaimer takes effect on the date when the notice of disclaimer is filed at Court.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every person claiming under the bankrupt as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 362 with respect to that property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer is to take effect.

(3) Where the Court gives a direction under subsection (2)(b), it may also, instead of or in addition to any order it makes under section 362, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers fit.

(4) Without prejudice to subsections (1) to (3), the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every person in occupation of or claiming a right to occupy the dwelling house and either—

(a) no application under section 362 is made with respect to the property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer is to take effect.

360. Notice to trustee to elect whether to disclaim

(1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the trustee, require him or her to elect whether or not to disclaim the property.

(2) Where a notice to elect is served on a trustee, he or she is not entitled to disclaim the property under section 358 unless he or she does so within 28 days of the date of service of the notice on him or her or within such extended period as the Court may allow.

(3) The trustee is deemed to have adopted any contract which by virtue of this section he or she is not entitled to disclaim.

361. Effect of disclaimer

(1) Subject to subsection (2), a disclaimer of onerous property under section 358—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his or her estate in or in respect of the property disclaimed; and

(b) discharges the trustee from all personal liability in respect of that property as from the date of his or her appointment, but, except so far as is necessary to release the bankrupt, the bankrupt's estate and the trustee from liability, does not affect the rights or liabilities of any other person.

(2) A notice of disclaimer shall not be given under section 358 in respect of any property that has been claimed for the estate under section 318 (after-acquired property) or 319 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the court.

(3) A person suffering loss or damage as a result of a disclaimer of onerous property under section 358 may claim in the bankruptcy of the bankrupt as a creditor for the amount of the loss or damage.

362. Vesting orders and orders for delivery

(1) Subject to section 363, if a trustee disclaims onerous property under section 358, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling house.

(2) On an application under subsection (1), the Court may, on such terms as it considers fit, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer;

(c) a trustee for a person referred to in paragraph (a) or (b); or

(d) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling house.

(3) The Court shall not make an order in respect of a person specified in subsection (2)(b), or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage suffered by a person for the purposes of section 361(3).

(5) Subject to subsection (6)[383], where a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) Where another Virgin Islands enactment—

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that enactment enables the order to be registered, on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

363. Vesting orders in respect of leases

(1) Where the Court makes an order under section 362 vesting property of a leasehold nature in a person, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the bankrupt was subject to under the lease on the date that the bankruptcy order was made; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him or her on that date.

(2) Where the property vested by an order under section 362 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) Where no person is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the bankrupt, to perform the lessee's covenants in the lease; and

(b) where a vesting order is made under paragraph (a), may vest the property free from all estates, encumbrances and interests created by the bankrupt.

(4) Where a person declines to accept a vesting order made subject to subsection (1), he or she is excluded from all interest in the property.

364. Land subject to rentcharge

Where land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his or her successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after he or she, or some person claiming title under or through him or her, has taken possession or control of the land or has entered into occupation of it.

365. Disclaimer presumed valid

Unless it is proved that a trustee has breached his or her duty to give notice under section 358(3) or that he or she has otherwise breached his or her duties under this Act or the Rules with regard to disclaimer, a disclaimer of property by the trustee is presumed to be valid and effective.

INVESTIGATION OF BANKRUPT'S AFFAIRS

366. Statement of assets and liabilities

(1) Where a bankruptcy order has been made against an individual otherwise than on his or her own application, the bankrupt shall submit a verified[384] statement of his or her assets and liabilities to his or her trustee within 21 days of the date of the bankruptcy order.

(2) A statement of assets and liabilities shall contain—

(a) such particulars of the bankrupt's creditors and of his or her debts and other liabilities and of his or her assets as may be prescribed; and

(b) such other information as may be prescribed.

(3) A trustee or the Court may, in accordance with the Rules[385]—

(a) release the bankrupt from his or her duty under subsection (1); or

(b) extend the period of time specified in that subsection.

(3A) Where the trustee considers that it would prejudice the conduct of the bankruptcy for the whole or part of a statement of assets and liabilities submitted to him or her to be disclosed, he or she may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.[386]

(3B) The Court may, on an application under subsection (3A), order that the statement of assets and liabilities or, as the case may be, the specified part of it, is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with the leave of the Court.[387]

(4) A bankrupt who—

(a) fails to submit a statement of his or her assets and liabilities in accordance with subsection (1); or

(b) submits a statement of his or her assets and liabilities that does not comply with the prescribed requirements, commits an offence.

367. Preliminary report

(1) The trustee of a bankrupt shall, within 60 days of the date of the bankruptcy order, prepare a preliminary report stating whether, in his or her opinion, further enquiry is desirable with respect to—

(a) whether the bankrupt has committed a bankruptcy offence;

(b) whether there are any claims under Part XIV;

(c) any matter relating to the conduct by the bankrupt of his or her business or affairs.

(2) The trustee shall send a copy of the report prepared under subsection (1) to the Official Receiver.

(3) Subsection (2) does not apply to the Official Receiver when he or she is acting as trustee.

(4) The Court may, on the application of the trustee, extend the period specified in subsection (1) on such terms and conditions as it considers fit.

368. Duty of Official Receiver concerning report under section 367

Where the Official Receiver receives a report under section 367[388], he or she shall carry out such investigation, if any, as he or she considers appropriate.

369. Application for examination of bankrupt and others

(1) Where a bankruptcy order is made, an application may be made to the Court, ex parte, by the trustee or by the Official Receiver at any time before the discharge of the bankrupt for an order that a person specified in subsection (2) appears before the Court to be examined concerning the affairs, dealings and assets of the bankrupt.

(2) An application under subsection (1) may be made in respect of one or more of the following—

(a) the bankrupt;

(b) the bankrupt's spouse or former spouse;

(c) any person known or believed to be indebted to the bankrupt or to have in his or her possession any asset comprised in the bankrupt's estate; and

(d) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs, assets or liabilities.

(3) The examination of a bankrupt may be held in public or in private but the examination of any other person shall be held in private.

(4) Unless the Court otherwise orders, the trustee shall make an application under subsection (1) in respect of the bankrupt if notice requiring him or her to do so is given to him or her, in accordance with the Rules, by not less than 50%, in value, of the creditors of the bankrupt.

370. Order for examination

(1) In this section, "examinee" means the person to be examined before the Court.

(2) On hearing an application made under subsection 369, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (2)—

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) where the examinee is the bankrupt, shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his or her possession or control that relate to the bankrupt or his or her dealings, affairs, liabilities or assets;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he or she does not appear before the Court as required by the order; and

(f) where the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) Where the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, where the trustee is not the Official Receiver—

(a) if the applicant is the trustee, send a sealed copy of the order[389] to the Official Receiver; or

(b) if the applicant is the Official Receiver, send a sealed copy of the order[390] to the trustee.

(5) Where an order under subsection (2) is for the public examination of the bankrupt, the applicant shall give not less than 14 days notice of the examination to each creditor of the bankrupt.

(6) The Court may as part of an order made under this section, or at any subsequent time, make one or more of the following directions—

(a) a direction specifying the matters upon which the examinee may be examined;

(b) a direction specifying the procedures to be followed at the examination; and

(c) in the case of an examinee referred to in section 369(2)(b), (c) or (d) a direction that the examinee—

(i) file with the Court an affidavit containing such matters as are specified by the Court, or

(ii) produce at his or her examination any documents in his or her possession or under his or her control relating to the bankrupt's dealings, affairs, assets or liabilities.

371. Conduct of examination

(1) This section applies to an examination held pursuant to an order made under section 370.

(2) An examinee shall be examined on oath, either orally or by interrogatories, and he or she shall answer such questions as the Court may put, or allow to be put to him or her.

(3) Subject to subsections (4) and (5), an examination is conducted by the applicant, or by his or her legal practitioner, and the person examined is entitled to be represented by a legal practitioner who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him or her.

(4) The examinee may also be examined—

(a) if the applicant is the Official Receiver, by the trustee; or

(b) if the applicant is the trustee, by the Official Receiver.

(5) At a public examination of the bankrupt, questions may, with the leave of the Court, be put to the examinee by any creditor present at the examination or by the legal practitioner representing such a creditor.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 372, the written record of an examination is admissible in evidence in any proceedings under this Act.

372. Examinee shall answer questions put to him or her

(1) An examinee is not excused from answering a question put to him or her at an examination held pursuant to an order made under section 370 on the ground that the answer may incriminate him or her or tend to incriminate him or her.

(2) Notwithstanding subsection (1), the record of an examination held pursuant to an order made under section 370 is not admissible as evidence in any criminal proceedings against the examinee except where he or she is charged with the offence of perjury.

373. Examinee failing to appear for his or her examination

(1) Where a person without reasonable excuse fails to attend an examination ordered to be held under section 370, or there are reasonable grounds for believing that the examinee has absconded, or is about to abscond, with a view to avoiding or delaying his or her examination, the Court may issue a warrant to a police officer or a prescribed officer of the Court—

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(2) The Court may authorise a person arrested under a warrant issued under subsection (1) to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

(3) A person who fails to attend an examination ordered to be held under section 370 commits an offence.

374. Court's enforcement powers

(1) If it appears to the Court, on consideration of any evidence obtained under section 371, 373 or this section, that any person has in his or her possession any assets comprised in the bankrupt's estate, the Court may, on the application of the trustee, order that person to deliver the assets or any of them to the trustee at such time, in such manner and on such terms as the Court considers fit.

(2) If it appears to the Court, on consideration of any evidence obtained under section 371, 373 or this section, that any person is indebted to the bankrupt, the Court[391] may, on the application of the trustee, order that person to pay the trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.

(3) The Court may order that any person who, if within the jurisdiction of the Court, would be liable to be examined pursuant to an order made under section 370 shall be examined in the Virgin Islands or any place outside the Virgin Islands.

DISCHARGE AND ANNULMENT OF BANKRUPTCY

375. Bankrupt ineligible for automatic discharge

(1) For the purposes of section 376, a bankrupt is ineligible for automatic discharge if—

(a) he or she has been an undischarged bankrupt at any time in the 10 years prior to the date of the bankruptcy order; or

(b) he or she has been convicted of a bankruptcy offence.

(2) Where a previous bankruptcy order made against a person has been annulled under section 382, the period during which that person was an undischarged bankrupt by virtue of that bankruptcy order shall be ignored for the purposes of subsection (1)(a).

376. Automatic discharge

(1) Subject to subsection (2), a bankrupt is discharged from bankruptcy at the end of the period of 3 years commencing on the date of the bankruptcy order unless—

(a) he or she is ineligible for automatic discharge by virtue of section 375; or

(b) he or she has previously been discharged under section 379(1)(b) or (c).

(2) On the application of a person specified in subsection (3), the Court may, on the grounds specified in subsection (4) —

(a) extend the period referred to in subsection (1);

(b) order that the period will cease to run until the fulfilment of such conditions as it may specify; or

(c) order that the bankrupt is not entitled to automatic discharge.

(3) An application under subsection (2) may be made on the application of the Official Receiver or the trustee of the bankrupt.

(4) The Court may—

(a) make an order under subsection (2)(a) or (b) if it is satisfied that the bankrupt has failed or is failing to comply with any of his or her obligations under this Act or the Rules; or

(b) make an order under subsection (2)(c) on any of the grounds upon which it could refuse to discharge the bankrupt under section 379.

(5) An application under subsection (2)—

(a) shall be made before the bankrupt has been discharged under subsection (1); and

(b) when made, operates to suspend the period referred to in subsection (1) until after the determination of the application by the Court.

(6) The Court may not, by an order made under section 496(1), permit an application to be made under subsection (2) after the discharge of a bankrupt under subsection (1).

377. Application by bankrupt concerning order for suspension of discharge

(1) Where the Court has made an order under section 376(2)(b) that the period for automatic discharge will cease to run, the bankrupt may apply to the Court for the order to be varied or discharged.

(2) On an application made under subsection (1), the Court may vary or discharge its order.

378. Application for discharge by Court order

(1) A bankrupt may apply to the Court for his or her discharge—

(a) where he or she is ineligible for automatic discharge or where the Court has made an order under section 376(2)(c) that he or she is not entitled to automatic discharge, at any time after 3 years from the date of the bankruptcy order; or

(b) in any other case, at any time after 6 months from the date of the bankruptcy order.

(2) An application under subsection (1) shall be served on—

(a) the Official Receiver; and

(b) his or her trustee, if not the Official Receiver, not less than 42 days before the date fixed for the hearing.

379. Court order on application for discharge

(1) Subject to subsection (3)[392], on an application under section 378, the Court may—

(a) refuse the application;

(b) make an order discharging the bankrupt absolutely; or

(c) make an order discharging the bankrupt subject to such conditions as it considers fit, including conditions with respect to—

(i) any income which may subsequently become due to him or her; or

(ii) any assets that may devolve on him or her or be acquired by him or her after his or her discharge.

(2) An order under subsection (1)(c) may be made with immediate effect or may be made effective after such period or until the fulfilment of such conditions as may be specified in the order.

(3) Where an application is made under section 378[393] more than 8 years after the date of the bankruptcy order, the Court shall not refuse the application unless it is satisfied that there are exceptional reasons for not granting the bankrupt his or her discharge.

(4) Subject to subsection (3)[394], the Court may refuse to grant a bankrupt his or her discharge if—

(a) the bankrupt has failed or is failing to comply with his or her obligations under this Act or the Rules;

(b) the bankrupt has, after the date of the bankruptcy order, engaged in a prohibited activity within the meaning of section 260(3);

(c) the bankrupt has been convicted of a bankruptcy offence;

(d) the bankrupt has failed, whether intentionally or not, to disclose to his or her trustee particulars of—

(i) any of his or her assets;

(ii) any liability existing at the date of the bankruptcy order; or

(iii) any income or expected income;

(e) where the bankrupt has been engaged in any business for any of the period of 3 years prior to the date of the bankruptcy order,or she has—

(i) failed to keep such books and accounts as would sufficiently disclose his or her business transactions and financial position whilst engaged in his or her business; or

(ii) having kept the books and accounts referred to in subparagraph (i), he or she has failed to preserve them;

(f) the bankrupt continued to trade after knowing, or having reason to believe himself or herself to be unable to pay his or her debts as they fell due[395];

(g) the bankrupt contracted any liability that is claimable in his or her bankruptcy without having at the time of contracting it any reasonable expectation that he or she would be able to discharge it;

(h) that the bankrupt, either before or after the bankruptcy order, has committed any fraud or breach of trust;

(i) that the bankrupt has entered into a voidable transaction within the meaning of section 400; or

(j) for any other reason it considers it appropriate to do so.

380. Effect of discharge

(1) Subject to this section, where a bankrupt is discharged, the discharge releases him or her from all debts claimable in the bankruptcy, but has no effect—

(a) on the functions, so far as they remain to be carried out, of the trustee; or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Act.

(2) The discharge of a bankrupt does not affect the right—

(a) of any creditor of the bankrupt to claim[396] in the bankruptcy for any debt from which the bankrupt is released; or

(b) of any secured creditor of the bankrupt to enforce his or her security interest for the payment of a debt from which the bankrupt is released.

(3) The discharge of a bankrupt does not release the bankrupt from—

(a) a liability incurred by means of a fraud or fraudulent breach of trust to which the bankrupt was a party or a liability of which he or she has obtained forbearance by fraud;

(b) a liability under a recognizance; or

(c) a liability in respect of a fine imposed for an offence.

(4) Except to such extent and subject to such conditions as the Court may otherwise order, the discharge of a bankrupt does not release the bankrupt from—

(a) a liability under a maintenance agreement or maintenance order or arrears payable under such an agreement or order;

(b) a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person; or

(c) such other liabilities, not being liabilities that may be claimed in the bankruptcy, as may be prescribed.

(5) The discharge of a bankrupt does not release any person other than the bankrupt from any liability, whether as partner or co-trustee of the bankrupt or otherwise, from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(6) In subsection (4), "personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

381. Discharged bankrupt to give assistance

(1) A discharged bankrupt shall, even though discharged, give such assistance as his or her trustee reasonably requires in the realisation and distribution of such of his or her assets as are vested in his or her trustee.

(2) A discharged bankrupt who contravenes subsection (1) commits an offence.

382. Annulment of bankruptcy order

(1) The Court may annul a bankruptcy order if at any time it appears to the court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made; or

(b) that, to the extent required by this Act and the Rules, the claims made in the bankruptcy and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The Court may annul a bankruptcy order whether or not the bankrupt has been discharged.

(3) Where the court annuls a bankruptcy order—

(a) any sale or other disposition of assets, payment made or other thing done, under any provision in this Part, by or under the authority of the trustee or by the Court is valid; but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms, if any, as the court may direct.

(4) The Court may, in an order made under subsection (2), include such supplemental provisions as may be authorised by the Rules.

(5) The trustee shall vacate office if the bankruptcy order is annulled.

383. Release of trustee

(1) Where the Official Receiver ceases to be the trustee of a bankrupt's estate and another person is appointed trustee in his or her place, the Official Receiver obtains his or her release—

(a) from the appointment of the new trustee; or

(b) such later date as the Court may determine.

(2) If the Official Receiver, while he or she is the trustee, gives notice to the Court that the administration of the bankrupt's estate in accordance with this Part is for practical purposes complete, he or she obtains his or her release with effect from such time as the Court may determine.

(3) A person other than the Official Receiver who ceases to be trustee may apply to the Court for his or her release and the Court may grant the release unconditionally or subject to such conditions as it considers fit, or withhold it.

(4) If the Court withholds the release it may make an order against the former trustee under section 384.

(5) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his or her release with effect from such time as the Court may determine.

(6) Subject to subsection (7), where a former trustee is released under this section, he or she is discharged from all liability in respect of any act or default of his or her in relation to the administration of the estate and otherwise in relation to his or her conduct as trustee.

(7) Subsection (6) does not prevent the Court from making an order under section 384 against a trustee who has been released under this section.

(8) A trustee, other than the Official Receiver, who obtains his or her release under this section shall file a notice in the prescribed form with the Official Receiver.

384. Liability of trustee

(1) Where on an application under this section the Court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other assets comprised in the bankrupt's estate; or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his or her functions, the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other assets, together with interest at such rate as the Court considers just, or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court considers just.

(2) Subject to subsection (3), an application under this section may be made by the Official Receiver, a creditor of the bankrupt or, whether or not there is, or is likely to be, a surplus for the purposes of section 348, the bankrupt himself or herself.

(3) The leave of the Court is required for the making of an application under this section if it is to be made by the bankrupt or if it is to be made after the trustee has had his or her release under section 383.

(4) Where—

(a) the trustee seizes or disposes of any asset which is not comprised in the bankrupt's estate; and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he or she is entitled, whether pursuant to an order of the court or otherwise, to seize or dispose of that asset, the trustee is not liable to any person, whether under this section or otherwise, in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by negligence of the trustee and the trustee has a lien on the asset, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) Subsection (1) does not prevent any person from instituting any other proceedings in relation to matters in respect of which an application can be made under that subsection.

SECOND OR SUBSEQUENT BANKRUPTCY

385. Stay of distribution in case of second bankruptcy

(1) This section and section 386 apply where a bankruptcy order is made against an undischarged bankrupt and in both sections—

"earlier bankruptcy" means the bankruptcy, or the most recent bankruptcy, from which the bankrupt has not been discharged at the time when the later bankruptcy commences;

"later bankruptcy" means the bankruptcy arising from the bankruptcy order made against an undischarged bankrupt; and

"existing trustee" means the trustee, if any, of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Where the existing trustee has been given notice of the application for the later bankruptcy, any distribution or other disposition by him or her of any asset to which subsection (3) applies made after the giving of the notice is void except to the extent that it was made with the consent of the Court or is or was subsequently ratified by the Court.

(3) Subsection (2) applies to—

(a) any asset which is vested in the existing trustee under section 318;

(b) any money paid to the existing trustee pursuant to an income payments order under section 322; and

(c) any asset or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of an asset or money falling within paragraphs (a) or (b).

386. Adjustment between earlier and later bankruptcy estates

(1) With effect from the commencement of the later bankruptcy any asset to which section 385(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy.

(2) Any sum which in pursuance of an income payments order made under section 322 is payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy and the court may give such consequential directions for the modification of the order as it considers fit.

(3) Anything comprised in a bankrupt's estate by virtue of subsections (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for his or her remuneration or any bankruptcy expenses incurred by him or her in relation thereto.

(4) Except as provided in this section and in section 385, any asset which is, or by virtue of section 319 is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, is not comprised in his or her estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier bankruptcy, are not to be creditors of his or hers in the later bankruptcy in respect of the same liabilities but the existing trustee may claim in the later bankruptcy for—

(a) the unsatisfied balance of the liabilities, including any liability under this subsection, claimable against the bankrupt's estate in the earlier bankruptcy;

(b) any interest payable on that balance; and

(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount claimable under subsection (5) ranks in priority after all the other claims admitted in the later bankruptcy and after interest on those claims and, accordingly, shall not be paid unless those claims and that interest have first been paid in full.

PART XIII - BANKRUPTCY OFFENCES

387. Definitions

In this Part—

(a) references to assets comprised in the bankrupt's estate or to assets possession of which is required to be delivered up to the trustee include any assets specified in section 313;

(b) "initial period" means the period between the filing of the application for the bankruptcy order and the commencement of the bankruptcy; and

(c) a reference to a number of months or years before the application is to that period ending with the filing of the application for the bankruptcy order.

388. Defence of innocent intention

(1) Subject to subsection (2), the bankrupt does not commit a bankruptcy offence if he or she proves that, at the time of the conduct constituting the offence, he or she had no intent to defraud or to conceal the state of his or her affairs.

(2) Subsection (1) does not apply to sections 390(1)(e), 392(b), 392(c), 392(d), 392(e), 396(1), 397 and 398.

389. Non-disclosure

(1) The bankrupt commits an offence if—

(a) he or she does not to the best of his or her knowledge and belief disclose all the assets comprised in his or her estate to the trustee; or

(b) he or she does not inform the trustee of any disposal of any assets which, but for the disposal, would be so comprised, stating how, when, to whom and for what consideration the asset was disposed of.

(2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his or her family.

390. Concealment of assets

The bankrupt commits an offence if—

(a) he or she does not deliver up possession to the trustee, or as the trustee may direct, those assets comprised in his or her estate as are in his or her possession or under his or her control of which he or she is required by law so to deliver up;

(b) he or she conceals any debt due to or from him or her or conceals any asset, the value of which is not less than the prescribed amount and possession of which he or she is required to deliver up to the trustee;

(c) in the 12 months before the application, or in the initial period, he or she did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made immediately before he or she did it;

(d) or she removes, or in the initial period removed, any asset the value of which was not less than the prescribed amount and possession of which he or she is or would have been required to deliver up to the trustee; or

(e) he or she without reasonable excuse fails, on being required to do so by the Official Receiver or the Court—

(i) to account for the loss of any substantial part of his or her assets incurred in the 12 months before the application or in the initial period; or

(ii) to give a satisfactory explanation of the manner in which such a loss was incurred.

391. Concealment of books and papers; falsification

The bankrupt commits an offence if—

(a) he or she does not deliver up possession to the trustee, or as the trustee may direct, of all documents in his or her possession or control which relate to his or her estate or his or her affairs;

(b) he or she prevents, or in the initial period prevented, the production of any documents relating to his or her estate or affairs;

(c) he or she conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any documents relating to his or her estate or affairs;

(d) he or she makes, or causes or permits the making of, any false entries in any documents relating to his or her estate or affairs;

(e) he or she disposes of, or alters or makes any omission in or causes or permits the disposal, altering or making of any omission in , any document relating to his or her estate or affairs; or

(f) in the 12 months before the application, or in the initial period, he or she did anything which would have been an offence under paragraph (c), (d) or (e) if the bankruptcy order had been made before he or she did it.

392. False statements

The bankrupt commits an offence if—

(a) he or she makes any false statement or any material omission in any statement made under this Act relating to his or her affairs;

(b) knowing or believing that a false claim has been made by any person under the bankruptcy, he or she fails to inform the trustee as soon as practicable;

(c) he or she attempts to account for any part of his or her assets by fictitious losses or expenses;

(d) at any meeting of his or her creditors in the 12 months before the application or, whether or not at such a meeting, at any time in the initial period, he or she did anything which would have been an offence under paragraph (c) if the bankruptcy order had been made before he or she did it; or

(e) he or she is, or at any time has been, guilty of any false representation or other fraud for the purposes of obtaining the consent of his or her creditors, or any of them, to an agreement with reference to his or her affairs or to his or her bankruptcy.

393. Fraudulent disposal of assets

(1) The bankrupt commits an offence if—

(a) he or she makes or causes to be made, or has during the period of 5 years prior to the date of the bankruptcy order made or caused to be made, any gift or transfer of, or any charge on, his or her assets; or

(b) he or she conceals or removes, or has at any time before the commencement of the bankruptcy, concealed or removed, any of his or her assets after, or within 60 days before, the date on which a judgement or order for the payment of money has been obtained against him or her, being a judgement or order which was not satisfied before the commencement of the bankruptcy.

(2) The reference in subsection (1) to making a transfer of or a charge on any asset includes causing or conniving at the levying of any execution against that asset.

394. Absconding

The bankrupt commits an offence if—

(a) he or she leaves, or attempts or makes preparations to leave the Virgin Islands with any assets the value of which is not less than the prescribed amount and possession of which he or she is required to deliver up to the Official Receiver or the trustee; or

(b) in the 6 months before the application, or in the initial period, he or she did anything which would have been an offence under paragraph(a)if the bankruptcy order had been made immediately before he or she did it.

395. Fraudulent dealing with asset obtained on credit

(1) The bankrupt commits an offence if, in the 12 months before the application, or in the initial period, he or she disposed of any asset which he or she had obtained on credit and, at the time he or she disposed of it, had not paid for.

(2) A person commits an offence if, in the 12 months before the application, or in the initial period, he or she acquired or received an asset from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the asset; and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money so owed.

(3) A person does not commit an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the asset was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any asset is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the asset.

(5) In this section, references to disposing of an asset include pawning or pledging it and references to acquiring or receiving an asset shall be read accordingly.

396. Obtaining credit: engaging in business

(1) The bankrupt commits an offence if—

(a) either alone or jointly with any other person, he or she obtains[397] credit to the extent of the prescribed amount or more without informing the person from whom he or she obtains credit[398] that he or she is an undischarged bankrupt;

(b) he or she engages, whether directly or indirectly, in any business under a name other than that in which he or she was made bankrupt without disclosing to all persons with whom he or she enters into any business transaction the name under which he or she was made bankrupt.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are billed to him or her under a hire-purchase agreement, or agreed to be sold to him or her under a conditional sale agreement; and

(b) where he or she is paid in advance, whether in money or otherwise, for the supply of goods and services.

397. Failure to keep proper accounts of business

(1) Where the bankrupt has been engaged in any business for any of the period of 2 years before the application, he or she commits an offence if he or she—

(a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he or she was so engaged; or

(b) has not preserved all the accounting records which he or she has kept.

(2) The bankrupt does not commit an offence under subsection (1)—

(a) if his or her unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount; or

(b) if he or she proves that in the circumstances in which he or she carried on business the omission was honest and excusable.

(3) For the purpose of this section, a person is deemed not to have kept proper accounting records if he or she has not kept such records as are necessary to show or explain his or her transactions and financial position in his or her business, including—

(a) records containing entries from day to day, in sufficient detail, of all cash paid and received;

(b) where the business involves dealing in goods, statements of annual stock-takings; and

(c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

398. Gambling

(1) The bankrupt commits an offence if he or she has—

(a) in the 2 years before the application, materially contributed to, or increased the extent of, his or her insolvency by gambling or by rash and hazardous speculations; or

(b) in the initial period, lost any of his or her assets by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he or she entered into them shall be taken into consideration.

399. Supplementary provisions

(1) Proceedings for a bankruptcy offence may not be instituted after the annulment of the bankruptcy.

(2) Without limiting the liability of a bankrupt in respect of a subsequent bankruptcy, the bankrupt does not commit an offence under this Part in respect of anything done after his or her discharge but nothing in this Act prevents the institution of proceedings against a discharged bankrupt for an offence committed before his or her discharge.

(3) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting that offence was done outside the Virgin Islands.

PART XIV - VOIDABLE TRANSACTIONS

400. Interpretation for this Part

(1) In this Part—

"debtor" means the individual against whom a bankruptcy order is made;

"insolvent bankruptcy" means a bankruptcy where the assets comprised in the bankrupt's estate are insufficient to pay his or her liabilities and the expenses of the bankruptcy;

"insolvency transaction" has the meaning specified in subsection (2);

"onset of insolvency" means the date on which the application for a bankruptcy order was filed;

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a voidable general assignment of book debts; or

(d) an extortionate credit transaction;

"vulnerability period" means—

(a) for the purposes of sections 401, 402 and 403—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing 2 years prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing 6 months prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(b) for the purposes of section 404, the period commencing 5 years prior to the onset of insolvency and ending on the date of the bankruptcy order;

(2) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the debtor is insolvent; or

(b) it causes the debtor to become insolvent.

(3) For the purposes of subsection (2)[399,] an individual is insolvent if he or she is unable to pay his or her debts as they fall due for payment.

(4) This Part applies in respect of an individual only if a bankruptcy order is made against him or her.

401. Unfair preferences

(1) Subject to subsection (2), a transaction entered into by an individual is an unfair preference given by the individual to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the individual becoming a bankrupt, will be better than the position he or she would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a Court or tribunal in or outside the Virgin Islands.

(4) Where a transaction entered into by an individual within the vulnerability period has the effect specified in subsection (1)(c) in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

402. Undervalue transactions

(1) Subject to subsection (2), an individual enters into an undervalue transaction with a person if—

(a) he or she makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for him or her to receive no consideration; or

(b) he or she enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by him or her; and

(c) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) An individual does not enter into an undervalue transaction with a person if—

(a) the individual enters into the transaction in good faith and for the purposes of his or her business; and

(b) at the time when he or she enters into the transaction, there were reasonable grounds for believing that the transaction would benefit him or her.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where an individual enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)(a) or subsection (1)(b), unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

403. Voidable general assignment of book debts

(1) This section applies where an individual engaged in any business makes a general assignment to another of his or her existing or future book debts, or any class of them, and a bankruptcy order is subsequently made against him or her.

(2) The assignment is voidable as regards book debts which were not paid before the filing of the application for the bankruptcy order, unless the assignment has been registered under the Bills of Sale Act.

(3) For the purposes of subsections (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts; and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts; or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Bills of Sale Act, an assignment of book debts is to be treated as if it were a bill of sale given otherwise by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

404. Extortionate credit transactions

A transaction entered into by an individual within the vulnerability period for, or involving the provision of, credit to him or her is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

405. Orders in respect of voidable transactions

(1) Subject to section 406, where it is satisfied that a transaction entered into by an individual is a voidable transaction the Court, on the application of the bankruptcy trustee of the individual—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers fit for restoring the position to what it would have been if the bankrupt had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the trustee of any sums paid by the bankrupt to that person by virtue of the transaction;

(iii) the surrender by any person to the trustee of any asset held by him or her as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)(b), an order under that paragraph may—

(a) require any asset transferred as part of the transaction to be vested in the trustee;

(b) require any asset to be vested in the trustee if it represents in any person's hands the application either of the proceeds of sale of an asset transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the bankrupt or the liability of the bankrupt under any contract;

(d) require any person to pay, in respect of benefits received by him or her from the bankrupt, such sums to the trustee as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any asset and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person affected by an order made under subsection (1) to claim[400] in the bankruptcy of the bankrupt in such amount as the Court considers fit; and

(h) require the bankrupt or trustee[401] to make a payment or transfer an asset to any person affected by an order made under subsection (1).

(3) Subject to section 406[402], in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he or she is the person with whom the bankrupt entered into the transaction.

406. Limitations on orders under section 405

(1) This section applies to an order made under section 405(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in an asset that was acquired in good faith and for value from a person other than the bankrupt, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the trustee, except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he or she was a creditor of the bankrupt.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph (a) or (b), it is presumed, unless the contrary is proved, that he or she acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of—

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if he or she had notice of the application on which the bankruptcy order was made[403].

407. Recoveries

Any money paid to, asset recovered or other benefit received by the trustee as a result of an order made under section 405 is deemed to be an asset comprised in the bankrupt's estate that is available to pay his or her unsecured creditors.

408. Remedies not exclusive

The provisions of this Part apply without prejudice to the availability of any other remedy.

PART XV - BANKRUPTCY RESTRICTIONS ORDERS AND UNDERTAKINGS

409. Interpretation for this Part

In this Part—

"restricted person" means a person—

(a) against whom a bankruptcy restrictions order or an interim order has effect; or

(b) in respect of whom a bankruptcy restrictions undertaking is in place;

"voluntary liquidator" means—

(a) a liquidator appointed by the directors or members of an international business company under Part XII of the BVI Business Companies Act; or

(b) a voluntary liquidator within the meaning specified in section 2 of the BVI Business Companies Act.[404]

410. Bankruptcy restrictions orders and undertakings

(1) A bankruptcy restrictions order is an order that an individual shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A bankruptcy restrictions undertaking is an undertaking in writing given by an individual to the Official Receiver that he or she will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, an individual engages in a prohibited activity if—

(a) he or she is a director of a company;

(b) he or she acts as the voluntary liquidator of a company;

(c) he or she acts as the receiver of the assets of a company;

(d) he or she acts as an insolvency practitioner;

(e) in any way, whether directly or indirectly, he or she is concerned with or takes part in the promotion, formation or management of a company; or

(f) he or she undertakes any activity prescribed as a prohibited activity.

411. Application for and hearing of application for bankruptcy restrictions order

(1) The Official Receiver may apply to the Court for a bankruptcy restrictions order against a bankrupt.

(2) On an application under subsection (1), the Court may, make a bankruptcy restrictions order against a bankrupt where it considers it appropriate having regard to the conduct of the bankrupt, whether before or after the making of the bankruptcy order against him or her.

(3) Without limiting subsection (3), the Court shall in particular take into account—

(a) any behaviour of the bankrupt that constitutes a bankruptcy offence, whether or not the bankrupt has been convicted of the offence; and

(b) whether the bankrupt was an undischarged bankrupt at some time during the 6 years prior to the making of the bankruptcy order in respect of which the application is made.

412. Duration of bankruptcy restrictions order

(1) The Court shall, on making a bankruptcy restrictions order, specify the period for which the order has effect.

(2) The period referred to in subsection (1) shall commence on a date no earlier than the date of the order and no later than 28 days after the date of the order and shall not exceed 10 years.

413. Interim bankruptcy restrictions order

(1) In this section, “interim order” means an interim bankruptcy restrictions order.

(2) The Official Receiver may apply to the Court for an interim order at any time between—

(a) the filing by him or her of an application for a bankruptcy restrictions order; and

(b) the determination of that application.

(3) The Court may, on an application made under subsection (1), make an interim order against a bankrupt if it considers—

(a) that there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful; and

(b) it is in the public interest to make an interim order.

(4) An interim order shall—

(a) take effect on the date that it is made; and

(b) have the same effect as a bankruptcy restrictions order.

(5) An interim order shall cease to have effect—

(a) on the determination of the application for the bankruptcy restrictions order;

(b) on the acceptance of a bankruptcy restrictions undertaking made by a bankrupt; or

(c) on the discharge of the interim order by the Court on the application of the Official Receiver or the bankrupt.

414. Bankruptcy restrictions undertaking

(1) A bankrupt may offer the Official Receiver a bankruptcy restrictions undertaking, whether or not the Official Receiver has made an application against him or her for a bankruptcy restrictions order.

(2) The Official Receiver may accept an offer made to him or her under subsection (1) if he or she considers that—

(a) there is a reasonable prospect that, on the hearing of an application under section 411, the Court would make a bankruptcy restrictions order against the bankrupt offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A bankruptcy restrictions undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed 10 years.

415. Variation of disqualification order or undertaking

(1) The Court may, on the application of the Official Receiver or a restricted person, vary a bankruptcy restrictions order or a bankruptcy restrictions undertaking.

(2) Without limiting subsection (1), an order under that subsection may—

(a) reduce the period for which the order, or undertaking, is in force; or

(b) provide for the order or undertaking to cease to be in force.

(3) An application made by a restricted person for an order under subsection (1) shall be served on the Official Receiver no less than 14 days prior to the date of the hearing and the Official Receiver shall appear or be represented and is entitled to call or give evidence at the hearing.

416. Offence provisions

A restricted person who engages in a prohibited activity commits an offence.

417. Official Receiver to appear on certain applications

The Official Receiver shall appear and call the attention of the Court to any matters which seem to him or her to be relevant, and may himself or herself give evidence or call witnesses on the hearing of—

(a) an application by the Official Receiver for a bankruptcy restrictions order; or

(b) any other application made under this Part.

418. Register of disqualification orders

(1) The Official Receiver shall register in a Register of Bankruptcy Restrictions Orders and Undertakings to be maintained by him or her for the purpose—

(a) each bankruptcy restrictions order and interim bankruptcy restrictions order made or bankruptcy restrictions undertaking accepted under this Part; and

(b) each variation of a bankruptcy restrictions order, an interim bankruptcy restrictions order or bankruptcy restrictions undertaking under this Part.

(2) When a bankruptcy restrictions order or undertaking ceases to be in force, the Official Receiver shall delete the entry from the Register.

(3) The Register of Bankruptcy Restrictions Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a restricted person by virtue of an entry in the Register of Bankruptcy Restrictions Orders and Undertakings.

419. Annulment of bankruptcy order

(1) Where a bankruptcy order is annulled under section 382(1)(a)—

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled;

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt; and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

(2) Where a bankruptcy order is annulled under section 382(1)(b)—

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt;

(b) the Court may make a bankruptcy restrictions order or an interim order in respect of the bankrupt on an application instituted before the annulment;

(c) the Official Receiver may accept a bankruptcy restrictions undertaking offered by the bankrupt before the annulment; and

(d) an application for a bankruptcy restrictions order may not be instituted after the annulment.

PART XVI - GENERAL PROVISIONS WITH REGARD TO INSOLVENCY PROCEEDINGS UNDER THIS ACT

DIVISION 1 - THE CREDITORS' COMMITTEE

420. Interpretation for and scope of this Division

(1) In this Division, "office holder" means—

(a) in respect of a company, its administrator, its liquidator or its administrative receiver and in respect of a foreign company, its liquidator[405]; and

(b) in respect of an individual, his or her bankruptcy trustee, and a reference to an office holder is to the office holder appointed in the insolvency proceeding in respect of which the creditors' committee is appointed.

(2) This Division applies to the establishment and operation of a creditors' committee under this Act where—

(a) a company is in administration or in liquidation or a foreign company is in liquidation[406];

(b) an administrative receiver has been appointed in respect of a company; or

(c) a bankruptcy order has been made against an individual.

(3) In this Division, where the context requires, "company" includes a foreign company.[407]

421. Establishment of creditors' committee

(1) The creditors of a company in liquidation, administration or administrative receivership or of a bankrupt may, by resolution passed at a meeting, establish a creditors' committee—

(a) in the case of a company in administration, at any time after the approval of the administrator's proposals;

(b) in the case of a company in administrative receivership, at any time after the appointment of the administrative receiver;

(c) in the case of a company in liquidation, at any time after the appointment of the liquidator; and

(d) in the case of an individual, at any time after the bankruptcy order.

(2) A resolution to establish a creditors' committee shall also appoint the first members of the committee, each of whom shall be eligible to serve on the committee in accordance with section 423.

(3) A resolution to establish a creditors' committee in the administration, administrative receivership or liquidation of a company may only be passed—

(a) at a meeting called under section 100, 147 or 179; or

(b) at a meeting requisitioned for the purpose by at least 10%in value of the creditors of the company.

(4) A resolution to establish a creditors' committee in the bankruptcy of an individual may be passed at a meeting of the creditors called under section 333.

(5) Where an office holder is satisfied that a creditors' committee has been validly established he or she shall, within 5 business days of the passing of the resolution, file a notice to that effect—

(a) in the case of an administrator, a liquidator appointed by the Court or a bankruptcy trustee, with the Court; or

(b) in the case of an administrative receiver or a liquidator not appointed by the Court, with the Registrar.

(6) The notice required to be filed under subsection (5) shall specify the names and addresses of the persons appointed to the creditors' committee.

(7) The creditors' committee cannot act until the relevant notice is filed by the office holder under subsection (5).

(8) The appointment of a member of a creditors' committee may be in the form of the appointment of a designated representative of the member.

