INSOLVENCY

CHAPTER 11:01

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INSOLVENCY

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CHAPTER 11:01

INSOLVENCY

9 of 2016
G.N. 16/2016

An Act to regulate matters relating to insolvency and bankruptcy; to make provision for the procedures and processes for bankruptcy; to make provisions for administration of insolvency and to provide for matters incidental thereto and connected therewith

[20TH MAY, 2016]

PART I

PRELIMINARY

Short title

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

Interpretation

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

"administrator" means a person appointed under this Act to manage the affairs, business and property of a company under reorganization and where the context requires, includes reference to a former administrator;

"bankrupt" means a natural person who has been adjudicated bankrupt, and includes a partnership, sole proprietorship or other body corporate which cannot be wound-up under the provisions of Part V;

Cap. 46:03

"company" means a company incorporated under the Companies Act and includes any other company not registered in Malaŵi which has its affairs dealt with under the provisions of this Act;

"company reorganization order" means an order appointing a person as the administrator of a company;

Cap. 46:03

"contributory" has the meaning assigned thereto in the Companies Act;

"correspondence" includes correspondence by telephonic or other electronic means;

"Court" means the High Court of Malaŵi established under the Constitution;

"declaration of solvency" means a declaration by or on behalf of a company that the company's assets exceed its liabilities and that the company is able to pay its debts as they fall due;

"Director" means the Director of Insolvency referred to in section 4 (1);

"discharge" means—

(*a*) in relation to a bankruptcy order, the removal of the impediment of bankruptcy; and

(*b*) in relation to a company reorganization order, the setting aside or discontinuance of a company reorganization order by the Court;

"financial institution" has the meaning ascribed thereto in the Financial Services Act; Cap. 44:05

"financial service law" has the meaning ascribed thereto in the Financial Services Act; Cap. 44:05

"immovable property" means land whether covered by water or not, any estate or interest in, or over, land, or arising out of, or relating to, land, and anything permanently attached to the earth, or permanently fastened to anything so attached;

"inability to pay its debts" has the meaning ascribed thereto in section 182 and section 183;

"insolvency practitioner" means a duly qualified natural person who is entitled to practice as such in terms of Part X;

"insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency whether personal or corporate in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise that proceeding, for the purpose of reorganization or liquidation;

"liquidator" means a liquidator appointed in terms of the provisions of this Act, and includes a provisional liquidator;

"market value" means the amount which would be realized on a sale of property in the open market by a willing vendor;

"Official Receiver" means the person or office designated an Official Receiver under section 5;

"partnership" has the meaning ascribed thereto in the Partnership Act; Cap. 46:04

"prohibition order" means an order made under section 100 or section 180;

"qualifications" in relation to an insolvency practitioner, means those qualifications that would entitle a person to act as a qualified auditor or a licensed legal practitioner in Malaŵi, or such other qualifications as may be prescribed by the Minister in accordance with section 311 (1) (*b*);

"qualifying security interest" means—

(*a*) a valid security interest;

(*b*) a number of valid security interests; or

(*c*) valid security interests and other forms of security,

over the whole or substantially the whole of the property of a company, partnership or sole proprietorship in terms of the provisions of the Personal Property Security Act;

Cap. 48:03

"receiver" means a receiver duly appointed under the provisions of Part IV;

"Registrar of Companies" means the public officer for the time being holding the office of Registrar of Companies established by section 3 of the Companies Act, and includes a Deputy or Assistant Registrar;

Cap. 46:03

"related person", in relation to a natural person, means—

(*a*) his parent, spouse, child, brother, or sister;

(*b*) the parent, child, brother or sister of his spouse; or

(*c*) a nominee or trustee of the person specified in paragraphs (*a*) and (*b*);

"Rules" means the Rules promulgated in terms of this Act;

"secured creditor" means a creditor with valid and enforceable security amounting to—

(*a*) a security interest over movable property in terms of the provisions of the Personal Property Security Act; and

Cap. 48:03

(*b*) a valid mortgage over immovable property;

"statutory demand" means, in relation to—

(*a*) a company being wound-up in terms of this Act, a statutory demand described in section 184; and

(*b*) a bankrupt, a statutory demand as described in section 190;

"the purpose of company reorganization" means an objective specified in section 14 (1).

Application of this Act Cap. 44:05

3. This Act shall not apply to financial institutions unless provided otherwise in the Financial Services Act.

PART II

Administration of this Act

Director of Insolvency

4.—(1) The Secretary responsible for industry and trade or such other person as the Minister may appoint, shall be the Director of Insolvency (hereinafter referred to as "Director"), who shall be responsible for the effective administration and application of this Act.

(2) Without derogating from the generality of subsection (1), the functions of the Director shall be to—

(*a*) keep under review the law and practice relating to the insolvency of individuals, partnerships, sole proprietorships, companies and other corporate bodies in Malaŵi and make recommendations to the Minister on any changes considered to be necessary;

(*b*) have an overview of the administration of insolvency in Malaŵi and in particular the administration of insolvency under this Act;

(*c*) receive reports from the Official Receiver on the administration of insolvencies, monitor the performance of the Official Receiver and report to the Minister on any resourcing or other needs in relation to the effective performance of the Official Receiver's functions;

(*d*) monitor the performance of insolvency practitioners and, where required, make an application to the Court for the discipline or removal of an insolvency practitioner;

(*e*) set rules and provide guidance governing the performance and conduct of insolvency practitioners in consultation with the relevant professional bodies;

(*f*) foster the development of training and in-service seminars to enhance the skills and encourage improved standards of performance on the part of insolvency practitioners in consultation with all relevant professional bodies;

(*g*) carry out research, commission studies, disseminate information and provide public education in the area of insolvency administration;

(*h*) establish and maintain communication and liaise with international agencies, in the area of international insolvencies and insolvency administration; and

(*i*) advise the Minister generally on any matter relating to the law and practice of insolvency and insolvency administration.

(3) The Director shall have a seal and such seal shall bear the words "Director of Insolvency, Malaŵi".

(4) In the performance of his duties under this Act, the Director shall be subject to—

(*a*) the general and special directions of the Minister, not inconsistent with the provisions of this Act; and

Cap. 1:03

(*b*) for avoidance of doubt, the provisions of the Public Service Act.

Official Receiver

5.—(1) The Minister shall designate a suitable person or office to be the Official Receiver.

(2) The Chief Justice shall by Rules prescribe a mandatory threshold including the procedure for small individual bankruptcies and individual voluntary arrangements to be adjudicated upon and administered by courts of the Chief Resident Magistrate summarily notwithstanding anything to the contrary.

Office and name of Official Receiver

6.—(1) The Official Receiver shall have legal personality and may sue and be sued as the Official Receiver of the property of bankrupt, or of the company which is the subject of a winding-up order, and may do all acts necessary or expedient to be done in the execution of his office.

(2) The Official Receiver may administer oaths and take declarations and may appear in Court and examine a bankrupt or the directors of a company who are the subject of a winding-up order or any other person who appears in proceedings under this Act.

(3) The Official Receiver may execute all documents, signing his private name under the official name, and may affix a seal to any document:

Provided that nothing in this subsection shall prevent the Official Receiver from affixing the seal of his office to any document.

Vacation of office of Official Receiver

7.—(1) A person shall not act or continue to act as Official Receiver in relation to the estate of any debtor of which he is a creditor (not being a creditor in the capacity of Official Receiver in

the property of any other bankrupt or the liquidator of any company) if the creditors declare by resolution that they do not wish him to act as Official Receiver.

(2) In any case where a disqualification under subsection (1) occurs, the Minister shall appoint a suitable person to act as the Official Receiver of the estate referred to in subsection (1).

Register of insolvency practitioners

8.—(1) The Director shall keep and maintain a register of insolvency practitioners in which there shall be entered the name, address and qualifications of every insolvency practitioner.

(2) An insolvency practitioner shall, within the prescribed period of the date of his appointment, give notice to the Director in the prescribed form.

(3) An insolvency practitioner who for a period of six months has ceased to hold office as an insolvency practitioner shall give notice of that fact to the Director within the prescribed period.

(4) An insolvency practitioner who is suspended or removed from the practice of accountancy or law or the practice of a company secretary by the relevant professional body in Malaŵi, or by a comparable professional body outside Malaŵi, shall give notice of that fact to the Director within the prescribed period of the insolvency practitioner receiving notice of the suspension or removal from practice.

(5) Where the Director receives notice under subsection (4), or is otherwise advised by the professional body concerned, or has reasonable grounds to suspect that an insolvency practitioner has been suspended from the practice of accountancy or law or the practice of a company secretary, the Director may, where he has reasonable ground to suspect that the person may be unfit to continue to act as an insolvency practitioner, after providing the insolvency practitioner with an opportunity to be heard, suspend the insolvency practitioner from continuing in office as an insolvency practitioner pending the making of further inquiries and the making of an application to the Court under section 9, and the issuance by the Court of a prohibition order pursuant to section 100 or section 180.

(6) The Director shall enter against the name of a person concerned in the register of insolvency practitioners any of the following matters that may affect the person—

(*a*) that the person has been subject to a prohibition order by the Court under section 100 or section 180;

(*b*) where the Director has received notice to that effect from the professional body or from the person concerned that the person has been suspended or removed from the practice of accountancy or law or the practice of a company secretary by any professional body in Malaŵi, or by any comparable body outside Malaŵi;

(*c*) that the person has died; or

(*d*) that the person has ceased to practice as an insolvency practitioner and has requested the Director to remove his name from the register.

Conduct and performance of insolvency practitioners

9.—(1) The Director shall keep under review the conduct and performance of persons appointed to be insolvency practitioners and may require any document or information concerning an insolvency practitioner to be provided to the Director by the Official Receiver, the Court, the Minister, any other insolvency practitioner or any person who is or has been an auditor of a company in which the insolvency practitioner has held office.

(2) The Director may receive representations from any person on the conduct and performance of an insolvency practitioner and shall within the prescribed period of receiving any such representation disclose the substance of the representation to the insolvency practitioner and seek comment on it.

(3) Any representation made to the Director under subsection (2) and any communication of the terms of the representation made in confidence shall be protected by absolute privilege.

(4) Where the Director has reasonable ground to suspect that an insolvency practitioner has—

(*a*) failed to comply with a provision of this Act in a manner which has or may materially affect creditors, contributories or persons dealing in good faith with a debtor; or

(*b*) been suspended or removed from the practice of accountancy or law or the practice of a company secretary by a professional body in Malaŵi, or by a comparable body outside Malaŵi,

the Director may inquire into the conduct of the insolvency practitioner.

(5) For the purposes of an inquiry under subsection (4), the Director may, by notice in writing, require a director, shareholder, a company or any other person, including the secretary of any relevant professional body to deliver to the Director such books, records or

documents of the company in that person's possession or under that person's control that are relevant to the subject matter of the inquiry as the Director requires.

(6) The Director may, for the purposes of an inquiry under subsection (4), by notice in writing require—

(*a*) a director or former director of a company;

(*b*) a shareholder of a company;

(*c*) a person who was involved in the promotion of formation of a company;

(*d*) a person who is, or has been, an employee of a company;

(*e*) a receiver, liquidator, administrator, accountant, auditor, bank officer or other person having knowledge of the affairs of a company; or

(*f*) a person who is acting or who has at any time acted as a legal practitioner for a company,

to do any of the things specified in subsection (7).

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

(*a*) appear before the Director at such reasonable time and at such place as may be specified in a request;

(*b*) provide the Director with such information about the business, accounts, or affairs of the company as the Director requests;

(*c*) be examined on oath by the Director or by a legal practitioner acting on behalf of the Director on any matter relating to the business, accounts or affairs of the company; or

(*d*) assist the Director to the best of the person's ability.

(8) The Director may pay to a person referred to in subsection (6) (*c*), (*d*) or (*f*), not being an employee of the company, reasonable travelling and other expenses in complying with a requirement of the Director under subsection (7).

(9) No action or proceeding (including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct) shall lie against any person arising from disclosure in good faith of information to the Director pursuant to this section.

Director may make application to Court

10.—(1) Where the Director, as a result of the outcome of an inquiry under section 9 or otherwise, considers that there is reasonable ground to believe that the insolvency practitioner is unfit to act as such by reason of—

(*a*) persistent failure to comply with this Act;

(*b*) the seriousness of the failure to comply with this Act; or

(*c*) misconduct or serious incompetence on the part of the insolvency practitioner,

the Director may apply to the Court for a prohibition order under section 100 or section 180.

(2) Where the Court makes a prohibition order pursuant to subsection (1), that fact shall be entered in the register kept under section 12 and in the register of prohibited persons kept pursuant to section 180 (5).

Disclosure to and consultation with, Director

11.—(1) Every person who holds or at any time has held office as an agent for, or trustee of, holders of any security issued by a company, or who has been an auditor of a public company, shall disclose to the Director information relating to the affairs of the company obtained in the course of holding that office where, in the opinion of the person—

(*a*) the company is insolvent, is likely to become insolvent or is in serious financial difficulties; or

(*b*) the company has breached, or is likely to breach in a significant respect—

(i) the terms of the agency deed or trust deed for secured parties;

(ii) the terms of the offer of any securities; or

(iii) the disclosure of the information is likely to assist, or be relevant to, the exercise of any power conferred on the Director or the Court under this Part.

(2) Every auditor of, or agent or trustee for, secured parties in a secured transaction shall, before disclosing any information to the Director under subsection (1), take reasonable steps to inform the company concerned of his intention to disclose the information and the nature of the information.

(3) The agent, trustee or auditor who has made disclosure to the Director under subsection (1), may on his own initiative, consult with

the Director or may be required by the Director to consult with him on the position of the company and the way in which the difficulties of the company may be addressed.

(4) The Director may, for the purpose of addressing the difficulties of a company identified by a consultation under subsection (3), give advice and assistance in connexion with any scheme for resolving the difficulties of the company, and may appoint an independent advisor to work with the company to address such difficulties and report to the Director.

(5) No action or proceedings including disciplinary proceedings by any professional tribunal, body or authority having jurisdiction in respect of professional conduct, shall lie against any agent, trustee or auditor arising from the disclosure in good faith of information to the Director pursuant to subsection (1).

Other registers to be kept by Director

12.—(1) The Director shall keep and maintain—

(*a*) a public register of discharged and undischarged bankrupts; and

(*b*) a public register of persons who are subject to an individual voluntary arrangement.

(2) The registers shall be maintained in accordance with the Rules.

PART III

COMPANY REORGANIZATION

Meaning of a company in reorganization

13.— (1) For the purposes of this Part—

(*a*) a company is "in company reorganization" while the appointment of an administrator of the company has effect;

(*b*) a company "enters company reorganization" when the appointment of an administrator takes effect;

(*c*) a company ceases to be in company reorganization when the appointment of an administrator of the company ceases to have effect in accordance with this Act;

(*d*) a company shall not cease to be in company reorganization merely because an administrator vacates office whether by reason of resignation, death or otherwise or is removed from office;

(*e*) the provisions of sections 182 and 183 shall apply when determining whether or not a company is unable to pay its debts under section 17; and

(*f*) the provisions of section 136 shall apply *mutatis mutandis*, to a company or companies "in company reorganization".

(2) A person may be appointed as administrator by a company reorganization order of the Court under section 19.

(3) The provisions of this Part shall apply, in so far as they may be conveniently applied, to a case of a business reorganization carried on by a partnership or a sole proprietorship.

Objective of company reorganization

14.—(1) The administrator shall perform his functions with the objective of—

(*a*) rescuing the company as a going concern; restoring the company to solvency and thereby preserving the company and its business operations as a going concern; or

(*b*) achieving a better result for the company's creditors as a whole than would be likely if the company were wound-up without first being in company reorganization, which may include a sale or a transfer of any business of the company as a going concern; or

(*c*) realizing property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to subsection (4), the administrator shall perform his functions in the interests of the company's creditors as a whole.

(3) The administrator shall perform his functions with the objective specified in subsection (1) (*a*) unless he thinks that—

(*a*) it is not reasonably practicable to achieve the objective; or

(*b*) the objective specified in subsection (1) (*b*) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in subsection (1) (*c*) only if—

(*a*) he determines that it is not reasonably practicable to achieve the objectives specified in subsection (1) (*a*) or (*b*); and

(*b*) the performance of his functions would not unnecessarily harm the interests of the creditors of the company as a whole.

(5) The administrator shall perform his functions as quickly and efficiently as is reasonably practicable.

Administrator to be an officer of the Court

15. An administrator shall be an officer of the Court.

16. A person may be appointed as administrator only if he is qualified to act as an insolvency practitioner in relation to the company.

Appointment of an administrator

17. The Court shall make a company reorganization order in relation to a company only if satisfied—

Conditions for making reorganization order

(*a*) that the company is or is likely to become unable to pay its debts as they fall due; and

(*b*) that the company reorganization order is reasonably likely to achieve the objective set out in section 14.

18.—(1) An application to the Court for a company reorganization order in respect of a company (a "company reorganization application") may be made only by—

Application for a reorganization order

(*a*) the company;

(*b*) the directors of the company;

(*c*) one or more creditors of the company; or

(*d*) a combination of persons listed in paragraphs (*a*), (*b*) and (*c*).

(2) As soon as is reasonably practicable after the making of a company reorganization application, the applicant shall notify—

(*a*) any person who has appointed a receiver of the company under Part IV;

(*b*) any person who is or may be entitled to appoint a receiver of the company under Part IV; and

(*c*) such other persons as may be prescribed.

(3) A company reorganization application shall not be withdrawn without the order of the Court.

(4) In subsection (1), "creditor" includes a contingent creditor and a prospective creditor.

19.—(1) On hearing a company reorganization application, the Court may—

Powers of Court

(*a*) make the company reorganization order sought;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order;

(*e*) treat the application as a winding-up petition and make any order which the Court could make under section 109; and

(*f*) make any other order which the Court thinks appropriate.

(2) The appointment of an administrator by company reorganization order shall take effect—

(*a*) at a time appointed by the order; or

(*b*) where no time is appointed by the order, when the order is made.

(3) An interim order under subsection (1) (*d*) may, in particular—

(*a*) restrict the exercise of a power of the directors of the company;

(*b*) make provision conferring discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

Application by holder of qualifying security interest

20. This section shall apply where a company reorganization application—

(*a*) is made by a holder of a qualifying security interest; and

(*b*) includes a statement that the application is made in reliance on this section.

Intervention by holder of a qualifying security interest

21.—(1) This section shall apply where—

(*a*) a company reorganization application in respect of a company is made by a person who is not the holder of a qualifying security interest; and

(*b*) the holder of a qualifying security interest applies to the Court to have a specified person other than the person specified by the company reorganization applicant appointed as Administrator.

(2) The holder of a qualifying security interest may make a company reorganization application.

(3) The Court shall grant an application under subsection (1) (*b*) unless the Court determines it right to refuse the application because of the particular circumstances of the case.

Application for reorganization order where company in liquidation

22.—(1) The holder of the qualifying security interest may make a company reorganization application.

(2) This section shall apply where the holder of a qualifying security interest cannot apply for a company reorganization order

due to the fact that the company is already in liquidation by virtue of a winding-up order by the Court.

(3) The liquidator of a company may make a company reorganization application.

(4) If the Court makes a company reorganization order on hearing an application under subsection (3)—

(*a*) the Court shall discharge any winding-up order in respect of the company;

(*b*) the Court shall make orders for such matters as may be prescribed;

(*c*) the Court may make other consequential orders;

(*d*) the Court shall specify which of the powers under this Act are to be exercisable by the administrator; and

(*e*) this Act shall have effect with such modifications as the Court may specify.

(5) If the Court makes a company reorganization order on hearing an application made under subsection (1)—

(*a*) the Court shall discharge the winding-up order;

(*b*) the Court shall make orders for such matters as may be prescribed;

(*c*) the Court may make such other consequential orders;

(*d*) the Court shall specify which of the powers under this Act are to be exercisable by the administrator; and

(*e*) this Act shall have effect with such modifications as the Court may specify.

Effects of receivership

23.—(*a*) Where an application for a company reorganization order is made after a receiver of a company has been appointed under the provisions of Part IV, the Court shall dismiss the application in respect of the company, unless the person by whom or on behalf of whom the receiver was appointed, or the receiver himself when he has the necessary authority to do so, consents to the making of the company reorganization order; or

(*b*) the Court considers that the security by virtue of which the receiver was appointed would be liable to be released, discharged or challenged under Part VIII.

Dismissal of pending winding-up petition

24. A petition for the winding-up of a company shall be dismissed on the making of a company reorganization order in respect of the company.

Dismissal of receiver

25.— (1) A receiver of a company shall vacate office when a company reorganization order takes effect in respect of the company.

(2) Where a company is in company reorganization, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where a receiver vacates office under subsection (1) or (2), his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office.

(4) In the application of subsection (3)—

(*a*) "remuneration" includes expenses properly incurred and any indemnity to which the receiver is entitled out of the assets of the company;

(*b*) the costs so imposed shall take priority over any security interests; and

(*c*) the provision for payment shall be subject to section 27.

Moratorium on insolvency proceedings

26.—(1) This section shall apply to a company in company reorganization.

(2) Where a company is in company reorganization—

(*a*) a resolution may not be passed for the winding-up of the company; and

(*b*) an order may not be made for the winding-up of the company.

Moratorium on other legal processes

27.—(1) No steps shall be taken to create, perfect or enforce any security interests over the company's property except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(2) A landlord shall not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(3) No legal process, including legal proceedings, execution or distress may be instituted or continued against the company or property of the company except with—

(*a*) the consent of the administrator; or

(*b*) the permission of the Court.

(4) Where the Court gives permission under this section, it may impose any condition or requirement as it sees fit.

(5) In this section, "landlord" includes a person to whom rent is payable.

Interim moratorium

28.—(1) This section shall apply where a company reorganization application in respect of a company has been made and the application has—

(*a*) not yet been granted or dismissed; or

(*b*) been granted, but the company reorganization order has not yet taken effect.

(2) The provision of sections 26 and 27 shall apply, except for any reference to the consent of the administrator.

(3) If there is a receiver of the company when the company reorganization application is made, the provisions of sections 26 and 27 shall not apply by virtue of this section until the person by or on behalf of whom the receiver was appointed consents to the making of the company reorganization order.

Publicity

29.—(1) While a company is in company reorganization, every document issued by or on behalf of the company or the administrator shall state—

(*a*) the name of the administrator; and

(*b*) that the affairs, business and property of the company are being managed by him.

(2) Any of the following persons commits an offence if without reasonable excuse, he authorizes or permits a contravention of subsection (1)—

(*a*) the administrator;

(*b*) an officer of the company; and

(*c*) the company.

Announcement of administrator's appointment

30.—(1) This section shall apply where a person becomes the administrator.

(2) As soon as is reasonably practicable, the administrator shall—

(*a*) send a notice of his appointment to the company; and

(*b*) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable, the administrator shall—

(*a*) obtain a list of the company's creditors; and

(*b*) send a notice of his appointment to each creditor of whose claim and address he is aware of.

(4) The administrator shall send a notice of his appointment to the Director and the Registrar of Companies within the prescribed period, beginning with the date of the order.

(5) The administrator shall send a notice of his appointment to such other persons as may be prescribed before the end of the prescribed period, beginning with the date of the order.

(6) The Court may direct that subsection (3) (*b*) or subsection (5)—

(*a*) shall not apply; or

(*b*) shall apply with the substitution of a different period.

(7) A notice under this section shall—

(*a*) contain the prescribed information; and

(*b*) be in the prescribed form.

Statement of company's affairs

31.—(1) Within the prescribed period after appointment, the administrator shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement shall—

(*a*) be verified by a statutory declaration in accordance with the Oaths, Affirmations and Declarations Act;

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(*b*) be in the prescribed form;

(*c*) give particulars of the company, debts and liabilities;

(*d*) give the names and addresses of the company's creditors;

(*e*) specify the security interests held by each creditor;

(*f*) give the date on which each security interest was perfected; and

(*g*) contain such other information as may be prescribed.

(3) In subsection (1), "relevant person" means—

(*a*) a person who is or has been an officer of the company;

(*b*) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters company reorganization;

(*c*) a person employed by the company during the period referred to in paragraph (*b*); and

(*d*) a person who is or has been during that period an officer or employee of a company which is, or has been during that year an officer of the company.

(4) For the purposes of subsection (3), a reference to employment is a reference to employment through a contract of employment or a contract for services.

Prescribed period for submission of statement of affairs

32.—(1) A person required to submit a statement of affairs shall do so within the prescribed period, beginning with the date on which he receives notice of the requirement.

(2) The administrator may—

(*a*) revoke a requirement under section 31 (1); or

(*b*) extend the period specified in subsection (1), whether before or after the expiry of such period.

(3) If the administrator refuses a request to act under subsection (2)—

(*a*) the person whose request is refused may apply to the Court; and

(*b*) the Court may take action of a kind specified in subsection (2).

Administrator's proposals

33.—(1) The administrator shall make a statement setting out proposals for achieving the purpose of company reorganization.

(2) A statement under subsection (1) shall, in particular—

(*a*) deal with such matters as may be prescribed; and

(*b*) where applicable, explain why the administrator thinks that the objective mentioned in section 14 (1) (*a*) or (*b*) cannot be achieved.

(3) Proposals under this section may include a proposal for an arrangement to be sanctioned under the provisions of section 156.

(4) The administrator shall send a copy of the statement of his proposals to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) every creditor of the company of whose claim and address he is aware of; and

(*d*) every member of the company of whose claim and address he is aware of.

(5) The administrator shall comply with subsection (4)—

(*a*) as soon as is reasonably practicable after the company enters company reorganization; and

(*b*) in any event, before the end of the prescribed period beginning with the day on which the company enters company reorganization.

(6) The administrator shall be taken to comply with subsection (4) (*d*) if he publishes in the prescribed manner a notice 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.

Creditors' meeting

34.—(1) In this Act, "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(*a*) in the prescribed manner; and

(*b*) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware of.

(2) A period prescribed under subsection (1) (*b*) may be varied in accordance with the Rules.

(3) A creditors' meeting shall be conducted in accordance with the Rules.

Requirement for initial creditors' meeting

35.—(1) Each copy of an administrator's statement of proposals sent to a creditor under section 33 shall be accompanied by an invitation to a creditors' meeting (hereinafter referred to as an "initial creditors' meeting").

(2) The date set for an initial creditor's meeting shall be as soon as is reasonably practicable after the company enters company reorganization and in any event within the prescribed period beginning with the date on which the company enters company reorganization.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this section may be varied in accordance with the Rules.

(5) Subsection (1) shall not apply where the statement of proposals states that the administrator thinks that—

(*a*) the company has sufficient property to enable each creditor of the company to be paid in full;

(*b*) the company has insufficient property to enable a distribution to be made to unsecured creditors; or

(*c*) none of the objectives specified in section 14 can be achieved.

(6) Notwithstanding the provisions of subsection (5), the administrator shall summon an initial creditors' meeting if it is requested—

(*a*) by creditors of the company whose debts amount to at least the prescribed amount as determined by the Rules;

(*b*) in the prescribed manner; and

(*c*) in the prescribed period.

(7) A meeting requested under subsection (6) shall be summoned for a date in the prescribed period.

(8) The period prescribed under subsection (7) may be varied in accordance with the Rules.

Business and result of initial creditors' meeting

36.—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider the proposals and may—

(*a*) approve them without modification in accordance with subsection (2); or

(*b*) approve them with modification to which the administrator consents.

(2) Subject to the provisions of subsection (3), the administrator's proposals shall be deemed to be approved when a majority in value

of those creditors present and voting, in person or by proxy, have voted in favour of the proposals.

(3) The administrator's proposals shall not be approved if those voting against the proposals include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman of the meeting's belief, persons connected with the company.

(4) After the conclusion of an initial creditors' meeting, the administrator shall as soon as is reasonably practicable report any decision taken to—

(*a*) the Court;

(*b*) the Director;

(*c*) the Registrar of Companies; and

(*d*) such other persons as may be prescribed.

Substantial revision after approval

37.—(1) This section shall apply where—

(*a*) an administrator's proposals have been approved at an initial creditors' meeting;

(*b*) the administrator proposes a revision to the proposals; and

(*c*) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

(*a*) summon a creditors' meeting;

(*b*) send a statement in the prescribed form, of the proposed revision with the notice of the meeting sent to each creditor;

(*c*) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware of; and

(*d*) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with subsection (2) (*c*) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under subsection (3) shall be published—

(*a*) in the prescribed manner; and

(*b*) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

(*a*) approve it without modification; or

(*b*) approve it with modification to which the administrator consents,

by applying the voting rules set out in section 36 (2) and (3).

(6) After the conclusion of a creditors' meeting, the administrator shall as soon as is reasonably practicable report any decision taken to—

(*a*) the Court;

(*b*) the Director;

(*c*) the Registrar of Companies; and

(*d*) such other persons as may be prescribed.

Failure to obtain approval of administrator's proposals

38.—(1) This section shall apply where an administrator reports to the Court that—

(*a*) an initial creditors' meeting has failed to approve the administrator's proposals presented to it; or

(*b*) a creditors' meeting has failed to approve a revision of the administrator's proposal presented to it.

(2) The Court may—

(*a*) order that the appointment of an administrator shall cease to have effect from a specified time;

(*b*) adjourn the hearing conditionally or unconditionally;

(*c*) make an interim order; and

(*d*) make any other order which the Court thinks appropriate.

Further creditors' meetings

39. The administrator shall summon a creditors' meeting if—

(*a*) it is requested in the prescribed manner by creditors of the company whose debts amount to at least ten per cent of the total debts of the company; or

(*b*) he is directed by the Court to summon a creditors' meeting.

Creditors' committee

40.—(1) A creditors' meeting may establish a creditors' committee.

(2) A creditors' committee may require the administrator to—

(*a*) attend on the committee at any reasonable time of which he is given notice of at least the prescribed number of days; and

(*b*) provide the committee with information about the exercise of his functions.

Correspondence instead of creditors' meeting

41.—(1) Anything which is required or permitted by or under this Act to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(*a*) in accordance with the Rules; and

(*b*) subject to any prescribed condition.

(2) A reference in this Act to anything done at a creditors' meeting shall include a reference to anything done in the course of correspondence in reliance on subsection (1).

(3) A requirement to hold a creditors' meeting shall be satisfied by conducting correspondence in accordance with this section.

General powers of administrator

42.—(1) The administrator may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Act which expressly permits the administrator to do a specified thing shall be without prejudice to the generality of subsection (1).

(3) A person who deals with the administrator in good faith need not inquire whether the administrator is acting within his powers.

(4) In addition to the powers conferred on the administrator by this Act, he shall also have the powers specified in the Rules.

(5) The administrator may—

(*a*) remove a director of the company; and

(*b*) appoint a director of the company whether or not to fill a vacancy.

(6) The administrator may call a meeting of members or creditors of the company.

(7) The administrator may apply to the Court for directions in connexion with his functions.

(8) A company in company reorganization or an officer of a company in company reorganization may not exercise a management power without the consent of the administrator.

(9) The administrator may raise finance by way of a loan or other credit or finance facility for the benefit of the company, provided that

such loan or facility is necessary for the continuation of any business of the company.

(10) In exercising the powers conferred by subsection (9), the administrator may give security interests over the assets of the company:

Provided that no such security interests shall take priority over any existing security interests in favor of a creditor of the company without the consent of the creditor holding the security interest or an order of the Court.

(11) The administrator may apply to the Court for an order under subsection (10).

(12) Upon an application under subsection (11), the Court may grant such order only if the Court is satisfied that the interest of any existing secured creditor will not be adversely affected.

(13) For the purposes of subsection (8)—

(*a*) "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers and it is immaterial whether the power is conferred by a written law or an instrument; and

(*b*) consent may be general or specific.

Distribution

43.—(1) The administrator may make a distribution to a creditor of the company.

(2) Section 297 shall apply in relation to a distribution under this section as it applies in relation to a winding-up.

(3) A payment may not be made by way of distribution under this section to a creditor of the company who is not secured or preferential unless the Court gives permission.

(4) The administrator may make a payment otherwise than in accordance with subsection (2) or (3) or as prescribed in the Rules if he thinks it likely to assist achievement of the purpose of company reorganization.

General duties of administrator

44.—(1) The administrator shall, on his appointment, take custody or control of all the property to which he thinks the company is entitled.

(2) Subject to subsection (3), the administrator shall manage the affairs, business and property of the company in accordance with—

(*a*) any proposals approved under section 36;

(*b*) any revision of those proposals which is made by him and which he does not consider substantial; and

(*c*) any revision of those proposals approved under section 37.

(3) If the Court gives directions to the administrator in connexion with any aspect of his management of the company's affairs, business or property, the administrator shall comply with such directions.

(4) The Court may give directions under subsection (3) only if—

(*a*) no proposals have been approved under section 36;

(*b*) the directions are consistent with any proposals or revision approved under section 36 or 37;

(*c*) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under section 36 or 37; or

(*d*) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under section 36 or 37.

Administrator as agent of the company

45. In exercising his functions under this Act, an administrator shall act as the agent of the company.

Secured property: qualifying security interest

46.—(1) An administrator may dispose of, or take action, relating to property which is subject to a qualifying security interest as if it were not subject to the security interest.

(2) Where property is disposed of in reliance on subsection (1), the holder of the qualifying security interest shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In subsection (2), "acquired property" means property which directly or indirectly represents the property disposed of.

Secured property: non-qualifying security interest

47.—(1) The Court may by order enable an administrator to dispose of property which is subject to a security interest other than a qualifying security interest, as if it were not subject to the security interest.

(2) An order under subsection (1) may be made only—

(*a*) on the application of an administrator; and

(*b*) where the Court thinks that disposal of the property would be likely to promote the purpose of company reorganization in respect of the company.

(3) An order under this section shall be subject to the condition that there be applied towards discharging the sums secured by the security interest—

(*a*) the net proceeds of disposal of the property; and

(*b*) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realized on a sale of the property at market value.

(4) If an order under this section relates to more than one security interest, application of money under subsection (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this section shall send a copy of the order to the Director and the Registrar of Companies within the prescribed period starting with the date of the order.

Protection for secured or preferential creditor

48.—(1) An administrator's statement of proposals under section 33 shall not include any action which—

(*a*) affects the right of a secured creditor of the company to enforce his security interest;

(*b*) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts; or

(*c*) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

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

(*a*) action to which the relevant creditor consents; or

(*b*) a proposal for an arrangement to be sanctioned under the provisions of section 156.

(3) The reference to a statement of proposals in subsection (1) shall include a reference to a statement as revised or modified.

Challenge to administrator's conduct of company

49.—(1) A creditor or member of a company in company reorganization may apply to the Court claiming that the administrator—

(*a*) is acting or has acted so as to unfairly harm the interests of the applicant whether alone or in common with some or all other members or creditors; or

(*b*) proposes to act in a way which would unfairly harm the interests of the applicant whether alone or in common with some or all other members or creditors.

(2) A creditor or member of a company in company reorganization may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

(*a*) grant relief;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order; or

(*e*) make any other order it thinks appropriate.

(4) An order under this section may—

(*a*) regulate the administrator's exercise of his functions;

(*b*) require the administrator to do or not to do a specified thing;

(*c*) require a creditors' meeting to be held for a specified purpose;

(*d*) provide for the appointment of an administrator to cease to have effect; or

(*e*) make consequential provision.

(5) An order may be made on a claim under subsection (1) whether or not the action complained of—

(*a*) is within the administrator's powers under this Act;

(*b*) was taken in reliance on an order under section 47.

(6) An order may not be made under this section if it would impede or prevent the implementation of—

(*a*) an arrangement sanctioned in terms of the provisions of section 156; or

(*b*) proposals or a revision approved under section 36 or 37 more than the prescribed number of days before the day on which the application for the order under this section is made.

50.—(1) The Court may examine the conduct of a person who— Misfeasance

(*a*) is, or purports to be the administrator; or

(*b*) has been or has purported to be the administrator.

(2) An examination under this section may be held only on the application of—

(*a*) the Official Receiver;

(*b*) the administrator;

(*c*) the liquidator of the company;

(*d*) a creditor of the company;

(*e*) a contributory of the company; or

(*f*) the Director.

(3) An application under subsection (2) shall allege that the administrator—

(*a*) has misapplied or retained money or other property of the company;

(*b*) has become accountable for money or other property of the company;

(*c*) has breached a fiduciary or other duty in relation to the company; or

(*d*) has been guilty of misfeasance.

(4) On an examination under this section into a person's conduct, the Court may order him to—

(*a*) repay, restore or account for money or property;

(*b*) pay interest; or

(*c*) contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In subsection (3), "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under subsection (2) in respect of an administrator who has been discharged under section 64 shall not be made without the permission of the Court.

Automatic end of company reorganization

51.—(1) Subject to subsections (2), (3) and (4), the appointment of an administrator shall cease to have effect at the end of the period of six months beginning with the date on which it takes effect.

(2) On the application of an administrator, the Court may by order extend the term of office of the administrator for a further six months.

(3) Where the Court has extended an administrator's term of office under subsection (2), it may by order further extend his term of office for a specified period for good cause shown.

(4) An administrator's term of office may be extended for a specified period not exceeding six months by consent.

(5) An order of the Court under subsection (3)—

(*a*) may be made in respect of an administrator whose term of office has already been extended by order or by consent; and

(*b*) may not be made after the expiry of the administrator's term of office.

(6) Where an order is made under subsection (5), the administrator shall as soon as is reasonably practicable notify the Director and the Registrar of Companies.

(7) In subsection (4), "consent" means the consent of—

(*a*) each secured creditor of the company; and

(*b*) if the company has unsecured debts, creditors whose debts amount to more than fifty per cent of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(8) Notwithstanding subsection (7), where the administrator has made a statement under section 35 (6) (*b*), "consent" means—

(*a*) consent of each secured creditor of the company; or

(*b*) if the administrator thinks that a distribution may be made to preferential creditors, the consent of—

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(10) Consent for the purposes of subsection (4) may be—

(*a*) written; or

(*b*) signified at a creditors' meeting.

(11) An administrator's term of office may—

(*a*) be extended by consent only once;

(*b*) not be extended by consent after extension by order of the Court; and

(*c*) not be extended by consent after expiry.

(12) Where an administrator's term of office is extended by consent, he shall as soon as is reasonably practicable—

(*a*) file notice of the extension with the Court; and

(*b*) notify the Director and the Registrar of Companies.

Court ending company reorganization on application of administrator

52.—(1) On the application of an administrator, the Court may provide for the appointment of an administrator to cease to have effect from a specified time.

(2) An administrator shall make an application under this section if—

(*a*) he thinks the purpose of company reorganization cannot be achieved in relation to the company;

(*b*) he thinks the company should not have entered company reorganization; or

(*c*) a creditors' meeting requires him to make an application under this section.

(3) On an application under this section, the Court may—

(*a*) adjourn the hearing conditionally or unconditionally;

(*b*) dismiss the application;

(*c*) make an interim order; and

(*d*) make any order it thinks appropriate whether in addition to, in consequence of or instead of the order applied for.

Termination of company reorganization where objective achieved

53.—(1) If an administrator thinks that the purpose of company reorganization has been sufficiently achieved in relation to the company he may file a notice to that effect in the prescribed form.

(2) An administrator's appointment shall cease to have effect when the requirements of subsection (1) are satisfied.

(3) Where an administrator files a notice, he shall, within the prescribed period, send a copy to every creditor of the company of whose claim and address he is aware of.

(4) The Rules may provide that an administrator shall be taken to have complied with subsection (3) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under subsection (1) to any creditor of the company who applies in writing to a specified address.

Court order ending company reorganization on application of creditor

54.—(1) On the application of a creditor of a company, the Court may order that the appointment of an administrator of the company cease to have effect at a specified time.

(2) An application under this section shall allege an improper motive on the part of the applicant for the company reorganization order.

(3) On an application under this section, the Court may—

(*a*) adjourn the hearing conditionally or unconditionally;

(*b*) dismiss the application;

(*c*) make an interim order; or

(*d*) make any order it thinks appropriate whether in addition to, in consequence of, or instead of, the order applied for.

Public interest winding-up of company in company reorganization

55.—(1) This section shall apply where a winding-up order is made for the winding-up of a company in company reorganization on a petition presented under section 107 (2) (*e*).

(2) This section shall apply where a provisional liquidator of a company in company reorganization is appointed following the presentation of a petition under section 107 (2) (*e*).

(3) The Court may order that the appointment of the administrator—

(*a*) cease to have effect; or

(*b*) continue to have effect.

(4) If the Court makes an order under subsection (3) (*b*), it may—

(*a*) specify which of the powers under this Act are to be exercisable by the administrator; and

(*b*) order that this Act shall have effect in relation to the administrator with specified modifications.

56.—(1) This section shall apply where the administrator thinks that—

Moving from company reorganization to creditors' voluntary winding-up

(*a*) the total amount each secured creditor of the company is likely to receive has been paid to him or set aside for him; and

(*b*) a distribution will be made to unsecured creditors of the company if there are any.

(2) The administrator shall send to the Director and the Registrar of Companies a notice that this section applies.

(3) On receipt of a notice under subsection (2), the Director and the Registrar of the Company shall register the notice.

(4) If an administrator sends a notice under subsection (2), he shall as soon as is reasonably practicable—

(*a*) file a copy of the notice with the Court; and

(*b*) send a copy of the notice to each creditor of whose claim and address he is aware.

(5) On the registration of a notice under subsection (3)—

(*a*) the appointment of an administrator in respect of the company shall cease to have effect; and

(*b*) the company shall be wound-up as if a resolution for voluntary winding-up under section 141 (1) (*b*) were passed on the day on which the notice is registered.

(6) The liquidator for the purposes of the winding-up shall be—

(*a*) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period; or

(*b*) if no person is nominated under paragraph (*a*), the administrator.

(7) In the application of Part V to a winding-up by virtue of this section—

(*a*) section 106 shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (2); and

(*b*) section 141 (3) shall not apply;

(*c*) section 141 (8) shall apply as if the reference to the time of the passing of the resolution for voluntary winding-up were a reference to the beginning of the date of registration of the notice under subsection (3);

(*d*) sections 143, 146, and 147 shall not apply;

(*e*) any creditors' committee which is in existence immediately before the company ceases to be in company reorganization shall continue in existence after that time as if appointed as a liquidation committee under section 148.

Moving from company reorganization to dissolution

57.—(1) If the administrator thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the Director and the Registrar of Companies.

(2) The Court may on the application of the administrator disapply subsection (1) in respect of the company.

(3) On receipt of a notice under subsection (1), the Registrar of Companies shall register the notice.

(4) On the registration of a notice in respect of a company under subsection (1), the appointment of an administrator shall cease to have effect.

(5) If an administrator sends a notice under subsection (1), he shall, as soon as is reasonably practicable—

(*a*) file a copy of the notice with the Court; and

(*b*) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the prescribed period beginning with the date of registration of a notice in respect of a company under subsection (1), the company shall be deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person, the Court may—

(*a*) suspend or extend the period specified in subsection (6); or

(*b*) disapply subsection (6).

(8) Where an order is made under subsection (7) in respect of a company, the administrator shall as soon as is reasonably practicable notify the Director and the Registrar of Companies.

58.—(1) This section shall apply where the Court makes an order under this Act providing for the appointment of an administrator to cease to have effect.

Discharge of company reorganization order where company reorganization ends

(2) The Court shall discharge the company reorganization order where company reorganization ends.

59.—(1) This section shall apply where the Court makes an order under this Act providing for the appointment of an administrator to cease to have effect.

Notice to Registrar of Companies where company reorganization ends

(2) The administrator shall send a copy of the order to the Director and the Registrar of Companies within the prescribed period beginning with the date of the order.

60.—(1) An administrator may resign only in the prescribed circumstances.

Resignation of administrator

(2) Where an administrator may resign, he may do so only by notice in writing to the Court.

61. The Court may order the removal of an administrator from office.

Removal of administrator from office

62.—(1) An administrator shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

Administrator ceasing to be qualified

(2) Where an administrator vacates office by virtue of subsection (1) he shall give notice in writing to the Court.

63.—(1) This section shall apply where an administrator—

Vacancy in office of administrator

(*a*) dies;

(*b*) resigns;

(*c*) is removed from office under section 61; or

(*d*) vacates office under section 62.

(2) The Court may replace the administrator on an application under this subsection made by—

(*a*) a creditors' committee of the company;

(*b*) the company;

(*c*) the directors of the company;

(*d*) one or more creditors of the company; or

(*e*) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remain in office.

(3) An application may be made in reliance on subsection (2) (*b*), (*c*) and (*d*) only where—

(*a*) there is no creditors' committee of the company;

(*b*) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement; or

(*c*) the Court is satisfied that for another reason it is right for the application to be made.

(4) The Court may replace an administrator on the application of a person listed in subsection (2) if the Court is of the opinion that for any reason, it is right for the Court to make the replacement.

Vacation of office: discharge from liability

64.—(1) Where a person ceases to be the administrator, whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office, or because his appointment ceases to have effect, he shall be discharged from liability in respect of any of his actions as administrator.

(2) The discharge provided by subsection (1) shall take effect—

(*a*) in the case of an administrator who dies, on the filing with the Court of notice of his death; or

(*b*) in any other case, at a time specified by the Court.

(3) The discharge under this section shall—

(*a*) apply to liability accrued before the discharge takes effect; and

(*b*) not prevent the exercise of the Court's powers under section 50.

Vacation of office: charges and liabilities

65.—(1) This section shall apply where a person ceases to be the administrator whether because—

(*a*) he vacates office by resignation, death or otherwise;

(*b*) he is removed from office; or

(*c*) his appointment ceases to have effect.

(2) In this section—

(*a*) "the former administrator" means the person referred to in subsection (1); and

(*b*) "cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(*a*) charged on and payable out of property of which he had custody or control immediately before cessation; and

(*b*) payable in priority to any security to which section 46 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(*a*) charged on and payable out of property of which the former administrator had custody or control immediately before cessation; and

(*b*) payable in priority to any security interest arising under subsection (3).

(5) Subsection (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(*a*) action taken within the prescribed period after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract;

(*b*) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment; and

(*c*) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In subsection (5) (*c*), "wages or salary" includes—

(*a*) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued);

(*b*) a sum payable in respect of a period of absence through illness or other good cause;

(*c*) a sum payable *in lieu* of holiday;

(*d*) in respect of a period, a sum which would be treated as earnings for that period for the purposes of a written law about social security; and

(*e*) a contribution to an occupational pension scheme.

Multiple appointments

66.—(1) In this Act—

(*a*) a reference to the appointment of an administrator includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator; and

(*b*) a reference to the appointment of a person as administrator includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator.

(2) The appointment of a number of persons to act as administrator shall specify—

(*a*) which functions (if any) are to be exercised by the persons appointed acting jointly; and

(*b*) which functions (if any) are to be exercised by any or all of the persons appointed.

Joint administrators

67.—(1) This section shall apply where two or more persons are appointed to act jointly as an administrator of a company.

(2) A reference to an administrator of the company is a reference to those persons acting jointly.

(3) Notwithstanding subsection (2), a reference to an administrator in sections 60 to 66 inclusive is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(*a*) commits the offence; and

(*b*) may be proceeded against and punished individually.

(5) The reference in section 29 (1) (*a*) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator, this section shall apply only in relation to those functions.

Concurrent administrators

68.—(1) This section shall apply where two or more persons are appointed to act concurrently as the administrator.

(2) A reference to the administrator in this Act is a reference to any of the persons appointed (or any combination of them).

69.—(1) Where a company is in company reorganization, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

Joint or concurrent administrators

(2) An appointment under subsection (1) shall be made by the Court on the application of—

(*a*) a person or group listed in section 26 (1), (2) and (3); or

(*b*) the person or persons acting as the administrator of the company.

(3) An appointment under subsection (1) may be made only with the consent of the person or persons acting as the administrator of the company.

70. An act of the administrator shall be valid notwithstanding a defect in his appointment or qualification.

Presumption of validity

71. A reference in this Act to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Majority decision of directors

72.—(1) Where a provision of this Act provides that a period may be varied in accordance with this section, the period may be varied in respect of a company—

Extension of time limit

(*a*) by the Court; and

(*b*) on the application of the administrator.

(2) A time period may be extended in respect of a company under this section—

(*a*) more than once; and

(*b*) after expiry of the period.

73.—(1) A period specified in sections 33 (5), 34 (1) (*b*) or 35 (2) may be varied in respect of a company by the administrator with consent.

Variation of period

(2) The power to extend under subsection (1) may—

(*a*) be exercised in respect of a period only once;

(*b*) not be used to extend a period by more than the prescribed period;

(*c*) not be used to extend a period which has been extended by the Court; and

(*d*) not be used to extend a period after expiry.

Extended period

74. Where a period is extended under section 72 or 73, a reference to the period shall be taken as a reference to the period as extended.

PART IV

RECEIVERSHIP

Appointment of receiver

75.—(1) A receiver—

(*a*) may be appointed—

(i) under any instrument that confers on a secured creditor the power to appoint a receiver; or

(ii) by the Court, whether or not the person appointed is empowered to sell any of the property in receivership; and

(*b*) shall not include a mortgagee in possession who personally or as or through an agent exercises a power to—

(i) receive income from mortgaged property;

(ii) enter into possession or assume control of mortgaged property; or

(iii) sell or otherwise alienate mortgaged property.

(2) An instrument that creates a security interest in respect of the property of the company may confer on the secured party the power to appoint a receiver, or a receiver and manager, of the property concerned or of that part which is secured by the security interest.

(3) A receiver may not be appointed under this Part if a company is already in company reorganization under Part III, or where an application has already been made to place the company under company reorganization.

Qualification of receiver

76.—(1) Unless the Court orders otherwise, no person may be appointed as a receiver who—

(*a*) is not qualified to be an insolvency practitioner;

(*b*) is a creditor of the debtor;

(*c*) is or has within the prescribed period immediately preceding the commencement of the receivership been a director, officer or auditor of the debtor of the property in receivership, or of any company which is a related company of the secured party;

(*d*) has, or has within the prescribed period immediately preceding the commencement of the receivership had, an interest, direct or indirect, in a share issued by the debtor;

(*e*) is a person in respect of whom an order for his removal as an insolvency practitioner has been made or is prohibited from acting as an insolvency practitioner; or

(*f*) is a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.

Appointment of receiver under instrument

77.—(1) When an instrument confers on the secured party the power to appoint a receiver or a receiver and manager, the secured party may appoint a receiver or a receiver and manager by an instrument in writing signed by him or on his behalf.

(2) A receiver or a receiver and manager appointed by, or under a power conferred by, an instrument shall be the agent of the debtor, unless the instrument expressly provides otherwise.

(3) A receiver or a receiver and manager may be appointed under this section—

(*a*) notwithstanding any other law; and

(*b*) whether or not the property in respect of which the receiver or receiver and manager is appointed includes immovable property.

(4) A person appointed a receiver shall not act as receiver and manager unless the instrument appointing him includes his appointment as a manager.

(5) A power conferred by an instrument to appoint a receiver includes, unless the instrument expressly provides otherwise, the power to appoint—

(*a*) two or more receivers;

(*b*) a receiver additional to a receiver in office; and

(*c*) a receiver to succeed a receiver whose office has become vacant.

Appointment of receiver by Court

78.—(1) The Court may appoint a receiver, or a receiver and manager, on the application of a secured party or of any other person and on notice to the company, where the Court is satisfied that—

(*a*) the company has failed to pay a debt due to the secured party or has otherwise failed to meet any obligation to the secured party, or that any principal money borrowed by the company or interest is in arrears for more than the prescribed period;

(*b*) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security interest; or

(*c*) it is necessary to do so to ensure the preservation of the secured property for the benefit of the secured party.

(2) A receiver or receiver and manager may be appointed under this section—

(*a*) notwithstanding any other law; and

(*b*) whether or not the property in respect of which the receiver is appointed includes immovable property.

(3) A person appointed by the Court as a receiver shall be appointed receiver and manager unless the Court directs that the person is to be appointed only as a receiver.

Notice of appointment of receiver

79.—(1) A receiver shall, within the prescribed period after being appointed—

(*a*) give written notice of his appointment to the debtor;

(*b*) give public notice of his appointment, including—

(i) the receiver's full name;

(ii) the date and time of the appointment;

(iii) the receiver's office address; and

(iv) a brief description of the property in receivership; and

(*c*) send a copy of the notice to the Director and the Registrar of Companies.

(2) Where the appointment of the receiver is in addition to that of a receiver who already holds office or is in place of a person who has vacated office as receiver, every notice under this section shall state that fact.

Notice of receivership

80.—(1) Where a receiver is appointed, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

(2) Where a receiver is appointed in relation to a specific asset, every agreement entered into, and every document issued, by or on behalf of the chargor or the receiver that relates to the asset and on which the name of the chargor appears shall state clearly that a receiver has been appointed.

(3) A failure to comply with subsection (1) or (2) shall not affect the validity of the agreement or document.

Vacancy in office of receiver

81.—(1) The office of a receiver shall become vacant if the person holding office resigns, dies or becomes disqualified.

(2) A receiver appointed under a power conferred by an instrument may resign office by giving written notice of not less than the prescribed period of his intention to resign to the person by whom he was appointed.

(3) If for any reason other than resignation a vacancy occurs in the office of a receiver, written notice of the vacancy shall forthwith be delivered to the Director and to Registrar of Companies by the person vacating office or, if that person is unable to act, by his legal representative.

(4) A receiver appointed by the Court shall not resign without first obtaining the leave of the Court to do so.

(5) A person vacating the office of receiver shall, where practicable, provide such information and give such assistance in the conduct of the receivership to his successor as that person reasonably requires.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the Court may make any order that it considers necessary or desirable to facilitate the performance of his duties.

Powers of receiver

82.—(1) A receiver shall have the powers and authorities expressly or impliedly conferred by the instrument or the order of the Court by or under which the appointment was made.

(2) Subject to the instrument or order of the Court by or under which the appointment was made, a receiver shall have and may exercise the powers set out in the Rules.

(3) A receiver may, subject to the instrument or order of the Court by or under which the appointment is made, exercise the receiver's powers and authorities to the exclusion of the board of directors or debtor company.

(4) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the instrument under which, or the order of the Court by which, they are appointed expressly provides otherwise.

Execution of documents

83.—(1) A receiver may execute in the name and on behalf of the company every document necessary or incidental to the exercise of the receiver's powers.

(2) A document signed on behalf of a company by a receiver shall be deemed to have been properly signed on behalf of the company.

(3) Notwithstanding any other law, or the memorandum and articles of association of a company that is a debtor, where the instrument under which a receiver is appointed empowers him to execute a document and to use the company's common seal for that purpose, the receiver may execute the document in the name and on behalf of the company by affixing the company's seal to the document and attesting the affixing of the seal or in such a manner as may be prescribed in the Rules.

Obligations of company and directors

84.—(1) Where a receiver is appointed in respect of the property of a company, the company and every director of the company shall—

(*a*) within the prescribed period make available to the receiver all books, documents and information relating to the property in receivership in the company's possession or under the company's control;

(*b*) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;

(*c*) within the prescribed period after receipt of the notice of the receiver's appointment, or such longer period as may be allowed by the Court, make out and submit a statement as to the affairs of the company;

(*d*) give the receiver such assistance as he may reasonably require; and

(*e*) where the company has a seal, make the seal available for use by the receiver.

(2) The receiver shall within the prescribed period after receipt of the statement under subsection (1) (*c*) or such extended period as the Court may allow—

(*a*) lodge with the Director and the Registrar of Companies a copy of the statement and of any comments the receiver sees fit to make on the statement;

(*b*) send to the company a copy of any such comments or, if the receiver does not see fit to make any comment, a notice to that effect.

(3) The statement as to the affairs of a company required by subsection (1) (*c*) shall show—

(*a*) the particulars of the company's assets;

(*b*) debts and liabilities;

(*c*) the names and addresses of its creditors;

(*d*) security interests held by them respectively;

(*e*) the dates when the security interests were respectively created; and

(*f*) a statement confirming that payment for amounts owing to the government and relating to taxes or any other levies, have been paid on the due dates.