422. Functions and powers of creditors' committee

(1) The functions of a creditors' committee are—

(a) to consult with the office holder about matters relating to the insolvency proceeding;

(b) to receive and consider reports of the insolvency holder;

(c) to assist the office holder in discharging his or her functions; and

(d) to discharge any other functions assigned to it under this Act or the Rules.

(2) A creditors' committee may—

(a) call a meeting of creditors;

(b) on giving the office holder reasonable notice, require him or her to provide the committee with such reports and information concerning the insolvency proceeding as the committee[408] reasonably requires; and

(c) on giving the office holder not less than 5 business days notice, require him or her to attend before the committee at any reasonable time to provide it with such information and explanations concerning the insolvency proceeding as it reasonably requires.

(3) Where the creditors' committee requires the attendance of the office holder at a meeting under subsection (2)(c)—

(a) the notice shall be signed in writing by a majority of the members of the committee; and

(b) the meeting shall be fixed for a business day and shall be held at such time and place as the committee may agree with the office holder.

(4) The designated representative of a committee member may sign a notice under subsection (3)(a) on the member's behalf.

(5) Unless expressly permitted to do so by the Act or the Rules, a creditors' committee cannot give directions to the office holder.

423. Composition of creditors' committee

(1) Subject to subsection (2), a person is eligible to be a member, or the designated representative of a member, of a creditors' committee if he or she is an individual who has consented in writing to serve on the committee, and—

(a) in the case of a member—

(i) he or she is a creditor of the company or the bankrupt, as the case may be; or

(ii) he or she holds a general power of attorney granted by such a creditor; or

(b) in the case of a designated representative, he or she is authorised in writing by a person eligible to be a member to be his or her representative on the committee.

(2) A person is not eligible to be a member of the creditors' committee if his or her claim has been rejected for the purposes of his or her entitlement to vote or, in the case of a liquidation or bankruptcy, for distribution purposes,[409] or if he or she is the legal practitioner or representative of such a creditor.

(3) A creditors committee shall consist of not less than 3 or more than 5[410] individuals who are eligible to be members of the committee.

424. Resignation and termination of committee member

(1) A member of a creditors' committee may resign by giving notice in writing to the office holder.

(2) The membership of a committee member is terminated if—

(a) he or she becomes bankrupt or compounds or arranges with his or her creditors;

(b) he or she is absent from 3 consecutive meetings of the committee without the leave of the other members;[411]

(ba) he or she ceases to be, or is found never to have been, a creditor; or[412]

(c) in the case of the designated representative of a member, his or her designation as a designated representative is terminated by the member he or she represents.

(3) A member of the committee may be removed by a resolution of creditors of which he or she has been given at least 5 business days notice, stating the object of that meeting.

(4) If a member of the creditors' committee becomes bankrupt, his or her bankruptcy trustee replaces him or her as a member of the committee.[413]

425. Vacancies and appointment of new members

(1) Where there is a vacancy in the membership of the committee, the continuing members of the committee, if not less than 2 in number, may continue to act.

(2) The continuing members of the committee, or where their number has fallen below 2, the office holder, may appoint a person eligible under section 423 as a member of the committee to fill a vacancy.

(3) Where there is any change in the membership of the committee, the office holder shall, within 5 business days, file a notice specifying the members of the committee following the change—

(a) in the case of an administrator, a liquidator appointed by the Court or a bankruptcy trustee, with the Court; or

(b) in the case of an administrative receiver or a liquidator appointed by the company, with the Registrar.

(4) The notice required to be filed under subsection (3) shall specify the names and addresses of the members of the creditors' committee.

426. Proceedings of creditors' committee

The Rules shall provide for the proceedings of a creditors' committee.

427. Expenses of members

(1) Subject to subsection (2), the reasonable travelling expenses of members directly incurred in attending a meeting of the creditors' committee shall be paid by the office holder out of the assets of the company, or the bankrupt's estate, as an expense of the insolvency proceeding.

(2) Where the office holder is of the opinion that a meeting of the creditors' committee called by a member was unreasonably called he or she may refuse to pay expenses under subsection (1).

(3) Where the office holder refuses to pay reasonable travelling expenses under subsection (2), the creditors may resolve that they should be paid and upon the creditors passing such a resolution, they shall be paid by the office holder out of the assets of the company, or the bankrupt's estate, as an expense of the insolvency proceeding.

428. Members dealing with company

(1) In the case of the administration or administrative receivership of a company[414], membership of the creditors' committee does not prevent a person from dealing with the company while the office holder is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

(2) The Court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this section, and may give such consequential directions as it considers fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

(3) The Rules may specify procedures for dealing with potential or actual conflicts of interest of committee members.[415]

429. Formal defects

The acts of a creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or in the formalities of its establishment.

DIVISION 2 - REMUNERATION

430. Remuneration of administrator, liquidator or bankruptcy trustee

(1) The remuneration of an administrator, liquidator or bankruptcy trustee is fixed—

(a) by the creditors' committee, if any; or

(b) by the Court on an application made under subsection (2).

(2) An administrator, liquidator or bankruptcy trustee may apply to the Court to fix his or her remuneration, or to fix an interim payment under section 433, if—

(a) no creditors' committee is appointed;

(b) the creditors' committee fails, for whatever reason, to fix his or her remuneration, or an interim payment; or

(c) he or she considers that the remuneration, or an interim payment, fixed by the creditors' committee—

(i) is insufficient;

(ii) is not in an appropriate currency; or

(iii) is on unacceptable terms.

(3) Not less than 14 days notice of an application under subsection (2) shall be given—

(a) in the case of an administrator, to the company in administration;

(b) in the case of a bankruptcy trustee, to the bankrupt; and

(c) in any other case—

(i) to each member of the creditors' committee; or

(ii) if there is no creditors' committee, to such creditors as the Court may direct.

(4) The members of the creditors' committee or, if there is no creditors' committee, the creditors given notice of the hearing may appear and be heard at the hearing of an application made under subsection (2).

(5) On the hearing of an application under subsection (2), the Court shall fix the remuneration of the administrator, liquidator or bankruptcy trustee at such amount as it considers appropriate.

(6) In this section, "liquidator" does not include a provisional liquidator.

431. Application by creditors for reduction of remuneration

(1) Where the creditors' committee has fixed the remuneration of an administrator, liquidator or bankruptcy trustee, a creditor may, with the concurrence of at least 25% in value of the creditors, including himself or herself, apply to the Court for an order reducing the remuneration fixed on the grounds that it is excessive.

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

(a) if it considers that the applicant has not shown sufficient cause for a reduction, dismiss the application; or

(b) set a venue for the application to be heard.

(3) An application shall not be dismissed under subsection (2)(a) unless the Court has given the applicant the opportunity to attend the Court for an ex parte hearing, of which he or she has been given at least 7 days notice.

(4) An applicant for an order under subsection (1) shall give the administrator, liquidator or bankruptcy trustee not less than 14 days notice of the date, time and place set by the Court under subsection (2).

(5) If it considers that the remuneration of the administrator, liquidator or bankruptcy trustee fixed by the creditors' committee is excessive, the Court shall fix the remuneration to such amount as it considers appropriate.

432. General principles to be applied in fixing remuneration

(1) This section applies—

(a) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by a creditors committee under section 430;

(b) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by the Court under section 430(5);

(c) to the fixing of the remuneration of a provisional liquidator by the Court under section 172 and of a person appointed by the Court under section 307[416];

(d) to the fixing of the remuneration of a receiver by the Court under section 134(2) or section 134(3);

(e) to the fixing of the remuneration of a supervisor or interim supervisor by the Court under section 17[417]; and

(f) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by the Court under section[418] 431.

(2) In this section and section 28—

"fixing remuneration" includes fixing the currency of payment;

"insolvency proceeding" means the insolvency proceeding in respect of which an insolvency practitioner is appointed; and

"insolvency practitioner" means administrator, liquidator, bankruptcy trustee, receiver, supervisor or interim supervisor, as the case may be.

(3) Subject to subsection (4), the remuneration of an insolvency practitioner shall be fixed by reference to the time properly given by him or her and his or her staff in carrying out his or her duties in the insolvency proceeding.

(4) Where the insolvency practitioner so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of an insolvency practitioner may be fixed in whole or in part as a percentage of the value of the assets realised and the value of the assets distributed, or as a percentage of either.

(5) When fixing the remuneration of an insolvency practitioner in the circumstances specified in subsection (1) or sanctioning an interim payment under section 433(3), the creditors' committee or the Court—

(a) shall take into account—

(i) the need for the remuneration to be fair and reasonable;

(ii) the time properly spent by the insolvency practitioner and his or her staff in carrying out his or her duties;

(iii) the complexity of the insolvency proceeding and whether the insolvency practitioner has been required to take any responsibility of an exceptional kind or degree;

(iv) the effectiveness with which the insolvency practitioner is carrying out, or has carried out, his or her duties;

(v) the value and nature of the assets with which the insolvency practitioner has had to deal;

(vi) the hourly rates charged by other insolvency practitioners, both within and outside the Virgin Islands, in undertaking similar work; and

(vii) whether any expenses which he or she incurred were properly incurred; and

(b) may take into account—

(i) the commercial and personal risks accepted by the insolvency practitioner[419],

(ii) the time spent by the insolvency practitioner and his or her staff outside the Virgin Islands and the amount of travelling required; and

(iii) the standards and practice used for assessing remuneration in jurisdictions other than the Virgin Islands.

433. Time for fixing remuneration and interim payments

(1) The remuneration of an office holder shall be fixed by the creditors' committee or the Court after the conclusion of the insolvency proceeding.

(2) In fixing the remuneration of an office holder, the creditors' committee or the Court shall take account of any interim payment made under subsection (3).

(3) Notwithstanding subsection (1), a creditors' committee or the Court may at any time set an interim payment to be made to the insolvency practitioner on account of his or her remuneration.

(4) An interim payment may be made under subsection (3)[420] subject to such conditions as the creditors' committee or the Court considers appropriate.

PART XVII - NETTING AND FINANCIAL[421] CONTRACTS

434. Interpretation for sections 434 and 435

(1) In this section and section 435—

"financial contract" means a contract of a type specified in the Rules as a financial contract;

"master netting agreement" has the meaning specified in subsection (4);

"multibranch netting agreement" [DELETED][422]

"netting" means the termination of financial contracts, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due, if any, by one party to the other where each such determination and set off is effected in accordance with the terms of a netting agreement between those parties;

"netting agreement" has the meaning specified in subsection (2);

"party" means a person constituting one of the parties to an agreement.

(2) A netting agreement is an agreement between 2 parties only, in relation to present or future financial contracts between them the provisions of which include[423] the termination of those contracts for

the time being in existence, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due.

(3) A netting agreement may provide for—

(a) a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the financial contracts concerned; and

(b) the set off against the net amount due under subsection (2) and that amount only of—

(i) any money provided solely to secure the obligation of either party in respect of the financial contracts concerned;

(ii) the proceeds of the enforcement and realisation of any collateral in the form of—

(I) security interests or other assets provided; or

(II) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (a), solely to secure the obligation of either party in respect of the financial contracts concerned.

(4) A master netting agreement is an agreement between two parties only, in relation to netting agreements between them—

(a) the provisions of which include the set off of the net amounts due under two or more netting agreements between them; and

(b) which may provide for a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the netting agreements concerned; and

(c) which may provide for the set off against the net amount due under paragraph (a) and that amount only of—

(i) any money provided solely to secure the obligation of either party in respect of the netting agreements concerned;

(ii) the proceeds of the enforcement and realisation of any collateral in the form of—

(I) security interests or other assets provided; or

(II) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (b), solely to secure the obligation of either party in respect of the netting agreements concerned.

435. Enforcement of netting agreements etc.

(1) Notwithstanding anything contained in this Act or the Rules or in any rule of law relating to insolvency—

(a) the provisions relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement of a collateral arrangement[424] and the set off of proceeds thereof, as contained within a netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security; and

(b) the provisions relating to set off of the net amounts due under netting agreements, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement of a collateral arrangement[425] and the set off of the proceeds thereof, as contained within a master netting agreement or a guarantee provided for in such an

agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security.

(2) Nothing in subsection (1)—

(a) prevents the application of this Act, any other enactment or rule of law which would prevent the legal enforceability of netting, set off, or enforcement[426] in any particular case, on the grounds of fraud or misrepresentation or on any similar ground; or

(b) permits the enforceability of netting, set off, or enforcement[427] if any provision of an agreement between the two parties concerned would make netting, set off, enforcement and realisation void whether because of fraud or misrepresentation or any similar ground.

[PART XVIII - CROSS-BORDER INSOLVENCY [PART XVIII SECTIONS 436 TO 465 NOT YET IN FORCE]

GENERAL PROVISIONS

[The provisions of Part XVIII of the Insolvency Act, 2003 are not in force. This Part, which encompasses sections 436 through 465, contains the provisions dealing with cross-border insolvency. The Government of the British Virgin Islands has stated that these provisions will not be brought into force until such time as there is a "level playing field" with respect to the UNCITRAL model on cross-border insolvency, meaning that the model be adopted by many jurisdictions. It is not anticipated that the provisions of Part XVII will come into force any time in the foreseeable future.]

436. Purpose and scope of this Part

(1) The purpose of this Part is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of—

(a) cooperation between—

(i) the Court and insolvency administrators of the Virgin Islands; and

(ii) the courts and other competent authorities of foreign countries involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) protection and maximisation of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(2) This Part applies where—

(a) assistance is sought in the Virgin Islands by a foreign Court or a foreign representative in connection with a foreign proceeding;

(b) assistance is sought in a foreign country in connection with a Virgin Islands insolvency proceeding;

(c) a foreign proceeding and a Virgin Islands insolvency proceeding in respect of the same debtor are taking place concurrently; or

(d) creditors or other interested persons in a designated foreign country have an interest in requesting the commencement of, or participating in, a Virgin Islands insolvency proceeding.

(3) This Part does not apply to a regulated person who holds, or at any time has held, a prescribed financial services licence of a type designated by the Governor for the purposes of this section by notice published in the Gazette.

437. Interpretation for this Part

(1) In this Part—

"designated foreign country" means a country or territory designated by the Governor for the purposes of this Part by notice published in the Gazette;

"establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

"foreign ancillary proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment within the meaning of subparagraph (f) of this article;

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

"foreign main proceeding" means a foreign proceeding taking place in the country where the debtor has the centre of his or her main interests;

"foreign proceeding" means a collective judicial or administrative proceeding in a designated foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy;

"foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

"insolvency officer" means the Official Receiver, a liquidator, provisional liquidator, bankruptcy trustee, administrator, receiver, supervisor or interim supervisor;

"Virgin Islands insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to this Act, or to any other enactment in the Virgin Islands; relating—

(a) to the bankruptcy, liquidation, administration or receivership of a debtor; or

(b) to the reorganisation of a debtor's affairs,

where, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors.

(2) In the interpretation of this Part, the Court shall have regard to its international origin and to the need to promote an application of this Part that is consistent with the application of similar laws adopted by foreign jurisdictions.

438. International obligations of the Virgin Islands

To the extent that this Part conflicts with an obligation of the Virgin Islands arising out of any treaty or other form of agreement to which the Virgin Islands is a party with one or more other countries, the requirements of the treaty or agreement prevail.

439. Public policy exception

Nothing in this Part prevents the Court from refusing to take an action governed by this Part if the action would be contrary to the public policy of the Virgin Islands.

440. Additional assistance

Subject to section 443, nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative where permitted under any other Part of this Act or under any other enactment or rule of law of the Virgin Islands.

441. Application under this Part

An application under this Part shall be made to the Court in accordance with the Rules.

442. Authorisation of insolvency officer to act in a foreign country

The Court may, on the application of an insolvency officer, authorise him or her to act in a foreign country on behalf of a Virgin Islands insolvency proceeding as permitted by the applicable foreign law.

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THE VIRGIN ISLANDS

443. Right of direct access

(1) A foreign representative is entitled to apply to the Court under section 448 for recognition of the foreign proceeding in respect of which he or she is appointed.

(2) Subject to section 453, a foreign representative may not be granted comity or cooperation by the Court unless the foreign proceeding in respect of which he or she is appointed has been granted recognition by the Court.

(3) Upon recognition being granted to the foreign proceeding in respect of which a foreign representative is appointed, he or she may apply directly to the Court for comity or cooperation or for any other relief under this Part.

444. Limited jurisdiction

The sole fact that a foreign representative makes an application under section 448 does not subject the foreign representative to the jurisdiction of the Court for any other purpose.

445. Commencement of and participation in a Virgin Islands insolvency proceeding by foreign representative

A foreign representative, upon the recognition of the foreign proceeding in respect of which he or she is appointed, may—

(a) apply to commence a Virgin Islands insolvency proceeding if the conditions for commencing such a proceeding are otherwise met; and

(b) participate in a Virgin Islands insolvency proceeding regarding the debtor.

446. Access of foreign creditors to a Virgin Islands proceeding

(1) Subject to subsection (2), foreign creditors have the same rights regarding the commencement of, and participation in, a Virgin Islands insolvency proceeding as creditors in the Virgin Islands.

(2) Subsection (1) does not affect the priority of claims in a Virgin Islands insolvency proceeding or the exclusion of foreign penal, revenue and social security claims from such a proceeding.

447. Notification to foreign creditors of a Virgin Islands insolvency proceeding

(1) Whenever under a Virgin Islands insolvency proceeding notification is to be given to creditors in the Virgin Islands, such notification shall also be given to the known creditors that do not have addresses in the Virgin Islands.

(2) Where the address of any creditor is not known, the Court may order that appropriate steps be taken with a view to notifying that creditor.

(3) Notification to creditors under subsection (1) 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.

(4) When notification of the commencement of a Virgin Islands insolvency proceeding is to be given to foreign creditors, the notification shall—

(a) indicate the time period for submitting claims and specify the place for their submission;

(b) indicate whether secured creditors need to submit their secured claims; and

(c) contain any other information required to be included in such a notification to creditors pursuant to the law of the Virgin Islands and any order of the Court.

(5) The Rules and any order of the Court as to notice or the submission of a claim time shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

RECOGNITION OF FOREIGN PROCEEDING AND RELIEF

448. Application for recognition of foreign proceeding

(1) A foreign representative may apply to the Court for recognition of the foreign proceeding 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 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) If the documents referred to in subsection (2)(a) and (b) are not in English, they shall be accompanied by a certified translation of the documents into English.

(5) The Court may require a certified translation of any other documents supplied in support of the application for recognition into English.

449. Presumptions concerning recognition

(1) If the decision or certificate referred to in section 448(2) indicates that the proceeding is a foreign proceeding as defined in section 437(1) and that the person or body is a foreign representative as defined in section 437(1), 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.

450. Recognition of foreign proceedings

(1) Subject to section 439, a foreign proceeding shall be recognised if—

(a) the proceeding is a foreign proceeding within the meaning of section 437(1);

(b) the person or body applying for recognition is a foreign representative within the meaning of section 437(1);

(c) the application meets the requirements of section 448(2); and

(d) the application has been made in accordance with this Part and the Rules.

(2) The foreign proceeding shall be recognised—

(a) as a foreign main proceeding if it is taking place in the country where the debtor has the centre of his or her main interests; or

(b) as a foreign ancillary proceeding if the debtor has an establishment in the foreign country.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) The provisions of this Part do not prevent the 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.

451. Subsequent information

After the filing of an application for recognition of a 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.

452. Interim relief

(1) Where an application for recognition of a foreign proceeding has been filed but not yet determined or withdrawn, the Court may, on the application of the foreign representative concerned, if it is satisfied that relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant such relief of a provisional nature as it considers appropriate, 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 the Virgin Islands to the foreign representative or to 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;

(c) any relief mentioned in section 454(1)(c), (d) and (f).

(2) The foreign representative in whose favour an order is made under subsection (1) shall notify the debtor of the order as soon as practicable or within such time as the Court may order.

(3) Unless extended under section 454(1)(f), the relief granted under this article terminates when the Court determines the application for recognition.

(4) The Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

453. Effects of recognition of foreign main proceeding

(1) Upon recognition of a foreign proceeding that is a foreign main proceeding—

(a) commencement or continuation of individual actions or individual proceedings concerning the property of the debtor within the Virgin Islands, rights, obligations or liabilities is stayed;

(b) execution against the debtor's property within the Virgin Islands is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any property of the debtor within the Virgin Islands is suspended.

(2) Notwithstanding subsection (1), the Court may, on the application of any creditor or interested person, order that the stay or suspension does not apply in respect of any particular action or proceeding or in respect of any particular property, rights, obligation or liability.

(3) An order under subsection (2) may be made subject to such terms as it considers fit.

(4) Subsection (1)(a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(5) Subsection (1) does not affect the right to request the commencement of a Virgin Islands insolvency proceeding or the right to file claims in such a proceeding.

454. Relief that may be granted upon recognition of foreign proceeding

(1) Upon recognition of a foreign proceeding, whether main or ancillary, 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 property, rights, obligations or liabilities, to the extent they have not been stayed under section 453(1)(a);

(b) staying execution against the debtor's property to the extent it has not been stayed under section 453(1)(b);

(c) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor to the extent this right has not been suspended under section 453(1)(c);

(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's assets located in Virgin Islands to the foreign representative or another person designated by the Court;

(f) extending relief granted under section 452(1).

(2) Upon recognition of a foreign proceeding, whether main or ancillary, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in the Virgin Islands to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in the Virgin Islands are adequately protected.

(3) In granting relief under this section to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the law of the Virgin Islands, should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

455. Protection of creditors and other interested persons

(1) In granting or denying relief under section 452 or 454, or in modifying or terminating relief under subsection (3), the Court shall 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 section 452 or 454 to such conditions as it considers appropriate, including the giving of any security interest or the filing of any bond.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under section 452 or 454, or at its own motion, modify or terminate the relief.

456. Actions to avoid acts detrimental to creditors

(1) Subject to subsection (2), upon recognition of a foreign proceeding, the foreign representative shall have power to apply to the Court for an order under section 249 or 405, as the case may be.

(2) The Court shall not make an order under section 249 or 405 on the application of the foreign representative of a recognised foreign proceeding unless it is satisfied that—

(a) in the case of an application under section 249, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a liquidator appointed under this Act; and

(b) in the case of an application under section 405, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a bankruptcy trustee appointed under this Act.

(3) When the foreign proceeding is a foreign ancillary proceeding, the Court shall be satisfied that the action relates to property that, under the law of the Virgin Islands, should be administered in the foreign ancillary proceeding.

457. Intervention by foreign representative in proceedings in the Virgin Islands

Upon recognition of a foreign proceeding, the foreign representative may, if the requirements of the law of the Virgin Islands are met, intervene in any proceedings in which the debtor is a party.

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

458. Cooperation and direct communication between court of the Virgin Islands and foreign courts or foreign representatives

(1) In matters referred to in section 436, the Court shall cooperate 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, subject to the rights of parties to notice and participation at hearings.

459. Cooperation and direct communication between the insolvency administrator and foreign courts or foreign representatives

(1) In matters referred to in section 436, an insolvency administrator shall, in the exercise of his or her functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) Subject to section 442, the insolvency administrator is entitled, in the exercise of his or her functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

460. Forms of cooperation

Cooperation referred to in sections 458 and 459 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) coordination of the administration and supervision of the debtor's property and affairs;

(d) approval or implementation by courts of agreements concerning the coordination of proceedings;

(e) coordination of concurrent proceedings regarding the same debtor.

CONCURRENT PROCEEDINGS

461. Commencement of a Virgin Islands insolvency proceeding after recognition of foreign main proceeding

After recognition of a foreign main proceeding, a Virgin Islands insolvency proceeding may be commenced only if the debtor has assets in the Virgin Islands and the effects of the Virgin Islands proceeding shall be restricted to the assets of the debtor that are located in the Virgin Islands and, to the extent necessary to implement cooperation and coordination under sections 458, 459 and 460, to other property of the debtor that, under the law of the Virgin Islands, should be administered in the recognised proceeding.

462. Coordination of a Virgin Islands insolvency proceeding and foreign proceeding

Where a foreign proceeding and a Virgin Islands insolvency proceeding are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under sections 458, 459 and 460, and the following shall apply—

(a) when the Virgin Islands insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed—

(i) any relief granted under section 452 or 454 shall be consistent with the Virgin Islands insolvency proceeding ; and

(ii) if the foreign proceeding is recognised in the Virgin Islands as a foreign main proceeding, section 453 does not apply;

(b) when the Virgin Islands insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceeding—

(i) any relief in effect under section 452 or 454 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the Virgin Islands insolvency proceeding; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 453(1) shall be modified or terminated pursuant to section 453(2) if inconsistent with the Virgin Islands insolvency proceeding;

(c) in granting, extending or modifying relief granted to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the

law of the Virgin Islands, should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

463. Coordination of more than one foreign proceeding

In matters referred to in section 436, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under sections 458, 459 and 460 and the following shall apply—

(a) any relief granted under section 452 or 454 to a representative of a foreign ancillary proceeding after recognition of a foreign main proceeding shall 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 ancillary proceeding, any relief in effect under section 452 or 454 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) if, after recognition of a foreign ancillary proceeding, another foreign ancillary proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

464. Presumption of insolvency based on recognition of foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a Virgin Islands insolvency proceeding proof that the debtor is insolvent.

465. 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 his or her claim in a proceeding pursuant to a law relating to insolvency in a foreign country may not receive a payment for the same claim in a Virgin Islands 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 the creditor has already received.

PART XIX - ORDERS IN AID OF FOREIGN PROCEEDINGS

466. Interpretation for this Part

(1) In this Part—

"foreign proceeding" means a collective judicial or administrative proceeding in a relevant foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy and "debtor" shall be construed accordingly;

"foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

"insolvency officer" means the Official Receiver, a liquidator, provisional liquidator, bankruptcy trustee, administrator, receiver, supervisor, or interim supervisor;

"relevant foreign country" means a country, territory or jurisdiction designated by the Commission as a relevant foreign country for the purposes of this Part; and

"Virgin Islands insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to this Act, or to any other enactment in the Virgin Islands, relating—

(a) to the bankruptcy, liquidation, administration or receivership of a debtor; or

(b) to the reorganisation of a debtor's affairs, where, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors.

(2) Notwithstanding subsection (1), a country or territory that is designated as a designated country for the purposes of Part XVIII ceases to be a relevant foreign country from the date of its designation as a designated country.

(3) The designation of a country for the purposes of Part XVIII does not affect the validity of any order made under this Part.

467. Order in aid of foreign proceeding

(1) For the purposes of this section "property" means property that is subject to or involved in the foreign proceeding in respect of which the foreign representative is authorised.

(2) A foreign representative may apply to the Court for an order under subsection (3) in aid of the foreign proceeding in respect of which he or she is authorised.

(3) Subject to section 468, upon an application under subsection (1), the Court may—

(a) restrain the commencement or continuation of any proceedings, execution or other legal process or the levying of any distress against a debtor or in relation to any of the debtor's property;

(b) subject to subsection (4), restrain the creation, exercise or enforcement of any right or remedy over or against any of the debtor's property;

(c) require any person to deliver up to the foreign representative any property of the debtor or the proceeds of such property;

(d) make such order or grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of a Virgin Islands insolvency proceeding with a foreign proceeding;

(e) appoint an interim receiver of any property of the debtor for such term and subject to such conditions as it considers appropriate;

(f) authorise the examination by the foreign representative of the debtor or of any person who could be examined in a Virgin Islands insolvency proceeding in respect of a debtor;

(g) stay or terminate or make any other order it considers appropriate in relation to a Virgin Islands insolvency proceeding; or

(h) make such order or grant such other relief as it considers appropriate.

(4) An order under subsection (3) shall not affect the right of a secured creditor to take possession of and realise or otherwise deal with property of the debtor over which the creditor has a security interest.

(5) In making an order under subsection (3), the Court may apply the law of the Virgin Islands or the law applicable in respect of the foreign proceeding.

468. Matters to be considered by Court in determining application under section 467

(1) In determining an application under section 467, the Court shall be guided by what will best ensure the economic and expeditious administration of the foreign proceeding to the extent consistent with—

(a) the just treatment of all persons claiming in the foreign proceeding;

(b) the protection of persons in the Virgin Islands who have claims against the debtor against prejudice and inconvenience in the processing of claims in the foreign proceeding;

(c) the prevention of preferential or fraudulent dispositions of property subject to the foreign proceeding, or the proceeds of such property;

(d) the need for distributions to claimants in the foreign proceedings to be substantially in accordance with the order of distributions in a Virgin Islands insolvency; and

(e) comity.

(2) An order under section 467 shall not, without the consent of the person concerned—

(a) affect the right of any creditor of the debtor to benefit from set-off as provided for in section 150; or

(b) result in a person who is a preferential creditor of the debtor, or who in a Virgin Islands insolvency proceeding in respect of the debtor would be a preferential creditor, receiving less than he or she would receive in a Virgin Islands insolvency proceeding.

(3) The Court shall not make an order under 467 that is contrary to the public policy of the Virgin Islands.

469. Limitation on effect of application under this Part

(1) Subject to subsection (2), an application to the Court by a foreign representative under section 467 does not submit the foreign representative to the jurisdiction of the Court for any other purpose except with regard to the costs of the proceedings.

(2) The Court may make an order under this Part conditional on the compliance by the foreign representative with any other order of the Court.

470. Additional assistance

Subject to section 443, nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative where permitted under any other Part of this Act or under any other enactment or rule of law of the Virgin Islands.

471. Application under this Part

An application by a foreign representative under this Part shall be made to the Court in accordance with the Rules.

472. Authorisation of insolvency officer to act in foreign country

The Court may, on the application of an insolvency officer, authorise him or her to act in a foreign country on behalf of a Virgin Islands insolvency proceeding as permitted by the applicable foreign law.

PART XX - INSOLVENCY PRACTITIONERS LICENSING

473. Interpretation for this Part

In this Part—

"Code of Practice" means the Code of Practice that the Commission is empowered to issue under section 487(1);

"Commission" means the Financial Services Commission established under the Financial Services Commission Act;

"licence" means a licence to act as an insolvency practitioner granted under section 476;

"licensee" means a licensed insolvency practitioner;

"overseas insolvency practitioner" means an individual resident outside the Virgin Islands appointed to act as an insolvency practitioner under section 483; and

"Regulations" means the Insolvency Practitioners Regulations made under section 486.

474. Prohibition on acting as insolvency practitioner without a licence

(1) For the purposes of this Act, a person acts as an insolvency practitioner by acting as—

(a) the administrator or administrative receiver of a company;

(b) the liquidator or provisional liquidator of a company or a foreign company;

(ba) a portfolio liquidator appointed under section 152 of the BVI Business Companies Act;[428]

(c) the interim supervisor under a proposal for an arrangement;

(d) the supervisor of an arrangement; or

(e) the bankruptcy trustee of an individual.

(2) Subject to subsection (3), no person shall act as an insolvency practitioner unless he or she holds a licence issued under section 476 that is not suspended under section 479.

(3) Subsection (2) does not apply—

(a) to the Official Receiver; or

(b) to an overseas insolvency practitioner whilst he or she is acting jointly with a licensee or with the Official Receiver.

(4) A person who contravenes subsection (2) commits an offence.

475. Application for licence

(1) An individual resident in the Virgin Islands may apply to the Commission for a licence to act as an insolvency practitioner.

(2) An application under subsection (1) shall—

(a) contain the information and be in the form prescribed; and

(b) be accompanied by the documentation prescribed.

(3) The Commission may require an applicant for a licence to furnish it with such other documentation and information as it considers necessary to determine the application.

476. Issue of licence[429]

(1) The Commission may issue a licence to the applicant if it is satisfied—

(a) that the applicant—

(i) is an individual resident in the Virgin Islands who is fit and proper and qualified to act as an insolvency practitioner;

(ii) satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulations; and

(iii) is not disqualified from holding a licence under section 477; and

(b) that issuing the licence is not against the public interest.

(2) A licence may be issued under subsection (1) subject to such terms and conditions as the Commission considers fit.

(3) [REVOKED][430]

(4) The Commission may, upon giving reasonable notice to the licensee—

(a) vary or cancel any terms or conditions imposed under subsection (1); or

(b) impose new terms or conditions.

(5) The Commission shall publish the issuance of a licence under this section in the Gazette.

477. Persons disqualified from holding a licence

An individual is disqualified from holding a licence if—

(a) he or she is a bankrupt; or

(b) he or she is a disqualified person within the meaning of section 260(4) or a restricted person within the meaning of section 409.[431]

CONTROL OF LICENSEES AND ENFORCEMENT

478. Production of accounts and records

(1) The Commission may, at any time during or after the completion of an insolvency proceeding, require a licensee appointed in respect of the proceeding to produce for inspection, at such place as he or she may specify—

(a) his or her records and accounts in respect of the proceeding; and

(b) any reports that he or she has prepared in respect of the proceeding.

(2) The Commission may cause the accounts and records produced to him or her under subsection (1) to be audited.

(3) The licensee shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

(4) A licensee who contravenes this section commits an offence.

479. Suspension and revocation of licence[432]

(1) The Commission shall suspend or revoke the licence of a licensee if—

(a) in the opinion of the Commission, the licensee is no longer a fit and proper person to hold a licence;[433]

(b) the licensee is disqualified from holding a licence; or[434]

(c) he or she is no longer resident in the Virgin Islands.[435]

(2) The Commission may suspend or revoke the licence of a licensee if the licensee—

(a) is in breach of any condition of his or her licence;

(b) has failed to comply with his or her obligations under this Part, the Regulations or the Code of Practice[436];

(c) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;

(d) has committed an offence under this Act;[437]

(e) has failed to pay the prescribed annual fee payable within six weeks of the date upon which it fell due for payment; or[438]

(f) he or she fails to comply with a directive issued by the Commission under section 480A.[439]

(3) The Commission may cancel the licence of a licensee if requested to do so by the licensee.[440]

(4) Subject to subsection (5), the period of suspension of a licence under subsection (1) shall not exceed 30 days.

(5) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding 30 days each.

(6) Before suspending or revoking a licence under subsections (1) or (2), the Commission shall give written notice to the licensee stating—

(a) the grounds upon which it intends to revoke or suspend the licence; and

(b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be revoked or suspended, the licence will be revoked or suspended, as the case may be, on a date not less than 14 days after the date of the notice.

(7) Where the Commission revokes or suspends a licence under this section, it shall send a written notice to the licensee stating—

(a) that the licence has been revoked or suspended, as the case may be; and

(b) the grounds upon which and the date from which the licence has been revoked or suspended.

(8) Where the Commission revokes or suspends a licence under this section, it shall cause notice of the revocation or suspension to be published in the Gazette.

(9) For purposes of subsection (1) (c), a licensee is considered to be no longer resident in the Virgin Islands if he or she no longer meets the residency requirement contained in paragraph 1 of Chapter III of the Insolvency Code of Practice.[441]

480. Right to make representations

(1) A licensee who receives a notice given under 479(6) may, within 14 days of the date of the notice, make written representations to the Commission.

(2) The Commission shall consider the representations made to it under subsection (1) in determining whether to suspend or revoke the licence.

480A. Directives[442]

(1) Where the Commission is entitled to revoke or suspend the licence of a licensee under section 479(2), the Commission may issue one or more of the following directives—

(a) that the licensee shall take all necessary steps to resign as an insolvency practitioner in respect of certain specified insolvency matters or specified types or descriptions of insolvency matters;

(b) that the licensee shall not accept any new appointments as an insolvency practitioner or any new appointments of a specified type or description;

(c) that the licensee shall take such other action as the Commission considers may be necessary to ensure that he or she properly fulfils his or her duties as an insolvency practitioner either generally or in respect of particular insolvency matters.[443]

(2) Without limiting subsection (1), where it considers it necessary for the exercise of its functions or for the proper supervision of insolvency practitioners, the Commission may issue directives of a special or general nature not inconsistent with this Part.[444]

(3) Where the Commission issues a directive of a general nature under subsection (2), it shall cause the directive to be advertised in the Gazette.[445]

OBLIGATIONS OF LICENSEES

481. Filing of returns and other documents

A licensee shall file with the Commission such returns and other documents as may be specified in the Regulations or the Code of Practice.

ELIGIBLE INSOLVENCY PRACTITIONERS

482. Eligible insolvency practitioner

(1) A person is eligible to act as an insolvency practitioner in relation to a company, a foreign company or an individual if—

(a) he or she is a licensed insolvency practitioner;

(b) he or she has given his or her written consent to act in the prescribed form;

(c) he or she is not disqualified from holding a licence under section 477;

(d) he or she is not disqualified from acting—

(i) in the case of a company or a foreign company, under subsection (2); or

(ii) in the case of an individual, under subsection (3); and

(e) there is in force such security for the proper performance of his or her functions as may be specified in the Regulations.

(2) A person is disqualified from acting as an insolvency practitioner in respect of a company and a foreign company if he or she is, or at any time in the previous 3 years has been—

(a) the auditor of the company or an employee of such auditor; or

(b) a director of the company.

(3) An insolvency practitioner is disqualified from acting as an insolvency practitioner in respect of an individual if he or she is connected to the individual within the meaning of section 5(3).

483. Appointment of overseas insolvency practitioner

Notwithstanding any other provision of this Act, an individual resident outside the Virgin Islands may be appointed to act as an insolvency practitioner jointly with a licensee or the Official Receiver if—

(a) where he or she is appointed by the Court, or in any other case the person or persons appointing him or her, is or are satisfied that—

(i) he or she has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made;

(ii) he or she has given his or her written consent to act in the prescribed form;

(iii) he or she is not disqualified from holding a licence under section 477;

(iv) he or she is not disqualified from acting in the case of a company or a foreign company, under subsection 482(2) or in the case of an individual, under subsection 482(3);

(v) there is in force such security for the proper performance of his or her functions as may be specified in the Regulations; and

(b) prior written notice of his or her appointment has been given to the Commission.

484. Commission's powers with regard to appointment of overseas insolvency practitioner

(1) Where an application is made to the Court for the appointment of an overseas insolvency practitioner to act as insolvency practitioner, the Commission may appear and be heard at the hearing of the application for the purpose of objecting to the appointment.

(2) Where the Commission receives notice under section 483(b) that an overseas insolvency practitioner is to be appointed by a person to act as an insolvency practitioner, it may give the appointer notice that it intends to apply to the Court for an order that the overseas insolvency practitioner concerned should not be appointed.

(3) Where a person receives a notice from the Commission under subsection (2), it shall not appoint the overseas insolvency practitioner concerned to act as insolvency practitioner unless—

(a) the Court approves the appointment at the hearing of the Commission's application under subsection (2); or

(b) the Commission approves the appointment.

(4) A person who contravenes subsection (3) commits an offence.

485. Overseas practitioner sole appointee

(1) This section applies where a licensee, for any reason, ceases to act in an insolvency proceeding and an overseas insolvency practitioner appointed jointly with him or her remains as the only insolvency practitioner appointed in the insolvency proceeding.

(2) Where this section applies, the overseas practitioner shall within 3 days after becoming aware that he or she is the only person acting as insolvency practitioner in an insolvency proceeding, give notice in the prescribed form—

(a) to the Court, where the Court appointed him or her, or to such person or persons as appointed him or her; and

(b) to the Official Receiver.

(3) An overseas insolvency practitioner to whom subsection (1) applies is deemed not to be in contravention of section 474(2)—

(a) where he or she gives notice in compliance with subsection (2), at any time during the period commencing with the date upon which he or she became the only person acting as insolvency practitioner in the insolvency proceeding and ending on the later of—

(i) the 14th day after the date on which he or she became the only person acting as insolvency practitioner in the insolvency proceeding; or

(ii) the seventh day after the date upon which he or she became aware that was the only person acting as insolvency practitioner in the insolvency proceeding; or

(b) at any time when he or she does not know and could not be expected to have known that he or she is the only person acting in the insolvency proceeding.

486. Regulations

(1) The Cabinet may, on the recommendation of the Commission,[446] make Regulations generally for giving effect to this Part and specifically in respect of—

(a) the form and contents of, and the documents that shall accompany, an application for a licence under this Part;

(b) the qualifications and experience required of and examinations to be taken and passed by applicants for a licence;

(c) the minimum security, including insurance cover, to be maintained by a licensee;

(d) the records to be kept by a licensee, and the length of time such records shall be kept;

(e) the inspection by the Commission of the records of a licensee;

(f) documents to be filed with and returns to be made to the Commission by licensees;

(fa) the submission to the Commission of complaints and the procedures for dealing with such complaints;[447]

(g) fees payable on application for a licence and by licensees generally; and

(h) any other matter required or permitted by this Part to be specified in the Regulations.