(4) The statement as to the affairs of a company required by subsection (1) (*c*) shall be submitted in the form of an affidavit by a director and a secretary of the company or by any of the following persons whom the receiver may require—

(*a*) a person who is or has been an officer of the company;

(*b*) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*c*) a person who is or has been an employee of the company within that year and is, in the opinion of the receiver, capable of giving the information required; or

(*d*) a person who is or has been within that year an officer of or employee of a corporate which is, or within that year was, an officer of the company to which the statement relates.

(5) Any person making a statement under this section shall be allowed and shall be paid by the receiver out of his receipts such costs and expenses incurred in and about the preparation and making of the statement as the receiver may consider reasonable.

(6) Any person aggrieved by a decision of the receiver under subsection (5) may, within the prescribed period, appeal to the Court and the Court, on hearing the appeal, may make such order as it thinks appropriate.

(7) On the application of the receiver, the Court may make an order requiring the company or a director of the company to comply with subsection (1).

Validity of act of receiver

85.—(1) Subject to subsection (2), no act of a receiver shall be invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorized to do the act.

(2) No transaction entered into by a receiver shall be invalid merely because the receiver was not validly appointed or is not authorized to

enter into the transaction unless the person dealing with the receiver has, or ought to have, by reason of his relationship with the receiver or the property by whom the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

Consent of mortgagee to sale of property

86.—(1) Where the consent of a mortgagee is required to the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorizing the sale of the property, by itself or together with other assets.

(2) The Court may, on application under subsection (1), make such order as it thinks appropriate authorizing the sale of the property by the receiver where it is satisfied that—

(*a*) the receiver has made reasonable efforts to obtain the mortgagor's consent; and

(*b*) the sale—

(i) is in the interests of the chargor and chargor's creditors; and

(ii) will not substantially prejudice the interests of the mortgagee.

General duties of receiver

87.—(1) A receiver shall exercise his powers in good faith.

(2) A receiver shall exercise his powers in a manner which he believes on reasonable grounds to be in the interests of the person in whose interest he was appointed.

(3) While acting in accordance with subsections (1) and (2), a receiver shall exercise his powers with reasonable regard to the interests of—

(*a*) the debtor company;

(*b*) the persons claiming, through the debtor company, interests in the property in the receivership;

(*c*) unsecured creditors of the chargor; and

(*d*) sureties who may be called upon to fulfill obligations of the chargor.

(4) A receiver shall not be bound to act in accordance with the directions of the person appointing him and any such failure shall not be regarded as being in breach of the duty referred to in subsection (2).

(5) A receiver who exercises a power of sale of property in a receivership owes a duty to the debtor company to obtain the best price reasonably obtainable as at the time of sale.

(6) Notwithstanding any other law or anything contained in the instrument by or under which a receiver is appointed—

(*a*) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by subsection (5) that the receiver was acting as the debtor company's agent or under a power of attorney from the debtor company; and

(*b*) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the debtor company in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (5).

(7) A receiver shall keep money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(8) A receiver shall at all times keep accounting records that correctly record and explain all receipts, expenditure and other transactions relating to the property in receivership.

(9) The accounting records shall be retained by the receiver for not less than the prescribed period after the receivership ends.

(10) The receiver shall, in claiming remuneration, be entitled to include the reasonable costs of storage of records required to be kept by this section.

First report by receiver

88.—(1) Not later than the prescribed period after his appointment, a receiver shall prepare a report on the state of the affairs with respect to the property in receivership including—

(*a*) particulars of the assets comprising the property in receivership;

(*b*) particulars of the debts and liabilities to be satisfied from the property in receivership;

(*c*) the names and addresses of the creditors with an interest in the property in receivership;

(*d*) particulars of any secured interest over the property in receivership held by any creditor including the date on which it was created;

(*e*) particulars of any default by the debtor company in making relevant information available; and

(*f*) such other information as may be prescribed.

(2) The report required to be prepared under subsection (1) shall also include details of—

(*a*) the events leading up to the appointment of the receiver, so far as the receiver is aware of them;

(*b*) property owing, as at the date of appointment, to any person in whose interests the receiver was appointed;

(*c*) amounts owing, as at the date of appointment, to any person in whose interest the receiver was appointed;

(*d*) amounts owing, as at the date of appointment, to creditors of the debtor company having preferential claims; and

(*e*) amounts likely to be available for payment to creditors other than those referred to in subsection (2) (*c*) or (*d*).

(3) A receiver may omit from the report required to be prepared under subsection (1) details of any proposals for disposal of the property in receivership where he considers that their inclusion would materially prejudice the exercise of his functions.

Further report by receiver

89.—(1) Not later than the prescribed period after—

(*a*) the end of each period of six months after his appointment as receiver; and

(*b*) the date on which the receivership ends, a receiver or a person who was a receiver at the end of the receivership, as the case may be, shall prepare a further report summarizing the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership, including all amounts received and paid, during the periods to which the report relates.

(2) The report required to be prepared under subsection (1) shall include details of—

(*a*) property disposed of since the date of any previous report and any proposals for the disposal of property in receivership;

(*b*) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;

(*c*) amounts owing, as at the date of the report, to creditors of the debtor company who have preferential claims; and

(*d*) amounts likely to be available as at the date of the report for payment to creditors, other than those referred to in subsection (2) (*b*) or (*c*).

(3) A receiver may omit from the report required to be prepared in accordance with subsection (1) (*a*) details of any proposal of property in receivership if he considers that their inclusion would materially prejudice the exercise of his functions.

Extension of time for preparing reports

90. A period of time within which a person is required to prepare a report under section 88 or 89 may be extended, on the application of the person, by—

(*a*) the Court, where the person was appointed a receiver by the Court; or

(*b*) the Registrar of Companies, where the person was appointed a receiver by or under an instrument.

Persons entitled to receive reports

91.—(1) A copy of every report prepared under section 88 or 89 shall be sent by the person required to prepare it to the debtor company and the debtor company shall as soon as possible cause public notice to be given that a report has been prepared and is available for inspection.

(2) A person appointed as a receiver by the Court shall file a copy of every report prepared under section 88 or 89 with the Court.

(3) Not later than the prescribed period after receiving a written request for a copy of any report from—

(*a*) a creditor, director or surety of the debtor company; or

(*b*) any other person with an interest in any of the property in the receivership,

and on payment of the costs of making and sending the copy, the person who prepared the report shall send a copy of the report to the person requesting it.

(4) Within the prescribed period after preparing a report under section 88 or 89, the person who prepared the report shall send or deliver a copy of the report to the Director and the Registrar of Companies in the prescribed manner.

(5) A person to whom a report must be sent in accordance with subsection (1) or (3) shall be entitled to inspect the report during normal working hours at the office of the person required to send it.

Duty to notify breaches of Acts
Cap. 46:03
Cap. 46:06

92.—(1) A receiver who considers that the company or any director or officer of the company has committed an offence under the Companies Act or the Securities Act shall forthwith report that fact to the Director and the Registrar of Companies.

(2) A report made under subsection (1), and any communication between a receiver and the Director and the Registrar of Companies relating to that report, shall be protected by absolute privilege.

Notice of end of receivership

93. Not later than the prescribed period after a receivership ceases, the person who held office as receiver at the end of the receivership shall send or deliver to the Director and the Registrar of Companies notice in writing of the fact that the receivership has ceased.

Preferential claims

94.—(1) Subject to the rights of any of the persons referred to in subsection (2), a receiver shall pay moneys received by him to the secured party of the secured transaction by virtue of which he was appointed in or towards satisfaction of the debt secured by the secured transaction.

(2) The following persons shall be entitled to payment out of the property of a company in receivership in priority to the secured party under a security interest, and in the following order of priority—

(*a*) first, the receiver for his expenses and remuneration and any indemnity to which he is entitled from out of the property of the company;

(*b*) second, any amount secured by any security interest that ranks in priority to the security in relation to which the receiver was appointed; and

(*c*) third, where the company is in liquidation, the persons entitled to preferential claims to the extent and in the order of priority required by section 297.

(3) The receiver shall hold and retain from any personal property of a company subject to the security interest or any proceeds of realization of such property, sufficient funds or value of property to discharge any claims under subsection (2) (*b*) and (*c*).

Powers of receiver on liquidation

95.—(1) Subject to subsection (2), a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that has been put into liquidation unless the Court orders otherwise.

(2) After the commencement of the winding-up of a company, a receiver shall not be appointed in respect of the property of the

company except under an order of the Court on such terms as the Court thinks appropriate.

(3) A receiver holding office in respect of property referred to in subsections (1) and (2) may act as the agent of the chargor only with the written—

(*a*) approval of the Court; or

(*b*) consent of the liquidator.

(4) A debt or liability incurred by a chargor through the acts of a receiver who is acting as the agent of the chargor in accordance with subsection (2) shall not be a cost, charge or expense of liquidation.

Liability of receiver

96.—(1) Subject to subsections (2) and (3), a receiver shall be personally liable—

(*a*) on a contract entered into by the receiver in the exercise of any of his powers; and

(*b*) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his appointment if notice of the termination of the contract is not lawfully given within the prescribed period after the date of appointment.

(2) The terms of a contract referred to in subsection (1) (*a*) may exclude or limit the personal liability of the receiver other than a receiver appointed by the Court.

(3) The Court may, on the application of a receiver, made before the end of the period of the prescribed period, extend the period within which notice of the termination of a contract is required to be given under subsection (1) (*b*) and may extend that period on such terms and conditions as the Court thinks fit.

(4) Subject to subsection (6), a receiver shall be personally liable, to the extent specified in subsection (5), for rent and any other payments becoming due under an agreement subsisting at the date of his appointment relating to the use, possession or occupation by the chargor of property in receivership.

(5) The liability of a receiver under subsection (4) shall be limited to that portion of the rent or other payments which is attributed to the prescribed period commencing after the date of appointment of the receiver and ending on—

(*a*) the date on which the receivership ends; or

(*b*) the date on which the debtor company ceases to use, possess or occupy the property,

whichever occurs earlier.

(6) The Court may, on the application of a receiver—

(*a*) limit the liability of the receiver to a greater extent than that specified in subsection (5); or

(*b*) excuse the receiver from the liability under subsection (4).

(7) Nothing in subsection (4) or subsection (5)—

(*a*) shall be taken as giving rise to an adoption by the receiver of an agreement referred to in subsection (4); or

(*b*) shall render a receiver liable to perform any other obligation under the agreement.

(8) A receiver shall be entitled to an indemnity out of the property in receivership in respect of his personal liability under this section.

(9) Nothing in this section shall—

(*a*) limit any other right of indemnity to which a receiver may be entitled;

(*b*) limit the liability of a receiver on a contract entered into without authority; or

(*c*) confer on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

Relief from liability

97.—(1) The Court may relieve a person who has acted as a receiver from any personal liability incurred in the course of the receivership where it is satisfied that—

(*a*) the liability was incurred solely by reason of a defect in the appointment of the receiver or in the instrument or order of the Court by or under which the receiver was appointed; and

(*b*) the receiver acted honestly and reasonably and ought, in the circumstances, to be excused.

(2) The Court may exercise its powers under subsection (1) subject to such terms as it thinks appropriate.

(3) A person in whose interests a receiver was appointed shall be liable, subject to such terms as the Court thinks appropriate, to the extent to which the receiver is relieved from liability under subsection (1).

Court supervision of receiver

98.—(1) The Court may, on the application of a receiver—

(*a*) give directions in relation to any matter arising in connexion with the performance of the functions of the receiver; and

(*b*) revoke or vary any such directions.

(2) The Court may, on the application of a person referred to in subsection (3)—

(*a*) in respect of any period, review the remuneration of a receiver at a level which is reasonable in the circumstances;

(*b*) to the extent that an amount retained by a receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount; or

(*c*) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.

(3) Any of the following persons may apply to the Court under subsection (2)—

(*a*) the receiver;

(*b*) the debtor company;

(*c*) a creditor of the debtor company;

(*d*) a person claiming, through the debtor company, an interest in the property in receivership;

(*e*) a liquidator; or

(*f*) the Director.

(4) The powers of the Court under subsections (1) and (2)—

(*a*) shall be in addition to any other power which the Court may exercise; and

(*b*) may be exercised whether or not the receiver has ceased to act as receiver when an application is made.

(5) The Court may, on the application of a person referred to in subsection (3), revoke or vary an order made under subsection (2).

(6) Subject to subsection (7), it shall be a defence to a claim against a receiver in relation to any act or omission by the receiver that he acted in accordance with a direction given under subsection (1).

(7) The Court may, on the application of a person referred to in subsection (3), order that, by reason of the circumstances in which a direction was obtained under subsection (1), a receiver is not entitled to the protection given by subsection (6).

Court may terminate or limit receivership

99.—(1) The Court may, on the application of the debtor company or a liquidator of the debtor company—

(*a*) order that a receiver shall cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership; or

(*b*) order that a receiver shall, as from a specified date, act only in respect of specific assets forming part of the property in receivership.

(2) An order shall not be made under subsection (1) unless the Court is satisfied that—

(*a*) the purpose of the receivership has been satisfied so far as possible; or

(*b*) circumstances no longer justify its continuation.

(3) Unless the Court orders otherwise, a copy of an application under this section shall be served on the receiver not less than the prescribed period before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1)—

(*a*) may be made on such terms as the Court thinks appropriate; and

(*b*) shall not affect a security interest over the property in respect of which the order is made.

(5) The Court may, on the application of any person who applied for or is affected by the order, rescind or amend an order under this section.

Order to enforce receiver's duties

100.—(1) An application for an order under this section may be made by—

(*a*) the Registrar of Companies;

(*b*) a receiver;

(*c*) a person seeking appointment as a receiver;

(*d*) the debtor company;

(*e*) the secured party;

(*f*) a person with an interest in the property in receivership;

(*g*) a creditor of the debtor company;

(*h*) a guarantor of an obligation of the debtor company;

(*i*) a liquidator of the debtor company;

(*j*) the Director; or

(*k*) a receiver of the property of a debtor company in relation to a failure to comply by another receiver of the property of the debtor company.

(2) No application shall be made to the Court in relation to a failure to comply unless notice of the failure to comply has been served on the receiver not less than the prescribed number of days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, a failure to comply, the Court may—

(*a*) relieve the receiver of the duty to comply, wholly or in part; or

(*b*) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply with the extent specified in the order.

(4) The Court may, in respect of a person who fails to comply with an order made under subsection (3) (*b*), or is or becomes disqualified to become or remain a receiver—

(*a*) remove the receiver from office; or

(*b*) order that the person may be appointed and act or may continue to act as a receiver, even when he is not qualified.

(5) Where it is shown to the satisfaction of the Court that a person is unfit to act as a receiver by reason of—

(*a*) persistent failures to comply; or

(*b*) the seriousness of a failure to comply,

the Court shall make, in relation to that person, a prohibition order for a period not exceeding the prescribed period.

(6) A person to whom a prohibition order applies shall not—

(*a*) act as a receiver in any receivership and if currently acting shall cease to act;

(*b*) act as a liquidator in any liquidation; or

(*c*) act as an administrator.

(7) In making an order under this section, the Court may, if it thinks appropriate—

(*a*) make an order extending the time for compliance;

(*b*) impose any term or condition; or

(*c*) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall, within the prescribed period of the order being made, be delivered by the applicant to the Registrar of Companies and to the Director who shall keep it on a public file indexed by reference to the name of the receiver concerned.

(9) Evidence that, on two or more occasions within the preceding prescribed period—

(*a*) a Court has made an order to comply under this section, and section in respect of the same person; or

(*b*) an application for an order to comply under this section has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing, is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.

Order for protection of property in receivership

101. The Court may, on making an order that removes, or has the effect of removing, a receiver from office, make such order as it thinks fit—

(*a*) for preserving the property in receivership; and

(*b*) requiring the receiver for that purpose to make available to any person specified in the order any information and document in the possession or under the control of the receiver.

Refusal to provide essential service

102.—(1) In this section—

(*a*) "essential service" means—

(i) retail supply of electricity;

(ii) the supply of water; or

(iii) telecommunication services; and

(*b*) "telecommunication services" means the conveyance from one device to another by any line, radio frequency or other medium, of any sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device.

(2) Notwithstanding any other written law or any contract, a supplier of an essential service shall not—

(*a*) refuse to supply the service to a receiver or to the owner of the property in receivership by reason of the chargor's default in paying charges due for the service in relation to a period before the date of the appointment of the receiver; or

(*b*) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership that payment be made of outstanding charges due for the service in relation to a period before the date of appointment of the receiver.

(3) Nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law in respect of a failure by a company to pay charges due for the service in relation to any period after the commencement of the liquidation.

(4) The provision of services under this section forms part of the costs of receivership.

PART V

WINDING-UP OF COMPANIES

Division I—Winding-up of Other Bodies Corporate and Foreign Companies

Winding-up of other bodies corporate

103.—(1) Subject to the provisions of this Act, any body corporate, not being a company, foreign company (or body corporate specified in subsection (2)), a partnership or sole proprietorship which has assets situated in Malaŵi, may be wound-up under this Part, and all the provisions of this Part shall apply to such body corporate as if it were a company.

(2) This section shall not apply to any body corporate incorporated by or under any written law for the time being in force in Malaŵi, which law makes specific provision for the winding-up of bodies corporate formed by or under it.

(3) Section 104 shall apply to a winding-up under this section, as if the body corporate were an external company.

Winding-up of foreign companies

104.—(1) A foreign company may be wound-up pursuant to this Part whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.

(2) A foreign company being wound-up in terms of the provisions of this part shall be subject to the provisions of this section.

(3) A foreign company shall not be wound-up except on a petition to the Court.

(4) A foreign company may be wound-up by the Court—

(*a*) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;

(*b*) if it is dissolved in the country of its incorporation or has ceased to carry on business in Malaŵi, or is carrying on business for the purpose only of winding-up its affairs;

(*c*) if it is unable to pay its debts;

(*d*) if the Court is of the opinion that the business or objects of the company, or any of them, are unlawful, or that the company is being operated in Malaŵi for any unlawful purpose or is carrying on a business or operations not authorized by its charter, memorandum or constitution;

(*e*) if the company has, for three months or more immediately preceding the filing of the petition, failed to comply with any provision of this Part requiring the delivery of any document or notice by the company to the Registrar of Companies for registration; or

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

(5) In determining whether the external company is unable to pay its debts, the provisions of sections 182 and 183 shall apply.

(6) Where an order is made by the Court for the winding-up in Malaŵi of a foreign company the company shall, for all of the purposes of such winding-up, be treated as if it were a company incorporated in Malaŵi and, subject to the provisions of Part X, only the assets and liabilities situated in Malaŵi shall be deemed to be the assets and liabilities thereof.

(7) The Court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Malaŵi by or with such foreign company shall be deemed to be validly done notwithstanding that they occurred after the date when such foreign company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make such order on such terms and conditions as it deems fit.

Division II—Winding-up Generally

Modes of winding-up

105.—(1) The winding-up of a company may be effected by way of—

(*a*) winding-up order made by the Court; or

(*b*) a voluntary winding-up commenced by a resolution passed by the company.

(2) A voluntary winding-up may be—

(*a*) a creditors' voluntary winding-up where the company is insolvent and the liquidator is appointed by a meeting of creditors; or

(*b*) a shareholder's voluntary winding-up where the company is solvent and the liquidator is appointed by a shareholders' meeting.

Commencement of winding-up

106.—(1) Where, before the presentation of a petition to the Court under section 107, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit to direct otherwise, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In every other case of a winding-up by the Court, the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up.

(3) Where—

(*a*) a liquidator is appointed under section 113 (1) the Court shall record on the order appointing the liquidator the date on which, and the time at which, the order was made;

(*b*) a liquidator is appointed under section 113 (2), the board of the company shall cause to be recorded in the instrument appointing the liquidator the date on which, and the time at which, the special resolution is passed.

(*c*) a liquidator is appointed under section 104, the shareholders shall cause to be recorded in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution is passed.

(4) If any question arises as to whether on the date on which a liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, the act or transaction shall, in the absence of proof to the contrary, be deemed to have been done or entered into or affected, as the case may be, after that time.

Division III—Winding-up by Court

Petition for winding-up

107.—(1) Subject to the provisions of this section, a company may, whether or not it is being wound-up voluntarily and on petition made in accordance with this section, be wound-up under an order of the Court.

(2) A petition to wind-up by a company may be presented by—

(*a*) the company;

(*b*) a shareholder;

(*c*) a creditor, including a contingent or prospective creditor, of the company;

(*d*) a liquidator; or

(*e*) the Director.

(3) The Court shall not hear a petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding-up has been established to the satisfaction of the Court.

(4) Subject to this section, a petition to wind-up may be presented where—

(*a*) the company has by special resolution resolved that it be wound-up by the Court;

(*b*) the company is unable to pay its debts;

(*c*) the company does not commence its business (if any) within a year from its incorporation or suspends its business for a whole year;

(*d*) the number of members is reduced below two;

(*e*) the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, on the

occurrence of which the memorandum or articles provide that the company is to be dissolved, has occurred; or

(*f*) the Court is of opinion that it is just and equitable to do so.

Preliminary costs

108.—(1) Where a person, other than a company or a liquidator, presents a petition under section 107 and a winding-up order is made, the person shall at his own cost prosecute all proceedings in the winding-up until a liquidator is appointed.

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

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

Power of Court on petition for winding-up

109.—(1) Subject to this section, on hearing a petition to wind-up, the Court may in its discretion grant the petition and make a winding-up order, dismiss the petition, adjourn the hearing conditionally or unconditionally, adjourn the petition in the case of a company in company reorganization, or make such interim or other order that it thinks fit, but the Court shall not refuse to make a winding-up order by reason that—

(*a*) the assets of the company have been charged to an amount equal to or in excess of those assets;

(*b*) the company has no assets; or

(*c*) in the case of a petition by a contributory, there will be no assets available for distribution, amongst the contributories.

(2) The Court may at the hearing of a petition, adjourn the petition for not more than the prescribed period and direct that the Director prepare a report for the Court, with a copy being provided to the company and the petitioner, on whether it is appropriate in the circumstances for the company to be placed in company reorganization under Part III.

(3) The Court may, at the hearing of a petition or at any other time, on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—

(*a*) direct that notices be given or any other steps be taken before or after the hearing of the petition;

(*b*) dispense with any notice being given or step being taken which is required by this Act or by any previous order of the Court; or

(*c*) give such other directions as to the proceedings as the Court thinks fit.

(4) An order for winding-up of a company shall operate in favour of all the creditors and contributories of the company as if it was made on the joint petition of a creditor and of a contributory.

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

Proceedings against company

110.—(1) At any time after the presentation of a petition under section 107 and before a winding-up order is made, the company, a creditor, or member may, where any action or proceedings against the company is pending, apply to the Court to stay further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks appropriate.

(2) Where a winding-up order has been made or a provisional liquidator has been appointed, no action or proceedings shall be proceeded with or commenced against the company except—

(*a*) by leave of the Court; and

(*b*) on such terms as the Court thinks appropriate.

Property of company

111.—(1) A disposition of any property of a company and a transfer of shares or alteration in the status of a shareholder made after the commencement of the winding-up by the Court shall, unless the Court otherwise directs, be void.

(2) Any attachment, sequestration, distress or execution put in force against the assets of a company after the commencement of the winding-up by the Court shall be void.

Lodging and service of order

112. A petitioner shall, within the prescribed period after the making of a winding-up order—

(*a*) lodge with the Director—

(i) a copy of the order; and

(ii) the name and address of the liquidator;

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

(*c*) cause a copy of the order to be served on the secretary of the company or on such other person or in such manner as the Court directs; and

(*d*) deliver a copy of the order to the liquidator with a statement that the requirements of this section have been complied with.

Appointment of provisional liquidator

113.—(1) The Court may, on the presentation of a petition under section 107 and at any time thereafter but before the making of a winding-up order, and on being satisfied that—

(*a*) there are reasonable grounds for believing that the company is unable to pay its debts; or

(*b*) any of the property of the company available to meet its debts is at risk or may be removed from Malaŵi,

appoint the Official Receiver or any other qualified person to be provisional liquidator who shall, subject to such limitations and restrictions as the Court may specify in the order, have and may exercise all the functions and powers of a liquidator.

(2) On his appointment under subsection (1), a provisional liquidator shall forthwith take into his custody or control all the property, movable or immovable, including all bank accounts and other financial assets, to which the company is or appears to be entitled.

(3) Where a winding-up order is made—

(*a*) the Official Receiver shall, unless another person has been appointed, become the provisional liquidator and continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(*b*) the Official Receiver shall, where no liquidator is appointed, summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(*c*) the Court may appoint a liquidator and, if there is a difference between the determination of the meetings of the creditors and members in that respect, make such order as it thinks fit;

(*d*) the Official Receiver shall, where a liquidator is not appointed by the Court, be the liquidator;

(*e*) subject to paragraph (*f*), the official receiver shall be the liquidator during any vacancy in the office of liquidator; and

(*f*) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court.

(4) A meeting of creditors under this section shall be called and conducted in accordance with the Rules.

(5) Where the names and address of all creditors are not known to the Official Receiver, public notice of the meeting shall be advertised in at least two daily newspapers of national circulation.

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

(*a*) he considers, 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 no such meeting should be held;

(*b*) he gives notice in writing to the creditors stating—

(i) that he does not consider that a meeting should be held;

(ii) the reasons for his views; and

(iii) that no such meeting will be called unless a creditor gives notice in writing to the Official Receiver within the prescribed period after receiving the notice, requiring a meeting to be called; and

(*c*) no notice requiring the meeting to be called is received by the Official Receiver within that period.

(7) A notice under subsection (6) (*b*) shall be given to every known creditor—

(*a*) where section 119 (1) (*c*) applies, together with the report and notice referred to in section 119 (1) (*c*); or

(*b*) where section 119 (1) (*c*) is not applicable, at the time the Official Receiver would have been required to send the report and notice referred to in section 119 (1) (*c*) if it were applicable.

(8) A liquidator, other than the Official Receiver, appointed by the Court may resign or, on good cause shown, be removed from office by the Court.

(9) Where the Court appoints more than one liquidator, it shall declare whether anything by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

Custody and vesting of company's property

114.—(1) Where a provisional liquidator has been appointed or a winding-up order has been made, the provisional liquidator or liquidator shall forthwith take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, order that the property of the company vest in the liquidator and the property shall, subject to subsection (4), vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

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

(4) Where an order is made under subsection (2), every liquidator in relation to whom the order is made shall, within the prescribed period of the making of the order—

(*a*) lodge with the Director a copy of the order; and

(*b*) where the order relates to land, delivery a copy of the order to the Land Registrar or Deeds Registrar, as the case may be.

(5) No order under subsection (2) shall have effect to transfer or otherwise vest land until the appropriate entries are made with respect to the vesting by the Land Registrar or Deeds Registrar, as the case may be.

Statement of company's affairs

115.—(1) There shall be delivered to the liquidator in accordance with subsection (2) a statement as to the affairs of the company as at the date of the winding-up order showing—

(*a*) the particulars of its assets, including any inventory of stock, debts and liabilities;

(*b*) the names and addresses of its creditors;

(*c*) the security interests held by them;

(*d*) the dates on which the security interests were respectively given; and

(*e*) such further information as may be prescribed or as the liquidator requires.

(2) The statement shall be verified by the statutory declaration of one or more of the persons who at the date of the winding-up order are directors, and by the secretary of the company, or by such of the following persons as the liquidator may, subject to any order made by the Court, require—

(*a*) a person who is or has been an officer;

(*b*) a person who has taken part in the formation of the company at any time within two years before the date of the winding-up order; or

(*c*) a person who is, or has been, within that period an officer of, or in the employment of, a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within the prescribed period after the date of the winding-up order or within such extended time as the liquidator or the Court may authorize.

(4) The liquidator shall, within the prescribed period after its receipt, file with the Court and lodge with the Director a copy of the statement and, where the Official Receiver is not the liquidator, cause a copy to be delivered to the Official Receiver.

(5) Any person making or concurring in making a statement required by subsection (1) may, subject to any order made by the Court, be allowed and paid, out of the assets of the company, such costs and expenses incurred in, and about, the preparation and making of the statement as the liquidator considers reasonable.

Liquidator's report

116.—(1) The liquidator shall, within the prescribed period after receipt of the statement of affairs, submit a preliminary report to the Court—

(*a*) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(*b*) where the company is unable to pay its debts, as to the likely causes of the inability; and

(*c*) whether in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or inability to pay debts of the company or the conduct of its business.

(2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any provision of this Act, and specifying any other matter which in his opinion is desirable to bring to the notice of the Court.

Principal duty of liquidator

117. Subject to section 118, the principal duty of the liquidator shall be to act in a reasonable and efficient manner so as to—

(*a*) take possession of, protect, realize, and distribute the assets, or the proceeds of the realization of the assets, of the company to its creditors in accordance with this Act; and

(*b*) where there are surplus assets remaining, distribute them, or the proceeds of the realization of the surplus assets, in accordance with sections 303 and 304.

Liquidator not required to act in certain cases

118.—(1) Notwithstanding this Part—

(*a*) except where a security interest is surrendered or taken to be surrendered under the Rules, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a security interest; and

(*b*) where—

(i) a company is wound-up by order of the Court; and

(ii) the company has no assets available for distribution to creditors of the company,

the liquidator shall not be required, without the consent of the Director, to carry out any duty or exercise any power in connexion with the liquidation where to do so would or would be likely to involve incurring any expense.

Other duties of liquidator

119.—(1) A liquidator shall—

(*a*) within the prescribed period of being appointed or being notified of his appointment, give public notice in the prescribed manner;

(*b*) within the prescribed period of being appointed or being notified of his appointment, submit to the Director and the Registrar of Companies notice of his appointment;

(*c*) within the prescribed period, or at the end of each period of six months following the commencement of the liquidation, prepare and send to every known creditor and shareholder, and submit to the Director and the Registrar of Companies, a report—

(i) on the conduct of the liquidation during the preceding six months;

(ii) containing the prescribed information; and

(iii) of any further proposals which the liquidator has for completing the liquidation.

(2) The Court may, on the application of a liquidator and on such terms as it thinks appropriate—

(*a*) exempt the liquidator from compliance with any of the provisions of this section; or

(*b*) modify the application of those provisions in relation to the liquidator.

(3) A liquidator shall not be required to comply with subsection (1) (*c*) where he is satisfied that the value of the assets of the company available for distribution to unsecured creditors, not being creditors entitled to be paid in the order of the priority set out in section 297, is not likely to exceed the prescribed amount owed to such creditors.

(4) A liquidator who considers that the company or any person has—

(*a*) committed an offence in relation to the company;

(*b*) been guilty of any negligence, default, breach of duty or trust in relation to the company; or

(*c*) committed any offence that is material to this Act, the Companies Act or the Securities Act,

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shall within the prescribed period submit a written report of that fact to the Director and the Registrar of Companies and give the Director such information or documents, and such assistance, including further reports, and access to and facilities for inspecting and taking copies of any documents, as the Director may require.

(5) A liquidator shall ensure that every document entered into, made, or issued by him on behalf of a company shall state in a prominent position that the company is in liquidation.

Powers of liquidator

120. A liquidator of a company shall have power to do all or any of the following—

(*a*) commence, continue, discontinue and defend legal proceedings;

(*b*) carry on the business of the company to the extent necessary for the liquidation;

(*c*) appoint a legal practitioner to assist him in his duties;

(*d*) appoint an agent or expert to do any business which the liquidator himself is unable to do;

(*e*) with the leave of the liquidation committee or the Court, pay any class of creditors in full;

(*f*) subject to section 156, make a compromise or any arrangement with creditors or persons claiming to be creditors or who have or allege the existence of claim against the company, whether present or future, actual or contingent, or ascertained or not;

(*g*) compromised cause and liabilities for cause, debts and liabilities capable of resulting in debts and claims, present or future, actual or contingent, or call ascertain or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability or claim and give a complete discharge;

(*h*) sell or otherwise dispose of the property of the company with the approval of the liquidation committee;

(*i*) act in the name and on behalf of the company and enter into deeds, contracts and arrangements in the name and on behalf of the company;

(*j*) prove, rank and claim in the bankruptcy or a shareholder for any balance against that person's estate, and receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent, and ratably with the other separate creditors;

(*k*) draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company in the course of its business;

(*l*) borrow money whether with or without providing security over the assets of the company;

(*m*) take action in his name as liquidator for transfer to the heir or executor of a deceased shareholder of any shares in the name of the deceased and to do in that name any other act necessary for obtaining payment of money due from a shareholder or his estate which cannot be conveniently done in the name of the liquidator; or

(*n*) call a meeting of creditors or shareholders for—

(i) the purpose of informing creditors of progress in the liquidation;

(ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation; or

(iii) such other purpose connected with the liquidation thinks fit.

Power of liquidator relating to documents and information

121.—(1) A liquidator shall in pursuance of the powers provided under section 120 have power to obtain documents and information set out in this section.

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

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

(*a*) a director or former director of the company;

(*b*) a shareholder of company;

(*c*) a person who was involved in the promotion or formation of the company;

(*d*) a person who is, or has been, an employee of the company;

(*e*) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company; or

(*f*) a person who is acting or has at any time acted as a legal practitioner for the company,

to do any of the things specified in subsection (4).

(4) A person referred to in subsection (3) may be required to—

(*a*) attend on the liquidator at such reasonable time or times and at such place, including a place of meeting of creditors, as may be specified in the notice;

(*b*) provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator request and be examined by the liquidator in connexion with such affairs of the company; and

(*c*) assist in the liquidation to the best of the person's ability.

(5) Where a person directed to attend before the liquidator under subsection (3) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and the Court may, after hearing any evidence given or witnesses called by the liquidator, grant the application.

(6) Notes of the examination of a person under subsection (4)—

(*a*) shall be reduced to writing;

(*b*) shall be read over to, or by, and signed by, the person examined;

(*c*) may, subject to section 124, thereafter be used in evidence in any legal proceedings against the person examined; and

(*d*) shall be open to the inspection of any creditor or member.

Document in possession of receiver

122.—(1) A receiver shall not be required to hand over to a liquidator any record or document that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

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

(*a*) make such record and document available for inspection by the liquidator at any reasonable time; and

(*b*) provide the liquidator with copies of such record and document, or extracts from them.

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

(4) No person may, as against the liquidator of a company, claim or enforce a lien over a record or document of the company.

Document creating charge over property

123.—(1) A person may be required to give a document to a liquidator under section 121 even though possession of the document creates a security interest over property of a company.

(2) Production of the document to the liquidator under subsection (1) shall not prejudice the existence or priority of the security interest.

(3) Notwithstanding subsection (2), the liquidator shall make the document available to the person entitled to it for the purpose of dealing with or realizing the security interest.

Power of Court

124.—(1) The Court may, on the application of a liquidator, order a person who has failed to comply with a requirement of the liquidator under sections 120 and 121 to comply with the requirement.

(2) A liquidator may apply to the Court for directions in relation to any particular matter in a winding-up.

(3) The Court may, on the application of the liquidator, order a person to whom section 119 (3) applies to—

(*a*) attend before the Court and be examined on oath or affirmation by the Court, the liquidator or a legal practitioner acting on behalf of the liquidator on any matter relating to the business, accounts or affairs of the company; and

(*b*) produce any record or document relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.

(4) Where a person is examined under subsection (3) (*a*)—

(*a*) the examination shall be recorded in writing; and

(*b*) the person examined shall sign the record.

(5) Subject to any direction by Court, a record of an examination under this section shall be admissible in evidence in any proceedings under this Act.

(6) A person shall not be excused from answering a question put in course of being examined under subsection (3) on the ground that the answer might incriminate or tend to incriminate that person.

(7) The testimony of the person examined shall not be admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

125.—(1) Where a liquidator has—

Release of liquidator and dissolution of company

(*a*) realized all the property of the company or so much as can in his opinion be realized without needlessly protracting the liquidation;

(*b*) distributed a final dividend, if any, to the creditors;

(*c*) adjusted the rights of the members among themselves; and

(*d*) made a final return, if any, to the members,

he may apply to the Court for an order that he be released or for an order that he be released and that the company be dissolved.

(2) Where a liquidator has resigned or been removed from his office, he may apply to the Court for an order that he be—

(*a*) released; or

(*b*) released and that the company be dissolved.

(3) A liquidator shall present to the Court an account showing how the winding-up has been conducted and how the property of the company has been disposed of.

(4) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(5) The Court—

(*a*) may cause a report on the accounts of a liquidator, other than the Official Receiver, to be prepared by the Official Receiver or by a qualified auditor appointed by the Court;

(*b*) shall, on the liquidator complying with all the requirements of the Court, take into consideration the report and any objection which is urged by the Official Receiver, auditor, any creditor, contributory or other person interested against the release of the liquidator; and

(*c*) shall grant or withhold the release accordingly.

(6) Where the release of a liquidator is withheld, the Court may, on the application of any creditor, contributory or person interested, make such order as it thinks appropriate charging the liquidator with the consequence of any act done or default which he may have done or made contrary to his duty.

(7) Subject to subsection (8), an order of the Court releasing a liquidator shall discharge him from all liability in respect of any act

done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator.

(8) Any order under subsection (7) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

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

(10) Where the Court has made—

(*a*) an order that the liquidator be released; or

(*b*) an order that the liquidator be released and the company be dissolved,

a copy of the order shall be lodged with the Director and the Registrar of Companies by the liquidator and delivered to the Official Receiver within the prescribed period.

Liquidation committee in winding-up by Court

126.—(1) The liquidator may summon separate meetings of the creditor and members for the purpose of determining whether or not creditors or members require the appointment of a liquidation committee to act with the liquidator, and if so, who are to be members of the committee provided that in the case of a public company or on request by a creditor or a member, the summon of the meeting shall be mandatory.

(2) If the meeting of members requires a liquidation committee to be appointed, the Court shall decide whether such a committee should be appointed, and the Court shall also determine any difference as to who are to be members of the committee and make such order as it thinks fit.

(3) A liquidation committee shall consist of a number of creditors and members of the company or of persons holding—

(*a*) general powers of attorney from creditors; or

(*b*) special authority from creditors or members authorizing the persons named thereto and therein to act on such a committee appointed by the meetings of creditors and contributories in such proportions as are agreed to or in case of difference as are determined by the Courts.

(4) The liquidator may at any time on his own motion at least once every six months, and shall, within the fourteen days on the written request of a creditor or member, summons a meeting of creditors or

of members to consider any appointment or revoke the appointment and appoint another creditor or member or person holding a general power or special authority as specified in subsection (1) to be a member of the committee.

(5) The Rules shall govern proceedings at meetings of a liquidation committee.

List of members

127.—(1) As soon as it deems fit after making a winding-up order, the Court may settle a list of members and rectify the shareholder or member's register in every case where rectification is required pursuant to this Part, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

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

(3) This list of members, when settled, shall be *prima facie* evidence of the liabilities of the persons named therein as members.

Liabilities of present and past shareholders

128.—(1) This section shall apply only in the case of a company being limited by guarantee, an unlimited company, and a company having shares which are not fully paid up.

(2) On a company being wound-up, any past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves.

(3) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he has ceased to be a member.

(4) A past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up.

(5) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.

(6) In the case of a company limited by shares, no contribution shall be required from any past member exceeding the amount unpaid on the shares in respect of which he is liable.

(7) For the purposes of this section, any reference to a member shall, unless the context otherwise requires—

(*a*) be deemed to include a past member who is liable by virtue of this section, to contribute to the assets of the company; and

(*b*) for the purpose of all proceedings for determining, and of all proceedings prior to the final determination of, the persons who are deemed to be so liable (including the presentation of a winding-up petition), includes any person claiming or alleged to be so liable.

Death of member

129. If a member dies before or after he has been placed on the list of those liable to contribute to the assets of the company, his personal representatives shall be so liable in due course of administration and, if they make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased members and for compelling payment there out of the money due.

Bankruptcy of member

130. If a member becomes bankrupt, before or after he has been placed on the list of those liable to contribute to the assets of the company—

(*a*) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be liable to contribute accordingly; and

(*b*) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls and as to calls already made.

Payment of debt due by contributory

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

(*a*) in the case of unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract other than money due to him as a shareholder or member in respect of any dividend or profit;

(*b*) in the case of a limited company, make a similar allowance to a director whose liability is unlimited, or to his heir; and

(*c*) in the case of any company, when all the creditors are paid in full, allow a contributory by way of set-off against any subsequent call any money due on any account whatever to a contributory from the company.

(2) The Court may, before or after it has ascertained the sufficiency of the company—

(*a*) make a call on any contributory for the time being on the list of contributories, to the extent of his liability, for—

(i) the payment of any money which the Court consider necessary to satisfy the debts and liability of the company and the costs, charges and expenses of winding-up; and

(ii) the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of all calls so made, and, in making a call, the Court may have regard to the probability that some of the contributories may partly or wholly fail to pay the call.

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

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

Special manager

132.—(1) Where a liquidator is satisfied that the nature of the assets or business of the company, or the interests of the creditors or members generally, require the appointment of special manager other than himself, he may, apply to the Court which may appoint a special manager to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

(*a*) shall give such security and account in such manner as the Court directs;

(*b*) shall receive such remuneration as is fixed by the Court; and

(*c*) may at any time resign after giving not less than one month's written notice to the liquidator or his intention to resign, or on cause shown be removed by the Court.

Receiver for secured creditors

133. Where an application is made to the Court to appoint a receiver on behalf of the secured creditors of a company which is being wound-up by the Court, the Court may grant the application on such terms as the Court thinks appropriate.

Creditor's claim

134. The Court may fix a date on or before which creditors are to prove their debts or claims, after which date they will be excluded from the benefit of any distribution made before those debts are proved.

Power of arrest

135.—(1) The Court may, at any time before or after making a winding-up order, on proof of probable cause for believing that a member or officer or a former member or officer of the company, is about to leave Malaŵi or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of any money due to the company or of avoiding examination regarding the affairs of the company, may cause the member, office or former member or officer to be arrested and his books and papers and movable personal property to be seized and be kept safely until such time as the Court orders otherwise.

(2) For the purposes of this section, "officer" shall include a banker, legal practitioner or auditor of the company.

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136.—(1) Subject to the provisions of this section, a liquidator may be appointed for a foreign company as defined in the Companies Act by the Court on the application of—

(*a*) a liquidator appointed in the country of the company's incorporation;

(*b*) a creditor; or

(*c*) the Director,

and thereupon the provisions of this Act shall apply.

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(2) Where the circumstances regarding an external company set out in section 369 (1) of the Companies Act have been brought to the attention of the Director, the Director may apply to the Court for an order for the winding-up of the affairs of the company in so far as they relate to its assets in Malaŵi.

(3) Where, on an application under subsection (1) or (2), an order is made for the winding-up of the affairs of the company so far as assets in Malaŵi are concerned, the company shall not carry on business or establish or keep a place of business in Malaŵi.

Pooling of assets of related companies

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

(*a*) a company that is, or has been, related to a company in liquidation shall pay to the liquidator any claim made in the liquidation; or

(*b*) where two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent that the Court so orders and subject to such terms as the Court may impose.

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

Guidelines for orders

138.—(1) In deciding whether it is just and equitable to make an order under section 137 (1) (*a*), the Court shall have regard to the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company.

(2) In deciding whether it is just and equitable to make an order under section 137 (1) (*a*), the Court shall have regard to—

(*a*) the extent to which any of the companies took part in the management of any of the other companies;

(*b*) the conduct of any of the companies towards the creditors of any of the other companies;

(*c*) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of the other companies; and

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

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it shall not be a ground for making an order under section 137.

Duty to identify and deliver property

139. A present or former director or employee of a company in liquidation shall—

(*a*) forthwith after the company is put into liquidation give the liquidator details of property of the company in his possession or under his control; and

(*b*) on being required to do so by the liquidator forthwith or within such time as may be specified by the liquidator, deliver the

property to the liquidator or such other person as the liquidator may direct, or dispose of the property in such manner as the liquidator may direct.

Refusal to supply essential service

140.—(1) For the purposes of this section—

(*a*) "essential service" means—

(i) the retail supply of electricity;

(ii) the supply of water; or

(iii) telecommunications services; and

(*b*) "telecommunication service" means the conveyance from one device to another by a line, radio frequency, satellite transmission or other medium of a sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of a person using the device.

(2) Notwithstanding any other law, a supplier of an essential service shall not—

(*a*) refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or

(*b*) make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation.

(3) The charges incurred by a liquidator for the supply of an essential service shall be an expense incurred by the liquidator as part of the costs of the liquidation.

Division IV—Voluntary Winding-up

Circumstances for voluntary winding-up

141.—(1) Subject to subsection (2), a company may be wound-up voluntarily where—

(*a*) the period, if any, fixed for its duration by its memorandum and articles of association expires, or the event, if any, occurs, on the occurrence of which the memorandum and articles of association provides that the company is to be dissolved, and the company passes an ordinary resolution that it shall be wound-up; or

(*b*) the company passes a special resolution that it shall be wound-up.

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

(3) A company shall—

(*a*) within the prescribed period, lodge with the Director and the Registrar General a copy of the winding-up resolution; and

(*b*) within the prescribed period, give notice of the winding-up resolution in one daily newspaper and in the *Gazette*.

(4) Where it appears to the directors of a company that the company is insolvent, the directors may, before holding a meeting for the passing of the special resolution referred to in subsection (1)—

(*a*) lodge with the Director and the Registrar of Companies a declaration and deliver a copy thereof to the Official Receiver, stating that—

(i) the company cannot by reason of its liabilities continue its business; and

(ii) meetings of the company and of its creditors have been summoned for a date not later than the prescribed period of the date of the declaration; and

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

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

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

(7) A provisional liquidator shall be entitled to receive remuneration as determined in the Rules.

(8) A voluntary winding-up shall commence—

(*a*) where a provisional liquidator is appointed under subsection (4) before a winding-up resolution is passed, at the time when a declaration under subsection (4) is lodged; and

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

Effect of voluntary winding-up

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

(2) The corporate status and corporate powers of the company shall, notwithstanding anything in the memorandum and articles of association, continue until it is dissolved.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the shareholders made after the commencement of the winding-up, shall be void.

Declaration of solvency

143.—(1) Where it is proposed to wind-up a company voluntarily as a shareholders' voluntary winding-up, the directors or the majority of them shall, before the date on which the notices of the meeting at which the winding-up resolution is to be proposed are set out, make a written declaration to the effect that—

(*a*) they have made an inquiry into the affairs of the company; and

(*b*) at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding the prescribed period after the commencement of the winding-up.

(2) There shall be attached to the declaration under subsection (1) a statement of the affairs of the company showing—

(*a*) the assets of the company and the total amount expected to be realized therefrom;

(*b*) the liabilities of the company; and

(*c*) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.

(3) A declaration made under subsection (1) shall have no effect unless it is—

(*a*) made at the meeting of directors referred to in subsection (1); or

(*b*) made within the prescribed period immediately preceding the passing of the winding-up resolution; and

(*c*) lodged with the Director and the Registrar of Companies before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out.

Liquidator in voluntary winding-up

144.—(1) The company shall, in a general meeting, appoint a liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to the liquidator.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator, or, with the liquidator's consent, the company in a general meeting, may otherwise determine.

(3) Subject to subsection (4), the company in a general meeting convened by a contributory may, by special resolution of which special notice has been given to the creditors and the liquidator, remove a liquidator.

(4) A resolution under subsection (3) shall have no effect if, on the application of the liquidator or a creditor, the Court otherwise directs.

(5) Where a vacancy occurs, by death, resignation, removal or otherwise, in the office of a liquidator the company in a general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by a contributory, or, if there were more liquidators than one, by the continuing liquidators.

(6) A general meeting under subsection (5) shall be held in the manner provided by the Rules, the Companies Act or in such manner as, on the application of a contributory or the continuing liquidators, the Court may direct.

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(7) Where a company in a general meeting has failed to fill a vacancy under subsection (5), any creditor or member of the company may apply to the Court for the appointment of the Official Receiver as provisional liquidator of the company and, if appointed by the Court, the Official Receiver shall act as provisional liquidator of the company until further order of the Court made on application by the company following a resolution in a general meeting nominating a liquidator for appointment by the Court.

Insolvency of company

145.—(1) Where a liquidator is of the opinion that the company will not be able to pay or provide for the payment of its debts in full

within the period stated in the declaration of solvency made under section 143, he shall forthwith—

(*a*) summon a meeting of the creditors; and

(*b*) lay before the meeting a statement of the assets and liabilities of the company.

(2) The notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (3).

(3) The creditors may at the meeting appoint some other person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(4) Where the creditors appoint some other person under subsection (3), the winding-up shall proceed as if the winding-up were a creditors' winding-up.

(5) The liquidator or, if some other person has been appointed by the creditors to be the liquidator, the person so appointed, shall, within the prescribed period, lodge a notice of the holding of the meeting with the Director and deliver a copy to the Official Receiver.

(6) Where, at a meeting summoned under subsection (1), the creditors do not appoint another liquidator, the winding-up shall proceed as if the winding-up were a creditors' voluntary winding-up.

(7) The liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting was held less than three months before the end of that year.

Creditor's meeting

146.—(1) Where no declaration of solvency is made under section 143, the voluntary winding-up shall be a voluntary winding-up by resolution.

(2) Directors shall cause—

(*a*) a meeting of the creditors of the company to be summoned for the day, or the day next following the day on which there is to be held the meeting at which a winding-up resolution is to be proposed; and

(*b*) the notice of the meeting of creditors shall be given in the prescribed manner at the same time as the notice of the meeting of the company are sent.

(3) Directors shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

(*a*) give the creditors at least the prescribed period of notice of the meeting; and

(*b*) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(4) Directors shall cause notice of the meeting of the creditors to be advertised at least for the prescribed number of days before the date of the meeting in one daily newspaper.

(5) Directors shall—

(*a*) cause a full statement of the company's affairs showing, in respect of assets, the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and

(*b*) appoint one of their number to attend the meeting.

(6) A director appointed under subsection (5) (*b*) shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding-up.

(7) Creditors may appoint one of their number or the director appointed under subsection (5) (*b*) to preside at the meeting.

(8) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(9) Where the chairman decides that the meeting has not been held at a time and place convenient to the majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(10) The Rules shall apply to the meeting so far as they are applicable and consistent with this section.

Liquidator in creditors' winding-up

147.—(1) Creditors may nominate a person to be the liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the directors nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors, the person nominated by the directors shall be the liquidator.

(2) Where different persons are nominated to be the liquidator, any director, shareholder or creditor may, within the prescribed period after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the directors shall be the liquidator instead of, or jointly with, the person nominated by the creditors.

(3) The liquidator, or liquidators, where more than one has been appointed, shall be entitled to remuneration in the amount and in the order of priority as set out in the Rules.

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

(5) Where a liquidator, other than a liquidator appointed by, or by the direction of, the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing, a meeting of the creditors may be summoned by any two of their number.

Liquidation committee in voluntary winding-up

148.—(1) The creditors at a meeting summoned pursuant to section 146 or 147, or at any subsequent meeting may, if they think fit, appoint a liquidation committee consisting of not more than five persons, whether creditors or not.

(2) Where a liquidation committee is appointed, the directors may, at the meeting at which the winding-up resolution is passed or at any time subsequently in a general meeting, appoint such number of persons not being more than five as it thinks fit, to act as members of the committee.

(3) The creditors may, if they think fit, resolve that all or any of the persons appointed by the directors under subsection (2) ought not to be members of the liquidation committee and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under subsection (2), the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) A committee appointed under this section shall meet at least once every six months.

(5) The provisions in the Rules shall apply to a liquidation committee appointed under this section.

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

Property and proceedings

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

150.—(1) Subject to sections 297, 303 and 304, the free assets of a company shall, on its winding-up—

Distribution of property

(*a*) be applied *pari passu* in satisfaction of its liabilities; and

(*b*) unless the memorandum and articles of association provide otherwise, be distributed among the shareholders according to their rights and interests in the company.

Division V—Liquidators

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

Appointment and removal of liquidator

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

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

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

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

152.—(1) A liquidator may—

Powers and duties of liquidator in voluntary winding-up

(*a*) exercise any of the powers of a liquidator in a winding-up by the Court—

(i) in the case of a shareholders' voluntary winding-up, with the approval of a special resolution of the company; and

(ii) in the case of a creditor's voluntary winding-up, with the approval of the Court or the liquidation committee;

(*b*) exercise any other power given by this Act to a liquidator in a winding-up by the Court;

(*c*) exercise the power of the Court of settling a list of members, and the list of the members shall be *prima facie* evidence of the liability of the persons named therein to be members and sections 128, 129, 130 and 131 shall apply to the liability of contributories;

(*d*) exercise the power of the Court under section 131 (2) of making calls; or

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks appropriate.

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

(3) Where several liquidators are appointed, any power may be exercised by a liquidator designated at the time of their appointment, or in default of such determination, by any number not less than two.

Sale of company's property

153.—(1) Subject to subsection (5), where it is proposed that the business or property of a company be transferred to another company, the liquidator may, with the sanction of a special resolution conferring on him a general authority or an authority in respect of a particular arrangement—

(*a*) receive in compensation or part compensation for the transfer of cash, shares, policies or other like interests in the corporation for distribution among the members; or

(*b*) enter into any other arrangement whereby the members may, *in lieu* of, or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of or receive any other benefit from the corporation, and any such transfer or arrangement shall be binding on the shareholders.

(2) Where a shareholder, within the prescribed period, by written notice addressed to the liquidator and left at his office, dissents from the resolution, he may require the liquidator to—

(*a*) abstain from carrying the resolution into effect; or

(*b*) purchase his interest at a price to be determined by agreement or by the Court.

(3) Where the liquidator elects to purchase the shareholder's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before, or concurrently with, a winding-up resolution or a resolution appointing a liquidator, but if an order for winding-up the company by the Court is made within one year after the passing of the resolution, it shall not be valid unless sanctioned by the Court.

(5) Subsection (1) shall not apply in the case of a creditors' winding-up except with the approval of the Court or the liquidation committee.

Annual meeting of shareholders and creditors

154.—(1) Where a voluntary winding-up continues for more than the prescribed period, the liquidator shall at the expiry of the first prescribed period from the commencement of the winding-up and of each succeeding prescribed period, summon a general meeting of the company, or in the case of a creditors' voluntary winding-up, a meeting of the company and the creditors, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

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

Final meeting and dissolution in voluntary winding-up

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

(*a*) make up an account showing how the winding-up has been conducted and how the property of the company has been disposed of; and

(*b*) call a general meeting of the company, or in the case of a creditors' voluntary winding-up a meeting of the company and the creditors, and shall lay the account before the meeting.

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

(*a*) specify the time, place and object of the meeting; and

(*b*) be published within the prescribed period before the meeting.

(3) The liquidator shall, within the prescribed period, lodge a notice, with the Director, of the holding of the meeting, and of its date, together with a copy of the account and deliver a copy of the notice to the Official Receiver.

(4) The *quorum* at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two shareholders and two creditors, and if a *quorum* is not present at the meeting, the liquidator shall *in lieu* of the notice specified in subsection (3) lodge a notice together with a copy of the account, that the meeting was summoned and that no *quorum* was present.

(5) Subject to subsection (6), the company shall be dissolved on the expiry of the prescribed period after the notice has been lodged and, if a *quorum* is reached, when a copy of the notice has been delivered to the Official Receiver.

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

(7) The person on whose application an order of the Court under subsection (6) is made shall, within the prescribed period, lodge a copy of the order with the Director and deliver a copy to the Official Receiver.

Arrangement binding on creditors

156.—(1) Any arrangement entered into between a company, about to be or in the course of being wound-up voluntarily, and its creditors shall, subject to subsection (4), be binding on—

(*a*) the company if sanctioned by a special resolution; and

(*b*) the creditors if acceded to by—

(i) three-fourths in value of the creditors; and

(ii) one-half of the number of persons who are creditors for the prescribed amount or more.

(2) A creditor shall be accounted a creditor for such sum as appears to be the balance due to him upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor.

(3) Any dispute with regard to the value of any security or lien, or the amount of a debt or set-off may, on the application of the company, the liquidator or the creditor, be settled by the Court.

(4) A creditor or contributory may, within the prescribed period from the completion of the arrangement, appeal to the Court against it, and the Court may amend, vary or confirm the arrangement.

Costs

157. All proper costs, charges and expenses of, and incidental to, a voluntary winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

PART VI

PROVISIONS APPLICABLE TO EVERY WINDING-UP

Effect of liquidation

158.—(1) With effect from the commencement of the liquidation of a company—

(*a*) the liquidator shall have custody and control of the company's assets;

(*b*) the directors shall remain in office but cease to have powers, functions or duties, other than those required or permitted to be exercised by this Act;

(*c*) unless the liquidator agrees or the Court orders otherwise, a person shall not—

(i) commence or continue legal proceedings against the company or in relation to its property; or

(ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;

(*d*) unless the Court orders otherwise, no share in the company shall be transferred;

(*e*) an alteration shall not be made to the rights or liabilities of a shareholder of the company;

(*f*) a shareholder shall not exercise a power under the memorandum or articles of association of the company or this Act, except for the purposes of this Act; and

(*g*) the memorandum and articles of association of the company shall not be altered.

(2) Subsection (1) shall not affect the right of a secured creditor to take possession of, and realize or otherwise deal with, property of the company over which that creditor has a security interest.

Application to Court

159.—(1) Any person aggrieved by any act or decision of the liquidator may appeal to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit.

(2) A liquidator, contributory or creditor may apply to the Court—

(*a*) to determine any question arising in the winding-up of a company; or

(*b*) to exercise all or any of the powers which the Court might exercise if the company were being wound-up by the Court.

(3) Where, in the course of the winding-up of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, administrator or receiver of the company, has misapplied or retained or become liable or accountable for money or property of the company, or been guilty of negligence, default or breach of duty or trust in relation to the company, the Court may on the application of the liquidator or a creditor or shareholder or the Director and the Registrar of Companies—

(*a*) inquire into the conduct of the promoter, director, manager, liquidator, administrator or receiver; and

(*b*) order that person—

(i) to repay or restore the money or property or any part of it with interest at a rate the Court thinks just;

(ii) to contribute such sum to the assets of the company by way of compensation as the Court thinks just; or

(iii) where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the Court thinks just to the creditor.

(4) An order for payment of money under subsection (3) shall be deemed to be a final judgment within the meaning of the rules of civil procedure.

Powers of Official Receiver

160.—(1) Where a person, other than the Official Receiver, is the liquidator and there is no liquidation committee, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no liquidation committee, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

Notice of appointment and address of liquidator

161.—(1) Every liquidator shall within seven days—

(*a*) lodge a notice of his appointment and of the situation of his office under section 118 with the Director;

(*b*) in the event of any change in the situation of his office lodge with the Director a notice to that effect;

(*c*) where he resigns or is removed from office, lodge with the Director a notice to that effect; and

(*d*) deliver to the Registrar and the Official Receiver a copy of every such notice.

Payment into bank by liquidator

162.—(1) Subject to any order which the Court may make, every liquidator shall pay all money received by him into a special bank account in the name of the company in liquidation.

(2) Where a liquidator retains for more than the prescribed period a sum exceeding the prescribed amount, or such other amount as the Court in any particular case authorizes him to retain, he shall, unless he explains the retention to the satisfaction of the Court, pay interest on the amount so retained in excess with effect from the day following the expiry of the prescribed period until he has complied with subsection (1), at the ruling bank rate and be liable to—

(*a*) disallowance of all or such part of his remuneration as the Court thinks fit;

(*b*) be removed from his office by the Court; and

(*c*) pay any expenses occasioned by reason of his default.

(3) A liquidator shall not pay any sums derived by him as liquidator into his private bank account.

(4) The "ruling bank rate" referred to in subsection (2) is the rate of interest charged by the bank from time to time based on the prevailing interest rates set by the Reserve Bank of Malaŵi.

Liquidator's accounts

163.—(1) Every liquidator shall within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and in any case within one month after ceasing to act as liquidator or obtaining an order of release, deliver to the Director for registration and, if the liquidator is not the Official Receiver, to the Official Receiver an account of his receipts and payments and a statement of the position in the winding-up, verified by statutory declaration.

(2) The Director may cause the account of any liquidation to be audited by an auditor approved by him and, for the purpose of the audit, the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator at his office and shall there be open to the inspection of any member or creditor or of any other person interested in the winding-up of the affairs of the company.

(4) The liquidator shall, when he is next forwarding any report or notice to the creditors and member generally—

(*a*) give notice to every member and creditor that the account has been prepared; and

(*b*) in such notice, inform members and creditors that the account may be inspected at his office and state the times during which inspection may be made.

(5) The costs of an audit under this section shall be fixed by the Director and be part of the expenses of winding-up.

(6) A liquidator, other than the Official Receiver, who fails to comply with this section shall be liable to a fine.

Default by liquidator

164.—(1) Where a liquidator who has made default in lodging or making any application, return, account or other document or in giving any notice which he is required to lodge, make or give, fails to make good the default within the prescribed period after the service on him of a notice issued by the Registrar of Companies or the Official Receiver or the Director requiring him to do so, the Court may, on the application of a member or creditor of the company, the Official Receiver or the Registrar of Companies or the Director, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) An order under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

Notification of liquidation

165. Where a company is being wound-up, every invoice, order for goods or business letter issued by or on behalf of the company, a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words “in liquidation” added after the name of the company where it first appears.

Books of company

166.—(1) Every book of a company and of a liquidator that is relevant to the affairs of the company at, or subsequent to, the commencement of a winding-up shall, as between the contributories, be *prima facie* evidence of the truth of all matters purporting to be recorded therein.

(2) Subject to subsection (3), where a company has been wound-up, the liquidator shall retain every book referred to in subsection (1) for a prescribed period from the date of the dissolution of the company, and a creditor or contributory may, unless the Court on the application of the liquidator otherwise directs, inspect such books.

(3) Where a company has been wound-up, every book referred to in subsection (1) may be destroyed—

(*a*) in the case of a winding-up by the Court, in accordance with the directions of the Court;

(*b*) in the case of a shareholder's voluntary winding-up, as the company may, by ordinary resolution, direct; and

(*c*) in the case of a creditor's voluntary winding-up, as the liquidation committee, or, if there is no committee, as the creditors of the company may direct.

(4) Subject to subsection (5), where—

(*a*) a company that is in liquidation and is unable to pay all its debts has, during the prescribed period preceding the winding-up of the company, failed to comply with section 180 or 185 of the Companies Act; and

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(*b*) the Court considers that—

(i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly winding-up of the company; or

(ii) for any other reason it is proper to make a declaration under this subsection,

the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company shall be personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.

(5) The Court shall not make a declaration under subsection (4) in relation to a person where the Court considers that the person—

(*a*) took all reasonable steps to secure compliance by the company with the applicable provision referred to in subsection (4) (*a*); or

(*b*) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

(6) A declaration under subsection (4) shall be deemed to be a final judgment within the meaning of the rules of civil procedure.

Investment of surplus funds

167.—(1) Whenever the cash balance standing to the credit of a company which is being wound-up is in excess of the amount which, in the opinion of the liquidation committee or, if there is no committee, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator may, subject to any written directions of the liquidation committee, if any, and unless the Court on application by a creditor otherwise directs, invest the sum in Government securities or place it on deposit at interest with a bank, and any interest received in that respect shall form part of the assets of the company.

(2) Where any money so invested, in the opinion of the liquidation committee, or, if there is no liquidation committee, in the opinion of the liquidator, is required to answer any demands in respect of the company's estate, the liquidation committee may direct, or, if there is no liquidation committee, the liquidator may arrange for the sale or realization of that part of the securities as is necessary.

Unclaimed assets

168.—(1) Where a liquidator has in his possession, custody or control—

(*a*) any unclaimed dividend or other money which has remained unclaimed for more than the prescribed period from the date when the dividend or other money became payable; or

(*b*) after making a final distribution, any unclaimed or undistributed money arising from the property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of a Companies Liquidation Account and, on such payment, he shall be entitled to a certificate issued by the Official Receiver which shall be an effectual discharge to him in that behalf.

(2) The Court may on the application of the Official Receiver—

(*a*) order a liquidator to submit an affidavit or the account of any unclaimed or undistributed dividend or other money in his possession, control or custody;

(*b*) direct an audit of the account; or

(*c*) direct the liquidator to pay the money to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) Except where it is otherwise prescribed, the Court may, for the purposes of this section, exercise all powers conferred by this Act with respect to the discovery and realization of the property of the company.

(4) Where a person makes a claim to any money placed to the credit of the Companies Liquidation Account, the Official Receiver shall, on being satisfied that the claimant is the owner of the money, authorize payment to be made to him accordingly out of the Companies Liquidation Account.

(5) Any person aggrieved by a decision of the Official Receiver in respect of a claim under subsection (4) may appeal to the Court which may confirm, reverse or modify the decision and make such order as it thinks fit.

(6) Where any money paid to a claimant is afterwards claimed by another person, that other person shall not be entitled to any payment out of the Companies Liquidation Account but may have recourse against the claimant to whom the money has been paid.

(7) Any unclaimed money paid to the credit of the Companies Liquidation Account to the extent to which the money has not under this section been paid out of the account shall, after the expiry of the prescribed period from the date of the payment of the moneys to the credit of the account, be paid into the Insolvency Surplus Account.

Expenses of winding-up where assets are insufficient

169.—(1) A liquidator shall not, unless expressly directed to do so by the Official Receiver, be liable to incur any expenses in relation to the winding-up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a member, direct a liquidator to incur a particular expense on condition that the creditor or member indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so

directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks fit.

Resolution at adjourned meeting of creditors and members

170. Subject to section 146 (9), where a resolution is passed at an adjourned meeting of creditors or members of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Meeting to ascertain wishes of creditors or members

171.—(1) The Court may, in the winding-up of a company, have regard to the wishes of the creditors or members and, if it thinks fit, for the purpose of ascertaining those wishes direct meetings of the creditors or members to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) For purposes of subsection (1), regard shall be had—

(*a*) in the case of creditors, to the value of each creditor's debt; and

(*b*) in the case of members, to the number of votes conferred on each member by this Act or the memorandum and articles of association of the company.

(3) A liquidator who calls a meeting of creditors or shareholders shall call such a meeting in accordance with the Rules.

(4) Nothing in this section shall limit or prevent a liquidator from exercising his discretion in carrying out his functions and duties under this Act.

Completion of liquidation

172. The liquidation of a company shall be completed when the liquidator—

(*a*) in the case of a winding-up by the Court, complies with section 125;

(*b*) in the case of a voluntary winding-up, complies with section 155.

Court may terminate liquidation

173.—(1) The Court may, at any time after the appointment of a liquidator, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company, or stay the liquidation for such time as the Court thinks fit.

(2) An application under this section may be made by—

(*a*) the liquidator;

(*b*) a director or shareholder of the company;

(*c*) a creditor of the company;

(*d*) the Director; or

(*e*) such other person as the Court may authorize.

(3) The Court may require the liquidator to furnish a report to the Court with respect to any facts or matters relevant to the application.

(4) The Court may, on making an order under subsection (1), or at any time thereafter, make such other order as it thinks fit in connexion with the termination or staying of the liquidation.

(5) Where the Court makes an order under this section, the person who applied for the order shall, within the prescribed period after the order was made, submit a certified copy of the order to the Director for registration.

(6) Where the Court makes an order under subsection (1) terminating the liquidation, the company shall cease to be in liquidation and the liquidator shall cease to hold office with effect on, and from, the making of the order, or such other date as may be specified in the order.

(7) Where the Court makes an order under subsection (1) staying the liquidation for a period of time, the liquidator shall cease to conduct any further action on behalf of the company from the date named by the Court.

Right of creditor to complete execution, distraint or attachment

174.—(1) Subject to subsection (3), a creditor shall not be entitled to retain the benefit of any execution process, distress or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before—

(*a*) the passing of a resolution under section 141 (1) (*a*) appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first;

(*b*) the making of an application to the Court under section 141 (4) to appoint a liquidator of the company;

(*c*) the making of an application to the Court under section 107 to appoint a liquidator of the company;

(*d*) the passing of an ordinary resolution under section 141 (1) (*a*) that a company should be wound-up, or the date on which the creditor had notice of the calling of the meeting at which such a resolution was proposed, whichever occurs first.

(2) Notwithstanding subsection (1)—

(*a*) a person who, in good faith, purchases property of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company; and

(*b*) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.

(3) The Court may order that subsection (1) shall not apply to such an extent and on such terms as the Court thinks appropriate.

(4) For the purposes of this section—

(*a*) an execution or distraint against movable property shall be completed by seizure and sale;

(*b*) an attachment of a debt shall be completed by receipt of the debt; and

(*c*) an execution against immovable property shall be completed by sale.

(5) Nothing in this section shall affect section 282.

Duties of sheriff in execution process

175.—(1) Subject to subsection (6), where property of a company is taken in an execution process and, before completion of the execution process, the sheriff charged with the execution process receives notice that a liquidator of the company has been appointed, he shall, on being required by the liquidator to do so, give or transfer the property and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the property, as the case may be, to the liquidator.

(2) The costs of the execution process shall be a first expense on any property or money given or transferred to the liquidator under subsection (1) and the liquidator may sell all or some of the property to satisfy the expense.

(3) Subject to subsection (6), where—

(*a*) property of a company is sold in an execution process in respect of a judgment for a sum exceeding the prescribed amount, or such other amount as may be prescribed; or

(*b*) money is paid to the sheriff charged with the execution process to avoid a sale of the property,

the sheriff shall retain the proceeds of sale or the money so paid for the prescribed period.

(4) Subject to subsection (6), where—

(*a*) within the prescribed period, the sheriff has notice of—

(i) the calling of a meeting of the company at which a resolution to appoint a liquidator is proposed under section 141 (1) (*a*);

(ii) the calling of a meeting at which a resolution is proposed to appoint a liquidator pursuant to section 141 (1) (*b*);

(iii) the making of an application to the Court to appoint a liquidator pursuant to section 107; and

(*b*) the company is put into winding-up,

the sheriff shall deduct from the amount the costs of the execution process and pay the balance to the liquidator.

(5) A liquidator to whom money is paid under subsection (4) shall be entitled to retain it as against the execution creditor.

(6) The Court may set aside the application to such extent and on such terms as it thinks appropriate.

Consent to appoint and validity of act of liquidator

176.—(1) The appointment of a person as liquidator, other than on the order of the Court, shall be of no effect unless that person has consented in writing to the appointment.

(2) The act of a person as a liquidator shall be valid even though the person is not qualified to act as a liquidator.

Vacancy in the office of liquidator

177.—(1) The office of liquidator shall become vacant where the person holding office resigns, dies, or ceases to be qualified under Part IX.

(2) A person, other than a person appointed by the Court, may resign from the office of liquidator by appointing another such person as his successor and submitting a notice of the appointment of his successor to the Director.

(3) With the approval of the Court, a person appointed as a liquidator by the Court may resign from the office of liquidator.

(4) The Court may, on the application of the company or a shareholder, director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who is qualified for appointment under Part IX to be the liquidator of the company.

(5) Where, for any reason other than resignation, a vacancy occurs in the office of liquidator, notice of the vacancy shall be submitted to the Director within the prescribed period by the person vacating office or, where that person is unable to act, by his personal representative.

(6) Where, as the result of the vacation of office by a liquidator, appointed by the Court, no person is acting as liquidator, the Director may appoint a person to act as liquidator until a successor is appointed under this section.

(7) Where a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under subsection (6), as the case may be, the Court may, on the application of the company, or a shareholder or director or creditor of the company, or the Director, appoint a person who is qualified for appointment as a liquidator under Part IX to be the liquidator of the company.

(8) A person vacating the office of liquidator shall, where practicable, provide such information and give such assistance to that person's successor as he reasonably requires in taking over the duties of liquidator.

Court supervision of liquidation

178.—(1) The Court shall have regard to the conduct of every liquidator and, where a liquidator does not faithfully perform his duties and observe the requirements of the Court or where there is a failure to comply with a relevant duty, or where a complaint is made in that behalf to the Court by a creditor, member or liquidation committee, or by the Official Receiver or Registrar of Companies or the Director, the Court shall inquire into the matter and make such order as it thinks fit.

(2) The Registrar of Companies, the Director or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator, and the Court may order the liquidator to make good any loss which the estate of the company has sustained and make such other order it thinks fit.

(3) On the application of the liquidator, the liquidation committee, the Director, the Registrar of Companies, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—

(*a*) give direction in relation to any matter arising in connexion with the liquidation;

(*b*) confirm, reverse or modify an act or decision of the liquidator;

(*c*) order an audit of the accounts of the liquidation;

(*d*) order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests;

(*e*) in respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances;

(*f*) to the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount;

(*g*) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property; and

(*h*) make order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

(4) The powers given by subsection (3) are in addition to any other powers the Court may exercise in its discretion relating to liquidators, and may be exercised in relation to a matter occurring before or after the commencement of the liquidation, or the removal of the company from the register, and whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

(5) Subject to subsection (6), a liquidator who has—

(*a*) obtained a direction of the Court with respect to a matter connected with the exercise of the powers or functions of a liquidator; and

(*b*) acted in accordance with the direction,

shall be entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction.

(6) The Court may, on the application of any person, order that, by reason of the circumstances in which a direction was obtained under subsection (1), the liquidator does not have the protection given by subsection (3).

Order to enforce or relieve liquidator from compliance

179.—(1) An application for an order to enforce, or relieve a liquidator from, compliance may be made by—

(*a*) a liquidator;

(*b*) a person seeking appointment as a liquidator;

(*c*) a liquidator committee;

(*d*) a creditor, shareholder, other entitled person, or a director of the company in liquidation;

(*e*) a receiver appointed in relation to property of the company in liquidation;

(*f*) the Registrar of Companies; or

(*g*) the Director.

(2) No application may be made to the Court by a person, other than a liquidator, in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than five days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

(3) Where the Court is satisfied that there is, or has been, failure to comply, the Court may—

(*a*) relieve the liquidator of the duty to comply, wholly or in part; or

(*b*) without prejudice to any other remedy which may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

(4) The Court may, in relation to a person who fails to comply with an order made under subsection (3), or is, or becomes, disqualified under Part IX to become or remain a liquidator—

(*a*) remove the liquidator from office; or

(*b*) order that the person may be appointed and act, or may continue to act, as liquidator, notwithstanding the provisions of Part IX.

Prohibition order

180.—(1) Where it is shown to the satisfaction of the Court that a person is unfit to act as liquidator by reason of—

(*a*) persistent failures to comply;

(*b*) the seriousness of a failure to comply; or

(*c*) misconduct or serious incompetence on the part of the person,

the Court shall make, in relation to the person, a prohibition order for a period not exceeding the prescribed period.

(2) A person to whom a prohibition order applies shall not act as an insolvency practitioner and, if currently acting, shall be removed from office.

(3) Evidence that, on two or more occasions within the preceding prescribed period—

(*a*) the Court has made an order to comply in respect of the same person; or

(*b*) an application for an order to comply has been made in respect of the same person and in each case the person has complied after the making of the application and before the hearing shall,

in the absence of special reasons to the contrary, constitute evidence of persistent failure for the purposes of subsection (1).

(4) In making an order under this section, the Court may, if it thinks fit—

(*a*) make an order extending the time for compliance;

(*b*) impose a term or condition; or

(*c*) make such other order as it thinks fit.

(5) A copy of every order made under subsection (1) shall, within the prescribed period of the order being made, be given by the applicant to the Director who shall keep it on a register indexed by reference to the name of the liquidator concerned.

Meaning of "failure to comply"

181. In sections 178, 179 and 180, "failure to comply" means a failure of a liquidator to comply with relevant duty arising—

(*a*) under this or any other Act or from an order of a competent Court; or

(*b*) under any order or direction of the Court.

Meaning of "inability to pay debts"

182.—(1) Unless the contrary is proved, and subject to section 183, a company shall be presumed to be unable to pay its debts as they become due in the ordinary course of business where—

(*a*) the company has failed to comply with a statutory demand in terms of section 184;

(*b*) execution issued against the company in respect of a judgment debt has been returned unsatisfied;

(*c*) a person entitled to a security interest over the whole or substantially the whole of the property of the company has

appointed a receiver under the instrument creating the security interest; or

(*d*) an arrangement between a company and its creditors has been put to a vote in accordance with the provisions of section 156 and has not been approved.

Evidence of inability to pay debts

183.—(1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand in terms of section 184 shall not be admissible as evidence that a company is unable to pay its debts as they become due in the ordinary course of business unless the application is made within the prescribed period after the last date for compliance with the demand.

(2) Section 182 shall not prevent proof by other means that a company is unable to pay its debts as they become due in the ordinary course of business.

(3) In determining whether a company is unable to pay its debts as they become due in the ordinary course of business, its contingent or prospective liabilities may be taken into account.

(4) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts as they become due in the ordinary course of business may be made by a contingent or prospective creditor only with the leave of the Court, and the Court may give such leave, with or without conditions, only if it is satisfied that a *prima facie* case has been made out that the company is unable to pay its debts as they become due in the ordinary course of business.

Statutory demand

184. A statutory demand under this Part shall—

(*a*) be in respect of a debt that is due and is not less than the prescribed amount;

(*b*) be in the prescribed form;

(*c*) be served on the company; and

(*d*) require the company to pay the debt, or enter into a compromise or otherwise compound with the creditor, or give a security interest over its property to secure payment of the debt, to the reasonable satisfaction of the creditor, within the prescribed period of the date of service, or such longer period as the Court may order.

Court may set aside statutory demand

185.—(1) The Court may, on the application of the company, set aside a statutory demand provided for in section 184.

(2) The application shall be made, and be served on the creditor, within the prescribed period of the date of service of the demand.

(3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but at the hearing of the application the Court may extend the time for compliance with the statutory demand.

(4) The Court may grant an application to set aside a statutory demand where it is satisfied that—

(*a*) there is a substantial dispute, whether or not the debt is owing or is due;

(*b*) the company appears to have a counterclaim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross-demand is less than the prescribed amount; or

(*c*) the demand ought to be set aside on other grounds.

(5) A statutory demand shall not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.

(6) In subsection (5), "defect" includes an immaterial misstatement of the amount due to the creditor and an immaterial misdescription of the debt referred to in the demand.

(7) Where, on the hearing of an application under this section, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of substantial dispute, or is not subject to a counterclaim, set-off or cross-demand, the Court may—

(*a*) order the company to pay the debt within a prescribed period and that, in default of payment, the creditor may make an application to put the company into liquidation; or

(*b*) dismiss the application and forthwith make an order under section 107 putting the company into liquidation, on the ground that the company is unable to pay its debts as they become due in the ordinary course of business.

(8) For the purposes of the hearing of an application to put the company into liquidation pursuant to an order made under subsection (7), the company shall be presumed to be unable to pay

its debts as they become due in the ordinary course of business where it failed to pay the debt within the specified period.

(9) An order under this section may be made subject to conditions.

Fraudulent trading

186.—(1) This section shall apply if in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company, or creditors of any other person, or for any fraudulent purpose.

(2) The Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner referred to in subsection (1), are to be liable to make such contributions to the company's assets as the Court thinks proper.

Wrongful trading

187.—(1) Subject to subsection (3), if in the course of the winding-up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution to the company's assets as the Court thinks proper.

(2) This subsection shall apply in relation to a person if—

(*a*) the company has gone into insolvent liquidation;

(*b*) at some time before the commencement of the winding-up of the company, the person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(*c*) the person was a director of the company at that time.

(3) The Court shall not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2) (*b*) was first satisfied in relation to him, the person took every step with a view to minimizing the potential loss to the company's creditors as he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having—

(*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 functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section, a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding-up.

(7) In this section, "director" includes a shadow director.

(8) This section shall apply without prejudice to section 186.

PART VII

Bankruptcy and Alternatives

Division I—Bankruptcy Process

Adjudication

188.—(1) A debtor shall be adjudicated bankrupt where—

(*a*) a creditor of the debtor petitions the Court for a bankruptcy order; or

(*b*) the debtor petitions the Court for a bankruptcy order,

and the Court makes the bankruptcy order.

(2) The Court shall not make a bankruptcy order on a creditor's petition unless one of the following grounds of adjudication is established to the satisfaction of the Court—

(*a*) failure to comply with a statutory demand issued under section 190;

(*b*) departure from Malaŵi by the debtor with intent to defeat or delay payment of a claim to a creditor;

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

(*d*) admission to creditors that the debtor is insolvent.

(3) There shall be an "admission" for the purposes of subsection (2) (*d*) where the debtor admits at a meeting of creditors that he is insolvent and—

(*a*) a majority in number and value of the creditors present at the meeting require the debtor to file an application for adjudication; or

(*b*) the debtor agrees to file an application for adjudication and does not do so within the prescribed number of days after the meeting.

(4) The Court shall not make a bankruptcy order on the petition of a secured creditor unless the creditor concerned has established that the amount of the debt exceeds the value of the security claimed by the creditor by at least the prescribed amount.

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

(6) In this Part, "debtor", means a natural person, a partnership, a sole proprietorship and any other form of debtor that cannot be wound-up under the provisions of Part V.

Creditor's petition

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

(*a*) the debtor owed the creditor the prescribed amount or more or, where two or more creditors join in the application, the debtor owed a total of the prescribed amount or more to those creditors between them;

(*b*) one of the grounds for adjudication referred to in section 188 is established to the satisfaction of the Court;

(*c*) the debt is a liquidation sum; and

(*d*) the debt is payable immediately or at some certain future time.

(2) Subject to subsection (3), a petition for a bankruptcy order may be made by—

(*a*) a creditor;

(*b*) creditors jointly where there are two or more creditors; or

(*c*) the trustee or provisional trustee of a debtor.

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

(*a*) the petition contains a statement that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors; or

(*b*) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of

the estimated value at the date of the petition of the security for the secured part of the debt.

(4) A debtor against whom a bankruptcy order may be made shall—

(*a*) be domiciled in Malaŵi; and

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

(*c*) have, at any time in the period of three years ending with that day—

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

(ii) have carried on business in Malaŵi.

(5) For the purposes of subsection (4) (*c*) (ii), carrying on business includes—

(*a*) the carrying on of business by a partnership of which the debtor is a partner;

(*b*) the carrying on of business by an agent or manager for the debtor or for such partnership; or

(*c*) the carrying on of business as a sole proprietorship, unregistered company, or association of persons with the aim of making profit.

(6) An application by a creditor for a bankruptcy order shall—

(*a*) be verified by affidavit of the creditor or some other person having knowledge of the facts;

(*b*) be served on the debtor in the prescribed manner; and

(*c*) call on the debtor to show cause at the hearing of the application as to why the debtor should not be made bankrupt.

Statutory demand

190.—(1) A statutory demand shall require the debtor, in relation to the sum ordered to be paid under a final order or the amount otherwise claimed to be owing—

(*a*) to pay the amount owing, including any interest to the date of payment of a debt that carries interest, plus costs; or

(*b*) to give security for the amount owing that satisfies the creditor or the Court.

(2) The statutory demand shall be served on the debtor in Malaŵi or, with the Court's permission, outside Malaŵi.

(3) The statutory demand may name an agent to act on behalf of the creditor in so far as the demand requires—

(*a*) any payment to be made to the creditor; or

(*b*) any other step to be taken that involves the creditor.

Overstatement in a statutory demand

191.—(1) Overstatement in a statutory demand of the amount actually owing by the debtor shall not invalidate the notice, unless—

(*a*) the debtor notifies the creditor in writing that he disputes the validity of the demand because it overstates the amount actually owing; and

(*b*) the debtor makes that notification within the time specified in the demand for the debtor to comply with the demand.

(2) A debtor shall comply with a demand that overstates the amount actually owing by—

(*a*) taking steps that would have been compliance with the demand had it stated the correct amount owing such as by paying the creditor the correct amount owing plus costs; and

(*b*) taking those steps within the time specified in the demand for the debtor to comply.

Failure to comply with statutory demand

192.—(1) There shall be a failure to comply with a statutory demand where the requirements of subsection (2) or (3) are satisfied.

(2) The requirements of this subsection are that—

(*a*) the debtor has, within the prescribed period before the date of the petition for a bankruptcy order, been served with a statutory demand; and

(*b*) the debtor has not, within the time limit specified in subsection (4)—

(i) complied with the requirements of the demand; or

(ii) satisfied the Court that he has a cross-claim against the creditor.

(3) The requirements of this subsection are that—

(*a*) the debtor is indebted to the creditor in relation to a provable debt;

(*b*) the debtor has within the prescribed period before the date of the petition for a bankruptcy order been served with a statutory demand;

(*c*) the debtor has not within the time limit specified in subsection (4)—

(i) complied with the requirements of the demand; or

(ii) satisfied the Court that the debtor has a cross-claim against the creditor; and

(*d*) the statutory demand informs the debtor that if the debtor disputes the debt or claims that any indebtedness on the part of the debtor to the creditor is less than the prescribed amount, the debtor may appear before the Court in opposition to any petition filed by the creditor to have the debtor adjudicated bankrupt and provide a cause that he—

(i) does not owe a debt to the creditor; or

(ii) owes a debt to the creditor, but the debt is less than the prescribed amount.

(4) The time limit referred to in subsection (2) (*b*) and subsection (3) (*c*) shall be—

(*a*) where the debtor is served with the statutory demand in Malaŵi, the prescribed number of days after service; or

(*b*) where the debtor is served with the bankruptcy notice outside Malaŵi, the time specified in the order of the Court permitting service outside Malaŵi.

(5) In this section—

(*a*) a "cross-claim" means a counterclaim, set-off or cross-demand that—

(i) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and

(ii) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

Adjournment of petition or refusal to adjudicate

193.—(1) The Court may, at its discretion, stay or adjourn the hearing of a petition conditionally or unconditionally—

(*a*) for obtaining further evidence; or

(*b*) for any other just cause.

(2) The Court may, at its discretion, refuse to adjudicate the debtor bankrupt where—

(*a*) the creditor has not established the requirements set out in section 188 or 189;

(*b*) the creditor has not established that the debtor has been served with a statutory demand;

(*c*) the debtor satisfies the Court that he is able and willing to pay his debts; or

(*d*) it is just and equitable or there is other sufficient cause that the Court does not make a bankruptcy order.

Judgment under appeal

194. Where the creditor's petition for a bankruptcy order relies on the ground that the debtor failed to comply with a statutory demand, and the debtor has appealed against the judgment or order underlying the statutory demand or the judgment for non-payment of trust money, as the case may be, and the appeal is still to be determined, the Court may—

(*a*) stay the creditor's petition for a bankruptcy order; or

(*b*) refuse the petition.

Underlying debt not determined

195.—(1) This section shall apply where the debtor appears in opposition to a creditor's petition and avers that he—

(*a*) does not owe a debt to the creditor; or

(*b*) owes a debt to the creditor, which is less than the prescribed amount.

(2) The Court may, instead of refusing the petition, stay the petition so that the question of whether the debt is owed, or how much of the debt is owed, can be resolved at a trial.

(3) Where the petition is based on the grounds set out in section 192 (3), the Court shall have jurisdiction for the trial of any question in relation to the existence or amount of the debt.

(4) Where the petition is made on any ground, other than the grounds set out in section 192 (3), the trial in relation to a debt of less than the prescribed amount shall, unless the Court orders otherwise, be held in the Magistrate Court.

(5) As a condition of staying the petition, the court may require the debtor to give security to the creditor for any debt that may be

established as owing by the debtor to the creditor, and for the costs of establishing the debt.

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

196.—(1) Where there is more than one petition for a bankruptcy order, and one petition has been stayed or adjourned by the Court, the Court may, if there is a good reason, make a bankruptcy order on the application that has not been stayed or adjourned.

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

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

Order on disposition of property or proposal

197.—(1) This section shall apply where the debtor has made a disposition of all, or substantially all, of his property to a trustee for the benefit of his creditors.

(2) The debtor or the trustee for the debtor's creditors or any creditor may apply to the Court for an order under this section.

(3) On the hearing of the application, the Court may—

(*a*) order that the disposition or proposal is not a ground for making a bankruptcy order;

(*b*) stay or refuse the petition for a bankruptcy order;

(*c*) order that any other petition for a bankruptcy order shall not be filed;

(*d*) make any order as to costs that the Court thinks appropriate; or

(*e*) where it orders that costs shall be paid to the creditor who has petitioned for the bankruptcy order, order that the costs shall be paid out of the debtor's estate.

Substitution of creditor

198.—(1) The Court may substitute another creditor for the creditor making the petition for a bankruptcy order where—

(*a*) the creditor making the petition has not proceeded with due diligence or at the hearing of the application offers no evidence; and

(*b*) the debtor owes the other creditor the prescribed amount or more.

(2) The other creditor shall, in that case, file another petition for a bankruptcy order, but may rely on the grounds of adjudication to which the first petition related.

Debtor's petition

199.—(1) Subject to subsection (2), a debtor may file a petition with the Court to have himself adjudicated bankrupt on the ground that he is unable to pay his debts where he has combined debts of the prescribed amount or more.

(2) The Court shall not receive for filing a petition by a debtor for a bankruptcy order unless he also files with the Court a statement of his affairs in the prescribed form which is not, in the Court's opinion, incorrect or incomplete.

(3) A debtor's petition shall not after presentation be withdrawn without leave of the Court.

Order on debtor's petition

200.—(1) Where the grounds set out in section 199 (1) are established to the satisfaction of the Court and the requirements of section 199 (2) are complied with, the Court shall make a bankruptcy order against the debtor unless the Court is of the opinion that it would be appropriate in the circumstances to direct the Director to prepare a report under section 200 on whether the debtor should make a proposal, in which case the Court shall adjourn the application.

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

Report of the Director

201.—(1) Where the Court under section 193 (1) (*b*) or 200 (1) directs the Director to prepare a report, the Director shall within the prescribed period submit to the Court a report on whether the debtor is willing to enter into a proposal.

(2) A report which states that the debtor is willing to enter into a proposal shall state—

(*a*) whether, in the opinion of the Director, a meeting of the debtor's creditors should be summoned to consider the proposal; and

(*b*) where in the Director's opinion such a meeting should be summoned, the date on which, and time and place at which, he suggests that the meeting should be held.

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

(*a*) without any application make an order for the appointment of the Official Receiver as interim receiver under section 204

where it feels that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal; or

(*b*) where it feels it would be inappropriate to make such an order, make a bankruptcy order.

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

(5) Where it has been reported to the Court under this section that a meeting of the debtor's creditors should be summoned, the Director shall, unless the Court otherwise directs, summon the meeting for the time, date, and place suggested in his report.

Debtors' joint petition

202.—(1) Two or more debtors, who are carrying on a business as partners, may file a joint petition.

(2) The debtors shall be automatically adjudicated bankrupt, separately and jointly, when the petition is filed.

Summary administration

203.—(1) Where, on the hearing of a debtor's petition, the Court makes a bankruptcy order and the conditions laid down under subsection (2) are satisfied, the Court shall, if it appears to be appropriate to do so, issue a certificate for the summary administration of the bankrupt's estate.

(2) The circumstances in which a certificate for summary administration may be issued are that—

(*a*) the aggregate amount of the bankruptcy debts so far unsecured would be less than the prescribed amount by the Rules; and

(*b*) within the prescribed period ending with the filing of the petition the debtor has not been adjudicated bankrupt nor made a composition with his creditors in satisfaction of his debts or a proposal.

(3) The Court may revoke a certificate issued under this section where it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.

(4) Where a certificate for summary administration is issued—

(*a*) the Official Receiver may dispense with the first meeting of creditors provided for in section 210;

(*b*) no fee shall be allowed to any legal practitioner except on the certificate of the Court that the presence of counsel or attorney was necessary; and

(*c*) the period after which the bankrupt is automatically discharged shall be two years.

Division II—Interim Receiver

Appointment of Official Receiver as interim receiver

204.—(1) Where a creditor's petition for a bankruptcy order has been filed, a creditor of the debtor may apply to the Court for an order appointing the Official Receiver as interim receiver of all or part of the debtor's property.

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

(3) As part of the order or, on the application of a creditor or the Official Receiver, subsequently, the Court may authorize the Official Receiver to—

(*a*) take possession of any property;

(*b*) sell any perishable property or property that is likely to fall rapidly in value;

(*c*) control the debtor's business or property as directed by the Court; or

(*d*) exercise, in relation to the debtor, any of the powers vested in him by section 237 in relation to a bankrupt.

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

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

(6) A creditor of the debtor shall not issue any execution process against the property of the debtor after the appointment of the Official Receiver as interim receiver has been advertised.

(7) A creditor shall not continue an execution process already issued before the advertisement.

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

(9) Where execution process is stayed under this section, sections 240 and 241 shall apply as if a bankruptcy order had been made against the debtor.

Division III—Effect of Adjudication

Date of adjudication and disqualification of bankrupt

205.—(1) The date of an adjudication, and the commencement of a bankruptcy, shall be the date and time when the Court made the bankruptcy order.

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

(3) The Court shall notify the Official Receiver as soon as possible after an order of adjudication is made.

(4) It shall be presumed that an act was done, or a transaction entered into or effected, after the date of an adjudication, but the presumption shall not apply if the contrary is proved.

(5) Unless an adjudication is the subject of an appeal—

(*a*) no one may later assert that the adjudication was not valid or that a prerequisite for adjudication was absent; and

(*b*) the adjudication shall be binding on every person.

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

(7) The disqualification under subsection (6) shall be removed and shall cease when the adjudication in bankruptcy is annulled, or when the debtor obtains his discharge with a certificate from the Court to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

(8) The Court may grant or withhold certificate referred to in subsection (7) as it thinks fit, but any refusal of such certificate shall be subject to appeal.

Procedure following adjudication

206.—(1) On adjudication—

(*a*) the Official Receiver shall advertise the adjudication under subsections (2) and (3);

(*b*) the bankrupt shall file with the Official Receiver a statement of his affairs under section 209 if the bankrupt has not already done so;

(*c*) the Official Receiver may call a meeting of the bankrupt's creditors under section 210;

(*d*) proceedings to recover certain debts shall be stayed under section 207;

(*e*) execution process may not be commenced or continued after the adjudication is advertised under section 208; and

(*f*) the property of the bankrupt vests in the Official Receiver under section 214.

(2) Subject to subsection (3), the Official Receiver shall, advertise the adjudication of a bankrupt in the prescribed manner as soon as practicable after it has occurred.

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

Stay of proceedings

207.—(1) Subject to subsection (2) on adjudication, all proceedings to recover any debt provable in the bankruptcy shall be stayed.

(2) On the application of any creditor or other person interested in the bankruptcy, the Court may allow proceedings that had already begun before the date of adjudication to continue on terms that the Court thinks appropriate.

Execution process after adjudication

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

(*a*) advertised the bankruptcy order; or

(*b*) given notice of the making of the bankruptcy order to the creditor.

(2) After advertisement of the adjudication or notice by the Official Receiver to the creditor, a creditor shall not seize or sell any property by way of distress for rent due by the bankrupt:

Provided that he may continue with the distress procedure if it has already begun.

Statement of affairs

209.—(1) After adjudication, the bankrupt shall file with the Official Receiver a statement in the prescribed form of his affairs, unless he has already filed a statement under section 199.

(2) Where no statement or, in the Official Receiver's view, no sufficient statement of affairs has been filed under section 199 the Official Receiver shall, as soon as practicable after adjudication, send to the bankrupt a notice stating—

(*a*) that the bankrupt shall file a statement of the bankrupt's affairs; and

(*b*) the time when the statement shall be filed.

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

(4) The bankrupt shall file his statement of affairs with the Official Receiver within the prescribed period of the adjudication or, as the case may be, after receiving the Official Receiver's notice under subsection (2).

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

Meeting of creditors

210.—(1) Subject to section 203 and this section, the Official Receiver shall, after adjudication, call the first meeting of the bankrupt's creditors.

(2) The Official Receiver shall call the meeting as soon as practicable after adjudication and, unless there are special circumstances, not less than the prescribed period after adjudication, by sending a notice of the time and place of the meeting by ordinary post to—

(*a*) the bankrupt, at the bankrupt's last known address;

(*b*) each creditor named in the bankrupt's statement of affairs, at the address given in the statement of affairs or any other address that the Official Receiver believed is the creditor's address; and

(*c*) any other creditor known to the Official Receiver.

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

(4) The meeting shall be held in accordance with the Rules.

(5) The Official Receiver need not call a first creditors' meeting where he—

(*a*) decides that the meeting should not be called; or

(*b*) sends each creditor named in the bankrupt's statement of affairs, and any other creditor known to the Official Receiver a notice that complies with subsection (7); and

(*c*) does not receive, within the prescribed period after the Official Receiver's notice was sent, written notice from a creditor requiring the Official Receiver to call the meeting.

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

(*a*) the bankrupt's assets and liabilities;

(*b*) the likely result of the bankruptcy; and

(*c*) any other relevant matter.

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

(*a*) state that the Official Receiver considers that the first creditor's meeting should not be called;

(*b*) give the reasons for not calling the meeting; and

(*c*) state that the Official Receiver shall not call the meeting unless the creditor gives the Official Receiver written notice, within the prescribed number of days after the Official Receiver's notice was sent, requiring the Official Receiver to call the meeting.

(8) The Official Receiver may call subsequent meetings of creditors after the first meeting of creditors.

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

(10) Meetings shall be held in accordance with the Rules.

(11) A creditors' meeting and the resolutions passed at the meeting shall be valid even if some creditors did not receive the notice of the meeting, unless the Court orders otherwise.

Appointment of expert and inspection of documents

211.—(1) A creditor's meeting may pass a resolution—

(*a*) appointing an expert to assist the Official Receiver in the administration of the bankrupt's estate; and

(*b*) providing for the expert's remuneration out of the bankrupt's estate.

(2) A creditors' meeting may pass a resolution appointing a committee to assist the Official Receiver in the administration of the bankrupt's estate, and the Court may approve any remuneration of the members of the committee out of the bankrupt's estate.

(3) A creditor, or a legal practitioner or accountant acting for the creditor, who has lodged a proof of debt may at any reasonable time inspect and take extracts or copies of—

(*a*) the bankrupt's accounting records;

(*b*) the bankrupt's answers to questions;

(*c*) the bankrupt's statement of affairs;

(*d*) all proofs of debt; and

(*e*) the minutes of any creditors' meeting.

Bankrupt's death after adjudication

212. Where a bankrupt dies after adjudication, the bankruptcy shall continue in all respects as if the bankrupt were alive.

Division IV—Bankrupt's Estate

Bankrupt's estate

213.—(1) Subject to subsection (2), a bankrupt's estate for the purpose of this Act shall comprise—

(*a*) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and

(*b*) any property which, pursuant to this Division, forms part of that estate or is treated as forming part of that estate.

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

(*a*) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation up to a maximum value assessed by the Official Receiver or such other amount as may be prescribed or agreed to by resolution of the creditors;

(*b*) such clothing, bedding, furniture, household equipment and provisions as are necessary to satisfy the basic domestic needs of the bankrupt and his family, up to a maximum value assessed by the Official Receiver or such other amount as may be prescribed or agreed by resolution of the creditors; and

(*c*) held by the bankrupt on trust for any other person.

(3) In this Act, "property", in relation to a bankrupt, includes reference to any power exercisable by the bankrupt over or in respect of property in or outside Malaŵi for the bankrupt's own benefit.

(4) For the purposes of this Act, property which forms part of the bankrupt's estate shall do so subject to the rights of any person other than the bankrupt, and a secured creditor may take possession of and realize and otherwise deal with property over which he has a security interest, disregarding any rights the secured creditor has given up under section 189 and any rights which have otherwise been given up in accordance with the Rules or in such manner as may be prescribed.

(5) This section shall apply to any other written law under which any property is to be excluded from a bankrupt's estate.

Vesting in Official Receiver

214.—(1) On adjudication, all the bankrupt's estate shall vest in the Official Receiver.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the Official Receiver, it shall so vest without any conveyance, assignment or transfer.

(3) A power exercisable over or in respect of property shall be deemed, for the purposes of this Act, to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person.

Property acquired after adjudication

215. Subject to section 216, between the commencement of the bankruptcy and the discharge of the bankrupt—

(*a*) all property in or outside Malaŵi that the bankrupt acquires or that passes to the bankrupt shall vest in the Official Receiver; and

(*b*) the powers that the bankrupt could have exercised in, over, or in respect of that property for the bankrupt's own benefit shall vest in the Official Receiver.

Transaction in good faith and for value

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

(*a*) the other person deals with the bankrupt in good faith and for value; and

(*b*) the transaction is completed without an intervention by the Official Receiver.

(2) Where the other person in subsection (1) is the bankrupt's bank, a transaction dealing with the bankrupt for value includes—

(*a*) the receipt by the bank of any money, security, or negotiable instrument from the bankrupt or by the bankrupt's order or direction;

(*b*) a payment by the bank to the bankrupt or by the bankrupt's order or direction; and

(*c*) the delivery by the bank of a security or negotiable instrument to the bankrupt or by the bankrupt's order or direction.

(3) A payment of money or delivery of property by legal personal representative to, or direction of, the bankrupt shall be a transaction for value.

Rights under execution or attachment

217.—(1) Where a creditor has issued execution against movable property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the Official Receiver, unless he has completed the execution or attachment before adjudication and before notice of the presentation of any application for a bankruptcy order by or against the debtor.

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

Duties of sheriff as to seized goods

218.—(1) Where movables of a debtor are taken in execution and, before their sale, notice is served on the sheriff that a bankruptcy order has been made against the debtor, the sheriff shall, on request, deliver the goods to the Official Receiver, but the costs of execution shall be an expense against the goods delivered, and the Official Receiver may sell the goods or an adequate part thereof, for the purpose of satisfying the expense.

(2) Where movables of a debtor are sold under an execution in respect of a judgment for a sum exceeding the prescribed sum, the sheriff shall deduct the costs of the execution from the proceeds of the sale, and pay the balance to the cashier of the Court to which he is attached, and the cashier shall retain it for the prescribed period and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, the cashier shall hold the proceeds on trust to pay to the Official Receiver.

(3) Where no notice referred to in subsection (2) is served within such period or where such notice having been served, the debtor is not adjudged bankrupt on such petition or on any other petition of which the cashier has notice, the cashier may deal with the proceeds as if no notice had been served on him.

(4) A person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title against the Official Receiver.

Bona fide transaction without notice

219.—(1) Subject to the provisions of this Act, nothing in this Act shall, in the case of a bankruptcy, invalidate—

(*a*) any payment by the bankrupt to any of his creditors;

(*b*) any payment or delivery to the bankrupt;

(*c*) any conveyance or assignment by the bankrupt for valuable consideration; or

(*d*) any contract, dealing or transaction by or with the bankrupt for valuable consideration, where—

(i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before adjudication; and

(ii) the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivered, conveyance, assignment, contract, dealing or transaction, notice of the presentation of an application for a bankruptcy order before that time.

Immovable property

220.—(1) Any interest of the bankrupt in any immovable property shall on adjudication vest in the Official Receiver without any conveyance, assignment or transfer.

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(2) The sale of any land or interest in land which vests in the Official Receiver shall be effected in accordance with section 274 and the Registered Land Act, Deeds Registration Act and Conveyancing Act shall not apply to the sale.

Transfer of shares and other securities

221.—(1) The Official Receiver may transfer the following property belonging to the bankrupt in the same way as the bankrupt could have transferred it if the bankrupt had not been adjudicated bankrupt—

(*a*) securities in a company;

(*b*) securities of the Government;

(*c*) securities issued by a local authority;

(*d*) shares in ships; and

(*e*) any other property transferable in the records of a company, office, or person.

(2) A person whose act or consent is necessary for the transfer of the property shall, on the Official Receiver's request, do whatever is necessary for the transfer to be completed.

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

(4) The Official Receiver may disclaim any liability under shares owned by the bankrupt in any company by disclaiming the shares in accordance with sections 312 and 313.

Second bankruptcy

222.—(1) Where a bankrupt is, before discharge, adjudicated bankrupt for a second time—

(*a*) subject to subsection (2), any property that is acquired by, or has passed to, the bankrupt since the first bankruptcy, including property acquired or that has passed since the second bankruptcy, shall vest in the Official Receiver in the second bankruptcy; and

(*b*) any surplus in the second bankruptcy is an asset in the estate in the first bankruptcy, and shall be paid to the Official Receiver in the first bankruptcy.

(2) The Court may, if it thinks it appropriate, order that the following assets or their proceeds vest in the Official Receiver in the first bankruptcy—

(*a*) assets in the second bankruptcy that, in the Court's opinion, were acquired independently of the creditor in the second bankruptcy; and

(*b*) assets in the second bankruptcy that devolved upon the bankrupt.

(3) Where the Official Receiver receives notice that a creditor has filed an application for a second bankruptcy, he shall—

(*a*) hold property in his possession that has been acquired by, or passed to, the bankrupt since the first bankrupt until the application for a second bankruptcy has been dealt with; and

(*b*) transfer the property and its proceeds, less any deduction for the Official Receiver's costs and expenses, to the Official Receiver in the second bankruptcy where the creditor's application results in a second bankruptcy, or if the bankrupt is automatically adjudicated bankrupt on his own application.

Division V—Duties of Bankrupt

General duties of bankrupt

223.—(1) A bankrupt shall aid in the realization of his property and the distribution of the proceeds amongst his creditors and shall—

(*a*) give a complete and accurate list of his property and of his creditors and debtors and such other information as to this property as the Official Receiver requires;

(*b*) attend before the Official Receiver whenever called upon to do so; and, if required to do so by the Official Receiver verify any statement by affidavit;

(*c*) disclose to the Official Receiver as soon as practicable any property which may be acquired by him before his discharge and would be divisible amongst his creditors;

(*d*) supply to the Official Receiver such information as he may require regarding his expenditure and sources of income after adjudication;

(*e*) execute such power of attorney, transfer or instrument, in relation to his property and the distribution of the proceeds amongst his creditors, as are required by the Official Receiver, prescribed or directed by the Court;

(*f*) deliver on demand any of his property that is divisible amongst his creditors and is under his possession or control to the Official Receiver;

(*g*) deliver on demand to the Official Receiver any property that is acquired by him before his discharge; and

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

Financial information

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

(2) Where required by the Official Receiver, the bankrupt shall, within a reasonable time of adjudication, prepare and deliver to the Official Receiver full, true and detailed accounts and statements of his financial position that show details of—

(*a*) the bankrupt's trading and stocktaking; and

(*b*) the bankrupt's profit and losses in any period before the adjudication.

(3) For the bankrupt to prepare the accounts and statements referred to in subsection (2)—

(*a*) the Official Receiver shall give the bankrupt full access to the bankrupt's books and papers in the Official Receiver's possession; and

(*b*) where the Official Receiver thinks it necessary, the bankrupt shall be assisted by an accountant at the expense of the bankrupt's estate.

Division VI—Control over Bankrupt

Contribution to payment of debts

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

(2) Before the Official Receiver requires a bankrupt to make payment under subsection (1), he shall—

(*a*) have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities and prospects; and

(*b*) make reasonable allowance for the maintenance of the bankrupt and his dependent relatives.

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

(*a*) vary, suspend or cancel the bankrupt's obligations to make a payment under subsection (1); or

(*b*) remit any arrears owing by the bankrupt.

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

Bankrupt entering business

226.—(1) An undischarged bankrupt shall not, without the consent of the Official Receiver or the Court, directly or indirectly—

(*a*) enter into, carry on, or take part in the management or control of any business;

(*b*) be employed by a relative of the bankrupt; or

(*c*) be employed by a company, trust, trustee, or any partnership or unincorporated association that is carrying on a business that is managed or controlled by a relative of the bankrupt.

(2) This section shall be in addition to, section 164 (2) (*c*) of the Companies Act.

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Search and seizure of property

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

(2) The warrant issued under subsection (1) may authorize the Official Receiver and any person required to assist him, to—

(*a*) enter and search any premises or place;

(*b*) seize and take possession of any relevant property; and

(*c*) where necessary, use force to enter the locality, premises or place.

(3) Where he is authorized by a warrant issued by a competent Court, the Official Receiver and any other person, required to assist him, may—

(*a*) seize any of the bankrupt's property in the custody or possession of the bankrupt or of any other person;

(*b*) with a view to seizing the bankrupt's property—

(i) break open any building or room of the bankrupt's property;

(ii) break open any building or receptacle of the bankrupt where the bankrupt's property is believed to be; and

(iii) seize and take possession of the bankrupt's property found in the building, room or receptacle.

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

(5) The Official Receiver may copy or extract from any relevant property any information relating to the property, conduct or dealings of the bankrupt.

(6) In this section, "relevant property" includes any document, computer, facsimile machine or other electronic equipment containing information relating to the bankrupt's property, conduct or dealings.

Vacation of property

228. Notwithstanding any other written law, the Official Receiver may require a bankrupt and any of his relatives to vacate any land or building that is part of the property vested in the Official Receiver under the bankruptcy, and the bankrupt and his relatives shall comply with the request.

Right to inspect documents

229.—(1) A bankrupt may at any convenient time inspect, and take extracts or copies of—

(*a*) his accounting records;

(*b*) his answers to questions put to him by the Official Receiver;

(*c*) his statement of affairs;

(*d*) all proofs of debt;

(*e*) the minutes of any creditors' meeting; and

(*f*) the record of any examination of the bankrupt.

Recovery, release or discharge of property

230. Subject to sections 215 and 216, after adjudication, a bankrupt, and any person other than the Official Receiver, who claims through or under the bankrupt, shall not be empowered to—

(*a*) recover any property that is part of the bankrupt's estate; or

(*b*) give a release or discharge in relation to the property.

Defeating beneficial interest

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

(2) The restriction imposed on the bankrupt by subsection (1) shall, subject to sections 215 and 216, apply before and after the bankrupt obtains a discharge.

Bank accounts

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

(*a*) as soon as possible, notify the Official Receiver of any account that the bankrupt holds with the bank; and

(*b*) not pay any money out of the account, except as provided under subsection (2).

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

(*a*) the bank is authorized by an order of the Court or instructed by the Official Receiver to do so; or

(*b*) the bank has notified the Official Receiver that the bank holds such an account and has not, within the prescribed period of notification, received any instructions from the Official Receiver.

Allowance to bankrupt

233.—(1) Notwithstanding any other written law, the Official Receiver may make an allowance out of the property of a bankrupt to the bankrupt or any relative of the bankrupt for the support of the bankrupt and his dependent relatives.

(2) The Official Receiver may allow a bankrupt to retain, for the immediate maintenance of the bankrupt and his dependent relatives, any money up to a specified maximum amount, or such sum as may be prescribed that the bankrupt has in his possession or in a bank account at the time of adjudication.

Examination of bankrupt and others

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

(*a*) summon any of the persons specified in subsection (2) to appear before him, or the Court to be examined on oath; and

(*b*) require that person to produce and surrender to the Official Receiver any document in that person's possession or control that relates to the bankrupt's property or dealings.

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

(*a*) the bankrupt;

(*b*) the bankrupt's spouse;

(*c*) a person known or suspected to possess any of the bankrupt's property or any document relating to the affairs or property of the bankrupt;

(*d*) a person believed to owe the bankrupt money;

(*e*) a person believed to be able to give information regarding—

(i) the bankrupt; or

(ii) the bankrupt's trade, dealings, property, income from any source, or expenditure; and

(*f*) a trustee of a trust of which the bankrupt is a settler or of which the bankrupt is or has been a trustee.

(3) An examination shall be recorded in writing, and the person examined must sign the written record if required to do so.