(2) The Regulations may—

(a) make different provision in relation to different persons, circumstances or cases;

(b) where a minimum standard, including a minimum level of security, is specified, authorise the Commission to impose a higher standard or a greater level of security, according to the circumstances of a particular licensee or insolvency proceeding; and

(c) provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Regulations.

(3) The Regulations, and any amendment to the Regulations, shall be published in the Gazette.

(4) Sections 494, 495, 496 and 502 apply in respect of the Regulations.[448]

487. Code of Practice

(1) Subject to subsections (2) and (3), the Commission may issue a Code of Practice with respect to—

(a) the criteria that will be used in assessing applications for a licence, including the criteria for determining whether or not an individual is to be regarded as being resident in the Virgin Islands; and

(b) the procedures to be followed by and the conduct expected of a licensee when acting as an insolvency practitioner.

(2) The Code of Practice shall not be inconsistent with the Act, the Rules or the Regulations.

(3) The Regulations may specify matters that shall or may be included in the Code of Practice[449], including the matters specified in section 486(1), and may limit the scope of the Code of Practice.

(4) The Code of Practice may make different provision in relation to different persons, circumstances or cases.

(5) The Commission shall publish the Code of Practice and any amendments thereto in the Gazette.

487A. Insolvency Surplus Account[450] [451]

(1) The Government shall open and maintain a separate account called the Insolvency Surplus Account.[452] [453]

(2) The Government shall pay into the Insolvency Surplus Account all monies representing the unclaimed assets of companies and bankrupts that are received by it in accordance with the Rules.[454] [455]

(3) The Rules may provide for the management of the Insolvency Surplus Account by the Government, the investment of monies held in the Insolvency Surplus Account and the circumstances in which monies shall or may be paid into and out of the Insolvency Surplus Account.[456] [457]

PART XXI - OFFICIAL RECEIVER

488. Official Receiver[458]

(1) The Government shall appoint a suitably qualified and experienced person to be Official Receiver on such terms and conditions as it considers appropriate.

(2) The Official Receiver is an employee of the Government.

489. Deputy Official Receiver and staff[459]

The Government shall appoint a Deputy Official Receiver and shall provide the Official Receiver with such other staff and resources as he or she requires to perform his or her functions under this Act and the Rules.

490. Official Receiver as officer of the Court[460]

For the purposes of the performance of his or her functions under this Act and the Rules, the Official Receiver is an officer of the Court and he or she—

(a) may apply to the Court for directions in connection with his or her functions; and

(b) shall comply with any directions given to him or her by the Court.

491. Functions of Official Receiver

(1) The Official Receiver has the duties, powers and functions imposed or conferred on him or her by this Act, any other enactment, the Rules and the Regulations[461].

(2) Any assets vested in the Official Receiver on his or her dying or otherwise ceasing to hold office, vest in his or her successor without any conveyance, assignment or transfer.

(3) Subject to any provision in this Act or the Rules to the contrary, a reference to the liquidator, supervisor, interim supervisor, receiver or bankruptcy trustee includes the Official Receiver when acting in that capacity.

492. Right of audience

The Official Receiver and the Deputy Official Receiver have a right of audience in insolvency proceedings before the Court.

PART XXII - MISCELLANEOUS PROVISIONS

493. Appointment of 2 or more office holders

(1) Where this Act provides for the appointment of a liquidator, provisional liquidator, administrator, bankruptcy trustee, supervisor or interim supervisor, 2 or more persons may be jointly appointed to the relevant office.

(2) Where 2 or more persons are jointly appointed to an office, a function or power of the office may be performed or exercised by any one of the office holders, or by any 2 or more of them together, except so far as the order, deed, instrument or resolution appointing them otherwise provides.

494. Use of prescribed forms

(1) If a document required or permitted by this Act or the Rules to be prepared or filed is of a type the form of which is prescribed by the Rules, that form shall be used with such modifications as the circumstances require.

(2) Notwithstanding subsection (1), a prescribed form shall not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

495. Notices

(1) Subject to subsection (2), all notices required or authorised to be given by or under this Act or the Rules shall be in writing.

(2) Subsection (1) does not apply where—

(a) this Act or the Rules provide otherwise; or

(b) the Court requires or permits a notice to be given in some other way.

496. Time

(1) Unless this Act or the Rules expressly provide otherwise, where the Act or the Rules specify a time within which an action shall or may be done, the Court—

(a) may extend the time either before or after it has expired; or

(b) abridge the time, on such terms as it considers fit.

(2) Without limiting subsection (1), where it is satisfied that an application is urgent, the Court may—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by the Act or the Rules.

(c) [deleted][462]

497. Resolutions

(1) Anything which is required or permitted to be done under this Act or the Rules by a resolution of the creditors of a company, a bankrupt or an individual debtor, by a resolution of a creditors' committee or by a resolution of the members of a company may be done by written resolution of the creditors, creditors' committee or members in accordance with and subject to any conditions specified in the Rules.[463]

(2) The Rules may specify types or classes of resolution to which subsection (1) does not apply.

(3) Subject to subsection (2)—

(a) a reference in this Act or the Rules to a resolution of a creditors' or members' meeting or to anything done at a creditors' or members' meeting includes a reference to anything done by a written resolution in accordance with this section; and

(b) a requirement to hold a creditors' or members' meeting is satisfied by the passing of a written resolution in accordance with this section.

498. Rules

(1) The Cabinet may make Rules generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(2) The Rules may make different provision for different persons, circumstances or cases.

499. Insolvent partnerships

(1) The Cabinet may make Rules specifying[464] which provisions of this Act shall apply to insolvent partnerships and the modifications applicable to insolvent partnerships.

(2) The Rules made under subsection (1)[465] may contain such incidental, supplemental and transitional provisions as the Cabinet considers necessary or expedient.

500. Insolvent estates

(1) The Cabinet may make Rules specifying[466] which provisions of this Act shall apply to the administration of insolvent estates of deceased persons and the modifications applicable to the administration of such estates.

(2) The Rules made under subsection (1)[467] may contain such incidental, supplemental and transitional provisions as the Cabinet considers necessary or expedient.

501. Offences, general provisions

(1) A person who commits an offence under this Act is liable on summary conviction—

(a) if an individual, to the penalty stated against the relevant offence in column 4 of Schedule 5; or

(b) if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule 5,

and, in either case, to the daily default fine (if any) stated in column 5 of Schedule 5 for each day during which the default continues.

(2) Where an offence under this Act is committed by a body corporate, a director or officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

(a) if an individual, to the penalty stated against the relevant offence in column 4 of Schedule 5; or

(b) if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule 5, and, in either case, to the daily default fine (if any) stated in column 5 of Schedule 5 for each day during which the default continues.

502. Rules may provide for offences and penalties

The Rules may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Rules.

503. Provisions of other enactments not to apply

Section 101 of the BVI Business Companies Act do not apply[468] in respect of—

(a) any document, including an application to the Court, that is required or permitted to be served or sent; or

(b) any notice required or permitted to be given to any person,under this Act or the Rules.

503A. Disapplication and modification of the Financial Services Commission Act

The Financial Services Commission Act is disapplied and modified with respect to the Official Receiver, licensed insolvency practitioners and former licensed insolvency practitioners to the extent specified in Schedule 6.[469]

504. [Omitted]

[Omitted]

505. Act binding on Crown

This Act is binding on the Crown.

SCHEDULE 1 - POWERS OF ADMINISTRATOR AND ADMINISTRATIVE RECEIVER - (SECTION 90 AND 144)

1. Power to take possession of, collect and get in the assets of the company and, for that purpose, to take such proceedings as he or she considers expedient to recover possession of any assets of the company.

2. Power to sell, charge or otherwise dispose of assets of the company.

3. Power to borrow money, whether on the security of the assets of the company, or otherwise.

4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him or her in the performance of his or her functions.

5. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

6. Power to refer to arbitration any question affecting the company.

7. Power to effect and maintain insurances in respect of the business and assets of the company.

8. Power to draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company.

9. Power to appoint any agent to do any business which he or she is unable to do himself or herself or which can be more conveniently done by an agent and power to employ and dismiss employees.

10. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the assets of the company.

11. Power to make any payment which is necessary or incidental to the performance of his or her functions.

12. Power to carry on the business of the company.

13. Power to establish subsidiaries of the company.

14. Power to transfer to subsidiaries of the company the whole or any part of the business and assets of the company.

15. Power to grant or accept a surrender of a lease or tenancy of any of the assets of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

16. Power to make any arrangement or compromise on behalf of the company.

17. Power to call up any uncalled capital of the company.

18. Power to rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

19. Power to make or defend an application for the winding up of the company.

20. Power to amend the Memorandum of Association and[470] to change the situation of the company's registered office.

21. Power to do all things incidental to the exercise of the foregoing powers.

SCHEDULE 2 - POWERS OF LIQUIDATOR -(SECTION 186)

1. Power to pay any class of creditors in full.

2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.

3. Power to compromise, on such terms as may be agreed—

(a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and

(b) questions in any way relating to or affecting the assets or the liquidation of the company;

and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

4. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.

6. Power to sell or otherwise dispose of property of the company.

7. Power to do all acts and execute, in the name and on behalf of the company, any deeds, receipts or other document.

8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his or her estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out in his or her official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his or her estate, that cannot conveniently be done in the name of the company. For the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself or herself.

13. Power to call meetings of creditors or members for—

(a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;

(b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or

(c) such other purpose connected with the liquidation as the liquidator considers fit.

14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him or her in the performance of his or her duties.

15. Power to appoint an agent to do any business that the liquidator is unable to do himself or herself, or which can be more conveniently done by an agent.

SCHEDULE 3 - LIQUIDATION OF FOREIGN COMPANY - (SECTION 163)

1. Part VI applies to the liquidation of a foreign company with the modifications and exclusions specified in this Schedule.

2. A foreign company is deemed to be insolvent if, in addition to the circumstances specified in section 8(1), it fails to comply with the requirements of a notice issued in accordance with paragraph 4.

3. Where a person has instituted an action or other proceeding against any member of a foreign company for any debt or demand due, or claimed to be due, from the company or from him or her in his or her character as member, that person may issue a notice to the company in accordance with paragraph 4.

4. A notice under this Schedule shall—

(a) be in writing and shall specify the action or proceeding that has been instituted;

(b) be signed by the person who instituted the action or proceeding or by a person authorised to issue the notice on his or her behalf;

(c) require the company to pay, secure or compound for the debt or demand, or to procure the action or proceeding to be stayed or to indemnify the defendant to his or her reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him or her because of it;

(d) state that if the notice is not complied with, application may be made to the Court for the appointment of a liquidator; and

(e) be served in accordance with the Rules.

5. Unless the context otherwise requires, references[471] in Part VI—

(a) to a company are to be taken as references to a foreign company, except in sections 159, 161 and 162[472]; and

(b) to assets are to be taken as references to assets situated in the Virgin Islands.

SCHEDULE 4 - POWERS OF BANKRUPTCY TRUSTEE - (SECTION 325)

PART I - POWERS EXERCISABLE WITH SANCTION

1. Power to carry on any business so far as may be necessary for winding it up beneficially and so far as the bankruptcy trustee is able to do so without contravening any requirement imposed by or under any enactment.

2. Power to bring, institute or defend any action or legal proceedings relating to the assets comprised in the bankrupt's estate.

3. Power to accept as the consideration for the sale of any asset comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditor's committee or the Court considers fit.

4. Power to mortgage or pledge any part of the assets comprised in the bankrupt's estate for the purpose of raising money for the payment of his or her liabilities.

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any asset which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect to bankruptcy liabilities.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the bankruptcy trustee by any person or by the trustee on any person.

PART 2 - GENERAL POWERS

9. Power to sell any of the assets for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. Power to give receipts for any money received by him or her, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his or her estate.

12. Power to exercise, in relation to any asset comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him or her under Part XII of this Act.

13. Power to deal with any asset comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

14. Power to at any time summon a general meeting of the bankrupt's creditors.

PART 3 - ANCILLARY POWERS

15. For the purposes of, or in connection with, the exercise of any of his or her powers under Part XII of this Act, the bankruptcy trustee may, by his or her official name—

(a) hold assets of every description;

(b) make contracts;

(c) sue and be sued;

(d) enter into engagements binding on himself and herself and, in respect of the bankrupt's estate, on his or her successors in office;

(e) employ an agent;

(f) execute any power of attorney, deed or other instrument;

and he or she may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 5 - OFFENCES UNDER THIS ACT - (SECTION 501)

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
20(2)	Director voting in favour of resolution to appoint interim supervisor without having reasonable grounds for believing that company is insolvent or is likely to become insolvent	$5,000	$4,000	
24(2)	Interim supervisor failing to file notice of appointment with Registrar		$1,000	$100
24(2)	Interim supervisor failing to file notice of appointment with Commission		$1,000	$100
25(4)	Officer of company failing to comply with Court order made under section 25(3)	$1,000	$1,000	$100
27(3)	Interim supervisor contravening section 27(1)		$2,000	
28(5)	Person failing to attend creditors' meeting	$1,000	$1,000	
32(5)	Person, as chairman of creditors' meeting, failing to prepare report of meeting		$1,000	$100
32(5)	Person, as chairman of creditors' meeting, failing to send report of meeting to creditors		$1,000	$100
32(5)	Person, as chairman of creditors' meeting, failing to file report of meeting with Registrar		$1,000	$100
33(2)	Supervisor failing to file notice of appointment with Registrar		$1,000	$100
33(2)	Supervisor failing to file notice of appointment with Commission		$1,000	$100
36(3)	Supervisor failing to keep accounting records in accordance with section 36(1)		$7,500	
37(5)	Supervisor contravening section 37 (Supervisor to prepare and send out regular accounts and reports)		$7,500	
38(3)	Supervisor contravening section 38 (Completion of arrangement)		$2,000	$100
45	Officer of company making false representation or fraudulently doing or omitting to do anything for the purpose of	$10,000	$10,000, imprisonment	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
	obtaining the approval of the creditors of the company to an arrangement		for 2 years or both	
48(2)	Interim supervisor failing to file notice of appointment with Commission		$1,000	$100
49(4)	Debtor failing to comply with order of Court made under section 49(3)		$7,500 imprisonment for one year or both	
58(2)	Interim supervisor failing to call meeting of creditors		$2,000	
58(2)	Interim supervisor failing to send to creditor documents required to be sent under section 58(1)(b)		$2,000	
61(5)	Person, as chairman of creditors' meeting, failing to file any document as required under section 61(1)		$1,000	
61(5)	Person, as chairman of creditors' meeting, failing to send notice of result of meeting to a creditor		$1,000	$100
64(3)	Supervisor contravening section 64 (Supervisor's duty to keep accounting records)		$7,500, imprisonment for one year or both	
65(4)	Supervisor contravening section 65 (Supervisor to prepare and send out regular accounts and reports)		$7,500, imprisonment for one year or both	
66(3)	Supervisor contravening section 66 (Completion of arrangement)		$2,000	
74(2)	Debtor making any false representation or fraudulently doing, or omitting to do, anything for the purpose of obtaining the approval of his or her creditors to an arrangement		$10,000, imprisonment for 2 years or both	
82(2)	Administrator failing to give notice of his or herappointment in accordance with section 82(1)(a)		$2,000	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
82(2)	Administrator failing to comply with section 82(1)(b)		$1,000	$100
82(2)	Administrator failing to send notice of appointment to company or a creditor		$1,000	$100
85(2)	Company contravening section 85(1) (Preservation of charged and other assets)	$7,500	$5,000	
86(8)	Company failing to file with Registrar notice of order made under section 86(2) or sealed copy of order	$500	$500	$100
86(8)	Company failing to comply with condition imposed under section 86	$5,000	$4,000	
92(6)	Administrator failing to serve or file copy of order in contravention of section 92(5)		$1,000	$100
92(6)	Administrator failing to comply with condition imposed under section 92		$10,000	
100(6)	Administrator contravening section 100(1)		$2,000	
101(5)	Person failing to attend creditors' meeting	$1,000	$1,000	
102(6)	Administrator failing to report result of creditors' meeting to Court		$1,000	$100
102(6)	Administrator failing to file copy of report of creditors' meeting with Registrar		$1,000	$100
102(6)	Administrator failing to send notice of result of creditors' meeting to every creditor		$1,000	$100
104(6)	Administrator failing to report result of creditors' meeting to Court		$1,000	$100
104(6)	Administrator failing to file copy of report of creditors' meeting with Registrar		$1,000	$100
104(6)	Administrator failing to send notice of result of creditors' meeting to every creditor		$1,000	$100
106(3)	Administrator contravening section 106 (Administrator's duty to keep accounting records)		$7,500, imprisonment for one year or both	
107(4)	Administrator contravening section 107 (Administrator to prepare and send out regular accounts and reports)		$7,500, imprisonment	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
			for one year or both	
108(3)	Company contravening section 108(1) (Notification)	$2,000	$1,000	
108(3)	Officer or administrator of company causing, permitting or acquiescing in contravention by company of section 108(1) (Notification)	$2,000	$1,000	
112(2)	Administrator or former administrator failing to file with the Registrar copy of order varying or discharging administration order		$1,000	$100
116(3)	Person accepting or purporting to accept appointment or acting or purporting to act as a receiver contrary to section 116(1)	$5,000	$4,000	
118(4)	Receiver failing to send notice of appointment to company		$1,000	
118(4)	Receiver failing to file notice of appointment in accordance with section 118(1)(b)		$2,000	
118(4)	Administrative receiver failing to advertise his or her appointment		$1,000	$100
118(4)	Administrative receiver failing to send notice of his or her appointment to all creditors		$1,000	$100
119(4)	Person contravening or causing, permitting or acquiescing in a contravention of section 119(1)	$2,000	$1,000	
120(7)	Receiver failing to vacate his office forthwith if he or she ceases to be eligible to act as a receiver		$4,000	
120(7)	Receiver failing to give notice in accordance with section 120(3)		$2,000	
120(7)	Receiver failing to notify Court that he or she ceases to be eligible to act as a receiver		$2,000	
120(7)	Person failing to give notice to Registrar of vacancy in the office of receiver		$1,000	$100
121(3)	Person failing to comply with order made under section 121(2)	$7,500	$5,000, imprisonment for one year or both	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
124(3)	Person failing to comply with order made under section 124(2)	$7,500	$5,000, imprisonment for one year or both	
136(7)	Receiver contravening section 136 (Receivership accounts to be filed with Registrar)		$4,000	$200
137(5)	Receiver failing to comply with order made under section 137		$5,000, imprisonment for one year or both	
145(10)	Administrative receiver failing to file copy of order made under section 145(2) or (7) with the Registrar		$1,000	$100
147(7)	Administrative receiver failing to comply with section 147 (Report by administrative receiver)		$2,000	
161(4)	Company failing to give liquidator notice of his or her appointment	$2,000	$1,000	
178(2)	Liquidator failing to advertise his or her appointment in accordance with section 178(1)(a)		$1,000	$100
178(2)	Liquidator failing to file notice of his or her appointment with Registrar		$1,000	$100
178(2)	Liquidator failing to serve notice of his or her appointment on company		$1,000	$100
178(2)	Liquidator failing to serve notice of his or her appointment on Commission		$1,000	$100
179(5)	Liquidator failing to call meeting of creditors in accordance with section 179(1)		$2,000	
179(5)	Liquidator failing to furnish documents or information to creditor as required by section 179(2)		$2,000	
179(5)	Liquidator failing to attend first creditors meeting or to report to the meeting on any exercise by him or her of his or her powers since his appointment		$2,000	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
191(3)	Company contravening section 191(1) (Notification of liquidation)	$2,000	$1,000	
191(3)	Officer, receiver of liquidator of company causing, permitting or acquiescing in contravention by company of section 191(1) (Notification of liquidation)	$2,000	$1,000	
209(7)	Person making or authorising the making of a claim under section 209 knowing that the claim is false or misleading in a material matter or that a material fact or matter has been omitted from the claim	$7,500	$7,500, imprisonment for 2 years or both	
217(4)	Liquidator failing to give notice of disclaimer		$5,000	
231(5)	Liquidator failing to comply with order made under section 231(3)		$7,500, imprisonment for one year or both	
233(7)	Person failing to file sealed copy of the order terminating liquidation with Registrar		$2,000	
239(5)	Liquidator failing to advertise his or her appointment in accordance with a direction of the Commission.		$1,000	$100
267	Disqualified person engaging in prohibited activity	$10,000	$7,500, imprisonment for 2 years or both	
271(5)	Person failing to comply with order made under section 271(3)	$10,000	$7,500, imprisonment for one year or both	
277(4)	Relevant person failing, when required, to submit statement of affairs to office holder together with the verifying affidavit	$3,000	$2,000	$100
282(3)	Person failing to comply with notice received under section 282(1)	$5,000	$4,000	
288(1)	Person failing to attend examination ordered to be held under section 285	$7,500	$5,000, imprisonment for one year or both	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
289(1)	Fraudulent conduct within the meaning of section 289(1)(a)	$10,000	$10,000, imprisonment for three years or both	
289(1)	Fraudulent conduct within the meaning of section 289(1)(b)	$10,000	$10,000, imprisonment for three years or both	
299(5)	Secured creditor failing to account or pay to the trustee the proceeds from any realisation of his security interest in accordance with section 299(3)(b)	$4,000	$3,000	
316(6)	Bankrupt failing to comply with an obligation under section 316 (Duties of bankrupt in relation to his assets and affairs)		$5,000, imprisonment for one year or both	
317(2)	Person failing to comply with an obligation imposed by section 317 (Delivery up by other person)	$7,500	$5,000, imprisonment for one year or both	
326(3)	Trustee failing to advertise his or her appointment in accordance with section 326(1)(a)		$1,000	$100
326(3)	Trustee failing to serve notice of his or her appointment on bankrupt		$1,000	$100
326(3)	Trustee failing to serve notice of his or her appointment on Commission		$1,000	$100
326(3)	Trustee failing to send notice of his or her appointment to every creditor		$1,000	$100
326(3)	Trustee failing to file notice of his or her appointment with Commission		$1,000	$100
326(3)	Trustee issuing advertisement that does not comply with section 326(2)		$1,000	
336(7)	Person making or authorising the making of a claim under section 336 knowing that the claim is false or misleading in a material matter; or a material fact or matter has been omitted from the claim	$7,500	$7,500, imprisonment for 2 years or both	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
354(4)	Undischarged bankrupt or discharged bankrupt whose estate is still being administered failing to do anything that he or she is directed to do by the Court in contravention of section 354(2)		$7,500, imprisonment for 2 years or both	
358(4)	Trustee failing to give notice of disclaimer to every person whose rights are, to his or her knowledge, affected by the disclaimer		$5,000	
366(4)	Bankrupt failing to submit a statement of his or her assets and liabilities in accordance with section 366(1)		$2,500, imprisonment for 6 months or both	
366(4)	Bankrupt submitting a statement of his or her assets and liabilities that does not comply with the prescribed requirements		$2,500, imprisonment for 6 months or both	
373(1)	Person failing to attend examination ordered to be held under section 370	$7,500	$5,000, imprisonment for one year or both	
381(2)	Discharged bankrupt failing to give trustee assistance in the realisation and distribution of such of his or her assets as are vested in his or her trustee		$5,000, imprisonment for one year or both	
389(1)	Bankruptcy offence (non-disclosure)		$7,500, imprisonment for 2 years or both	
390	Bankruptcy offence (concealment of assets) contrary to paragraph (a), (b), (c), (d) or (e) of section 390		$10,000, imprisonment for 3 years or both	
391	Bankruptcy offence (concealment of books and papers or falsification) contrary to paragraph (a), (b), (c), (d), (e) or (f) of section 391		$10,000, imprisonment for 3 years or both	
392	Bankruptcy offence (false statements) contrary to paragraph (a), (b), (c), (d) or (e) of section 392		$10,000, imprisonment for 3 years or both	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
393	Bankruptcy offence (fraudulent disposal of assets) contrary to paragraph (a) or (b) of section 393		$10,000, imprisonment for 3 years or both	
394	Bankruptcy offence (absconding) contrary to paragraph (a) or (b)of section 394		$10,000, imprisonment for 3 years or both	
395	Bankrupt committing bankruptcy offence of fraudulently dealing with assets obtained on credit contrary to section 395(1)		$10,000, imprisonment for 3 years or both	
395	Person committing bankruptcy offence of fraudulently dealing with assets obtained on credit contrary section 395(2)		$10,000, imprisonment for 3 years or both	
396	Bankruptcy offence (obtaining credit; engaging in business) contrary to paragraph (a) or (b) of section 396(1)		$7,500, imprisonment for 2 years or both	
397(1)	Bankruptcy offence (failure to keep proper accounts of business) contrary to paragraph (a) or (b) of section 397(1)		$10,000, imprisonment for 3 years or both	
398	Bankruptcy offence (gambling) contrary to paragraph (a) or (b) of section 398		$7,500, imprisonment for 2 years or both	
416	Restricted person engaging in prohibited activity		$7,500, imprisonment for 2 years or both	
474(4)	Person acting as an insolvency practitioner without holding a licence that is not suspended	$10,000, imprisonment for 2 years or both	$10,000, imprisonment for 2 years or both	
478(4)	Licensee contravening section 478 (Production of accounts and records)		$7,500, imprisonment	

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
			for 2 years or both	
484(4)	Person appointing an overseas insolvency practitioner to act as an insolvency practitioner contrary to section 484(3)		$5,000	

SCHEDULE 6 - DISAPPLICATION AND MODIFICATION OF FINANCIAL SERVICES COMMISSION ACT – (SECTION 503A)

The Financial Services Commission Act is disapplied and modified with respect to the Official Receiver, licensed insolvency practitioners and former licensed insolvency practitioners to the extent specified below:

1. Section 29 and section 49(1)(c) of the Financial Services Commission Act do not apply to the Official Receiver in respect of any information, document, record, statement or thing made or disclosed to him or her in the course of discharging any function or duty or exercising any power in his or her capacity as Official Receiver.

2. Sections 30 and 31 of the Financial Services Commission Act do not apply to any person engaged in or related to the business of acting as an insolvency practitioner.

3. Sections 32 and 33 of the Financial Services Commission Act do not apply to a licenced insolvency practitioner, a former licenced insolvency practitioner or a person carrying on business as an insolvency practitioner.

4. Sections 34, 36, 37, 38, 39 and 40 of the Financial Services Commission Act do not apply to a licensed insolvency practitioner.

5. Section 35 of the Financial Services Commission Act does not apply to a licensed insolvency practitioner or a former licensed insolvency practitioner.

6. Section 41 of the Financial Services Commission Act does not apply with respect to licensed insolvency practitioners.[473]

LIST OF RELEVANT FOREIGN COUNTRIES FOR THE PURPOSES OF PART XIX OF THE INSOLVENCY ACT, 2003

PART XIX OF THE INSOLVENCY ACT, 2003 - August 22, 2005

The Financial Services Commission in exercise of the powers conferred by section 466 (1) of the Insolvency Act, 2003 designates the following countries, territories or jurisdictions as relevant foreign countries for the purposes of Part XIX of the Insolvency Act 2003

1. Australia
2. Canada
3. Finland
4. Hong Kong
5. Japan
6. Jersey
7. New Zealand
8. United Kingdom, and
9. United States of America

The designations shall take effect on the 23rd day of August, 2005

VIRGIN ISLANDS

INSOLVENCY (TRANSITIONAL PROVISIONS) REGULATIONS, 2004

STATUTORY INSTRUMENT 2004 NO. 58

BVI INSOLVENCY ACT, 2003

(NO. 5 OF 2003)

[Gazetted 2nd September, 2004]

The Executive Council, in exercise of the powers conferred by section 504 of the Insolvency Act, 2003 (No. 5 of 2003), makes the following Regulations:

PART 1 - PRELIMINARY PROVISIONS

1. Citation and commencement

These Regulations may be cited as the Insolvency (Transitional Provisions) Regulations, 2004 and shall be deemed to have come into force on the 16th day of August, 2004.

2. Interpretation

In these Regulations,

"Act" means the Insolvency Act, 2003 and includes the Insolvency Rules, 2004 and any regulations made under the Insolvency Act, 2003;

"commencement date", in respect of a Part, Division, section or other provision of the Act, means the date when that Part, Division, section or other provision comes into operation in accordance with section 1(2) of the Act;

"Part", "Division" and "section" means a Part, Division or section of the Act.

(2) In these regulations, "former law" means the enactments and rules of law repealed, amended or modified by the Act.

(3) Unless otherwise provided, the words and expressions defined in the Act have the same meaning in these regulations.

3. Creditors' arrangements

(1) Subject to this regulation, for the purposes of Divisions 1 and 2 of Part II,

"liquidation" includes a liquidation commenced prior to the commencement date; and

"liquidator" includes a liquidator appointed in a liquidation commenced prior to the commencement date.

(2) In Part II, "preferential creditor" means

(a) where the company is in liquidation at the time of the approval of the arrangement and the liquidation commenced prior to the commencement date, a creditor who would have been a preferential creditor under the former law; and

(b) in any other case, a creditor who is a preferential creditor under the Act; and

the preferential claim of a preferential creditor shall be quantified in accordance with the Act or the former law, as applicable.

(3) Section 23 does not apply in respect of a liquidator appointed in a liquidation commenced prior to the commencement date unless the liquidator is a licensed insolvency practitioner.

(4) Section 35(2)(a)(i) applies to a liquidator appointed in a liquidation commenced prior to the commencement date with the omission of the words “under the Act or the Rules”.

(5) References in Part II to the termination of a liquidation mean a liquidation under the Act.

4. Receivers

(1) In this regulation, “pre-Act receiver” means the receiver of the Receivers property of a company appointed prior to the commencement date.

(2) Subject to subregulation (3), Part IV of the Act does not apply to a pre-Act receiver and the former law applicable to receivers continues to apply to such a receiver.

(3) Sections 134(3) and 432 apply in respect of a pre-Act receiver.

(4) In Part XI, a pre-Act receiver to whom subregulation (6)(b) applies

(a) is an office holder for the purposes of Division 1; but

(b) is not an office holder for the purposes of Division 2.

(5) A pre-Act receiver is an insolvency officer for the purposes of Part XIX.

(6) For the avoidance of doubt,

(a) a pre-Act receiver is an interested person within the meaning of sections 46 and 75;

(b) a pre-Act receiver who, if he had been appointed after the commencement date, would have been an administrative receiver, is deemed to be an administrative receiver for the purposes of sections 254 and 259(2);

(c) for the purposes of sections 176(4(c), 191(2) and (3), Part X and section 351(5)(b) “receiver” includes a pre-Act receiver;

(d) a pre-Act receiver is not an office holder within the meaning of section 420(1).

5. Liquidation commenced prior to the commencement date.

The Act does not apply in relation to any liquidation or winding up of a company which commenced prior to the commencement date and the former law continues to apply in relation to any such liquidation or winding up.

6. Petition for winding up order.

Where a petition presented to the Court for the winding up of a company has not been determined at the commencement date, the petition shall be treated as if it was an application for the appointment of a liquidator under the Act.

7. Voidable transactions.

The Court may make an order under section 249 in respect of a transaction, including a floating charge, entered into or created prior to the commencement date only to the extent that it could have made such an order under the former law.

8. Fraudulent conduct.

A person does not commit an offence under section 289 in respect of any act or omission prior to the commencement date.

9. Existing bankruptcy case.

The Act does not apply to any case in respect of which a receiving order or an adjudication in bankruptcy was made prior to the commencement date and the former law continues to apply in relation to any such case.

10. Bankruptcy offences.

A person does not commit an offence under Part XIII in respect of any conduct committed prior to the commencement date.

11. Voidable transactions.

The Court may make an order under section 405 in respect of a transaction, including a general assignment of book debts, entered into or given prior to the commencement date only to the extent that it could have made such an order under the former law.

12. Insolvency practitioners.

Section 474(2) does not apply to a person who acts as an insolvency practitioner by virtue of an appointment made prior to the commencement date.

13. Offences.

Offences committed before the commencement date under any provision of the former law may, notwithstanding any repeal, amendment or modification by this Act, be prosecuted and punished after the commencement date as if this Act had not come into operation.

Made by the Executive Council this 25th day of August, 2004.

H. M. PERCIVAL,

Clerk of the Executive Council.

VIRGIN ISLANDS

INSOLVENCY PRACTITIONERS REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 63/2004 and 61/2010)

Section 486

[Commencement: 16 September, 2004]

1. Short title

These Regulations may be cited as the Insolvency Practitioners Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires, "licence" means a licence to act as an insolvency practitioner issued under section 476 of the Act and "licensee" shall be construed accordingly.

3. Application for licence

An application for a licence shall be made to the Commission in the form set out in the Schedule and shall be accompanied by—

(a) an non-refundable application fee of $300[474];

(b) evidence that the applicant is deemed to belong to, or otherwise entitled or permitted to work in, the Virgin Islands;

(c) the applicant's curriculum vitae providing details of his or her qualifications and career history;

(d) written confirmation from the firm or employer of the applicant that the firm or employer complies with such minimum security requirements, including insurance cover, as may be specified in the Code of Practice.

4. Approval of application for licence

(1) Where the Commission approves an application for a licence, it shall issue to the applicant a notice in writing to that effect and the applicant shall pay the fee specified in regulation 5(1) and collect the licence from the Commission within 3 months from the date on which the notice is issued.

(2) The approval of an application for a licence shall expire unless the applicant complies with subregulation (1), or demonstrates to the satisfaction of the Commission that his or her failure to comply was due to exceptional circumstances and not any fault of his or her own.

(3) Where the approval of an application for a licence expires, the Commission shall not issue the licence to the applicant unless the applicant submits a fresh application and pays all the relevant fees, in accordance with these Regulations.

5. Licence fees

(1) There shall be payable for the year in which a licence is issued, a fee of—

(a) $3,000[475] where the licence is issued on or before the 30th day of June in that year;

(b) $1,500[476] where the licence is issued on or after the 1st day of July in that year; or

(c) $3,000[477] where the licence is issued subject to a restriction that no new insolvency appointments are undertaken.

(2) On or before the 31st day of March every year following the year in which a licence is issued, there shall be payable in respect of the licence an annual fee of—

(a) $3,000[478] in the case of a licence referred to in subregulation (1)(a) or (b); or

(b) $1,500[479] in the case of a licence referred to in subregulation (1)(c).

(3) Without prejudice to the power of the Commission to suspend or revoke a licence under section 479(2)(e) of the Act, an unpaid annual fee may be sued for by the Commission by action as a civil debt to be recoverable summarily, and the Commission may require, and the court may order, the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

5A. Notice fee for the proposed appointment of an overseas insolvency practitioner[480]

Notice of the proposed appointment of an overseas insolvency practitioner provided to the Commission under section 483 (b) of the Act, shall be accompanied by a non-refundable fee of five hundred dollars.

6. Maintenance of records

(1) A licensee shall maintain in respect of his or her practice as an insolvency practitioner—

(a) records and details of each appointment as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee;

(b) case records, working papers and all proper documents relating to all insolvency work undertaken.

(2) A licensee shall, in writing, notify the Commission of the address in the Virgin Islands where any records or documents referred to subregulation (1) are kept.

(3) A licensee shall, in respect of each of his or her appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, keep the records and documents referred to in subregulation (1) for a period of at least 6 years after the appointment has ceased to have effect.

7. Inspection of records

(1) The Commission may, after giving reasonable notice to a licensee of its intention to do so—

(a) inspect such records and documents of the licensee as are referred to in regulation 6(1) for the purpose of ensuring compliance with the Act, regulations made under the Act and the Code of Practice; and

(b) make copies of any such records and documents.

(2) The Commission may appoint one or more competent persons to exercise its powers under subregulation (1) and where a person so appointed is not a member or officer of the Commission, he or she shall, unless otherwise agreed between him or her and the Commission, be remunerated on such terms and conditions as the Commission may determine.

8. Notification of changes

(1) A licensee or an applicant for a licensee shall, in writing, notify the Commission of any matter which may affect his or her status as a fit and proper person to hold a licence, as soon as practicable and in any event within 10 days of becoming aware of the matter.

(2) A licensee shall, in writing, notify the Commission of any change in circumstances which might affect his or her eligibility for a licence, or his or her general ability to accept appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, as soon as practicable and in any event within 10 days of becoming aware of the change.

(3) A licensee shall, in writing, notify the Commission of the following, as soon as practicable and in any event within 10 days of becoming aware thereof—

(a) any change to—

(i) his or her name or address;

(ii) his or her business name or business address;

(iii) the name, principal business address or registered office address of his or her firm or employer;

(iv) the address where records and documents referred to in regulation 6(1) are kept;

(b) any matter relating to his or her firm or employer or any of his or her firm's or employer's partners, directors or employees which could render the licensee no longer fit and proper to hold a licence.

9. Variation of minimum level of security

The Commission may, having regard to the particular circumstances of an applicant for a licence, a licensee or any insolvency proceedings, impose a higher standard or greater level of security than that provided for in the Code of Practice.

10. Administrative penalties

(1) Where the Commission is satisfied that a licensee has contravened the Act, regulations or rules made under the Act or the Code of Practice, the Commission may cause to be delivered to the licensee a notice setting out the particulars of the contravention or contraventions, as the case may be, and requiring the licensee to pay to the Commission, before the expiration of one month from the date of delivery of the notice, an administrative penalty of $500 in respect of each contravention.

(2) If the licensee fails to pay the amount specified in the notice within the time specified therein, the administrative penalty shall increase by 10% of that amount.

(3) If the licensee fails to pay the amount due as an increased administrative penalty under subregulation (2) before the expiration of 2 months from the date of the delivery of the notice, the administrative penalty increases by 50% of that amount.

(4) The Commission may recover unpaid administrative penalties in civil proceedings in the Magistrate's Court, provided that where the licensee appeals against the imposition of the administrative penalty in accordance with section 44 of the Financial Services Commission Act, no such proceedings shall be instituted by the Commission before the appeal has been determined.

11. Complaints against licensees

(1) A person may file with the Commission a complaint against a licensee and shall set out in the complaint such facts or matters as may indicate that the licensee may have become liable to have his or her licence suspended or revoked under Part XX of the Act.

(2) The Commission shall not proceed to consider a complaint unless—

(a) firstly, the complainant demonstrates, to the satisfaction of the Commission, that the complainant has previously addressed the complaint to the licensee and to the firm or employer of the licensee and that the matter has not been resolved to the satisfaction of the complainant; and

(b) the Commission determines, having regard to all the circumstances of the matter, that a prima facie case has been made that the licensee has become liable to have his or her licence suspended or revoked.

(3) In considering a complaint, the Commission may require the licensee or the complainant concerned to provide such information as the Commission thinks necessary for the purpose of evaluating the merits of the complaint.

(4) Where a complaint is upheld by the Commission, the Commission may—

(a) issue to the licensee such directives under the Act as it thinks fit;

(b) suspend or revoke the licence of the licensee in accordance with the Act;

(c) require the licensee to pay such administrative penalties under these Regulations as it thinks fit;

(d) take such enforcement action under the Financial Services Commission Act as it thinks fit; or

(e) publish the details and outcome of the complaint.

(5) Where a complaint is upheld by the Commission, the Commission may charge the licensee concerned for some or all of the costs it incurred in dealing with that complaint.

(6) A licensee who is aggrieved by a decision of the Commission under this regulation, may appeal to the Financial Services Commission Appeal Board in accordance with section 44 of the Financial Services Commission Act.

12. Code of Practice

Subject to section 487(2) of the Act, the Code of Practice may provide for any matter specified in section 486(1) of the Act.

SCHEDULE 1

APPLICATION FOR A LICENCE TO ACT AS AN INSOLVENCY PRACTITIONER

Pursuant to the Insolvency Act, Section 475(1)

[OMITTED – Applications and Appendix 1 available on the website https://www.bvifsc.vg]

VIRGIN ISLANDS

INSOLVENCY RULES

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 45/2005, Act 1 of 2008 and S.I. 6/2023)

Section 498

[Commencement: 16 August 2003 – rules 3 and 424

30 June 2005 – remaining provision except for Part V]

PART I - PRELIMINARY PROVISIONS

1. Short title

These Rules may be cited as the Insolvency Rules.

2. Interpretation

(1) In these Rules—

"Act" means the Insolvency Act;

"contact details", in respect of a person, means—

(a) a telephone number;

(b) a fax number;

(c) an e-mail address; or

(d) another method of communication, not being a physical address.