(4) Where a person summoned does not appear at the appointed time and has no reasonable excuse, the Court may—

(*a*) on the Official Receiver's application, by warrant, have him arrested and brought for examination before the Court; and

(*b*) where the Court thinks that his evidence was necessary for the purposes of the bankrupt's estate, order him to pay all the expenses arising out of his arrest and examination.

(5) On the Official Receiver's application, the Court may permit publication of a report under the conditions that the Court imposes.

(6) Subsections (1) to (5) also apply when the Official Receiver has been appointed a receiver and manager of all or part of a debtor's property under section 204, and references in those sections to the bankrupt must be read as if they were references to the debtor.

Public examination of bankrupt

235.—(1) The Court shall hold a public examination of a bankrupt where, at any time before an order for the bankrupt's discharge is made, there is filed with the Court a statement by the Official Receiver, or a copy of a creditors' ordinary resolution, requiring that the bankrupt should be publicly examined.

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

(3) Every public examination shall be conducted in accordance with the Rules.

Documents and other records

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

(2) Subject to subsection (3), no person may, as against the Official Receiver, withhold possession of, or claim a privilege or lien over—

(*a*) a deed or instrument that belongs to the bankrupt; or

(*b*) accounting records, accounts, receipts, bills, invoices, or other papers relating to the bankrupt's accounts, trade dealings, or business.

(3) A person who is not the bankrupt's spouse may claim as secured creditor where the person—

(*a*) has performed services in connexion with the bankrupt's accounting records or a deed or instrument belonging to the bankrupt; and

(*b*) has not been paid, or has not been paid in full, for those services; and

(*c*) would, but for subsection (1), ordinarily have had a lien over the accounting records, deed, or instrument, as the case may be.

Division VII—Powers and Duties of Official Receiver

Official Receiver's powers

237.—(1) The Official Receiver shall have and exercise the powers set out in the Rules.

(2) Subject to subsection (3), the Official Receiver may, on such terms as he thinks appropriate—

(*a*) sell the bankrupt's property by public auction or public tender to one or more persons, in such parcels or in such order as he thinks fit;

(*b*) buy in at an auction of the bankrupt's property;

(*c*) rescind or vary a contract for the sale of the bankrupt's property;

(*d*) for the purposes of paragraph (*a*), sell the whole of the bankrupt's property to one person;

(*e*) for the purposes of paragraph (*a*), sell the bankrupt's property in parcels and in any order.

(3) The Official Receiver shall not sell any of the bankrupt's property until after the date fixed for the first creditors' meeting, except where—

(*a*) the property is perishable or likely to fall rapidly in value;

(*b*) in the Official Receiver's opinion, the sale of the property might be prejudiced by delay; or

(*c*) expenses are likely to be incurred by any delay, and before selling the Official Receiver consults a creditor or creditors whom the Officer Receiver considers to be representative of the interests of creditors.

(4) For the purposes of sale by public auction or public tender under subsection (2) (*a*), the Official Receiver—

(*a*) may instruct a licensed auctioneer to conduct the sale; and

(*b*) shall ensure that the sale is advertised at least twice at an interval of seven days between the advertisements in two daily

newspapers circulating widely in Malaŵi and notice of the sale is given to the bankrupt in each case not less than the prescribed period before the date of the sale.

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

(*a*) perishable property or property that is likely to fall rapidly in value;

(*b*) property that is unsold after being offered for sale by public auction or public tender;

(*c*) property that the Official Receiver considers unnecessary or inadvisable to sell by public auction or public tender, because of its nature, situation, value or other special circumstances;

(*d*) property authorized by a resolution of creditors to be sold by private contract in accordance with the authority given by the creditors; and

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

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(6) The title of a purchaser of the bankrupt's property from the Official Receiver under a document that is made in the exercise of the Receiver's power of sale under this section shall not be—

(*a*) challenged except on the ground of fraud; and

(*b*) affected by an absence of authority to sell, or the improper or irregular exercise of the power of sale.

Bank account and investment

238.—(1) The Official Receiver shall have a bank account and he shall pay into that account all money that he receives in that capacity in such manner as may be prescribed.

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

Official Receiver's discretion

239.—(1) The Official Receiver shall use his discretion in the administration of a bankrupt's property.

(2) When exercising discretion under subsection (1), the Official Receiver shall have regard to the resolutions of the creditors at creditor's meetings.

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

(*a*) conflicts with this Act or any other written law; or

(*b*) is unjust or unfair.

Division VIII—End of Bankruptcy

Automatic discharge

240.—(1) Subject to section 203 and this section, a bankrupt shall automatically be discharged from bankruptcy after adjudication, but may apply to be discharged earlier.

(2) A bankrupt shall not be automatically discharged where—

(*a*) the Officer Receiver or a creditor has objected under subsection (4) and the objection has not been withdrawn after adjudication;

(*b*) the bankrupt has to be publicly examined under section 234 and that examination has not taken place; or

(*c*) the bankrupt is undischarged from an earlier bankruptcy.

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

(4) The Official Receiver or, with the permission of the Court, a creditor may object to a bankrupt's automatic discharge in such manner as may be prescribed.

(5) An objection to the automatic discharge of a bankrupt may be withdrawn in such manner as may be prescribed.

(6) The bankrupt shall be automatically discharged on the withdrawal of an objection where—

(*a*) the prescribed period has elapsed after adjudication; and

(*b*) there is no other objection to the discharge that has not been withdrawn.

Application for discharge

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

(2) The Official Receiver shall, as soon as practicable after the expiry of three years from the date of adjudication, summon the

bankrupt to be publicly examined by the Court concerning his discharge, and the Court shall conduct the examination where—

(*a*) the Official Receiver or a creditor has objected to the bankrupt's automatic discharge;

(*b*) the bankrupt is due for automatic discharge but is still undischarged from an earlier bankruptcy; or

(*c*) the bankrupt has been required to be publicly examined under section 234 and that examination has not taken place.

Official Receiver's report

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

(*a*) the bankrupt has applied for a discharge; or

(*b*) the Official Receiver has summoned the bankrupt to be examined under section 241 (2).

(2) The Official Receiver shall report as to—

(*a*) the bankrupt's affairs;

(*b*) the causes of the bankruptcy;

(*c*) the bankrupt's performance of his duties under this Act;

(*d*) the manner in which the bankrupt has complied with an order of the Court;

(*e*) the bankrupt's conduct before and after adjudication; and

(*f*) any other matter that would assist the Court in making a decision as to the bankrupt's discharge.

Notice of opposition to discharge

243.—(1) A creditor shall give notice to the Official Receiver and the bankrupt where he intends to oppose the bankrupt's discharge on a ground that is not mentioned in the Official Receiver's report.

(2) The notice shall—

(*a*) set out the ground for opposing the discharge; and

(*b*) be given within the prescribed time.

Grant or refusal of discharge

244.—(1) Where the Court hears an application for discharge, or conducts the examination of the bankrupt under section 241 (2), the Court may, having regard to all the circumstances of the case—

(*a*) immediately discharge the bankrupt;

(*b*) discharge the bankrupt on such conditions as it thinks appropriate;

(*c*) discharge the bankrupt but suspend the order for a period;

(*d*) discharge the bankrupt, with or without conditions, at a specified future date; or

(*e*) refuse an order of discharge, in which case the Court may specify the earliest date when the bankrupt may apply again for discharge.

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

Engaging in business after discharge

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

(*a*) entering into, carrying on, or taking part in the management or control of, any business or class of business;

(*b*) being a director of, or being concerned in, or taking part, directly or indirectly in, the management of any company;

(*c*) being employed by a relative of the bankrupt; or

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

(2) The Court may make an order under subsection (1) for a specified period or without a time limit and may at any time vary or cancel the prohibition.

Reversal of order of discharge

246.—(1) The Court may, on the application of the Official Receiver or a creditor, reverse the discharge of a bankrupt at any time before two years after—

(*a*) the discharge, in the case of an absolute discharge; and

(*b*) the discharge takes effect, in the case of a discharge that is conditional or suspended.

(2) Where the Court reverses a discharge, the Court may, at the same time or at any time thereafter, make a new order of discharge, whether absolute, suspended or conditional.

(3) The Court may reverse a discharge where—

(*a*) the bankrupt has been given notice of the application; and

(*b*) the Court is satisfied that facts have been established that—

(i) were not known to the Court when it made the order of discharge; and

(ii) had the Court known of them, it would have been justified in refusing a discharge or discharging the bankrupt on conditions.

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

(*a*) were known to the applicant; or

(*b*) could have been known if the applicant had inquired with reasonable diligence.

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

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

(*a*) shall vest in the Official Receiver subject to any encumbrance; and

(*b*) shall be applied by the Official Receiver to pay debts that the bankrupt has incurred since the date of discharge.

Powers of the Court where conditions of discharge too onerous

247.—(1) A bankrupt who cannot comply with any condition of his discharge may apply to the Court for an absolute discharge.

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

Release from debts

248.—(1) On discharge, a bankrupt shall be released from all debts provable in the bankruptcy except those listed in subsection (2).

(2) The bankrupt shall not be released from—

(*a*) a debt or liability incurred by fraud or fraudulent breach of trust to which the bankrupt was a party;

(*b*) a debt or liability for which the bankrupt has obtained forbearance through fraud to which the bankrupt was a party;

(*c*) a judgment debt or an amount payable for which the bankrupt is liable under section 225 or 244;

(*d*) an amount payable under a spousal maintenance order; or

(*e*) a student loan in favour of the bankrupt, or for which the bankrupt is liable, and which has not been fully repaid.

Other effects of discharge

249.—(1) A discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings in the bankruptcy.

(2) A discharge shall not release any person who, at the date of adjudication, was—

(*a*) a business partner of the bankrupt;

(*b*) a co-trustee with the bankrupt;

(*c*) jointly bound or had made any contract with the bankrupt; or

(*d*) a surety or guarantee or in the nature of surety for the bankrupt.

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

(4) Where the Court has refused a bankrupt a discharge or discharged a bankrupt but suspended the discharge, that information shall be entered in the public register maintained under section 12.

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

Division IX—Annulment of Adjudication

Annulment

250.—(1) The Court may, on the application of the Official Receiver or any person interested, annul an adjudication where the Court—

(*a*) considers that the bankrupt should not have been adjudicated bankrupt;

(*b*) is satisfied that the bankrupt's debts have been fully paid or satisfied; or

(*c*) considers that the liability of the bankrupt to pay his debts should be reviewed because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication.

(2) In the case of an application on one of the grounds specified in subsections (1) (*a*) to (*c*) by an applicant who is not the Official Receiver—

(*a*) a copy of the application shall be served on the Official Receiver in the manner and within the time that the Court directs; and

(*b*) the Official Receiver may appear on the hearing of the application as a party to the proceedings.

(3) An adjudication shall be annulled—

(*a*) from the date of adjudication, in the case of an application on the ground specified in subsection (1) (*a*); or

(*b*) from the date of the Court's order of annulment, in the case of an application on one of the grounds specified in subsections (1) (*b*) to (*c*).

(4) In the case of an application for annulment on the ground that the adjudication should not have been made because of a defect in form or procedure, the Court may, in addition to annulling the adjudication, exercise its powers under subsection (5) to correct the defect and order that the application for adjudication be reheard.

(5) Where the Court annuls the adjudication on one of the grounds specified in subsections (1) (*a*) to (*c*)—

(*a*) the Court may, on the Official Receiver's application, fix an amount as reasonable remuneration for the Official Receiver's services and order that it be paid, in addition to any costs that may be awarded;

(*b*) the Court shall make any determination under paragraph (*a*) promptly;

(*c*) the fee shall be paid into the Consolidated Fund; and

(*d*) the Official Receiver shall not be entitled to remuneration for those services.

Effects of annulment

251.—(1) On the annulment of an adjudication, all property of the bankrupt vested in the Official Receiver on bankruptcy and not sold or disposed of by the Official Receiver shall revest in the bankrupt without the necessity for any conveyance, transfer or assignment.

(2) Any contract, sale, disposition or payment duly made or anything duly done by the Official Receiver before the annulment shall—

(*a*) not be prejudiced or affected as to validity by the annulment; and

(*b*) have effect as if it had been made or done by the bankrupt while no adjudication was in force.

Division X—Voluntary Arrangements for Individual Debtors

Interim order of Court

252.—(1) In the circumstances specified in section 253, the Court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order shall have the effect that, during the period for which it is in force—

(*a*) no bankruptcy petition relating to the debtor may be presented or proceeded with;

(*b*) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the Court; and

(*c*) no other proceedings, and no execution or other legal process, may be commenced or continued and no distress may be levied against the debtor or his property except with the leave of the Court.

Application for interim order

253.—(1) Application to the Court for an interim order may be made where—

(*a*) the debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (hereinafter referred to as a "voluntary arrangement"); or

(*b*) two or more debtors who are carrying on business in partnership, or a debtor who is carrying on business as a sole proprietor, intend to make a proposal for reorganization of the business and, in such a case, the proposal shall conform, as far as possible, to a proposal for company reorganization.

(2) The proposal under subsection (1) shall provide for some person ("the nominee") to act in relation to the voluntary

arrangement as trustee or otherwise for the purpose of supervising its implementation and the nominee shall be a person who is qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(3) Subject to subsections (4) and (5), the application may be made—

(*a*) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the Official Receiver; and

(*b*) in any other case, by the debtor.

(4) An application shall not be made under subsection (3) (*a*) unless the debtor has given notice of the proposal to the Official Receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending.

Effect of application

254.—(1) At any time when an application under section 253 for an interim order is pending—

(*a*) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the Court; and

(*b*) the Court may forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and stay any action, execution or other legal process against the property or person of the debtor.

(2) Any Court in which proceedings are pending against an individual may, on proof that an application under section 253 has been made in respect of that individual, stay the proceedings or allow them to continue on such terms as it thinks fit.

Cases in which interim order can be made

255.—(1) The Court shall not make an interim order on an application under section 253 unless it is satisfied that—

(*a*) the debtor intends to make a proposal under this Division;

(*b*) on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(*c*) no previous application has been made by the debtor for an interim order in the prescribed period ending with that day; and

(*d*) that the nominee under the debtor's proposal is willing to act in relation to the proposal.

(2) The Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject to subsections (5) and (6), the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision and any provision of the Rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions or of the Rules, unless the Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the provisions of this Division, an interim order made on an application under section 253 shall cease to have effect at the end of the prescribed period beginning with the day after the making of the order.

Nominee's report on debtor's proposal

256.—(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the Court stating—

(*a*) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented;

(*b*) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(*c*) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report, the debtor shall submit to the nominee—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(ii) such other information as may be prescribed.

(3) The Court may—

(*a*) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died; or

(*b*) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(4) The Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or if it has ceased to have effect, be renewed, for such further period as the Court may specify in the direction.

(5) The Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(6) If the Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors.

(7) The Court may discharge the interim order if it is satisfied, on the application of the nominee, that—

(*a*) the debtor has failed to comply with his obligations under subsection (2); or

(*b*) for any other reason, it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Division XI—Procedure Where No Interim Order Made

Debtor's proposal and nominee's report

257.—(1) This section shall apply where a debtor, being an individual—

(*a*) intends to make a proposal under this Part where an interim order has not been made in relation to the proposal and no application for such an order is pending; and

(*b*) if he is an undischarged bankrupt, has given notice of the proposal to the Official Receiver and, if there is one, the trustee of his estate, unless a bankruptcy petition presented by the debtor is pending.

(2) For the purpose of enabling the nominee to prepare a report to the Court, the debtor shall submit to the nominee—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within the prescribed period, or such longer period as the Court may allow, after receiving the document and statement mentioned in subsection (2), submit a report to the Court stating—

(*a*) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented;

(*b*) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and

(*c*) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The Court may—

(*a*) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died; or

(*b*) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorized to act as nominee, in relation to the voluntary arrangement.

(5) The Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

Division XII—Creditors' Meeting

Summoning of creditors' meeting

258.—(1) Where it has been reported to the Court under section 256 or 257 that a meeting of the debtor's creditors should be summoned, the nominee, or his replacement, shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting under subsection (1) shall be every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For purpose of subsection (2), the creditors of a debtor who is an undischarged bankrupt include—

(*a*) every person who is a creditor of the bankrupt in respect of a bankruptcy debt; and

(*b*) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Decision of creditors' meeting

259.—(1) A creditors' meeting summoned under section 258 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include modification conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorized to act as nominee, in relation to the voluntary arrangement:

Provided that they shall not include any modification by virtue of which the proposal ceases to be a proposal under this Part.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to exercise his security interest, except with the concurrence of the creditor concerned.

(5) Subject to subsections (6), (7) and (8), the meeting shall not approve any proposal or modification under which—

(*a*) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts; or

(*b*) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) Notwithstanding subsections (1), (2), (3), (4) and (5), the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) Subject to subsections (1), (2), (3), (4), (5) and (6), the meeting shall be conducted in accordance with the Rules.

(8) In this section, "preferential debt" has the meaning ascribed thereto in section 297 and "preferential creditor" is to be construed accordingly.

Report of decisions to Court

260.—(1) After the conclusion in accordance with the rules of the meeting summoned under section 258, the chairman of the meeting shall report the result of it to the Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report under subsection (1) is that the meeting has declined, with or without modifications, to approve the debtor's proposal, the Court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

261.—(1) This section shall have effect where the meeting summoned under section 258 approves the proposed voluntary arrangement, with or without modifications.

(2) The approved arrangement shall—

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

(*b*) bind every person who in accordance with Rules—

(i) was entitled to vote at the meeting, whether or not he was present or represented; or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.

(3) If—

(*a*) when the arrangement ceases to have effect, any amount payable under the arrangement to a person bound by virtue of subsection (2) (*b*) (ii) 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) Any interim order in force in relation to the debtor immediately before the end of the prescribed period beginning with the day on which the report with respect to the creditors' meeting was made to the Court under section 260 shall cease to have effect at the end of that period.

(5) Subsection (4) shall apply except to such extent as the Court may direct for the purposes of any application under section 263.

Additional effect on undischarged bankrupt

262.—(1) This section shall apply where—

(*a*) the creditors' meeting summoned under section 258 approves the proposed voluntary arrangement with or without modifications; and

(*b*) the debtor is an undischarged bankrupt.

(2) Where this section applies, the Court shall annul the bankruptcy order on an application made—

(*a*) by the bankrupt; or

(*b*) where the bankrupt has not made an application within the prescribed period, by the Official Receiver.

(3) An application under subsection (2) may not be made—

(*a*) during the period specified in section 263 (3) (*a*) during which the decision of the creditors' meeting can be challenged by application under section 263;

(*b*) while an application under that section is pending; or

(*c*) while an appeal in respect of an application under that section is pending or may be brought.

(4) Where this section applies, the Court may give such directions about the conduct of the bankruptcy and the administration of

the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

Challenge of creditors' meeting's decision

263.—(1) Subject to this section, an application to the Court may be made, by any of the persons specified in subsection (2), on one or both of the following grounds, namely—

(*a*) that a voluntary arrangement approved by a creditors' meeting summoned under section 258 unfairly prejudices the interests of a creditor of the debtor;

(*b*) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this section are—

(*a*) the debtor;

(*b*) a person who—

(i) was entitled, in accordance with the Rules, to vote at the creditors' meeting; or

(ii) would have been so entitled if he had had notice of it;

(*c*) the nominee or his replacement under sections 256 (3), 257 (4) or 259 (3); and

(*d*) if the debtor is an undischarged bankrupt, the trustee of his estate or the Official Receiver.

(3) An application under this section shall not be made—

(*a*) after the end of the prescribed period beginning with the day on which the report of the creditors' meeting was made to the Court under section 260; or

(*b*) in the case of a person who was not given notice of the creditors' meeting, after the end of the prescribed period beginning with the day on which he became aware that the meeting had taken place, but (subject to that) an application made by a person within subsection (2) (*b*) (ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.

(4) Where on an application under this section, the Court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

(*a*) revoke or suspend any approval given by the meeting;

(*b*) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1) (*b*), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4) (*b*) for the summoning of a meeting to consider a revised proposal the Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the Court gives a direction under subsection (4) (*b*), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the Court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4) (*b*) or revokes or suspends an approval under subsection (4) (*a*) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(*a*) things done since the meeting under any voluntary arrangement approved by the meeting; and

(*b*) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 258 is not invalidated by any irregularity at or in relation to the meeting.

False representations

264.—(1) A debtor commits an offence if for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(*a*) makes any false representation; or

(*b*) fraudulently does, or omits to do, anything.

(2) Subsection (1) shall apply even if the proposal is not approved.

Prosecution of delinquent debtors

265.—(1) This section shall apply where a voluntary arrangement approved by a creditors' meeting summoned under section 258 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has committed an offence in connexion with the arrangement for which he is criminally liable, he shall forthwith—

(*a*) report the matter to the Director; and

(*b*) provide the Director with such information and give the Director such access to, and facilities for, inspecting and taking copies of documents, information in his possession or under his control and relating to the matter in question, as the Director requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, the supervisor shall give the authority all assistance in connexion with the prosecution which he is reasonably able to give.

(4) The Court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

Arrangements coming to an end prematurely

266. For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 258 shall come 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 by virtue of section 261 (2) (*b*) (i).

Implementation and supervision of approved voluntary arrangement

267.—(1) This section shall apply where a voluntary arrangement approved by a creditors' meeting summoned under section 258 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court; and on such an application, the Court may—

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

(*b*) give him directions; or

(*c*) make such other order as it thinks fit.

(4) The supervisor may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The Court may, whenever—

(*a*) it is expedient to appoint a person to carry out the functions of the supervisor; and

(*b*) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorized to act as supervisor, in relation to the voluntary arrangement, in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Availability of fast-track voluntary arrangement

268.—(1) Section 269 shall apply where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(*a*) the debtor is an undischarged bankrupt;

(*b*) the Official Receiver is specified in the proposal as the nominee in relation to the voluntary arrangement; and

(*c*) no interim order is applied for under section 253.

Decision

269.—(1) The debtor may submit to the Official Receiver—

(*a*) a document setting out the terms of the voluntary arrangement which the debtor is proposing; and

(*b*) a statement of his affairs containing such particulars as may be prescribed, of his creditors, debts, other liabilities and assets, and such other information as may be prescribed.

(2) If the Official Receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2), a person is a "creditor" only if—

(*a*) he is a creditor of the debtor in respect of a bankruptcy debt; and

(*b*) the Official Receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

(*a*) shall include the provision to each creditor of a copy of the proposed voluntary arrangement;

(*b*) shall include the provision to each creditor of information about the criteria by reference to which the Official Receiver will determine whether the creditors approve or reject the proposed voluntary arrangement; and

(*c*) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the Official Receiver under subsection (1), no application under section 253 for an interim order shall be made in respect of the debtor until the Official Receiver has—

(*a*) made arrangements as described in subsection (2); or

(*b*) informed the debtor that he does not intend to make arrangement because he—

(i) does not think the voluntary arrangement has a reasonable prospect of being approved;

(ii) declines to act.

Report of Official Receiver to Court on proposed voluntary arrangement

270. As soon as is reasonably practicable after the implementation of arrangements under section 269, the Official Receiver shall report to the Court whether the proposed voluntary arrangement has been approved or rejected.

Approval of voluntary arrangement

271.—(1) Where the Official Receiver reports to the Court under section 270 that a proposed voluntary arrangement has been approved, the voluntary arrangement shall—

(*a*) take effect;

(*b*) bind the debtor; and

(*c*) bind every person who was entitled to participate in the arrangements made under section 269.

(2) The Court shall annul the bankruptcy order in respect of the debtor on an application made by the Official Receiver.

(3) An application under subsection (2) shall not be made—

(*a*) during the period specified in section 273 (3) during which the voluntary arrangement can be challenged by application under section 273 (2);

(*b*) while an application under that section is pending; or

(*c*) while an appeal in respect of an application under that section is pending or may be brought.

(4) The Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(5) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

Implementation of a voluntary arrangement approved by a creditors' meeting

272. Section 267 shall apply to a voluntary arrangement which has effect by virtue of section 271 (2) as it applies to a voluntary arrangement approved by a creditors' meeting.

Revocation

273.—(1) The Court may make an order revoking a voluntary arrangement which has effect by virtue of section 271 (2) on the ground that—

(*a*) it unfairly prejudices the interests of a creditor of the debtor; or

(*b*) a material irregularity occurred in relation to the arrangements made under section 269.

(2) An order under subsection (1) may be made only on the application of—

(*a*) the debtor;

(*b*) a person who was entitled to participate in the arrangements made under section 269 (2);

(*c*) the trustee of the bankrupt's estate; or

(*d*) the Official Receiver.

(3) An application under subsection (2) shall not be made after the end of the prescribed period beginning with the date on which the Official Receiver makes his report to the Court under section 269.

(4) Notwithstanding subsection (3), a creditor who was not made aware of the arrangements under section 269 (2) at the time when they were made may make an application under subsection (2) during the prescribed period beginning with the date on which he becomes aware of the voluntary arrangement.

Offences

274.—(1) Section 264 shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 271.

(2) Section 265 shall apply *mutatis mutandis*, in relation to a voluntary arrangement which has effect by virtue of section 271 (2).

PART VIII

GENERAL PROVISIONS FOR ALL DEBTORS

Definition of debtor

275. In this Part, "debtor" means—

(*a*) a person who is adjudicated bankrupt; or

(*b*) a company in the course of being wound-up by the Court or by way of a creditors' voluntary winding-up.

Provable debt and proof of debt

276.—(1) A provable debt shall be a present, future, certain or contingent debt or liability which a creditor may prove in a bankruptcy or a winding-up and that a debtor owes—

(*a*) at the time of adjudication or, in the case of a company, on the commencement of the winding-up; or

(*b*) after adjudication but before discharge or, in the case of a company, after the commencement of the winding-up and before dissolution, by reason of an obligation incurred by the debtor before adjudication or dissolution, as the case may be.

(2) A fine, penalty, order for restitution or other order for the payment of money that has been made following a conviction for an offence shall not be—

(*a*) a provable debt; and

(*b*) shall be discharged when the debtor, in the case of bankruptcy, is discharged from bankruptcy.

(3) A proof of debt shall be a document that a creditor submits, for the purpose of proving the debt, to—

(*a*) the Official Receiver, in the case of a bankruptcy; or

(*b*) a liquidator, in the case of a company winding-up.

(4) A debt shall be proved when a decision is made by the Official Receiver or liquidator to admit the debt in accordance with the Rules as being a debt provable in the bankruptcy.

Procedure for proving debts

277.—(1) The Rules shall govern the manner in which a proof of debt shall be submitted and examined, and the procedure to be followed in relation to the proving of debts, including the options available to a secured creditor and the procedure to be followed by a secured creditor.

(2) The proof shall also comply with such other requirements as may be prescribed.

(3) The creditor shall bear the costs of proving the debt, unless the Court makes an order directing that the bankrupt's estate or company in winding-up is to pay the creditor's costs.

Uncertain proof

278.—(1) Where a proof is subject to a contingency, or is for damages, or where for some other reason the amount of the proof is uncertain, the Official Receiver or liquidator may estimate the amount of the proof.

(2) The Court shall determine the amount of an uncertain proof on the application of—

(*a*) the Official Receiver or liquidator, where the Official Receiver or liquidator chooses not to estimate the amount; or

(*b*) a creditor, where the Official Receiver or liquidator has estimated the amount and the creditor is aggrieved by the estimate.

Proof of debt payable six months or more after adjudication or winding-up

279.—(1) A proof of debt that would, but for a bankruptcy or a liquidation, be payable six months or more after the date of adjudication or winding-up, shall be treated as a proof for the present value of the debt.

(2) The present value of the debt shall be calculated by discounting the debt at the prescribed rate for the period from the date of adjudication or winding-up to the date when the debt would be payable.

Mutual credit and set-off

280.—(1) Where there have been mutual credits, mutual debts or other mutual dealings between a debtor and another person—

(*a*) an account shall be taken of what is due from one party to the other party in respect of those credits, debts, or dealings;

(*b*) an amount due from one party to the other shall be set-off against an amount due from the other party;

(*c*) only the balance of the account may be proved in a bankruptcy or a liquidation; and

(*d*) only the balance of the account shall be payable to the Official Receiver or liquidator, as the case may be.

(2) A person, other than a related person, shall not be entitled under this section to claim the benefit of a set-off arising from—

(*a*) a transaction made within the specified period, being a transaction by which the person gave credit to the debtor or the debtor gave credit to the person; or

(*b*) the assignment within the specified period to the person of a debt owed by the debtor to another person, unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the debtor was unable to pay his debts as they became due.

(3) A related person shall not be entitled under this section to claim the benefit of a set-off arising from—

(*a*) a transaction made within the restricted period, being a transaction by which the related person gave credit to the debtor or the debtor gave credit to the related person; or

(*b*) the assignment within the restricted period to the person of a debt owed by the debtor to another person, unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the debtor was unable to pay his debts as they became due.

(4) This section shall not apply to an amount paid or payable by a shareholder—

(*a*) as the consideration, or part of the consideration, for the issue of a share; or

(*b*) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.

(5) In this section—

(*a*) "related person" means—

(i) a related company; and

(ii) includes a director of a company in liquidation;

(*b*) "restricted period" means the period of two years before the date of an adjudication or the commencement of a winding-up; and

(*c*) "specified period" means the period of six months before the date of an adjudication or the commencement of a winding-up.

Interest on claims

281.—(1) The amount of a claim may include interest up to the date of the adjudication or the commencement of the winding-up—

(*a*) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or

(*b*) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) Where any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of adjudication or commencement of the winding-up to the date on which each claim is paid, and where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) Where any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1) from the date of adjudication or the commencement of the winding-up to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subsection (1) (*a*) or subsection (1) (*b*), as the case may be, and, where the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

Voidable preference

282.—(1) A transaction by a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where it—

(*a*) is a voidable preference; and

(*b*) was made within two years immediately before adjudication or commencement of the winding-up.

(2) A voidable preference shall be a transaction by the debtor that—

(*a*) is made at a time when the debtor is unable to pay his due debts; and

(*b*) enables another person to receive more towards satisfaction of a debt by the debtor than the person would receive, or would be likely to receive, in the bankruptcy or liquidation.

(3) "Transaction" in subsection (2) means any of the following steps by the debtor—

(*a*) conveying or transferring the debtor's property;

(*b*) creating a charge over the debtor's property;

(*c*) incurring an obligation;

(*d*) undergoing an execution process;

(*e*) paying money (including money paid in accordance with a judgment or an order of a Court); or

(*f*) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

(4) For the purposes of subsection (1), a transaction that is made within six months immediately before the debtor's adjudication or the commencement of the winding-up shall be presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts.

(5) Where—

(*a*) a transaction is, for commercial purposes, an integral part of a continuing business relationship such as a running account between a debtor and a creditor, including a relationship to which other persons are parties; and

(*b*) in the course of the relationship, the level of the debtor's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship, then—

(i) subsection (1) shall apply in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

(ii) the transaction referred to in paragraph (*a*) may only be taken to be an insolvent transaction voidable by the Official Receiver or liquidator where the effect of applying subsection (1) in accordance with subparagraph (i) is that the single transaction referred to in subparagraph (i) is taken to be an insolvent transaction voidable by the Official Receiver or liquidator.

Voidable security interest

283.—(1) A security interest over any property or undertaking of a debtor may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(*a*) the security interest was given within two years immediately before the date of the debtor's adjudication or the commencement of the winding-up; and

(*b*) immediately after the security interest was given, the debtor was unable to pay his due debts.

(2) A security interest given by a debtor under an agreement to give the security interest that was made before the period of two years immediately before the date of adjudication or the commencement of the winding-up shall not be set aside under subsection (1).

Security interest or security for new consideration

284.—(1) A security interest may not be set aside under section 283 where the security interest secures money actually advanced or paid, or the actual price or value of property sold or supplied, or any other valuable consideration given in good faith, by the holder of the security interest to the debtor at the time when, or at any time after, the security interest was given.

(2) A security interest may not be set aside under section 283 where the security interest is a substitute for an existing security interest that was given by the debtor more than two years before the date of adjudication or the commencement of the winding-up, except to the extent that—

(*a*) the amount secured by the substituted security interest is greater than the amount that was secured by the existing security interest; or

(*b*) the value of the property subject to the substituted security interest at the date of substitution was greater than the value of the property subject to the existing security interest at that date.

Presumption that debtor unable to pay due debts

285. A debtor who gives a security interest within six months immediately before the date of adjudication or the commencement of the winding-up or bankruptcy shall be presumed, unless the contrary is proved, to have been unable to pay his due debts immediately after giving the security interest.

Security for unpaid purchase price given after sale of property

286. Where a debtor, after purchasing property, has within two years immediately before the date of adjudication or the commencement of the winding-up given the seller a security interest over the property, section 283 shall not affect the security interest to the extent that it secures unpaid purchase money, whether it is unpaid

in relation to the property over which the security interest is given or some other property, or the security interest was given not more than the prescribed number of days after the date of the sale of the property to the debtor.

Appropriation of payment by debtor to security interest holder

287.—(1) Where a debtor has made a payment to a secured party after the debtor has given a security interest to which section 283 or 285 applies, the debtor's payment shall be credited as far as is necessary towards—

(*a*) repayment of the money actually advanced or paid by the secured party to the debtor when or after the debtor gave the security interest;

(*b*) payment of the actual price or value of property sold by the secured party to the debtor when or after the debtor gave the security interest; or

(*c*) payment of any other liability of the debtor to the secured party, including in respect of any other valuable consideration given in good faith when or after the debtor gave the security.

(2) Nothing in this section shall apply to any payment received by a bank in good faith in the ordinary course of business and without negligence.

Alienation of property with intent to defraud a creditor

288.—(1) Subject to subsection (2), every alienation of property made by a debtor within five years immediately before the date of adjudication or the commencement of the winding-up of the debtor with intent to defraud a creditor may be set aside by the Court on the application of the Official Receiver or a liquidator.

(2) This section shall not apply to any estate or interest in property alienated to a purchaser in good faith not having at the time of the alienation notice of the intention to defraud any creditor.

Voidable gift

289.—(1) A gift by a debtor to another person may be set aside by the Court on the application of the Official Receiver or a liquidator where—

(*a*) the debtor made the gift within two years immediately before the date of adjudication or the commencement of the winding-up; and

(*b*) the debtor was unable to pay his due debts immediately after making the gift.

(2) A gift that is made within six months immediately before the date of the debtor's adjudication or the commencement of the

winding-up shall be presumed, unless the contrary is proved, to be made at a time when the debtor is unable to pay his due debts.

Procedure for setting aside voidable transaction

290.—(1) The procedure set out in this section shall apply to—

(*a*) a voidable preference;

(*b*) a voidable security interest;

(*c*) an alienation of property with intent to defraud a creditor; and

(*d*) a voidable gift.

(2) To initiate the setting aside of a voidable transaction to which this section applies, the Official Receiver or liquidator shall, as soon as practicable, serve a notice that meets the requirements set out in subsection (3) on—

(*a*) the other party to the transaction; and

(*b*) any other party from whom the Official Receiver or liquidator intends to recover.

(3) The notice shall—

(*a*) be in writing;

(*b*) state the Official Receiver's or liquidator's address;

(*c*) specify the voidable transaction to be set aside;

(*d*) describe the property or state the amount that the Official Receiver or liquidator wishes to recover;

(*e*) state that the person named in the notice may object to the setting aside of the transaction if the person sends a written notice of objection to the Official Receiver or liquidator within the prescribed number of days after the notice has been served on the person; and

(*f*) state that the transaction will be set aside as against the person named in the notice if that person does not object.

(4) A voidable transaction shall be automatically set aside as against a person named in the notice if the person has not objected, by the sending of a notice by the Official Receiver or liquidator to the person not later than the prescribed number of working days after the expiry of the time limit specified in subsection (3) (*e*).

(5) A notice of objection shall state the reasons for objecting.

(6) The Court may, on the application of the Official Receiver or liquidator, set aside the voidable transaction in any case where a person named in the notice has given a notice of objection under subsection (4).

Court may order re-transfer or payment

291.—(1) On the setting aside of a voidable transaction, the Court may make an order for—

(*a*) the re-transfer to the Official Receiver or liquidator of any property of the debtor, or any interest in that property, that was transferred under the transaction; or

(*b*) payment to the Official Receiver or liquidator of a sum of money that the Court thinks appropriate, but the sum must not be greater than the value of the property when the transaction was set aside.

(2) The Court may make any other order for the purpose of giving effect to an order under subsection (1).

(3) An order under subsection (1) shall be in addition to any other right and remedy available to the Official Receiver or liquidator.

Limits on recovery

292. The Court shall not make an order setting aside a transaction under section 290 against a person, the person proves that, when he received the property—

(*a*) he acted in good faith;

(*b*) a reasonable person in his position would not have suspected that the debtor was, or would become, unable to pay his due debts; and

(*c*) he gave value for the property or altered his position in the reasonably held belief that the transfer of the property to him was valid and would not be set aside.

Transaction with debtor for inadequate or excessive consideration

293.—(1) Where, within the specified period, a debtor has acquired a business or property from, or the services of—

(*a*) a person who was, at the time of the acquisition, a nominee or relative of or a trustee for, or a trustee for a relative of the debtor, or, in the case of a debtor that is a company, a director of the company;

(*b*) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the acquisition, had control of the company;

(*c*) in the case of a debtor that is a company, another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of a director of the company; or

(*d*) in the case of a debtor that is a company, another company that was, at the time of the acquisition, a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property or services exceeded the value of the business, property or services at the time of the acquisition.

(2) Where, within the specified period, a debtor has disposed of a business or property, provided a guarantee or services, or, in the case of a debtor that is a company, has issued shares, for the benefit of—

(*a*) a person who was, at the time of the disposition, provision or issue a nominee or relative of or a trustee for or a trustee for a relative of the debtor or in the case of a company, a director of the company;

(*b*) in the case of a debtor that is a company, a person or a relative of a person who, at the time of the disposition, provision or issue, had control of the company;

(*c*) in the case of a debtor that is a company, another company that was, at the time of the disposition, provision or issue, controlled by a director of the company or a nominee or relative of or a trustee for or a trustee for a relative of a director of the company; or

(*d*) in the case of a debtor that is a company, another company that, at the time of the disposition, provision or issue, was a related company,

the Official Receiver or the liquidator may recover from the person, relative, company or related company, as the case may be, any amount by which the value of the business, property or services, or the value of shares at the time of the disposition, provision or issue exceeded the value of any consideration received by the debtor.

(3) For the purposes of this section—

(*a*) the value of a business or property includes the value of any goodwill attaching to the business or property; and

(*b*) "specified period" means the period of two years before the date of adjudication or commencement of the winding-up.

Court may order recipient to pay value

294.—(1) On the application of the Official Receiver or a liquidator, the Court may order the recipient of a contribution by the debtor to the recipient's property to pay the value of the contribution to the Official Receiver or liquidator.

(2) The Court may make an order under subsection (1) where—

(*a*) the debtor was not paid an adequate amount in money or money's worth for the contribution;

(*b*) the value of the debtor's assets was reduced by the contribution; and

(*c*) the debtor made the contribution—

(i) within two years immediately before the date of adjudication or commencement of the winding-up; or

(ii) within five years immediately before the date of adjudication or commencement of the winding-up and the recipient is not able to prove that the debtor, at the time of the contribution or at any later time before the date of adjudication or commencement of the winding-up, was able to pay the debtor's debts without the aid of the contribution.

(3) For the purposes of this section and section 295, a debtor has made a contribution to the recipient's property where he has—

(*a*) erected buildings on, or otherwise improved, land or any other property of the recipient;

(*b*) bought land or property in the recipient's name;

(*c*) provided money to buy land or other property in the recipient's name or on the recipient's behalf; or

(*d*) paid installments for the purchase of, or towards the purchase of, any land or any other property in the recipient's name or on the recipient's behalf.

Court's power in relation to debtor's contribution

295.—(1) The Court may ascertain the value of a debtor's contribution (including any payment of legal expenses, interest, rates, and other expenses or charges) for the purposes of section 294 and order the recipient to pay it to the Official Receiver or liquidator.

(2) The Court may order the recipient to pay less than the value of the contribution, or refuse to order the recipient to pay anything, where—

(*a*) the recipient acted in good faith and has altered his position in the reasonably held belief that the debtor's contribution was valid and that the recipient would not be liable to repay it in full or in part; or

(*b*) in the Court's opinion, it is unfair that the recipient should repay all or part of the contribution.

(3) Where the Court orders that the recipient shall repay a debtor's contribution, the Court may also, in the same or a subsequent order—

(*a*) direct the Official Receiver or liquidator to sell the whole or part of the relevant property, and to convey or transfer it to the buyer; and

(*b*) make vesting and other orders that are necessary for the sale and conveyance or transfer of the property.

Use of repayment of debtor's contribution to property

296. The Official Receiver or the liquidator shall use money repaid under section 295 by the recipient of a contribution by the debtor to property, or the proceeds of the sale of the property, as the case may be, by taking the following steps in order—

(*a*) step 1: the Official Receiver or liquidator shall keep as much of the proceeds as the Official Receiver or liquidator needs, when added to the other assets in the debtor's estate, to pay the creditors in full, including interest;

(*b*) step 2: if there is a surplus after the creditors have been paid in full, the Official Receiver or liquidator shall pay as much of the surplus to the recipient of the property to which the debtor has contributed as the Official Receiver or liquidator first retained; and

(*c*) step 3: the Official Receiver or liquidator shall not pay any sum to the debtor before the Official Receiver or liquidator has taken the steps in subsections (*a*) and (*b*).

Preferential claims

297.—(1) Subject to the provisions of this Act, in a winding-up or a bankruptcy, there shall be paid in priority to all other unsecured debts—

(*a*) the costs and expenses of the winding-up or bankruptcy, including the taxed costs of a petitioner, the remuneration of the

liquidator or trustee and the costs of any audit carried out pursuant to the provisions of this Act;

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(*b*) the claim of an employee or those claiming on his behalf to wages and other payments to which he is entitled under the Employment Act or any contract, for the following amounts—

(i) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twelve weeks preceding the date of the declaration of insolvency or winding-up;

(ii) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;

(iii) amounts due in respect of other types of paid absence accrued during the three months preceding the date of the declaration of insolvency or winding-up; and

(iv) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment;

(*c*) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the commencement of the winding-up or bankruptcy;

(*d*) any tax, duty or rate payable by the company or bankrupt to the government in respect of any period prior to the commencement of the winding-up or bankruptcy, whether or not payment has become due after that date;

(*e*) all government rents not more than five years in arrears;

(*f*) all rates due from the company or bankrupt to a local authority at the commencement of the winding-up or bankruptcy, having become due and payable within three years next before that date.

(2) Debts having priority shall rank as follows—

(*a*) firstly, the debts referred to in subsection (1) (*a*);

(*b*) secondly, the debts referred to in subsection (1) (*b*) and (*c*);

(*c*) thirdly, the debts referred to in subsection (1) (*d*) and (*e*); and

(*d*) fourthly, the debts referred to in subsection (1) (*f*).

(3) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the company or bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been paid to an employee of the company or bankrupt on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding-up or bankruptcy, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up or bankruptcy has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of security interests created over the assets of the company or the bankrupt, and shall be paid accordingly out of any property that constitutes such a security interest.

(6) Where the company or bankrupt is under a contract of insurance, entered into before the winding-up or the bankruptcy, insured against liability to third parties, then if any such liability is incurred by the company or the bankrupt, before or after the commencement of the winding-up or the bankruptcy, and an amount in respect of the liability is, or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of, or incidental to, getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge the liability or any part of the liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(7) Nothing in subsection (5) shall limit the rights of the third party in respect of the balance if the liability of the insurer to the company is less than the liability of the company to the third party.

(8) The provisions of subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary.

(9) Notwithstanding anything in subsection (1)—

(*a*) subsection (1) (*d*) shall not apply in relation to the winding-up of a company in any case where the company is being wound-up voluntarily merely for the purpose of reconstruction or amalgamation with another company the right to compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and

(*b*) where the company has given security for the payment or repayment of any amount to which paragraphs (*e*), (*f*) or (*g*) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realized from such security.

(10) Where, in any winding-up or bankruptcy, assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

(11) Subject to the provisions of this Act, all debts proved in the winding-up shall be paid *pari passu*.

Priority of payments for distribution of debtor's assets

298.—(1) The Official Receiver or a liquidator shall pay, out of the money received by him by the realization of the property of a debtor, the preferential claims set out in section 297 to the extent and in the order of priority specified in that section.

(2) After paying the preferential claims in accordance with subsection (1), the Official Receiver or the liquidator shall pay any remaining money to the general creditors.

(3) After paying the general creditors in accordance with subsection (2), the Official Receiver or the liquidator shall pay any remaining money to the debtor.

(4) In the case of a company in winding-up the liquidator, after paying the general creditors in accordance with subsection (2), shall distribute the company's surplus assets—

(*a*) in accordance with the provisions of the company's memorandum and articles of association; or

(*b*) where the company's memorandum and articles of association does not contain provision for the distribution of surplus assets or the company does not have a memorandum and articles of association, to shareholders rateably.

(5) Any money received by the Official Receiver or liquidator by the realization of the property of the debtor that cannot be paid in accordance with subsections (1) to (4) shall be paid into the Insolvency Surplus Account.

(6) A secured creditor shall—

(*a*) pursuant to sections 158 (2) and 213 (4) have power to take possession of, realize and otherwise deal with property over which the secured creditor has a security interest; and

(*b*) hold and retain from any property or proceeds of realization of property sufficient funds, or value of property, to discharge any prior claims under section 297, such funds or property to be held on trust under the Trustees Act or otherwise for the benefit of the Official Receiver or liquidator, and the secured creditor shall pay the amount of any such prior claims to the Official Receiver or liquidator.

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(7) For the avoidance of doubt, it is declared that except as expressly provided in this Act, nothing in this Act shall affect the power of the holder of a security interest to realize or otherwise deal with his security outside of bankruptcy or winding-up in the same manner as he would be entitled to realize and deal with it apart from under this Act.

Right of personal creditors of partners

299.—(1) The personal estate of every partner of a partnership shall accrue and be paid to the personal creditors of the partner, and the creditors of the partnership shall not receive any dividend out of the separate estate of the partner, until all the creditors of the partnership have received the full amount of their respective debts.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts.

(3) Where there is a surplus of the separate estates, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Where there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(5) For the purposes of this section, the respective estates of the partnership and of each partner shall be administered together by the Official Receiver (the joint estate):

Provided that separate accounts shall be kept by the Official Receiver in relation to each estate.

(6) This section shall also apply to unincorporated associations where there is joint and several liability.

Right of creditor who has proved debt late

300. Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the Official Receiver or liquidator any dividend he may have failed to receive before the money is made applicable to the payment of any future dividend:

Provided that he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved on the ground that he has not participated in it.

Final dividend

301.—(1) Where the Official Receiver or a liquidator has converted into money all the property of a debtor, or so much of it as can, in the joint opinion of himself and of any liquidation committee, be realized without needlessly protracting the bankruptcy or liquidation, he shall declare a final dividend, and give notice to the creditors whose claims have been rejected by him, that if such claims are not admitted by the Court within such period as may be fixed by the Court, he will proceed to declare a final dividend without regard to their claims.

(2) After the expiry of the period referred to in subsection (1), or where the Court, on application by any creditor, grants him further time for establishing his claim, then on the expiry of such further time, the final dividend shall be distributed among the creditors who have proved, without regard to the claim of any other person.

(3) Where the Court admits any claim which may have been rejected by the Official Receiver or a liquidator, the holder of the claim shall be entitled to be paid out of all available property in the hands of the Official Receiver or liquidator, any dividend to which he would have been entitled if his claim had not been rejected by the Official Receiver or liquidator.

(4) No action or suit for a dividend shall lie against the Official Receiver or a liquidator:

Provided that if the Official Receiver or liquidator refuses to pay any dividend, the Court may, if it thinks fit, order the Official Receiver or liquidator to pay the dividend, and also to pay out of his

own money interest on it for the time that it is withheld, and the costs of the application.

Definition of undistributed money

302. In sections 303 and 304, "undistributed money" means any money that—

(*a*) was received by the Official Receiver or a liquidator by the realization of the property of a debtor; and

(*b*) is required to be paid to any person under sections 297, 298, 299, 300 and 301:

Provided that it cannot be distributed for any reason.

Undistributed money

303.—(1) The Official Receiver or a liquidator shall on termination of the bankruptcy or liquidation pay any undistributed money into the Insolvency Surplus Account.

(2) The Official Receiver or a liquidator shall hold any undistributed money paid into the Insolvency Surplus Account subject to the claim of any person who appears to be entitled to that money.

(3) After the expiry of twelve months from the date on which undistributed money is paid into the Insolvency Surplus Account, the Official Receiver or liquidator shall, notwithstanding any other written law, transfer any undistributed money that has not been claimed by a person into the general fund of the Insolvency Surplus Account.

(4) Undistributed money transferred into the general fund of the Insolvency Surplus Account—

(*a*) shall be deemed to be one common and general fund; and

(*b*) may be applied without discrimination in accordance with section 304.

Application of general fund

304.—(1) Funds held in the general fund of the Insolvency Surplus Account may be used—

(*a*) for distribution, in relation to the bankruptcy or liquidation from which the undistributed money came, to any person who remains to be paid as set out in section 303 (2);

(*b*) for the purposes of this Act, to the extent and in the manner allowed by this Act;

(*c*) to replace, to the extent of the deficiency, any money misappropriated by an Official Receiver or liquidator or any person employed under the provisions of this Act; and

(*d*) to meet the costs of any investigation into the circumstances of the insolvency, or of any Court proceedings, obtaining legal advice, or employing an accountant or other expert in circumstances where the Official Receiver determines that the creditors of a bankrupt or company are unable to pay those costs, or it would be unfair or inequitable that they should do so and it is in the interest of creditors and the public interest to meet these costs from the Insolvency Surplus Account.

(2) The allocation of funds for the purposes of subsection (1) (*d*) shall be in the discretion of the Official Receiver and application may be made to him by any liquidator for that purpose.

(3) The Official Receiver may appoint a committee formed from experienced insolvency practitioners to assist him in the administration of the Insolvency Surplus Account.

PART IX

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATIONS

Disqualification from appointment

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

(*a*) or has been an officer or auditor or employee of the company or any related corporation during the preceding two years;

(*b*) a minor, or a person under any legal disability;

(*c*) any person who has at any time been convicted of an offence involving fraud or dishonesty;

(*d*) a body corporate;

(*e*) not qualified to be appointed to be an insolvency practitioner in terms of any of the provisions of this Act.

(2) Where a person other than the Official Receiver is appointed provisional liquidator or liquidator, the person—

(*a*) shall not act as such until he has given—

(i) written notice of appointment to the Director;

(ii) security to the satisfaction of the Official Receiver; and

(iii) satisfactory evidence to the Official Receiver that he holds professional indemnity insurance to the satisfaction of the Official Receiver; and

(*b*) shall give the Official Receiver such information and such access to, and facilities for inspecting, the books of the company, and generally such assistance as may be required for enabling the officer to perform his duties under this Act.

(3) For the purposes of this section, "auditor" means the auditor or partner of the audit firm that has been appointed auditor of the company.

Control of liquidator by Official Receiver

306.—(1) Where a person, other than the Official Receiver, is a provisional liquidator or liquidator, the Official Receiver—

(*a*) shall take cognizance of his conduct and, if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him, or if a complaint is made to the Official Receiver by a creditor or member in that behalf, inquire into the matter and take such action as he thinks fit;

(*b*) may require the liquidator to answer any inquiry and provide any information or documents in relation to any winding-up in which he is engaged;

(*c*) may apply to the Court to examine him or any other person on oath concerning the winding-up of the company;

(*d*) may direct an examination to be made of the books and vouchers of the liquidator; and

(*e*) may refer the matter to the Director.

Remuneration of insolvency practitioner

307. The insolvency practitioner may be paid such remuneration as may be prescribed in the Rules.

Acting as insolvency practitioner

308.—(1) A person shall act as an insolvency practitioner in relation to a company by acting as its liquidator, provisional liquidator, administrator or receiver.

(2) A person shall act as an insolvency practitioner in relation to an individual by acting—

(*a*) as his trustee in bankruptcy; or

(*b*) where a voluntary arrangement in relation to the individual is proposed or approved, as nominee or supervisor.

Qualifications of an insolvency practitioner

309.—(1) A person who is not a natural person shall not be qualified to act as an insolvency practitioner.

(2) A person shall not be qualified to act as an insolvency practitioner at any time unless at that time—

(*a*) he is authorized so to act by virtue of membership of a professional body recognized under section 311, being permitted so to act by or under the rules of that body; or

(*b*) he holds an authorization granted by a competent authority under section 312.

(3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless there is in force at that time security for the proper performance of his functions.

(4) Notwithstanding any other provision of this Act, a person is not qualified to act as an insolvency practitioner at any time if at that time—

(*a*) he has been adjudged bankrupt and he has not been discharged; or

(*b*) he is subject to a director's disqualification order made or a director's disqualification undertaking accepted.

Authority and further qualification to act as insolvency practitioner

310.—(1) A person shall not be qualified to act as an insolvency practitioner at any time unless at that time—

(*a*) he is authorized so to act by virtue of membership of a professional body recognized under section 311, being permitted so to act by or under the rules of that body; or

(*b*) he holds an authorization granted by a competent authority under section 311.

(2) A person shall not be qualified to act as an insolvency practitioner in relation to another person at any time unless—

(*a*) there is in force at that time security for the proper performance of his functions in accordance with the Rules; and

(*b*) that security meets the prescribed requirements with respect to his so acting in relation to that other person.

(3) Notwithstanding any other provision of this Act, a person shall not be qualified to act as an insolvency practitioner at any time if at that time—

(*a*) he has been adjudged bankrupt and he has not been discharged; or

(*b*) he is subject to a director's disqualification order made or a director's disqualification undertaking accepted under the provisions of this Act.

Recognition of bodies or persons and qualifications

311.—(1) The Minister may—

(*a*) by order, published in the *Gazette*, declare a body which appears to him to fall within subsection (2) to be a recognized professional body for the purposes of this section; and

(*b*) prescribe the minimum qualifications, if any, to be obtained by an insolvency practitioner before being allowed to act as such.

(2) A body may be recognized under subsection (1) if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

(*a*) are fit and proper persons so to act; and

(*b*) meet acceptable requirements as to education, practical training and experience.

(3) References to members of a recognized professional body are to persons who, whether members of the body or not, are subject to its rules in the practice of the profession in question and the reference in subsection (2) to membership of a professional body recognized under this section is to be read accordingly.

(4) An order made under subsection (1) (*a*), in relation to a professional body, may be revoked by a further order if it appears to the Minister that the body no longer falls within subsection (2).

(5) An order of the Minister under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorized to act as insolvency practitioners for a prescribed period after the revocation takes effect.

Application to competent authority

312.—(1) Application may be made to a competent authority for authorization to act as an insolvency practitioner.

(2) In subsection (1), "competent authority" means—

(*a*) in relation to a case of any description specified in directions given by the Minister, the body or person so specified in relation to cases of the description; and

(*b*) in relation to a case not falling within paragraph (*a*), the Minister.

(3) The application shall—

(*a*) be made in such manner as the competent authority may direct;

(*b*) contain or be accompanied by such information as the competent authority may reasonably require for the purpose of determining the application; and

(*c*) be accompanied by the prescribed fee, and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it, the competent authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this section shall, if the competent authority so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this section by a competent authority other than the Ministry may be retained by the authority; and any sums so received by the Ministry shall be paid into the Consolidated Fund.

(9) Subsection (3) (*c*) shall not have effect in respect of an application made to the Minister.

Grant or refusal of application

313.—(1) The competent authority may, on an application duly made in accordance with section 312 and after being furnished with all such information as it may require under the section, grant or refuse the application.

(2) The competent authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have, that the applicant—

(*a*) is a fit and proper person to act as an insolvency practitioner; and

(*b*) meets the prescribed requirements with respect to education, qualifications and practical training and experience.

(3) An authorization granted under this section, if not previously withdrawn, shall continue in force for one year.

(4) Notwithstanding subsection (3), where an authorization is granted under this section, the competent authority shall, before its expiry, and without a further application made in accordance with section 312, grant a further authorization under this section taking effect immediately after the expiry of the previous authorization, unless it appears to the competent authority that the subject of the authorization no longer complies with subsection (2) (*a*) and (*b*).

(5) An authorization granted under this section may be withdrawn by the competent authority if it appears to it—

(*a*) that the holder of the authorization is no longer a fit and proper person to act as an insolvency practitioner; or

(*b*) without prejudice to paragraph (*a*), that the holder has failed to comply with any provision of this Act or of any regulations made under this Act, or in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(6) An authorization granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorization.

(7) Where an authorization granted under this section is withdrawn—

(*a*) subsection (4) does not require a further authorization to be granted; or

(*b*) if a further authorization has already been granted at the time of the withdrawal, the further authorization is also withdrawn.

Notice of authorization

314.—(1) Where a competent authority grants an authorization under section 313, it shall give written notice of that fact to the applicant, specifying the date on which the authorization will take effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorization under section 313 (5), it shall give the applicant or holder of the authorization written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under section 315 by a person on whom the notice is served.

Written representations where application refused

315.—(1) A person on whom a notice is served under section 314 (2) may within the prescribed period after the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorization, as the case may be.

PART X

Cross-Border Insolvency

Division I—General Provisions

Purpose of this Part

316. 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 the Court and other competent authorities of Malaŵi and foreign states 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 maximization of the value of the debtor's assets; and

(*e*) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Scope of application

317. This Part shall apply where—

(*a*) assistance is sought in Malaŵi by a foreign court or a foreign representative in connexion with a foreign proceeding;

(*b*) assistance is sought in a foreign state in connexion with a proceeding under this Act;

(*c*) a foreign proceeding and a proceeding under this Act in respect of the same debtor are taking place concurrently; or

(*d*) creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in, a proceeding under this Act.

Interpretation

318.—(1) For the purposes of this Part—

(*a*) "centre of main interest" means the debtor's registered office, or habitual residence in the case of an individual;

(*b*) "debtor" means any company, individual, partnership, sole proprietorship or other entity that may be wound-up, placed under company reorganization or declared bankrupt under the provisions of this Act;

(*c*) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

(*d*) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(*e*) "foreign main proceeding" means a foreign proceeding taking place in the state where the debtor has the centre of its main interests;

(*f*) "foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a state where the debtor has an establishment;

(*g*) "foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(*h*) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(*i*) "Malaŵi insolvency practitioner" means—

(i) the Official Receiver; and

(ii) an insolvency practitioner appointed in terms of the provisions of this Act,

but shall not include a person acting as a receiver under Part IV.

(2) In the interpretation of this Part, the Court may make reference to—

(*a*) *travaux preparatoires* and any practice guides dealing with how courts can cooperate originating from the United Nations Commission on International Trade Law; and

(*b*) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442) prepared at the request of

the United Nations Commission on International Trade Law made in May 1997, as updated from time to time by UNCITRAL.

International obligations of Malaŵi

319. To the extent that this Act conflicts with an obligation of Malaŵi arising out of any treaty or other form of agreement to which it is a party with one or more other States, the provisions of section 211 of the Constitution shall apply.

Competent court

320. The functions referred to in this Act relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Court.

Authorization of insolvency practitioner to act in a foreign state

321. A Malaŵi insolvency practitioner shall be authorized to act in a foreign state on behalf of a proceeding under this Act, as permitted by the applicable foreign law.

Public policy exception

322. Nothing in this Act shall prevent the Court from refusing to take an action governed by this Act if the action would be manifestly contrary to the public policy of Malaŵi.

Additional assistance under other laws

323. Nothing in this Act shall limit the power of a Court or an insolvency practitioner to provide additional assistance to a foreign representative under the other laws of Malaŵi.

Factors to consider in the interpretation of this Part

324. In the interpretation of this Part, regard shall be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Division II—Access of Foreign Representatives and Creditors to Courts in Malaŵi

Right of direct access

325. A foreign representative shall be entitled to apply directly to the Court.

Limited jurisdiction

326. The mere fact that an application pursuant to this Act is made to the Court by a foreign representative, shall not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

Application by a foreign representative to commence proceedings

327. A foreign representative shall be entitled to apply to commence a proceeding under this Act if the conditions for commencing such a proceeding are otherwise met.

Participation of a foreign representative in a proceeding under this Act

328. Upon recognition of a foreign proceeding, the foreign representative shall be entitled to participate in a proceeding regarding the debtor under this Act.

Access of foreign creditors to a proceeding under this Act

329.—(1) Subject to subsection (2), foreign creditors shall have the same rights regarding the commencement of, and participation in, a proceeding under this Act as creditors in Malaŵi.

(2) Subsection (1) shall not affect the ranking of claims in a proceeding under this Act, except that the claim of a foreign creditor shall not be given a lower priority than that of the general unsecured creditors solely because the holder of such a claim is a foreign creditor.

(3) A claim shall not be challenged solely on the ground that it is a claim by a foreign tax or social security authority, but such a claim may be challenged—

(*a*) on the ground that it is in whole or in part a penalty; or

(*b*) on any other ground that a claim might be rejected in a proceeding under this Act.

Notification to foreign creditors of a proceeding under this Act

330.—(1) Whenever under this Act, notification is to be given to creditors in Malaŵi, such notification shall also be given to the known creditors that do not have addresses in Malaŵi.

(2) The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(3) Notification referred to in 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.

(4) When notification of a right to file a claim is to be given to foreign creditors, the notification shall—

(*a*) indicate a reasonable time period for filing claims and specify the place for their filing;

(*b*) indicate whether secured creditors need to file their secured claims; and

(*c*) contain any other information required to be included in such a notification to creditors pursuant to the laws of Malaŵi and the orders of the Court.

Division III—Recognition of a Foreign Proceeding and Relief

Application for recognition of a foreign proceeding

331.—(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 and proceedings under this Act in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of Malaŵi.

Presumptions concerning recognition

332.—(1) If the decision or certificate referred to in section 331 (2) indicates that the foreign proceeding is a proceeding within the meaning of section 318 (*h*) and that the foreign representative is a person or body within the meaning of section 318 (1) (*g*), 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 legalized.

(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.

Decision to recognize a foreign proceeding

333.—(1) Subject to section 322, a foreign proceeding shall be recognized if—

(*a*) the foreign proceeding is a proceeding within the meaning of paragraph (*e*) of section 318 (1);

(*b*) the foreign representative applying for recognition is a person or body within the meaning of paragraph (*h*) of section 318 (1);

(*c*) the application meets the requirements of section 331 (2) and (3); and

(*d*) the application has been submitted to the Court referred to in section 320.

(2) The foreign proceeding shall be recognized—

(*a*) as a foreign main proceeding if it is taking place in the state where the debtor has the centre of its main interests; or

(*b*) as a foreign non-main proceeding if the debtor has an establishment within the meaning of section 318 (1) (*c*) in the foreign state.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) Sections 331, 332 and 334 shall not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist and in such a case, the Court may, on the application of the foreign representative or a person affected by recognition, or of its own motion, modify or terminate recognition, altogether, or for a limited time, on such terms and conditions as the Court thinks fit.

Subsequent information

334. From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Court promptly of—

(*a*) any substantial change in the status of the recognized 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.

Provisional relief that may be granted upon application for recognition of a foreign proceeding

335.—(1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(*a*) staying execution against the debtor's assets;

(*b*) entrusting the administration or realization of all or part of the debtor's assets located in Malaŵi to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(*c*) any relief mentioned in section 337 (1) (*c*), (*d*) or (*g*).

(2) Unless extended under section 337 (1) (*f*), the relief granted under this section shall terminate when the application for recognition is decided upon.

(3) The Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

Effects of recognition of a foreign main proceeding

336.—(1) Subject to subsection (2), upon recognition of a foreign proceeding that is a foreign main proceeding—

(*a*) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities shall be stayed;

(*b*) execution against the debtor's assets shall be stayed; and

(*c*) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The stay and suspension referred to in subsection (1) shall be—

(*a*) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under this Act, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under this Act; and

(*b*) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Malaŵi in such a case,

and the provisions of subsection (1) shall be interpreted accordingly.

(3) Without prejudice to subsection (2), the stay and suspension referred to in subsection (1) shall not affect any right—

(*a*) to take any steps to enforce security over the debtor's property; or

(*b*) of a creditor to set-off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor, in the case of an individual, had been adjudged bankrupt under the provisions of this Act, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the provisions of this Act.

(4) Subsection (1) (*a*) shall not affect the right to—

(*a*) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or

(*b*) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

(5) Subsection (1) shall not affect the right to request the commencement of a proceeding under this Act or the right to file claims in such a proceeding.

(6) In addition to and without prejudice to any powers of the Court under or by virtue of subsection (2), the Court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in subsection (1) of this section, or of its own motion, modify or terminate such stay and suspension or any part of it, altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Relief that may be granted upon recognition of a foreign proceeding

337.—(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—

(*a*) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under section 336 (1) (*a*);

(*b*) staying execution against the debtor's assets to the extent it has not been stayed under section 336 (1) (*b*);

(*c*) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 336 (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 realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the Court;

(*f*) extending relief granted under section 336 (1); and

(*g*) granting any additional relief that may be available to insolvency practitioners under the laws of Malaŵi.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative,

entrust the distribution of all or part of the debtor's assets located in Malaŵi to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Malaŵi are adequately protected.

(3) The Court shall not grant relief under this section to a representative of a foreign non-main proceeding unless it is satisfied that the relief relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

(4) No stay under subsection (1) (*a*) shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

Protection of creditors and other interested persons

338.—(1) In granting or denying relief under section 335 or 337 or in modifying or terminating relief under subsection (3) or section 335 (6), the Court shall satisfy itself 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 334 or 336 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under section 335 or 337 or at its own motion, modify or terminate the relief.

Actions to avoid acts detrimental to creditors

339.—(1) Subject to the limitations and modifications set out in the Rules, upon recognition of a foreign proceeding, the foreign representative shall have standing to make application to the Court for an order under or in connexion with sections 186,187, 282, 283, 288, 289 and 293.

(2) When the foreign proceeding is a foreign non-main proceeding, the Court shall satisfy itself that an application under this section relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding.

(3) At any time when a proceeding under this Act is taking place regarding the debtor the foreign representative shall not make an application under this section except with the permission of the Court.

(4) On making an order on an application under this section, the Court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Malaŵi are adequately protected.

(5) Nothing in this section affects the right of a Malaŵi insolvency practitioner to make an application under or in connexion with any of the provisions referred to in subsection (1).

(6) Nothing in subsection (1) shall apply in respect of any preference given, security interest created, alienation or assignment made or other transaction entered into before the date on which this Part comes into force.

Intervention by a foreign representative in proceedings in Malaŵi

340. Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Malaŵi are met, intervene in any proceedings in which the debtor is a party.

Division IV—Cooperation with Foreign Courts and Foreign Representatives

Cooperation between the Court and foreign courts or foreign representatives

341.—(1) In matters referred to in section 317, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, directly or through the insolvency practitioner.

(2) The Court shall be entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Cooperation between insolvency practitioner and foreign courts or foreign representatives

342.—(1) In matters referred to in section 317, the insolvency practitioner shall cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency practitioner shall be entitled, in the exercise of their functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Forms of cooperation

343.—(1) Cooperation referred to in sections 341 and 342 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 assets and affairs;

(*d*) approval or implementation by courts of agreements concerning the coordination of proceedings;

(*e*) coordination of concurrent proceedings regarding the same debtor.

Division V—Concurrent Proceedings

Commencement of proceedings under this Act after recognition of foreign main proceeding

344. After recognition of a foreign main proceeding, a proceeding under this Act may be commenced only if—

(*a*) the debtor has assets in Malaŵi;

(*b*) the effects of that proceeding shall be restricted to the assets of the debtor that are located in Malaŵi; and

(*c*) to the extent necessary to implement cooperation and coordination under sections 341, 342 and 343, to other assets of the debtor that, under the law of Malaŵi, should be administered in that proceeding.

Coordination of a proceeding under this Act and a foreign proceeding

345. Where a foreign proceeding and a proceeding under this Act are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under sections 341, 342 and 343, and the following paragraphs shall apply—

(*a*) when the proceeding in Malaŵi is taking place at the time the application for recognition of the foreign proceeding is filed—

(i) any relief granted under section 335 or 337 shall be consistent with the proceeding in Malaŵi; and

(ii) if the foreign proceeding is recognized in Malaŵi as a foreign main proceeding, section 336 shall not apply;

(*b*) when the proceeding in Malaŵi commences after recognition, or after the filing of the application for recognition, of the foreign proceeding—

(i) any relief in effect under section 335 or 336 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the proceeding in Malaŵi; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 336 (1) shall be modified or terminated pursuant to section 336 (2) if inconsistent with the proceeding in Malaŵi;

(*c*) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Court has

to be satisfied that the relief relates to assets that, under the law of Malaŵi, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Coordination of more than one foreign proceeding

346. In matters referred to in section 317, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under sections 341, 342 and 343 and the following paragraphs shall apply—

(*a*) any relief granted under section 335 or 337 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(*b*) if a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under section 335 or 337 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 non-main proceeding, another foreign non-main proceeding is recognized, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Presumption of insolvency based on recognition of a foreign main proceeding

347. In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Act, proof that the debtor is insolvent.

Rule of payment in concurrent proceedings

348. Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state may not receive a payment for the same claim in a proceeding under this Act 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 XI

Miscellaneous Provisions

General offence and penalty

349.—(1) Any person who contravenes any provision of this Act for which no offence is specifically provided commits an offence.

(2) Any person who commits an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K50,000.

Administrative penalties

350. The Director may, if satisfied that a person has committed an offence under this Act, accept from the person a sum of money not exceeding the amount of the fine to which the person would have been liable if he had been prosecuted and convicted of the offence:

Provided that—

(*a*) the power provided under this section shall be exercised only where the person admits in writing to have committed the offence;

(*b*) the person exercising the power conferred by this section shall give the person from whom he receives the money a receipt therefor; and

(*c*) the person may not be prosecuted based on the same evidence.

Regulations

351.—(1) The Minister may make regulations for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may prescribe—

(*a*) the forms for the purposes of this Act, including the form of registers to be kept and the places at which the registers are to be kept;

(*b*) the fees to be charged in respect of anything done under or by virtue of this Act, and the method of payment of such fees; and

(*c*) all matters and things which are required or permitted to be prescribed under or for the purposes of this Act.

Rules of Court

352. The Chief Justice may make rules of Court governing practice and procedure for the winding-up of businesses in Malaŵi and with respect to procedure in any application to the Court under the provisions of this Act, and enabling all or any of the powers and duties conferred and imposed on the Court in respect of the winding-up of businesses to be exercised or performed by the Director or by the Official Receiver, or by the liquidator as an officer of the Court and subject to the control of the Court.

Maximum penalty for offences under subsidiary legislation Cap. 1:01

353. Notwithstanding the provisions of section 21 of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1) shall, on conviction, be liable to a fine of up to K200,000 and to imprisonment for one year.

354.—(1) The Bankruptcy Act and Deeds of Arrangement Act are repealed.

Repeals and savings
Cap. 11:01
Cap. 11:02

(2) Any subsidiary legislation made under the written laws repealed by subsection (1), in force immediately before the commencement of this Act—

(*a*) shall, unless in conflict with this Act, remain in force and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

355.—(1) All proceedings commenced under the Bankruptcy Act or the Deeds of Arrangement Act and penalty before the commencement of the Act shall continue in accordance with the procedure provided under the related Acts.

Transitional provisions
Cap. 11:01
Cap. 11:02

(2) A person may continue to act as trustee in bankruptcy, liquidator or receiver or manager of the property of a company, if his appointment was validly made before the commencement of this Act for a period of six months after which he shall be required to comply with Part IX of this Act.

(3) Any register, fund and account kept under any written law repealed by this Act shall be deemed to be part of the register, fund and account kept under the corresponding provisions of this Act.

SUBSIDIARY LEGISLATION

INSOLVENCY RULES

ARRANGEMENT OF RULES

RULE

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8. Standard contents of notice in *Gazette* or newspaper
9. *Gazette* or newspaper notices relating to company
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RULE

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RULE

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RULE

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RULE

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RULE

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RULE

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RULE

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392. Appeals in interlocutory matters

393. Revocation of Rules

SCHEDULE

INSOLVENCY RULES

G.N. 12A/2017

under s. 352

PART I
PRELIMINARY PROVISIONS

1. These Rules may be cited as the Insolvency Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

"business day" means any of the days from a Monday to a Friday of a working week, excluding a public holiday;

"Judge" means a Judge of the High Court and includes the Chief Justice;

"pre-company reorganization costs" means fees charged, and expenses incurred by the person who was appointed the administrator, or other person qualified to act as an insolvency practitioner, before the company entered company reorganization but with a view to its doing so;

"proof of debt" means all debts whether payable on contingency and all claims against a debtor, present or future, certain or contingent, ascertained or sounding only in damages or a just estimate made of claims that some other reason do not bear a certain value provable against a debtor;

"proxy" is a document which is given by a creditor, member or contributory to another person ("the proxy-holder") authorizing

the proxy-holder to attend, and to speak and vote at, a meeting as the representative of the creditor, member or contributory, and either directs the proxy-holder to vote or abstain, or to propose resolutions, as directed, or authorizes the proxy-holder to do so in accordance with the proxy-holder's discretion;

"Registrar" means the Registrar of the High Court and includes a Deputy or an Assistant Registrar of the High Court;

"seal" includes an official stamp;

"standard contents" means particulars set out in rule 12, 13, 14, 15, 16, 17, 18 or 19 of these Rules; and

"unpaid pre-company reorganization costs" means pre-company reorganization costs which had not been paid when the company entered company reorganization.

Performance of functions by the Court and the Registrar

3.—(1) Anything to be done under or by virtue of the Act or these Rules by, to or before the Court may be done by, to or before a Judge.

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(2) Subject to the Act, these Rules and the Courts Act, the Judge may direct the Registrar to carry out such functions and duties in relation to any procedure as the Judge may deem fit.

(3) The rules of civil procedure and practice shall apply to proceedings under these Rules, unless inconsistent with these Rules or expressly excluded by these Rules.

General principles

4. The Court shall, in exercise of its powers conferred under these Rules, ensure that—

(*a*) all measures are taken in the interests of the body of creditors as a whole and subject to the provisions of the Act, as to the payment of costs and preferential payments, the property of the debtor is applied *pari passu*;

(*b*) every procedure under the Act or these Rules is conducted in a cost effective manner and that such costs and expenses of the proceedings that are incurred are proportional to the tasks required to be undertaken and the value of assets; and

(*c*) every procedure is conducted expeditiously and, where possible, avoid the depreciation of assets.

Calculation of time

5. The rules of procedure that apply in the High Court in calculating time shall also be applicable under these Rules.

Determination of the beginning and end of period expressed in months, etc

6.—(1) The beginning and the end of a period expressed in months in these Rules are to be determined as follows—

(*a*) if the beginning of the period is specified, the month in which the period ends is the specified number of months after the month in which it begins, and the date in the month on which the period ends is the date corresponding to the date in the month on which it begins, or if there is no such date in the month in which it ends, the last day of that month; and

(*b*) if the end of the period is specified, the month in which the period begins is the specified number of months before the month in which it ends, and the date in the month on which the period begins is the date corresponding to the date in the month on which it ends, or if there is no such date in the month in which it begins, the last day of that month.

(2) The Court may extend or shorten the time for compliance with anything required or authorized to be done by these Rules where the interests of justice so require.

Documents required to be in writing

7. A notice or statement shall be in writing unless the Act or these Rules provide otherwise.

Standard contents of notice in *Gazette* or newspaper

8.—(1) A notice which the Act or these Rules requires to be published in the *Gazette* or in a newspaper shall contain the standard contents set out in this rule, in addition to any content specifically required by the Act or any other provision of these Rules, as follows—

(*a*) the identity of the office-holder;

(*b*) the office-holder's address and contact details;

(*c*) the office-holder's Insolvency Practitioner (IP) number;

(*d*) the name of any person, other than the office-holder, if any, who may be contacted about the proceedings;

(*e*) the date of the office-holder's appointment;

(*f*) the Court name, Registry and any number assigned to the proceedings by the Court; and

(*g*) the reference assigned to the proceedings by the adjudicator, where applicable.

(2) Information which this rule requires to be included in the *Gazette* or newspaper notice may be omitted if it is not reasonably practicable to obtain it.

Gazette or newspaper notices relating to company

9. A notice published in the *Gazette* or a newspaper relating to liquidation of a company shall identify the company and specify—

(*a*) its registered office, or if an unregistered company, the postal address of its principal place of business;

(*b*) any principal trading address if this is different from its registered office;

(*c*) any name under which it was registered in the twelve months before the date of the commencement of the proceedings which are the subject of the *Gazette* or newspaper notice; and

(*d*) any name or style, other than its registered name, under which the company carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper notices relating to bankruptcy

10. A notice published in the *Gazette* or a newspaper relating to a bankruptcy shall identify the bankrupt and specify—

(*a*) any other place at which the bankrupt has resided in the period of twelve months preceding the making of the bankruptcy order;

(*b*) any principal trading place, if this is different from the bankrupt's residential place;

(*c*) the bankrupt's date of birth, if known;

(*d*) the bankrupt's occupation;

(*e*) any other name by which the bankrupt has been known; and

(*f*) any name or style, other than the bankrupt's own name, under which the bankrupt carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper as evidence

11.—(1) A copy of the *Gazette* or any newspaper containing a notice required by the Act or these Rules to be published as such is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require notice of an order of the Court to be published in the *Gazette* or in a newspaper, a copy of the *Gazette* or the newspaper containing the notice may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the Court or of an adjudicator has been varied, or any matter has been erroneously or inaccurately published in the *Gazette* or newspaper, the person whose responsibility it was to publish the order or other matter shall, as soon as it is reasonably practicable, cause the variation to be published or a further entry to be made in the *Gazette* or newspaper for the purpose of correcting the error or inaccuracy.

Standard contents of documents to be delivered to the Registrar of Companies or the Director

12. A document to be delivered to the Registrar of Companies or the Director shall—

(*a*) identify the company;

(*b*) specify—

(i) the nature of the document;

(ii) the section of the Act, or the rule under which the document is delivered;

(iii) the date of the document;

(iv) the name and postal address of the person delivering the document; and

(v) the capacity in which that person is acting in relation to the company; and

(*c*) be signed by the person delivering the document.

Standard contents of documents relating to the office of office-holder

13. A document relating to the office of the office-holder shall identify the office-holder by name and specify—

(*a*) the date of the event of which notice is delivered;

(*b*) where the document relates to an appointment, the person, body or Court making the appointment;

(*c*) where the document relates to the termination of an appointment, the reason for that termination; and

(*d*) the contact details of the office-holder.

Standard contents of documents relating to other documents

14. A document relating to another document shall specify—

(*a*) the nature of the other document;

(*b*) the date of the other document; and

(*c*) where necessary, the period of time to which it relates.

Standard contents of documents relating to Court orders

15. A document relating to a Court order shall specify—

(*a*) the nature of the order; and

(*b*) the date of the order.

Standard contents of returns or reports of meetings

16. A return or report of a meeting shall also specify—

(*a*) the purpose of the meeting, including the section of the Act or the rule under which it took place and venue for the meeting;

(*b*) whether a required *quorum* was in attendance for the meeting to take place;

(*c*) if the meeting took place, the outcome of the meeting, including any resolutions passed; and

(*d*) if the meeting was adjourned, the time and place to which the meeting was adjourned.

Standard contents of returns or reports of matters considered by correspondence

17. A return or report of matters the consideration of which has been sought by correspondence shall specify—

(*a*) the purpose of the consideration; and

(*b*) the outcome of the consideration, including any resolutions passed or deemed to be passed.

Standard contents of documents relating to other events

18. A document relating to any other event shall specify—

(*a*) the nature of the event, including the section of the Act or the rule under which it took place; and

(*b*) the date on which the event occurred.

Standard contents and authentication of applications to Court

19.—(1) An application to the Court shall state—

(*a*) that the application is made under the Act or these Rules;

(*b*) the section or rule under which it is made;

(*c*) the names of the parties;

(*d*) the name of the debtor or company which is the subject of the insolvency proceedings to which the application relates;

(*e*) the Court, and where applicable, the division or district registry of the Court, in which the application is made;

(*f*) where the Court has previously allocated a number to the insolvency proceedings within which the application is made, that number;

(*g*) the nature of the remedy or order applied for or the directions sought from the Court;

(*h*) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

(*i*) where the Act or these Rules require that notice of the application is to be delivered to specified persons, the names and addresses of all those persons, so far as known to the applicant; and

(*j*) the applicant's address for service.

(2) The application shall be signed by or on behalf of the applicant or the applicant's legal practitioner.

Delivery of documents to joint office-holders

20. Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

Right to copy documents

21. Where the Act or these Rules gives a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of the standard fee for copies.

Right to be provided with list of creditors

22.—(1) This rule applies in the following proceedings—

(*a*) company reorganization;

(*b*) insolvent or compulsory winding-up of the company; and

(*c*) bankruptcy.

(2) A creditor has the right to require the office-holder to provide a list of the creditors and the amounts of their respective claims unless—

(*a*) a statement of affairs has been delivered to the Registrar of Companies, in a winding-up of the company or company reorganization;

(*b*) the list has been filed with the Court, in bankruptcy proceedings; or

(*c*) the information is available for inspection on the bankruptcy file.

(3) The office-holder on being required to provide such a list—

(*a*) shall deliver it to the person requiring the list, as soon as it is reasonably practicable; and

(*b*) may charge the standard fee for copies for a hard copy.

(4) The office-holder may omit the name and address of a creditor if the office-holder thinks its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence or oppressive conduct against any person.

(5) In such a case, the list shall include—

(*a*) the amount of that creditor's claim; and

(*b*) a statement that the name and address of the creditor has been omitted for that debt.

Confidentiality

23.—(1) Where an office-holder considers that a document forming part of the records of the insolvency proceedings should be treated as confidential, or is of such a nature that its disclosure would be prejudicial to the interests of creditors or the conduct of the proceedings or might reasonably be expected to lead to violence or oppressive conduct against any person, the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may refuse inspection include members of a liquidation committee.

(3) Where the office-holder refuses inspection of a document, the person wishing to inspect it may appeal to the Court.

(4) The Court's decision may be subject to such conditions, if any, as it considers just.

PART II

Company Reorganization

Proposed administrator's statement and consent to act

24.—(1) References in this Part to "a consent to act" are to a statement by a proposed administrator headed "Proposed Administrator's Statement and Consent to Act".

(2) A consent to act shall—

(*a*) identify the company immediately below the heading;

(*b*) certify that the proposed administrator is authorized under Part IX of the Act to act as an insolvency practitioner;

(*c*) state the proposed administrator's IP number;

(*d*) state the source of the proposed administrator's authorization being—

(i) the name of the relevant recognized professional body of which the proposed administrator is a member; or

(ii) the authority which granted the authorization held by the proposed administrator;

(*e*) state that the proposed administrator consents to act as administrator of the company;

(*f*) identify the person by whom the appointment is to be made or the applicant in the case of an application to the Court for an appointment;

(*g*) state that the proposed administrator is of the opinion that the purpose of company reorganization is reasonably likely to be achieved in the particular case; and

(*h*) be signed and dated by the proposed administrator.

(3) Where a number of persons are proposed to be appointed to act jointly or concurrently as administrators of a company, each shall make a separate statement and consent to act.

Administrator's security

25.—(1) A person proposing an administrator under the Act shall be satisfied that the proposed person has security for the proper performance of the office.

(2) It is the duty of the creditors' committee, if established, to review from time to time the adequacy of the security.

(3) In cases where a creditors' committee has not been established, security has to be to provided to the satisfaction of the Court.

(4) The cost of the security is an expense of the company reorganization.

Company reorganization application

26.—(1) An application for company reorganization, in relation to a company, shall—

(*a*) be headed "Company Reorganization Application";

(*b*) identify the company immediately below the heading;

(*c*) state the name and status of the applicant;

(*d*) state whether the company reorganization application is being made by—

(i) the company under section 18 (1) (*a*) of the Act;

(ii) the directors of the company under section 18 (2) (*b*) of the Act;

(iii) a single creditor under section 18 (1) (*c*) of the Act;

(iv) a creditor under section 18 (1) (*c*) of the Act on behalf of that creditor and others; or

(v) the holder of a qualifying security interest under section 20 or 22 of the Act;

(*e*) if the company reorganization application is made by a creditor on behalf of the creditor and other person, the names of the other persons;

(*f*) if the company reorganization application is made by the holder of a security interest, state details of the debt due to the holder of the security interest, the assets secured by the security interest, the date upon which it was perfected and any maximum amount for which it is enforceable;

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(*g*) if the company is registered under the Companies Act, state—

(i) its nominal capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or

(ii) that it is a company limited by guarantee; and

(iii) the principal business carried on by the company;

(*h*) except where the applicant is the holder of a qualifying security interest and is making the company reorganization application under section 20 of the Act, state that the applicant believes, for the reasons set out in the witness statement in support of the company reorganization application that the company is, or is likely to become, unable to pay its debts;

(*i*) state the name and address of the proposed administrator;

(*j*) the address for service of the applicant or the applicant's legal practitioner;

(*k*) that the applicant requests the Court to—

(i) make a company reorganization order in relation to the company;

(ii) appoint the proposed person to be administrator; and

(iii) make such ancillary order as the applicant may request, and such other order as the Court considers appropriate; and

(*l*) be signed by the applicant or the applicant's legal practitioner and dated.

(2) Where the company which is the subject of the application is registered under the Companies Act, its address for service shall be that of the company's registered office or the company's legal practitioner.

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(3) Once a company reorganization application has been made by the directors of the company it shall be treated for all purposes as an application by the company.

(4) A company reorganization application made by a creditor on his own behalf and on behalf of other creditors shall be treated for all purposes as an application by only that creditor.

Sworn statement in support of company reorganization application

27.—(1) Where a company reorganization application is to be made by—

(*a*) the company, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the company;

(*b*) the company's directors, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the directors;

(*c*) a single creditor, a sworn statement shall be made by the single creditor or a person acting under the single creditor's authority; or

(*d*) two or more creditors, a sworn statement shall be made by a person acting under the authority of them all, whether or not he is one of their number.

(2) In a case where a person is acting under the authority of a single creditor or two or more creditors, the sworn statement shall state the nature of the authority of the person making it and the

means of that person's knowledge of the matters to which the sworn statement relates.

(3) The sworn statement shall contain—

(*a*) a statement of the company's financial position, specifying, to the best of the applicant's knowledge and belief, the company's assets and liabilities, including contingent and prospective liabilities;

(*b*) details of any security known or believed to be held by creditors of the company and whether, in any case, the security is such as to confer power on the holder to appoint a receiver or to propose an appointment of an administrator under section 20 of the Act;

(*c*) if a receiver has been appointed, a statement to that effect;

(*d*) details of any insolvency proceedings in relation to the company, including any petition that has been presented for the winding-up of the company of the company or any other application for the appointment of administrators so far as it is known to the applicant;

(*e*) a statement as to whether, in the applicant's opinion, the proceedings will be foreign main proceeding or foreign non-main proceeding under Part X of the Act and the reasons for the opinion; and

(*f*) any other matters which, in the applicant's opinion, will assist the Court in deciding whether to make such an order.

(4) Where a company reorganization application is made by the holder of a qualifying security interest under section 20 or 22 of the Act, the sworn statement shall give sufficient details to satisfy the Court that the applicant is entitled to propose the appointment of an administrator.

(5) Where a company reorganization application is made under section 22 of the Act in relation to a company in liquidation, the sworn statement shall contain—

(*a*) details of the existing insolvency proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;

(*b*) the reasons why it has subsequently been considered appropriate that a company reorganization application should be made; and

(*c*) any other matters that would, in the applicant's opinion, assist the Court in deciding whether to make the order requested and to make any provision in relation to matters arising in connexion with the liquidation.

Filing of company reorganization application

28.—(1) The company reorganization application shall be filed with the Court together with the sworn statement and the proposed administrator's consent to act.

(2) The Court shall fix a date, time and venue for the hearing of the company reorganization application.

(3) There shall also be filed, at the same time as the company reorganization application or at any subsequent time, a sufficient number of copies of the company reorganization application.

(4) Each of the copies filed shall—

(*a*) have applied to it the seal of the Court and be endorsed with—

(i) the date and time of filing; and

(ii) the date, time and venue fixed by the Court; and

(*b*) be delivered by the Court to the applicant.

Service of company reorganization application

29.—(1) In this rule, references to the company reorganization application are to a copy of the company reorganization application and sworn statement delivered by the Court to the applicant under rule 28.

(2) Notification for the purposes of section 18 (2) of the Act shall be by service of the company reorganization application and the sworn statement.

(3) The company reorganization application shall, in addition to service on the persons referred to in section 18 (2) (*a*) and (*b*) of the Act, be served on the following—

(*a*) any receiver;

(*b*) if a petition is pending for the winding-up of the company, on—

(i) the petitioner; and

(ii) any provisional liquidator or liquidator;

(*c*) the proposed administrator; and

(*d*) the company, if the company reorganization application is made by any person other than the company.

Notice to officers charged with execution or other legal process

30. The applicant shall, as soon as it is reasonably practicable, after filing the company reorganization application deliver a notice of its being made to—

(*a*) any enforcement officer or other officer who to the knowledge of the applicant is charged with an execution or other legal process against the company; and

(*b*) any person who to the knowledge of the applicant has distrained against the company.

Notice of other insolvency proceedings

31.—(1) After the company reorganization application has been filed, it is the duty of the applicant to file with the Court notice of the existence of any insolvency proceedings in relation to the company.

(2) The applicant shall file the notice under subrule (1), as soon as he becomes aware of the proceedings.

Hearing

32.—(1) At the hearing of the company reorganization application, any of the following persons may appear or be represented—

(*a*) the applicant;

(*b*) the company, its liquidator or provisional liquidator;

(*c*) one or more of the directors;

(*d*) any receiver;

(*e*) any person who has presented a petition for the winding-up of the company;

(*f*) the proposed administrator;

(*g*) the holder of any qualifying security interest; or

(*h*) with the permission of the Court, any other person who appears to have an interest which justifies his appearance.

(2) Where the Court makes a company reorganization order, the costs of the applicant, and of any other person whose costs are allowed by the Court, are payable as an expense of the company reorganization.

Order

33.—(1) Where the Court makes a company reorganization order, that order shall be headed “Company Reorganization Order” and shall—

(*a*) state the name of the Court in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) contain details of any other parties appearing and by whom represented;

(*f*) state that upon consideration of the evidence it is ordered that during the period the order is in force the affairs, business and property of the company be managed by the administrator;

(*g*) state the name of the person appointed as administrator;

(*h*) order that the person be appointed as administrator of the company; and

(*i*) state the date and time of making the order.

(2) Where two or more administrators are appointed, the order shall additionally specify—

(*a*) which functions, if any, are to be exercised by those persons acting jointly; and

(*b*) which functions, if any, are to be exercised by any or all of those persons.

(3) The Court shall deliver a sealed copy of the order to the administrator.

(4) The appointment of the administrator shall take effect from the date of the order.

(5) Where the Court makes a company reorganization order in relation to a company on an application under section 22 of the Act, the Court shall also include in the order—

(*a*) in the case of a liquidator appointed in a voluntary winding-up of the company, the removal of that liquidator from office;

(*b*) provision for payment of the expenses of the winding-up of the company; and

(*c*) such provision as the Court considers just relating to—

(i) any indemnity given to the liquidator;

(ii) the release of the liquidator;

(iii) the handling or realization of any of the company's assets in the hands of, or under the control of, the liquidator;

(iv) other matters arising in connexion with the winding-up of the company; and

(v) such other provisions, if any, as the Court considers just.

Notice of company reorganization order

34.—(1) Where the Court makes a company reorganization order, it shall, as soon as it is reasonably practicable, deliver two sealed copies of the order to the applicant.

(2) The applicant shall, as soon as it is reasonably practicable, deliver a sealed copy of the company reorganization order to the person appointed as administrator.

(3) Where the Court makes an interim order under section 19 (1) (*d*) of the Act or any other order under section 19 (1) (*f*) of the Act, the Court shall give directions as to the persons to whom, and how, notice of that order is to be delivered.

Publication of administrator's appointment

35.—(1) The notice of appointment under section 30 (2) (*b*) of the Act shall be published in the *Gazette* and in at least two daily newspapers of wide circulation or may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard contents, the notice of appointment shall state—

(*a*) that an administrator has been appointed;

(*b*) the date of the appointment; and

(*c*) the nature of the business of the company.

(3) The date for the purpose of section 30 (4) and (5) of the Act shall be seven days within the date of the company reorganization order.

(4) The administrator shall, as soon as it is reasonably practicable, after the date specified in subrule (3), deliver the notice of the appointment—

(*a*) if a receiver has been appointed, to that person;

(*b*) if there is pending a petition for the winding-up of the company, to the petitioner, and to the provisional liquidator, if any;

(*c*) to any enforcement officer or other officer who, to the administrator's knowledge, is charged with execution or other legal process against the company; or

(*d*) to any person who, to the administrator's knowledge, has distrained against the company.

(5) Where, under the Act or these Rules, the administrator is required to deliver a notice of the appointment to any person, other than the Registrar of Companies, the notice shall be headed "Notice of Administrator's Appointment" and, in addition to the standard contents—

(*a*) state the administrator's name and address and that the administrator has been appointed as administrator of the company;

(*b*) be signed and dated by the administrator; and

(*c*) set out the administrator's IP number.

Notice of requirement to provide a statement of affairs

36.—(1) A requirement under section 31 (1) of the Act for one or more relevant persons to provide the administrator with a statement of the affairs of the company shall be made by a notice delivered to each of such persons within fourteen days of the administrator's appointment.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and in addition to the standard contents shall—

(*a*) require each relevant person to whom the notice is delivered to prepare and submit to the administrator a statement of the affairs of the company; and

(*b*) inform each relevant person of—

(i) the names and addresses of all other persons, if any, to whom the same notice has been delivered; and

(ii) the date by which the statement shall be delivered to the administrator.

(3) The administrator shall inform each relevant person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion can be supplied if requested.

(4) The document for preparation of the statement of affairs to be supplied under subrule (3) shall be in such manner as to be capable of completion.

Statement of affairs: content and submission of copy

37.—(1) The statement of the company's affairs shall—

(*a*) be headed "Statement of Affairs" and identify the company immediately below the heading;

(*b*) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered company reorganization;

(*c*) contain, in addition to the matters required by section 31 (2) of the Act, a summary of the assets of the company;

(*d*) state customers claiming amounts paid in advance for the supply of goods or services; and

(*e*) contain the name and address of each member of the company and the number, nominal value, if any, and other details of the shares held by each member.

(2) The summary of assets of the company referred to in subrule (1) (*c*) shall set out—

(*a*) the book value and the estimated realizable value of—

(i) the assets subject to a security interest;

(ii) the unencumbered assets; and

(iii) the total value of all the assets;

(*b*) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts; and

(iii) the amount of secured debts;

(*c*) an estimate of the total assets available to pay secured debts;

(*d*) an estimate of the deficiency with respect to debts secured by a security interest or the surplus available after paying the debts secured by security interests;

(*e*) the amount of unsecured debts, excluding preferential debts;

(*f*) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(*g*) the issued and called-up capital or stated capital, as the case may be;

(*h*) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*i*) the amount of the debt owed to each creditor with the further particulars required by subrule (1) identifying all creditors with security interests.

(3) The particulars required by section 31 (2) (*d*), (*e*) and (*f*) of the Act relating to each creditor shall be given in the following order—

(*a*) the name of the creditor;

(*b*) the address of the creditor;

(*c*) the amount of the debts owed to the creditor;

(*d*) details of any security held by the creditor;

(*e*) the date on which any such security was given; and

(*f*) the value of any such security.

(4) Each person submitting a statement of affairs to the administrator shall deliver with it—

(*a*) a copy of the statement; and

(*b*) a copy of a sworn statement verifying the statement.

Statement of affairs: concurrence

38.—(1) The administrator may require a relevant person to deliver a statement of concurrence with the statement of affairs submitted by another relevant person.

(2) Where the administrator decides to resort to subrule (1), he shall inform the person submitting the statement of affairs that a statement of concurrence has been required from a relevant person.

(3) The person submitting the statement of affairs shall deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(4) A person required to deliver a statement of concurrence shall do so before the end of the period of five business days or such other period as the administrator may determine beginning with the day on which that person receives the statement of affairs.

(5) A statement of concurrence—

(*a*) shall identify the company; and

(*b*) may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(i) is not in agreement with the person submitting the statement of affairs;

(ii) considers the statement of affairs to be erroneous or misleading; or

(iii) is without the direct knowledge necessary for concurring with it.

(6) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver the statement of concurrence and the statement of affairs to the administrator.

(7) A copy of the statement of concurrence and the statement of affairs shall be delivered to the administrator in duplicate.

Statement of affairs: filing

39.—(1) The administrator shall, as soon as it is reasonably practicable, deliver to the Registrar of Companies a copy of—

(*a*) the verified statement of affairs; and

(*b*) any verified statement of concurrence.

(2) The administrator shall retain the original documents as part of the records of the company reorganization.

(3) The requirement to deliver the statement of affairs is subject to any order of the Court made under rule 23 that the statement of affairs or a specified part shall not be delivered to the Registrar of Companies.

Statement of affairs: release from requirement and extension of time

40.—(1) The power of the administrator under section 32 (2) of the Act to revoke a requirement to provide a statement of affairs or to extend the period within which it shall be submitted may be exercised upon the administrator's own initiative or at the request of the relevant person who has been required to provide it.

(2) Where a relevant person requests a revocation or extension but the administrator refuses it, the relevant person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect, and—

(*a*) if, within five business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall do so; and

(*b*) if the applicant does not deliver such a notice to the Court, the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed without a hearing, the Court will fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the administrator a notice which states the date, time and venue of the hearing and that notice shall be accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The administrator may do one or both of the following—

(*a*) appear and be heard on the application; or

(*b*) file a report of any matters which the administrator considers ought to be drawn to the Court's attention.

(7) Where the administrator files a report, then the administrator shall deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application will be delivered by the Court to the applicant and the administrator.

(9) Subject to subrule 10, the applicant's costs shall be paid by the applicant in any event.

(10) The Court may order that an allowance towards the applicant's costs be made as an expense of the company reorganization.

(11) For purposes of section 32 (1) of the Act, the prescribed period shall be eight weeks.

Statement of affairs: expenses

41.—(1) The expenses of a relevant person which the administrator considers to have been reasonably incurred in making a statement of

affairs or statement of concurrence shall be paid by the administrator as an expense of the company reorganization.

(2) A decision by the administrator that expenses were not reasonably incurred, and shall not be payable as an expense of the company reorganization, may be appealed to the Court.

Administrator's proposals: additional content

42.—(1) A statement of proposals made under section 33 of the Act shall identify the proceedings and, in addition to the matters set out in section 33 of the Act, include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment;

(ii) the person making the application or appointment; and

(iii) where a number of persons have been appointed as administrators, details of matters set out in relation to the exercise of their functions;

(*c*) the names of the directors and the secretary of the company and details of any shareholdings in the company which they may have;

(*d*) an account of the circumstances giving rise to the appointment of the administrator;

(*e*) if a statement of the company's affairs has been submitted—

(i) a copy or summary of it, except so far as an order under rule 23 limits its disclosure;

(ii) any comments which the administrator may have upon the statement of affairs;

(iii) if an order under rule 23 has been made, a statement of that fact and the date of the order; and

(iv) details of who provided the statement of affairs;

(*f*) where no statement of affairs has been submitted—

(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 on which the company entered company reorganization; and

(ii) an explanation as to why there is no statement of affairs;

(*g*) a full list of the company's creditors, with their names and addresses and details of their debts, including if no statement of affairs has been submitted or, a statement of affairs has been submitted but it does not include such a list, or includes such a list but it is less than full, any security held;

(*h*) a statement of—

(i) how it is envisaged the purpose of the company reorganization will be achieved; and

(ii) how it is proposed that the company reorganization will end, including, where it is proposed that the company reorganization will end by the company moving to a creditors' voluntary winding-up of the company, details of the proposed liquidator and a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator;

(*i*) whether the administrator has decided to seek approval for the proposals by correspondence or by calling a meeting of creditors;

(*j*) 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 the disposal and the terms upon which the disposal was made; and

(ii) shall, if the administrator's proposals are approved, continue to be managed and financed;

(*k*) whether the proceedings are foreign main proceeding or foreign non-main proceeding; and

(*l*) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) The document containing the statement of proposals shall also include, but not as part of the proposals—

(*a*) the basis on which it is proposed that the administrator's remuneration shall be fixed under the Insolvency (Practitioners) Regulations; and

(*b*) a statement of any pre-company reorganization costs charged or incurred by the administrator or, to the administrator's

knowledge, by any other person qualified to act as an insolvency practitioner.

Administrator's proposals: statement of pre-company reorganization costs

43. A statement of pre-company reorganization costs shall include—

(*a*) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;

(*b*) details of the work done for which the fees were charged and expenses incurred;

(*c*) an explanation of why the work was done before the company entered company reorganization and how it had been intended to further the achievement of an objective in section 14 (1) of the Act in accordance with subsections (2) to (4) of the section;

(*d*) a statement of the amount of the pre-company reorganization costs, setting out separately—

(i) the fees charged by the administrator;

(ii) the expenses incurred by the administrator;

(iii) the fees charged, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately; and

(iv) the expenses incurred to the administrator's knowledge by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately;

(*e*) a statement of the amounts of pre-company reorganization costs which have already been paid;

(*f*) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under paragraph (*d*);

(*g*) a statement of the amounts of unpaid pre-company reorganization costs, set out separately as under paragraph (*d*); and

(*h*) a statement that the payment of unpaid pre-company reorganization costs as an expense of the company reorganization is—

(i) subject to approval in accordance with Insolvency (Practitioners) Regulations; and

(ii) not part of the proposals subject to approval under section 36 of the Act.

Administrator's proposals: ancillary provisions about delivery

44.—(1) Where upon an application by the administrator under section 72 of the Act, the Court orders an extension of the period in section 33 (5) (*b*) of the Act, the administrator shall, as soon as it is reasonably practicable, after the making of the order, deliver a notice of the extension containing the standard contents to—

(*a*) every creditor of the company;

(*b*) every member of the company whose address the administrator is aware of;

(*c*) the Registrar of Companies; and

(*d*) the Director.

(2) The notice shall identity the company.

(3) The administrator is deemed to have complied with subrule (1) (*b*) if the administrator publishes a notice complying with subrule (4).

(4) A notice under section 33 (6) of the Act or under subrule (1) shall—

(*a*) be published by advertisement;

(*b*) contain the standard contents;

(*c*) state—

(i) that members can request in writing for a copy of the statement of proposals or notice of the extension; and

(ii) the address to which the request may be sent, in writing; and

(*d*) subject to subrule (5), be published, as soon as it is reasonably practicable, after the administrator has delivered the statement of proposals or notice of the extension to the company's creditors.

(5) In the case of the statement of proposals, publication shall be not later than twelve weeks or such other period as may be agreed by the creditors or as the Court may order from the date on which the company entered reorganization.

Approval of administrator's proposals

45.—(1) The administrator shall seek approval of the statement of proposals made under section 36 of the Act or a statement of revised

proposals made under section 37 of the Act by convening a meeting of creditors or under section 41 of the Act by correspondence.

(2) Where the administrator is seeking approval by correspondence, the statement of proposals sent out shall be accompanied by a notice to the creditors that the proposals will be deemed to have been approved in the absence of objections by ten per cent or more of the creditors by number or by value.

(3) The notice to creditors under subrule (2) shall state—

(*a*) that a creditor who wishes to object to the proposals shall deliver a notice of that objection to the administrator;

(*b*) that the notice of objection shall be accompanied by details of the creditor's claim;

(*c*) the deadline for objections and the accompanying details of the creditor's claim to be delivered to the administrator;

(*d*) the administrator's contact details; and

(*e*) that, unless objections are received from ten per cent or more of the creditors by number or by value by the deadline date, the proposals will be deemed to be approved on that date.

(4) Where the administrator has delivered a notice to creditors under subrule (2) and has not received objections from ten per cent or more of the creditors by number or by value by the deadline date, the administrator's statement of proposals or statement of revised proposals is deemed to have been approved on that date.

(5) Where the administrator has received objections from ten per cent or more of the creditors by number or by value, and the statement of proposals or statement of revised proposals is deemed as not approved, the administrator may convene a meeting of creditors to seek their approval or seek approval of a revised statement by correspondence.

(6) A notice of the meeting of creditors shall be sent to all creditors.

(7) Nominations for membership of the creditors' committee shall be delivered to the administrator with details of each creditor's claim by a deadline date.

(8) The deadline date shall be at least fourteen days after the date on which the administrator delivers the notice.

(9) A revised statement of proposals shall include a revised statement of proposals which is further revised.

(10) The costs of a meeting of the creditors shall be part of the expenses of the company reorganization.

Notice of deemed approval of administrator's proposals or revised proposals

46.—(1) As soon as it is reasonably practicable, after the date on which the administrator's statement of proposals or statement of revised proposals is deemed approved under rule 45 the administrator shall deliver a notice that the proposals or revised proposals were deemed to be approved on that date to—

(*a*) the Registrar of Companies;

(*b*) the Court;

(*c*) the Director; and

(*d*) the creditors.

(2) A copy of the statement of proposals shall accompany the notices to the Court and to any creditor who has not previously received the proposals.

Notice of result of creditors' meeting to consider proposals

47.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies and the Director as required by section 36 (4) of the Act, deliver notice of the result of the meeting to every creditor and to every other person who received a copy of the statement of proposals.

(2) The administrator shall file with the Court a copy of the statement of proposals considered at the meeting.

(3) The notice under section 36 (4) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notices delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of the statement of proposals to any creditor who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Administrator's proposals: revision

48.—(1) Where section 37 of the Act applies, the statement of the proposed revision which is required to be sent to creditors and members shall identify the proceedings and include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment; and

(ii) the person making the application or appointment;

(*c*) the names of the directors and secretary of the company and details of any shareholding in the company which they have;

(*d*) a summary of the original proposals and the reason(s) for proposing a revision;

(*e*) details of the proposed revision, including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;

(*f*) where the proposed revision relates to the ending of the company reorganization by a creditors' voluntary winding-up of the company and the nomination of a person to be the proposed liquidator of the company—

(i) details of the proposed liquidator;

(ii) where applicable, the declaration required by the Act; and

(iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator; and

(*g*) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(2) As soon as it is reasonably practicable, after sending the statement of the proposed revisions to the creditors, the administrators shall deliver a copy of the statement to the Registrar of Companies.

(3) Subject to section 37 (3) of the Act, the period within which the administrator shall send a copy of the statement to every member of the company whose address the administrator is aware of shall be five business days after sending the statement of the proposed revision to each creditor.

(4) A notice under section 37 (3) and (4) of the Act shall—

(*a*) be published by advertisement, as soon as it is reasonably practicable, after the administrator has sent the statement to the creditors;

(*b*) contain the standard contents; and

(*c*) state that members can request, in writing, for a copy of the statement of proposed revision with the address to which to send the request, in writing.

Notice of result of creditors' meeting to consider revised proposals

49.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of the administrator's revised proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies, as required by section 37 (6) of the Act, deliver a notice of the result of the meeting to every creditor and to every other person who received a copy of the original proposals.

(2) The administrator shall file with the Court a copy of the statement of revised proposals considered at the meeting.

(3) The notices under section 37 (6) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notice delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of both the original and the revised statement of proposals to any creditors who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Disposal of charged property

50.—(1) The administrator may apply to the Court under section 47 of the Act for authority to dispose of property of the company which—

(*a*) is subject to a security interest; or

(*b*) consists of goods in the possession of the company under a lease.

(2) The Court shall fix a date, time and venue for the hearing of the application.

(3) As soon as it is reasonably practicable, after the Court has fixed the date, time and venue of hearing under subrule (2), the administrator shall deliver notice of the date, time and venue to the holder of the security or the owner of the goods.

(4) Where an order is made under section 47 of the Act, the Court shall deliver two sealed copies of that order to the administrator.

(5) The administrator shall deliver—

(*a*) one of the sealed copies to the holder of the security interest or the owner of the goods; and

(*b*) a copy of the sealed order to the Registrar of Companies.

Expenses

51. All fees, costs, charges and other expenses incurred in the course of the company reorganization are to be treated as part of the expenses of the company reorganization.

Order of priority

52.—(1) Subject to an order of the Court under subrule (2), the expenses of company reorganization are payable in the following order of priority—

(*a*) expenses properly incurred by the administrator in performing the administrator's functions;

(*b*) the cost of any security provided by the administrator in accordance with the Act or these Rules;

(*c*) the costs of the applicant and any person appearing on the hearing of the application for a company reorganization order;

(*d*) any amount payable to a person in respect of assistance 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 deliver a statement of concurrence;

(*f*) any necessary disbursements by the administrator in the course of the company reorganization, including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator, but not including any payment of tax in circumstances referred to in paragraph (i);

(*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 authorized under the Act or these Rules;

(*h*) the administrator's remuneration the basis of which has been fixed under the Insolvency (Practitioners) Regulations and unpaid pre-company reorganization costs;

(*i*) the amount of any tax on chargeable gains accruing on the realization of any asset of the company, irrespective of the person by whom the realization is effected.

(2) Where the assets are insufficient to satisfy the liabilities, the Court may make an order as to the payment out of the assets of the expenses incurred in the company reorganization in such order of priority as the Court considers just.

(3) The former administrator's remuneration and expenses comprise all the items in subrule (1).

Pre-company reorganization costs

53.—(1) Where the administrator has made a statement of pre-company reorganization costs, the creditors' committee may determine whether and to what extent the unpaid pre-company reorganization costs set out in the statement are approved for payment.

(2) Subrule (3) applies where—

(*a*) there is no creditors' committee;

(*b*) there is a creditors' committee but it does not make the necessary determination; or

(*c*) the creditors' committee makes the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(3) Where this rule applies, determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment shall be—

(*a*) by resolution of a meeting of creditors other than in a case falling in paragraph (*b*); or

(*b*) in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act—

(i) by the approval of each secured creditor of the company; or

(ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by the approval of each—

(AA) secured creditor of the company; and

(BB) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company,

disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) The administrator shall call a meeting of the creditors' committee or of creditors if so requested for the purposes of rules (1), (2) and (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs and the administrator shall deliver notice of the meeting within twenty-eight days of receipt of the request.

(5) The administrator, where the fees were charged or expenses incurred by the administrator, or other insolvency practitioner, where the fees were charged or expenses incurred by that practitioner, may apply to the Court for a determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment if—

(*a*) there is no determination under subrule (1) or (3); or

(*b*) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(6) The administrator or other insolvency practitioner shall deliver at least fourteen days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(7) Where there is no creditors' committee, notice of the application shall be delivered to such one or more of the company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.

(8) The Court may, if it appears to be a proper case, order the costs of the application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor so appearing or being represented, to be paid as an expense of the company reorganization.

(9) Where the administrator fails to call a meeting of the creditors' committee or of creditors in accordance with subrule (4), the other insolvency practitioner may apply to the Court for an order requiring the administrator to do so.

Final progress reports

54. "Final progress report" means a progress report which includes a summary of—

(*a*) the administrator's original proposals;

(*b*) any revised proposals;

(*c*) the steps taken during the company reorganization; and

(*d*) the outcome.