"CPR" means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and "CPR" followed by a Part or rule by number means the Part or rule with that number in those rules;

"insolvency proceeding" means any proceeding under the Act or the rules, including a creditors' arrangement;

"practice direction" means a direction as to practice and procedure issued by the Court under rule 8;

"Regulations" means the Regulations made under section 486;

"Rules" means these Rules;

"section" means a section of the Act.

(2) For the purposes of section 2(1) [definition of "preferential claims"], the claims set out in Schedule 2 are preferential claims.

(3) Unless otherwise provided, the words and expressions defined in the Act have the same meaning in the rules.

3. Prescribed financial services licence

For the purposes of section 2(1) (definition of "regulated person"), a prescribed financial services licence is a licence, authorisation, permission or recognition issued under one of the following Acts—

(a) Banks and Trust Companies Act;

(b) Insurance Act[481];

(c) Company Management Act;

(d) Securities and Investment Business Act

PART II - COURT PROCEDURE AND PRACTICE

DIVISION 1 – GENERAL

4. Application of CPR

(1) Subject to paragraph (2), except so far as inconsistent with the Act or the rules or a practice direction issued under rule 8, the CPR, practice directions issued under CPR Part 4 and practice guidance issued under CPR 4.6 apply to insolvency proceedings, with any necessary modifications.

(2) The provisions of the CPR specified in Schedule 1 do not apply in insolvency proceedings.

5. Exercise of Court's powers

Subject to any provision in the Act or the rules to the contrary or to any practice direction, the functions of the Court under the Act or the rules may be exercised by a master.

6. Filing of documents with the Court

Every document filed with the Court shall have endorsed upon it the date and time at which it was filed and, if the rules so provide, shall be sealed.

7. Filing of documents with the Registrar

(1) Where a document is required or permitted under the Act or the rules to be filed with the Registrar, the document is filed by delivering or posting it to the Registrar.

(2) A document is filed with the Registrar on the day when it is received at the Companies Registry or, where it is received at a time when the Companies Registry is closed, on the next day on which the Companies Registry is open.

DIVISION 2 – PRACTICE DIRECTIONS AND GUIDES

8. Issue of practice directions

(1) The Chief Justice may issue a practice direction where required or permitted by the Act or the rules.

(2) Where there is no express provision in the Act or the rules for such a direction, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

(3) In the case of any inconsistency between a practice direction issued under this rule and the CPR, or a practice direction or practice guide issued under the CPR, the practice direction issued under this rule prevails.

9. Practice directions to be published in Gazette

(1) A practice direction issued under rule 8 shall be published in the Gazette.

(2) A practice direction issued under rule 8 comes into effect on its publication in the Gazette or on such later date as may be specified in the direction.

10. Compliance with practice directions

(1) In this rule, "relevant practice direction" means a practice direction made—

(a) under rule 8; or

(b) under CPR Part 4.

(2) Unless there are good reasons for not doing so, a party shall comply with any relevant practice directions.

(3) The Court may make an order under CPR Part 26 (Powers of Court) or CPR Part 64 (Costs – General) against a party who fails to comply with a relevant practice direction.

11. Practice guides

(1) In this rule, "relevant practice guide" means a practice guide made

(a) under this rule; or

(b) under CPR 4.6.

(2) The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.

(3) Parties shall have regard to any relevant practice guide.

(4) The Court may take account of any failure of a party to comply with any relevant practice guide when deciding whether or not to make an order under CPR Part 26 (Powers of the Court) or CPR Part 64 (Costs – General).

DIVISION 3 – APPLICATIONS

12. Scope of rules

(1) Except as otherwise provided in the Act or the Rules, this Division applies to every application made to the Court under the Act or the rules.

(2) Notwithstanding this Division, an application for an administration order, for the appointment of a liquidator and for a bankruptcy order shall also comply with the relevant provisions of the Act and the rules.

13. Types of application

(1) An application to the Court which is not an application made in insolvency proceedings already before the Court shall be made as an "originating application".

(2) An application to the Court made in insolvency proceedings already before the Court shall be made by way of an "ordinary application".

(3) For the purposes of applying the CPR, an application made in insolvency proceedings, whether originating or ordinary, shall be regarded as a fixed date claim.

14. Form and content of application

(1) An application, whether originating or ordinary, shall be in writing and in the prescribed form, with such modifications as are appropriate.

(2) In particular, an application shall state—

(a) the name of the applicant and the names of any respondents;

(b) the nature of the relief or the order applied for or the directions sought from the Court;

(c) the names and addresses of the persons, if any, on whom it is intended to serve the application or that no person is intended to be served;

(d) where the Act or the rules require that notice of the application is to be given to specified persons, the names and addresses of those persons so far as known to the applicant;

(e) the applicant's name and his address for service within the Virgin Islands; and

(f) the applicant's contact details.

(3) Where an application is made on behalf of an applicant by a legal practitioner appointed by the applicant to act for him or her, the application shall state the full address of the legal practitioner, contact details for the legal practitioner and the name or reference of the individual dealing with the matter.

(4) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(5) The application shall be signed by the applicant if he or she is acting in person or, otherwise, by or on behalf of his or her legal practitioner.

(6) An application may, and where the rules so provide shall, be supported by an affidavit.

(7) Where the address for service of an applicant changes, he or she shall immediately notify the Court and all other parties and any document sent to the original address before notice of the change is given is regarded as validly served.

15. Application for appointment of insolvency practitioner

Any application that seeks the appointment of one or more insolvency practitioners in an insolvency proceeding shall have attached to it, a written statement signed by each of the proposed insolvency practitioners—

(a) stating that the insolvency practitioner consents to accept the appointment;

(b) setting out details of any prior professional relationship that he or she has had with the company or individual concerned; and

(c) stating that he or she is eligible to act as insolvency practitioner in respect of the company or individual concerned.

16. Filing of applications

(1) An application, with any supporting documents, shall be filed with the Court together with one copy for exhibiting to the affidavit of service, if required, and sufficient additional copies for service.

(2) Unless the rules otherwise provide, or the Court otherwise orders, the Court shall—

(a) fix a venue for the first hearing of the application;

(b) seal each application and each copy of the application filed;

(c) endorse on the application, and on each copy of the application filed, the date and time of filing and details of the venue fixed; and

(d) return the copies of the application to the applicant.

17. Service of applications

(1) A copy of the application, endorsed in accordance with rule 16(2), shall be served on—

(a) the respondent or respondents named in the application; and

(b) any other person that the Court may direct.

(2) Subject to paragraph (3), notice of the application shall be given to any person specified in the rules and to any other person that the Court may direct.

(3) Unless the Act or the rules provide otherwise, the Court may, by order, give any of the following directions—

(a) that the giving of notice of an application to any person be dispensed with; and

(b) that notice be given in some way other than that specified in the Act or the rules.

(4) Unless the Act or the rules provide otherwise, an application shall be served at least 14 days before the date fixed for the hearing.

18. Persons entitled to copy of certain applications

(1) Each of the following persons may request the applicant to provide him or her with a copy of an application for an administration order or an application for the appointment of a liquidator—

(a) a director of the company against which the application is made;

(b) a member of the company; and

(c) a creditor of the company.

(2) On receipt of a request made under paragraph (1), the applicant, or where the applicant is represented by a legal practitioner, his or her legal practitioner, shall provide the person making the request with a copy of the application.

19. Affidavit of service

(1) Where required by the Act or the rules, service of an application or other document shall be verified by an affidavit of service in the prescribed form sworn by the person who effected service specifying the date on which, and the manner in which, service was effected.

(2) A sealed copy of the application or other document served, together with any supporting documents served, shall be exhibited to the affidavit of service.

(3) The affidavit verifying service shall be filed in Court as soon as reasonably practicable after service but, in any event, not less than 2 days prior to the date fixed for the hearing of the application.

20. Hearing of applications

(1) Unless otherwise provided by the Act or the rules—

(a) an application before the master shall be heard in chambers; and

(b) an application before the judge may be held in chambers or in Court.

(2) An ordinary application shall be made to the master unless—

(a) the Act, the rules or a practice direction issued under rule 8 provide otherwise; or

(b) the master does not have power to make the order sought.

(3) The master may refer to the judge any matter that he or she considers should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the master with such directions as he or she considers appropriate.

(4) The following originating applications shall be made and heard by the judge—

(a) an application for an administration order;

(b) an application to appoint a liquidator of a company or a foreign company; and

(c) an application for a bankruptcy order.

(5) Nothing in this rule precludes an application being made directly to the judge in a proper case.

(6) Unless the Act or the rules provide otherwise, any person served with or given notice of an application is entitled to appear or be represented at the hearing of the application.

21. Ex parte hearings

(1) Where the Act or the rules do not require service of an application on, or notice of it to be given to, any person, the Court may hear the application ex parte.

(2) Where the application is made ex parte in the circumstances specified in paragraph (1), the Court may—

(a) hear it forthwith, without fixing a venue as required by rule 16(2); or

(b) fix a venue for the application to be heard, in which case rule 16(2) applies.

22. Affidavits

(1) Except as provided otherwise by the Act or the rules, or as the Court otherwise orders, an affidavit in an insolvency proceeding may contain statements of information and belief.

(2) The deponent of an affidavit in an insolvency proceeding—

(a) shall state which of the statements in it are made from the deponent's own knowledge and which are matters of information and belief;

(b) shall specify the means of his or her knowledge or belief as to the matters sworn to; and

(c) if he or she is not an applicant, shall state the capacity in which and the authority by which he or she makes the affidavit.

(3) Subject to paragraphs (1) and (2) and except as provided otherwise by the Act or the rules or as the Court otherwise orders, CPR Part 30 applies to an affidavit sworn under the Act or the rules with such modifications as the circumstances require.

DIVISION 4 – SERVICE

23. Scope of rules concerning service

(1) This Division applies where in an insolvency proceeding—

(a) a document is required or permitted to be served, sent or delivered to any person; or

(b) notice of any matter is required or permitted to be given to any person.

(2) In this Division, "registered office" has the meaning set out in the International Business Companies Act, the Companies Act or the BVI Business Companies Act, as the case may be.

24. Application of CPR

(1) Except as otherwise provided in the Act or the rules—

(a) CPR Parts 5 and 7 apply to the service of a document of a type specified in paragraph (2), as if the document was a claim form; and

(b) CPR Parts 6 and 7 apply to the service of an ordinary application, a judgment or order and any other document required or permitted to be served, sent or delivered in an insolvency proceeding before the Court;

in each case with such modifications as are necessary.

(2) Paragraph (1)(a) applies to the documents of the following types—

(a) an application for an administration order;

(b) an application for the appointment of a liquidator;

(c) an application for a bankruptcy order;

(d) an originating application;

(e) a statutory demand; and

(f) an order for the examination of a person under section 284.

(3) A document referred to in paragraph (2) shall be served in accordance with paragraph (1)(a) on every person whom the Act or the rules require to be served with the document.

25. Responsibility for service

(1) Unless the Act or the rules provide otherwise, the service of documents in insolvency proceedings is the responsibility of the parties and will not be undertaken by the Court.

(2) Paragraph (1) applies notwithstanding that a rule in the CPR applicable in insolvency proceedings may state otherwise.

(3) As soon as reasonably practicable after making an order in an insolvency proceeding, the Court shall provide the applicant with, or send to the applicant, sealed copies of the order for service.

26. Service on company

(1) Subject to paragraphs (2) and (3), service on a company may be effected by one of the methods of service specified in CPR 5.7 (Service on limited company).

(2) Service of a document of a type specified in rule 24(2)(a), (b), (d) and (e) shall be served on a company—

(a) at its registered office—

(i) by serving the application personally on a director, officer or employee of the company;

(ii) by serving the application personally on a person who acknowledges himself or herself to be authorised to accept service of documents on behalf of the company; or

(iii) if service under subparagraphs (i) or (ii) is not possible, by leaving the application at the registered office in such a way that it is likely to come to the attention of a person coming to the office; or

(b) if, for any reason, service of a document at the registered office of a company under sub-paragraph (a) is not practicable, or the company has no registered office, the document may be served—

(i) by leaving it at the company's last known principal place of business in the Virgin Islands in such a way that it is likely to come to the attention of a person coming to the office; or

(ii) by serving the document personally on any director, officer or manager of the company.

(3) CPR 5.13 and 5.16 do not apply to the service on a company of a statutory demand or an application for an administration order or for the appointment of a liquidator.

(4) Where the Act or the rules require service of a document on the board of a company, service may be effected by service of a single copy of the document on the company at its registered office.

27. Service on partnership

Service on a partnership may be effected by one of the methods of service specified in CPR 5.8 (Service on firm or partnership).

28. Service on foreign company

(1) Service on a foreign company may be effected—

(a) by one of the methods of service specified in CPR 5.9 (Service on body corporate); or

(b) by serving the claim form, in the Virgin Islands, personally on any person who acknowledges himself or herself to be authorised to accept service of documents on behalf of the foreign company.

(2) If, for any reason, service of a document in a manner specified in paragraph (1) is not practicable, service may be effected by leaving the document at, or sending it by post to, any place of business established by the foreign company in the Virgin Islands.

29. Service on any other person

(1) Service on any other person may be effected by one of the methods specified in the relevant Part of the CPR or by delivering the document to be served to his or her proper address.

(2) For the purposes of paragraph (1), a person's proper address is any address which he or she has previously notified as his or her address for service or, if he or she has not notified any such address, service may be effected by delivery of the document to his or she usual or last known address.

(3) Delivery of documents to any place or address may be made by leaving them there or by sending them by post.

30. Sending or delivering other documents

(1) Paragraph (2) applies where, under the Act or the rules—

(a) a document, other than an application, is required or permitted to be sent or delivered to any person; or

(b) written notice of a meeting or any matter is required or permitted to be given to any person.

(2) A document may be sent or delivered and written notice may be given—

(a) by any means of service specified in CPR Part 6; or

(b) by any other means, including a means of electronic communication, that may be agreed between the person sending the document or notice and the person receiving it.

DIVISION 5 – GENERAL

31. Advertisements

(1) Without limiting any specific requirement to advertise contained in the Act or the rules, where a person is required by the Act or the rules to advertise any application, order, notice or other document or matter, he or she shall, within the time specified in the Act or the rules—

(a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Gazette Office for advertisement; and

(b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company or individual who is subject to the insolvency proceeding concerned.

(2) The first meeting of creditors in an administration or a liquidation and the notice specified in section 147(3) shall be advertised in the same newspaper as that in which, as the case may be, the notice of the administration order, the appointment of the liquidator or the appointment of the administrative receiver was advertised.

(3) Where paragraph (2) applies, the administrator, liquidator or administrative receiver may also advertise in such other newspaper as he or she thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

32. Advertisement of liquidator's appointment

(1) This rule applies to the advertisement by a liquidator of his or her appointment as required by section 178(1).

(2) A liquidator shall advertise his or her appointment—

(a) as specified in rule 31(1)(a);

(b) in a newspaper published and circulating in the Virgin Islands; and

(c) in such other newspaper or newspapers, if any, that he or she considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

33. Advertisement of bankruptcy trustee's appointment

(1) This rule applies to the advertisement by a bankruptcy trustee of his or her appointment as required by section 326(1).

(2) A bankruptcy trustee shall advertise his or her appointment—

(a) as specified in rule **31**(1)(a); and

(b) in a newspaper published and circulating in the Virgin Islands.

DIVISION 6 – MINORS AND PATIENTS

34. Interpretation

(1) In this Division—

"minor" means a person who has not attained the age of 18 years; and

"patient" means a person who is incapable of managing his or her assets and affairs—

(a) by reason of his or her mental disorder as defined in section 2 of the Mental Health Ordinance; or

(b) due to physical affliction or disability.

(2) A person is eligible to be appointed as the next friend of a patient or a minor under rule 35 if—

(a) he or she can fairly and competently appear for, represent or act for that patient or minor; and

(b) he or she has no interest adverse to that of the patient or minor.

35. Appointment of next friend

(1) The Court may appoint an eligible person as the next friend to appear for, represent or act for a patient or a minor.

(2) The appointment of a next friend may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the patient or minor is entitled to exercise.

(3) The Court may make the appointment of a next friend either of its own motion or on application by—

(a) a person who has been appointed by a court in a jurisdiction outside the Virgin Islands to manage the affairs of, or to represent, the patient or minor;

(b) a relative or friend of the patient or minor who appears to the Court to be a proper person to make the application;

(c) the Official Receiver;

(d) the person who, in relation to the proceedings, is the responsible insolvency practitioner; or

(e) in the case of a minor, the minor himself or herself.

(4) Subject to paragraph (5), an application under paragraph (3) may be made ex parte.

(5) The Court may require such notice of the application as it considers appropriate to be given to the patient or minor, or to any other person that it considers appropriate, and may adjourn the hearing of the application to enable notice to be given.

(6) The Court may make an order appointing a next friend subject to such terms and conditions as it considers just, including a requirement that the next friend take legal or other professional advice or that he or she acts by a legal practitioner, and may limit the next friend's authority to appear for, represent or act for the patient or minor.

36. Affidavit in support of application

(1) An application under rule 35(3) made in respect of a patient by a person other than the Official Receiver, shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the patient.

(2) An application under rule 35(3) made in respect of a patient by the Official Receiver shall be supported by a report made by the Official Receiver.

37. Service of documents and giving of notice

Any document or notice served on, or sent to, a person appointed as next friend under rule 35 has the same effect as if it had been served on, or given to, the patient or minor.

38. Termination of appointment of next friend and variation of conditions

(1) The Court may on its own motion, or on the application of the person appointed as the next friend of a minor or patient or of a person specified in rule 35(3)—

(a) terminate the appointment of a person as next friend of the patient or minor;

(b) limit the next friend's authority to appear for, represent or act for the patient or minor;

(c) amend the terms and conditions upon which the person is appointed next friend; or

(d) appoint an eligible person as next friend of the patient or minor in substitution for an existing next friend.

(2) If an application under paragraph (1) is made by a person other than the next friend of the patient or minor, notice of the application shall be given to the person appointed as best friend.

(3) Subject to paragraph (2), rule 35 applies to an application made under paragraph (1) as if it was an application for the appointment of a best friend.

39. Termination of appointment of next friend of minor on majority

(1) The appointment of the next friend of a minor, who is not also a patient, terminates when the minor reaches the age of majority.

(2) Where the appointment of the next friend of a minor terminates under paragraph (1), the person whose appointment as best friend has been terminated, shall apply to the Court for directions.

(3) On an application under paragraph (2), the Court may make such directions, if any, as it considers necessary or just.

40. Directions

A person appointed as the next friend of a patient or minor may at any time apply to the Court for directions concerning his or her appointment and upon such application the Court make give such directions as it considers appropriate.

PART III - GENERAL PROVISIONS

DIVISION 1 – CREDITORS' AND MEMBERS' MEETINGS

41. Interpretation

In this Division—

"convener" means the person calling a creditors' or members' meeting;

"creditors' meeting" means a meeting of creditors required or permitted to be called under the Act or the rules;

"members' meeting" means a meeting of members required or permitted to be called under the Act or the rules;

"notice" means a notice calling a creditors' or members' meeting;

"office holder" means—

(a) in the case of a company, a supervisor, interim supervisor, administrator, administrative receiver or liquidator; and

(b) in the case of an individual, a supervisor, interim supervisor or his or her bankruptcy trustee;

"relevant date" means—

(a) in the case of a company creditors' arrangement, the date of the creditors' meeting or, if the company is in administration or in liquidation, the date that the administration or liquidation commenced;

(b) in the case of an individual creditors' arrangement, the date of the creditors' meeting;

(c) in the case of an administrative receivership, the date of his or her appointment; and

(d) in the case of administration, liquidation or bankruptcy proceedings, the date that the administration, liquidation or bankruptcy commenced.

42. Scope of this Division

Except to the extent that the Act or the rules otherwise provide—

(a) rules 43 to 60 apply to all creditors' meetings; and

(b) rule 61 applies to all members' meetings.

43. Calling of Creditors' Meetings

(1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting, a notice complying with the Act and the rules.

(2) Subject to any requirement of the Act or the rules, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the venue of a creditors' meeting shall be fixed by the convener and stated in the notice.

(3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside the Virgin Islands.

(4) A notice sent to a creditor under paragraph (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him or her at least 14 days before the date of the meeting.

(5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10:00 and 16:00 on a business day.

44. Form of notice calling creditors' meeting and accompanying documents

(1) In addition to any other requirements of the Act or the rules, a notice shall contain—

(a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and

(b) an explanation as to—

(i) the majority required to pass a resolution at the meeting, and

(ii) the basis on which a person will be admitted to vote at the meeting.

(2) The convener shall send, or cause to be sent, together with every notice—

(a) a proxy form; and

(b) any document required by the Act or the rules to be sent with the notice.

(3) Where a copy of the notice, together with any other documentation, is required by the Act or the rules to be sent to any person not entitled to vote at the meeting, the convener shall send,

or cause to be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least 14 days before the date of the meeting.

(4) Neither the proceedings at, nor any resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

45. Notice to be given to creditors

(1) The convener of a creditors' meeting shall send a notice to every creditor—

(a) specified in the statement of affairs or statement of assets and liabilities, if any; and

(b) of whom the convener is otherwise aware.

(2) The convener of a creditors' meeting is not in breach of any requirement of the Act or the rules to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

46. Notice of meetings by advertisement

(1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.

(2) In considering whether to make a direction under this rule, the Court shall have regard to—

(a) the cost of public advertisement;

(b) the assets available in the insolvency proceeding concerned; and

(c) the extent of the interest of creditors or any particular class of either.

47. Notice to Registrar, Commission and Official Receiver

Where a convener is required by the Act to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Receiver, he or she shall file the notice, together with any accompanying documentation, at least 14 days before the date set for the meeting.

48. Meetings requisitioned by creditors

(1) This rule applies where creditors are permitted by the Act to requisition a meeting.

(2) A notice requisitioning a creditors' meeting shall be sent to the office holder concerned by a creditor accompanied by—

(a) a list of creditors supporting the requisition, showing the amounts of their respective claims;

(b) the written confirmation of each creditor on the list that he or she supports the requisition; and

(c) a statement—

(i) specifying the section of the Act under which the meeting is requisitioned;

(ii) that the creditors on the list comprise at least the minimum number of creditors specified by the relevant section; and

(iii) of the purpose of the meeting.

(3) Subject to paragraph (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the office holder in accordance with paragraph (2).

(4) If the office holder is satisfied that a requisition complies with the Act and the rules, he or she shall, within 5 business days of receiving the notice under paragraph (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the office holder sufficient security to cover those costs.

(5) If the office holder is not satisfied that a requisition complies with the Act and the rules, he or she shall notify the creditor in writing stating the reasons for his or her conclusion.

(6) Upon receipt of the deposit referred to in paragraph (4), the office holder shall fix a venue for the meeting not more than 35 days from his or her receipt of the deposit and shall give not less than 21 days notice of the meeting to creditors.

(7) A meeting held under this rule may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.

(8) To the extent that any deposit paid to the office holder under this rule is not required for the payment of the expenses of calling and holding the meeting, it shall be repaid to the person who paid the deposit.

CONDUCT OF CREDITORS' MEETINGS

49. Chairman

(1) Subject to paragraphs (2) and (3), every creditors' meeting shall be chaired by the convener.

(2) Where the convener is an insolvency practitioner or the Official Receiver and he or she is unable to attend the meeting, he or she may, in writing, nominate as chairman—

(a) in the case of an insolvency practitioner—

(i) another eligible insolvency practitioner; or

(ii) an employee of the insolvency practitioner, or of his or her firm, who is experienced in insolvency matters; or

(b) in the case of the Official Receiver, the Deputy Official Receiver or a member of his or her staff.

(3) Where a creditors' meeting convened by an insolvency practitioner or the Official Receiver is to be held outside the Virgin Islands and he or she will not be attending the meeting, he or she may nominate a suitably qualified and experienced individual to act as chairman.

50. Suspension

Once only in the course of any meeting, the chairman may, in his or her discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

51. Adjournment of meetings

(1) If within 30 minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chairman of the meeting, the meeting is adjourned to the same time and place in the following week or, if that is not a business day, to the same time on the next following business day.

(2) Subject to paragraph (3), unless those persons present, in person or by proxy, pass a resolution to the contrary, the chairman may adjourn a creditors' meeting.

(3) The chairman of a creditors' meeting may not adjourn or further adjourn a meeting under paragraph (2) to a date more than 14 days after the date fixed for the original meeting.

52. Chairman as proxy holder

(1) The chairman shall not by virtue of any proxy he or she holds, vote on a resolution concerning the remuneration or expenses of the office holder unless the proxy specifically directs him or her to vote in that way.

(2) If the chairman uses a proxy contrary to paragraph (1), his or her vote with that proxy does not count towards any majority under this rule.

(3) Where the chairman holds a proxy which requires him or her to vote for a particular resolution, and no other person proposes that resolution—

(a) he or she shall propose it himself or herself, unless he or she considers that there is good reason for not doing so; and

(b) if he or she does not propose it, he or she shall forthwith after the meeting notify his or her principal of the reason why he or she did not propose it.

53. Quorum

(1) The quorum for a meeting of creditors is at least one creditor entitled to vote.

(2) A creditor shall be counted towards the quorum for the purposes of paragraph (1) if he or she is present or represented by proxy by any person, including the chairman.

(3) Where at any meeting of creditors—

(a) a quorum is present by the attendance of the chairman alone or by the chairman together with one additional creditor; and

(b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote, the meeting shall not commence until at least 15 minutes after the time set for its commencement.

VOTING RIGHTS AND MAJORITIES

54. Resolutions

(1) Unless the Act or the rules provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50% in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.

(3) Where a resolution is proposed which affects a person in respect of his or her remuneration or conduct as an office holder, or as a proposed or former office holder, the vote of that person and of any partner or employee of his or hers, shall not be counted in the majority required for passing the resolution.

(4) Paragraph (3) applies with respect to a vote given by a person whether personally, on his or her behalf by a proxy-holder or as a proxy holder for a creditor.

55. Creditors' entitled to vote

(1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12 noon on the business day before the day fixed for the meeting—

(a) he or she has given written notice of his or her claim to the office holder and the claim is admitted in accordance with rule 58; and

(b) any proxy that he or she intends to be used on his or her behalf has been lodged with the office holder.

(2) The office holder may accept a proxy that has been sent to him or her by facsimile transmission as lodged for the purposes of paragraph (1)(b).

(3) The chairman of a creditors' meeting may allow a creditor to vote, notwithstanding that he or she has failed to comply with paragraph (1)(a), if he or she is satisfied that the failure was due to circumstances beyond the creditor's control.

(4) The votes of a creditor are calculated—

(a) where the creditors' meeting is in respect of a company that is in liquidation, on the value of the creditor's claim made in accordance with the provisions of the Act and the rules that relate to a claim in a liquidation;

(b) where the creditors' meeting is in respect of a bankruptcy, on the value of the creditor's claim made in accordance with the provisions of the Act and the rules that relate to a claim in a bankruptcy;

(c) in any other case, according to the amount of the creditor's debt as at the relevant date, deducting any amounts paid in respect of the debt after that date.

(4) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except where the chairman agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

56. Secured creditors and holders of negotiable instruments

(1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his or her debt after deducting the value of his or her security interest as estimated by him or her.

(2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he or she is willing—

(a) to treat the liability to him or her on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made, or in the case of a company, which has not gone into liquidation, as a security in his or her hands;

(b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his or her claim; and the chairman decides to admit the reduced claim for voting purposes.

57. Hire purchase, conditional sale and chattel leasing agreements

(1) This rule does not apply to a creditors' meeting held in respect of a company that is in liquidation or in respect of a bankruptcy.

(2) Subject to paragraph 3, an owner of goods under a hire purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt owed by the debtor to him or her on the relevant date.

(3) In calculating the amount of a debt for the purposes of paragraph 1, no account is taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the relevant insolvency proceeding or any order made in, or matter arising in consequence of, the proceeding.

58. Admission and rejection of claims

(1) Subject to paragraph (5), the chairman of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman of a creditors' meeting may require a creditor to produce any document or other evidence where he or she considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.

(4) If the chairman of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he or she shall mark the claim as objected to and allow the creditor to vote, subject to his or her vote being subsequently declared invalid if the objection to the claim is sustained.

(5) Where a creditor's claim in a liquidation or bankruptcy has been admitted by the liquidator or trustee, under section 209 or section 336, as the case may be, the Chairman shall admit the claim in the same amount for the purposes of voting.

59. Appeal

(1) A creditor may appeal to the Court against any decision of an office holder, or the chairman of a creditors' meeting, under rules 55 or 58.

(2) If on an appeal the Court reverses or varies the Chairman's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.

(3) An appeal under this rule shall be made within a period of 28 days from the date of the decision in respect of which the appeal is made.

(4) Neither an office holder, nor any person nominated to chair a creditors' meeting on his or her behalf in accordance with rule 49(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

60. Minutes

(1) The chairman of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he or she signs the minutes.

(2) Minutes kept under paragraph (1) shall include a list of the creditors who attended the meeting, whether in person or by proxy, the resolutions passed at the meeting and, if a creditors'

committee is established, the names and addresses of those persons elected to be members of the committee.

(3) Minutes kept in accordance with this rule shall be retained as a record in the insolvency proceeding.

61. Members' meetings

(1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside the Virgin Islands.

(2) Rules 49, 51(1), 53(2) and 53(3) apply to members' meetings with necessary modifications.

(3) The quorum for a meeting of members is—

(a) where the company or foreign company only has one member or only has one member entitled to vote, that member; or

(b) where the company or foreign company has more than one member entitled to vote, at least 2 members of those members.

(4) Subject to this rule, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the BVI Business Companies Act.

(5) Where a company is in administration, the chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

DIVISION 2 – PROXIES AND COMPANY REPRESENTATION

62. Interpretation

(1) In this Division—

"meeting" means a meeting of creditors or of members required or permitted to be held under the Act or the rules;

"principal" means the person giving a proxy; and

"proxy-holder" means the person to whom the principal gives his or her proxy.

(2) For the purposes of the Act and the rules, a proxy is an authority given by a principal to a proxy-holder to attend a meeting and to speak and vote as his or her representative.

63. General provisions concerning proxies

(1) Subject to paragraph (2), a person who desires to be represented at a creditors' meeting may give one proxy to an individual aged 18 or over.

(2) Notwithstanding paragraph (1)—

(a) a principal may specify one or more other individuals aged 18 or over to be proxy-holder in the alternative, in the order in which they are named in the proxy; and

(b) a proxy for a particular meeting may be given to the chairman of the meeting who cannot decline to act as proxy-holder in such circumstances.

(3) A proxy requires the holder, either as directed or in accordance with the holder's discretion—

(a) to give the principal's vote on matters arising for determination at the meeting;

(b) to abstain; or

(c) to propose, in the principal's name, a resolution to be voted on by the meeting.

64. Issue and use of proxy forms

(1) A proxy form sent with a notice of a meeting shall not have inserted in it the name or description of any person.

(2) A proxy form shall not be used at a meeting unless it is in the same, or a substantially similar form, as the proxy form sent out with the notice calling the meeting.

(3) A proxy form shall be signed by the principal, or by some person authorised by him or her, either generally or with reference to a particular meeting.

(4) Where a proxy form is signed by a person other than the principal, the nature of the person's authority shall be stated.

65. Use of proxies at meetings

(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the Official Receiver holds proxies for use at a meeting, his or her deputy, or such other of his or her officers as he or she may authorise in writing, may act as proxy-holder in his or her place.

(3) Where an insolvency practitioner holds proxies to be used by him or her as chairman of a meeting, and some other person acts as chairman, the other person may use the insolvency practitioners proxies as if he or she were themselves the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as an officer holder, the proxy-holder may, unless the proxy states otherwise, vote for or against, as he or she thinks fit, any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he or she would be entitled to vote.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his or her discretion on resolutions put to the meeting which are not dealt with in the proxy.

66. Retention of proxies

(1) Subject to paragraph (2), proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) Where the chairman is not the responsible insolvency practitioner, he or she shall deliver the proxies, immediately after the meeting, to the responsible insolvency practitioner who shall retain them.

(3) Proxies shall be retained as records in the insolvency proceeding.

67. Right of inspection

(1) The responsible insolvency practitioner shall allow proxies retained by him or her to be inspected, at all reasonable times on any business day, by—

(a) any creditor, in the case of proxies used at a meeting of creditors; and

(b) a member, in the case of proxies used at a meeting of the company or of its members.

(2) Subject to paragraph (3), the reference in paragraph (1) to a creditor is—

(a) in the case of a liquidation or a bankruptcy, a creditor who has submitted a claim under section 209 or section 336; and

(b) in any other case, a person who has submitted a claim, in writing, to be a creditor of the company or individual concerned.

(3) The reference in paragraph (1) to a creditor does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(4) The right of inspection given by this rule is also exercisable—

(a) in the case of an insolvent company, by a director; and

(b) in the case of an insolvent individual, by him or her.

(5) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting.

68. Proxy-holder with financial interest

(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him or her, or any associate of his or her, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him or her to vote in that way.

(2) Where a proxy-holder has signed the proxy as being authorised to do so by his or her principal and the proxy specifically directs him or her to vote in the way mentioned in paragraph (1), he or she shall nevertheless not vote in that way unless he or she produces to the chairman of the meeting written authorisation from his or her principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under rule 65 and in its application to him or her, the proxy-holder is deemed an associate of his or hers.

69. Company representation

(1) Where a person is authorised under the BVI Business Companies Act to represent a company at a meeting of creditors or of the company or its members, he or she shall produce to the chairman of the meeting a copy of the resolution from which he or she derives his or her authority.

(2) The copy resolution shall be under the seal of the company, or certified by the secretary or a director of the company to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

DIVISION 3 – THE CREDITORS' COMMITTEE

70. Interpretation for this Division

(1) In this Division—

"committee" means a creditors' committee established under section 421 of the Act; and

"meeting" means a meeting of the committee.

(2) Where the context permits, references in the Act or the rules to a "member" shall include a member's representative.

71. Committee may establish own procedures

(1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Act or this Division.

(2) Without limiting paragraph (1), the committee may agree procedures for—

(a) the participation by members in meetings by telephone or other electronic means; and

(b) the passing of circular resolutions.

72. Meetings

(1) Subject to paragraph (2), meetings—

(a) may be held at such venues as the committee may resolve; and

(b) may be called by a member of the committee or by the office holder.

(2) If a meeting has not already been held, the office holder shall call a first meeting to be held not less than 28 days after the committee's establishment.

(3) The person convening a meeting shall give 7 days written notice of the venue of the meeting to each member of the committee and to the office holder.

(4) Notwithstanding paragraph (3), a member of the committee may, before or at the meeting, waive his or her entitlement to notice under that paragraph.

73. Chairman of meetings

(1) Subject to paragraph (2), every meeting of the creditors' committee shall be chaired by the relevant office holder.

(2) Where the office holder is unable to attend the meeting, he or she may nominate as chairman—

(a) an eligible insolvency practitioner; or

(b) an employee of the insolvency practitioner, or of his or her firm, who is experienced in insolvency matters.

(3) Where a meeting of the creditors' committee is to be held outside the Virgin Islands and the insolvency practitioner will not be attending the meeting, he or she may nominate a suitably qualified and experienced individual to act as chairman.

(4) Where a meeting of the creditors' committee is held pursuant to a notice issued by the committee under section 422(2), the members of the creditors' committee may elect one of the

members of the committee to be chairman of the meeting in place of the office holder or his or her nominee.

74. Quorum and resolutions

(1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.

(2) At a meeting of the committee, each member has one vote and a resolution is passed by a simple majority of those members who are present and vote.

(3) A resolution shall be recorded in writing, signed by the chairman and retained as a record in the insolvency proceeding.

75. Committee members' representatives

(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him or her for that purpose.

(2) A person acting as a committee-member's representative shall hold a letter of authority entitling him or her so to act (either generally or specially) and signed by or on behalf of the committee member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his or her letter of authority, and may exclude him or her if it appears that his or her authority is deficient.

(4) No committee member may be represented by a body corporate, a person who is an undischarged bankrupt, a person who is a disqualified person within the meaning of section 260(4) or a person who is a restricted person within the meaning of section 409.

(5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he or she so signs shall be stated below his or her signature.

76. Written resolutions

(1) The office holder may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the office holder and the committee member.

(2) A notice sent to a member under paragraph 1 shall be set out so as to enable the committee member to signify his or her dissent or agreement to each separate resolution on which the office holder seeks agreement.

(3) Any member of the committee may, within 7 days of a notice being sent out under paragraph (1), require the office holder to call a meeting of the creditors' committee to consider the matters raised by the resolution.

(4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the office holder is notified in writing by a majority of the committee members that they agree with it.

(5) A resolution passed under this rule shall be treated as a resolution passed at a meeting of the creditors' committee.

(7) Without limiting paragraph 1, written notice may be given by post, fax or e-mail.

77. Cooperation by office holder with committee

Without limiting section 422(2)(b), a requirement of the committee under that section to provide it with reports or information is not reasonable if the office holder considers that—

(a) the requirement is frivolous or unreasonable;

(b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;

(c) the company or bankrupt does not have sufficient funds to enable him or her to comply with the requirement.

78. Termination of insolvency proceeding

(1) Subject to paragraph (2), the creditors' committee ceases to exist on the termination of the insolvency proceeding in which it was appointed.

(2) Where, on discharging an administration order, the Court makes an order for the appointment of a liquidator under section 111(1)(a), unless the Court otherwise orders, any creditors' committee appointed in the administration continues as if appointed in the liquidation.

DIVISION 4 – WRITTEN RESOLUTIONS

79. Written resolutions

(1) The office holder may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

(2) A notice under paragraph (1) shall specify the time and date by which votes on the resolution shall be received by him or her and a vote shall be counted if—

(a) the vote is received by the office holder by the time and date specified in the notice; and

(b) the vote is accompanied by a completed statement of entitlement to vote.

(3) If any votes are received without the statement as to entitlement to vote, or the office holder decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.

(4) The closing date for receipt of votes shall be set at the discretion of the office holder but shall not be set less than 14 days from the date of issue of the notice under paragraph (1).

(5) Where an office holder sends out a notice under paragraph (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with paragraph (6) by—

(a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or

(b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.

(6) A meeting is requisitioned under paragraph (5) by sending a notice to the office holder within 7 days after the date that the notices under paragraph (1) are sent out.

(7) If the resolution proposed in the notice is rejected by the creditors or members, the office holder may call a meeting of creditors or members, as the case may be.

(8) A reference in the Act or the rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this rule.

PART IV - CREDITORS' ARRANGEMENTS

DIVISION 1 – GENERAL

80. Scope of and interpretation for this Part

(1) This Part applies where a debtor makes or intends to make a proposal under Part II of the Act and in respect of any arrangement that may be approved.

(2) In this Part, "creditors' meeting" means a creditors' meeting held under Part II of the Act.

81. Additional matters that may be included in an arrangement

Subject to section 15(4), and without limiting section 15(1), an arrangement may—

(a) provide for circumstances in which persons who become creditors of the debtor after the approval of an arrangement are entitled to be paid under the arrangement in priority to creditors bound by the arrangement;

(b) specify a date or a time at which liabilities of the debtor will be calculated and provide how liabilities arising after that date are to be dealt with;

(c) be entered into in conjunction with any other arrangement, reorganisation or scheme taking effect under the law of another jurisdiction, whether subject to Court approval or otherwise; and

(d) in the case of a company—

(i) provide for the whole or partial cancellation of a liability of the company in return for shares of any kind or for the issue by the company, or by any other person, of a debenture or a security interest; and

(ii) relate to an amendment of the company's memorandum or articles that affects the likelihood of the company being able to pay a debt or satisfy a liability.

82. Chairman of creditors' meeting

Subject to rule 49(2) and (3), the interim supervisor or the supervisor shall be the chairman of every creditors' meeting.

83. Voting at creditors' meeting

(1) The majority required for the passing of a resolution at a creditors' meeting is—

(a) for the approval of an arrangement or of a modification of an arrangement, 75% or more in value of the creditors present in person or by proxy who vote on the resolution; and

(b) in respect of any other matter, in excess of 50% in value of the creditors present in person or by proxy who vote on the resolution.

(2) A creditor is entitled to vote at a creditors' meeting if written notice of his or her claim is given to the interim supervisor, or supervisor, or the chairman of the meeting either at the meeting or before it.