Application to extend a company reorganization and extension by consent

55.—(1) Where the administrator applies to Court for an order to, or requests the consent of creditors to, extend the administrator's term of office under section 51 (2) of the Act, the application or request shall be accompanied by a progress report for the period since—

(*a*) the last progress report, if any; or

(*b*) if there has been no previous progress report, the date on which the company entered company reorganization.

(2) Where the Court makes an order extending the administrator's term of office, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the order together with a copy of the progress report which accompanied the application to the Court.

(3) Where the administrator's term of office has been extended with the consent of creditors, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the extension.

Notice of automatic end of company reorganization

56.—(1) This rule applies where—

(*a*) the appointment of an administrator has ceased to have effect; and

(*b*) the administrator is not required by any other rule to give notice of that fact.

(2) The administrator shall, as soon as it is reasonably practicable, and in any event within five business days of the date on which the appointment has ceased, file with the Court a notice accompanied by a final progress report.

(3) The notice shall—

(*a*) be headed "Notice of Automatic End of Company Reorganization" and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the appointment has ceased to have effect;

(vi) the date on which the appointment ceased to have effect;

(vii) that a copy of the final progress report accompanies the notice; and

(viii) be signed by the administrator and dated.

(4) A copy of the notice and an accompanying final progress report shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

(5) An administrator who fails to comply with this rule commits an offence and shall be liable to a fine of—

(*a*) K50,000 and to imprisonment for six months; and

(*b*) K25,000 for every day during which the default continues.

Notice of end of company reorganization when purposes achieved

57.—(1) Where an administrator who was appointed under section 18 or 20 of the Act thinks that the purpose of company reorganization has been sufficiently achieved, he may file with the Court a notice ("Notice of End of Company Reorganization") under section 53 of the Act which shall—

(*a*) be headed "Notice of End of Company Reorganization" and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the administrator thinks that the purpose of the company reorganization has been sufficiently achieved;

(vi) that a copy of the final progress report accompanies the notice;

(vii) that the administrator is filing the notice with the Registrar of Companies; and

(viii) be signed by the administrator and dated.

(2) The notice of end of company reorganization shall be accompanied by a final progress report.

(3) The notice of end of company reorganization filed with the Court shall also be accompanied by a copy of the notice.

(4) The Court shall endorse the notice and the copy of the notice with the date and time of filing, seal the copy and deliver it to the administrator.

(5) The period within which the administrator shall, under section 53 (3) of the Act, send a copy of the notice to every creditor of whose name and address the administrator is aware of is five business days.

(6) The copy notice sent to creditors shall be accompanied by the final progress report.

(7) The administrator shall also, within five business days, deliver a copy of the notice and the accompanying report to—

(*a*) the Director;

(*b*) the directors of the company; and

(*c*) all other persons, other than the creditors, members and the Registrar of Companies, to whom notice of the administrator's appointment was delivered.

(8) The administrator shall be deemed to have complied with section 53 (3) of the Act if, within five business days of filing with the

Court the notice of end of company reorganization, the administrator publishes in the *Gazette*, a notice which—

(*a*) contains the standard contents;

(*b*) states—

(i) that the company reorganization has ended;

(ii) the date on which the company reorganization ended;

(iii) undertakes that the administrator will provide a copy of the notice of end of company reorganization to any creditor or member of the company who applies in writing; and

(iv) specifies the address to which to write to.

(9) The notice published in the *Gazette* under this rule shall also be advertised in such other manner as the administrator thinks fit.

Administrator's application for order ending company reorganization

58.—(1) An application to Court by the administrator under section 52 of the Act for an order ending a company reorganization shall be accompanied by—

(*a*) a progress report for the period since the last progress report, if any, or if there has been no previous progress report, the date on which the company entered company reorganization;

(*b*) a statement indicating what the administrator thinks should be the next steps for the company, if applicable; and

(*c*) where the administrator makes the application because of a requirement by a creditors' meeting, a statement indicating with reasons whether or not the administrator agrees with the requirement.

(2) Where the application is made other than because of a requirement by a creditors' meeting—

(*a*) the administrator shall, at least five business days before the application is made, deliver a notice of the administrator's intention to apply to Court to the person who applied for the company reorganization and the creditors; and

(*b*) the application shall be accompanied by—

(i) a statement that a notice has been delivered to the creditors; and

(ii) copies of any response from creditors to that notice.

(3) Where the application is in conjunction with a petition under section 107 of the Act for an order to wind-up the company, the administrator shall, at least five business days before the application is made, deliver a notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

Notice by administrator of Court order

59. Where the Court makes an order ending the company reorganization, the administrator shall, as soon as it is reasonably practicable, deliver a copy of the order and of the final progress report to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

Grounds for resignation

60.—(1) The administrator may resign—

(*a*) on grounds of his ill health;

(*b*) if he intends to cease to practise as an insolvency practitioner; or

(*c*) if there is a conflict of interest, or a change of personal circumstances, which in either case prevents or makes the further discharge of the duties of administrator impracticable.

(2) The administrator may, with the permission of the Court, resign on other grounds.

Notice of intention to resign

61.—(1) The administrator shall give at least five business days' notice of intention to resign in a case falling within rule 60 (1), or to apply for the Court's permission to resign in a case falling within rule 60 (2).

(2) The notice shall be delivered to—

(*a*) the continuing administrator of the company, if any;

(*b*) the creditors' committee, if any;

(*c*) the company and the company's creditors, if there is neither a continuing administrator nor a creditors' committee; and

(*d*) the Director.

Notice of resignation

62.—(1) A notice of resignation shall be effected by filing the notice with the Court.

(2) A resigning administrator shall, within five business days of delivering notice, file a copy of the notice with the Court, and deliver a copy of it to—

(*a*) the Registrar of Companies;

(*b*) the Director; and

(*c*) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered.

(3) The notice shall—

(*a*) identify the company; and

(*b*) state—

(i) the date from which the resignation is to have effect; and

(ii) where the resignation is with the permission of the Court, the date on which permission was given.

Application to Court to remove administrator from office

63.—(1) An application for an order that the administrator be removed from office shall state the grounds on which the order is sought.

(2) A copy of the application shall be delivered, not less than five business days before the date fixed for the hearing, to—

(*a*) the administrator;

(*b*) the person who made the application for the company reorganization order;

(*c*) the creditors' committee, if any;

(*d*) any other administrator appointed to act jointly or concurrently;

(*e*) the Director; and

(*f*) the company and all the creditors, where there is neither a creditors' committee nor another administrator appointed to act jointly or concurrently.

(3) The Court shall deliver to the applicant a copy of an order removing the administrator.

(4) The applicant shall, as soon as it is reasonably practicable, and in any event within five business days of the copy of the order being delivered, deliver a copy of the order to—

(*a*) the administrator;

(*b*) all other persons to whom notice of the application was delivered;

(*c*) the Registrar of Companies; and

(*d*) the Director.

Notice of vacation of office when administrator ceases to be qualified to act

64. An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company shall give notice to the Director and the Registrar of Companies.

Deceased administrator

65.—(1) Whenever an administrator dies, a notice of the fact and date of death shall be filed with the Court.

(2) The notice shall be filed, as soon as it is reasonably practicable, by one of the following persons—

(*a*) a partner in the deceased administrator's firm, where the deceased administrator was a partner in, or an employee of, the firm; or

(*b*) a personal representative of the deceased administrator.

(3) Where a notice has not been filed within twenty-eight days following the administrator's death, then any other person may file the notice.

(4) The person who files the notice shall also deliver a notice containing the fact and date of death and the standard contents to the Registrar of Companies.

Application to replace an administrator

66.—(1) Where an application to Court is made to appoint a replacement administrator, the application shall be accompanied by the proposed replacement administrator's consent to act.

(2) A copy of the application shall be delivered to—

(*a*) the person who made the application for the company reorganization order;

(*b*) any person who has appointed a receiver of the company;

(*c*) any person who is or may be entitled to appoint a receiver of the company;

(*d*) the petitioner and any provisional liquidator, if there is a pending petition for the winding-up of the company;

(*e*) the company, if the application is made by anyone other than the company; and

(*f*) the proposed administrator.

Appointment of replacement or additional administrator

67.—(1) Where a replacement administrator is appointed or an additional administrator is appointed to act jointly or concurrently, the replacement or additional administrator shall deliver a notice of the appointment to the Registrar of Companies.

(2) All documents subsequent to the delivery of the notice of appointment under subrule (1) shall clearly state the appointment of a person as that of a replacement administrator or an additional administrator appointed to act jointly or concurrently.

PART III

RECEIVERSHIP

Receivers or managers: acceptance of appointment

68.—(1) This Part applies where a secured party's interest—

(*a*) relates to the whole or substantially the whole of the debtor's property;

(*b*) by a number of security interests which together relate to the whole or substantially the whole of the debtor's property; or

(*c*) by charges and other forms of security interest which together relate to the whole or substantially the whole of the debtor's property.

(2) Where two or more persons are appointed as joint receivers or managers of a company's property under powers contained in an instrument—

(*a*) each of them shall accept the appointment in accordance with section 75 of the Act as if each were a sole appointee;

(*b*) the joint appointment takes effect only when all of them have accepted the appointment; and

(*c*) the joint appointment is deemed to have been made at the time at which the instrument of appointment was received by or on behalf of each of them.

(3) A person who is appointed as the sole or joint receiver or manager of a company's property under powers contained

in an instrument and accepts the appointment, but not in writing, shall confirm the acceptance in writing to the person making the appointment within five business days.

(4) The confirmation shall state the time and date of—

(*a*) receipt of the instrument of appointment; and

(*b*) the acceptance of the appointment.

(5) Acceptance or confirmation of acceptance of appointment as a receiver or manager of a company's property, whether under the Act or these Rules, may be given by any person, including, in the case of a joint appointment, any joint appointee duly authorized for that purpose on behalf of the receiver or manager.

Receiver's security

69.—(1) A person appointing a receiver shall be satisfied that the appointee has security for the proper performance of the office.

(2) The creditors' committee shall review the adequacy of the security from time to time.

(3) The cost of the security shall be an expense of the receivership.

Publication of appointment of receiver

70.—(1) The notice which a receiver is required by section 79 of the Act to send to the company, Registrar of Companies, the Director and creditors on being appointed, shall identify the company within seven days of appointment and state—

(*a*) any other registered name of the company in the twelve months preceding the date of the appointment;

(*b*) any name under which the company has traded at any time in those twelve months, if substantially different from its then registered name;

(*c*) the name and address of the person appointed;

(*d*) the date of the appointment;

(*e*) the name of the person who made the appointment; and

(*f*) the date of the instrument conferring the power under which the appointment was made and a brief description of—

(i) the instrument itself; and

(ii) any assets of the company in relation to which the appointment is not made.

(2) The notice which a receiver is required to give under section 79 of the Act—

(*a*) shall be published in the *Gazette*;

(*b*) may be advertised in such other manner as the receiver thinks fit; and

(*c*) shall state, in addition to the standard contents—

(i) that a receiver or receiver and manager has been appointed;

(ii) the date of the appointment;

(iii) the name of the person who made the appointment; and

(iv) the nature of the business of the company.

Requirement to provide a statement of affairs

71.—(1) A requirement under section 84 (1) of the Act for a nominated person to provide the receiver with a statement of affairs of the company shall be made by a notice delivered to such a person within fourteen days after the appointment of the receiver.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and shall—

(*a*) identify the company immediately below the heading;

(*b*) require the recipient to prepare and submit to the receiver a statement of affairs of the company; and

(*c*) inform each recipient of—

(i) the name and address of any other nominated person to whom a notice has been delivered; and

(ii) the date by which the statement shall be delivered to the receiver.

(3) The receiver shall inform each nominated person that a document for the preparation of the statement of affairs capable of completion may be supplied, if requested.

Statement of affairs: concurrence and retention by receiver

72.—(1) The receiver may require any of the persons mentioned in section 84 (1) of the Act to deliver a statement of concurrence.

(2) A statement of concurrence may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(*a*) is not in agreement with the nominated person submitting the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with it.

(3) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver both the statement of concurrence and the statement of affairs to the receiver together with copy of them.

(4) The receiver shall retain the verified statement of affairs and each statement of concurrence as part of the records of the receivership.

Statement of affairs: release from requirement and extension of time

73.—(1) The receiver may, on his own initiative or at the request of any nominated person, exercise the powers under section 84 (1) of the Act to—

(*a*) release a person from an obligation imposed under section 84 (1) or (2) of the Act; or

(*b*) concur in an application to Court seeking to extend the period for submitting a statement of affairs.

(2) Where a nominated person requests a release or extension, the nominated person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect and where—

(*a*) within five business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall fix the date, time and venue of the hearing; and

(*b*) the applicant does not deliver notice in accordance with paragraph (*a*), the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed under subrule (3), the Court shall fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the receiver a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The receiver may—

(*a*) appear and be heard on the application;

(*b*) file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention; or

(*c*) appear and be heard on the application and file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention.

(7) Where a report is filed, the receiver shall deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application shall be delivered by the Court to the applicant and the receiver.

(9) On any application under this rule, the applicant's costs shall be paid by the applicant in any event, however, the Court may order that allowance towards them may be made out of the assets under the receiver's control.

Limited disclosure

74.—(1) Where the receiver thinks that disclosure of the whole or part of the statement of affairs may likely prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person, the receiver may apply to the Court for an order that the statement of affairs or any specified part of it may not be open to inspection, except with permission of the Court.

(2) The Court order referred to in subrule (1), may include directions regarding the delivery of documents to the Registrar of Companies and the disclosure of relevant information to other persons.

Report delivered to Registrar of Companies and the Director

75.—(1) The report which under section 91 (4) of the Act a receiver is required to send or deliver to the Registrar of Companies and the Director shall be accompanied by a copy of any statement of affairs under section 84 (1) (*c*) of the Act.

(2) The duty to send a copy of the report to the Registrar of Companies and the Director is subject to any order for limited disclosure made under rule 74.

(3) Where a statement of affairs is submitted or statement of concurrence is delivered to the receiver after the report is sent to the Registrar of Companies and the Director, the receiver shall, as soon as it is reasonably practicable after its receipt, deliver a copy of it to the Registrar of Companies and the Director.

(4) The report under section 88 (1) of the Act shall state, to the best of the receiver's knowledge and belief, and in addition to the matters required by section 88 (1) of the Act, an estimate of the value of the company's net property.

(5) The receiver may exclude, from the estimates under subrule (3), information the disclosure of which could seriously prejudice the commercial interests of the company, but in that case, the estimates shall be accompanied by a statement to that effect.

Copy of report for unsecured creditors

76. A notice stating an address to which unsecured creditors shall request in writing for copies of a receiver's report may be advertised in such manner as the receiver considers fit.

Invitation by correspondence to creditors to form a creditors' committee

77.—(1) A receiver who decides not to convene a creditors' meeting shall deliver to the creditors a notice inviting the creditors to vote on whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice shall state that votes and nominations for membership of a creditors' committee shall be—

(*a*) delivered to the receiver with details of the creditor's claim by the deadline; and

(*b*) accepted if accompanied by such details.

(3) The deadline shall be at least fourteen days after the date on which the receiver delivers the notice.

(4) The notice under subrule (1) shall be accompanied by the report under section 88 (1) of the Act.

Summary of receipts and payments

78.—(1) The receiver shall deliver a summary of receipts and payments as receiver to the Registrar of Companies, the Director, the company and to the person who made the appointment, and to each member of the creditors' committee.

(2) The summary shall be delivered to the persons mentioned in subrule (1) within two months after the following—

(*a*) the period of six months from the date of being appointed;

(*b*) the end of every subsequent period of six months; and

(*c*) ceasing to act as receiver.

(3) The summary shall show receipts and payments—

(*a*) during the relevant period of twelve months; or

(*b*) where the receiver has ceased to act, during the period—

(i) from the end of the last six month period to the time when the receiver so ceased; or

(ii) if there has been no previous summary, since being appointed.

(4) This rule is without prejudice to the receiver's duty to produce proper accounts otherwise than as stated in subrules (1), (2) and (3).

Resignation of receiver

79.—(1) A receiver shall deliver a notice of intention to resign, at least five business days before the date the resignation is intended to take effect, to—

(*a*) the person by whom the appointment was made;

(*b*) the company or, if it is in liquidation, the liquidator; and

(*c*) the members of the creditors' committee.

(2) The notice given under subrule (1) shall specify the date on which the receiver intends the resignation to take effect.

Deceased receiver

80.—(1) Where the receiver dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the person by whom the appointment was made;

(*b*) the Registrar of Companies;

(*c*) the Director;

(*d*) the company or, if it is in liquidation, the liquidator; and

(*e*) the creditors' committee or a member of that committee.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased receiver's firm, if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased receiver.

(3) Where the notice has not been delivered within twenty-eight days following the receiver's death, then any other person may deliver the notice.

Vacation of office in other cases

81. A receiver, on vacating office on completion of the receivership, or in consequence of ceasing to be qualified as an insolvency practitioner, shall, as soon as it is reasonably practicable, deliver notice of doing so to—

(*a*) the company or, if it is in liquidation, the liquidator; and

(*b*) the members of the creditors' committee.

PART IV

WINDING-UP OF THE COMPANY

Division I—Winding-up of the Company by the Court

Application of this Division

82. This Division applies to winding-up of the company by the Court whether the petition for winding-up of the company is presented under the Act or under any written law enabling the presentation of a winding-up of the company petition.

Statutory demand (s. 184 of the Act)

83.—(1) A statutory demand shall—

(*a*) identify the company;

(*b*) state the registered office of the company;

(*c*) state the name and address of the creditor;

(*d*) specify the section of the Act under which it is made;

(*e*) state the amount of the debt not being less than K100,000 and the consideration for it, or, if there is no consideration, the nature of the claim;

(*f*) give details of the judgment or order, if the demand is founded on a judgment or order of a Court;

(*g*) details of the original creditor and any intermediary assignees, if the creditor is entitled to the debt by way of assignment; and

(*h*) be dated, and signed by the creditor or a person authorized to make the demand on the creditor's behalf.

(2) A demand which is signed by an authorized person shall state that—

(*a*) that person is authorized to make the demand on the creditor's behalf; and

(*b*) person's relationship to the creditor.

(3) Where the amount claimed in the demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the company as included in its 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.

(4) The amount claimed for charges mentioned in subrule (3) shall be limited to the amount which has accrued and due at the date of the demand.

Contents of petition

84.—(1) The petition shall—

(*a*) contain the name of the Court and the Registry;

(*b*) state the name and postal address of the petitioner;

(*c*) identify the company which is the subject of the petition;

(*d*) state the date on which the company was incorporated;

(*e*) state the nominal capital of the company, if applicable;

(*f*) state the number of shares the capital of the company is divided into and the value of each share;

(*g*) state the amount of capital of the company;

(*h*) state the principal objects for which the company was established or the nature of the company's business, if known;

(*i*) provide details of any other objects stated in the company's articles of association;

(*j*) state the grounds on which the winding-up of the company order is sought;

(*k*) state whether the company is limited by guarantee;

(*l*) state whether, in the opinion of the person making the statement, the proceedings will be foreign main proceedings or foreign non-main proceedings under Part X of the Act and that the reasons are given in the sworn statement;

(*m*) state that in the circumstances it is just and reasonable that the company be wound-up;

(*n*) state that the petitioner applies for an order that the company be wound-up by the Court under the Act, or that such other order be made as the Court considers just;

(*o*) state the name and postal address of any person on whom the petitioner intends to serve the petition; and

(*p*) state the contact details of the petitioner's legal practitioners, if any.

(2) A petition filed by an administrator of a company under company reorganization shall—

(*a*) be expressed to be the petition of the company by its administrator;

(*b*) state the name of the administrator, the Court case number and the date that the company entered company reorganization; and

(*c*) where applicable, requesting that the appointment of the administrator should cease to have effect.

(3) The petition shall also contain space for the Court to complete with the details for hearing the petition.

Request to appoint administrator or receiver as liquidator

85.—(1) This rule applies where a petition requests the appointment of an administrator or a receiver as liquidator.

(2) The person whose appointment is sought ("the appointee") shall, not less than two business days before the date appointed for hearing the petition, file with the Court a report including particulars of—

(*a*) the date on which the appointee delivered notice to creditors of the company, either in writing or at a meeting of creditors, of the intention to seek that person's appointment as liquidator, such date to be at least seven business days before the day on which the report is filed; and

(*b*) details of any response from creditors to that notice, including any objections to the proposed appointment.

Verification of petition

86.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition is in respect of debts due to different creditors, then the debt to each creditor shall be verified separately.

(3) A sworn statement which is not contained in or endorsed upon the petition shall identify the petition and shall—

(*a*) identify the company;

(*b*) state the name of the petitioner; and

(*c*) state the name of the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be signed and dated—

(*a*) by the petitioner, or if there are two or more petitioners, any one of them;

(*b*) by some person such as a director, company secretary or similar company officer, or a legal practitioner, who has been involved in the matters giving rise to the presentation of the petition; or

(*c*) by some responsible person who is duly authorized to sign the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the swom statement shall state—

(*a*) the name and postal address of the person making the statement;

(*b*) the capacity in which, and the authority by which, that person signs the statement; and

(*c*) the means of that person's knowledge of the matters verified in the sworn statement.

(6) A sworn statement verifying more than one petition shall—

(*a*) include, in its title, the names of the companies to which it relates; and

(*b*) set out, in relation to each company, the statements relied on by the petitioner, and a clear and legible photocopy of the sworn statement shall be filed with each petition which it verifies.

(7) The sworn statement shall give the reasons why the person making the statement considers the proceedings will be foreign main proceeding or foreign non-main proceeding under Part X of the Act.

Copies of petition to be served on company or delivered to other persons

87.—(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner shall, when filing the petition with the Court, file an additional copy with the Court for each such person.

(2) Where to the petitioner's knowledge—

(*a*) the company is in the course of being wound-up voluntarily, the petitioner shall deliver a copy of the petition to the liquidator; or

(*b*) a receiver has been appointed in relation to the company, or the company is in company reorganization, the petitioner shall deliver a copy of the petition to the receiver or the administrator.

(3) Where the Act or this rule requires the petitioner to deliver a copy of the petition, the copy shall be delivered within three business days after the day on which the petition is served on the company.

Notice of petition

88.—(1) Unless the Court otherwise directs, the petitioner shall give notice of the petition.

(2) In addition to the standard contents for a notice to be published in the *Gazette*, the notice shall state—

(*a*) that a petition has been presented for the winding-up of the company;

(*b*) in the case of a foreign company, the address at which service of the petition was effected;

(*c*) the name and address of the petitioner;

(*d*) the date on which the petition was presented;

(*e*) the date, time and venue fixed for the hearing of the petition;

(*f*) the name and address of the petitioner's legal practitioner, if any; and

(*g*) that any person intending to appear at the hearing, whether to support or oppose the petition, shall give notice of that intention.

(3) The notice shall be published in at least two daily newspapers of wide circulation.

(4) The notice shall be made to appear—

(*a*) if the petitioner is the company itself, not less than seven business days before the day appointed for the hearing; and

(*b*) otherwise, not less than seven business days after service of the petition on the company, nor less than seven business days before the day so appointed.

(5) The Court may adjourn the hearing of the petition or dismiss the petition if notice of the hearing is not given in accordance with this rule.

Persons entitled to request a copy of petition

89. Where a director, contributory or creditor requests a copy of the petition from the legal practitioner for the petitioner, or the petitioner, if acting in person, and pays the prescribed fee for copies, the legal practitioner or petitioner shall deliver the copy within two business days.

Certificate of compliance

90.—(1) The petitioner or the petitioner's legal practitioner shall, at least five business days before the hearing of the petition, file with the Court a certificate of compliance relating to service and notice of the petition.

(2) The certificate shall be signed and dated by the petitioner or the petitioner's legal practitioner and shall state—

(*a*) the date of presentation of the petition;

(*b*) the date fixed for the hearing; and

(*c*) the date or dates on which the petition was served and notice of it was given in compliance with these Rules.

(3) Subject to subrule (4), a copy of any notice given shall be filed with the Court with the certificate.

(4) Where it is not reasonably practicable to file a copy of the notice, a statement of the content of the notice shall be filed with the Court with the certificate.

(5) The Court may, if it considers just, adjourn the hearing of the petition or dismiss the petition if this rule is not complied with.

Permission for the petitioner to withdraw

91.—(1) Where at least five business days before the hearing the petitioner, on an application without notice to any other party, satisfies the Court that—

(*a*) notice of the petition has not been given as required by rule 88;

(*b*) no notices in support or in opposition to the petition have been received by the petitioner; and

(*c*) the company consents to an order being made under this rule,

the Court may allow the petitioner to withdraw the petition on such terms as to costs.

(2) The order shall—

(*a*) state the date on which the petition for the winding-up of the company was presented;

(*b*) state the name and postal address of the applicant;

(*c*) identify the company;

(*d*) state, that upon the application without notice to any other party by the applicant named in the order and upon considering the evidence the Court is satisfied that—

(i) the notice of the petition has not been given;

(ii) no notices in support of or in opposition to the petition have been received by the petitioner; and

(iii) the company consents to this order.

Notice by persons intending to appear

92.—(1) A creditor or contributory who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and address of the creditor or contributory, and any telephone number and reference which may be required for communication with that person or with any other person, also to be specified in the notice, authorized to speak or act on the creditor's or contributory's behalf;

(*b*) the date of the presentation of the petition and a statement that the notice relates to the matter of that petition;

(*c*) the date of the hearing of the petition;

(*d*) for a creditor the amount and nature of the debt due from the company to the creditor;

(*e*) for a contributory, the number of shares held in the company;

(*f*) whether the creditor or contributory intends to support or oppose the petition;

(*g*) where the creditor or contributory is represented by a legal practitioner or other agent, the name, postal address, telephone number and any contact detail of that person and details of that person's position with, or relationship to, the creditor or contributory; and

(*h*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or the petitioner's legal practitioner at the address shown in the Court records, or in the notice of the petition required by rule 88.

(5) The notice shall be delivered so as to reach the petitioner, or the petitioner's legal practitioner, not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

93.—(1) The petitioner shall prepare for the Court a list of the creditors and contributories who have given notice under rule 88.

(2) The list of the creditors and contributories shall contain—

(*a*) the date of the presentation of the petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors and contributories listed have delivered notice that they intend to appear at the hearing of the petition;

(*d*) their names and addresses;

(*e*) the amount owed to each creditor;

(*f*) the number of shares held by each contributory;

(*g*) the name and postal address of any legal practitioner for a person listed; and

(*h*) whether each person listed intends to support or oppose the petition.

(3) On the day appointed for the hearing of the petition, a copy of the list of the creditors and contributories shall be filed with the Court before the hearing commences.

(4) Where the Court gives a person permission to appear, then the petitioner shall add the person to the list of the creditors and contributories and complete in respect of the person the particulars in subrule (2).

Sworn statement in opposition

94.—(1) Where the company intends to oppose the petition, it shall not later than five business days before the date fixed for the hearing—

(*a*) file with the Court, a sworn statement in opposition; and

(*b*) deliver a copy of the sworn statement to the petitioner or his legal practitioner.

(2) The sworn statement shall—

(*a*) identify the proceedings;

(*b*) state that the company intends to oppose the winding-up of the company petition; and

(*c*) state the grounds on which the company opposes the petition.

Substitution of creditor or contributory for petitioner

95.—(1) This rule applies where the petitioner—

(*a*) is subsequently found not to have been entitled to present the petition;

(*b*) fails to give notice of the petition in accordance with rule 88;

(*c*) consents to withdraw the petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of the petition when it is called in Court on the day originally fixed for the hearing, or on a day to which it is adjourned; or

(*d*) appears, but does not apply for an order in the terms of the prayer in the petition.

(2) The Court may, on such terms as it considers just, substitute as petitioner any creditor or contributory who, in its opinion, would have a right to present a petition and who wishes to prosecute it.

Order for substitution

96.—(1) An order for substitution of a petitioner shall identify the proceedings and contain—

(*a*) date of hearing of the petition;

(*b*) name of the original petitioning creditor;

(*c*) name of the creditor or member who is willing to be substituted as petitioner;

(*d*) statement that the evidence has been considered;

(*e*) the following orders—

(i) that the named creditor be substituted for the original petitioning creditor and that the named creditor may amend the petition accordingly;

(ii) that the named creditor shall within five business days from the date of the order file a sworn statement in the petition;

(iii) that, at least fourteen days before the date of the adjourned hearing of the petition, the substituted petitioner shall serve a sealed copy of the amended petition on the company and deliver a copy to any other person to whom the original petition was delivered;

(iv) that the hearing of the amended petition be adjourned to the date, time and venue specified in the order; and

(v) that the question of the costs of the original petitioning creditor be reserved until the final determination of the amended petition;

(*f*) the date, time and venue of the adjourned hearing; and

(*g*) the date of the making of the order.

Adjournment of hearing of petition

97.—(1) Where the Court adjourns the hearing of the petition, the petitioner shall, as soon as it is reasonably practicable, deliver notice of the making of the order of adjournment and of the date, time and venue for the adjourned hearing to—

(*a*) the company; and

(*b*) any creditor or contributory who has given notice under rule 88 but was not present at the hearing.

(2) The notice shall identify the proceedings.

(3) The requirement to deliver such notices applies unless the Court otherwise directs.

Order for winding-up by the Court

98.—(1) An order for winding-up of the company by the Court shall—

(*a*) identify the company;

(*b*) state the name and postal address of the petitioner;

(*c*) state that the petitioner is—

(i) the company;

(ii) a creditor of the company; or

(iii) a contributory of the company;

(*d*) state the date of presentation of the petition;

(*e*) state, that upon consideration of the evidence, it is ordered that the company be wound-up by the Court under the Act;

(*f*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act;

(*g*) order that the costs of certain persons specified in the order of the petition be paid out of the assets of the company; and

(*h*) state the date of the making of the order.

(2) The order may contain such additional terms concerning costs as the Court considers just.

Order for winding-up by the Court following the cessation of the appointment of an administrator

99.—(1) An order for winding-up of the company by the Court following the cessation of the appointment of an administrator shall—

(*a*) identify the company;

(*b*) state the name and postal address of the administrator of the company;

(*c*) state the date of the administrator's appointment;

(*d*) state the date of presentation of the petition by the administrator;

(*e*) order that upon consideration of the evidence—

(i) the appointment of the administrator ceases to have effect; and

(ii) the company is wound-up by the Court under the Act;

(*f*) state the name and postal address of the person to be appointed as liquidator of the company, if applicable;

(*g*) order, if applicable, that the person specified in the order is appointed liquidator of the company;

(*h*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act; and

(*i*) state the date of the making of the order.

(2) The order may contain such additional terms as the Court considers just.

Notice to Official Receiver of winding-up order

100.—(1) When a winding-up of the company order has been made, the Court shall, as soon as it is reasonably practicable, deliver a notice to that effect to the Official Receiver.

(2) The notice shall be headed “Notice to Official Receiver of Winding-up of the Company Order” and shall—

(*a*) identify the company the subject of the order;

(*b*) state the date of presentation of the petition;

(*c*) state the date of the winding-up of the company order; and

(*d*) state the name and postal address of the petitioner or the petitioner’s legal practitioner.

Division II—Shareholders’ Voluntary Winding-up of the Company

Statutory declaration of solvency

101.—(1) The statutory declaration of solvency required by section 143 of the Act shall identify the company and state the name and postal address of each director making the declaration—

(*a*) that all of the directors, or a majority of the directors, have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full together with interest within a specified period, which shall not exceed twelve months, from the commencement of the winding-up of the company;

(*b*) that the declaration is accompanied by a statement of the company’s assets and liabilities as at a given date; and

(*c*) of that date, which shall be the latest practicable date, before the making of the declaration.

(2) The statement of the company’s assets and liabilities shall contain—

(*a*) the date of the statement;

(*b*) a statement that the statement shows the assets of the company at estimated realizable values and liabilities of the company expected to rank as at the date referred to in paragraph (*a*);

(*c*) the estimated realizable value of each of the following assets of the company—

(i) balance at bank;

(ii) cash in hand;

(iii) marketable securities;

(iv) bills receivable;

(v) trade debtors;

(vi) loans and advances;

(vii) unpaid calls;

(viii) stock in trade;

(ix) work in progress;

(x) freehold property;

(xi) leasehold property;

(xii) machinery, plant and equipment;

(xiii) furniture, fittings and utensils;

(xiv) patents, trademarks and any other intellectual property;

(xv) investments other than marketable securities; and

(xvi) any other property;

(*d*) the total of the estimated realizable value of the company's assets;

(*e*) the value of each secured liability;

(*f*) the estimated costs of the winding-up of the company and other expenses including interest accruing until payment of debts in full;

(*g*) the value of unsecured liabilities of the company divided among—

(i) trade accounts;

(ii) bills payable;

(iii) accrued expenses;

(iv) other liabilities; and

(v) contingent liabilities; and

(*h*) the value of the estimated surplus after paying debts, costs and interest in full.

Division III—Liquidators

Appointment of liquidator by the company

102.—(1) This rule applies where the liquidator is appointed by a meeting of the company.

(2) The chairperson of the meeting shall certify the appointment when—

(*a*) the appointee has provided the chairperson with a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act such as; and

(*b*) the chairperson is satisfied that the appointee has security for the proper performance of the office.

(3) The cost of the security is an expense of the liquidation.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the appointee—

(i) provided a statement of his being qualified to act as an insolvency practitioner in relation to the company under the Act;

(ii) consented to act; and

(iii) was appointed as liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also specify—

(*a*) which functions are to be exercised jointly; and

(*b*) which may be exercised by any of them.

(6) The chairperson shall deliver the certificate, as soon as it is reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) Not later than twenty-eight days from the liquidator's appointment, the liquidator shall deliver notice of the appointment to all creditors of the company.

Appointment of liquidator by the Court

103.—(1) This rule applies where the liquidator is appointed by the Court under section 151 of the Act.

(2) The Court's order shall not be issued until the appointee has filed with the Court a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act as such.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) state the capacity in which the applicant is making the application;

(*f*) identify the liquidator;

(*g*) state, that upon consideration of the evidence, it is ordered that the liquidator, having filed a statement of being qualified to act as an insolvency practitioner in relation to the company under the Act and of consenting to act as such, is appointed liquidator of the company; and

(*h*) state the date of the making of the order.

(4) Where two or more liquidators are appointed, the order shall also specify—

(*a*) which functions are to be exercised jointly; and

(*h*) which may be exercised by any of them.

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) The liquidator shall deliver the notice of the appointment to all creditors of the company, not later than twenty-eight days from the appointment.

Authentication of liquidator's appointment

104. A copy of the certificate of the liquidator's appointment, or a sealed copy of the Court's order appointing the liquidator, may be provided in any proceedings as proof that the person appointed is authorized to exercise the powers and perform the duties of liquidator in the company's winding-up of the company.

Liquidator's resignation

105.—(1) A liquidator may resign—

(*a*) on grounds of his ill health;

(*b*) if he ceases to practise as an insolvency practitioner;

(*c*) if there is some conflict of interest or change of personal circumstances which precludes or makes it impracticable for him to further discharge the duties of a liquidator; or

(*d*) where two or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before the liquidator resigns, he shall deliver a notice to the members of the company either inviting them to consider by correspondence or calling a meeting for them to consider whether a replacement should be appointed.

(3) The notice—

(*a*) shall state the liquidator's intention to resign;

(*b*) shall state the purpose of the notice; and

(*c*) may suggest the name of a replacement liquidator.

(4) The notice shall be accompanied by an account of the liquidator's administration of the winding-up of the company, including a progress report for the period—

(*a*) commencing with the later of the date of the liquidator's appointment, and the day after the end of the period of the last progress report; and

(*b*) ending with the day of the deadline for voting by correspondence or the date of the meeting.

(5) The date of the deadline or the meeting shall be not more than five business days before the date on which the liquidator intends to give notice.

(6) A new liquidator appointed in place of the liquidator who has resigned shall, in delivering the notice of appointment, also state that the previous liquidator has resigned.

(7) The liquidator who has resigned shall deliver the notice of resignation to the Registrar of Companies and the Director.

(8) The release of the liquidator who has resigned shall be effective from the date on which the liquidator delivers the notice of resignation to the Registrar of Companies and the Director.

Removal of liquidator by the Court

106.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing a liquidator to summon a company meeting for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon the delivery of the notice under subrule (2), the applicant may, by notice, within five business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under subrule (3), the Court may dismiss the application without a hearing.

(5) Unless the application is dismissed, the Court shall fix a date, time and venue for it to be heard.

(6) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(7) The applicant shall, at least fourteen days before the hearing, deliver to the liquidator a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(8) The costs of the application shall not be payable as an expense of the winding-up of the company unless the Court orders otherwise.

(9) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the liquidator;

(*f*) identify the company;

(*g*) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(10) The order of the Court may include such provision as the Court considers just relating to matters arising in connexion with the removal.

(11) Where the Court removes the liquidator—

(*a*) it shall deliver three copies of the order of removal to the former liquidator; and

(*b*) the former liquidator shall, as soon as reasonably practicable, deliver one copy of the order to the Registrar of Companies and the Director.

(12) Where the Court appoints a new liquidator, the provisions of rule 103 shall apply, *mutatis mutandis*.

Removal of liquidator by company meeting

107. A liquidator removed by a meeting of the company shall, as soon as it is reasonably practicable, deliver the notice of the removal to the Registrar of Companies and the Director.

Vacation of office of liquidator on completion of winding-up

108.—(1) The liquidator shall not deliver a notice under section 155 (3) of the Act to the Director, the Official Receiver and the Registrar of Companies until at least eight weeks after the final report on the winding-up of the company and the notice of the liquidator's intention to vacate office has been delivered to the members of the company.

(2) In addition to the standard contents, the notice shall state—

(*a*) that the liquidator has delivered the notice of intention to vacate office and the copy of the final report to all members; and

(*b*) the date of that notice.

(3) The notice shall be signed and dated by the liquidator.

(4) The notice to the Director, the Official Receiver and the Registrar of Companies shall be accompanied by the copy of the final report.

(5) Where a member has applied to the Court under rule 106 and delivered a copy of the application to the liquidator, the liquidator shall not deliver the notice of vacation of office under section 155 (3) of the Act until the application, including any appeal, has been disposed of and the liquidator has complied with any order of the Court.

Deceased liquidator

109.—(1) Where the liquidator dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) one of the company's directors; and

(*b*) the Director, the Official Receiver and the Registrar of Companies.

(2) The notice shall be delivered by one of the following—

(*a*) a partner in the deceased liquidator's firm if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased liquidator.

(3) Where the notice has not been delivered within twenty-eight days following the liquidator's death, then any other person may deliver the notice.

Liquidator's loss of qualification as insolvency practitioner

110.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner.

(2) The liquidator shall, upon ceasing to be qualified to act as an insolvency practitioner, or as soon as it is reasonably practicable, give notice to vacate the office of the liquidator of a company to the Director, the Official Receiver and the Registrar of Companies.

(3) The notice shall—

(*a*) identify and provide contact details for the former liquidator;

(*b*) identify the company;

(*c*) state that the former liquidator ceased to be a qualified insolvency practitioner with effect from the date stated in the notice; and

(*d*) be signed and dated by the former liquidator.

Power of the Court to set aside certain transactions entered into by liquidator

111.—(1) Where in dealing with a company a liquidator enters into any transaction with a person who is his associate, the Court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) Subrule (1) does not apply if the transaction was entered into with the prior approval of the Court.

(3) Nothing in this rule shall be taken as the proscription of any written law, common law or principles of equity relating to a liquidator's dealings with trust property or the fiduciary obligations of any person.

Rule against solicitation by, or on behalf of, liquidator

112.—(1) Where the Court is satisfied that any improper solicitation has been used by, or on behalf of, the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding-up of the company to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the Court under this rule overrides any resolution of the members, or any other provision of these Rules relating to the liquidator's remuneration.

Disclaimer

113.—(1) The liquidator may, by the giving of a notice to interested parties, disclaim any onerous property and may do so notwithstanding that—

(*a*) he has taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property of the company which is un-saleable, not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in, or in respect of, the property disclaimed; and

(*b*) does not, except as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this rule in respect of any property if—

(*a*) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and

(*b*) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the Court may allow, has expired without a notice of disclaimer having been given under this rule in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this rule shall be deemed a creditor of the company to the extent of the loss or damage and accordingly may prove the loss or damage in the winding-up of the company.

Notice of disclaimer

114.—(1) A liquidator's notice of disclaimer of property under rule 113 shall be headed "Notice of Disclaimer under Rule 113 of the Insolvency Rules" and shall—

(*a*) identify the company;

(*b*) contain such particulars of the property disclaimed as to enable it to be easily identified;

(*c*) identify and provide contact details for the liquidator;

(*d*) state that the liquidator of the company disclaims all the company's interest in the property; and

(*e*) be signed and dated by the liquidator.

(2) Where the property consists of land or buildings, the nature of the interest shall be stated in the notice.

(3) Where the property consists of land under the Registered Land Act, the notice shall state the registered title number and the registration area. Cap. 58:01

(4) The liquidator shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer, deliver a copy of the notice to—

(*a*) the Registrar of Companies; and

(*b*) the Chief Land Registrar or the Deeds Registrar, as the case may be, in the case of land.

Communication of disclaimer to interested persons

115.—(1) The liquidator shall serve any copies of a notice of disclaimer in respect of any interest in land within seven business days after the date of the notice of disclaimer.

(2) The liquidator shall, within seven business days after the date of a notice of disclaimer, deliver copies of the notice to every person who, to the liquidator's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer; or

(*c*) is a party to an unprofitable contract or has an interest under it and the disclaimer relates to such contract.

(3) Where it subsequently comes to the liquidator's knowledge that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the liquidator shall deliver a copy of the notice to that person, as soon as it is reasonably practicable.

(4) The liquidator is not required to deliver a copy of the notice under subrule (3) in the following circumstances—

(*a*) if the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) if the Court, on the liquidator's application, orders that delivery of a copy of the notice is not required in that particular case.

Powers of the Court

116.—(1) An application under this rule may be made to the Court by—

(*a*) any person who claims an interest in the disclaimed property; or

(*b*) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to subrules (3), (4) and (5), the Court may on the application make an order, on such terms as it considers fit, for the vesting of the disclaimed property in, or for, its delivery to—

(*a*) a person entitled to it or a trustee for such a person; or

(*b*) a person subject to such a liability as is mentioned in subrule (1) (*b*) or a trustee for such a person.

(3) The Court shall not make an order under subrule (2) (*b*) except where it appears to the Court that it would be just 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 rule shall be taken into account in assessing for the purpose of rule 113 (5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this rule vesting property in any person confers on that person interest in the property in equity pending the completion of a conveyance, an assignment or a transfer.

Application for exercise of the Court's powers under r. 116

117.—(1) Where a person becomes aware of a liquidator's notice of disclaimer or upon receiving a copy of the notice, he shall make an application under rule 116 within three months of becoming aware of, or receiving, the notice, whichever is the earlier.

(2) The applicant shall file with the application a sworn statement stating—

(*a*) whether the application is made as a claim of interest in the property or liability not discharged;

(*b*) the date on which the applicant received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and

(*c*) the grounds of the application and the order sought.

(3) On hearing the application, the Court may give directions as to any other persons to whom notice of the application and the grounds on which it is made should be delivered.

(4) The Court shall deliver sealed copies of any order made on the application to the applicant and the liquidator.

Application for, and appointment of, special manager

118.—(1) An application by the liquidator under section 132 of the Act for the appointment of a special manager shall be supported by a report setting out the reasons for the application verified by a sworn statement.

(2) The report shall include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The Court's order appointing a special manager shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state the name and postal address of the appointee as special manager;

(*d*) state that the evidence has been considered;

(*e*) order that the appointee is appointed as special manager of the company;

(*f*) give details of the special manager's responsibility over the company's business or property;

(*g*) specify the powers to be entrusted to the special manager;

(*h*) specify the time allowed for the special manager to give the required security for the appointment;

(*i*) state the duration of the special manager's appointment, being one of the following—

(i) for a fixed period stated in the order;

(ii) until the occurrence of a specified event; or

(iii) until the Court makes a further order;

(*j*) specify the special manager's remuneration; and

(*k*) state the date of the making of the order.

(4) The appointment of the special manager may be renewed or varied by order of the Court.

(5) The special manager's remuneration shall be fixed from time to time by the Court.

(6) The acts of the special manager shall be valid notwithstanding any defect in the special manager's appointment or qualifications.

(7) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Security

119.—(1) The appointment of the special manager shall not take effect until the person appointed has given, or if the Court allows undertaken to give, security to the applicant for the appointment.

(2) A person appointed as special manager may give security specifically for a particular winding-up of the company or generally for any winding-up of the company in relation to which that person may be appointed as special manager.

(3) The amount of the security—

(*a*) shall be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment; and

(*b*) may need to be varied in the course of the special manager's appointment, depending on the value of the assets under management.

(4) When the special manager has given security to the applicant, the applicant shall file with the Court a certificate as to the adequacy of the security.

(5) The cost of providing the security shall be paid in the first instance by the special manager, but the special manager is entitled to be reimbursed as an expense of the winding-up of the company, in the prescribed order of priority.

(6) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Failure to give, or keep up, security

120.—(1) Where the special manager fails to give the required security within the time stated in the order of appointment, or any extension of that time that may be allowed, the liquidator shall report the failure to the Court, which may discharge the order appointing the special manager.

(2) Where the special manager fails to keep up the security, the liquidator shall report the failure to the Court, which may remove the special manager, and make such an order as to costs, as it considers just.

(3) Where the Court discharges the order appointing the special manager, or makes an order removing the special manager, the Court shall give directions as to whether any, and if so what, steps shall be taken for the appointment of another special manager.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Special manager's accounts

121.—(1) The special manager shall produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts shall be for—

(*a*) each three month period for the duration of the special manager's appointment; or

(*b*) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the liquidator.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Termination of appointment of special manager

122.—(1) Where the liquidator thinks that the appointment of the special manager is no longer necessary or beneficial, the liquidator shall apply to the Court for directions, and the Court may order the special manager's appointment to be terminated.

(2) The liquidator shall also make such an application if the creditors pass a resolution requesting that the appointment of the special manager be terminated.

(3) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Arrangements

123.—(1) Where there has been an arrangement under section 153 of the Act and a distribution to members has taken place, the liquidator shall comply with subrule (2) in relation to any account or report to the company which the liquidator is required to prepare.

(2) In any account or summary of receipts and payments which is required to be included in the account or report, the liquidator shall—

(*a*) state the estimated value of the following during the period to which the account or report relates—

(i) the property transferred to the transferee;

(ii) the property received from the transferee; and

(iii) the property distributed to members; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

(3) For the purposes of section 153 (2) of the Act, the prescribed period shall be fourteen days.

Other distributions to members

124.—(1) Where there has been a distribution of property to members in its existing form other than under an arrangement under section 153 of the Act, the liquidator shall comply with subrule (2) in relation to any account or report which the liquidator is required to prepare.

(2) The liquidator shall in any account or summary of receipts and payments which is required to be included in the account or report—

(*a*) state the estimated value of the property distributed amongst the members of the company during the period to which the account or report relates; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

Division IV—Creditors' Voluntary Winding-up of the Company

Statement of affairs made out by the liquidator

125.—(1) This rule applies to the statement of affairs made by the liquidator under section 145 (1) of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a date which is stated, being the date of the opinion formed by the liquidator under section 145 (1) of the Act;

(*c*) state that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full, together with interest, within the period stated in the directors' declaration of solvency made under section 143 of the Act; and

(*d*) be verified by a sworn statement made by the liquidator and dated.

(3) The statement of affairs shall be delivered by the liquidator to the Director, the Official Receiver and the Registrar of Companies within five business days after the meeting of creditors summoned under section 145 (1) (*a*) of the Act, or if there is no meeting, as soon as it is reasonably practicable.

Statement of affairs made by the directors

126.—(1) This rule applies to the statement of affairs made by the directors under section 143 of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a specified date, being a date not more than fourteen days before the date of the resolution for winding-up of the company; and

(*c*) be verified by a sworn statement by the directors and dated.

(3) The directors shall deliver the statement of affairs to the liquidator at the company meeting at which the liquidator was appointed or as soon as it is reasonably practicable.

(4) The liquidator shall deliver the statement of affairs to the Director, the Official Receiver and the Registrar of Companies within five business days after the meeting of creditors under section 146 of the Act, or if there is no meeting as soon as it is reasonably practicable.

(5) The liquidator may require a director to deliver to the liquidator a statement of concurrence, verified by a sworn statement, stating that the director concurs with the statement of affairs.

(6) The director may make a qualified statement of concurrence where the director—

(*a*) is not in agreement with the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with the statement.

(7) The liquidator shall deliver a copy of any statement of concurrence to the Director, the Official Receiver and the Registrar of Companies.

Additional requirements as to statements of affairs

127. A statement of affairs under section 143 or 145 of the Act shall also contain—

(*a*) a list of the company's shareholders, with the following details about each shareholder—

(i) name and postal address;

(ii) the type of shares held;

(iii) the nominal amount of the shares held, if any;

(iv) the number of shares held;

(v) the amount per share called up;

(vi) the total amount of shares called up; and

(vii) the total amount of shares held by all shareholders;

(*b*) a summary of the assets of the company, setting out the book value and estimated realizable value of each of—

(i) the surplus of assets subject to a security interest over the amount required to discharge the security interest;

(ii) the uncharged assets; and

(iii) the total value of all the assets available for preferential creditors;

(*c*) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts;

(iii) the amount of debts secured by a security interest to the extent that the value of the security is insufficient to discharge the security interest;

(iv) the amount of unsecured debts, excluding preferential debts;

(v) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(vi) issued and called up capital; and

(vii) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*d*) a list of the company's creditors under a security interest, with the following details about each listed creditor—

(i) name and postal address of the creditor;

(ii) amount of the debt owed to the creditor;

(iii) details of any security held by the creditor;

(iv) the date the security interest was perfected; and

(v) the value of the security held by the creditor.

Expenses of statement of affairs

128.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 143 of the Act may be paid out of the company's assets, before or after the commencement of the winding-up of the company, as an expense or the winding-up of the company.

(2) Where the payment is made before the commencement of the winding-up of the company, the director presiding at the meeting of creditors held under section 146 of the Act shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 151 of the Act may make such a payment, but if there is a creditors' committee, the liquidator shall deliver to the committee at least five business days' notice of the intention to make it.

(4) A payment shall not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the creditors' committee, the creditors, or the Court.

(5) Subrules (1), (2), (3) and (4) are without prejudice to the Court's powers under voluntary winding-up of the company followed by winding-up of the company by the Court.

Expenses for assistance in preparing accounts

129.—(1) Where the liquidator requires a person to deliver accounts, the liquidator may, with the approval of the creditors' committee, if there is one, and as an expense of the winding-up of the company, employ someone to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance towards the expenses to be incurred in employing others to assist in preparing the accounts.

(3) A request for an allowance shall be accompanied by an estimate of the expenses involved.

(4) The liquidator may, with the approval of the creditors' committee, if there is one, authorize such an allowance, payable as an expense of the winding-up of the company.

Notice to creditors in a creditors' voluntary winding-up of the company

130.—(1) A liquidator who decides not to convene a creditors' meeting under section 146 of the Act, shall deliver a notice to all the creditors within fourteen days of being appointed by the company.

(2) The notice shall inform the creditors that the liquidator will remain in office unless ten per cent or more in value or in number of creditors vote against the liquidator continuing in office.

(3) The notice may also seek nominations for members of a creditors' committee.

(4) The deadline for voting shall be at least fourteen days after the date of the notice.

(5) The notice shall be accompanied by a copy of the statement of affairs or a summary and a statement by the liquidator of any material transactions relating to the company occurring between the date of the making of the statement of affairs and the date of the notice.

(6) The expenses of calling a meeting shall be expenses of the liquidation.

Information to creditors and contributories

131.—(1) The liquidator shall deliver to all the creditors and contributories within twenty-eight days of the deadline of a meeting of creditors, a notice which, in addition to the standard contents, shall—

(*a*) be accompanied by a statement of affairs or a summary when the notice is delivered to any creditor or contributory; and

(*b*) contain particulars of any objections to the liquidator remaining in office received in response to the notice under rule 130 and a report of the proceedings at any meeting which took place under section 146 of the Act.

(2) The liquidator may exclude from the estimates information the disclosure of which could seriously prejudice the commercial interests of the company.

(3) Where such information is excluded, then the estimates shall be accompanied by a statement to that effect.

Report by director, etc.

132.—(1) At a meeting held under section 146 of the Act, where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause a report, written or oral, to be made to the meeting on any material transactions relating to the company

occurring between the date of the making of the statement of affairs and the date of the meeting.

(2) The report shall be made by the director presiding at the meeting or by another person with knowledge of the relevant matters.

Resolutions in respect of appointment of liquidator

133.—(1) In the case of a resolution for the appointment of a liquidator—

(*a*) if on any vote there are two nominees for appointment, the person who obtains the most votes is appointed;

(*b*) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that person is appointed; and

(*c*) in any other case, the chairperson of the meeting shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson of the meeting may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of liquidator by creditors or by the company

134.—(1) This rule applies where a person is appointed as liquidator by a meeting of creditors or by a meeting of the company.

(2) The chairperson of the meeting shall only certify the appointment of the liquidator, where—

(*a*) the proposed liquidator ("the appointee") has provided the chairperson with evidence that he qualifies as an insolvency practitioner under the Act and he consents to act as the liquidator; and

(*b*) the appointee has provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The liquidator's appointment shall take effect upon the passing of a resolution for his appointment by the meeting of creditors or the meeting of the company.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the proposed liquidator, having provided evidence that he qualifies as an insolvency practitioner under the Act to be the liquidator of the company and having consented to act such, was appointed liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as the liquidator; and

(*b*) specify the circumstances, if any, in which the joint liquidators shall act together.

(6) The chairperson shall deliver the certificate, as soon as it is reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) It shall be the duty of the creditors' committee to review from time to time the adequacy of the liquidator's security for the proper performance of the office.

(8) The cost of the liquidator's security shall be an expense of the liquidation.

Appointment of liquidator by the Court

135.—(1) This rule applies where the liquidator is appointed by the Court under section 151 (1) and (2) of the Act.

(2) The Court shall only make an order where the proposed liquidator has filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the date on which it is made;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) state the capacity in which the applicant is making the application;

(*f*) identify the proposed liquidator; and

(*g*) state that, upon consideration of the evidence, it is ordered that the proposed liquidator, having filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator, is appointed liquidator of the company.

(4) Where two or more liquidators are appointed, the order shall additionally specify the circumstances, if any, in which the joint liquidators shall act together.

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) Within twenty-eight days from appointment, the liquidator shall—

(*a*) deliver the notice of appointment to all creditors of the company; or

(*b*) advertise the notice of appointment in accordance with any directions given by the Court.

Authentication of the liquidator's appointment

136. The following may be provided as proof in any proceedings that the person appointed is duly authorized to exercise the powers and perform the duties of a liquidator in the company's winding-up of the company—

(*a*) a copy of the certificate of the liquidator's appointment; or

(*b*) a sealed copy of the Court's order.

Appointment of liquidator to be advertised

137.—(1) A liquidator appointed in a voluntary winding-up of the company, in addition to giving notice of the appointment in accordance with section 161 of the Act, may advertise the notice in such other manner as the liquidator thinks fit.

(2) In addition to the standard contents, the notice shall state—

(*a*) that a liquidator has been appointed; and

(*b*) the date of the appointment.

(3) The liquidator shall initially bear the expense of giving the notice under this rule and shall be entitled to be reimbursed for the expenditure as an expense of the winding-up of the company.

Liquidator's resignation and replacement

138.—(1) Where a liquidator intends to resign, rule 105 shall apply, *mutatis mutandis*, to his intention to resign.