(3) It is for the chairman to decide whether a creditor is entitled to vote in accordance with paragraph (2).

(4) At any creditors' meeting held under Part II of the Act, a creditor may vote in respect of a claim for an unliquidated amount or on any claim the value of which is not ascertained and for the purposes of voting, but not otherwise, his or her claim shall be valued at $1 unless the chairman agrees to put a higher value on it.

(5) Rules 54 and 55 are modified to the extent provided in this rule in respect of a creditors' meeting held under Part II of the Act.

84. Appointment of joint supervisors

Where joint supervisors of an arrangement are appointed, they may act jointly or severally unless the arrangement provides otherwise.

DIVISION 2 – COMPANY CREDITORS' ARRANGEMENT

85. Scope of this Division

This Division applies where, under Part II, Division 2 of the Act, a company makes or intends to make a proposal and in respect of any arrangement that may be approved.

PROPOSAL

86. Form and contents of proposal

(1) A proposal under section 20(1)(b)(ii) shall be in writing and shall include—

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

(b) a summary of the proposed arrangement with a brief explanation as to its main features and as to why the arrangement is desirable and why the board expects the creditors to agree to it;

(c) to the best of the knowledge and belief of the board, particulars of the assets of the company specifying—

(i) the value of each asset or class of assets;

(ii) the extent, if any, to which the assets are charged in favour of creditors; and

(iii) the extent, if any, to which particular assets are to be excluded from the arrangement;

(d) particulars of any assets, other than those of the company, which it is proposed will be included in the arrangement, specifying—

(i) the source of the assets; and

(ii) the terms upon which they are to be made available to creditors under the arrangement;

(e) to the best of the knowledge and belief of the board, particulars of the nature and amount of the company's liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular—

(i) how it is proposed that creditors who are or who claim to be secured creditors will be dealt with, detailing the amount of any secured liabilities;

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected with the company will be dealt with;

(iii) whether there are, to the knowledge of the board, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims for a voidable transaction under Part VIII of the Act and, if so, whether and how it is proposed to make provision for wholly or partly indemnifying the company in respect of such claims;

(iv) whether there are any persons with non-admissible or postponed claims against the company and how it is proposed that they will be dealt with, if at all;

(v) any creditors who, for the purposes of section 15(4) of the Act, are or are expected to be or claim to be preferential, detailing the amount and nature of each such claim and how it is proposed that the claims will be dealt with;

(f) how it is proposed that the claims of any creditor who did not participate in the approval of the arrangement, as provided by paragraph (2), will be dealt with;

(g) particulars of any security interest, liens, rights of set-off held by creditors and as to any guarantees of the company's debts given by third parties, specifying which of the sureties, if any, are persons connected with the company;

(h) details of the proposed duration of the arrangement;

(i) the proposed dates of distributions of assets to creditors of the company, with estimates of their amounts;

(j) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(k) details of any benefits, including guarantees, assets and any security interests that are to be offered by any director or other third party for the purposes of the arrangement;

(l) details of any further loans or credit facilities which it is intended to arrange for the company, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(m) details of the business that will be conducted by the company during the course of the arrangement and the manner in which funds payable to the company will be dealt with during the period before the arrangement is approved and during the course of the arrangement, if approved;

(n) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(o) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(p) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved; and

(q) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he or she is, eligible to act in relation to the company.

(2) For the purposes of paragraph (1)(f), a creditor does not participate in the approval of the arrangement if, for whatever reason—

(a) he or she was not given notice of the creditors' meeting called under section 27; and

(b) he or she did not attend the meeting at which the arrangement was approved, whether in person or by proxy.

(3) Paragraphs (1) and (2) apply to a proposal prepared by the liquidator or administrator of a company under section 22 or 23, with such modifications as are appropriate.

87. Statement of affairs

The statement of affairs provided to the nominated insolvency practitioner under section 21(1)(c) shall be verified by at least one director of the company.

88. Amendment or withdrawal of proposal before appointment of interim supervisor

(1) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may before the nominated insolvency practitioner has accepted appointment as interim supervisor—

(a) amend a proposal by providing a copy of the amended proposal to the nominated insolvency practitioner; or

(b) withdraw the proposal by providing a notice of withdrawal to the nominated insolvency practitioner.

(2) In the case of a company that is not in administration or liquidation, the nominated insolvency practitioner shall also be provided with a copy of the resolution of the board approving the amendment or withdrawal.

(3) The withdrawal of a proposal under section 26(1)(a) takes effect from the time that the notice of withdrawal is received by the nominated insolvency practitioner.

(4) The nominated insolvency practitioner shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

89. Amendment or withdrawal of proposal after appointment of interim supervisor

(1) This rule applies if the board of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the appointment of an interim supervisor but before a creditors' meeting is called under section 27.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the board's resolution before the interim supervisor calls a creditors' meeting under section 27; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him or her.

(3) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he or she considers that he or she does not have sufficient time to prepare a report on the amended proposal before giving notice of the creditors' meeting under section 27.

(4) A proposal may be withdrawn under section 26(1)(b) by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the board's resolution, before the interim supervisor calls a creditors' meeting under section 27.

(5) On receipt of a notice of withdrawal in accordance with paragraph (4), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

(6) The withdrawal of a proposal under section 26(1)(b), and the termination of the interim supervisor's appointment, takes effect from the time that he or she receives the notice of withdrawal.

(7) If the interim supervisor has filed a notice of his or her appointment under section 24 with the Registrar and, if appropriate, the Commission, he or she shall, with 2 business days of receiving the withdrawal notice, file a copy of the notice with the Registrar and, if appropriate, the Commission.

(8) Where a proposal is withdrawn under this rule, the company is liable to the former interim supervisor in respect of any remuneration payable to him or her including the costs of complying with paragraph (7).

90. Amendment or withdrawal of proposal before creditors' meeting

(1) This rule applies if the board of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the calling of a creditors' meeting under section 27 but before the meeting is held.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the board's resolution at least 7 days prior to the date fixed in the notice calling the meeting under section 27; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him or her.

(3) Where a proposal is amended under this rule, the interim supervisor shall give at least 2 business days notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 27.

(4) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he or she considers that he or she does not have sufficient time to comply with paragraph (3).

(5) A proposal may be withdrawn under section 26(1)(c) by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the board's resolution, at least 5 business days prior to the date fixed for the creditors' meeting called under section 27.

(6) On receipt of a notice of withdrawal in accordance with paragraph (5), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

(7) The withdrawal of a proposal under section 26(1)(c), and the termination of the interim supervisor's appointment, takes effect from the time that he or she receives the notice of withdrawal.

(8) Forthwith on receiving a notice of withdrawal under paragraph (5), the former interim supervisor shall—

(a) send a notice cancelling the creditors' meeting to every creditor, member and director of the company and to the company itself; and

(b) file a copy of the notice of withdrawal with the Registrar and, if the company is a regulated person, with the Commission.

(9) Where a proposal is withdrawn under section 26(1)(c), the company is liable to the former interim supervisor in respect of any remuneration payable to him or her, including the costs of complying with paragraph (8).

91. Effect of amendment or withdrawal of proposal

Where a proposal is amended under rules 88, 89 or 90, Part II, Division 2 of the Act applies to the amended proposal as if it was the original proposal.

APPOINTMENT OF INTERIM SUPERVISOR BY BOARD

92. Appointment of Interim Supervisor by Board

If the insolvency practitioner nominated by the board of a company agrees to act as interim supervisor, he or she shall—

(a) cause a copy of the notice of intention to appoint him or her as interim supervisor to be endorsed with—

(i) an acknowledgement that he or she has received a copy of the resolution of the board together with a copy of the proposal approved by the board and a copy of the company's statement of affairs;

(ii) the date upon which he or she received the notice of intention to appoint him or her interim supervisor and copies of the resolution, the proposal and the statement of affairs;

(iii) the date or dates upon which he or she received an amended proposal from the board or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his or her knowledge, he or she is eligible to act as an insolvency practitioner in respect of the company; and

(v) his or her agreement to act as interim supervisor;

(b) deliver the endorsed notice to the board at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

93. Appointment by administrator or liquidator of another insolvency practitioner as interim supervisor

(1) Where the administrator or liquidator of a company intends to appoint another insolvency practitioner as interim supervisor, the notice of intention to appoint shall be in the form for an appointment made by the board of a company, with suitable modifications.

(2) If the insolvency practitioner who the administrator or liquidator of a company intends to appoint as interim supervisor agrees to act, he or she shall—

(a) cause a copy of the notice of intention to appoint him or her as interim supervisor to be endorsed with—

(i) an acknowledgement that he or she has received a copy of the proposal;

(ii) the date upon which he or she received the proposal;

(iii) the date or dates upon which he or she received an amended proposal from the administrator or liquidator or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his or her knowledge, he or she is eligible to act as an insolvency practitioner in respect of the company; and

(v) his or her agreement to act as interim supervisor;

(b) deliver the endorsed notice to the administrator or liquidator at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

REPORTS TO CREDITORS

94. Report to creditors on proposal

The report that the interim supervisor is required to make to the creditors' meeting called to consider the board's proposal, shall include—

(a) in the case of an interim supervisor appointed by the board of a company, a summary of the affairs of the company and the conduct of its business during the proposal period;

(b) in the case of a company that is not in liquidation or administration, his or her opinion as to whether the company is insolvent or likely to become insolvent;

(c) his or her opinion as to whether the arrangement which is being proposed has a reasonable prospect of being implemented;

(d) the costs to the company of his or her acting as interim supervisor;

(e) any other matters that he or she considers should be brought to the attention of the creditors.

95. Report on modification of arrangement

The supervisor's written report to creditors on a proposed modification to an arrangement shall include—

(a) details of the proposed modification together with an explanation as to why the supervisor considers that the modification is necessary or desirable;

(b) a brief summary of the implementation of the arrangement to the date of the report, including details of any material differences between the implementation and the proposal approved by creditors; and

(c) any other information that the supervisor considers would assist the creditors in deciding whether to approve the modification.

WITHDRAWAL OF PROPOSAL AT CREDITORS' MEETING

96. Withdrawal of proposal

(1) A proposal may be withdrawn at the creditors' meeting under section 31(4) by providing to the chairman of the meeting at any time before the proposal has been accepted by the creditors a notice of withdrawal and, if appropriate, a copy of the board's resolution.

(2) Where a proposal is withdrawn under section 31(4), the chairman's report under section 32 shall state that fact.

(3) The interim supervisor's appointment is terminated with effect from the conclusion of the creditors' meeting at which the proposal was withdrawn.

(4) Where a proposal is withdrawn under section 31(4), the company is liable to the former interim supervisor in respect of any remuneration payable to him or her, including the costs of complying with section 32.

TERMINATION OF ARRANGEMENT

97. Termination of arrangement

Where an arrangement terminates prior to its completion, the supervisor shall, in the report prepared under section 37(2)(c) explain the reason why the arrangement has terminated.

APPLICATIONS TO COURT

98. Application for appointment of supervisor or interim supervisor

(1) A person, other than the supervisor or interim supervisor, who makes an application to the Court under section 41 shall serve a sealed copy of the application on the supervisor or interim supervisor at least 7 days before the date fixed for the hearing.

(2) Where the Court makes an order under section 41 on the application of a person other than the supervisor or interim supervisor, the person who applied for the order shall serve a sealed copy of the order on the supervisor or interim supervisor.

99. Application where arrangement approved or modified

(1) A person, other than the supervisor, who makes an application to the Court under section 42 shall serve a sealed copy of the application on the supervisor at least 7 days before the date fixed for the hearing.

(2) Where the Court makes an order under section 42 on the application of a person other than the supervisor or interim supervisor, the person who applied for the order shall serve a sealed copy of the order on the supervisor or interim supervisor.

100. Application on grounds of unfair prejudice

(1) In considering whether to make an order under section 43, the Court may take into account the time that has elapsed between the applicant first becoming aware of the circumstances which he or she claims ground a claim under the section and the date of his or her application.

(2) Where the Court makes an order of revocation or suspension under section 43, the person who applied for the order shall serve sealed copies of the order—

(a) on the supervisor; and

(b) on the board of the company or the administrator or liquidator, depending upon who made the proposal for the arrangement.

(3) If the order includes a direction by the Court under section 43 for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(4) The board or the administrator or liquidator, as the case may be, shall—

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the arrangement or who, not having been sent that notice, appear to be affected by the order;

(b) within 7 days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, deliver a copy of the order with the Registrar.

DIVISION 3 – INDIVIDUAL CREDITORS' ARRANGEMENT

101. Scope of this Part

This Division applies where, under Part II, Division 3 of the Act an individual debtor makes or intends to make a proposal and in respect of any arrangement that may be approved.

PROPOSAL

102. Contents of proposal

A proposal shall be in writing and shall include—

(a) a summary of the proposed arrangement with a brief explanation as to its main features and as to why the arrangement is desirable and why the debtor expects the creditors to agree to it;

(b) to the best of the debtor's knowledge and belief, particulars of his or her assets specifying—

(i) the value of each asset or class of assets;

(ii) the extent, if any, to which the assets are charged in favour of creditors; and

(iii) the extent, if any, to which particular assets are to be excluded from the arrangement;

(c) particulars of any assets, other than those of the debtor himself or herself, which it is proposed will be included in the arrangement, specifying—

(i) the source of the assets; and

(ii) the terms upon which they are to be made available to creditors under the arrangement;

(d) to the best of the debtor's knowledge and belief, particulars of the nature and amount of his or her liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular—

(i) how it is proposed that creditors who are or who claim to be preferential or secured creditors will be dealt with;

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected with the debtor will be dealt with;

(iii) whether there are, to the knowledge of the debtor, any circumstances giving rise to the possibility, in the event that a bankruptcy order should be made against the debtor, of claims for a voidable transaction under Part XIV of the Act and, if so, whether and how it is proposed to make provision for wholly or partly making the value of such claims available to the creditors under the arrangement; and

(iv) whether there any persons with non-admissible or postponed claims against the debtor and how it is proposed that they will be dealt with, if at all;

(e) particulars of any security interests, liens, rights of set-off held by creditors and as to any guarantees of the debtor's debts given by third parties, specifying which of the sureties, if any, are connected with the debtor;

(f) details of the proposed duration of the arrangement;

(g) the proposed dates of distributions of assets to creditors of the debtor, with estimates of their amounts;

(h) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(i) details of any benefits, including guarantees, assets and any security interests that are to be offered by any person other than the debtor for the purposes of the arrangement;

(j) details of any further loans or credit facilities which it is intended to arrange for the debtor, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(k) details of any business that will be conducted by the debtor during the course of the arrangement and the manner in which funds payable to him or her will be dealt

with during the period before the arrangement is approved and during the course of the arrangement, if approved;

(l) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(m) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(n) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved; and

(o) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he or she is, eligible to act in respect of the debtor.

103. Amendment of proposal before appointment of interim supervisor

(1) A debtor may amend a proposal by providing a copy of the amended proposal to the nominated insolvency practitioner before he or she has accepted appointment as interim supervisor.

(2) Where a proposal is amended under paragraph (1), Part 2, Division 3 of the Act applies to the amended proposal as if it was the original proposal.

104. Amendment of proposal after appointment of interim supervisor

(1) This rule applies if a debtor wishes to amend a proposal after the appointment of an interim supervisor but before a meeting of creditors is called under section 58.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing before the interim supervisor calls a meeting of creditors under section 58; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him or her.

(3) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he or she considers that he or she does not have sufficient time to amend the proposal and prepare a report on the amended proposal before giving notice of the creditors' meeting under section 58.

105. Amendment of proposal before creditors' meeting

(1) This rule applies if a debtor wishes to amend a proposal after the calling of a meeting of creditors under section 58 but before the meeting of creditors is held.

(2) A proposal is deemed to be amended under this rule if—

(a) the amendment is provided to the interim supervisor in writing at least 4 business days prior to the date fixed in the notice calling the meeting under section 58;

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him or her; and

(c) the interim supervisor gives at least 2 business days notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 58.

APPOINTMENT OF INTERIM SUPERVISOR

106. Appointment of interim supervisor

If the insolvency practitioner nominated by a debtor agrees to act as interim supervisor, he or she shall—

(a) cause a copy of the instrument of appointment to be endorsed with—

(i) an acknowledgement that he or she has received a copy of the proposal together with the debtor's statement of affairs;

(ii) the date upon which he or she received the instrument of appointment together with a copy of the proposal;

(iii) the date or dates upon which he or she received an amended proposal from the debtor or confirmation that the proposal has not been amended;

(iv) confirmation that, to the best of his or her knowledge, he or she is eligible to act as an insolvency practitioner in respect of the debtor; and

(v) his or her agreement to act as interim supervisor;

(b) deliver the endorsed instrument of appointment to the debtor at the address specified in the instrument of appointment; and.

(c) retain a copy of the endorsed notice in his or her records.

MORATORIUM

107. Application for moratorium order

(1) The affidavit supporting an application for a moratorium order shall—

(a) set out the reasons justifying the application;

(b) set out particulars of any execution or other legal process which, to the debtor's knowledge, has been commenced against him or her;

(c) confirm that, in accordance with section 295, the Court could make a bankruptcy order against the debtor on his or her application;

(d) confirm that no previous application for a moratorium order has been made by the debtor in the period of 12 months immediately preceding the date of the application; and

(e) confirm that an eligible insolvency practitioner has accepted appointment as interim supervisor.

(2) On receipt of the application and affidavit, the Court shall fix a venue, date and time for the hearing of the application.

INTERIM SUPERVISOR'S REPORT ON PROPOSAL

108. Report to Court

(1) The report submitted by the interim supervisor to the Court under section 56 shall include—

(a) a summary of the affairs of the debtor and, if relevant, the conduct of his or her business during the proposal period;

(b) his or her opinion as to whether the debtor is insolvent;

(c) his or her opinion as to whether the arrangement which the debtor is proposing has a reasonable chance of being approved and implemented;

(d) his or her opinion as to whether a meeting of the debtor's creditors should be called to consider the proposal;

(e) if, in his or her opinion, such a meeting should be called, the venue he or she proposes for the meeting;

(f) the costs of his or her acting as interim supervisor; and

(g) any other matters that he or she considers should be brought to the attention of the Court.

(2) The date proposed by the interim supervisor for a creditors' meeting under paragraph (1)(e) shall be at least 21 days but no more than 35 days from the date that his or her report is filed with the Court.

109. Notice of arrangement

(1) The notice of arrangement required to be filed with the Official Receiver shall contain the following details—

(a) the name and address of the debtor;

(b) the date on which the arrangement was approved by the creditors; and

(c) the name and address of the supervisor.

(2) A person who is appointed supervisor of an arrangement, whether as the first supervisor, an additional supervisor or a replacement supervisor, shall file a notice of his or her appointment with the Official Receiver.

(3) A person vacating office as supervisor shall file a notice of vacation of office with the Official Receiver.

APPLICATIONS TO COURT

110. Application concerning supervisor or interim supervisor

(1) Where a person intends to apply to the Court under section 69 for the appointment or removal of a supervisor or an interim supervisor, he or she shall give every supervisor or interim supervisor 7 days' notice of his or her application.

(2) The supervisor, or interim supervisor, is entitled to appear and be represented at the hearing of an application referred to in paragraph (1).

111. Revocation or suspension of arrangement

(1) This rule applies where the Court makes an order of revocation or suspension under section 70.

(2) The person who applied for the order shall serve sealed copies of the order on the supervisor and on the debtor.

(3) If the order includes a direction by the Court for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(5) The debtor shall—

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the arrangement or who, not having been sent that notice, appear to be affected by the order;

(b) within 7 days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether he or she intends to make a revised proposal to his or her creditors, or to invite re-consideration of the original proposal.

(6) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, file a copy of the order with the Official Receiver.

112. Service of orders

Where a moratorium order is made or any order is made on the consideration of the interim supervisor's report, at least 2 sealed copies of the order shall be sent by the Court forthwith to the debtor and the debtor shall serve a copy of the order on—

(a) the interim supervisor; and

(b) any creditor who, to his or her knowledge has applied for a bankruptcy order against him or her.

PART V - ADMINISTRATION

PRELIMINARY

113. Interpretation and scope of this Part

(1) In this Part, unless otherwise stated "statutory purpose" means a purpose specified in section 76(1).

(2) This Part applies to—

(a) an application for the appointment of an administrator; and

(b) administration proceedings; under Part III of the Act.

OBTAINING AN ADMINISTRATION ORDER

114. Application

Application for an administration order is made by filing at Court—

(a) an application complying with rule 115; and

(b) an affidavit in support of the application complying with rule 116.

115. Form of application

(1) An application for an administration order shall—

(a) specify which of the statutory purposes is sought to be achieved by the making of the administration order;

(b) state the applicant's belief that the company is or is likely to become insolvent;

(c) specify the name and address of the insolvency practitioner the applicant proposes for appointment as administrator; and

(d) state the applicant's address for service which, in the case of an application made by the company itself, shall, in the absence of special reasons to the contrary, be the registered office of the company.

(2) An application for an administration order made by 2 or more creditors shall name all the creditors as applicants but, from the filing of the application, it is to be treated as the application of the first named creditor applying on behalf of himself or herself and other creditors.

(3) An application for an administration order made by the directors of a company shall, from the filing of the application, be treated as the application of the company.

(4) The address for service stated on an application filed under paragraph (2) shall be that of the first named creditor.

(5) An application for an administration order shall have attached to it a written statement signed by the insolvency practitioner whom the applicant proposes for appointment as administrator that, in his or her opinion, there is a reasonable prospect that the making of the administration order will achieve the statutory purposes specified in the application.

116. Affidavit in support

(1) The affidavit in support of an application for an administration order shall—

(a) state the deponent's belief that the company is or is likely to become insolvent; and

(b) to the best of the deponent's knowledge and belief—

(i) provide details of the financial position of the company, specifying its assets and liabilities;

(ii) provide details of any security interest held by creditors of the company, specifying whether the holder of any security interest has the power to appoint a receiver and, if so, whether a receiver has been appointed and stating whether the receiver that may be or has been appointed is an administrative receiver;

(iii) provide details of any insolvency proceedings that have commenced in relation to the company and whether an application has been made for the appointment of a liquidator; and

(iv) set out any other facts or matters that will or may assist the Court in deciding whether to make an administration order in respect of the company.

(2) Where an application for an administration order is made by the liquidator of a company under section 80, the affidavit in support of the application shall also contain—

(a) the date upon which the liquidation commenced and whether it was commenced on an appointment by the Court or by the members;

(b) the reasons why the liquidator considers that an administration order should be made; and

(c) all other matters that the liquidator considers would assist the Court in determining the application and in making provision for the matters specified in section 80(2)(a)(ii) to (iv).

(3) An affidavit under paragraph (1) shall be sworn—

(a) in the case of an application made by a company, by a director or the secretary of the company;

(b) in the case of an application made by a creditor, by the creditor or a person authorised by the creditor;

(c) in the case of an application made by the supervisor of an arrangement, by the supervisor or a person authorised by him or her;

(d) in the case of an application made by the liquidator, by the liquidator or a person authorised by him or her; and

(e) in the case of an application made by the Commission, by an authorised officer of the Commission.

117. Subsequent application for appointment of liquidator

If, after the filing of an application in respect of a company, the applicant becomes aware that an application for the appointment of a liquidator of the company has been made, he or she shall notify the Court in writing.

118. Service of application

(1) Service shall be effected on each person specified in section 77(3) by serving him or her with a sealed copy of the application for an administration order, the statement of the insolvency practitioner proposed for appointment as administrator attached to the application and the affidavit in support of the application, including the documents exhibited to the affidavit.

(2) For the purposes of section 77(3)(h), the following persons shall also be served with a copy of an application for an administration order—

(a) the insolvency practitioner proposed as administrator; and

(b) if a supervisor of an arrangement has been appointed under Part II, Division 2 of the Act, on the supervisor.

119. Copies of application to be sent to other persons

A sealed copy of the application for an administration order shall be sent to—

(a) any person who, to the applicant's knowledge, is charged with an execution or other legal process against the company or its assets; and

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets.

120. Hearing of application

The following are entitled to appear or be represented at the hearing of an application for an administration order—

(a) the applicant;

(b) a person entitled under the Act or the rules to be served with a copy of the application;

(c) the person proposed to be appointed administrator; and

(d) with the leave of the Court, any other person who appears to the Court to have an interest in the application.

ADMINISTRATION ORDER

121. Order

(1) An administration order shall be in the prescribed form.

(2) Where the Court makes an administration order, the costs of the applicant and of any person whose costs are allowed by the Court, are payable as an expense of the administration.

(3) Where the Court makes an administration order on the application of the liquidator of a company under section 80, it shall—

(a) provide for the payment of the expenses of the liquidator;

(b) make provisions regarding any indemnity given to the liquidator;

(c) make provision regarding the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator; and

(d) treat the application for the administration order as an application by the liquidator for his or her release and make any order that it could make under section 235; and the Court may make such other order as it considers appropriate.

122. Notice of administration order

(1) Where an administration order is made, the Court shall, as soon as reasonably practicable, send 2 sealed copies of the order to the applicant.

(2) The applicant shall, as soon as reasonably practicable, send a sealed copy of the administration order to the person appointed as administrator.

(3) For the purposes of section 82(1)(a)(iv), the following persons shall be given notice of the appointment of an administrator—

(a) any person who, to the administrator's knowledge, is charged with an execution or other legal process against the company or its assets;

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets;

(c) if a supervisor of an arrangement has been appointed under Part II, Division 2 of the Act, on the supervisor; and

(d) if the company is or has been a regulated person, the Commission.

PROPOSAL AND STATEMENT OF AFFAIRS

123. Matters to be set out in report on proposals

(1) The report of the administrator on his or her proposals prepared under section 100(1)(a) shall include the following—

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

(b) details relating to his or her appointment as administrator, the purposes for which an administration order was applied for and made, and any subsequent variation of those purposes;

(c) the names of the directors and any secretary of the company and details of any shareholdings they may have;

(d) an account of the circumstances giving rise to the application for an administration order;

(e) if a statement of affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;

(f) if an order of limited disclosure has been made under section 280, a statement of that fact, as well as—

(i) details of the relevant person who provided the statement of affairs;

(ii) the date of the order of limited disclosure; and

(iii) the details or a summary of the details that are not subject to that order;

(g) if a full statement of affairs is not provided, the names, addresses and debts of the creditors of the company, including details of any security held;

(h) if no statement of affairs has been submitted, to the best of his or her knowledge and belief—

(i) details of the financial position of the company at the latest practicable date, which shall, unless the Court otherwise orders, be a date not earlier than that of the administration order;

(ii) a list of the company's creditors, including any security held; and

(iii) an explanation as to why no statement of affairs has been submitted;

(i) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator's appointment, been managed and financed, including where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and

(ii) will, if the administrator's proposals are approved, continue to be managed and financed; and

(j) such other information, if any, that the administrator considers necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) The proposals of an administrator, including the proposals as amended or modified, shall not, except with the written agreement of the secured creditor or the preferential creditor concerned—

(a) affect the right of a secured creditor of the company to enforce his or her security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than he or she would receive in a liquidation or bankruptcy of the debtor had it commenced at the time of approval of the arrangement.

(3) Where the administrator intends to apply to the Court under section 110 for the administration order to be discharged before he or she has sent a report to creditors under section 100(1), he or she shall, at least 10 days before the hearing of such an application, send to all creditors of the company a report containing the information required by paragraph (1)(a) to (i) of this rule.

(4) The Court shall not discharge an administration order under section 110 unless it is satisfied that the administrator has sent a report to creditors under section 100(1) or under paragraph (3).

124. Advertisement of availability of proposal for members

(1) The administrator, instead of sending a copy of a notice calling a meeting of creditors and a copy of his or her report to members under sections 100(1)(d) and 104(1)(d), may advertise a notice—

(a) specifying the date and venue of the creditors' meeting; and

(b) undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(2) Rule 31(1) applies to an advertisement under paragraph (1) with the substitution in rule 31(1)(b) of "members" for "creditors".

(3) A notice under paragraph (1) shall be advertised no later than 14 days prior to the date set for the meeting of creditors.

125. Statement of affairs

If the administrator receives a statement of affairs after he or she has sent the report on his or her proposals to creditors, he or she shall, as soon as reasonably practicable after receiving the statement of affairs, send a copy of the statement of affairs, or a summary thereof, to the creditors.

126. Minutes of creditors' meetings

In administration proceedings, the minutes required to be kept under rule 60 shall be entered in the company's minute book.

127. Requisition of meeting by creditors under section 100(4)

(1) A request to the administrator of a company to requisition a meeting under section 100(4) shall be delivered to the administrator within 14 days of the date when the administrator sent his or her report to the creditors under section 100(1)(c).

(2) Subject to paragraph (1), rule 48 applies to the requisition of a creditors' meeting under section 100(4).

128. Modification of proposals

(1) The report of the administrator on his or her proposed modifications to approved proposals prepared under section 104(1)(a) shall include the following—

(a) the matters specified in rule 123(1), subparagraphs (a), (b) and (c);

(b) a summary of the initial proposals and the reasons for proposing a modification;

(c) details of the proposed modification including details of the administrator's assessment of the likely impact of the proposed modification upon creditors generally or upon each class of creditors;

(d) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed modification.

129. Creditors' committee

(1) When there is any change in the membership of a creditors' committee appointed in an administration, the administrator shall file with the Registrar a copy of the notice filed with the Court under section 425(3)(a).

(2) In the case of a company in administration, a record of each resolution of the creditors' committee shall be entered into the company's minute book.

130. Final report

The final report prepared by an administrator under section 107(2)(c) shall include a summary of—

(a) the administrator's proposals;

(b) any modifications to those proposals;

(c) the steps taken during the administration; and

(d) the outcome of the administration.

ADMINISTRATOR

131. Resignation of administrator

(1) The grounds upon which an administrator may resign are—

(a) his or her ill health;

(b) because he or she intends ceasing to practice as an insolvency practitioner; or

(c) because there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him or her of the duties of administrator.

(2) The administrator shall give 7 days notice of his or her intention to resign or of an application to the Court under section 94(2)(a) for leave to resign—

(a) if there is a continuing administrator of the company, to him or her;

(b) if there is no continuing administrator, to the creditors' committee, if any; or

(c) if there is no administrator or creditors' committee, to the company and its creditors.

(3) An administrator who resigns shall, within 5 days of his or her resignation under section 94(2)(a), file a notice of his or her resignation with the Court and the Registrar and send a copy of the notice to each person to whom a notice of his or her intention to resign was given under paragraph (2).

(4) Where an administrator resigns under section 94(2)(b) (ceasing to be an eligible insolvency practitioner), he or she shall—

(a) forthwith file a notice of his or her resignation, specifying the reason for his or her resignation, with the Court and the Registrar; and

(b) within 5 days of his or her resignation, send a copy of the notice filed with the Court to the persons specified in paragraph (2).

132. Death of administrator

(1) Where the administrator dies, his or her personal representative shall give notice of his or her death to the Court and the Registrar, specifying the date of his or her death, unless notice has already been given to the Court and the Registrar under paragraphs (2) or (3).

(2) If an administrator who dies was a partner in a firm, notice of his or her death may be given to the Court and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of an administrator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

133. Application by creditor to remove administrator

(1) An application by a creditor of a company to remove an administrator from office shall state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application shall be served on the administrator, the person who applied for the administration order, the creditors' committee (if any), any joint administrator and, where there is neither a creditors' committee or a joint administrator, to the company and each of the creditors of the company not less than 5 business days before the date fixed for the application to be heard.

(3) Where a Court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the administrator.

(4) The applicant shall, within 5 business days of the order being made, send a copy of the order to the Registrar and to each person to whom notice of the application was sent.

134. Application to replace administrator

(1) An application to the Court under section 95 to appoint a replacement administrator—

(a) shall specify the grounds of the application; and

(b) shall be served on the person who applied for the administration order and on any person who was entitled to be served with notice of the application for the administration order.

(2) An application under section 95 shall be supported by an affidavit deposing as to the matters set out in the application and as to any other matters that may assist the Court in determining the application.

135. Application to appoint joint administrator

(1) Application may be made to the Court to appoint a joint administrator.

(2) An application under paragraph (1) and any order made by the Court shall, for the purposes of form of application, notice, hearing and advertisement be treated as an application under section 95.

136. Administrator's duties on vacating office

Where a person, for whatever reason, ceases to hold office as administrator, he or she shall as soon as reasonably practicable deliver up to the person succeeding him or her as administrator—

(a) the assets of the company, after deduction of any expenses properly incurred;

(b) the records of, and relating to, the administration; and

(c) the company's books, papers and other records.

137. Discharge of administration order

(1) Together with an application for an order varying or discharging the administration order under section 110(2)(a), the administrator shall file with the Court a report—

(a) indicating the reasons why the administrator considers that the administration order should be varied or discharged;

(b) if the application is for the discharge of the order, setting out his or her opinion, with reasons, as to whether the Court should make an order under section 111(1)(a) or (b) or, if not, his or her opinion as to the future prospects for the company; and

(c) if he or she is of the opinion that the Court should make an order under section 111(1)(a), whether he or she seeks appointment, or would consent to being appointed, as liquidator.

(2) The administrator shall send the company and each creditor of the company a copy of an application under section 110(2)(a) together with his or her report at least 7 days before the date fixed for hearing of the application.

(3) Together with an application for an order varying or discharging the administration order under section 110(2)(b), the administrator shall file with the Court a report—

(a) indicating, with reasons, whether he or she agrees with the creditors' requirement that he or she make the application;

(b) indicating, with reasons, whether or not he or she considers that the administration order should be varied or discharged;

(c) if he or she considers that the administration order should be discharged, setting out his or her opinion, with reasons, as to whether the Court should make an order under section 111(1)(a) or (b) or, if not, his or her opinion as to the future prospects for the company;

(d) if he or she is of the opinion that the Court should make an order under section 111(1)(a), whether he seeks appointment, or would consent to being appointed, as liquidator; and

(e) if he or she has indicated that he or she would seek appointment, or would consent to being appointed, as liquidator, the date upon which he or she so notified creditors, either in writing or at a meeting of creditors and advised them.

(4) A report filed under paragraphs (1) or (3) shall have the most recent accounts and report prepared by the administrator under section 107 annexed to it and a report filed under paragraph (3) shall also have annexed to it the resolution of the creditors requiring him or her to make the application.

(5) Where, in a report filed under paragraph (1) or (3), the administrator indicates that he or she seeks appointment, or would consent to being appointed, as liquidator, he or she shall, at least 7 days prior to the date fixed for the hearing of the application to discharge the administration order, notify the creditors of this and that they may send him or her written notice of their support or objection to his or her appointment as liquidator which he or she will bring to the attention of the Court.

(6) The administrator may comply with paragraph (5)—

(a) by including the notification in his or her report prepared under paragraph (1);

(b) by notifying creditors at a meeting of creditors; or

(c) by separate written notice.

(7) Where an administration order is discharged or varied, the administrator or where the order is discharged the person who, immediately before the discharge, was the administrator of the company, shall within 21 days of the date of the order send a notice of the order to the company and to each creditor of the company.

138. Expenses of administration

(1) Subject to paragraph (2), the expenses of an administration are payable in the following order of priority—

(a) expenses properly incurred by the administrator in performing his or her functions;

(b) the cost of any security provided by the administrator in accordance with the Act or the rules;

(c) the costs of the applicant for the administration order and any person appearing on the hearing of the application whose costs are allowed by the Court;

(d) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or statement of concurrence;

(e) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;

(f) any necessary disbursements by the administrator in the course of the administration including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under the rules;

(g) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or the rules;

(h) the remuneration of the administrator.

(2) Where the assets of a company are insufficient to satisfy the liabilities specified in paragraph (1), the Court may make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as it considers appropriate.

PART VI - RECEIVERSHIP

GENERAL

139. Scope of this Part

The rules in this Part apply where Part IV of the Act applies to a receiver of a company or to the appointment of a receiver of a company.

140. Persons not eligible to be appointed or act as receiver

For the purposes of section 116(1)(f), the following persons are not eligible to be appointed or to act as a receiver—

(a) a person who has not attained the age of 18 years;

(b) a person who is certified to be insane or otherwise adjudged to be of unsound mind under any law in force in any country.

NOTICES AND ADVERTISEMENT

141. Notice and advertisement of appointment

(1) Subject to paragraph (2), the notice of appointment referred to in section 118(1) shall—

(a) state the receiver's name and address, and the date of his or her appointment;

(b) state the name of the person by whom the appointment was made;

(c) if the receiver is appointed to act jointly with an existing receiver or in place of a receiver who has vacated office, then state that fact;

(d) state the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;

(e) state a brief description of the assets of the company in respect of which the receiver has been appointed.

(2) The notice of appointment of an administrative receiver required to be sent to the company under section 118(1)(a) and to the creditors under section 118(2)(b) shall, in addition to the matters specified in paragraph (1), state—

(a) any name with which the company has been registered in the 12 months preceding the date of his or her appointment; and

(b) any name under which the company has traded at any time in those 12 months, if substantially different from its registered name.

(3) The advertisement by an administrative receiver of his or her appointment shall state the matters set out in paragraph (1)(a) to (c).

142. Notice of vacation of office

An administrative receiver who, under section 120(3), is required to give notice of his or her resignation or vacation of office shall, if there is no creditors' committee, also give notice to the creditors of the company.

143. Report of meeting of unsecured creditors

(1) If, when he or she sends his or her report to the Registrar under section 147(1), the administrative receiver has not received a statement of affairs, he or she shall in his or her report state that fact and state, to the best of his or her knowledge and belief, the reasons therefore.

(2) The notice calling a meeting of unsecured creditors under section 147(3)(c) shall state that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting.

MISCELLANEOUS PROVISIONS

144. Application to dispose of charged assets

(1) This rule applies where the administrative receiver of a company applies to the Court under section 145 for authority to dispose of assets of the company subject to a security interest.

(2) The administrative receiver shall forthwith give notice of the hearing of an application under section 145 to the person who is the holder of the security interest.

(3) If an order is made under section 145, the administrative receiver shall forthwith serve a sealed copy of the order on the holder of the security interest.

145. Death of administrative receiver

If an administrative receiver dies, the person who appointed him or her shall, forthwith on his or her becoming aware of the death, give notice of it to—

(a) the Registrar;

(b) the company or, if it is in liquidation, the liquidator; and

(c) in any case, to the members of the creditors' committee, if any.

PART VII - PROVISIONS APPLICABLE TO THE LIQUIDATION OF COMPANIES AND TO THE BANKRUPTCY OF INDIVIDUALS

DIVISION 1 – QUANTIFICATION OF CLAIMS

146. Claim in currency other than dollars

The rate of exchange used for the purposes of converting a liability into dollars in accordance with section 154 is the closing mid-point rate published in the Financial Times (US Edition) for the relevant date.

147. Discounts

Any trade and other discounts which would have been available to the debtor but for the insolvency proceeding, except any discount for immediate, early or cash settlement, shall be deducted from a creditor's claim.

148. Discount for debt payable after commencement date

(1) This rule provides for the discount to be applied to a claim based on a liability that, at the commencement of the insolvency proceeding, was not payable by the company until after the commencement of the insolvency proceeding.

(2) The claim shall be reduced by a percentage calculated as follows—

$$\frac{IxM}{12}$$

Where—

(a) I = 5%; and

(b) M is the number of months, expressed if need be as, or as including, fractions of a month, between the commencement of the liquidation and the date when the liability would otherwise have been due for payment.

DIVISION 2 – STATUTORY DEMAND

149. Statutory demand

(1) The minimum sum for which a statutory demand may be issued is $2,000.

(2) Where the amount claimed in a statutory demand made against a person includes—

(a) a charge by way of interest not previously notified to the person as included in his or her liability; or

(b) any other charge accruing from time to time;

the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(3) Where paragraph (2) applies, the amount claimed shall be limited to that amount that has accrued due at the date of the demand.

(4) A statutory demand shall include the name, address and the contact details, if any, of an individual or individuals with whom the debtor may communicate with a view to securing or compounding for the debt to the satisfaction of the creditor.

150. Service on individual

(1) A creditor shall make all reasonable attempts to effect personal service of a statutory demand on an individual.

(2) Where a creditor is not able to effect personal service, a statutory demand may be served on an individual by leaving the demand addressed to the individual at such of the places specified in paragraph (3) as would be most likely to bring the demand to his or her notice.

(3) The places referred to in paragraph (2) are his or her last known place of residence, place of business or place of employment.

(4) Where the creditor has no knowledge of the last known place of residence, place of business or place of employment of the individual, he or she may serve the statutory demand by advertisement in one or more local newspapers.

(5) Where service is effected in accordance with paragraph (4), the period of time specified in section 155(2)(d) for compliance with the demand shall run from the date of publication of the advertisement.

151. Service out of jurisdiction

Where the Court permits a statutory demand is to be served outside the Virgin Islands in accordance with CPR Part 7, the period of time specified in section 155(2)(d) for compliance with the demand shall be increased to 28 days or such longer period of time as the Court may order.

152. Setting aside of statutory demand

(1) An application to set aside a statutory demand shall be supported by an affidavit—

(a) specifying the date upon which the debtor was served with the statutory demand; and

(b) stating the grounds upon which he or she claims that the statutory demand should be set aside.

(2) A copy of the statutory demand shall be exhibited to the affidavit in support.

PART VIII - LIQUIDATION

PRELIMINARY

153. Scope of this Part[482]

(1) Subject to rule 168, the rules in this Part apply to—

(a) an application to the Court to appoint a liquidator of a company;

(b) the appointment of a liquidator, whether by the members or the Court; and

(c) the liquidation of a company and, where appropriate, a foreign company; under Part VI of the Act.

(2) Unless otherwise stated or unless the context otherwise requires, the rules in this Part apply to a foreign company.

(3) Where a liquidator is appointed in respect of a regulated person, the liquidator shall send to the Commission and, in the case of a regulated person that is a bank, to the VIDIC as well a copy of every notice or other document—[483]

(a) required to be sent to creditors of the regulated person; or

(b) filed with the Court.

DIVISION 1 – APPOINTMENT OF LIQUIDATOR

154. Appointment of liquidator by members

(1) The chairman of a meeting of members that, by a qualifying resolution, appoints a liquidator under section 159(2) shall, as soon as practicable, provide the liquidator with—

(a) a copy of the resolution by which he or she was appointed; and

(b) a certificate of his or her appointment, signed by the chairman.

(2) The provision to the liquidator of the documents specified in paragraph (1) is deemed notice to the liquidator for the purposes of section 161(2).

(3) This rule does not apply to a foreign company.

155. Application

(1) Application for the appointment of a liquidator is made by filing at Court an application complying with paragraph (2) together with an affidavit in support of the application complying with rule 156.

(2) An application under paragraph (1) shall state—

(a) the grounds upon which the appointment is sought; and

(b) whether the applicant proposes an eligible insolvency practitioner as liquidator and, if he or she does, it shall—

(i) specify the name and address of the person proposed; and

(ii) state that, to the best of the applicant's knowledge and belief, the person specified is eligible to act as an insolvency practitioner in relation to the company.

(3) No application for the appointment of a liquidator of a company may be made to the Court where the company is in liquidation, whether the liquidator was appointed by the members or by the Court.

156. Affidavit in support

(1) An application for the appointment of a liquidator shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made—

(a) by the applicant;

(b) if the applicant is a corporate body, by an officer who has been concerned with the matters stated in the application;

(c) by the legal practitioner acting for the applicant; or

(d) by a responsible person who is authorised to make the affidavit and who has the requisite knowledge of the matters sworn in the affidavit.

(4) A supporting affidavit is prima facie evidence of the statements in the application to which it relates.

(5) Where an applicant is making applications to appoint a liquidator for more than one company, a separate affidavit shall be filed in respect of each application.

(6) If the applicant proposes an eligible insolvency practitioner as liquidator of the company, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application shall be exhibited to the affidavit in support of an application for the appointment of a liquidator.

157. Service of application on company

(1) Unless the company is the applicant, a sealed copy of the application for the appointment of a liquidator, together with the supporting affidavit, shall be served on the company not more than 14 days after the application has been filed.

(2) Service of the application on the company shall be verified by an affidavit of service complying with rule 19.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

158. Copies of application to be sent to other persons[484]

(1) A sealed copy of an application for the appointment of a liquidator of a company shall be sent—

(a) if the company is in administration, to its administrator;

(b) if an administrative receiver has been appointed in respect of the assets of the company, to him or her;

(c) if a creditors' arrangement has been proposed or accepted, to the interim supervisor or supervisor appointed in respect of the arrangement or the proposed arrangement, as the case may be;

(d) if the company is, or at any time in the previous 2 years has been, a regulated person, to the Commission, unless the Commission is the applicant,

within the time limits specified in paragraph (2).

(e) if the company is a regulated person that is a bank, to the Commission and the VIDIC,[485]

(2) Documents referred to in paragraph (1) shall be sent—

(a) to the persons specified in paragraph (1)(a) to (c)—

(i) no earlier than the day after service of the application on the company; and

(ii) no later than 4 days after service of the application on the company; and

(b) to the Commission under subparagraph (d), or the Commission and the VIDIC under subparagraph (e), as soon as reasonably practicable after the application has been filed but, in any event, no later than 10 a.m. on the day immediately after the date on which the application was filed.[486]

159. Application seeking appointment of supervisor as liquidator

(1) This rule applies where, in an application for the appointment of a liquidator, the applicant proposes as liquidator the supervisor of an arrangement in place in respect of the company.

(2) Within 5 business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the company—

(a) stating that an application has been made for the appointment of a liquidator of the company and that it is proposed that he or she be appointed liquidator; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he or she shall send his or her objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he or she has received.

160. Persons entitled to a copy of the application

An applicant for the appointment of a liquidator of a company shall, on receiving—

(a) a request from any director, member or creditor of the company for a copy of the application; and

(b) payment of the prescribed fee,

provide that person with a copy of the application as soon as is reasonably practicable to do so.

161. Advertisement of application

The advertisement of an application to appoint a liquidator shall state—

(a) the name of the company in respect of which the appointment is sought and the address of its registered office or, in the case of a foreign company, the address at which the application was served;

(b) the name and address of the applicant;

(c) the date on which the application was filed;

(d) the venue fixed for the hearing of the application;

(e) the name and address of the legal practitioner acting for the applicant; and

(f) that any person intending to appear at the hearing of the application, whether to support or oppose the application, shall give notice of his or her intention in accordance with rule 162.

162. Notice of intention to appear

(1) A person who intends to appear on the hearing of an application to appoint a liquidator of a company, other than the company itself, shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify—

(a) the name and address of the person giving notice and his or her contact details, if any;

(b) whether it is his or her intention to support or oppose the application; and

(c) if he or she is a creditor, the amount of his or her debt or if he or she is not a creditor the grounds upon which he or she supports or opposes the application.

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16:00 hours on the business day before the date fixed for the hearing of the application, or where the hearing has been adjourned, the adjourned hearing.

(4) A person who fails to comply with this rule may appear on the hearing of the application only with the leave of the Court.

163. List of appearances

(1) An applicant for the appointment of a liquidator shall prepare a list of the persons, if any, who have sent him or her a notice of intention to appear in accordance with rule 162, specifying, in respect of each person—

(a) his or her name and address;

(b) his or her legal practitioner, if known; and

(c) whether he or she intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule 162, the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

164. Affidavit in opposition

If a company intends to oppose an application for the appointment of a liquidator it shall, not less than 7 days before the date fixed for the hearing of the application, file with the Court and serve on the applicant—

(a) a notice setting out the grounds on which it opposes the application; and

(b) an affidavit verifying the matters stated in the notice.

165. Leave to withdraw application

(1) The Court may, on the application of the person applying for the appointment of a liquidator in respect of a company, grant that person leave to withdraw the application in accordance with section 164 if it is satisfied that—

(a) the application has not been advertised;

(b) no notices of intention to appear have been received by the applicant under rule 162; and

(c) the company consents to the application being withdrawn.

(2) An application under paragraph (1) shall be made ex parte at least 5 days before the date fixed for the hearing of the application.

166. Appointment of Official Receiver as liquidator

The Court may appoint the Official Receiver as liquidator of a company notwithstanding that—

(a) the applicant may, in his or her application, have proposed the appointment of an eligible insolvency practitioner as liquidator under section 162(7);

(b) the Official Receiver has not consented to act as liquidator; and

(c) the Official Receiver has not been given notice of the application.

167. Notice of order

The Court shall, forthwith on making an order appointing a liquidator, give notice to the liquidator of his or her appointment and send a sealed copy of the order to him or her as soon as is practicable.

168. Application by member of company

(1) Except as provided in this rule or by the Court, this Division does not apply to an application for the appointment of a liquidator made by a member of the company ("a member's application").

(2) A member's application shall be made in accordance with rule 155 and shall be supported by an affidavit complying with rule 156.

(3) A sealed copy of the application and the affidavit in support shall be served on the company not less than 14 days before the date fixed for the hearing of the application.

(4) A member's application shall not, except as directed by the Court, be served on any person other than the company or be advertised.

(5) At the first hearing of the application, the Court shall give such directions concerning the procedures for or in connection with the determination of the application as it considers appropriate.

(6) Without limiting paragraph (5), the Court shall give directions concerning—

(a) service of the application on, or giving notice of the application to, persons other than the company;

(b) whether the application should be advertised and, if so, the manner of its advertisement;

(c) whether a statement of claim, defence and reply to defence are to be delivered; and

(d) the manner in which evidence is to be adduced at the hearing of the application including the matters to be dealt with in evidence.

(7) Rules 162, 163, 165, 166 and 167 apply to a member's application with such modifications as are necessary.

DIVISION 2 – INTERIM RELIEF

169. Application for appointment of provisional liquidator

(1) An application for the appointment of a provisional liquidator of a company shall propose an eligible insolvency practitioner or the Official Receiver for appointment as provisional liquidator.

(2) If the Official Receiver is proposed for appointment as provisional liquidator, he or she shall be given sufficient notice of the hearing to enable him or her to attend the hearing.

170. Affidavit in support of application

An application for the appointment of a provisional liquidator shall be supported by an affidavit stating—

(a) the grounds upon which the application is being made;

(b) that the proposed appointee has consented to act and, to the best of the applicant's belief is eligible to act as provisional liquidator of the company;

(c) whether, to the applicant's knowledge—

(i) there has been proposed or is in force for the company a creditor's arrangement under Part II of the Act; or

(ii) an administrator or administrative receiver is acting in relation to the company;

(d) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed; and

(e) if the Official Receiver is proposed for appointment as provisional liquidator, whether and in what manner he or she has been given notice of the application.

171. Hearing of application

(1) If the Official Receiver is proposed to be appointed as provisional liquidator, he or she is entitled to attend the hearing and make such representations as he or she considers appropriate.

(2) The Court shall not appoint the Official Receiver as provisional liquidator of a company unless he or she has been given notice of the application in accordance with rule 169(2).

172. Order appointing provisional liquidator

(1) The order appointing a provisional liquidator shall specify the functions to be carried out by him or her in relation to the company's affairs and assets.

(2) The Court shall, forthwith on making an order appointing a provisional liquidator, give notice to the provisional liquidator of his or her appointment and, as soon as is practicable—

(a) send 2 sealed copies of the order to the provisional liquidator; and

(b) send one copy of the sealed order to any administrator or administrative receiver who has been appointed.

(3) The provisional liquidator shall, as soon as practicable, send one copy of the sealed order to the company.

DIVISION 3 – NOTICE OF APPOINTMENT AND FIRST MEETING OF CREDITORS

173. First meeting of creditors

(1) The notice of the first meeting of creditors required to be sent under section 179(1)(a) shall state—

(a) the business to be conducted at the meeting, as specified in paragraph (2); and

(b) that the liquidator will, at the request of any creditor, during the period before the date of the meeting furnish the creditor with—

(i) a list of the creditors of the company known to the liquidator; and

(ii) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide; and shall be accompanied by a claim form as required by rule 185.

(2) The first meeting of creditors may pass only one or more of the following resolutions—

(a) such resolutions as are necessary to exercise the powers specified in section 179(4);

(b) a resolution to adjourn the meeting for a period of not more than 21 days;

(c) where the meeting has been requisitioned in accordance with section 183(b)(iii), a resolution that the expenses of calling and holding the meeting are to be payable out of the assets of the company;

(d) any other resolution that the chairman allows to be put to the meeting.

DIVISION 4 – LIQUIDATORS

174. Authentication of liquidator's appointment

A copy of the certificate of the liquidator's appointment or, as the case may be, a sealed copy of the Court's order appointing the liquidator, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's liquidation.

175. Removal of liquidator

(1) Application for the removal of a liquidator under section 187 is made by filing at Court—

(a) an application stating the grounds upon which the removal of the liquidator is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the liquidator and the Official Receiver, unless it is his or her application, not less than 10 days before the date fixed for the hearing.

(3) The liquidator may file affidavit evidence in opposition to the application not less than 4 days before the date fixed for the hearing of the application.

(4) The liquidator shall, not less than 4 days after being served with an application under paragraph (2) send to the Official Receiver a statement as to whether any of the company's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—

(a) the nature, value and location of the assets;

(b) any action taken by the liquidator to deal with the assets or his or her reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a liquidator shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the liquidator on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove the liquidator of a company are not payable out of the assets of the company.

(8) If the Court removes a liquidator under section 187, it shall send a copy of the order removing him or her to—

(a) the liquidator removed;

(b) any remaining liquidator; and

(c) the Official Receiver.

(9) Where the Court removes a liquidator under section 187, it may appoint the Official Receiver as liquidator under section 187(3)(b) notwithstanding that the company commenced liquidation on the appointment of a liquidator by the members under section 159(2).

176. Resignation of liquidator under section 188(1)(a)

(1) Where the liquidator resigns under section 188(1)(a) [liquidator no longer eligible to act as an insolvency practitioner in relation to the company], he or she shall send the Official Receiver with the notice of his or her resignation, a statement covering the matters specified in rule 175(4).

(2) The liquidator shall, if so directed by the Official Receiver, verify the statement by affidavit.

177. Resignation of liquidator under section 188(1)(b)

(1) Unless the liquidator is a joint liquidator resigning in accordance with section 188(4), the notice of a creditors' meeting sent to creditors in accordance with section 188(5) shall be accompanied by an account of the liquidator's administration of the liquidation, including a summary of his or her receipts and payments.

(2) The liquidator shall, not less than 7 days before the date fixed for the creditors' meeting—

(a) send a copy of the notice and account referred to in paragraph(1) and a statement covering the matters specified in rule 175(4) to the Official Receiver; and

(b) if he or she was appointed by the Court, file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 188(5) either of the following resolutions is passed—

(a) that the liquidator's resignation be accepted;

(b) that a new liquidator be appointed; the chairman shall, forthwith, send the Official Receiver a copy of the resolution together with a certificate of the liquidator's appointment, signed by the chairman.

(4) Where a liquidator's resignation is accepted by the creditors, he or she shall forthwith—

(a) send a notice of his or her resignation to the Official Receiver; and

(b) if he or she was appointed by the Court, file a notice of his or her resignation with the Court.

(5) The liquidator's resignation is effective from the date that the notice of his or her resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former liquidator.

(6) Within 14 days of receiving a copy of the endorsed notice from the Official Receiver under paragraph (5), the former liquidator shall file a copy of the endorsed notice with the Registrar.

178. Leave to resign

(1) A liquidator shall, not less than 7 days before the date fixed for the hearing of an application for leave to resign under section 188(6A), give notice of his or her application to—

(a) any joint liquidator;

(b) the creditors' committee, if any; and

(c) the Official Receiver.

(2) If the Court gives the liquidator leave to resign, it may make such provision as it considers appropriate with respect to matters arising in connection with the resignation.

(3) Where the Court gives the liquidator leave to resign, section 187(3) and rule 175(9) apply with such modifications as are necessary.

(4) The Court shall send 2 sealed copies of the order to the liquidator, who shall forthwith send one of the copies to the Official Receiver.

(5) Within 14 days of his or her resignation, the former liquidator shall send a notice of his or her resignation to the Official Receiver and to the Registrar.

179. Death of liquidator

(1) Where the liquidator dies, his or her personal representative shall give notice of his or her death to the Official Receiver and the Registrar, specifying the date of his or her death, unless notice has already been given to the Court and the Registrar under paragraph (2) or (3).

(2) If a liquidator who dies was a partner in a firm, notice of his or her death may be given to the Official Receiver and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of a liquidator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

(4) Where the Official Receiver receives a notice under paragraph (3) and the deceased liquidator was the sole liquidator of the company, the Official Receiver shall as soon as reasonably practicable apply to the Court under section 189(1) for the appointment of a replacement liquidator, unless an application has already been made by the creditors' committee.

180. Advertisement of appointment

(1) A liquidator who is appointed to replace a liquidator who has, for whatever reason, ceased to hold office, shall within 21 days of the date of his or her appointment, advertise his or her appointment.

(2) His or her advertisement shall state that he or she has been appointed in place of a liquidator who ceased office.

181. Solicitation

(1) Where the Court is satisfied that any improper solicitation has been used by or on behalf of a liquidator in obtaining proxies or procuring his or her appointment, it may order that no remuneration, or that reduced remuneration, be payable to the liquidator out of the assets of the company.

(2) An order of the Court under paragraph (1) overrides any resolution of the creditors' committee or any other provision of the rules.

DIVISION 5 – SETTLING LIST OF MEMBERS

182. Form and contents of list of members

(1) The list of members settled by the liquidator of a company under section 193(1) shall identify—

(a) the classes of the company's shares, if more than one;

(b) the classes of members, if more than one.

(2) The list shall detail, in respect of each member—

(a) his or her name and address;

(b) the number and class of shares held by him or her, or the extent of any other interest to be attributed to him or her;

(c) if the shares are not fully paid up, the amounts that have been called up and paid in respect of them, and the equivalent if his or her interest is other than shares.

183. Procedure for settling list of members

(1) The notice given to each person under section 193(2) shall state—

(a) in what character, and for what number of shares or what interest, he or she is included in the list;

(b) what amounts have been called up and paid up in respect of the shares or interest;

(c) that in relation to any shares or interest not fully paid up, his or her inclusion in the list may result in the unpaid capital being called; and

(d) the rights of a person to object under paragraphs (2) and (3) of this rule.

(2) If a person objects to any entry in, or omission from, the list, he or she shall inform the liquidator of his or her objection in writing within 21 days from the date of the notice.

(3) Where the liquidator receives an objection under paragraph (2), he or she shall, within 14 days, give notice to the objector either—

(a) that he or she has amended the list, specifying the amendment; or

(b) that he or she does not accept the objection and that he or she does not intend to amend the list.

(4) A notice given under paragraph (3) shall contain a summary of the effects of section 193(3) and (4).

DIVISION 6 – CLAIMS

184. Claims by unsecured creditors

A claim made against a company in liquidation by an unsecured creditor under section 209 shall be in the prescribed form and shall specify—

(a) the name and address of the creditor;

(b) the total amount of his or her claim as at the commencement of the liquidation;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the company;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself or herself.

185. Claim forms

(1) Unless the Court otherwise orders, the liquidator of a company shall send a claim form to each creditor of whom he or she is aware at the same time as he or she sends the creditor—

(a) notice of the first meeting of creditors under section 179(1)(a); or

(b) notice under section 183(b) that he or she does not consider it necessary to call a meeting of creditors.

(2) The liquidator shall as soon as is practicable send a claim form to any creditor that he or she becomes aware of subsequent to sending out a notice under section 179(1)(a) or section 183(b).

186. Application to Court to expunge or amend an admitted claim

The applicant for an order expunging or reducing a claim under section 210(2) shall serve a copy of his or her claim—

(a) in the case of an application by the liquidator, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the liquidator and on the creditor who submitted the claim.

187. Negotiable instruments

The liquidator may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his or her authorised representative to be a true copy, is produced to the liquidator.

188. Inspection of claims

The liquidator of a company shall allow claims in his or her custody or control to be inspected by—

(a) a creditor who has submitted a claim in the liquidation that has not been wholly rejected by the liquidator;

(b) a contributory of the company;

(c) a person acting on behalf of a person referred to in paragraph (a) or (b).

DIVISION 7 – DISTRIBUTIONS

189. Distribution by means of dividend

The liquidator shall make a distribution by distributing dividends among the creditors whose claims he or she has admitted.

190. Notice to submit claim

A notice issued under section 216(1) shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

191. Distributions

(1) In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision—

(a) for any claims which creditors may not have had sufficient time to make;

(b) for any claims which have not yet been determined; and

(c) for any disputed claims.

(2) A creditor who has not submitted a claim by the date specified in the notice issued under section 216(1) is not entitled to disturb, by reason that he or she has not participated in it, the distribution of the dividend.

(3) When a creditor referred to in subsection (2) makes a claim that is accepted by the liquidator—

(a) he or she is entitled to be paid, out of any money for the time being available for distributing a further dividend, a payment in respect of any dividend which he or she has failed to receive; and

(b) any payment under subparagraph (a) shall be paid before that money is used to distribute a further dividend to creditors.

(4) No action lies against the liquidator for a dividend but if he or she refuses to pay a dividend, the Court may, if it thinks fit, order him or her to pay it and also to pay, out of his or her own money—

(a) interest on the dividend, at the Court rate, from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

192. Distribution of dividend

Where the liquidator distributes a dividend, he or she shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

DIVISION 8 – DISCLAIMER

193. Notice of disclaimer

(1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed at Court with a copy.

(3) The original notice and the copy notice shall be sealed by the Court, endorsed with the date of filing and the copy notice shall be returned to the liquidator.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the sealed notice of disclaimer was returned to the liquidator.

194. Communication of notice of disclaimer

(1) Written notice of a disclaimer notice shall be given under section 217(3) and 218(2) by sending or giving a copy of the sealed and endorsed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 217, the following are persons whose rights are affected by a disclaimer of property—

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(c) where the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a liquidator that a person's rights are affected by a disclaimer, the liquidator shall forthwith given written notice of the disclaimer to that person in accordance with this rule unless—

(a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A liquidator disclaiming property may at any time, in addition to his or her obligations under the Act and the rules, give notice of the disclaimer to any person who, in his or her opinion, ought in the public interest or otherwise to be informed of the disclaimer.

195. Duty to keep Court informed

The liquidator shall, as soon as reasonably practicable, notify the Court of each person to whom he or she has given notice of disclaimer in accordance with the Act and the rules, specifying the name and address of each person and his or her interest in the property disclaimed.

196. Notice to elect

A notice to elect shall be served on a liquidator by delivering the notice to him or her personally or sending it to him or her by registered post.

197. Notice to declare interest in onerous property

(1) If it appears to the liquidator of a company that a person may have an interest in onerous property, he or she may give notice to that person to declare, within 14 days, whether he or she claims any interest in the property and, if so, the nature and extent of his or her interest.

(2) If a person fails to comply with a notice given under paragraph (1), the liquidator is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

198. Application for vesting order or order for delivery

(1) An application for a vesting order or an order for delivery under section 221 shall be made within 3 months of—

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the liquidator; whichever is the earlier.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the liquidator and an affidavit—

(a) stating whether his or her claim is based upon an interest in the disclaimed property or whether it is based upon an undischarged liability;

(b) specifying the date upon which he or she received a copy of the liquidator's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his or her application is based and the order that he or she desires the Court to make under section 221.

(3) Not less than 7 days before the date fixed for the hearing of the application, the applicant shall serve on the liquidator—

(a) a sealed copy of the application endorsed by the Court; and

(b) a copy of the affidavit filed in support.

(4) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(5) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the liquidator.

(6) Unless there is one or more applications pending under section 221, in a case where the property disclaimed is of a leasehold nature, and section 218(2) applies to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

DIVISION 8A - DISSOLUTION OF INSOLVENT COMPANY[487]

198A. Dissolution upon completion of liquidation[488]

(1) Where, following the completion of liquidation of a company, a liquidator files with the Registrar a copy of his or her final report and the statement of realisations and distributions as required under section 234 (2)(b) of the Act, the Registrar shall publish in the Gazette

(a) the fact that the liquidation of the company has been completed in accordance with the requirements of the Insolvency Act, Revised Edition 2020; and

(b) his or her intention to

(i) remove the name of the company from the Register of Foreign Companies, in the case of a foreign company, or

(ii) strike off the name of the company from the Register of Companies, in the case of any other company,

within a period of not less than 7 days from the date of publication.

(2) The Registrar shall, for the purposes of the publication under paragraph (1), specify the date on which he or she intends to remove or strike off the name of the company from the Register of Foreign Companies or the Register of Companies, as the case may be.

(3) A company is dissolved after the expiry of the date specified by the Registrar in the Gazette published under paragraph (1).

DIVISION 9 – MISCELLANEOUS PROVISIONS

199. Prescribed priority

The following costs and expenses of the liquidation shall be paid in the order of priority in which they are listed (the "prescribed priority")—

(a) the costs and expenses properly incurred by the liquidator in preserving, realising or getting in the property of the company or in carrying on the company's business, including—

(i) the costs and expenses of any legal proceedings which the liquidator has brought or defended whether in his or her own name or in the name of the company; and

(ii) the costs of and in connection with an examination ordered under section 285;

(b) the costs and expenses of complying with a notice issued by the Official Receiver under section 271(2);

(c) the remuneration of the provisional liquidator;

(d) the deposit lodged on an application for the appointment of a provisional liquidator;

(e) the costs of the application on which the liquidator was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(f) any costs allowed in respect of the preparation of a statement of affairs;

(g) the cost of and in respect of any creditors' committee appointed in the liquidation;

(h) any disbursements properly paid by the liquidator;

(i) the remuneration of anyone employed by the liquidator;

(j) the remuneration of the liquidator;

(k) any other fees, costs, charges or expenses properly incurred in the course of the liquidation or properly chargeable by the liquidator in carrying out his or her functions in the liquidation.

PART IX - GENERAL PROVISIONS WITH REGARD TO COMPANIES THAT ARE INSOLVENT OR IN LIQUIDATION

DIVISION 1 – STATEMENT OF AFFAIRS

200. Interpretation

The words and expressions defined in Part XI, Divisions 1 and 2 of the Act have the same meaning in this Division.

201. Notice requiring statement of affairs

(1) A notice requiring a relevant person to submit a statement of affairs shall state—

(a) the names and addresses of all other persons, if any, to whom the same notice has been sent;

(b) the dates within which the statement of affairs shall be made up to;

(c) the time within which the statement shall be delivered to the office holder;

(d) the effect of section 277(4), (failure to submit statement of affairs and verifying affidavit an offence); and

(e) the effect of section 282, if appropriate (duty to provide information and attend on office holder).

(2) A notice under paragraph (1) shall be accompanied by the forms required for the preparation of the statement of affairs.

(3) For the purposes of paragraph (1)(b), a statement of affairs shall be made up to a date not more than 14 days before—

(a) where the company is in administration, the date of the administration order;

(b) where the company is in administrative receivership, the date that the administrative receiver was first appointed; and

(c) where the company is in liquidation, the date that the liquidation commenced in accordance with section 160.

202. Verification and delivery of statement of affairs

A statement of affairs—

(a) shall be verified by affidavit; and

(b) shall be delivered to the office holder, together with the affidavit of verification, within the time period specified in the notice issued under rule 201.

203. Affidavit of concurrence

(1) Subject to paragraph (3), an affidavit of concurrence is an affidavit stating that the maker of the affidavit—

(a) has been provided with a statement of affairs of a company prepared and verified by a relevant person in accordance with section 277 pursuant to a notice sent to him or her by an officer holder under section 276;

(b) concurs that the statement of affairs is complete and accurate and is not, in any respect, misleading; and

(c) has sufficient direct knowledge of the company's affairs to make the affidavit.

(2) An affidavit of concurrence shall have exhibited to it the statement of affairs with which the maker concurs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the person making the affidavit of concurrence considers the statement of affairs to be erroneous or misleading or he or she is without the direct knowledge necessary for concurring with it.

204. Filing of statement of affairs and affidavit of concurrence

(1) Subject to section 280 and to paragraph (2), an office holder shall as soon as reasonably practicable after receiving a verified statement of affairs or an affidavit of concurrence, file a copy with the Registrar and with the Court.

(2) A liquidator appointed by the members of a company and an administrative receiver appointed out of court is not required to file a verified statement of affairs or an affidavit of concurrence with the Court.

205. Release from duty to submit statement of affairs and extension of time

(1) Where a relevant person has received a notice requiring him or her to prepare and submit a statement of affairs, he or she may request the office holder who sent him or her the notice for—

(a) a release from his or her obligation; or

(b) an extension of time for submitting the statement of affairs; under section 279.

(2) An office holder may grant a release of an obligation or an extension of time under section 279 at his or her own discretion, without having received a request from the relevant person concerned.

206. Application to Court where office holder refuses a request under rule 205

(1) If an office holder refuses a request made under rule 205, the relevant person concerned may apply to the Court for an order granting him or her the release or the extension.

(2) An applicant shall give the office holder at least 10 business days notice of an application under paragraph (1) and of any affidavit filed in support of his or her application.

(3) The office holder is entitled to appear and make representations at the hearing of an application under paragraph (1) and, whether or not he or she appears, to file with the Court a written report setting out any matters that he considers should be brought to the attention of the Court.

(4) An office holder shall send the applicant a copy of a report filed under paragraph (3) at least 5 business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the applicant's costs shall be paid in any event by him or her and, unless the Court otherwise orders, no allowance towards them shall be made out of the assets of the company or, in the case of an administrative receivership, out of the assets under the administrative receiver's control.

(6) The Court shall send sealed copies of an order made under this rule to the office holder and to the relevant person who made the application.

207. Expenses of statement of affairs

(1) Subject to paragraph (3), a relevant person preparing a statement of affairs and making a verifying affidavit shall be allowed, and paid by the office holder out of the assets of the company or, in the case of an administrative receivership, out of the assets under the administrative receiver's control, any expenses he or she incurs in so doing which the office holder considers reasonable.

(2) Nothing in this rule relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to, the office holder.

(3) No payment may be made to the office holder or any of his or her associates in respect of any assistance given to a relevant person in the preparation of his or her statement of affairs unless approved by the creditors' committee.

208. Order of limited disclosure

(1) Where the Court makes an order of limited disclosure under section 280 in respect of a statement of affairs, the office holder shall, as soon as reasonably practicable, file the verified statement of affairs with the Registrar, to the extent provided by the order.

(2) If there is a material change in circumstances rendering the limit on disclosure, or any part of it, unnecessary, office holder shall, as soon as reasonably practicable after the change, apply to the Court for the order to be varied or rescinded.

(3) The office holder shall, as soon as reasonably practicable after the making of an order under paragraph (2), file the verified statement of affairs with the Registrar, to the extent provided by the order.

209. Application by creditor for disclosure

(1) If a creditor seeks disclosure of a statement of affairs or a specified part of a statement of affairs in relation to which an order has been made under section 280, he or she may apply to the Court for an order that the office holder disclose it or a specified part of it.

(2) An application under paragraph (1) shall be—

(a) supported by an affidavit; and

(b) served on the office holder, together with the supporting affidavit, not more than 3 business days prior to the date fixed for the hearing.

(3) The Court may make an order for disclosure to the creditor subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

(4) CPR Part 28 does not apply to an application under this rule.

DIVISION 2 – INVESTIGATION OF INSOLVENT COMPANY'S AFFAIRS

OFFICE HOLDERS POWERS

210. Request by office holder for information

(1) A notice to provide information under section 282(1)(a) shall specify the period within which the information shall be submitted to the office holder and shall state whether the office holder requires the information to be verified by affidavit.

(2) Where the office holder requires the recipient of a notice under section 282(1)(a) to prepare and submit accounts of the company, rule 207 applies with such modifications as are necessary.

(3) An office holder shall not require accounts to be prepared and submitted to him or her for a period more than 5 years prior to the appropriate date specified in paragraphs (a) to (d) of the definition of "relevant period" in section 275(1) without the leave of the Court.

(4) The office holder may issue subsequent notices to a person specified under section 282(2), notwithstanding that a previous notice has been fully complied with.

EXAMINATION BEFORE COURT

211. Application for examination

(1) An application for the examination before the Court of a person under section 284 shall be filed with the Court, without notice to the proposed examinee, together with a supporting affidavit.

(2) Neither the application nor the supporting affidavit are open to public inspection unless the Court otherwise orders.

(3) The matters contained in the supporting affidavit shall include—

(a) details of the proposed examinee and his or her relationship with the company concerned or a connected company;

(b) details of the matters upon which the applicant seeks to examine the proposed examinee and the reasons for his or her belief that the proposed examinee has knowledge of these matters;

(c) details of any books, records or other documents relating to the company or a connected company that the applicant believes are in the possession of the proposed examinee that he or she wishes the proposed examinee to produce at the examination;

(d) if he or she seeks an order for a public examination, the justification for a public examination;

(e) a statement as to whether the matters upon which he or she seeks to examine the proposed examinee are matters that he or she could examine him or her on using his or her powers under sections 282 and 283 and, if so, whether or not he or she has conducted such an examination;

(f) if the applicant has conducted an examination under section 283, the reasons why a further examination before the Court is necessary;

(g) if the applicant is entitled to examine the proposed examinee under section 283, but has not done so, the reasons for the application to examine him or her before the Court.

212. Adjournment of examination

(1) An examination held pursuant to an order made under section 285 may be adjourned by the Court either generally or to a fixed date.

(2) Where an examination has been adjourned generally, the Court may, on the application of the liquidator, the Official Receiver or the examinee—

(a) fix a venue for the resumption of the hearing; or

(b) give directions as to the manner in which, and the time within which, notice is to be given to any person entitled to take part in the examination.

(3) Where the examinee applies under paragraph (2) for the resumption of a public examination, the Court may grant it on condition that the expenses of giving the notices required by that paragraph are paid by the examinee and that, before a venue, date and time for the resumed public examination is fixed, he or she shall deposit with the Official Receiver or liquidator, as the case may be, such sum as the Official Receiver or liquidator considers necessary to cover those expenses.

213. Examinee unfit for examination

(1) Where an examinee is suffering from any mental disorder or physical affliction or disability that renders him or her unfit to undergo or attend for an examination, the Court may, on application, either stay the order for his or her examination or direct that it shall be conducted in such manner and at such place as it considers fit.

(2) Application under this rule shall be made—

(a) by a person who has been appointed by a court in the Virgin Islands or elsewhere to manage the affairs of, or to represent, the examinee;

(b) by a relative or friend of the examinee whom the Court considers to be a proper person to make the application; or

(c) by the Official Receiver.

(3) Where the application is made by a person other than the Official Receiver—

(a) it shall be supported by the affidavit of a medical practitioner as to the examinee's mental and physical condition; and

(b) at least 7 days' notice of the application shall be given to the Official Receiver and the liquidator, if not the Official Receiver.

(4) Where the application is made by the Official Receiver it may be made ex parte, and may be supported by evidence in the form of a report by the Official Receiver to the Court.

214. Adjournment of examination

(1) The Court may, in its discretion, adjourn an examination either to a fixed date or generally.

(2) Where an examination has been adjourned generally, the Court may at any time on the application of the Official Receiver, the liquidator if not the Official Receiver, or of the examinee—

(a) fix a venue for the resumption of the examination; and

(b) give directions as to the manner in which, and the time within which, notice of the resumed examination is to be given to persons entitled to take part in it.

(3) Where application under paragraph (2) is made by the examinee, the Court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him or her and that, before a venue for the resumed examination is fixed, he or she shall deposit with the Court such sum as it considers reasonable to cover those expenses.

PART X - DISQUALIFICATION ORDERS

215. Application for disqualification order

(1) Application for a disqualification order against a person (the respondent) is made by filing at Court an originating application and one or more affidavits in support, at least one of which shall be sworn by the Official Receiver.

(2) The affidavit sworn by the Official Receiver shall specify the facts and matters that the Official Receiver relies upon to support his or her application for a disqualification order.

(3) The application shall be endorsed with the following information—

(a) that if the application is successful, the Court may make a disqualification order against the person concerned for a maximum period of 10 years;

(b) that a disqualified person is for the period of the disqualification order prohibited from engaging in any prohibited activity within the meaning of section 260; and

(c) that any evidence that the respondent wishes to be taken into consideration by the Court shall be filed with the Court and served on the Official Receiver within the time limits specified in rule 216, which shall be set out on the application.

(4) On the filing of an application for a disqualification order, the Court shall fix, and endorse on the application, a date and time for the hearing of the application not less than 8 weeks after the date that the application was filed.

(5) A sealed copy of the application together with the supporting affidavit or affidavits shall be served on the respondent not more than 14 days after the date that the application is filed.

216. Affidavits in response and reply

(1) The respondent shall, within 28 days of the date of service of the application on him or her, file affidavit evidence in opposition to the application if—

(a) he or she opposes the application for a disqualification order; or

(b) while not opposing the making of a disqualification order, he or she intends to adduce mitigating factors with a view to justifying a short period of disqualification.

(2) In any affidavit filed under paragraph (1), the respondent shall state the basis on which he or she contests the application or seeks a short period of disqualification.

(3) The respondent shall forthwith upon filing an affidavit serve a copy on the Official Receiver.

(4) The Official Receiver shall, within 14 days of receiving a copy of the respondent's affidavit or affidavits, file any further affidavits in reply that he or she wishes the Court to take into consideration and shall forthwith serve a copy of the affidavit or affidavits on the respondent.

217. Hearing

(1) The Court shall, on the hearing of the application—

(a) determine the application summarily; or

(b) if it considers that questions of law or fact arise that are not suitable for summary determination, give directions for the further conduct of the matter and adjourn it to a fixed date.

(2) The Court may, upon being satisfied that the respondent has been served with the application, make a disqualification order against the respondent whether or not he or she appears and whether or not he or she has filed evidence in opposition in accordance with rule 216.

(3) Any disqualification order made against the respondent in his or her absence may, at any time within 2 years following the date of the order, be set aside or varied by the Court on such terms as it considers fit.

PART XI - BANKRUPTCY

PRELIMINARY

218. Official name of trustee

The official name of a bankruptcy trustee is "the trustee of the estate of (name of bankrupt) a bankrupt" but he or she may be known as the bankruptcy trustee of the bankrupt.

219. Appointment of Official Receiver as trustee

(1) The Court may appoint the Official Receiver as the bankruptcy trustee of a debtor on an application under Part XII of the Act, notwithstanding that—

(a) the applicant may, in his or his application, have proposed the appointment of an eligible insolvency practitioner as trustee;

(b) the Official Receiver has not consented to act as trustee; and

(c) the Official Receiver has not been given notice of the application.

(2) Where the Official Receiver is the trustee of a bankrupt, any provision of the Act or the uules requiring the trustee to send or give any notice or other document to the Official Receiver shall be construed as requirement that the notice or document is to be retained by the Official Receiver as a record of the bankruptcy.

DIVISION 1 – BANKRUPTCY ORDER

CREDITOR'S APPLICATION

220. Scope of and interpretation for this Division

(1) Rules 220 to 245 apply to—

(a) creditor's application for a bankruptcy order under section 296;

(b) an application of a creditor or the supervisor of an arrangement under section 301, with such modifications as are appropriate; and

(c) the making of a bankruptcy order on an application specified in paragraphs (a) or (b).

(2) In this Division, unless the context otherwise requires—

"applicant" means the person making an application;

"application" means an application for a bankruptcy order under section 296 or, where appropriate, under section 301.

221. Form of creditor's application

An application shall be dated and shall be signed—

(a) by the applicant himself or herself; or

(b) on the applicant's behalf by a person who is authorised by him or her and who has the requisite knowledge of the matters referred to in the application;

and shall be witnessed.

222. Identification of debtor

(1) An application shall state the following particulars with respect to the debtor—

(a) his or her name;

(b) his or her place of residence;

(c) his or her occupation;

(d) the nature of his or her business, if any, and the address at which he or she carries it on; and

(e) any name other than the one specified under sub-paragraph (a), including a business name, which, to the applicant's personal knowledge, the debtor has used.

(2) The title of the proceedings shall be determined by the particulars given under paragraph (1)(a) and (e).

223. Particulars of liability

An application shall state the following matters with respect to the liability in respect of which the application is made—

(a) the amount of the liability at the date of the application;

(b) the consideration for the liability or, if there is no consideration, the nature of the liability;

(c) if the amount claimed in the application includes interest, penalties, charges or any pecuniary consideration in lieu of interest, the amount claimed and the rate at which and the period for which it was calculated, which shall be separately identified;

(d) when the liability was incurred or became due;

(e) if the liability is founded on a judgment or an order of a court, details of the judgment or order, including the action under which the judgment or order was obtained and the date of the judgment or order; and

(f) if the debt is founded on grounds other than a judgment or an order of a court, such details as would enable the debtor to identify the debt.