(2) The date of the deadline or of the meeting under subrule (1) shall be not more than five business days before the date on which the liquidator intends to give notice to the Director, and a copy of the notice to the Registrar of Companies and the Official Receiver as required under section 161 of the Act.

(3) The resigning liquidator's release is effective from the date of delivery of the notice of resignation to the Director, and a copy of that notice to the Registrar of Companies and the Official Receiver.

Removal of liquidator by creditors' meeting

139.—(1) Where a creditors' meeting resolves that the liquidator be removed, the chairperson of the meeting shall, as soon as it is reasonably practicable, deliver the certificate of the liquidator's removal—

(*a*) to the new liquidator; or

(*b*) to the Director, the Official Receiver and the Registrar of Companies if another liquidator was not appointed at the meeting.

(2) The new liquidator shall deliver the certificate to the Director, the Official Receiver and the Registrar General, as soon as it is reasonably practicable.

Advertisement of resignation or removal of liquidator

140. A new liquidator, who is appointed in place of the person who has resigned or been removed, shall, in giving notice of the appointment, state whether the liquidator's predecessor has resigned or been removed and, if it be the case, has been released.

Removal of liquidator by the Court

141.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon delivery of the notice under subrule (2), the applicant may, by notice, within five business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under subrule (3), the Court may dismiss the application without a hearing.

(5) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(6) The applicant shall, at least fourteen days before the hearing, deliver to the liquidator a notice stating the date, time and venue and with a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(7) The costs of the application are not payable as an expense of the winding-up of the company, unless the Court orders otherwise.

(8) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the liquidator;

(*f*) identify the company; and

(*g*) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(9) The Court shall deliver two sealed copies of the order to the liquidator.

Deceased liquidator

142.—(1) Where a liquidator dies, a notice to the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the creditors' committee or a member of that committee; and

(*b*) the Director;

(*c*) the Official Receiver; and

(*d*) the Registrar of Companies.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased liquidator's firm, if the deceased was a partner in, or an employee of, a firm;

(*b*) a personal representative of the deceased liquidator.

(3) Where such a notice has not been delivered within twenty-eight days following the liquidator's death, then any other person may deliver the notice.

Liquidator's duties on vacating office

143. A liquidator who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner shall, as soon as it is reasonably practicable, deliver to the successor liquidator—

(*a*) the assets, after deduction of any expenses properly incurred and distributions made by the previous liquidator;

(*b*) the records of the winding-up of the company, including correspondence, proofs and other documents relating to the company reorganization while it was within the liquidator's responsibility; and

(*c*) the company's documents and other records.

Application by liquidator for release

144.—(1) A liquidator's application to the Court for release under section 125 of the Act shall—

(*a*) identify and provide contact details for the liquidator;

(*b*) identify the company;

(*c*) provide details of the circumstances under which the liquidator has ceased to act as liquidator and any other information required by the Act;

(*d*) state that the liquidator of the company is applying to the Court for a certificate of release as liquidator as a result of the circumstances specified in the application; and

(*e*) be signed and dated by the liquidator.

(2) The Court shall deliver a copy of the order for release to the Director, the Registrar of Companies and the Official Receiver within seven days of the making of the order of release.

(3) When the Court releases the liquidator, the Director shall certify the release and deliver the certificate to the Registrar of Companies and the Official Receiver.

Court's powers to set aside certain transactions

145. Rule 111 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of a company.

Rule against solicitation

146. Rule 112 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of a company.

General powers of liquidator

147.—(1) A permission given by—

(*a*) the creditors' committee, or if there is no such committee, a meeting of the company's creditors; or

(*b*) under these Rules,

shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value need not enquire whether permission under subrule (1) has been given.

(3) Where the liquidator has done anything without such permission, the Court or the creditors' committee may ratify what the liquidator has done, but neither shall do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

General rule as to priority

148.—(1) All fees, costs, charges and other expenses incurred in the course of the winding-up of a company are to be treated as expenses of the winding-up.

(2) The expenses of the winding-up of the company are payable out of—

(*a*) assets of the company available for the payment of general creditors, including proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*b*) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*c*) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure; and

(*d*) payments made as a result of a settlement of any such action, arrangement or procedure *in lieu* of, or before, any judgment being given or award being made.

(3) Unless provided otherwise, the expenses shall be payable in the following order of priority—

(*a*) expenses which are properly chargeable or incurred by the liquidator in preserving, realizing or getting in any of the assets of the company or otherwise in the preparation or conduct of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(*b*) the cost of any security provided by the liquidator or special manager under the Act or these Rules;

(*c*) the remuneration of the special manager, if any;

(*d*) any amount payable to a person employed or authorized to assist in the preparation of a statement of affairs or of accounts;

(*e*) the costs of employing a secretary, on the application of the liquidator;

(*f*) any necessary disbursements by the liquidator in the course of the company reorganization, including any expenses incurred by members of the creditors' committee or their representatives and allowed by the liquidator;

(*g*) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorized by or under the Act or these Rules;

(*h*) the remuneration of the liquidator;

(*i*) the amount of any tax on chargeable gains accruing on the realization of any asset of the company, irrespective of the person by whom the realization is effected; and

(*j*) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding-up of the company.

Division V—Examination of Company Officers and Others

Application and order for examination

149.—(1) This rule applies to an application by a liquidator to the Court under section 159 (3) of the Act for the examination of any person.

(2) An application relating to a person falling within section 159 (3) of the Act shall be accompanied by a report by the liquidator indicating—

(*a*) the grounds on which the person is supposed to fall within section 159 (3) of the Act; and

(*b*) whether the liquidator thinks it is likely that the order can be served on the person at a known address and, if so, by what means.

(3) The order shall be headed "Order of Examination" and shall—

(*a*) identify the proceedings;

(*b*) state that, upon the application of the liquidator and upon consideration of the evidence, it is ordered that the person specified in the order do attend the venue specified in the order for the purpose of being examined;

(*c*) state the name and postal address of the person to be examined;

(*d*) state the date, time and venue for the examination;

(*e*) state the date of the making of the order; and

(*f*) contain a warning to the person to be examined stating that if the person fails, without reasonable excuse, to attend the examination at the time and place specified in the order, the person shall be in contempt of Court and liable to be committed to prison or fined.

(4) As soon as it is reasonably practicable, after the Court makes the order, the Official Receiver shall serve a copy of the Court's order on the person to be examined.

(5) Where the report accompanying an application relating to a person falling within section 159 (3) of the Act states that the liquidator

thinks that there is no reasonable certainty that the order can be served at a known address, the Court may direct that the order be served by some alternative means other than, or in addition to, such service.

(6) The Court shall rescind an order for examination made on an application to which subrule (3) relates if the Court is satisfied that the person does not fall within section 159 (3) of the Act.

Notice of hearing

150.—(1) The liquidator shall give at least fourteen days' notice of the hearing—

(*a*) to the Official Receiver and the Director;

(*b*) to the special manager, if a special manager has been appointed; and

(*c*) to every creditor and contributory of the company who is known to the Official Receiver subject to any contrary direction of the Court.

(2) Where the liquidator thinks fit, the notice of the hearing—

(*a*) shall be published in the *Gazette*;

(*b*) shall be advertised in two daily newspapers of wide circulation; and

(*c*) may be advertised in such other manner as the liquidator thinks fit, not less than fourteen days before the date fixed for the hearing.

(3) In addition to the standard contents, the notice of the hearing shall state—

(*a*) the purpose of the hearing; and

(*b*) the venue, date and time for the hearing.

(4) Where the notice of hearing relates to a person falling within section 159 (3) of the Act, unless the Court directs otherwise, the notice shall not be published under subrule (3) until at least five business days have elapsed since the examinee was served with the notice.

Request by creditors or contributories for a public examination

151.—(1) This rule applies to a request made to the liquidator by a creditor or contributory for the public examination of a person.

(2) A request by a creditor shall be accompanied by—

(*a*) a list of the creditors concurring with the request and the amounts of their respective claims in the winding-up of the company, with their respective values; and

(*b*) from each concurring creditor, confirmation of the concurrence.

(3) A request by a creditor shall—

(*a*) identify the company;

(*b*) state the name and postal address of the creditor;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the creditor requests the Official Receiver to apply to the Court for a public examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the amount of the creditor's claim in the winding-up of the company;

(*g*) state that the total amount of the creditors and the concurring creditors' claims is believed to represent not less than one-half in value of the debts of the company in relation to total debts;

(*h*) state that the creditor understands the requirement to deposit with the liquidator such sum as the Official Receiver may determine to be appropriate by way of security for the expenses of holding a public examination;

(*i*) state that the creditor believes that a public examination is required for the reason stated in the request; and

(*j*) be signed and dated by the creditor.

(4) A request by a contributory shall be accompanied by—

(*a*) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and

(*b*) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

(5) A request by a contributory shall—

(*a*) identify the company;

(*b*) state the name and postal address of the contributory;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the requisitioning contributory requests the Official Receiver to apply to the Court for an examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the number of shares held in the company by the requisitioning contributory;

(*g*) state the number of votes to which the requisitioning contributory is entitled to;

(*h*) state that the total amount of the contributories and concurring contributories' shares and votes is believed to represent not less than three-quarters in value of the company's contributories;

(*i*) state that the requisitioning contributory understands the requirement to deposit with the Official Receiver, such sum as the Official Receiver may determine to be appropriate, by way of security for the expenses of holding a public examination;

(*j*) state that the requisitioning contributory believes that a public examination is required for the reason specified in the request; and

(*k*) be signed and dated by the requisitioning contributory.

(6) A request for an examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding, is, by itself, sufficient.

(7) Before an application to the Court is made on the request, the requisitioning contributory shall deposit with the liquidator such sum of money, as the liquidator may determine to be appropriate, by way of security for the expenses of the hearing of an examination, if ordered.

(8) The liquidator shall make the application to the Court required by section 159 (3) of the Act within twenty-eight days of receiving the request, unless the liquidator thinks the request is unreasonable in the circumstances.

(9) Where the liquidator applies without notice to any other party to be relieved of the obligation and the Court makes such an

order, then the liquidator shall give notice of the order, as soon as it is reasonably practicable, to the creditors or contributories who requested the examination.

(10) Where the Court dismisses the liquidator's application, the Official Receiver shall make the application under section 160 of the Act, as soon as it is reasonably practicable.

Examinee unfit for examination

152.—(1) Where the examinee is a person who lacks capacity or is unfit to undergo or attend for examination, the Court may—

(*a*) stay the order for the examinee's examination; or

(*b*) direct that it shall be conducted in such manner and at such place as it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malaŵi or elsewhere to manage the affairs of, or to represent, the examinee;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the liquidator.

(3) Where the application is made by a person other than the liquidator, then—

(*a*) the application shall, unless the examinee is a person who lacks capacity, be supported by a sworn statement of a registered medical practitioner as to the examinee's mental and physical condition;

(*b*) at least five business days' notice of the application shall be given to the liquidator; and

(*c*) before any order is made on the application, the applicant shall deposit with the liquidator such sum of money, as the liquidator certifies to be necessary for the additional expenses of an examination.

(4) The order shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state name and postal address of the examinee;

(*d*) state the date of the order for the examinee's examination ("the original order");

(*e*) state that, upon consideration of the evidence, the Court is satisfied that the examinee specified in the order lacks capacity to manage and administer the examinee's property and affairs or is unfit to undergo a public examination;

(*f*) order that—

(i) the original order be stayed on the grounds that the examinee is unfit to undergo a public examination; or

(ii) the original order be varied, as specified in this order, on the grounds that the examinee is unfit to attend the public examination fixed by the original order; and

(*g*) state the date of the making of the order.

(5) Where a person other than the liquidator makes the application, the Court may order that some or all of the expenses of the examination shall be payable out of the deposit, instead of as an expense of the winding-up of the company.

(6) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing

153.—(1) The examinee shall at the hearing—

(*a*) be examined on oath; and

(*b*) answer all such questions as the Court may put, or allow to be put, to the examinee.

(2) The examinee may, at the examinee's own expense, engage a legal practitioner, who may put to the examinee such questions as the Court may allow for the purpose of enabling the examinee to explain or qualify any answers given by the examinee, and may make representations on behalf of the examinee.

(3) The Court shall have a record made of the examination such as the Court considers appropriate.

(4) The record may, in any proceedings, whether under the Act or otherwise, be used as evidence of any statement made by the examinee in the course of the examination.

(5) Where criminal proceedings have been instituted against the examinee, and the Court is of the opinion that the continuation of the hearing would prejudice a fair trial of those proceedings, the hearing may be adjourned.

Adjournment of examination

154.—(1) The Court may adjourn the examination from time to time, to a fixed date or generally.

(2) Where the examination has been adjourned generally, the Court may at any time on the application of the Official Receiver, or of the examinee, 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) An order adjourning the examination to a fixed date will contain a warning to the person being examined stating that if the person fails without reasonable excuse to attend the public examination at the venue, date and time specified in the order, the person shall be in contempt of court and liable to be committed to prison or fined.

(4) Where an application to resume an examination is made by the examinee, the Court may grant the resumption on terms that the examinee shall pay the expenses of giving the notices required by subrule (2) and that, before the venue, date and time for the resumed public examination is fixed, the examinee shall deposit with the liquidator such sum of money, as the liquidator considers necessary, to cover those expenses.

Expenses of examination

155. Where an examination of the examinee has been ordered by the Court on a creditor's or contributory's requisition, the Court may order that some or all of the expenses of the examination shall be paid out of the deposit, instead of as an expense of the winding-up of the company.

Division VI—Miscellaneous Provisions

Application to Court for order authorizing return

156.—(1) This rule applies where the liquidator intends to apply to the Court for an order authorizing a return of capital.

(2) The application shall be accompanied by a list of the persons to whom the return is to be made.

(3) The list shall include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.

(4) Where the Court makes an order authorizing the return of capital, it shall deliver a sealed copy of the order to the liquidator.

Procedure for return of capital

157.—(1) The liquidator shall inform each person to whom a return of capital is made of the rate of return of capital per share, and whether it is expected that any further return of capital shall be made.

(2) Any payments made by the liquidator by way of the return of capital may be delivered by post, unless for any reason, another method of making the payment has been agreed with the payee.

PART V

BANKRUPTCY AND ALTERNATIVES

Division I—Bankruptcy Process

Statutory demand

158.—(1) A statutory demand under section 190 of the Act shall—

(*a*) identify the debtor;

(*b*) state the name and address of the creditor;

(*c*) state the amount of the debt, being not less than K100,000 and the consideration for it, or, if there is no consideration, the way in which it arises;

(*d*) if founded on a judgment or order of the Court, it shall give details of the judgment or order;

(*e*) state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt; and

(*f*) be dated and signed by the creditor or a person who is authorized to make the statutory demand on the creditor's behalf.

(2) A statutory demand which is signed by an authorized person shall state that the person is authorized to make the demand on the creditor's behalf.

(3) Where the amount claimed in the statutory demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the debtor as a liability of the debtor; 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.

(4) The amount claimed in the statutory demand for charges referred to in subrule (3) shall be limited to the amount which has accrued and due at the date of the demand.

(5) Where the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but the statutory demand shall—

(*a*) specify the nature of the security, and the value which the creditor puts upon it at the date of the statutory demand; and

(*b*) claim payment of the full amount of the debt, less the specified value of the security.

(6) For the purposes of—

(*a*) section 192 (4) of the Act, the number of days shall be twenty-one days; and

(*b*) section 192 (2) (*a*) of the Act, the number of days shall be forty-two days.

Further information to be given in the statutory demand

159.—(1) The statutory demand shall explain the following matters to the debtor—

(*a*) the purpose of the demand;

(*b*) that if the debtor does not comply with the demand, bankruptcy proceedings may be commenced;

(*c*) the date by which the debtor shall comply with the demand, if that consequence is to be avoided;

(*d*) the methods of compliance which are open to the debtor;

(*e*) the debtor's right to apply to the Court for the demand to be set aside;

(*f*) that any application to set aside the demand shall be made within eighteen days of service of the demand on the debtor; and

(*g*) that if the debtor does not apply to set aside the demand within eighteen days or otherwise deal with the demand within twenty-one days after its service on the debtor, the debtor may be made bankrupt and the debtor's property and goods taken away.

(2) A demand shall name one or more individuals with whom the debtor may communicate with a view to—

(*a*) securing or compounding for the debt to the satisfaction of the creditor; or

(*b*) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

(3) The postal address and telephone number, if any, of the named individual shall be given to the creditor.

(4) The prescribed amount for the purposes of section 188 (4) of the Act shall be K100,000.

Service of statutory demand

160. Unless the Court directs otherwise, a statutory demand shall be served personally.

Proof of service of statutory demand

161.—(1) Where section 188 of the Act requires a statutory demand to be served before the petition, a certificate proving service of the demand shall be filed with the Court together with the petition.

(2) The certificate shall be verified by a sworn statement and be accompanied by a copy of the statutory demand served.

(3) Where the statutory demand has been served personally on the debtor, the certificate shall be signed by the person who served it unless service has been acknowledged in writing by the debtor or a person authorized to accept service of the statutory demand on behalf of the debtor.

(4) Where service of the statutory demand has been acknowledged in writing by—

(*a*) the debtor; or

(*b*) a person who is authorized to accept service of the statutory demand on behalf of the debtor and who has stated that this is the case in the acknowledgement of service,

then the certificate shall be signed by the creditor or by a person acting on behalf of the creditor, and the acknowledgement of service shall accompany the certificate.

(5) Where the Court has directed that the statutory demand be served other than personally and there is no acknowledgement of service, the certificate shall be signed by a person or persons having direct personal knowledge of the means adopted for serving the statutory demand, and shall contain the following information—

(*a*) particulars of the Court's direction for alternative service;

(*b*) the steps taken to serve the statutory demand in accordance with the Court's direction; and

(*c*) a date by which, to the best of the knowledge and belief of the person authenticating the certificate, the statutory demand shall have come to the debtor's attention.

(6) Where the certificate referred to in subrule 5 (*c*) specifies such a date then, unless the Court orders otherwise, the statutory demand is deemed to have been served on the debtor on that date for the purposes of these Rules.

Application to set aside statutory demand

162.—(1) The debtor may apply to the Court for an order setting aside a statutory demand.

(2) The application shall be made within eighteen days from the date of the service of the statutory demand.

(3) The application shall—

(*a*) identify the debtor;

(*b*) state that the application is for an order that the statutory demand be set aside;

(*c*) state the date of the statutory demand; and

(*d*) be dated and signed by the debtor, or by a person authorized to act on behalf of the debtor.

(4) The time within which the debtor shall comply with the statutory demand ceases to run starting from the date on which the application to set aside the statutory demand is filed with the Court, subject to any order of the Court.

(5) The debtor's application shall be accompanied by a copy of the statutory demand, where it is in the debtor's possession, and supported by a sworn statement containing the following—

(*a*) the date on which the debtor became aware of the statutory demand;

(*b*) the grounds on which the debtor claims that it should be set aside; and

(*c*) any evidence in support of the application.

Hearing of application to set aside statutory demand

163.—(1) On receipt of an application to set aside a statutory demand, the Court may, if satisfied that no sufficient cause is shown for the demand, dismiss the demand without giving notice to the creditor.

(2) Where the application to set aside the statutory demand has been dismissed by the Court, the time for complying with the demand

runs again starting from the date on which the application has been dismissed.

(3) Unless the application is dismissed for no sufficient cause, the Court shall fix the date, time and venue for it to be heard, and shall give at least five business days' notice to—

(*a*) the debtor or, if the debtor's application was made by a legal practitioner acting on behalf of the debtor, to the legal practitioner;

(*b*) the creditor; and

(*c*) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand.

(4) The Court may grant the application if—

(*a*) the debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt specified in the statutory demand;

(*b*) the debt is disputed on grounds which appear to the Court to be substantiated;

(*c*) it appears that the creditor holds security in relation to the debt claimed by the statutory demand, and the Court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(*d*) the Court is satisfied, on other grounds, that the statutory demand ought to be set aside.

(5) An order setting aside a statutory demand shall—

(*a*) identify the debtor;

(*b*) state the date of the hearing of the application;

(*c*) state that the evidence has been considered;

(*d*) state the date of the statutory demand;

(*e*) order that the statutory demand be set aside;

(*f*) contain details of any further order in the matter; and

(*g*) state the date of the making of the order.

(6) Where the creditor holds some security in relation to the debt, but the Court is satisfied that the statutory demand undervalues the

security, the creditor may be required to amend the demand without prejudice to the creditor's right to represent the bankruptcy petition by reference to the statutory demand as amended.

(7) Where the Court dismisses the application to set aside the statutory demand, it shall make an order authorizing the creditor to present a bankruptcy petition, as soon as it is reasonably practicable, or on, or after, a date specified in the order.

(8) The Court shall deliver a copy of the order to the creditor, as soon as it is reasonably practicable.

Contents of petition

164. The petition shall state—

(*a*) the name and postal address of the petitioner;

(*b*) where the petitioner is represented by a legal practitioner, the name, postal address and telephone number of the legal practitioner;

(*c*) that the petitioner requests that the Court make a bankruptcy order against the debtor; and

(*d*) any other matter prescribed by the Act.

Identification of debtor

165.—(1) The petition shall state the following matters about the debtor, so far as they are within the petitioner's knowledge—

(*a*) the debtor's identity information;

(*b*) the occupation of the debtor, if any;

(*c*) the name or names in which the debtor carries on business, if other than the name of the debtor, and whether, in the case of any business of a specified nature, the debtor carries it on alone or with others;

(*d*) the nature of the debtor's business, and the address or addresses at which it is carried on;

(*e*) any name or names, other than the name of the debtor, in which the debtor has carried on business at, or after, the time when the debt was incurred, and whether the debtor has done so alone or with others;

(*f*) any address or addresses at which the debtor has resided or carried on business at or after that time, and the nature of that business; and

(*g*) whether the debtor's centre of main business interests is in or outside Malaŵi.

(2) The particulars of the debtor given under this rule shall determine the title of the proceedings.

(3) Where to the petitioner's knowledge, the debtor has used any name other than the one specified under subrule (1) (*a*), that fact shall be stated in the petition.

Identification of debt

166.—(1) The petition shall, for each debt in relation to which it is presented, state—

(*a*) the amount of the debt, the consideration for it, or, if there is no consideration, the way in which it arises, and the fact that it is owed to the petitioner;

(*b*) when the debt was incurred and became due for payment;

(*c*) if the amount of the debt includes any charge by way of interest not previously notified to the debtor as a liability of the debtor, the amount and rate of the charge, separately identified;

(*d*) if the amount of the debt includes any other charge accruing from time to time, the amount and rate of the charge, separately identified;

(*e*) the grounds on which any such a charge is claimed to form part of the debt, provided that the amount or rate shall, in the case of a petition based on a statutory demand, be limited to that claimed in the demand;

(*f*) that the debt is unsecured or that where the claim is secured, the amount of the claim and the estimated value of the security; and

(*g*) that the debt is for a liquidated sum payable—

(i) immediately, and the debtor appears to be unable to pay it; or

(ii) at some certain, future time, that time to be specified, and the debtor appears to have no reasonable prospect of being able to pay it.

(2) Where the debt is one for which a statutory demand has been served on the debtor under section 190 of the Act, the petition shall—

(*a*) specify the date and manner of service of the statutory demand; and

(*b*) state that, to the best of the creditor's knowledge and belief—

(i) the demand has been neither complied with nor set aside in accordance with these Rules; and

(ii) no application to set aside the demand is outstanding.

(3) Where the case is one of an unsatisfied execution or process in respect of a judgment debt, a warrant of distress, a garnishee order, a charging order or any other means of enforcement of judgment, the petition shall state which Court and the Registry issued the execution or other process and give particulars of the return.

Verification of petition

167.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition relates to debts to different creditors, the debt to each creditor shall be separately verified.

(3) A sworn statement which is not contained in, or endorsed upon, the petition which it verifies, shall identify the petition to which it refers and shall contain—

(*a*) the name of the debtor;

(*b*) the name of the petitioner; and

(*c*) the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be sworn by—

(*a*) the petitioner or, if there are two or more petitioners, any one of them;

(*b*) a person such as a director, company secretary or similar company officer, or a legal practitioner, who has been concerned with the matters giving rise to the presentation of the petition; or

(*c*) a responsible person who is duly authorized to swear the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the sworn statement shall state—

(*a*) the name and postal address of the person swearing the sworn statement;

(*b*) the capacity in which, and the authority by which, the person swears the sworn statement; and

(*c*) the means of the authenticating person's knowledge of the matters verified.

(6) Where the petition is based on a statutory demand and more than forty-two days have elapsed between the service of the demand and the presentation of the petition, the sworn statement shall explain the reasons for the delay.

Court in which petition is to be presented

168.—(1) Where there is in force for the debtor an individual voluntary arrangement under the Act, the petition shall be presented to the Court to which—

(*a*) the nominee's report under section 256 of the Act was submitted; or

(*b*) where a nominee has made a report under section 257 of the Act, an application has been made.

(2) The petition shall contain sufficient information to establish that it is presented in the appropriate Court.

Procedure for presentation and filing

169.—(1) The following copies of the petition shall also be filed with the Court with the petition—

(*a*) one copy for service on the debtor;

(*b*) one copy for service on the Director;

(*c*) one copy for service on the Official Receiver; and

(*d*) if there is in force for the debtor an individual voluntary arrangement under the Act, and the petitioner is not the supervisor of the individual voluntary arrangement, one copy for the supervisor.

(2) The date and time of filing the petition shall be endorsed on the petition and on the copies.

(3) The Court shall fix the date, time and venue for hearing the petition, and the date, time and venue shall also be endorsed on the petition and the copies.

(4) Each copy of the petition shall have the seal of the Court applied to it and shall be delivered to the petitioner.

Death of debtor before service

170. Where the debtor dies before service of the petition, the Court may order service to be effected on the debtor's personal representative, or on such other person as it considers just.

Amendment of petition

171. The petition may, with the Court's permission, be amended at any time after presentation.

Security for costs

172.—(1) This rule applies where the debt is a liquidated sum payable at some future time, where the petitioner claims that the debtor appears to have no reasonable prospect of being able to pay the debt.

(2) The debtor may apply for an order that the petitioning creditor gives security for the debtor's costs.

(3) The nature and amount of the security to be ordered shall be in the Court's discretion.

(4) Where an order for security is made, then the petition shall not be heard until the whole amount of the security has been given to the satisfaction of the Court.

Debtor's notice of opposition to petition

173.—(1) A debtor who intends to oppose the making of a bankruptcy order shall not less than five business days before the day fixed for the hearing—

(*a*) file a notice with the Court; and

(*b*) deliver a copy of the notice to the petitioning creditor or his legal practitioner.

(2) The notice shall—

(*a*) identify the proceedings;

(*b*) state that the debtor intends to oppose the making of a bankruptcy order;

(*c*) state the grounds on which the debtor opposes the making of the order; and

(*d*) be signed and dated by the debtor or by a person authorized to act on behalf of the debtor.

Notice by creditors intending to appear

174.—(1) A creditor who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and postal address of the creditor, and any telephone number and reference which may be required for communication with that creditor or with any other person specified in the notice as authorized to speak or act on behalf of the creditor;

(*b*) the date of the presentation of the bankruptcy petition and a statement that the notice relates to that petition;

(*c*) the date of the hearing of the petition;

(*d*) the amount and nature of the debt due from the debtor to the creditor;

(*e*) whether the creditor intends to support or oppose the petition;

(*f*) where the creditor is represented by a legal practitioner or other agent, the name, postal address, telephone number and reference number if any, of that person and details of that person's position with, or relationship to, the creditor; and

(*g*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or his legal practitioner at the address provided by the petitioner or his legal practitioner as the address for service.

(5) The notice shall be delivered so as to reach the petitioner or his legal practitioner not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

175.—(1) The petitioner shall prepare for the Court a list of the creditors who have delivered a notice of their intention to appear.

(2) The list shall contain—

(*a*) the date of the presentation of the bankruptcy petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors listed have delivered notice that they intend to appear at the hearing of the petition;

(*d*) the name and address of each creditor who has delivered notice of intention to appear;

(*e*) the amount owed to each such creditor;

(*f*) the name and postal address of any legal practitioner for a creditor listed; and

(*g*) whether each creditor listed intends to support the petition, or to oppose it.

(3) On the day appointed for hearing the petition, a copy of the list shall be handed to the Court before the hearing commences.

(4) Where the Court gives a creditor permission to appear, the petitioner shall add that creditor to the list with the same particulars.

Hearing of petition

176.—(1) Subject to subrule (2), the petition shall not be heard until at least fourteen days have elapsed since it was served on the debtor.

(2) The Court may, on such terms as it considers just, hear the petition at an earlier date, if it appears that the debtor has absconded, or the Court is satisfied that it is a proper case for an expedited hearing, or the debtor consents to a hearing within the fourteen days.

(3) The following persons may appear and be heard—

(*a*) the petitioning creditor;

(*b*) the debtor;

(*c*) the supervisor of any individual voluntary arrangement in force for the debtor; and

(*d*) any creditor who has delivered notice to be heard.

Postponement of hearing

177.—(1) The petitioner may, if the petition has not been served, apply to the Court to appoint another day for the hearing.

(2) The application shall state the reasons why the petition has not been served.

(3) No costs of the application shall be allowed in the proceedings except by order of the Court.

(4) Where the Court appoints another day for the hearing, the petitioner shall, as soon as it is reasonably practicable, deliver notice of that day to any creditor who delivered notice of intention to appear.

Adjournment of the hearing

178.—(1) This rule applies where the Court adjourns the hearing of a bankruptcy petition.

(2) The order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) a statement that the evidence has been considered;

(*c*) an order that the further hearing of the petition be adjourned to the date, time; and

(*d*) the date of the making of the order.

(3) Unless the Court otherwise directs, the petitioner shall, as soon as it is reasonably practicable, deliver a notice of the order of adjournment to—

(*a*) the debtor; and

(*b*) any creditor who has delivered a notice of intention to appear but was not present at the hearing.

(4) The notice of the order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) the date the order of adjournment was made; and

(*c*) the date, time and venue for the adjourned hearing.

Decision on the hearing

179.—(1) On the hearing of the petition, the Court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, secured or compounded for.

(2) Where the petition is brought in relation to a judgment debt, or a sum ordered by any Court to be paid, the Court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

(3) An order dismissing a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the presentation of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petition be dismissed or that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*h*) the date of the making of the order.

Non-appearance of creditor

180. A petitioning creditor who fails to appear on the hearing of the petition shall not present a petition alone or jointly with any other person against the same debtor in respect of the same debt

without the permission of the Court to which the previous petition was presented.

Petitioner seeking permission to withdraw

181.—(1) Where the petitioner applies to the Court for permission to withdraw the petition, the petitioner shall file with the Court a sworn statement specifying the grounds of the application and the circumstances in which it is made if—

(*a*) a creditor of the debtor has delivered notice of intention to appear at the hearing of the petition; or

(*b*) the Court so orders.

(2) Where any payment has been made to the petitioner since the petition was filed by way of settlement, in whole or in part, of the debt or any arrangement has been entered into for securing or compounding the debt, the sworn statement shall also state—

(*a*) what dispositions of property have been made for the purposes of the settlement or arrangement;

(*b*) whether, in the case of any disposition, it was property of the debtor, or of some other person; and

(*c*) whether, if it was property 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 permission to withdraw a petition shall be given before the petition has been heard.

(4) The order of permission to withdraw a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the filing of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*h*) the date of the making of the order.

Contents of bankruptcy order

182. The bankruptcy order shall identify the proceedings and state—

(*a*) the name and address of the petitioning creditor;

(*b*) the date of the presentation of the petition;

(*c*) the description of the debtor as set out in the petition;

(*d*) that upon reading the evidence it is ordered that the person named be adjudged bankrupt; and

(*e*) the date and time of the making of the order.

Delivery and notice of bankruptcy order

183.—(1) As soon as it is reasonably practicable, after making a bankruptcy order, the Court shall deliver two sealed copies of the order to the Official Receiver.

(2) The Official Receiver shall, as soon as it is reasonably practicable, deliver a sealed copy of the order to the bankrupt.

(3) On receipt of the sealed copies of the bankruptcy order, the Official Receiver shall, as soon as it is reasonably practicable—

(*a*) cause notice of the order to be published in the *Gazette*; and

(*b*) may cause a notice of the order to be advertised in such other manner as the Official Receiver thinks fit.

(4) In addition to the standard contents, the notice to be published in the *Gazette* and any notice to be advertised shall state—

(*a*) that a bankruptcy order has been made against the bankrupt;

(*b*) the date and time of making of the bankruptcy order;

(*c*) the name and address of the petitioning creditor; and

(*d*) the date of presentation of the petition.

(5) The Court may, on the application of the bankrupt or a creditor, order the Official Receiver to suspend action under subrule (3) pending a further order of the Court.

(6) An application under subrule (5) shall be supported by a sworn statement stating the grounds on which it is made.

(7) Where an order to suspend an action under subrule (3) is made, the applicant shall deliver a copy of the order to the Official Receiver, as soon as it is reasonably practicable.

Expenses of individual voluntary arrangement

184. Where a bankruptcy order is made on a debtor's application and there is in force at the time of the application an individual voluntary arrangement under the Act, any expenses properly incurred as expenses of the company reorganization of the individual voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Official Receiver and trustee in bankruptcy

185.—(1) A qualified insolvency practitioner may perform any functions of the Official Receiver and shall be designated "Trustee of a Bankrupt Estate".

(2) The Court or creditors may appoint a trustee in bankruptcy in place of the Official Receiver.

Remuneration of interim receiver

186.—(1) The remuneration of an interim receiver, other than the Official Receiver, shall be fixed by the Court from time to time on application of the interim receiver.

(2) In fixing the remuneration of the interim receiver, the Court shall take into account—

(*a*) the time properly given by the interim receiver and staff of the interim receiver in attending to the debtor's affairs;

(*b*) the complexity of the case;

(*c*) any respects in which, in connexion with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree;

(*d*) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, the duties of the interim receiver; and

(*e*) the value and nature of the property which the interim receiver has to deal with.

(3) Without prejudice to any order the Court may make as to costs, the interim receiver's remuneration shall be paid to the interim receiver, and the amount of any expenses incurred by the interim receiver—

(*a*) if a bankruptcy order is not made, out of the property of the debtor; and

(*b*) if a bankruptcy order is made, out of the bankrupt's estate in the prescribed order of priority, or in either case, the relevant funds being insufficient, out of any deposit.

(4) Unless the Court otherwise directs, if a bankruptcy order is not made the interim receiver may retain out of the debtor's property such sums or property as are, or may be, required for meeting the remuneration and expenses of the interim receiver.

(5) Where a person, other than the Official Receiver, has been appointed interim receiver, and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs, or has performed any other duty under these Rules, the interim receiver shall pay the Official Receiver such sum, if any, as the Court may direct.

Statement of affairs (s. 209 of the Act)

187.—(1) The Official Receiver shall deliver to the bankrupt instructions for the preparation of the bankrupt's statement of affairs.

(2) The statement of affairs shall—

(*a*) state the name of the Court and the Registry that made the bankruptcy order;

(*b*) identify the bankrupt;

(*c*) state the date of the bankruptcy order;

(*d*) contain a list of the bankrupt's secured creditors, giving in relation to each—

(i) the name and postal address;

(ii) the amount owed to the creditor; and

(iii) particulars of the property of the bankrupt which is claimed by the creditor to secure the creditor's claim and the value of that property;

(*e*) contain a list of unsecured creditors, giving in relation to each—

(i) the name and postal address of the creditor;

(ii) the amount the creditor claims the bankrupt owes to that creditor; and

(iii) the amount the bankrupt thinks is owed by the bankrupt to that creditor;

(*f*) contain a list of the bankrupt's total assets divided into the following categories and giving the value of each asset listed—

(i) cash in hand or at a financial institution;

(ii) household furniture and belongings;

(iii) life policies or other investments;

(iv) money owed to the bankrupt;

(v) stock in trade and work in progress;

(vi) motor vehicles;

(vii) real estate; and

(viii) other property; and

(*g*) the total value of the assets listed under paragraph (*f*).

(3) The bankrupt shall sign and date each page of the statement of affairs.

(4) The statement of affairs shall be verified by a sworn statement and delivered to the Official Receiver and the Director, together with one copy.

(5) The Official Receiver shall file with the Court the statement by the bankrupt verified by a sworn statement.

(6) For the purposes of section 209 (4) of the Act, the prescribed time shall be twenty-eight days.

Limited disclosure

188. Where the Official Receiver thinks that disclosure of the whole or part of the statement of affairs would be likely to prejudice the conduct of the bankruptcy or might reasonably be expected to lead to violence against any person, the Official Receiver may apply to the Court for an order that the statement of affairs or any specified part of it—

(*a*) shall not be filed with the Court; or

(*b*) shall be filed separately and not be open to inspection otherwise than with permission of the Court.

Release from duty to submit statement of affairs and extension of time

189.—(1) The Official Receiver may release the bankrupt from the duty to submit a statement of affairs where the debtor has filed a statement of affairs under section 199 of the Act, or to grant an extension of time, at the Official Receiver's own discretion, or at the bankrupt's request.

(2) The bankrupt may apply to the Court for a release or extension of time if the Official Receiver refuses the bankrupt's request.

(3) The Court may dismiss the application if it considers that no sufficient cause is shown, but shall not do so, unless the bankrupt has had an opportunity to attend the Court for a hearing, of which the bankrupt has been delivered at least five business days' notice but which is without notice to any other party.

(4) The bankrupt shall, at least fourteen days before the hearing, deliver to the Official Receiver a notice stating the date, time and venue and accompanied by a copy of the application, and of any evidence which the bankrupt intends to provide in support of it.

(5) The Official Receiver may appear and be heard on the application and, whether or not the Official Receiver appears, the Official Receiver may file with the Court a report of any matters which the Official Receiver considers ought to be drawn to the Court's attention.

(6) Where such a report is filed, a copy shall be delivered by the Official Receiver to the bankrupt, not later than five business days before the hearing.

(7) Sealed copies of any order on the application shall be delivered by the Court to the bankrupt and the Official Receiver.

(8) The bankrupt shall pay the costs of any application under this rule and, unless the Court otherwise orders, no allowance towards them shall be made out of the bankrupt's estate.

Expenses of assisting bankrupt to prepare statement of affairs

190.—(1) Where the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may, at the expense of the bankrupt's estate, employ a person or firm to assist in the preparation of the statement of affairs.

(2) At the request of the bankrupt, made on the grounds that the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may authorize an allowance payable out of the bankrupt's estate, in accordance with the prescribed order of priority, towards expenses to be incurred by the bankrupt in employing a person or firm to assist the bankrupt in preparing the statement.

(3) The bankrupt's request shall be accompanied by an estimate of the expenses involved, and the Official Receiver shall only authorize the employment of a named person or a named firm, being in either case approved by the Official Receiver.

(4) The Official Receiver may make the authorization subject to such conditions, if any, as the Official Receiver thinks fit relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule shall relieve the bankrupt from any obligation relating to the preparation, verification and submission of a statement of affairs, or to the provision of information to the Official Receiver or the trustee.

Delivery of accounts to Official Receiver

191.—(1) The bankrupt shall, at the request of the Official Receiver, deliver to the Official Receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period, as the Official Receiver may specify.

(2) The period specified may begin from a date up to three years preceding the date of the presentation of the bankruptcy petition.

(3) The Court may, on the Official Receiver's application, require accounts for any earlier period.

(4) The accounts shall be verified by a sworn statement, and, whether or not so verified, delivered to the Official Receiver and the Director within twenty-one days of the request, or such longer period as the Official Receiver may allow.

Further disclosure

192.—(1) The Official Receiver may, at any time, require the bankrupt to deliver in writing further information amplifying, modifying or explaining any matter contained in the bankrupt's statement of affairs, or in the accounts delivered under the Act or these Rules.

(2) The information shall be verified by a sworn statement, and, whether or not verified, delivered to the Official Receiver and the Director within twenty-one days from the date of the requirement, or such longer period as the Official Receiver may allow.

Appointment of trustee by creditors' meeting

193.—(1) This rule applies where a person is appointed as trustee by a meeting of creditors.

(2) The chairperson of the meeting shall only certify the appointment, where the appointee has—

(*a*) delivered, to the chairperson, evidence to the effect that he—

(i) is qualified as an insolvency practitioner under the Act;

(ii) is entitled to act as trustee in relation to the bankrupt; and

(iii) consents to act as trustee; and

(*b*) provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The certificate shall be signed and dated by the chairperson and shall also—

(*a*) identify the bankrupt;

(*b*) identify and provide contact details for the person appointed as trustee;

(*c*) state the date of the meeting of creditors at which the trustee was appointed; and

(*d*) state that at the meeting, the appointee having provided evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, was appointed trustee of the bankrupt's estate.

(4) Where two or more trustees are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as trustee; and

(*b*) specify the circumstances, if any, in which the joint trustees shall act together or whether one or more of them act for other persons.

(5) The trustee's appointment shall be effective from the date on which the appointment has been certified.

(6) The chairperson of the meeting shall deliver the certificate to—

(*a*) the Director; and

(*b*) the Official Receiver, if he is not the Official Receiver.

(7) The Official Receiver shall in any case deliver the certificate to the trustee.

(8) It shall be the duty of the creditors' committee to review from time to time the adequacy of the trustee's security.

(9) The cost of the security shall be an expense of the bankruptcy.

Creditors' meetings: resolution to appoint trustee

194.—(1) In the case of a resolution for the appointment of a trustee—

(*a*) if on a vote there are two nominees for appointment, the nominee who obtains the most votes shall be appointed;

(*b*) if there are three or more nominees, and one of them has a clear majority over both or all the other nominees together, the nominee with a clear majority shall be appointed; and

(*c*) in any other case the chairperson shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of trustee by the Court

195.—(1) This rule applies where the Court appoints a trustee.

(2) The Court's order appointing a trustee shall only be made where the person appointed has filed with the Court evidence to the effect that the person is qualified to act as an insolvency practitioner under the Act, and that he consents to act as the trustee.

(3) The order of the Court shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the person appointed as trustee;

(*f*) state that upon consideration of the evidence, it is ordered that the person appointed, having filed evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, he was appointed trustee of the bankrupt's estate; and

(*g*) state the date on which the order is made.

(4) Where two or more trustees are appointed, the order shall also specify the circumstances, if any, in which the joint trustees shall act together.

(5) The Court shall deliver three copies of the order to be sealed, to the Official Receiver and the Director.

(6) The Official Receiver shall deliver the sealed copy of the order to the person appointed as trustee.

(7) The trustee's appointment takes effect from the date of the order.

Authentication of trustee's appointment

196. A copy of the certificate of the trustee's appointment, or as the case may be, a sealed copy of the order of appointment may be provided in any proceedings as proof that the person appointed is duly authorized to exercise the powers and perform the duties of the trustee of the bankrupt's estate.

Appointment to be advertised

197.—(1) As soon as it is reasonably practicable, after appointment of a trustee, a trustee appointed by a meeting of creditors—

(*a*) shall publish a notice of his appointment in the *Gazette*; and

(*b*) may advertise that notice in such other manner as the trustee thinks fit.

(2) In addition to the standard contents, the notice shall state—

(*a*) that a trustee has been appointed by a meeting of creditors; and

(*b*) the date of the appointment.

Hand over of bankrupt's estate by Official Receiver to trustee

198.—(1) This rule applies where the trustee is appointed in succession to the Official Receiver acting as trustee.

(2) When the trustee's appointment takes effect, the Official Receiver shall, as soon as it is reasonably practicable, do all that is required for putting the trustee into possession of the bankrupt's estate.

(3) On taking possession of the bankrupt's estate, the trustee shall discharge any balance due to the Official Receiver on account of—

(*a*) expenses properly incurred by the Official Receiver and payable under the Act or these Rules; and

(*b*) any advances made by the Official Receiver in respect of the bankrupt's estate together with interest on the date of the bankruptcy order or subsequently.

(4) As an alternative to subrule (3), the trustee may, before taking office, deliver to the Official Receiver a written undertaking to discharge any such balance out of the first realization of assets.

(5) The Official Receiver shall have a charge on the bankrupt's estate in respect of any sums due under subrule (3) until they have been discharged, subject only to the deduction from realizations by the trustee of the costs and expenses of such realizations.

(6) The trustee shall, from time to time out of the realization of assets, discharge all guarantees properly given by the Official Receiver for the benefit of the bankrupt's estate, and shall pay all the Official Receiver's expenses.

(7) The Official Receiver shall give to the trustee all the information relating to the affairs of the bankrupt and the course of the bankruptcy which the Official Receiver considers to be reasonably required for the effective discharge by the trustee of the trustee's duties in relation to the estate.

Trustee's resignation and appointment of replacement

199.—(1) Rule 105 shall apply, *mutatis mutandis*, to the resignation of the trustee of a bankrupt's estate.

(2) The trustee of a bankrupt's estate shall deliver a copy of his notice of resignation to the Official Receiver and the bankrupt.

(3) A new trustee appointed in place of one who has resigned shall, when delivering his notice of appointment, also deliver the notice of the previous trustee's resignation.

(4) The resigning trustee's release shall be effective from the date on which the notice of resignation is filed—

(*a*) with the Court and the Registry, where the debtor was declared bankrupt by the Court; or

(*b*) with the Official Receiver, where the debtor was declared bankrupt based on a debtor's application.

Meeting of creditors to remove trustee

200.—(1) Where the chairperson of a meeting of creditors is other than the Official Receiver, and a resolution is passed to remove the trustee, the chairperson shall, within three business days of the passing of the resolution, deliver a certificate to that effect to the Official Receiver.

(2) Where the creditors have resolved to appoint a new trustee, the certificate of the new trustee's appointment shall also be delivered to the Official Receiver within that time.

(3) The certificate of the trustee's removal shall be signed and dated by the chairperson and—

(*a*) identify the bankrupt;

(*b*) identify and provide the contact details for the trustee;

(*c*) state that at a meeting of the creditors of the bankrupt held on the date specified in the certificate, it was resolved that the trustee specified in the certificate be removed from office as trustee of the bankrupt's estate;

(*d*) state the date of the meeting; and

(*e*) state that the meeting—

(i) did not pass any resolution against the trustee being released; or

(ii) resolved that the trustee should not be released.

(4) The trustee's removal shall be effective from the date of the certificate of removal.

Procedure on removal by creditors

201.—(1) Where the creditors have resolved that the trustee be removed, the Official Receiver shall, in the case where the debtor was declared bankrupt—

(*a*) by the Court, following a creditor's petition, file the certificate of removal with the Court; or

(*b*) following a debtor's application, place the certificate of removal on the bankrupt's file.

(2) The Official Receiver shall deliver a copy of the certificate to—

(*a*) the removed trustee;

(*b*) the new trustee, if appointed; and

(*c*) the Director.

Removal of trustee by the Court

202.—(1) This rule applies where an application is made to the Court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of considering a motion removing the trustee.

(2) Where the Court considers that no sufficient cause is shown for the application it shall deliver a notice to that effect to the applicant.

(3) Unless the application is dismissed, the Court will fix the date, time and venue for it to be heard.

(4) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the trustee on the application.

(5) The applicant shall, at least fourteen days before the hearing, deliver to the trustee and the Official Receiver and the Director a notice stating the date, time and venue of the hearing, accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(6) On a successful application, the Court's order shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the trustee;

(*f*) state that, upon consideration of the evidence, it is ordered that—

(i) the trustee be removed from office; or

(ii) the trustee shall summon a meeting of the bankrupt's creditors on or before the date specified in the order for the purposes of considering the trustee's removal from office;

(*g*) provide details of any further order in the matter; and

(*h*) state the date of the making of the order.

(7) The costs of the application shall not be payable as an expense of the bankruptcy, unless the Court orders otherwise.

(8) Where the Court removes the trustee, the Court shall deliver a copy of the order of removal to the trustee, the Director and the Official Receiver.

Advertisement of removal

203. A new trustee who has been appointed in place of a trustee who has been removed shall, in giving notice of his appointment,

state that the previous trustee has been removed and, if it be the case, has been released.

Release of removed trustee

204. Where a trustee is removed by a meeting of creditors, the certificate of removal shall state whether or not the meeting resolved for, or against, the trustee's release.

Deceased trustee

205.—(1) Where the trustee, not being an Official Receiver, dies, a notice to that effect and the date of death shall be delivered, as soon as it is reasonably practicable, to the Official Receiver and the Director by one of the following—

(*a*) a partner in the deceased trustee's firm, if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased trustee.

(2) Where such a notice has not been delivered within twenty-eight days following the trustee's death, then any other person may deliver the notice.

(3) The Official Receiver shall file the notice of the death with the Court.

Loss of qualification as insolvency practitioner

206.—(1) This rule applies where the trustee vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee shall, as soon as it is reasonably practicable, deliver a notice stating his loss of qualification referred to in subrule (1) to the Official Receiver.

(3) The notice shall—

(*a*) identify and provide contact details for the trustee;

(*b*) identify the bankrupt;

(*c*) state that the trustee ceased to be a qualified insolvency practitioner with effect from the date specified in the notice;

(*d*) specify the date; and

(*e*) be signed and dated by the trustee.

(4) On receiving the notice, the Official Receiver shall deliver a copy of the notice to the Director.

Vacation of office on completion of bankruptcy

207.—(1) The trustee shall not deliver a notice under rule 206 that the administration of the bankrupt's estate is complete until at

least eight weeks after the final report on the bankruptcy and the notice of the trustee's intention to vacate office has been delivered to all the creditors.

(2) In addition to the standard contents, the notice under rule 206 shall—

(*a*) state that the trustee has delivered the notice of intention to vacate office and a copy of the final report to the directors, all the creditors and the bankrupt;

(*b*) state the date of the notice;

(*c*) state whether—

(i) the trustee shall be released on vacating office; or

(ii) more than ten per cent in value of the creditors objected to the trustee's release, who shall apply to the Director for his release;

(*d*) be signed and dated by the trustee; and

(*e*) be accompanied by a copy of the final report.

(3) The trustee shall deliver a copy of the notice to the Director and the Official Receiver.

Trustee's duties on vacating office

208. A trustee who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner, shall as soon as it is reasonably practicable, deliver to the successor as trustee—

(*a*) the assets of the estate, after deduction of any expenses properly incurred, and distributions made, by the trustee;

(*b*) the records of the bankruptcy, including correspondence, proofs and other documents relating to the bankruptcy while it was within the trustee's responsibility; and

(*c*) the bankrupt's documents and other records.

Rule against solicitation by, or on behalf of, trustee

209. Rule 112 shall apply, *mutatis mutandis*, to the proscription against solicitation by the trustee or a person acting on his behalf.

Order for public examination

210.—(1) The Court shall hold a public examination of a bankrupt under section 235 of the Act.

(2) The Official Receiver shall deliver a notice of the public examination to a bankrupt fourteen days after the statement of the

Official Receiver is filed with the Court, or the ordinary resolution of the meeting of creditors has been certified by the Official Receiver or the chairperson of the meeting.

(3) The notice shall appoint the date, time and venue for the public examination, and direct the bankrupt's attendance at the examination.

(4) The notice shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend the bankrupt's public examination at the date, time and venue set out in the notice, the bankrupt commits contempt of court.

(5) The Official Receiver shall deliver the notice of the public examination at least fourteen days from the date of the examination—

(*a*) to the trustee; and

(*b*) subject to any contrary direction of the Court, to every creditor of the bankrupt who is known to the Official Receiver.

(6) Where the Official Receiver thinks fit, a notice of the public examination shall be advertised, not less than fourteen days before the date of the examination, in two daily newspapers of wide circulation or in such other manner.

(7) The notice of public examination shall include the standard contents.

Order on public examination requested by creditors

211.—(1) A notice by a creditor to the Official Receiver requesting the bankrupt to be publicly examined shall be accompanied by—

(*a*) a list of the creditors concurring with the request with the name and postal address of each of the creditors and the amount of their respective claims in the bankruptcy;

(*b*) confirmation by each creditor of that creditor's concurrence; and

(*c*) a statement of the reasons why the public examination is requested.

(2) The request shall be signed and dated by the creditor giving the notice.

(3) A list of concurring creditors is not required if the requisitioning creditor's debt alone holds more than twenty per cent of the debt without the concurrence of the other creditors.

(4) Before the Official Receiver makes an application to the Court on the request, the creditor requesting the examination shall deposit with the Official Receiver, such sum as the latter may determine to be, by way of security for the expenses of the hearing of a public examination, if so ordered.

(5) Subject to subrule (4), the Official Receiver shall make the application to the Court within twenty-eight days of receiving the request for public examination.

(6) Where the Official Receiver is of the opinion that the request is unreasonable, the Official Receiver may apply to the Court for an order relieving him from the obligation to make the application.

(7) Where the Court orders that the Official Receiver need not make the application for the order, and the application for the order was made without notice to any other party, the Official Receiver shall deliver a notice of the order, as soon as it is reasonably practicable, to the person making the request.

Bankrupt unfit for examination

212.—(1) Where the bankrupt is a person who lacks capacity or is unfit to attend the public examination, the Court may—

(*a*) stay the order for the bankrupt's public examination; or

(*b*) direct that it shall be conducted in a manner and place it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malaŵi or elsewhere to manage the affairs of, or to represent, the bankrupt;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the Official Receiver.

(3) Where an application for public examination is made by a person other than the Official Receiver, then—

(*a*) the application shall, unless the bankrupt is a person who lacks capacity, be supported by a sworn statement by a registered medical practitioner as to the bankrupt's mental and physical condition;

(*b*) at least five business days' notice of the application shall be delivered to the Director, Official Receiver and the trustee; and

(*c*) before any order is made on the application, the applicant shall deposit with the Official Receiver such sum as the Official Receiver determines is necessary for the additional expenses of the public examination.

(4) The Court may order that some or all of the expenses of the public examination are to be payable out of the deposit under subrule (3) (*c*), instead of out of the estate.

(5) The order shall—

(*a*) identify the proceedings;

(*b*) state the date of the original order for the public examination of the bankrupt;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant, other than the Official Receiver, is making the application;

(*e*) state the name and postal address of the debtor or the bankrupt;

(*f*) state that upon consideration of the evidence, the Court is satisfied that the bankrupt lacks capacity to manage and administer the bankrupt's property and affairs or is unfit to attend a public examination;

(*g*) order that—

(i) the original order be stayed on the grounds that the bankrupt is unfit to attend a public examination; or

(ii) the original order be varied on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order.

(6) Where the original order is varied, the order shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend his public examination on the date, time and venue set out in the order, he commits contempt of court.

(7) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing of bankrupt's public examination

213.—(1) At the hearing of the public examination, the bankrupt shall be examined under oath or affirmation and shall answer the questions put to him.

(2) A person allowed to question the bankrupt may, with the approval of the Court, appear by counsel or may authorize in writing another person to question the bankrupt on that person's behalf.

(3) The bankrupt may, at his expense employ, counsel who may put such questions as the Court may allow to be put to the bankrupt for the purpose of enabling the bankrupt to explain or qualify any answers given by the bankrupt, and may make representations on the bankrupt's behalf.

(4) The Court shall have a record made of the public examination, as it considers fit.

(5) The record may, in any proceedings, whether under the Act or otherwise, be used as evidence of any statement made by the bankrupt in the course of the bankrupt's public examination.

(6) Where criminal proceedings have been instituted against the bankrupt, and the Court is of the opinion that the continuation of the hearing of the public examination may prejudice a fair trial of those proceedings, the hearing may be adjourned until the conclusion of the proceedings.

Adjournment of public examination

214.—(1) The Court may adjourn the public examination to a fixed date or generally.

(2) The order of adjournment of the public examination to a fixed date shall contain a warning to the bankrupt, stating that if the bankrupt fails without reasonable excuse to attend the public examination on the date, time and venue set out in the order, the bankrupt commits contempt of court and liable to be fined or be sent to prison.