224. Application based on statutory demand

(1) An application based on the debtor's failure to comply with the requirements of a statutory demand, shall state the date and manner of service of the statutory demand and that to the best of the creditor's knowledge and belief, the demand has neither been complied with nor set aside and that no application to set it aside is pending.

(2) An application may not be made based on a statutory demand served more than 4 months before the filing date of the application.

225. Application based on unsatisfied execution

(1) An application based on an unsatisfied execution or other process shall specify—

(a) the judgment, decree or order on which the execution was issued;

(b) the court which issued the execution against the debtor;

(c) the mode of execution; and

(d) the extent, if any, to which the judgment debt has been satisfied as a result of the execution.

(2) An application may not be made based on an execution or other process completed more than 4 months before the filing date of the application.

226. Other matters to be specified in application

(1) An application shall state which of the conditions for making a bankruptcy order specified in section 293(1) apply to the debtor.

(2) An application under section 301 shall provide sufficient details to enable the debtor to understand the grounds on which the bankruptcy order is sought.

227. Filing of application

Application for a bankruptcy order is made by filing at Court an application complying with paragraph (2), together with—

(a) an affidavit verifying service of the statutory demand, if required under rule 229; and

(b) an affidavit in support of the application complying with rule 228**.**

228. Affidavit in support

(1) An application shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made by the applicant or by the person who signed the application on the applicant's behalf.

(4) A supporting affidavit is prima facie evidence of the statements in the application to which it relates.

(5) The following documents shall be exhibited to the affidavit in support of an application—

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

229. Affidavit of service of statutory demand

(1) Where an application is based on the debtor's failure to comply with the requirements of a statutory demand, an affidavit of service of the statutory demand complying with rule 19 shall be filed together with the application.

(2) Where the statutory demand has been served other than by personal service, the affidavit shall—

(a) give particulars of the steps taken to effect personal service and the reasons for which they have been ineffective;

(b) state the means whereby, attempts at personal service having been unsuccessful, it was sought to bring the demand to the debtor's attention and explain why such means would have best ensured that the demand would be brought to the debtor's attention;

(c) exhibit evidence of such alternative mode or modes of service; and

(d) specify a date by which to the best of the knowledge, information and belief of the person making the affidavit, the demand would have come to the debtor's attention.

(3) If the affidavit specifies a date for the purposes of compliance with paragraph (2) (d), then unless the Court otherwise orders, that date is deemed to have been the date on which the statutory demand was served on the debtor.

(4) The Court shall dismiss the application for a bankruptcy order if it is not satisfied that the creditor has discharged the obligations imposed on him or her by rule 150.

230. Service of application for bankruptcy order

Subject to rule 231, an application shall be served personally on the debtor by an officer of the Court, by the creditor making the application or his or her solicitor, or by a person in their employment.

231. Substituted service

(1) If the Court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of a creditor's application, or for any other cause, the Court may order substituted service to be effected in such manner as it considers appropriate.

(2) Where an order for substituted service has been carried out, the application is deemed to have been served on the debtor.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

232. Death of debtor before service

If a debtor dies before service on him or her of an application, the Court may order service to be effected on his or her personal representatives or on such other persons as it considers appropriate.

233. Affidavit of service of application for bankruptcy order

(1) Service of an application on the debtor shall be verified by an affidavit of service complying with rule 19.

(2) If an order has been made for substituted service of the application, a sealed copy of the order for substituted service and any evidence of service shall be exhibited to the affidavit of service.

(3) The affidavit of service shall be filed with the Court forthwith after service has been effected.

234. Copies of application to be sent to other persons

A sealed copy of an application shall be sent, as soon as reasonably practicable—

(a) if the application is made under section 301, and the applicant is not the supervisor of the arrangement, to the supervisor;

(b) if the individual is, or at any time in the previous 2 years has been, a regulated person, to the Commission.

235. Application seeking appointment of supervisor as trustee

(1) This rule applies where an applicant proposes as trustee the supervisor of an arrangement in place in respect of the debtor.

(2) Within 5 business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor—

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he or she be appointed bankruptcy trustee; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he or she shall send his or her objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he or she has received.

236. Application opposed by debtor

If a debtor intends to oppose an application he or she shall, not less than 5 days before the date fixed for the hearing of the application, file with the Court and send to the applicant a notice setting out the grounds on which he or she opposes the application.

237. Notice of intention to appear

(1) A creditor who intends to appear on the hearing of an application shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify—

(a) the name and address of the person giving notice and his or her contact details, if any;

(b) whether it is his or her intention to support or oppose the application; and

(c) the amount and nature of the liability of the debtor to him or her.

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16:00 hours on the business day before the date fixed for the hearing of the application, or where the hearing has been adjourned, the adjourned hearing.

238. List of appearances

(1) An applicant shall prepare a list of the creditors, if any, who have sent him or her a notice of intention to appear in accordance with rule 237, specifying, in respect of each person—

(a) his or her name and address;

(b) his or her legal practitioner, if known; and

(c) whether he or she intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule **240**(e), the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

239. Hearing of application

(1) Subject to paragraph (2), an application shall not be heard until the expiration of 14 days, or such longer time as the Court may direct, from the service of the application on the debtor.

(2) The Court may, on such terms as it considers appropriate, hear the application at an earlier date where—

(a) it is satisfied that the debtor has absconded;

(b) it is satisfied that it is a proper case for an expedited hearing; or

(c) the debtor consents to a hearing within the 14 days.

240. Parties who may be heard

Any of the following persons may appear and be heard on the hearing of an application—

(a) the applicant;

(b) the debtor;

(c) the supervisor of any arrangement in place in respect of the debtor;

(d) any creditor who has given notice to the Court of his or her intention to appear at the hearing of the application;

(e) a creditor who, having failed to comply with rule 237, is granted leave by the Court to appear; and

(f) the Official Receiver.

241. Non-appearance of applicant or failure to prosecute application

If the applicant fails to appear on the hearing of the application or fails to prosecute the application diligently, the application may be dismissed and no subsequent application against the same debtor shall be filed by the same creditor in respect of the same debt without the leave of the Court.

242. Extension of time for hearing

(1) The applicant may, if the application has not been served, apply to the Court to fix another venue for the hearing of the application.

(2) An application under paragraph (1) shall state the reasons why the application has not been served.

(3) No costs occasioned by an application under paragraph (1) shall be allowed in the proceedings unless the Court otherwise orders.

(4) The application shall be amended before service to reflect the new hearing date.

(5) If the Court fixes another venue for the hearing, the applicant shall as soon as reasonably practicable notify any creditor who has given notice under rule 237.

243. Adjournments

(1) If the Court adjourns the hearing of the application, the applicant shall forthwith send a notice of the order adjourning the hearing to the debtor and any creditor who has given notice under rule 237.

(2) A notice of an order adjourning the hearing of an application shall state the venue for the adjourned hearing.

244. Substitution of applicant

(1) In the circumstances specified in paragraph (2), the Court may, by order, substitute as applicant, a creditor who—

(a) has given notice of his or her intention to appear and support the application under rule 237 and appears at the hearing;

(b) wishes to prosecute the application; and

(c) was in such a position in relation to the debtor at the date on which the application was filed as would have enabled him or her on that date to file an application against the debtor.

(2) The Court may make a substitution order under paragraph (1) where the Court considers it appropriate to do so—

(a) because the applicant applies to withdraw the application, consents to it being dismissed or fails to appear in support of the application on the day fixed for the hearing;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

(3) An order under paragraph (1) may be made on such terms as the Court considers appropriate.

(4) Where the Court makes a substitution order, the original applicant shall not be entitled to the costs of his or her application unless the Court otherwise orders.

(5) Where the Court makes a substitution order, the application shall be amended accordingly and shall be verified, re-filed and re-served on the debtor and the Official Receiver.

245. Leave to withdraw application

(1) Where the applicant applies to the Court for the application to be dismissed, or for leave to withdraw it, he or she shall, unless the Court otherwise orders, file in Court an affidavit specifying the grounds of the application and the circumstances in which it is made.

(2) If, since the application was filed, any payment has been made to the applicant by way of settlement, in whole or in part, of the liability in respect of which the application was made, or any arrangement has been entered into for securing or compounding them, the affidavit shall state—

(a) what dispositions of assets have been made for the purposes of the settlement or arrangement;

(b) whether, in the case of any disposition, it was assets of the debtor himself or herself, or of some other person; and

(c) whether, if it was assets of the debtor, the disposition was made with the approval of, or has been ratified by, the Court and, if so, specifying the relevant Court order.

(3) No order giving leave to withdraw an application shall be given before the application is heard.

DEBTOR'S APPLICATION

246. Scope of and interpretation for this Division

(1) This Division applies to an application by a debtor for a bankruptcy order under section 294 and for the making of a bankruptcy order on an application under that section.

(2) In this Division, unless the context otherwise requires—

"application" means a debtor's application for a bankruptcy order under section 294.

247. Form of application

(1) An application shall be dated and signed by the debtor and shall state—

(a) his or her name;

(b) his or her residential address;

(c) his or her occupation, if any;

(d) the nature of his or her business, the address at which he or she carries on the business and whether he or she carries on the business alone or with others;

(e) any names, other than the one stated under paragraph (a), by which he or she is or was known or by which he or she carries or has carried on any business;

(2) The title of the proceedings shall be determined by the particulars given under paragraph (1)(a) and (e).

(3) The debtor shall state in his or her application which of the conditions for making a bankruptcy order specified in section 293(1) apply to him or her.

248. Admission of insolvency

(1) An application shall contain a statement that the debtor is unable to pay his or her debts as they fall due, an explanation as to the cause of his or her insolvency and a request that a bankruptcy order be made against him or her.

(2) If, within the period of 5 years prior to the date that the application is filed, the debtor has had a bankruptcy order made against him or her, or has made a composition with his or her creditors in satisfaction of his or her debts or a scheme of arrangement of his or her affairs or has entered into an arrangement under Part II, Division 2 of the Act, particulars of these matters shall be given in the application.

(3) If, at the date of the filing of the application an arrangement under Part II, Division 2 of the Act is in force, the particulars required under paragraph(2) shall contain a statement to this effect and the name and address of the supervisor of the arrangement.

249. Filing of application

(1) Application for a bankruptcy order is made by filing at Court an application complying with this Division, together with—

(a) 3 copies of the application for sealing;

(b) an affidavit in support of the application made by the debtor complying with paragraph (2); and

(c) the verified statements of his or her assets and liabilities required by section 295(2) and 2 additional copies.

(2) The following documents shall be exhibited to the affidavit in support of an application—

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

(3) The Court shall—

(a) return a sealed copy of the application to the applicant; and

(b) send a sealed copy of the application and a copy of the verified statements of assets and liabilities to the Official Receiver.

250. Application where arrangement in place

(1) Where an application is made by the debtor at a time when an arrangement under Part II of the Act is in force between himself or herself and his or her creditors, he or she shall serve a copy of the application on the supervisor.

(2) Where the debtor proposes the supervisor as his or her trustee, within 5 business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor—

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he or she be appointed bankruptcy trustee; and

(b) advising the creditor—

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he or she shall send his or her objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he or she has received.

RULES APPLICABLE TO BANKRUPTCY ORDERS

251. Scope of and interpretation for this Division

This Division applies to bankruptcy orders whether made by the debtor, a creditor or a supervisor.

252. Drawing and content of bankruptcy order

(1) A bankruptcy order shall be drawn by the Court.

(2) A bankruptcy order shall—

(a) state the date that the application on which the order is made was filed;

(b) state the date of the making of the order; and

(c) contain a notice requiring the bankrupt forthwith after the service of the order on him or her to attend on the trustee at the time and place stated in the order.

(3) Where the debtor is represented by a legal practitioner, the bankruptcy order shall be endorsed with the name, address and telephone number of the legal practitioner and any reference.

253. Service of bankruptcy order

(1) The Court shall, forthwith on making a bankruptcy order, give notice to the trustee of his or her appointment and send 3 sealed copies of the order to him or her as soon as is practicable.

(2) The trustee shall, forthwith on receiving the sealed copies of the bankruptcy order from the Court, send one copy to the bankrupt and one copy to the Official Receiver.

254. Advertisement of bankruptcy order

(1) The trustee shall, within 10 days of receiving sealed copies of the bankruptcy order from the Court, advertise the Order.

(2) The advertisement shall state the name and address of the person appointed as trustee.

255. Stay of advertisement

(1) The Court may, on the application of the bankrupt or a creditor, order the trustee not to advertise a bankruptcy order pending a further order of the Court.

(2) An application for a stay of advertisement shall be supported by an affidavit setting out the grounds on which the application is made.

(3) The applicant for an order under paragraph (1) shall serve a sealed copy of the order, if made, on the trustee and on the Official Receiver.

256. Amendment of title of proceedings

(1) At any time after the making of a bankruptcy order, the trustee may apply to the Court for an order amending the title of the proceedings.

(2) The Court may include in an order under paragraph (1), directions for the service and advertisement of a notice of the amendment.

DIVISION 2 – INTERIM RELIEF

257. Application for order under section 307(1)

(1) An application for an order under section 307(1) [protection of assets after application for bankruptcy order], shall propose an eligible insolvency practitioner or the Official Receiver for appointment under section 307(1)(a).

(2) If the Official Receiver is proposed for appointment, he or she shall be given sufficient notice of the hearing to enable him or her to attend the hearing.

(3) An application referred to in paragraph (1) shall be supported by an affidavit stating—

(a) the grounds upon which the application is being made;

(b) where the proposed appointee is not the Official Receiver, that he or she has consented to act and, to the best of the applicant's belief is eligible to act as an insolvency practitioner in relation to the debtor;

(c) whether, to the applicant's knowledge, there has been proposed or is in force for the debtor a creditor's arrangement under Part II of the Act;

(d) the applicant's estimate of the value of the assets in respect of which the appointment is to be made; and

(e) if the Official Receiver is proposed for appointment, whether and in what manner he or she has been given notice of the application.

258. Hearing of application

(1) If the Official Receiver is proposed to be appointed under section 307(1)(a), he or she is entitled to attend the hearing and make such representations as he or she considers appropriate.

(2) The Court shall not appoint the Official Receiver unless he or she has been given notice of the application in accordance with rule 257(2).

259. Order under section 307(1)

(1) An order under section 307(1) shall state the nature and a short description of the assets of which the person appointed is to take control, and the duties to be performed by him or her in relation to the debtor's affairs.

(2) The Court shall, forthwith on making an order under section 307(1), give notice to the person appointed of his or her appointment and, as soon as is practicable send 2 sealed copies of the order to him or her.

(3) The person appointed by the Court shall, as soon as practicable, send one copy of the sealed order to the debtor.

DIVISION 3 – BANKRUPT'S ESTATE

260. Duties of bankrupt with respect to after acquired property

(1) The notice required to be given by the bankrupt to the trustee under section 316(4) of assets acquired by, or devolving on him or her, or of any increase of his or her income, is within 21 days of his or her becoming aware of assets or the increased income.

(2) If the bankrupt disposes of property before giving the notice required by this rule or in contravention of section 316(6), he or she shall forthwith disclose to the trustee the name and address of the person to whom he or she disposed of the assets and provide any other information which may be necessary to enable the trustee to trace the assets and recover them for the estate.

(3) Where the bankrupt gives the trustee notice under paragraph (2) of assets acquired by or devolving upon him or her, he or she shall not, without the trustee's consent in writing, dispose of the assets within the period of 42 days beginning with the date of the notice.

(4) Subject to paragraph (5), paragraphs (1) to (3) do not apply to assets acquired by the bankrupt in the ordinary course of a business carried on by him or her.

(5) If the bankrupt carries on a business, he or she shall, at least once in each six month period, provide to the trustee information with respect to the business, showing the total value of goods bought and sold or, as the case may be, services supplied, and the profit or loss arising from the business.

(6) Where paragraph (5) applies, the trustee may by a notice in writing, require the bankrupt to provide such further details of the business, including accounts, as are specified in the notice.

261. Action against person to whom bankrupt disposed assets

(1) Where assets have been disposed of by the bankrupt, before giving the notice required by rule 260(3) or in contravention of that rule, the trustee may serve notice on the person to whom the assets were disposed of, claiming the property as part of the estate by virtue of section 318(2).

(2) The trustee's notice under this rule shall be served within 28 days of his or her becoming aware of the identity of the person to whom the bankrupt disposed of the assets and an address at which he or she can be served.

262. Expenses of acquiring title to after-acquired assets

Any expenses incurred by the trustee in acquiring title to after-acquired property shall be paid out of the estate, in the prescribed order of priority.

263. Purchase of replacement property for items of excess value

(1) A purchase of replacement assets under section 319(3) may be made either before or after the realisation by the trustee of the value of the assets vesting in him or her under the section.

(2) The trustee is under no obligation, by virtue of the section, to apply funds to the purchase of a replacement for assets vested in him or her, unless and until he or she has sufficient funds in the estate for that purpose.

INCOME PAYMENTS ORDERS

264. Application for order

(1) An application by the trustee for an income payments order under section 322 is made by filing with the Court an application together with a statement of the grounds upon which the application is made.

(2) The trustee shall send a notice of the application to the bankrupt not less than 28 days before the day fixed for the hearing of the application, together with sealed copies of the documents filed with the Court.

(3) A notice sent to the bankrupt under paragraph (2) shall state that—

(a) unless at least 7 days before the date fixed for the hearing the bankrupt sends to the Court and to the trustee written consent to an order being made in the terms of the application, he or she is required to attend the hearing; and

(b) if he or she attends, he or she will be given an opportunity to show cause why the order should not be made, or an order should be made otherwise than as applied for by the trustee.

265. Notice of order

Where the Court makes an income payments order, the trustee shall, forthwith after the order is made, send a sealed copy of the order—

(a) to the bankrupt; and

(b) if the order is made under section 322(3)(b), to the person to whom the order is directed.

266. Order under section 322(3)(b)

(1) Where a person receives notice of an income payments order under section 322(3)(b), with reference to income otherwise payable by him or her to the bankrupt, he or she shall make the necessary arrangements for immediate compliance with the order.

(2) The trustee may, by written notice, authorise a person making payments to him or her in accordance with an order under section 322(3)(b) to deduct and retain such fee as may be specified in the notice towards the clerical and administrative costs of compliance with the order.

(3) The trustee shall send a copy of any notice under paragraph (2) to the bankrupt.

(4) Where a person receives notice of an income payments order imposing on him or her a requirement under section 322(3)(b), he or she shall forthwith give notice to the trustee if—

(a) he or she is no longer liable to make to the bankrupt any payment of income; or

(b) having made payments in compliance with the order, he or she ceases to be so liable.

267. Variation or discharge of order

(1) The trustee or the bankrupt may apply to the Court to vary or discharge an income payments order.

(2) Subject to paragraphs (5) and (6), where the application is made by the trustee, rule 264 applies to an application under this rule with such modifications as are necessary.

(3) A bankrupt shall make application under paragraph (1) by filing with the Court an application, a statement of the grounds upon which it is made and any affidavit that he or she intends to rely on.

(4) The bankrupt shall send sealed copies of the application, the statement of grounds and any affidavit filed with the Court to the trustee not less than 28 days before the day fixed for the hearing of the application.

(5) If an income payments order is made under section 322(3)(a), and the bankrupt does not comply with it, the trustee may apply to the Court for the order to be varied, so as to take effect under section 322(3)(b) as an order to the person making the payment.

(6) The trustee's application under paragraph (1) may be made ex parte.

(7) Where an application under this rule is made by the bankrupt, the trustee may, not less than 7 days before the date fixed for the hearing, file a written report of any matters which he or she considers ought to be drawn to the Court's attention.

(8) The trustee shall, as soon as reasonably practicable after filing a report under paragraph (7) send a sealed copy to the bankrupt.

(9) Where the Court makes an order under this rule, the trustee shall, forthwith after the order is made, whether on his or her application or on the application of the bankrupt, send a sealed copy of the order or variation or discharge—

(a) to the bankrupt; and

(b) if the order is made under paragraph (5) or the order varies or discharges an order made under section 322(3)(b), to the person making the payment.

DIVISION 4 – BANKRUPTCY TRUSTEE

268. Appointment of trustee by Court

(1) Where the Court appoints a trustee, it shall as soon as reasonably practicable after the date of the order, send 2 sealed copies of the order to the trustee who shall send one copy to the Official Receiver.

(2) The trustee's appointment takes effect from the date of the order.

269. Authentication of trustee's appointment

A sealed copy of the Court's order appointing a person as trustee of a bankrupt may, in any proceedings, be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of trustee in relation to the bankruptcy.

270. Removal of trustee

(1) Application for the removal of a trustee under section 328 is made by filing at Court—

(a) an application stating the grounds upon which the removal of the trustee is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the trustee and the Official Receiver, unless it is his or her application, not less than 10 days before the date fixed for the hearing.

(3) The trustee may file affidavit evidence in opposition to the application not less than 4 days before the date fixed for the hearing of the application.

(4) The trustee shall, not less than 4 days after being served with an application under paragraph (2) send to the Official Receiver a statement as to whether any of the bankrupt's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—

(a) the nature, value and location of the assets;

(b) any action taken by the trustee to deal with the assets or his or her reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a trustee shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the trustee on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove a trustee are not payable out of the bankrupt's estate.

(8) If the Court removes a trustee under section 328, it shall send a copy of the order removing him or her to—

(a) the trustee removed;

(b) any remaining trustee; and

(c) the Official Receiver.

271. Resignation of liquidator under section 329(1)(a)

(1) Where the trustee resigns under section 329(1)(a) [trustee no longer eligible to act as an insolvency practitioner in relation to the bankrupt], he or she shall send the Official Receiver with the notice of his or her resignation, a statement covering the matters specified in rule 270(4).

(2) The trustee shall, if so directed by the Official Receiver, verify the statement by affidavit.

272. Resignation of liquidator under section 329(1)(b)

(1) Unless the trustee is a joint trustee resigning in accordance with section 329(4), the notice of a creditors' meeting sent to creditors in accordance with section 329(5) shall be accompanied by an account of the trustee's administration of the bankruptcy, including a summary of his or her receipts and payments.

(2) The trustee shall, not less than 7 days before the date fixed for the creditors' meeting, send a copy of the notice and account referred to in paragraph (1) and a statement covering the matters specified in rule 270(4) to the Official Receiver and file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 329(5) a resolution is passed accepting the trustee's resignation, the chairman shall, forthwith, send the Official Receiver a copy of the resolution signed by the chairman.

(4) Where a trustee's resignation is accepted by the creditors, the trustee shall forthwith—

(a) send a notice of his or her resignation to the Official Receiver, and

(b) file a notice of his or her resignation with the Court.

(5) The trustee's resignation is effective from the date that the notice of his or her resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former trustee.

273. Leave to resign

(1) A trustee shall, not less than 7 days before the date fixed for the hearing of an application for leave to resign under section 329(6A), give notice of his or her application to—

(a) any joint trustee;

(b) the creditors' committee, if any; and

(c) the Official Receiver.

(2) If the Court gives the trustee leave to resign, it may make such provision as it considers appropriate with respect to matters arising in connection with his or her resignation.

(3) Where the Court gives the trustee leave to resign, section 328(3) applies with such modifications as are necessary.

(4) The Court shall send 2 sealed copies of the order to the trustee, who shall forthwith send one of the copies to the Official Receiver.

(5) Within 14 days of his or her resignation, the former liquidator shall send a notice of his or her resignation to the Official Receiver.

274. Death of liquidator

(1) Where the trustee dies, his or her personal representative shall give notice of his or her death to the Official Receiver, specifying the date of his or her death, unless notice has already been given to the Court and the Official Receiver under paragraphs (2) or (3).

(2) If a trustee who dies was a partner in a firm, notice of his or her death may be given to the Official Receiver and the Court by a partner in the firm.

(3) Notice of the death of a trustee may be given by any person producing to the Court and the Official Receiver the relevant death certificate or a copy of it.

(4) Where the Official Receiver receives a notice under paragraph (3) and the deceased trustee was the sole trustee of the bankrupt, the Official Receiver shall, as soon as reasonably practicable, apply to the Court under section 330(1) for the appointment of a replacement trustee, unless an application has already been made by the creditors' committee.

275. Advertisement of appointment

(1) A trustee who is appointed to replace a trustee who has, for whatever reason, ceased to hold office, shall within 21 days of the date of his or her appointment, advertise his or her appointment.

(2) His or her advertisement shall state that he or she has been appointed in place of a trustee who has ceased to hold office.

276. Solicitation

(1) Where the Court is satisfied that any improper solicitation has been used by or on behalf of a trustee in obtaining proxies or procuring his or her appointment, it may order that no remuneration, or that reduced remuneration, be payable to the trustee out of the assets of the estate.

(2) An order of the Court under paragraph (1) overrides any resolution of the creditors' committee or any other provision of the rules.

DIVISION 5 – ADMINISTRATION BY TRUSTEE

277. Meeting of creditors

(1) This rule applies to a creditors' meeting called under Part XII of the Act.

(2) The trustee shall give the bankrupt not less than 14 days notice of a creditors' meeting.

(3) If a creditors' meeting is adjourned, the chairman of the meeting shall give notice of the fact to the bankrupt, unless—

(a) the bankrupt was present at the meeting; or

(b) the chairman considers it to be unnecessary or impracticable to give notice to the bankrupt.

(4) The chairman of a creditors' meeting may admit the bankrupt or any other person to the meeting, if he or she has given reasonable notice of his or her wish to be present at the meeting.

(5) The chairman's decision is final as to what, if any, intervention may be made by the bankrupt, or by any other person, admitted to the meeting under this paragraph.

(6) If the bankrupt is not present at a creditors' meeting, and it is desired to put questions to him or her, the chairman may adjourn the meeting with a view to obtaining his or her attendance.

(7) Where the bankrupt is present at a creditors' meeting, only such questions may be put to him or her as the chairman may in his or her discretion allow.

278. Trustee's duty to report to Official Receiver and creditors

(1) Unless otherwise directed by the Official Receiver, a trustee shall at the end of every 6 months file with the Court and send to the Official Receiver and the creditors' committee, if any, a written report stating—

(a) the receipts and payments for the period;

(b) details of the assets realised and the assets remaining unrealised during the period and the reasons why the assets remaining unrealised have not been realised;

(c) the progress of his or her administration of the bankrupt's estate and any matters in connection with his or her administration which he or she considers should be drawn to the Official Receiver's attention; and

(d) such other information as the Official Receiver may require.

(2) Where a creditors' committee is not appointed, the report referred to in paragraph (1) shall be sent to each creditor.

DIVISION 6 – CLAIMS AND DISTRIBUTION OF ESTATE

279. Claims by unsecured creditors

A claim made against a bankrupt by an unsecured creditor under section 336 shall be in the prescribed form and shall specify—

(a) the name and address of the creditor;

(b) the total amount of his or her claim at the date of the bankruptcy order;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the bankrupt;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself or herself.

280. Claim forms.

(1) Unless the Court otherwise orders, the trustee shall send a claim form to each creditor of whom he or she is aware at the same time as he or she sends the creditor notice of his or her appointment under section 326.

(2) The trustee shall as soon as is practicable send a claim form to any creditor that he or she becomes aware of subsequent to sending out a notice under section 326.

281. Application to Court to expunge or amend an admitted claim

The applicant for an order expunging or reducing a claim under section 337(2) shall serve a copy of his or her application—

(a) in the case of an application by the trustee, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the trustee and on the creditor who submitted the claim.

282. Negotiable instruments

The trustee may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy

certified by the creditor or his or her authorised representative to be a true copy, is produced to the trustee.

283. Inspection of claims

The trustee shall allow claims in his or her custody or control to be inspected by—

(a) a creditor who has submitted a claim in the bankruptcy that has not been wholly rejected by the trustee;

(b) the bankrupt;

(c) a person acting on behalf of a person referred to in paragraph (a) or (b).

284. Distribution of dividend

Where the trustee distributes a dividend, he or she shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

285. Final meeting

(1) The trustee shall call a meeting under section 349 by sending a notice of the meeting, together with his or her final report, to all creditors not less than 28 days before the date fixed for the meeting.

(2) A copy of the notice and report sent to creditors under paragraph (1) shall, within the same time period, also be sent to the Official Receiver and the bankrupt

(3) The trustee's final report shall include a summary of his or her receipts and payments.

(4) At the final meeting, the creditors may question the trustee with respect to any matter contained in his or her report or concerning his or her administration of the bankrupt's estate.

(5) As soon as reasonably practicable after the final meeting has been held, the trustee shall send to the Official Receiver and file with the Court a notice that the meeting has been held and shall file a copy of his or her final report with the Court.

(6) If there is no quorum at the final meeting, the trustee shall report to the Court and the Official Receiver that a final meeting was summoned in accordance with the rules, but there was no quorum present and the final meeting is then deemed to have been held.

DIVISION 7 – DISCLAIMER

286. Notice of disclaimer

(1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the trustee and filed at Court with a copy.

(3) The Court shall return the sealed copy to the trustee.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the notice of disclaimer was returned to the trustee.

287. Communication of notice of disclaimer

(1) Written notice of a disclaimer notice shall be given under section 358(3) by sending or giving a copy of the sealed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 358(3), the following are entitled to receive notice of a disclaimer—

(a) where the property disclaimed is of a leasehold nature, every person who, to the trustee's knowledge, claims under the bankrupt as underlessee or mortgagee;

(b) where the disclaimer is of property in a dwelling house, every person who, to the trustee's knowledge, is in occupation of, or claims a right to occupy, the house;

(c) every person who, to the trustee's knowledge—

(i) claims an interest in the disclaimed property; or

(ii) is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(d) where the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a trustee that a person's rights are affected by a disclaimer, the trustee shall forthwith give written notice of the disclaimer to that person in accordance with this rule unless—

(a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A disclaimer notice required to be given to a person under the age of 18 years in relation to the disclaimer of property in a dwelling house is sufficiently given if given to the parent or guardian of that person.

(5) A trustee disclaiming property may at any time, in addition to his or her obligations under the Act and the rules, give notice of the disclaimer to any person who, in his or her opinion, ought in the public interest or otherwise to be informed of the disclaimer.

288. Duty to keep Court informed

The trustee shall, as soon as reasonably practicable, notify the Court of each person to whom he or she has given notice of disclaimer in accordance with the Act and the rules, specifying the name and address of each person and his or her interest in the property disclaimed.

289. Notice to elect

(1) A notice to elect shall be served on a trustee by delivering the notice to him or her personally or sending it to him or her by registered post.

(2) Where property cannot be disclaimed by the trustee without the leave of the Court, if the trustee applies to the Court for leave to disclaim within the 28 day period specified in section 360(2), the Court shall extend the time allowed by that section for giving notice of disclaimer to a date not earlier than the date of the application.

290. Application for leave to disclaim

(1) Where the trustee requires the leave of the Court to disclaim property claimed for the bankrupt's estate under section 318 or 319, he or she may apply for that leave ex parte.

(2) An application under paragraph (1) shall be accompanied by a report—

(a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified;

(b) setting out the reasons why, the property having been claimed for the estate, the Court's leave to disclaim is now applied for; and

(c) specifying the persons, if any, who have been informed of the trustee's intention to make the application.

(3) If the report states that any person's consent to the disclaimer has been signified, a copy of that consent shall be annexed to the report.

(4) The Court may, on consideration of the application, grant the leave applied for and it may, before granting leave—

(a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 362; and

(b) fix a venue for the hearing of the application under section 361(2).

291. Notice to declare interest in onerous property

(1) If it appears to the trustee that a person may have an interest in onerous property, he or she may give notice to that person to declare, within 14 days, whether he or she claims any interest in the property and, if so, the nature and extent of his or her interest.

(2) If a person fails to comply with a notice given under paragraph (1), the trustee is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

292. Application for vesting order or order for delivery

(1) An application for a vesting order or an order for delivery under section 362 shall be made within 3 months of the earlier of—

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the trustee.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the trustee and an affidavit—

(a) stating whether his or her claim is based upon—

(i) an interest in the disclaimed property,

(ii) an undischarged liability; or

(iii) the occupation of a dwelling house;

(b) specifying the date upon which he or she received a copy of the trustee's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his or her application is based and the order that he or she desires the Court to make under section 362.

(3) The Court shall return a sealed copy of the application to the applicant.

(4) Not less than 7 days before the date fixed for the hearing of the application, the applicant shall serve on the trustee—

(a) a copy of the sealed application; and

(b) a copy of the affidavit filed in support.

(5) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the trustee.

(7) Unless there is one or more applications pending under—

(a) section 359(2), in a case where the property disclaimed is of a leasehold nature; or

(b) section 359(4), in a case where the property disclaimed is property in a dwelling house;

and section 359(2) or 359(4), as the case may be, apply to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

DIVISION 8 – INVESTIGATION OF BANKRUPT'S AFFAIRS

STATEMENT OF ASSETS AND LIABILITIES

293. Statement of assets and liabilities

(1) The statement of assets and liabilities required—

(a) to be filed by a debtor under section 295(2) together with his or her application for a bankruptcy order; and

(b) to be submitted by a bankrupt under section 366(1); shall be in the prescribed form and shall contain the information required by the form.

(2) Without limiting paragraph (1), a statement of assets and liabilities shall set out—

(a) the assets and liabilities of the debtor or bankrupt;

(b) the names and addresses of the creditors of the debtor or bankrupt; and

(c) the security interests held by creditors of the debtor or bankrupt and the dates upon which the security interests were created.

294. Scope of rules 295 to 298

Rules 295 to 298 apply in respect of a statement of assets and liabilities required to be submitted by a bankrupt under section 366(1).

295. Submission and filing of verified statement

(1) The trustee of a bankrupt shall provide him or her with the forms required to complete the statement of assets and liabilities together with instructions for completing the forms.

(2) The bankrupt shall verify his or her statement of assets and liabilities by affidavit and submit it to the trustee together with one copy.

(3) The trustee shall file the verified statement of assets and liabilities in Court.

296. Release from duty to submit statement of assets or liabilities and extension of time

(1) A bankrupt may request the trustee—

(a) to release him or her from his or her obligation to submit a statement of assets and liabilities; or

(b) for an extension of time for submitting the statement; under section 366(3).

(2) The trustee may grant the bankrupt a release or an extension of time under section 366(3) at his or her own discretion, without having received a request from the bankrupt.

297. Application to Court where office holder refuses a request under rule 296

(1) If the trustee refuses a request made under rule 296, the bankrupt may apply to the Court for an order granting him or her the release or the extension.

(2) The bankrupt shall give the trustee at least 10 business days notice of an application under paragraph (1) and of any affidavit filed in support of his or her application.

(3) The trustee is entitled to appear and make representations at the hearing of an application under paragraph (1) and, whether or not he or she appears, to file with the Court a written report setting out any matters that he or she considers should be brought to the attention of the Court.

(4) The trustee shall send the bankrupt a copy of a report filed under paragraph (3) at least 5 business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the bankrupt's costs shall be paid in any event by him or her and, unless the Court otherwise orders, no allowance towards them shall be made out his or her estate.

(6) The Court shall send sealed copies of an order made under this rule to the trustee and to the bankrupt.

298. Expenses of statement of assets and liabilities

(1) If the bankrupt is unable to prepare a statement of assets and liabilities himself or herself, the trustee may, at the expense of the estate—

(a) employ a person to assist the bankrupt in the preparation of the statement; or

(b) authorise an allowance payable out of the estate towards expenses to be incurred by the bankrupt in employing a person approved by the trustee to assist the bankrupt in preparing the statement.

(2) A request by the bankrupt for an authorisation under paragraph (1)(b) shall be accompanied by an estimate of the expenses involved.

(3) An authorisation given by the trustee under this rule shall be subject to such conditions, if any, as he or she considers appropriate with respect to the manner in which any person may obtain access to relevant books and papers.

(4) Nothing in this rule relieves the bankrupt from any obligation with respect to the preparation, verification and submission of his or her statement of assets and liabilities, or to the provision of information to the Official Receiver or the trustee.

299. Report where statement of assets and liabilities submitted

(1) Where the bankrupt submits a statement of assets and liabilities under section 366(1), the trustee shall send to creditors a report containing a summary of the statement and such observations, if any, as he or she considers it appropriate to make with respect to it or to the bankrupt's affairs generally.

(2) The trustee need not comply with paragraph (1) if he or she has previously reported to creditors with respect to the bankrupt's affairs, so far as known to him or her, and he or she is of opinion that there are no additional matters which ought to be brought to their attention.

300. Statement of affairs dispensed with

(1) Where the bankrupt has been released from the obligation to submit a statement of affairs, the trustee shall, as soon as reasonably practicable, send to creditors a report containing a summary of the bankrupt's assets and liabilities and affairs, so far as within his or her knowledge, and such observations, if any, as he or she considers it would be appropriate for him or her to make.

(2) The trustee need not comply with paragraph (1) if he or she has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him or her) and he or she is of opinion that there are no additional matters which ought to be brought to their attention.

EXAMINATION

301. Application for examination

(1) An application to the Court under section 369(1) for the examination of a bankrupt shall state whether the Official Receiver or the trustee seeks the examination to be held in public or in private.

(2) The Official Receiver or trustee shall, together with the application, file with the Court a statement setting out—

(a) the person or persons sought to be examined;

(b) a general description of the matters the person will be examined on;

(c) where the person sought to be examined is not the bankrupt or the bankrupt's spouse, the grounds for the application;

(d) whether any further orders or directions are sought under section 370(3) or (6).

(3) Unless the Court gives a direction under section 370(6)(a), the matters upon which the examinee may be examined are not limited to the matters stated in the application in accordance with paragraph (2)(b).

302. Advertisement of order

Where the Court makes an order for the public examination of a bankrupt—

(a) it may give directions for the advertisement of the order; and

(b) if it does not give such directions, the Official Receiver or the trustee, as the case may be, may advertise the order in such manner as he or she considers appropriate.

303. Application required by creditors

(1) A notice to the trustee under section 369(4) shall be in writing and shall be accompanied by—

(a) a list of the creditors concurring with the notice and the amount of their respective claims in the bankruptcy;

(b) written confirmation of each creditor's concurrence with the notice; and

(c) a statement of the reasons why the creditors require the trustee to make application for the examination of the bankrupt.

(2) The trustee shall not make an application as required by the creditors unless there is deposited with him or her such sum as he or she determines to be appropriate by way of security for the expenses of the hearing of the examination, if ordered.

(3) Within 28 days of receiving a notice under section 369(4), the documents specified in paragraph (1) and the security deposit, the trustee shall apply to the Court for the examination of the bankrupt.

(4) If the trustee considers that the request is an unreasonable one, he or she may apply to the Court for an order relieving him or her from the obligation to make the application otherwise required by that subsection.

(5) If the Court makes an order under paragraph (4), and the application for the order was made ex parte, the trustee shall, as soon as reasonably practicable after the order is made, give notice of the order to the creditors named in the notice.

304. Record of examination

(1) A written record shall be kept of an examination.

(2) The record shall be read either to or by the examinee and signed by him or her.

(3) The Court may order that the examinee verify the written record of the examination by affidavit.

305. Adjournment of examination

(1) An examination may be adjourned by the Court either to a fixed date or generally.

(2) Without limiting paragraph (1), the Court shall adjourn an examination if criminal proceedings have been instituted against the examinee and the Court is of opinion that the continuance of the hearing would prejudice a fair trial of those proceedings.

(3) Where an examination is adjourned generally, the Court may at any time on the application of the trustee, the Official Receiver or the bankrupt—

(a) fix a venue for the resumption of the examination; and

(b) give such directions concerning the examination as it considers appropriate.

306. Costs of an examination

(1) The costs and expenses incurred by an examinee or by a creditor in connection with an examination, including the costs of representation by a legal practitioner, shall be borne by him or her and shall not be payable out of the bankrupt's estate as a cost of the bankruptcy.

(2) Subject to paragraph (3), the costs of the trustee and, if appropriate, the Official Receiver in connection with an examination ordered are a cost of the bankruptcy and shall be paid out of the bankrupt's estate in accordance with the prescribed priority.

(3) Where an examination of the bankrupt has been ordered by the Court on a requisition of the creditors under section 369(4), the Court may order that the expenses of the examination are to be paid, as to the whole or a specified proportion, out of the deposit under rule 303(2), instead of out of the estate.

DIVISION 9 – DISCHARGE AND ANNULMENT OF BANKRUPTCY

DISCHARGE

307. Application in relation to automatic discharge

(1) This rule applies to an application made by the Official Receiver or the trustee under section 376(2).

(2) An affidavit, or in the case of the Official Receiver, a report stating the grounds upon which the application is made shall be filed together with the application.

(3) A copy of the endorsed application, together with the affidavit or report in support, shall be sent to the persons specified in paragraph (4) so as to reach them at least 21 days before the date fixed for the hearing.

(4) The following persons are entitled to be given notice of the application—

(a) the bankrupt;

(b) where the applicant is the Official Receiver and he or she is not the bankruptcy trustee, the bankruptcy trustee; and

(c) where the applicant is the bankruptcy trustee (not being the Official Receiver), the Official Receiver.

(5) The bankrupt may, not later than 7 days before the date of the hearing, file with the Court an affidavit specifying any statements in the applicant's affidavit or report which he or she intends to deny or dispute.

(6) An affidavit filed under paragraph (5) shall be sent to the Official Receiver and the bankruptcy trustee, if different, not less than 4 days before the date of the hearing.

(7) If, on the hearing of the application, the Court makes an order under section 376(2), the applicant shall serve a copy on each person entitled to receive notice of the application under paragraph (4).

308. Application concerning order for suspension of discharge

(1) This rule applies to an application made by the bankrupt under section 377.

(2) The bankrupt shall, together with the application, file an affidavit stating the grounds upon which the application is made.

(3) A copy of the endorsed application, together with the affidavit in support, shall be sent to the Official Receiver and the trustee, if different, so as to reach them at least 28 days before the date fixed for the hearing.

(4) The Official Receiver and the bankruptcy trustee, if different—

(a) may file with the Court a report of any matters which he or she considers ought to be drawn to the Court's attention; and

(b) may appear and be heard on the bankrupt's application.

(5) If the Court's order under section 376(2) was for the period for automatic discharge to cease to run until the fulfilment of specified conditions, the Court may request a report from the Official Receiver or the bankruptcy trustee as to whether those conditions have or have not been fulfilled.

(6) If an affidavit is filed under paragraph (4) or a report is filed under paragraph (5), copies shall be sent to the bankrupt and the Official Receiver or the bankruptcy trustee, as the case may be, not later than 14 days before the hearing.

(7) The bankrupt may, not later than 7 days before the date of the hearing, file with the Court an affidavit specifying any statements in the report or affidavit referred to in paragraph (6) which he or she intends to deny or dispute.

(8) An affidavit filed under paragraph (7) shall be sent to the Official Receiver and the trustee, if different, not less than 4 days before the date of the hearing.

(9) If, on the bankrupt's application, the Court discharges the order under section 376(2) it shall issue a certificate to the bankrupt stating that it has done so, with effect from a specified date and the bankrupt shall send copies of the certificate to the Official Receiver and the trustee, if different.

309. Application for discharge

(1) An application by a bankrupt for his or her discharge under section 378 shall state whether the application is made under subsection (1)(a) or (1)(b) of that section.

(2) Where a bankrupt makes an application for his or her discharge under section 378, he or she shall deposit with the Official Receiver such sum as the Official Receiver reasonably requires to comply with his or her obligations under paragraph (3).

(3) Subject to paragraph (5), upon receiving an application for discharge by the Court, the Official Receiver shall give notice of the application to every creditor who, to the Official Receiver's knowledge, has a claim outstanding against the estate which has not been satisfied.

(4) Notices under paragraph (3) shall be given not later than 14 days before the date fixed for the hearing of the bankrupt's application.

(5) If the bankrupt fails to comply with paragraph (2)—

(a) the Official Receiver is not obliged to give notice under paragraph (3); and

(b) the Court shall not make an order discharging the bankrupt.

310. Report of Official Receiver

(1) Where the bankrupt makes an application for his or her discharge under section 378, the bankruptcy trustee shall file an affidavit, and the Official Receiver may file a report, at least 21 days before the date fixed for the hearing of the application as to—

(a) whether paragraphs (a) to (j) in section 379(4), or any of them, apply to the bankrupt and, if so, providing particulars; and

(b) any other matters that the trustee and the Official Receiver consider should be brought to the attention of the Court.

(2) A copy of the affidavit and report filed under paragraph (1) shall be sent to the bankrupt at least 14 days before the date fixed for the hearing of the application.

ANNULMENT OF BANKRUPTCY ORDER

311. Application for annulment

An application to the Court under section 382(1) for the annulment of a bankruptcy order shall specify under which paragraph of that subsection it is made and shall be supported by an affidavit stating the grounds on which it is made.

312. Notice of application and other documents

(1) Notice of an application under section 382(1) shall be given—

(a) to the trustee and, if he or she is not the trustee, to the Official Receiver;

(b) if the application is made under section 382(1)(a), to the person on whose application the bankruptcy order was made; and

(c) if the applicant is not the bankrupt, to the bankrupt.

(2) Any notice required to be given, or document sent, under the rules in this Division relating to annulment to the trustee, shall also be given or sent, if he or she is not trustee, to the Official Receiver within the time periods specified in the relevant rule.

(3) Any notice required to be given, or document sent, under the rules in this Division relating to annulment to the trustee or any other person shall also be given, if he or she is not the applicant, to the bankrupt within the time periods specified in the relevant rule.

313. Report by trustee

(1) Where the application is made under section 382(1)(b), not less than 21 days before the date fixed for the hearing, the trustee shall file with the Court a report with respect to the following matters—

(a) the circumstances leading to the bankruptcy;

(b) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the application;

(c) details of the bankrupt's creditors who are known to him or her to have claims, but have not submitted them; and

(d) such other matter as the person making the report considers would assist the Court in making a decision on the application.

(2) The report filed under paragraph (1) shall include particulars of the extent to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured and, in so far as the debts and expenses of the bankruptcy are unpaid but secured, the person making the report shall state in it whether and to what extent he or she considers the security to be satisfactory.

(3) A copy of the report shall be sent to the applicant at least 14 days before the date fixed for the hearing.

(4) The applicant for an order annulling the bankruptcy may, if he or she wishes, file further affidavits in reply to the trustee's report.

(5) The applicant shall send a copy of any affidavit sworn under paragraph (4) to the trustee.

(6) Where the Official Receiver is not the trustee, he or she may file a report with the Court, a copy of which shall be sent to the applicant at least 7 days before the hearing.

314. Power of Court to stay proceedings

(1) The Court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this rule may be made ex parte.

(3) Where application is made under this rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant shall send a copy of the application to the trustee in sufficient time to enable him or her to be present at the hearing and to make any representations he or she may wish to make.

(4) Where the Court makes an order under this rule staying all or any part of the proceedings in the bankruptcy, the rules in this Division in connection with an annulment continue to apply.

(5) If the Court makes an order under this rule, it shall send copies of the order to the applicant and to the trustee.

315. Notice to creditors who have not submitted a claim

Where an application for annulment is made under section 382(1)(b) and the trustee reports under rule 313 that there are creditors of the bankrupt who have not submitted a claim, the Court may—

(a) direct the trustee to send notice of the application to such of those creditors as the Court thinks ought to be informed of it, with a view to their submitting a claim for their debts within 21 days;

(b) direct the trustee to advertise the application so that creditors who have not submitted a claim may do so within a specified time; and

(c) adjourn the application, for a period of not less than 35 days.

316. The hearing

(1) The trustee shall attend the hearing of the application.

(2) If he or she is not trustee, the Official Receiver may but is not required to attend, unless he or she has filed a report under rule 313(6).

(3) If the Court makes an order on the application, it shall send copies of the order to the applicant and the trustee and to the Official Receiver, if he or she is not the trustee.

317. Security to be provided by bankrupt

(1) This rule applies to an application made under section 382(1)(b).

(2) If a debt is disputed, or a creditor who has submitted a claim can no longer be traced, the Court shall not annul the bankruptcy unless the bankrupt has given such security, in the form of money paid into court, or a bond entered into with approved sureties, as the Court considers adequate to satisfy any sum that may subsequently be found to be due to the creditor concerned together with, if the Court considers it appropriate, costs.

(3) Where under paragraph (2), security has been given in the case of an untraced creditor, the Court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it considers appropriate.

(4) If advertisement is ordered under this paragraph, and no claim on the security is made within 12 months from the date of the advertisement, or the first advertisement, if more than one, the Court shall, on application being made to it, order the security to be released.

318. Notice to creditors

(1) Where the trustee has notified creditors of the bankruptcy order, and the bankruptcy order is annulled, he or she shall as soon as reasonably practicable notify them of the annulment.

(2) Expenses incurred by the trustee in giving notice under this rule are a charge in his or her favour on the assets of the former bankrupt, whether or not actually in his or her hands.

(3) Where any assets is in the hands of any person other than the former bankrupt himself or herself, the trustee's charge is valid subject only to any costs that may be incurred by that other person in effecting realisation of the property for the purpose of satisfying the charge.

319. Advertisement of annulment

(1) Where a bankruptcy order is annulled, the former bankrupt may require the Official Receiver to advertise the annulment.

(2) Advertisement of the annulment under paragraph (1) shall be at the cost of the former bankrupt, and the Official Receiver is not obliged to advertise the annulment until the former bankrupt has paid the costs of advertisement to him or her.

320. Trustee's final account

(1) The annulment of a bankruptcy order under section 382 does not operate to release the trustee from any duty or obligation imposed on him or her by or under the Act or the rules to account for his or her transactions in connection with the former bankrupt's estate.

(2) The trustee shall send to the Official Receiver, and file in Court, a copy of his or her final account as soon as reasonably practicable after the Court's order annulling the bankruptcy order.

(3) The final account shall include a summary of the trustee's receipts and payments in the administration of the former bankrupt's estate.

(4) The trustee is released from such time as the Court may determine, having regard to whether—

(a) paragraph (2) of this rule has been complied with; and

(b) any security given under rule 317(2) has been, or will be, released.

DIVISION 10 – MISCELLANEOUS PROVISIONS

321. Prescribed priority

The following costs and expenses of the bankruptcy shall be paid in the order of priority in which they are listed (the "prescribed priority")—

(a) the costs and expenses properly incurred by the trustee in preserving, realising or getting in the property of the bankrupt or in carrying on the bankrupt's business; including—

(i) the costs and expenses of any legal proceedings which the trustee has brought or defended whether in his or her own name or in the name of the bankrupt; and

(ii) the costs of and in connection with an examination ordered under section 370;

(b) the remuneration of any person appointed under section 307;

(c) the deposit lodged under section 307(3);

(d) the costs of the application on which the trustee was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(e) any costs allowed in respect of the preparation of a statement of assets and liabilities;

(f) the cost of and in respect of any creditors' committee appointed in the bankruptcy;

(g) any disbursements properly paid by the trustee;

(h) the remuneration of anyone employed by the trustee;

(i) the remuneration of the trustee;

(j) any other fees, costs, charges or expenses properly incurred in the course of the bankruptcy or properly chargeable by the trustee in carrying out his or her functions in the bankruptcy.

322. Register of Bankruptcy Orders

(1) The Official Receiver shall maintain a register of bankruptcy orders of which he or she receives notice under rule 253(1) or (2).

(2) The register of bankruptcy orders shall contain the following information—

(a) the date of the bankruptcy order and the Court reference number;

(b) the name and any former name, gender, occupation (if any) and date of birth of the bankrupt;

(c) the bankrupt's last known address;

(d) where the bankrupt has been an undischarged bankrupt at any time in the period of 15 years ending with the date of the bankruptcy order in question, the date of the most recent of any previous bankruptcy orders, excluding any bankruptcy order that has been annulled under section 382;

(e) any name by which the bankrupt is known other than his or her true name;

(f) any business or trading names that the bankrupt uses or, during the previous 10 years, has used;

(g) the name and address of the bankruptcy trustee;

(h) subject to paragraph (i), where the bankrupt is eligible for automatic discharge under section 376, the date on which the bankrupt will be discharged or, if the bankrupt is not eligible for automatic discharge under section 376, a statement to that effect;

(i) if the Court makes an order under section 376(2), details of the order together with the revised discharge date, if any;

(j) details of any order made under section 377;

(k) the date on which the bankrupt is discharged and any conditions to which the discharge is subject.

(3) If, pursuant to rule 316(3), the Official Receiver is given notice of the making of an annulment order under section 382, he or she shall enter the annulment order in the register of bankruptcy orders.

(4) Where the Official Receiver enters a discharge or annulment in the register of bankruptcy orders under this rule, he or she shall, on the expiry of 3 years after the date of the discharge or annulment order, delete from the register all information relating to the bankruptcy order.

(5) The register of bankruptcy orders is open to public inspection.

323. Changes to information entered in the register of bankruptcy orders

(1) If the Official Receiver becomes aware that any information which has been entered in the register of bankruptcy orders is inaccurate he or she shall rectify the information entered in the register.

(2) If the Official Receiver receives notice of the death of a bankrupt in respect of whom bankruptcy information has been entered in the register of bankruptcy orders, he or she shall cause the date of his or her death to be entered in the register.

PART XII - NETTING AND FINANCIAL CONTRACTS

324. Financial contracts

(1) For the purposes of Part XVII of the Act, a financial contract is a contract, including any terms and conditions incorporated into any such contract, pursuant to which payment or delivery obligations that have a market or an exchange price are due to be performed at a certain time or within a certain period of time.

(2) Without limiting paragraph (1), the following are financial contracts—

(a) a currency, cross-currency or interest rate swap agreement;

(b) a basis swap agreement;

(c) a spot, future, forward or other foreign exchange agreement;

(d) a cap, collar or floor transaction;

(e) a commodity swap;

(f) a forward rate agreement;

(g) a currency or interest rate future;

(h) a currency or interest rate option;

(i) equity derivatives, such as equity or equity index swaps, equity options and equity index options;

(j) credit derivatives, such as credit default swaps, credit default basket swaps, total return swaps and credit default options;

(k) energy derivatives, such as electricity derivatives, oil derivatives, coal derivatives and gas derivatives;

(l) weather derivatives, such as weather swaps or weather options;

(m) bandwidth derivatives;

(n) freight derivatives;

(o) carbon emissions derivatives;

(p) a spot, future, forward or other commodity contract;

(q) a repurchase or reverse repurchase agreement;

(r) an agreement to buy, sell, borrow or lend securities, such as a securities lending transaction;

(s) a title transfer collateral arrangement;

(t) an agreement to clear or settle securities transactions or to act as a depository for securities;

(u) any other agreement similar to any agreement or contract referred to in paragraphs (a) to (t) with respect to reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments and precious metals;

(v) any derivative or option in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (u); and

(w) any agreement or contract designated as such by the Commission;

PART XIII - MISCELLANEOUS AND GENERAL

325. Insolvency practitioner's consent to act

(1) For the purposes of section 482(1)(b), the written consent of an insolvency practitioner shall specify the appointment to which it relates.

(2) The written consent of an insolvency practitioner shall—

(a) where the appointment is to be made by the Court, specify the date of the hearing for which it is provided;

(b) where the appointment is to be made by the members of a company, specify that the consent is valid only for a meeting of the members to be held on a date specified in the consent, or at any adjournment of the meeting,

and, in either case shall state the period of time for which the consent is valid which shall not exceed 6 weeks.

326. Remuneration

(1) In this rule, "insolvency practitioner" has the meaning specified in section 432(2).

(2) Where an administrator, liquidator or bankruptcy trustee sells assets on behalf of a secured creditor, he or she is entitled to be paid out of the assets reasonable remuneration fixed in accordance with the general principles contained in section 432.

(3) If the administrator, liquidator or bankruptcy trustee cannot agree his or her remuneration with the secured creditor, he or she may apply to the Court to fix the remuneration and the Court shall fix the remuneration in accordance with the general principles contained in section 432.

(4) Where insolvency practitioners are appointed jointly, the remuneration shall be apportioned as agreed between them.

(5) If jointly appointed insolvency practitioners cannot agree how the remuneration should be apportioned between them, the matter may be referred for decision to the Court, to the creditors' committee, if any, or to a meeting of creditors.

(6) If the insolvency practitioner is a legal practitioner and employs his or him own firm, or any partner in it, to act in or in connection with the insolvency proceeding in respect of which he or she is appointed, profit costs shall not be paid unless authorised by the creditors' committee or the Court.

INSOLVENCY SURPLUS ACCOUNT

327. Payments into Insolvency Surplus Account[489]

(1) Immediately after the completion of a liquidation or a bankruptcy, the liquidator or bankruptcy trustee shall pay all monies representing unclaimed assets of the company or the bankrupt to the Government for payment into the Insolvency Surplus Account.

(2) A supervisor of a company or individual creditors' arrangement, an administrator or a receiver may at any time apply to the Court for an order permitting him or her to pay any monies that he or she holds with respect to the arrangement, administration or receivership that represent unclaimed assets to the Government for payment into the Insolvency Services Account.

(3) The Court shall not make an order under paragraph (2) unless the Government has been given notice of the hearing.

(4) A liquidator, bankruptcy trustee, supervisor, administrator or receiver paying money to the Government under paragraph (1), or pursuant to an order of the Court under paragraph (2), shall provide the Government with such information, documentation and explanations regarding the monies, the assets which they represent and the claims or potential claims that have or may be made in respect of the monies as the Government may require.

328. Investment of monies in Insolvency Surplus Account[490]

(1) The Government may invest monies standing to the credit of the Insolvency Account—

(a) in one or more deposit or other interest bearing accounts with a reputable bank or banks licensed and operating in the British Virgin Islands; and

(b) in such investments as may be approved by Cabinet for that purpose.

(2) Any interest received on monies standing to the credit of the Insolvency Surplus Account, or interest or income received in respect of investments made in accordance with paragraph (1), shall be paid into the Consolidated Fund, and a claimant of monies paid into the Insolvency Surplus Account shall not be entitled to make any claim in respect of such interest or income.

329. Payments out of the Insolvency Surplus Account[491]

(1) The Government shall, subject to such conditions as it may reasonably impose, pay or distribute monies from the fund to any person that it is satisfied is entitled to claim those monies under, or in respect of, the insolvency proceeding in respect of which the monies were paid into the Insolvency Surplus Account.

(2) The Government shall keep accounts of the monies in the Insolvency Surplus Account, including those monies that are invested in accordance with rule 328(1), identifying the insolvency

proceeding to which each receipt and payment relates and showing the balance remaining in respect of each insolvency proceeding.

(3) Any monies standing to the credit of the Insolvency Surplus Account 20 years after they were paid into the account, shall, provided that there is no outstanding claim in respect of those monies, be paid to and become the property of the Government of the British Virgin Islands and no person shall thereafter be entitled to make any claim to those monies.

SCHEDULE 1 - [RULE 4(2)] - PROVISIONS OF CPR NOT APPLICABLE IN INSOLVENCY PROCEEDINGS

CPR PART	PROVISIONS NOT APPLICABLE IN INSOLVENCY PROCEEDINGS
Part 2 (Application and Interpretation)	Rule 2.4 (Definitions), all definitions except: -"application" and "applicant"; -"court office"; -"FAX"; -"filing"; -"The Hague Convention"; -"judge" -"master"; -"month"; -"order"; -"party" and -"the overriding objective". Rule 2.5 (Who May Exercise the Powers of the Court), paragraphs (1), (2) and (3) only.
Part 3 (Time, Documents)	Rule 3.7 (Filing of documents) does not apply to a document filed with the Registrar of Companies. Rule 3.10 (Forms). Rule 3.11 (Statements of case – address for service). Rule 3.12 (Statement of case – certificate of truth).
Part 5 (Service of Claim Form Within Jurisdiction)	Rule 5.2 (Statement of claim to be served with claim form). Rule 5.16 (Service of claim by contractually agreed method). Rule 5.17 (Service of claim form on agent of principal who is out of jurisdiction). Rule 5.18 (Service of claim form for possession of vacant land). Rule 5.19 (Deemed date of service), paragraph (3) only.
Part 6 (Service of Other Documents)	Rule 6.6 (Deemed date of service), paragraph (3) only.
Part 7 (Service of Court Process out of Jurisdiction)	Rule 7.1 (Scope of this Part), paragraph (2)(a) and (2)(c) only. Rule 7.6 (Acknowledgement of service and defence where claim served out of the jurisdiction)
Part 8 (How to Start Proceedings)	Entire Part.
Part 9 (Acknowledgement of Service and Notice of Intention to Defend)	Entire Part.

CPR PART	PROVISIONS NOT APPLICABLE IN INSOLVENCY PROCEEDINGS
Part 10 (Defence)	Entire Part.
Part 12 (Default Judgements)	Entire Part.
Part 13 (Setting Aside or Varying Default Judgement)	Entire Part.
Part 14 (Judgement on Admissions)	Entire Part.
Part 15 (Summary Judgement)	Entire Part.
Part 16 (Assessment of Damages)	Entire Part.
Part 17 (Interim Remedies)	Rule 17.5 (Interim payments – general procedure). Rule 17.6 (Interim payments – conditions to be satisfied and matters to be taken into account). Rule 17.7 (Powers of Court where it has made an order for an interim payment).
Part 18 (Ancillary Claims)	Entire Part.
Part 19 (Addition and Substitution of Parties)	Entire Part.
Part 20 (Changes to Statement of Case)	Entire Part.
Part 21 (Representative Parties)	Entire Part.
Part 23 (Minors and Patients)	Entire Part.
Part 26 (Case Management – The Court's Powers)	Rule 26.1 (The Court's general powers of management), paragraph (2)(a) and (2)(b) only.
Part 60 (Appeals to the High Court)	Entire Part.

SCHEDULE 2 - [RULE 2(2)] - PREFERENTIAL CLAIMS

1. In this Schedule—

"debtor" means—

(a) in the case of a liquidation, the company in liquidation; or

(b) in the case of a bankruptcy, the bankrupt.

"relevant date" means the commencement of the liquidation or the bankruptcy, as the case may be.

2. For the purposes of section 2(1), the claims set out in column 1 of the table below are preferential claims up to the maximum amount specified in column 2 of the table or up to an unlimited amount where specified in column 2.

NATURE OF CLAIM	MAXIMUM AMOUNT OF CLAIM TO BE REGARDED AS PREFERENTIAL
The amount due to a person as a present or past employee of the debtor that represents— (a) wages and salary, including commission and any amount payable by way of allowance or reimbursement, due in respect of the whole or any part of the period of 6 months immediately prior to the relevant date; or (b) accrued holiday pay in respect of any period of employment before the relevant date, whether the employee's contract of employment was terminated before or after the relevant date.	$10,000
The amount due by the debtor to the BVI Social Security Board— (a) in respect of employees' contributions deducted from the employee; (b) in respect of employer's contributions payable for the 6 months immediately before the relevant date.	No limit
The amount due in respect of pension contributions or contributions in respect of medical insurance payable during the 12 months immediately before the relevant date by the debtor as the employer of any person, including any amounts deducted from the employee.	$5,000 in respect of each employee
Sums due to the Government of the Virgin Islands in respect of any tax, duty, including Stamp Duty, licence fee or permit.	$50,000
Sums due to the Commission in respect of any fee or penalty.	$20,000

3. Preferential claims rank equally between themselves and, if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

SCHEDULE 3 – INSOLVENCY RULES - FORMS

NO.	FORM	TITLE
1	86 (7)	Notice of Court Order to Dispose of Perishable Assets
2	88(2)	Notice of Administrator's Report on Further Enquiries
3	98(6)	Notice of Release of Administrator
4	120(3)	Notice of Vacation of Office of Receiver
5	120(5)	Notice to Registrar of Vacation of Office of Receiver
6	145(9)	Notice of Court Order to Dispose of Assets in Receivership Subject to a Security Interest
7	147(3)	Advertisement of Administrative Receiver's Report (for Newspaper or Virgin Islands Official Gazette)
8	193(1)	Settlement of List of Members
9	235(7)	Notice of Release of Liquidator
10	265(2)	Notice of Disqualification Order or Undertaking
11	266(4)	Notice of Variation of Disqualification Order or Undertaking
12	271	Report on Directors' Conduct
13	276(1)	Notice Requiring Preparation and Submission of Statement of Affairs
14	277(1)	Statement of Affairs in a Company Creditors' Arrangement, Receivership, Administration or Liquidation
15	295(2)	Statement of Assets and Liabilities in Bankruptcy or an Individual Creditors' Arrangement
16	383(8)	Notice of Release of Bankruptcy Trustee
17	482(1)A	Consent to Act
18	482(1)B	Consent to Act
19	485(2)A	Notice by an Overseas Practitioner that he or she is the Sole Appointee
20	485(2)B	Notice by an Overseas Practitioner that he or she is the Sole Appointee
21	R14A	Originating Application (Company)
22	R14B	Ordinary Application (Company)
23	R184	Claim Form
24	R279	Claim Form

INSOLVENCY CODE OF PRACTICE

Section 487

CHAPTER I: INTRODUCTION

This Insolvency Code of Practice ("the Code") is issued in accordance with the powers provided to the Commission under section 487 of the Insolvency Act. The Code applies to all persons who apply for and who have been granted licences under section 476 of that Act to act as insolvency practitioners.

All licensees are required to comply with the requirements of the Code. Failure to comply with specific requirements of the Code may give rise to a penalty or penalties as prescribed in the Insolvency Act, the Insolvency Practitioners Regulations, or this Code, and may also call into question the "fit and proper" status of the licensee or lead to the suspension or revocation of the licence of the licensee under section 479 of the Insolvency Act.

The Code was brought into force on 8 October, 2004 and applies, where applicable, to insolvency proceedings commenced on or after that date.

CHAPTER II: INTERPRETATION

1. Definitions

Words or terms used throughout the Code have the meanings given to them below or under the Insolvency Act (as amended), the Insolvency Rules and the Insolvency Practitioners Regulations and the Financial Services Commission Act (as amended)—

"Act" means the Insolvency Act and its subordinate legislation including the Insolvency Rules, the Insolvency Practitioners Regulations or the Insolvency Code of Practice, as from time to time re-enacted or amended;

"Applicant" means an individual who has applied for a licence pursuant to section 475 of the Act;

"Appointment" means the position of administrator, provisional liquidator, liquidator, interim supervisor, supervisor or bankruptcy trustee held by an insolvency practitioner in respect of an insolvency made under the Act;

"C.P.E." means Continuing Professional Education;

"Code" means the Insolvency Code of Practice;

"Commission" means the Financial Services Commission established under the Financial Services Commission Act;

"Employee" means anyone who carries out insolvency work for a licensed insolvency practitioner, including sub-contractors and consultants;

"Firm" means—

a. a sole practitioner; or

b. a partnership; or

c. a body corporate; including a limited liability partnership;

"Insolvency practitioner" has the meaning set out in section 474(1) of the Insolvency Act;

"Insolvency work" means the work undertaken by the licensee himself or herself, and his or her employees under his or her direction, in respect of his or her activities as an insolvency practitioner;

"Licence" means a licence to act as an insolvency practitioner granted under section 476 of the Insolvency Act and the words "licence" and "licensed" are to be defined accordingly;

"Licensee" means an individual who has been issued with and continues to hold a current licence;

"Principal" means an individual in sole practice or any partner or a director of a firm, or member of a limited liability partnership;

"Regulations" means the Insolvency Practitioners Regulations, as from time to time re-enacted or amended.

CHAPTER III: GUIDELINES FOR THE ASSESSMENT OF APPLICATIONS FOR LICENCES

1. Residency[492]

1.1 The Commission will consider an applicant to be resident in the Virgin Islands for the purpose of section 476(1)(a)(i) of the Act if he or she

(a) belongs to the Virgin Islands pursuant to section 2(2) of The Virgin Islands Constitution Order 2007;

(b) is the holder of a certificate of residence granted under section 16 of the Immigration and Passport Act, 1977; or

(c) is an individual who, apart from temporary and occasional absences, habitually and normally resides lawfully in the Virgin Islands and is properly entitled to work or operate a business in the Virgin Islands.

1.2 For the purposes of paragraph 1.1(c), an individual who is licensed as an insolvency practitioner shall be considered to continue to be resident in the Virgin Islands if, in any particular year after the year in which he or she was licensed, his or her temporary and occasional absences from the Virgin Islands do not exceed 180 days, whether continuously or in aggregate.

2. Fitness and properness

2.1 Fit and proper criteria

In carrying out its responsibilities to determine whether an applicant is fit and proper to act as an insolvency practitioner, the Commission shall apply the fitness and propriety standards outlined in Schedule 1A of the Regulatory Code, Revised Edition 2020 and shall, in particular, take into account [493]

(a) whether the applicant is solvent and in good financial standing;

(b) whether the applicant is in good standing with his or her professional bodies;

(c) whether the applicant has adequate office facilities, staff and systems in place to enable insolvency work to be delivered to a high standard;

(d) any previous disciplinary findings or pending investigations by a professional body, regulator or similar body; and

(e) any conviction, decision, sentence or judgment (including criminal and civil court decisions) involving an applicant.

2.2 Information gathering

The Commission may make enquiries and take into account such information as it considers necessary, including the following—

(a) any information provided by professional bodies, regulators or other supervisory bodies of any kind, wherever located, as a result of enquiries made by the Commission or otherwise;

(b) any information relating to any individual who is or will be employed by an applicant or licensee, or firm in which the applicant or licensee is employed, in connection with insolvency work;

(c) if the applicant or licensee is employed by a firm, any information relating to the applicant's or licensee's employers; and

(d) in the case of an applicant or licensee who is in partnership, any information relating to any of the principals;

3. Qualifications and experience

3.1 Required qualifications

The Commission shall take into account the following guidelines when considering whether an applicant has the necessary qualifications and experience to act as an insolvency practitioner. An applicant will normally be required to demonstrate that he or she falls within one of the categories (a) to (c) below—

(a) he or she is either—

(i) admitted to practice as a legal practitioner in the Virgin Islands or as a barrister, solicitor or attorney-at-law in a country or jurisdiction recognised by the Commission for the purposes of sections 29(2)(d)(ii) and 29(2)(e) of the Financial Services Commission Act; or

(ii) qualified as an accountant by an examination conducted by a professional accountancy body in a country or jurisdiction recognised by the Commission for the purposes of sections 29(2)(d)(ii) and 29(2)(e) of the Financial Services Commission Act, and is a current member in good standing of one of these bodies,

and has, in the 3 years preceding the date of his or her application, completed at least 200 hours of insolvency experience;

(b) he or she possesses such other professional qualification as the Commission may approve and has acquired such insolvency experience as the Commission may determine on a case-by-case basis;

(c) he or she has, in the 3 years preceding the date of his or her application, completed at least 2,500 hours of insolvency experience, including at least 500 hours of insolvency experience in each such year, in a senior advisory or decision-making capacity.

3.2 Insolvency experience

The content of the insolvency experience required prior to the grant of a licence falls into 2 main categories—

(a) carrying out work or, in the case of legal professionals, providing legal advice to an insolvency practitioner in connection with work of a type reserved to insolvency practitioners under the Act.

(b) carrying out—

(i) other insolvency related work or, in the case of legal professionals, providing legal advice to an insolvency practitioner in connection with insolvency related work not reserved to insolvency practitioners under the Act but which the Commission decides is relevant experience; and/or

(ii) other work done at the request of a potentially insolvent entity or of its creditors, which might lead to insolvency work, or the avoidance of formal insolvency.

Experience in category (a) may make up the whole of an applicant's insolvency experience requirements. Experience in category (b) may be included in the calculation of insolvency experience but only to a maximum of 50% of the total insolvency experience required by this Code, the remainder being category (a) experience.

4. Security requirements

4.1 Minimum security requirement

The minimum security, including insurance cover, to be maintained by a licensee pursuant to s.486(1)(c) of the Act is as follows; every licensee, or his or her firm must, at all times, have in effect a policy of professional indemnity insurance with a reputable insurance company or companies against any loss arising out of any single claim and in the aggregate, annually, in the amount of at least $500,000[1] for negligence or breach of duty by the licensee in the performance of his or her duties as an insolvency practitioner.

4.2 Ability to impose higher levels of security

The attention of applicants and licensees is drawn to the authority given to the Commission to impose a greater level of security according to the circumstances of a particular licensee or insolvency proceeding pursuant to section 486(2)(b) of the Act and regulation 9 of the Regulations. [494]

5. Annual returns

An annual return must be submitted to the Commission each year at the time that annual licence fees become payable. The form and content of the return will be decided by the Commission and may be amended from year to year. The return may be used by the Commission, inter alia, to satisfy itself that licensees continue to meet the eligibility requirements set out in the Act.

CHAPTER IV: ETHICAL PRINCIPLES

1. Ethical principles

A licensee must at all times conduct insolvency work with proper regard for the ethical principles of integrity, objectivity, competence, due skill and courtesy, and for the spirit, that underlies them.

1. Integrity

To behave with integrity in all insolvency work. Integrity implies not merely honesty but fair dealing and truthfulness.

2. Objectivity

To strive for objectivity in all professional judgments. Objectivity is the state of mind that has regard to all considerations relevant to the task in hand but no other.

[1] The Insolvency Code of Practice 2020 Revised Edition has $5,000 instead of $50,000.

3. Competence

Only to accept work that one is competent and has the resources (staffing and otherwise) to undertake, unless one obtains such advice and assistance that will enable one to carry out the work competently.

4. Due skill

To carry out insolvency work with due skill, care, diligence and expedition.

5. Courtesy

To conduct oneself with courtesy and consideration towards all with whom one comes into contact during the course of performing one's work.

2. Threats to objectivity and conflicts of interest

The greatest threat to a licensee's objectivity is likely to be a conflict of interest. A licensee must be aware of actual or potential conflicts of interest in the form of self-review threats and self-interest threats.

3. Self-review threats to objectivity

3.1 Nature of self-review threats

A self-review threat to objectivity may arise where a licensee, or his or her firm, has or had a material professional relationship with the company or individual in relation to which or whom insolvency work is performed. The threat that lies behind a material professional relationship is that the licensee, who is the custodian of what are often competing interests in the prosecution of insolvency work, may improperly and inappropriately favour one or more of these interests. In that way, a licensee's objectivity would be lost. Any such relationship would usually require the licensee to decline insolvency work.

3.2 Familiarity with individuals or subject matter

A licensee's familiarity, either with the individuals or the subject matter connected with a proposed appointment, may also give rise to a self-review threat to objectivity. The licensee may be over-influenced by the personality and qualities of those individuals or place an inappropriate degree of reliance on the representations they make, or may fail to make adequate enquiries as to either.

3.3 Material professional relationship

A material professional relationship with a client arises where a firm to which a licensee belongs, or a principal or employee of the firm, is carrying out, or has during the previous 3 years carried out, one or more assignments of such overall significance or in such circumstances that the licensee's objectivity in carrying out a subsequent appointment might be, or be seen to be, impaired.

3.4 Relationships with other companies and individuals

A client relationship with other companies or entities under common control, or with a director or shadow director of a company, could also amount to a material professional relationship where the relationship is material in the context of the company or individual to whom an appointment is being considered.

3.5 Sequential insolvency appointments

A licensee should only accept office in any insolvency role sequential to one in which he or she, or another principal or employee of the firm to which the licensee belongs, has previously acted after giving careful consideration to the implications of acceptance in all the circumstances of the case and satisfying himself or herself that his or her objectivity is unlikely to be, or to appear to be, impaired by a prospective conflict of interest or otherwise. For example, it would not be appropriate to accept appointment as liquidator, administrator or nominee/supervisor of a company creditors' arrangement following appointment as a receiver or administrative receiver (unless such receivership or administrative receivership appointment was made by the Court).

3.6 Statutory disqualification on acting as an insolvency practitioner

The attention of licensees is drawn to the statutory disqualification on acting as an insolvency practitioner in sections 482(2) and 482(3) of the Insolvency Act.

4. Self-interest threats to objectivity

4.1 Nature of self-interest threats

A self-interest threat is one which could affect the reasoning a licensee applies because it is, or might be, affected by considerations that either favour or are prejudicial or disadvantageous to the licensee.

4.2 Improper influence

It is improper for a licensee to be influenced by—

(a) a significant financial or other benefit accruing, or which might accrue; or

(b) the avoidance of disadvantage,

to himself or herself or to anyone with whom he or she is associated or connected.

5. General considerations

5.1 Threats to be considered in the light of particular circumstances

Threats to objectivity may be general in nature or peculiar to the particular circumstances of a case. They require the licensee to consider them in the light of the particular circumstances in which the appointment is offered or undertaken.

5.2 Licensees' responsibility to justify actions

It is always a matter for the licensee to assess whether he or she may accept or continue insolvency work in the particular context that obtains at the time. It will always be up to the licensee to justify his or her actions in cases of doubt.

5.3 Perception of objectivity

The licensee must not only be satisfied as to the actual objectivity which he or she can bring to his or her judgments, decisions and conduct, but also must be mindful of how his or her objectivity will be perceived by others. Sometimes, the mere perception of risk or conflict will tend to undermine confidence in the licensee objectivity, and so make acceptance or continuation of an appointment unwise.

5.4 Regular or reciprocal arrangements

A licensee should also be aware of the threat to objectivity if he or she were to engage in regular or reciprocal arrangements in relation to appointments with another firm or organisation.

5.5 Payments for introductions inappropriate

The special nature of insolvency appointments makes it inappropriate to pay or offer any valuable consideration for the introduction of insolvency appointments. This does not, however, preclude an arrangement between a licensee and a bona fide employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the licensee through the effort of the employee.

5.6 Harassment

Solicitation for insolvency work or for proxies in any way amounting to that which a reasonable person would regard as harassment, or otherwise so as to represent a breach of this Code, is inappropriate.

5.7 Joint appointments

A licensee who is invited to accept an insolvency appointment jointly with another insolvency practitioner should be guided by similar principles to those set out in relation to sole appointments. Where a licensee is precluded by this Code from accepting an appointment as an individual, a joint appointment will not render the appointment acceptable.

CHAPTER V: CONDUCT OF INSOLVENCY WORK

1. Statutory requirements

1.1 Compliance with insolvency legislation

A licensee must comply with the requirements of the Act and any other relevant legislation.

1.2 Supervision of employees

When it considers the fit and proper status of a licensee the Commission will take into account whether his or her procedures are adequate to ensure that he or she and his or her employees are fully aware of all relevant statutory obligations and guidance.

2. Technical standards

A licensee must comply with any technical standards or good practice guidelines issued by the Commission.

3. Quality control

3.1 Quality Control procedures

A licensee holder must establish and maintain procedures designed to ensure that—

(a) anyone, at any time, employed by or associated with him or her in connection with his or her insolvency work is a fit and proper person;

(b) when deciding whether to accept an appointment he or she considers—

(i) his or her own independence;

(ii) the availability of the resources required;

(iii) his or her ability to perform the appointment with an appropriate level of competence;

(c) he or she maintains an appropriate level of competence in the conduct of appointments;

3.2 Procedures, systems and supervision

A licensee must ensure that there are adequate procedures, systems and supervisory standards in place to comply with these Regulations in relation to the conduct of insolvency work for which he or she is responsible.

4. C.P.E.

4.1 Training

A licensee who is a principal must establish and maintain procedures designed to ensure that all principals and employees involved in insolvency work are competent in the conduct of such work.

4.2 C.P.E. requirements

A licensee must undertake a minimum of 30 hours relevant C.P.E., including not less than 10 hours structured C.P.E. each year, unless the Commission waives the requirement.

4.3 Structured C.P.E.

Structured C.P.E. includes attending or lecturing at formal courses, seminars, conferences or structured technical meetings of general relevance to the business of insolvency. Such events are likely to be organised by licensee's own firms, professional bodies, industry sector interest groups or by independent training organisations. Distance learning, where a course is assessed and/or leads to a further qualification, or lectures delivered through the internet are also acceptable means of delivery. Research for technical presentations and writing technical articles are also considered to be structured activity.

4.4 Unstructured C.P.E.

Unstructured C.P.E. is normally achieved through private study, and includes reading technical journals and other technical literature and home study (involving no assessment and/or not leading to a further qualification).

4.5 Disallowed activities

Normal working activities (other than research), general internal meetings and discussions, social activities and general reading of the financial press are not considered to be either structured or unstructured C.P.E.

4.6 C.P.E. records

A licensee must keep a record of all C.P.E and must from time to time provide a summary of such record at a time and in a format determined by the Commission.

Endnotes

1 Insolvency (Amendment) Act, 2022
2 Insurance Act, 2008
3 Insurance Act, 2008
4 Insolvency (Amendment) Act, 2022
5 Insolvency (Amendment) Act, 2022
6 Insolvency (Amendment and Consequential Provisions) Act, 2004
7 Insolvency (Amendment and Consequential Provisions) Act, 2004
8 BVI Business Companies Act, 2004
9 Insolvency (Amendment and Consequential Provisions) Act, 2004
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