(3) Where the public examination has been adjourned generally, the Court may at any time on the application of the Official Receiver or the bankrupt—

(*a*) fix the date, time and venue for the resumption of the examination; and

(*b*) give directions as to the manner in which, and the time within which, the notice of the examination to be resumed is to be given to persons entitled to take part in it.

(4) Where the application to adjourn the public examination is made by the bankrupt, the Court may grant it on condition that—

(*a*) the expenses of giving the notice under subrule (3) shall be paid by the bankrupt; and

(*b*) before the date, time and venue for the hearing of the examination to be resumed is fixed, the bankrupt shall deposit with the Official Receiver such sum as the Official Receiver considers necessary to cover those expenses.

Expenses of public examination

215.—(1) Where a public examination of the bankrupt has been ordered by the Court on a creditor's request, the Court may order that some or all of the expenses of the examination are to be paid out of the deposit made under rule 214 (4) (*b*), instead of out of the bankruptcy estate.

(2) The expenses of a public examination shall not fall on the Official Receiver personally.

Disclaimer

216.—(1) Subject to subrules (2) and (3), the trustee may, by notice, disclaim any onerous property and may do so notwithstanding that he has—

(*a*) taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise, exercised rights of ownership in relation to it.

(2) The following is "onerous property" for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property under the bankruptcy estate which is un-saleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his 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 commencement of his trusteeship, but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

Trustee's notice of disclaimer

217.—(1) A trustee's notice of disclaimer under rule 216 shall have the title "Notice of Disclaimer under Rule 216 of the Insolvency Rules" and shall—

(*a*) identify the bankrupt;

(*b*) contain such particulars of the property as shall enable it to be easily identified;

(*c*) identify and provide contact details of the trustee;

(*d*) state that the trustee of the bankrupt's estate disclaims all interest in the property specified in the notice;

(*e*) state the name and postal address of each person to be sent a copy of the notice under these Rules; and

(*f*) be signed and dated by the trustee.

(2) Where the property consists of land or buildings, the nature of the interest under subrule 1 (*d*) shall be stated in the notice.

(3) The trustee shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer—

(*a*) file a copy of the notice with the Court; and

(*b*) deliver a copy of the notice to the Chief Land Registrar or the Deeds Registrar, as the case may be.

(4) For the purposes of rule 216, the date of the disclaimer shall be the date on which the trustee signs the notice.

Communication of disclaimer to interested persons

218.—(1) The trustee shall serve any copies of a notice of disclaimer in respect of leasehold property within seven business days after the date of the notice of disclaimer.

(2) The trustee shall, within seven business days after the date of a notice of disclaimer, deliver copies of the notice to every person who to the trustee's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer;

(*c*) if the disclaimer is of an unprofitable contract, is a party to the contract or has an interest under it; or

(*d*) if the disclaimer is of property in a dwelling-house, is in occupation of, or claims a right to occupy, the house.

(3) Where the trustee becomes aware that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the trustee shall deliver a copy of the notice to the person, as soon as it is reasonably practicable.

(4) The trustee is not required to deliver a copy of the notice under subrule (3) where—

(*a*) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) the Court, on the trustee's application, orders that delivery of a copy is not required in the particular case.

Delivery of copies of trustee's notice of disclaimer

219. The trustee disclaiming property may at any time deliver copies of the notice of disclaimer to any other person whom the trustee thinks ought, in the public interest or otherwise, to be informed of the disclaimer.

Second bankruptcy

220. Rules 221, 222 and 223, relate to the manner in which, in the case of a second bankruptcy, the existing trustee is to deal with property and money to which section 222 (3) of the Act, apply until there is a trustee of the estate in the later bankruptcy.

General duty of existing trustee

221.—(1) The existing trustee shall take into custody or under control all of the property and money, so far as the existing trustee has not already done so as trustee in the earlier bankruptcy.

(2) Where any of the property taken into custody consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee may sell or otherwise dispose of the goods.

(3) The proceeds of a sale or disposal of goods under subrule (2) shall be held, under the existing trustee's control, with the other property and money comprised in the bankruptcy estate.

Delivery up to later trustee

222. The existing trustee shall, if requested by the later trustee for the purposes of the later bankruptcy, deliver to the later trustee, as soon as it is reasonably practicable, all the property and money in the existing trustee's custody or under his control.

Existing trustee's expenses

223. Any expenses incurred by the existing trustee in compliance with section 222 of the Act and this Part shall be paid out of, and are a charge on, all of the property and money referred to in section 222 of the Act, whether in the hands of the existing trustee or the later trustee for the purposes of the later bankruptcy.

Division II—Individual Voluntary Arrangement

Interpretation

224. In this Division, unless the context otherwise requires—

"nominee" includes the proposed insolvency practitioner nominee in relation to a proposal;

"proposal" means a proposal for an individual voluntary arrangement; and

"supervisor" includes the proposed insolvency practitioner supervisor of an individual voluntary arrangement.

Contents of proposal

225.—(1) The proposal shall—

(*a*) explain briefly why the debtor is making the proposal; and

(*b*) explain why the creditors are being invited to agree to an individual voluntary arrangement.

(2) The proposal shall be signed and dated by the debtor.

(3) The proposal may be amended with the nominee's agreement, in writing, at any time up to the filing of the nominee's report with the Court, or the submission of the nominee's report to the creditors.

(4) The following matters shall be stated, or otherwise dealt with, in the proposal, so far as within the debtor's knowledge, in relation to—

(*a*) assets—

(i) the nature of the debtor's assets, with an estimate of their respective realizable values;

(ii) which assets are subject to an encumbrance and the extent of the encumbrance;

(iii) which assets are to be excluded from the individual voluntary arrangement; and

(iv) particulars of any property to be included in the individual voluntary arrangement which is not owned by the debtor, including details of who owns the property and the conditions under which it may be available for inclusion;

(*b*) liabilities—

(i) the nature and amount of the debtor's liabilities;

(ii) how the debtor's liabilities shall be met, modified, postponed or otherwise dealt with under the individual voluntary arrangement and, in particular—

(AA) how preferential creditors and creditors who are, or claim to be, secured will be dealt with; and

(BB) how creditors who are associates of the debtor will be dealt with;

(iii) if the debtor is an undischarged bankrupt, whether any claim has been made under section 290 of the Act or section 293 of the Act and, if he has, whether, and if so, what provision is being made to indemnify the insolvent estate in respect of such a claim; and

(iv) if the debtor is not an undischarged bankrupt, whether there are circumstances which might give rise to a claim referred to in paragraph (iii) if the debtor were made bankrupt and, where there are such circumstances, whether, and if so, what provision will be made to indemnify the insolvent estate in respect of such a claim;

(*c*) nominee's fees and expenses, the amount proposed to be paid to the nominee as fees and expenses;

(*d*) supervisor—

(i) the name, address and qualification of the supervisor and confirmation that that person is qualified to act as an insolvency practitioner, or is an authorized person, in relation to the debtor;

(ii) how the fees and expenses of the supervisor of the individual voluntary arrangement shall be paid; and

(iii) the tasks to be undertaken by the supervisor;

(*e*) guarantees and proposed guarantees—

(i) details of any guarantees of the debtor's debts that have been given by other persons, specifying which of the guarantors are associates of the debtor; and

(ii) whether, for the purposes of the individual voluntary arrangement, any guarantees are to be offered and, if so, by whom and whether security is to be given or sought;

(*f*) timing—

(i) the period that the individual voluntary arrangement is expected to last; and

(ii) the proposed dates of distribution of proceeds to creditors, with estimates of their amounts;

(*g*) type of proceedings, whether the proceedings will be foreign main or foreign non-main;

(*h*) conduct of business, if the debtor has any continuing business, how that business will be conducted during the course of the individual voluntary arrangement;

(*i*) further credit facilities, details of any further credit facilities or liabilities the debtor proposes to incur during the period of the individual voluntary arrangement and how the debts so arising are to be paid;

(*j*) handling of funds arising—

(i) the manner in which funds held for the purposes of the individual voluntary arrangement are to be banked, invested or otherwise dealt with pending distribution of proceeds to creditors;

(ii) how funds held for the purpose of payment to creditors and may not have been paid on the termination of the individual voluntary arrangement shall be dealt with; and

(iii) how the claim of any person bound by the individual voluntary arrangement under section 261 (2) (*b*) (ii) of the Act shall be dealt with; and

(*k*) other proposals, whether any other proposal in relation to the debtor has been submitted within the twenty-four months preceding the submission of this proposal to the nominee—

(i) for approval by the creditors and, if so—

(AA) whether that proposal was approved or rejected;

(BB) whether, if approved, the individual voluntary arrangement was completed or was terminated; and

(CC) in what respects such a proposal, where rejected, differs from the current proposal; and

(ii) to the Court in connexion with an application for an interim order under section 252 of the Act and, if so, whether the interim order was made.

Notice of nominee's consent

226.—(1) Where the nominee consents to act, the nominee shall, as soon as it is reasonably practicable, after submission of the proposal to the nominee, deliver a notice of that consent to the debtor.

(2) The notice shall state the date the nominee received the proposal.

Statement of affairs

227.—(1) Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 209 of the Act, a statement of affairs need not be submitted to the nominee under section 256 (2) or 257 (2) of the Act, unless the nominee requires a further statement of affairs to supplement or amplify the earlier one.

(2) The statement of affairs shall contain—

(*a*) a list of the debtor's assets, divided into such categories as are appropriate for easy identification, and an estimated value of each category;

(*b*) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim, how and when the security was created;

(*c*) the names and addresses of the preferential creditors, with the amounts of their respective claims;

(*d*) the names and addresses of the unsecured creditors, with the amounts of their respective claims;

(*e*) particulars of any debts owed by, or to the debtor, to or by persons who are associates of the debtor; and

(*f*) such other particulars, if any, as the nominee may, in writing, require to be provided for the purposes of making the nominee's report on the proposal to the Court or to the creditors, as the case may be.

(3) Subject to subrule (4), the statement shall be made up to a date not earlier than two weeks before the date of the proposal.

(4) The nominee may allow the statement to be made up to a date that is earlier than two weeks, but not earlier than two months, before the date of the proposal, where that is more practicable.

(5) Where the statement is made up to an earlier date, the nominee's report shall explain why an earlier date was allowed.

(6) The statement shall be verified by a sworn statement by the debtor.

Limited disclosure of statement of affairs

228. The nominee, the debtor or any person appearing to the Court to have an interest may, if any information in the statement of affairs would be likely to prejudice the conduct of the individual voluntary arrangement or might reasonably be expected to lead to violence

against any person, apply to the Court for an order that specified information be omitted from any statement of affairs required to be delivered to creditors.

Additional disclosure for assistance of nominee

229.—(1) Where it appears to the nominee that the report to the Court or the creditors cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the debtor to provide—

(*a*) more information about the circumstances in which, and the reasons why, the debtor is insolvent or is threatened with insolvency;

(*b*) information about any proposals which have, at any time, been made by the debtor; and

(*c*) any further information relating to the debtor's affairs which the nominee thinks necessary for the purposes of the report.

(2) The nominee may require the debtor to inform the nominee whether, and in what circumstances, the debtor has at any time—

(*a*) been concerned in the affairs of a company, wherever incorporated, which has become insolvent;

(*b*) been made bankrupt; or

(*c*) entered into an arrangement with creditors.

(3) The debtor shall give the nominee such access to the debtor's accounts and records as the nominee requires to enable the nominee to consider the debtor's proposal and prepare the report on it.

Application for interim order (cases within s. 257 of the Act)

230.—(1) An application to the Court for an interim order shall be accompanied by a sworn statement containing—

(*a*) the reasons for making the application;

(*b*) information about any action, execution, other legal process or the levying of any distress which, to the debtor's knowledge, has been commenced against the debtor or the debtor's property;

(*c*) a statement that the debtor is an undischarged bankrupt or is able to make a bankruptcy application;

(*d*) a statement that no previous application for an interim order has been made by or in relation to the debtor in the period of twelve months ending with the date of the sworn statement; and

(*e*) a statement that a person named in the sworn statement is willing to act as nominee in relation to the proposal and is qualified to act as an insolvency practitioner or is authorized person in relation to the debtor.

(2) For the purposes of section 257 (3) of the Act, the prescribed period shall be twenty-one days.

(3) The sworn statement shall be accompanied by a copy of—

(*a*) the proposal; and

(*b*) the notice of the nominee's consent to act as such.

(4) When the application and the sworn statement have been filed, the Court shall fix the date, time and venue for the hearing of the application.

(5) The applicant shall deliver a notice of the hearing at least two business days before the hearing to the nominee and—

(*a*) the debtor, the Official Receiver or the trustee, whichever is not the applicant, where the debtor is an undischarged bankrupt; or

(*b*) any creditor who, to the debtor's knowledge, has presented a bankruptcy petition against the debtor where the debtor is not an undischarged bankrupt.

(6) An application under section 257 (4) of the Act shall contain the name and address of the nominee.

Court in which application to be made

231. An application shall be made—

(*a*) to the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) to the Court having jurisdiction over bankruptcy matters.

Order granting stay

232. A court order under section 254 (1) (*b*) of the Act granting a stay of an action, execution or other legal process pending the hearing of an application for an interim order under section 253 of the Act shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) details of the action, execution or other legal process which is stayed;

(*d*) the date, time and venue for the hearing of the application for the interim order; and

(*e*) the date on which the order granting the stay is made.

Hearing of application for interim order

233.—(1) A person to whom a notice of the hearing of the application for an interim order was delivered, or should have been delivered, may appear or be represented at the hearing.

(2) The Court shall take into account any representations made by, or on behalf of, such a person, in particular, as to whether an order should contain such provision as is referred to in section 255 (3) and (4) of the Act.

(3) Where the Court makes an interim order, it shall fix the date, time and venue for consideration of the nominee's report for a date no later than the date on which the order ceases to have effect.

Interim order

234. An interim order shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the order has effect from its making until the end of the period of fourteen days beginning on the day after the date on which it is made;

(*d*) particulars of the effect of the order under section 252 (2) of the Act;

(*e*) an order that the report of the nominee be delivered to the Court, not later than a specified date which shall not be later than two business days before the interim order ceases to have effect;

(*f*) particulars of any orders made under section 255 (3) and (4) of the Act;

(*g*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the interim order to the Official Receiver;

(*h*) the date, time and venue for the Court's consideration of the report; and

(*i*) the date of the order.

Action to follow making of order

235.—(1) The Court shall deliver at least two sealed copies of the interim order to the applicant.

(2) As soon as it is reasonably practicable, the applicant shall deliver—

(*a*) one copy of the interim order to the nominee and, where the debtor is an undischarged bankrupt, another copy to the Official Receiver, unless the Official Receiver was the applicant; and

(*b*) a notice that the order has been made to any other person to whom a notice of the hearing of the application for an interim order was, or should have been, delivered and who was not in attendance or represented at the hearing.

Order extending period of interim order

236. An order under section 256 (4) of the Act extending the period for which an interim order has effect shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the application is that of the nominee for an extension of the period under section 256 (4) of the Act for which an interim order is to have effect;

(*d*) a statement that the period for which the interim order has effect is extended to a specified date;

(*e*) particulars of the effect under section 252 (2) of the Act of the interim order;

(*f*) an order that the report of the nominee be delivered to the Court not later than a specified date which shall not be later than two business days before the day on which the Court is to consider the nominee's report;

(*g*) particulars of any orders made under section 255 (3) or (4) of the Act;

(*h*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the order to the Official Receiver;

(*i*) the date, time and venue for the Court's consideration of the report; and

(*j*) the date of the order.

Nominee's report on the proposal

237.—(1) The nominee's report under section 256 of the Act shall be filed with the Court not less than two business days before the interim order ceases to have effect and it shall be accompanied by—

(*a*) a copy of the report;

(*b*) a copy of the proposal, as amended, if applicable; and

(*c*) a copy of any statement of affairs or a summary of the statement.

(2) The nominee's report shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why creditors should or should not be invited to consider the proposal.

(3) The Court shall endorse the nominee's report and the copy of it with the date on which they were filed and return the copy to the nominee.

(4) Where the debtor is an undischarged bankrupt, the nominee shall deliver to the Official Receiver and any trustee a copy of—

(*a*) the proposal;

(*b*) the nominee's report; and

(*c*) any statement of affairs or summary of such statement.

(5) Where the debtor is not an undischarged bankrupt, the nominee shall deliver a copy of each of the documents referred to in subrule (4) to any person who has presented a bankruptcy petition against the debtor.

Order extending period of interim order

238. An order under section 256 (5) of the Act extending the period for which an interim order has effect to enable creditors to consider the proposal shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the Court has considered the nominee's report filed under section 256 of the Act;

(*d*) the date that the nominee's report was filed;

(*e*) a statement that for the purpose of enabling the creditors to consider the proposal, the period for which the interim order has effect is extended to a specified date;

(*f*) a statement that the nominee will be inviting the creditors to consider the proposal and if the nominee has decided that the proposal should be considered at a meeting, the date, time and venue for the meeting; and

(*g*) the date of the order.

Replacement of nominee

239.—(1) A debtor, who intends to apply under section 256 (3) (*a*) or (*b*) of the Act for the nominee to be replaced, shall deliver a notice to the nominee, at least five business days before making an application, that such application will be made.

(2) A nominee, who intends to apply under section 256 (3) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least five business days before making an application, that such application will be made.

(3) The Court shall not appoint a replacement nominee unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner in relation to the debtor.

Appearance at consideration of nominee's report

240. A person to whom a notice was or should have been delivered may appear in person or be represented and appear by a legal practitioner at the Court's hearing to consider the nominee's report.

Nominee's report

241.—(1) The nominee's report under section 257 (3) of the Act shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why the creditors should or should not be invited to consider the proposal.

(2) The nominee shall deliver a copy of the report to the debtor.

(3) Where the nominee gives an opinion in the affirmative on the matters referred to in section 257 (3) (*a*) and (*b*) of the Act, the copy of the report delivered by the nominee to each of the creditors shall be accompanied by—

(*a*) a statement that an application for an interim order under section 253 of the Act is not being made;

(*b*) a copy of the proposal as amended, if applicable;

(*c*) a copy of any statement of affairs or a summary of such statement; and

(*d*) a copy of the notice of the nominee's consent to act as such.

(4) The nominee shall also deliver the documents referred to in subrule (3) to—

(*a*) the Official Receiver and any trustee, where the debtor is an undischarged bankrupt; and

(*b*) any person who has presented a bankruptcy petition against the debtor,

within fourteen days or such longer period, as the Court may allow of receipt of the documents and statement referred to in section 257 (2) of the Act.

Applications to the Court

242.—(1) This rule applies where the nominee has made a report under section 257 (3) of the Act.

(2) An application under section 263 of the Act may not be made after the period of twenty-eight days beginning with the first day on which the nominee gave notice of the result of consideration of the proposal under section 260 (1) of the Act.

(3) The twenty-eight day time limit for making an application shall not apply to an application by a person who was not invited to consider the proposal.

(4) An application relating to a proposal or an individual voluntary arrangement shall be made to—

(*a*) the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) the Court having jurisdiction over bankruptcy matters.

(5) Where an application relates to a matter relating to a proposal or an individual voluntary arrangement, the applicant shall file with the Court, in addition to the documents in support of the application, such other documents required by these Rules as the applicant considers may assist the Court in determining the application.

Replacement of the nominee

243.—(1) A debtor who intends to apply under section 257 (4) (*a*) or (*b*) of the Act for the nominee to be replaced shall deliver a notice to the nominee at least five business days before making the application that such an application is being made.

(2) A nominee, who intends to apply under section 257 (4) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least five business days before making the application, that such an application is being made.

(3) The Court will not appoint a replacement nominee, unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner or is an authorized person in relation to the debtor.

Consideration of proposal: common requirements

244.—(1) The nominee may invite the creditors to consider a proposal by correspondence or by summoning a meeting of the creditors.

(2) The nominee shall deliver to each creditor a notice which, in addition to the standard contents, shall—

(*a*) identify the proceedings;

(*b*) state—

(i) in a case where an interim order has not been obtained, the Court to which the application shall be made; or

(ii) in a case where an interim order is in force, the Court in which the nominee's report on the debtor's proposal has been filed under section 256 of the Act;

(*c*) state the effect of the following—

(i) creditors' voting rights;

(ii) the calculation of creditors' voting rights; and

(iii) the requisite majorities of creditors for passing resolutions; and

(*d*) unless they have been delivered already, be accompanied by—

(i) a copy of the proposal;

(ii) a copy of the statement of affairs, or, if the nominee thinks fit, a summary of the statement, including a list of creditors with the amounts of their debts;

(iii) a copy of the nominee's report on the proposal; and

(iv) a copy of the resolution to be voted on.

Consideration by correspondence

245.—(1) Where the nominee invites the creditors to consider the proposal by correspondence, the notice shall, in addition to the requirements under rule 237—

(*a*) invite the creditor to vote for or against each resolution; and

(*b*) state that in order to be counted—

(i) a vote shall be received by the deadline stated in the notice;

(ii) that written details of the creditor's claim shall have been received by the nominee before the deadline;

(iii) require any person who signs the vote on behalf of a creditor to state the capacity in which the person signs the vote; and

(iv) state how any proposals by those creditors entitled to vote for modifications to the proposals can be made, and how they will be dealt with by the nominee.

(2) The deadline referred to in subrule (1) (*b*) (i) shall be 12 noon on a date which shall be not less than fourteen days from the date of delivery of the notice and not more than twenty-eight days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) the nominee's report was considered by the Court in a case where an interim order is in force.

Consideration at a meeting

246.—(1) Where the nominee invites the creditors to consider the proposal at a meeting, the notice shall in addition to the requirements of these Rules—

(*a*) specify the date, time and venue for the meeting;

(*b*) specify the purpose of the meeting;

(*c*) state that a creditor may only vote at the meeting if details of the claim are delivered to the nominee or to the chairperson of the meeting, before or at the meeting; and

(*d*) be accompanied by a blank proxy.

(2) The nominee shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a meeting, including the resumption of an adjourned meeting.

(3) The date of the meeting shall not be more than twenty-eight days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) on which the nominee's report was considered by the Court in a case where an interim order is in force.

Notice of meeting: when and to whom delivered

247. A notice summoning a meeting shall be delivered to all the creditors at least fourteen days before the day fixed for the meeting.

Non-receipt of notice of meeting

248. Where under the Act or these Rules consideration of a proposal is invited by correspondence or at a meeting, the consideration is presumed to have duly taken place even if not everyone to whom the notice was delivered responded in writing or attended the meeting.

Quorum at meeting of creditors

249.—(1) A meeting of creditors is not competent to act unless at least one creditor entitled to vote is in attendance.

(2) The start of a meeting shall be delayed by at least fifteen minutes if—

(*a*) the *quorum* consists of the chairperson, with or without one other person; and

(*b*) the chairperson is aware that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

250. The chairperson of a meeting of creditors shall be the nominee or his appointee.

Adjournment of meeting by chairperson

251.—(1) The chairperson may, and if the meeting so resolves shall, adjourn a meeting for not more than fourteen days.

(2) A meeting shall be concluded not later than fourteen days after the date on which the meeting was originally held.

Suspension of meeting

252. The chairperson may suspend a meeting for one or more periods not exceeding one hour in total without adjourning the meeting.

Creditors' voting rights

253.—(1) For the purposes of section 261 (2) of the Act, every creditor, secured or unsecured, is entitled to vote in respect of the debt due from the debtor, but whether a creditor may cast a vote is determined by these Rules.

(2) A creditor may only vote if details of his claim are delivered—

(*a*) before or by the deadline in the notice where the proposal is being considered by correspondence; or

(*b*) to the nominee or chairperson at or before the meeting where the proposal is being considered at a meeting.

Calculation of voting rights

254.—(1) Votes are to be calculated according to the amount of each creditor's claim—

(*a*) at the date of the interim order, where the debtor is not an undischarged bankrupt and an interim order is in force;

(*b*) at the date of the meeting, or the deadline in the notice inviting consideration by correspondence, where the debtor is not an undischarged bankrupt and an interim order is not in force; and

(*c*) at the date of the bankruptcy order, where the debtor is an undischarged bankrupt.

(2) A creditor may vote in respect of a debt for a liquidated amount, including a debt for an unliquidated amount or of an unascertained value.

(3) For the purposes of voting but not otherwise, a debt referred to in subrule (2) is to be valued at K1000 unless the nominee, an appointee or the chairperson of a meeting decides to put a higher value on it.

(4) A creditor whose claim is wholly secured may not vote.

(5) A creditor whose claim is partly secured may vote in respect of the unsecured balance.

Procedure for admitting creditors' claims for voting

255.—(1) The nominee or his appointee shall ascertain both entitlement to vote, and whether votes may be cast, and admit or reject claims them accordingly.

(2) A claim may be rejected in whole or in part.

(3) Where the nominee or his appointee is in any doubt whether a claim should be admitted or rejected, the nominee or the appointee shall mark it as objected to and allow votes to be cast in respect of

it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities of creditors

256.—(1) A resolution other than a resolution approving a proposal or modification is passed by creditors by correspondence or by a creditors' meeting when a majority in value of those voting have voted in favour of it.

(2) Subject to subrule (3), a resolution approving a proposal or a modification is passed by creditors by correspondence or by a creditors' meeting when a majority of three-quarters or more in value of those voting have voted in favour of it.

(3) A resolution is not passed by correspondence, unless at least one creditor votes in favour of it.

(4) A resolution is not passed if those voting against it include more than half in value of all the qualifying votes of unassociated creditors, whether or not actually cast.

(5) A creditor is unassociated unless the nominee, and appointed person or the chairperson decides that the creditor is an associate of the debtor.

(6) In deciding whether a creditor is an associate, reliance may be placed on the information provided by the debtor's statement of affairs or otherwise under these Rules.

(7) For the purposes of subrule (4), a vote is a qualifying vote except to the extent that by or under these Rules it is not permitted to be cast.

Appeals against decisions

257.—(1) A creditor or the debtor may appeal against a decision of a creditors' meeting to the Court.

(2) An appeal may not be made after the end of the period of twenty-eight days beginning with the day on which—

(*a*) where an interim order has not been obtained, the notice of the result of the consideration of the proposal required by section 260 (1) of the Act has been given; or

(*b*) where an interim order has been obtained, the report required by section 260 (1) of the Act is made to the Court.

(3) Whether the decision is reversed or varied, or votes are declared invalid, the Court may order the nominee to review a decision taken by correspondence or to summon another meeting or may make such order as it considers just, but only if it considers

that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) The nominee or his appointee who took the decision shall not be personally liable for expenses incurred by a person appealing.

Report of creditors' consideration of proposal

258.—(1) A report of the creditors' consideration of a proposal shall be prepared by the nominee or his appointee, in the case of consideration by correspondence or the chairperson, in the case of consideration at a meeting.

(2) The report shall—

(*a*) state whether the proposal was approved or rejected and, if approved, with what, if any, modifications;

(*b*) list the creditors who voted by correspondence or attended the meeting, setting out with their respective values how they voted on each resolution;

(*c*) if the proposal was approved, state whether, in the opinion of the supervisor, the proceedings are foreign main or foreign non-main proceedings;

(*d*) state the reasons for the supervisor's opinion; and

(*e*) include such further information as the nominee, the appointed person or the chairperson thinks appropriate.

(3) Where an interim order was obtained, a copy of the report shall be filed with the Court, within four business days of—

(*a*) the deadline, if the proposal was considered by correspondence; or

(*b*) the date of the meeting of creditors.

(4) The Court shall endorse the copy of the report with the date of filing.

(5) The nominee, the appointee or the chairperson shall give notice of the result of the consideration to—

(*a*) everyone who was invited to consider the proposal by correspondence or to whom notice of a meeting was delivered;

(*b*) any other creditor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee.

(6) The notice shall be given—

(*a*) where an interim order was obtained, as soon as it is reasonably practicable, after a copy of the chairperson's report is filed with the Court; or

(*b*) where an interim order was not obtained—

(i) within four business days of the deadline, if the proposal was considered by correspondence; or

(ii) on the date of the meeting of creditors.

Appointment of proxy-holders

259.—(1) A proxy-holder shall be an individual who is at least eighteen years of age.

(2) A proxy may be given for use only at a particular meeting.

(3) A principal may appoint more than one person to be proxy-holder at a particular meeting, but if so—

(*a*) their appointment is as alternates;

(*b*) the order in which they are authorized to be proxy-holder shall be specified in the appointment; and

(*c*) only one of them may act as proxy-holder for that principal at the meeting.

(4) A proxy may be given to the chairperson of the meeting in question, and the chairperson may not refuse it.

Blank proxies

260.—(1) Blank proxies delivered under these Rules shall not have inserted in them the name or description of any person as proxy.

(2) A proxy shall be signed and dated by the creditor or by a person authorized by the creditor.

(3) Where a proxy is signed by a person, other than the principal, the nature of the person's authority shall be stated.

Use of proxies

261.—(1) A signed proxy given for a meeting shall be delivered to the chairperson before the meeting begins.

(2) Subject to subrule (3), a proxy given for a meeting may be used at the resumption of the meeting after an adjournment, and need not be delivered again to the chairperson at the resumed meeting whether or not the chairperson is the same person.

(3) Where a different proxy is given for use at a resumed meeting, the signed proxy shall be delivered to the chairperson before the beginning of the resumed meeting.

(4) Where the nominee holds proxies for use as chairperson of a meeting but another person acts as chairperson, that other person may use the proxies as if the person were the proxy-holder.

(5) Where a proxy directs a proxy-holder to vote for or against a resolution for the appointment of a person as the supervisor, the proxy-holder may, unless the proxy states otherwise, vote for or against, as the proxy-holder thinks fit, any resolution for the appointment of the person jointly with another or other persons.

(6) A proxy-holder may propose any resolution which the proxy could vote for if someone else proposed it.

(7) Where a proxy gives specific directions as to voting, this shall not, unless the proxy states otherwise, prohibit the proxy-holder from voting at the discretion of the proxy-holder on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

262. The chairperson of a meeting shall—

(*a*) retain the proxies used for voting at the meeting where the chairperson is the nominee; or

(*b*) deliver them, as soon as it is reasonably practicable, after the meeting to the nominee.

Right of inspection

263.—(1) The nominee shall allow a creditor or the debtor to inspect proxies at all reasonable times on a business day, so long as the proxies remain in the nominee's possession, custody or power.

(2) A creditor in subrule (1) is a person who has delivered a written claim to be a creditor of the debtor, but does not include a person whose claim has been wholly rejected.

(3) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents delivered by a creditor to the nominee, the chairperson or any other person in accordance with the notice convening the meeting.

(4) The right of inspection in subrule (3) shall be subject to the rules governing confidentiality of documents and the breach of those rules shall be the ground for refusing inspection.

Proxy-holder with financial interest

264.—(1) Subject to subrule (2), a proxy-holder, including the chairperson of the meeting, using a proxy shall not vote in favour of a resolution which would—

(*a*) directly or indirectly place the proxy-holder or an associate in a position to receive any payment from the debtor; or

(*b*) increase or reduce the amount of remuneration or expenses receivable by the proxy-holder or an associate out of the debtor's assets.

(2) A proxy-holder may vote for a resolution referred to in subrule (1) if the principal specifically directs the proxy-holder to vote in that way.

(3) Where—

(*a*) a principal has signed the proxy stating that the proxy-holder is authorized to do so; and

(*b*) the proxy specifically directs the proxy-holder to vote as mentioned in subrule (1),

the proxy-holder shall nevertheless not vote in that way without having produced to the chairperson the authorization from the principal sufficient to show that the proxy-holder was entitled so to vote.

Corporate representation

265.—(1) A person authorized to represent a company at a meeting, other than as a proxy, shall produce to the chairperson—

(*a*) the instrument conferring the authority; or

(*b*) a copy of the instrument certified as a true copy by—

(i) two directors;

(ii) a director and the secretary; or

(iii) a managing director in the presence of a witness who attests the managing director's signature.

(2) The instrument conferring the authority shall have been executed in accordance with the Companies Act.

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Resolutions to follow approval

266.—(1) Where two or more supervisors are appointed, the creditors shall decide, at the same time when approving the individual voluntary arrangement, whether acts done in connexion with the individual voluntary arrangement may be done by any one or more of them, or shall be done by all of them.

(2) Where in response to a notice inviting consideration of the proposal by correspondence a creditor proposes that a person other than the nominee be appointed as supervisor, the person's consent to act and confirmation of being qualified to act as an insolvency practitioner or being an authorized person in relation to the debtor shall be delivered to the nominee.

(3) Where at the creditors' meeting a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person shall produce to the chairperson at or before the meeting—

(*a*) confirmation of being qualified to act as an insolvency practitioner or being an authorized person in relation to the debtor; and

(*b*) written consent to act as such, unless the person is present at the meeting and signifies consent.

Hand over of property, etc., to supervisor

267.—(1) As soon as it is reasonably practicable after the individual voluntary arrangement is approved, the debtor or, where the debtor is an undischarged bankrupt, the Official Receiver or any trustee shall do all that is required to put the supervisor in possession of the assets included in the individual voluntary arrangement.

(2) Where the debtor is an undischarged bankrupt, the supervisor shall—

(*a*) before taking possession of the assets included in the individual voluntary arrangement deliver to the Official Receiver or any trustee an undertaking to discharge the balance due to the Official Receiver or trustee out of the first realization of the assets; or

(*b*) upon taking possession of the assets included in the individual voluntary arrangement discharge such balance.

(3) The balance is any balance due to the Official Receiver or any trustee—

(*a*) by way of fees or expenses properly incurred and payable under the Act or these Rules; or

(*b*) on account of any advances made in respect of the insolvent estate, together with interest on such advances at the base lending rate at the date of the bankruptcy order.

(4) Where the debtor is an undischarged bankrupt, the Official Receiver and any trustee have a charge on the assets included in the individual voluntary arrangement in respect of any sums comprising such balance, subject only to the deduction from realizations by the supervisor of the proper expenses of realization.

(5) Any sums due to the Official Receiver shall take priority over those due to any trustee.

(6) The supervisor shall, from time to time, out of the realization of assets—

(*a*) discharge all guarantees properly given by the Official Receiver or any trustee for the benefit of the estate; and

(*b*) pay the expenses of the Official Receiver and any trustee.

Report to the Director of the approval of individual voluntary arrangement

268.—(1) After the creditors approve an individual voluntary arrangement, the nominee, his appointee or the chairperson of the creditors' meeting shall deliver a report containing the required information to the Director.

(2) The report shall be delivered, as soon as it is reasonably practicable, and in any event within fourteen days after the report that the creditors have approved the individual voluntary arrangement has been filed with the Court or sent to the creditors, as the case may be.

(3) The required information shall be—

(*a*) information identifying the debtor and his business or occupation, if any;

(*b*) the debtor's gender;

(*c*) the debtor's date of birth;

(*d*) any name by which the debtor was, or is, known, not being the name in which the debtor has entered the individual voluntary arrangement;

(*e*) the date on which the individual voluntary arrangement was approved by the creditors; and

(*f*) the name and address of the supervisor.

(4) Where the proposal was approved by correspondence, the deadline for voting shall be taken as the date when the individual voluntary arrangement was approved.

(5) A person who is appointed to act as a supervisor, including as a replacement of another person, or who vacates that office, shall deliver a notice of the fact to the Director, as soon as it is reasonably practicable.

Revocation or suspension of an individual voluntary arrangement

269.—(1) This rule applies where the Court makes an order of revocation or suspension under section 263 of the Act.

(2) The applicant for the order referred to in subrule (1), shall deliver a sealed copy of it to—

(*a*) the debtor, if different to the applicant;

(*b*) the supervisor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee, if different to the applicant.

(3) Where the order includes a direction by the Court under section 263 (4) (*b*) of the Act for a matter to be considered further by correspondence or by a meeting, the applicant for the order shall deliver a notice that the order has been made to the person who is directed to take such action.

(4) The debtor, the trustee, if the debtor is an undischarged bankrupt, or the Official Receiver, if there is no trustee, shall—

(*a*) as soon as it is reasonably practicable, deliver a notice that the order has been made to everyone to whom a notice to consider the matter by correspondence or at a creditors' meeting was delivered or who appear to be affected by the order; and

(*b*) within five business days of delivery of a copy of the order, or within such longer period as the Court may allow, deliver, if applicable, a notice to the Court advising that it is intended to make a revised proposal to the creditors, or to invite re-consideration of the original proposal.

(5) The applicant for the order shall, within five business days of the making of the order, give notice of the order to the Director.

(6) The applicant for the order shall, within five business days of the expiry of any order of suspension, give notice of the expiry to the Director.

Supervisor's accounts, records and reports

270.—(1) The supervisor shall keep accounts and records where the individual voluntary arrangement authorizes or requires the supervisor—

(*a*) to carry on the business of the debtor or trade on behalf of, or in the name of, the debtor;

(*b*) to realize assets of the debtor or, in a case where the debtor is an undischarged bankrupt, belonging to the estate; or

(*c*) otherwise, to administer or dispose of any funds of the debtor or the estate.

(2) The accounts and records which shall be kept are of the supervisor's acts and dealings in and in connexion with the individual voluntary arrangement, including in particular records of all receipts and payments of money.

(3) The supervisor shall preserve any such accounts and records which were kept by any other person who has acted as supervisor of the individual voluntary arrangement and are in the supervisor's possession.

(4) The supervisor shall deliver reports on the progress and prospects for the full implementation of the individual voluntary arrangement to—

(*a*) the debtor;

(*b*) all the creditors bound by the individual voluntary arrangement; and

(*c*) the Director.

(5) Each report shall cover a twelve month period ending with the anniversary of the commencement of the individual voluntary arrangement and shall be delivered within two months of the end of that period.

(6) A report referred to in subrule (5) shall not be required if an obligation to deliver a final report arises in the two months' period referred in subrule (5).

(7) Where the supervisor is authorized or required to do any of the things mentioned in subrule (1), the report shall include or be accompanied by—

(*a*) a summary of receipts and payments which subrule (2) requires to be kept; or

(*b*) where there have been no such receipts and payments, a statement to that effect.

Production of accounts and records to the Director

271.—(1) The Director may during the individual voluntary arrangement or after its completion or termination require the supervisor to produce for inspection, at the supervisor's premises or elsewhere—

(*a*) the supervisor's accounts and records in relation to the individual voluntary arrangement; and

(*b*) copies of reports and summaries prepared in compliance with rule 270.

(2) The Director may require any accounts and records produced under this rule to be audited and, if so, the supervisor shall provide such further information and assistance as the Director requests for the purposes of the audit.

Fees and expenses

272. The fees and expenses that may be paid or incurred for the purposes of the individual voluntary arrangement are—

(*a*) fees for the nominee's services agreed with the debtor, the Official Receiver or any trustee;

(*b*) disbursements made by the nominee before the approval of the individual voluntary arrangement; and

(*c*) fees and expenses which—

(i) are sanctioned by the terms of the individual voluntary arrangement; or

(ii) would be payable or correspond to those which would be payable in the debtor's bankruptcy.

Termination or full implementation of the individual voluntary arrangement

273.—(1) The supervisor shall deliver a notice that the individual voluntary arrangement has been terminated or fully implemented to the debtor and the creditors bound by the individual voluntary arrangement not more than twenty-eight days after the termination or full implementation of the individual voluntary arrangement.

(2) The notice shall be accompanied by a copy of a report by the supervisor which—

(*a*) summarizes all receipts and payments in relation to the individual voluntary arrangement;

(*b*) explains any departure from the terms of the individual voluntary arrangement as approved by the creditors; and

(*c*) sets out the reasons why the individual voluntary arrangement has been terminated, if that is the case.

(3) Not more than twenty-eight days after the termination or full implementation of the individual voluntary arrangement, the supervisor shall deliver to the Director and, if the creditors were invited to consider the proposal following a report under section 257 of the Act, file with the Court a copy of the notice and report.

(4) The supervisor shall not vacate office until the notice and report have been delivered to the Director.

Application

274.—(1) An application to the Court under section 250 (1) of the Act shall be supported by a sworn statement stating—

(*a*) that the individual voluntary arrangement has been approved by the creditors; and

(*b*) the date of the approval.

(2) The application and a sworn statement shall be filed with the Court and the Court shall deliver a notice of the date, time and venue for the hearing to the bankrupt.

(3) Not less than five business days before the date of the hearing, the bankrupt shall deliver the notice of the date, time and venue, with a copy of the application and the sworn statement, to—

(*a*) the Official Receiver;

(*b*) where the trustee is not the same person as the Official Receiver, the trustee; and

(*c*) the supervisor.

(4) The Official Receiver, the trustee or the supervisor may attend the hearing in person or be represented and appear by a legal practitioner and draw the attention of the Court to any matter which seem to him to be relevant.

Notice of order

275.—(1) An Official Receiver, who has delivered a notice of the debtor's bankruptcy to creditors, shall, as soon as it is reasonably practicable, deliver to the creditors a notice of an annulment under section 250 of the Act.

(2) Upon delivering the notice under subrule (1), the expenses incurred by the Official Receiver in delivering of the notice under subrule (1) shall be a charge in the Official Receiver's favour on the property of the former bankrupt, whether or not the property is in the possession, custody or power of the former bankrupt.

(3) Where any property is in the possession, custody or power of a person other than the former bankrupt, the Official Receiver's charge is valid subject only to any expenses that may be incurred by the person in effecting realization of the property for the purpose of satisfying the charge.

Advertisement of order

276.—(1) The former bankrupt may, in writing within twenty-eight days of the date of an order under section 250 of the Act, require the Official Receiver to—

(*a*) cause a notice of the order to be published in the *Gazette*; and

(*b*) advertise the notice in such manner as he thinks fit.

(2) The Official Receiver shall comply with any such requirement, as soon as it is reasonably practicable.

(3) In addition to the standard contents, the notice shall state—

(*a*) the name of the former bankrupt;

(*b*) the date on which the bankruptcy order was made;

(*c*) that the bankruptcy order has been annulled;

(*d*) the date of the annulling order; and

(*e*) the grounds of the annulment.

(4) Where the former bankrupt has died, or is a person lacking capacity to manage his affairs, the reference to the former bankrupt in subrule (1) shall be read as reference to the personal representative of the former bankrupt or, as the case may be, a person appointed by the Court to represent, or act for, the former bankrupt.

Trustee's final account

277.—(1) The making of an order under section 250 of the Act shall not of itself release the trustee from any duty or obligation, imposed by or under the Act or these Rules, to account for all of the trustee's transactions in connexion with the former bankrupt's estate.

(2) As soon as it is reasonably practicable, after the making of an order, the trustee shall—

(*a*) deliver a copy of the final account of the trustee to the Director; and

(*b*) file a copy of that account with the Court.

(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 shall be released from such time as the Court may determine, having regard to whether subrule (2) has been complied with.

Application for suspension of automatic discharge

278.—(1) A bankrupt shall be automatically discharged two years after adjudication under section 240 of the Act, unless the Court orders otherwise under section 244 of the Act.

(2) Subrules (3) to (10) apply where the Official Receiver or the trustee applies to the Court for an order for suspension of automatic discharge.

(3) The Official Receiver or the trustee shall file with the application, a sworn statement setting out the reasons why it appears that an order for suspension of automatic discharge should be made.

(4) The Court shall fix the date, time and venue for the hearing of the application, and shall deliver the notice of the hearing to the Official Receiver, the trustee and the bankrupt.

(5) The Official Receiver shall deliver copies of his report to the bankrupt and any trustee who is not the Official Receiver, so as to reach them at least twenty-one days before the date fixed for the hearing.

(6) Copies of the trustee's sworn statement shall be delivered by the trustee to the Official Receiver and the bankrupt at least twenty-one days before the date fixed for the hearing.

(7) The bankrupt may, not later than five business days before the date of the hearing, file with the Court a notice specifying any statements in the Official Receiver's or trustee's sworn statement which the bankrupt intends to dispute.

(8) Where the bankrupt files such a notice under subrule (6), the bankrupt shall deliver copies of the notice, not less than three business days before the date of the hearing, to the Official Receiver and any trustee who is not the Official Receiver.

(9) Where the Court makes an order suspending the bankrupt's discharge, copies of the order shall be delivered by the Court to the Official Receiver, any trustee who is not the Official Receiver and the bankrupt.

(10) An order of the suspension of automatic discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify and provide contact details for the applicant who will be the Official Receiver or the trustee;

(*c*) identify the bankrupt;

(*d*) state the date of the bankruptcy order;

(*e*) state that upon considering the evidence it appears to the Court that the bankrupt has failed or is failing to comply with the bankrupt's obligations under the Act for the reasons specified in the order;

(*f*) state in what respect the bankrupt has failed to comply with his obligations under the Act;

(*g*) order that the relevant period for the purpose of section 279 of the Act will cease to run for the period specified in the order until the conditions specified in the order have been fulfilled;

(*h*) state the period and conditions referred to in paragraph (*g*); and

(*i*) state the date of the making of the order.

Certificate of discharge from bankruptcy

279.—(1) A bankrupt shall apply to the Court for a certificate of discharge whether the discharge is on account of expiration of time or otherwise.

(2) Where it appears to the Court that the bankrupt is discharged, whether by expiration of time or otherwise, the Court shall deliver a certificate of discharge to the former bankrupt.

(3) The certificate of discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify the former bankrupt;

(*c*) state the date of the bankruptcy order;

(*d*) certify that the former bankrupt was discharged from bankruptcy;

(*e*) state the date of discharge from bankruptcy; and

(*f*) state the date of the certificate.

(4) The certificate shall also state that—

(*a*) the former bankrupt may request notice of the discharge to be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183; and

(*b*) such a request shall be delivered to the Official Receiver within twenty-eight days of the making of the certificate of discharge.

(5) As soon as it is reasonably practicable, after delivery of such a request to the Official Receiver, the notice of discharge shall be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183.

(6) In addition to the standard contents, the notice shall state—

(*a*) the name of the former bankrupt;

(*b*) the date of the bankruptcy order;

(*c*) that a certificate of discharge has been delivered to the former bankrupt;

(*d*) the date of the certificate; and

(*e*) the date from which the discharge is effective.

(7) An application for a notice of discharge and a request for the notice to be published in the *Gazette* and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the Court to represent or act for the former bankrupt where the former bankrupt—

(*a*) has died; or

(*b*) is a person lacking capacity to manage his affairs.

Deferment of issue of order pending appeal

280. An order made by the Court on an application by the bankrupt for discharge under section 240 of the Act shall not be drawn up or published in the *Gazette* until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

Bankruptcy restrictions register

281.—(1) Where any of the following orders are made against a bankrupt or a debtor, the Director shall enter on the bankruptcy restrictions register the specified information—

(*a*) a bankruptcy order; and

(*b*) a bankruptcy restrictions order, if any.

(2) The specified information shall be—

(*a*) the bankrupt's or debtor's identity information;

(*b*) the bankrupt's or debtor's gender;

(*c*) the bankrupt's or debtor's occupation, if any;

(*d*) a statement that a bankruptcy order has been made against the bankrupt or debtor;

(*e*) the date of the making of the order;

(*f*) the Court and the Registry in which the order was made and the Court or order reference number; and

(*g*) the duration of the order, if any.

(3) In proceedings, the bankruptcy restrictions register shall be conclusive proof of the matters in the register.

PART VI

INSOLVENCY PROCEEDINGS

Division I—General Provisions

Formal defects

282. No insolvency proceedings shall be invalidated by any formal defect or any irregularity, unless the Court before which an objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

Requirement to assess costs by the detailed procedure

283.—(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable shall be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

(2) In the absence of an agreement, the office-holder—

(*a*) may serve a notice requiring the person entitled to payment to commence detailed assessment proceedings under the rules of civil procedure; and

(*b*) except in a receivership, shall serve such notice where a liquidation or creditors' committee formed in relation to the insolvency proceedings resolves that the amount of the costs shall be decided by detailed assessment.

(3) Detailed assessment proceedings shall be commenced in the Court and the Registry to which the insolvency proceedings are allocated or, where in relation to a company there is no such Court, any Court having jurisdiction to wind-up the company.

(4) Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the Court, the office-holder may make payments on account to such person in respect of those costs if that person undertakes in writing—

(*a*) to repay, as soon as it is reasonably practicable, any money which may, when detailed assessment is made, prove to have been overpaid; and

(*b*) to pay interest on any such sum as is mentioned in paragraph (*a*) at the rate specified in the Courts Act on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

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(5) In any proceedings before the Court, including proceedings on a petition, the Court may order costs to be decided by detailed assessment.

(6) Unless otherwise directed or authorized, the costs of a trustee in bankruptcy or a liquidator shall be allowed on the standard basis under the rules of civil procedure.

Procedure where detailed assessment is required

284.—(1) Before making a detailed assessment of the costs of any person employed in insolvency proceedings by the office-holder, the Court shall require a certificate of employment, which shall be endorsed on the bill and signed by the office-holder.

(2) The certificate shall include—

(*a*) the name and address of the person employed;

(*b*) details of the tasks to be carried out under the employment; and

(*c*) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the office-holder, commence detailed assessment proceedings under the rules of civil procedure.

(4) Where a person referred to in subrule (3) does not commence detailed assessment proceedings within three months of being required to do so under that subrule, or within such further time as the Court, on application, may allow, the office-holder may deal with the

insolvent estate without regard to any claim for costs by the person, whose claim is forfeited by such failure to commence proceedings.

(5) In any case falling within subrule (4), a claim for costs shall—

(*a*) lie against an office-holder in the office-holder's official and personal capacities; and

(*b*) be forfeited by the failure to commence proceedings.

Enforcement

285. A judgment of the Court in insolvency proceedings shall be enforced as any other civil judgment of the Court.

Procedure on appeal

286.—(1) An appeal against a decision of the Court at first instance may be brought—

(*a*) with the permission of the Court which made the decision; or

(*b*) with the permission of the Court which has jurisdiction to hear the appeal where the Court which made the decision refused to grant the permission.

(2) An appellant shall file a notice of appeal within thirty days after the date of the decision of the Court, stating the appellant's intention to appeal.

Official Receiver's expenses

287.—(1) Any expenses, including damages, incurred by the Official Receiver, in whatever capacity the Official Receiver may be acting, in connexion with proceedings taken against the Official Receiver in insolvency proceedings are to be treated as expenses of the insolvency proceedings.

(2) In respect of any sums due to the Official Receiver under subrule (1) in connexion with insolvency proceedings, the Official Receiver shall have a charge on the insolvent estate.

Division II—Provisions Applicable to all Debtors

Interpretation

288.—(1) In this Division—

"debt", in relation to winding-up of the company, means, subject to subrule (2), one or more of the following—

(*a*) a provable debt or liability to which the company is subject at the relevant date;

(*b*) a debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date; and

(*c*) interest provable;

"dividend", in its application to a members' voluntary winding-up of the company, includes a distribution to members;

"relevant date" means—

(*a*) in the case of a company reorganization which was not immediately preceded by a winding-up of the company, the date on which the company entered company reorganization;

(*b*) in the case of a company reorganization which was immediately preceded by a winding-up of the company, the date on which the company went into liquidation;

(*c*) in the case of a winding-up of the company which was not immediately preceded by a company reorganization, the date on which the company went into liquidation;

(*d*) in the case of a winding-up of the company which was immediately preceded by a company reorganization, the date on which the company entered company reorganization; and

(*e*) in the case of a bankruptcy, the date of the bankruptcy order.

(2) For the purposes of any provision of the Act or these Rules about winding-up of the company, a liability in tort is a debt provable in a winding-up of the company, if—

(*a*) the cause of action has accrued at the relevant date; or

(*b*) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of references, in any provisions of the Act or these Rules about winding-up of the company, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is liquidated or unliquidated, or is capable of being ascertained by fixed rules or as a matter of opinion, and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the Act or these Rules about winding-up of the company, "liability" means, subject to subrule (3), a liability to pay money or money's worth, including any liability—

(*a*) under an enactment;

(*b*) for breach of trust;

(*c*) in contract, tort or bailment; and

(*d*) arising out of an obligation to make restitution.

(5) This rule applies where a company is in company reorganization and shall be read as if—

(*a*) references to winding-up of the company were references to company reorganization of the company;

(*b*) references to company reorganization of the company were references to winding-up of the company;

(*c*) references to going into liquidation of the company were references to entering company reorganization of the company; and

(*d*) references to entering company reorganization of the company were references to going into liquidation of the company.

Provable debts

289.—(1) All claims by creditors in insolvency proceedings are provable as debts against the company or the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding in damages.

(2) Nothing in subrule (1) shall prejudice any law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Proving debt

290.—(1) Proofs of debt in insolvency proceedings, except in shareholders' voluntary winding-up of the company, shall be delivered to the office-holder unless—

(*a*) the Court orders otherwise;

(*b*) in a winding-up of the company immediately preceded by a company reorganization of the company, the creditor has already proved in the company reorganization; or

(*c*) in a company reorganization of the company immediately preceded by a winding-up of the company, the creditor has already proved in the winding-up.

(2) In a shareholders' voluntary winding-up of the company, the liquidator may require proofs of debt to be delivered to him.

Requirements for proof of debt

291.—(1) A proof of debt shall—

(*a*) be made out by, or under the direction of, the creditor and authorized by the creditor or a person authorized in that behalf;

(*b*) state the creditor's name and address;

(*c*) if the creditor is a company, state its unique identifiers under the Companies Act; Cap. 46:03

(*d*) state the total amount of the creditor's claim, including value added tax, as at the relevant date, less any payments made after that date in relation to the claim, any adjustment by way of set-off under section 280 of the Act;

(*e*) state whether or not the claim includes an uncapitalized interest;

(*f*) contain particulars of how and when the debt was incurred by the company or the bankrupt;

(*g*) contain particulars of any security held, the date on which it was given and the value which the creditor attaches on it;

(*h*) provide details of any security interest in relation to goods to which the debt refers;

(*i*) provide details of any document by reference to which the debt can be substantiated, but the document shall accompany the proof of debt only if called for under subrule (2); and

(*j*) state the name, postal address and authority of the person authorizing the proof of debt, if it is someone other than the creditor.

(2) The office-holder may call for any document or other evidence to be produced to the office-holder if the office-holder considers it necessary for the purpose of substantiating the whole or any part of a claim.

Creditor bears own costs of proof of debt

292.—(1) Unless the Court otherwise orders, each creditor bears the cost of proving that creditor's own claim, including costs incurred in providing documents or evidence under rule 289 (2).

(2) In a company reorganization or winding-up of the company, costs incurred by the office-holder in estimating the value of a debt are payable out of the assets as an expense of the company reorganization or winding-up.

(3) In a bankruptcy, costs incurred by the office-holder in estimating the value of a debt fall on the estate as an expense of the bankruptcy.

Allowing inspection of proofs of debt

293. The office-holder shall, as long as proofs of debt delivered to the office-holder are in the possession of the office-holder, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(*a*) any creditor who has delivered a proof of debt, unless the proof has been wholly rejected for purposes of dividend or otherwise;

(*b*) any member or contributory of the company or, in the case of a bankruptcy, the bankrupt; and

(*c*) any person acting on behalf of the persons mentioned in paragraphs (*a*) and (*b*).

Transmission of proofs: appointment or replacement of office-holder

294.—(1) Where an office-holder is first appointed, or is appointed in succession to the Official Receiver or to replace another office-holder, ("the appointee") the former office-holder or, where it is the case, the Official Receiver, shall, as soon as it is reasonably practicable, after the appointment, deliver to the appointee all proofs of debt which the former office-holder or the Official Receiver has received, together with an itemized list of them.

(2) The appointee shall sign the list and return it to the former office-holder or the Official Receiver.

Admission and rejection of proofs of debt for dividend

295.—(1) A proof of debt may be admitted for dividend for the whole amount claimed by the creditor or for part of that amount.

(2) Where the office-holder rejects a proof of debt in whole or in part, the office-holder shall prepare a statement of his reasons for doing so, and deliver the statement, as soon as it is reasonably practicable, to the creditor.

Appeal against decision on proof of debt

296.—(1) Where a creditor is dissatisfied with the office-holder's decision in relation to the creditor's proof of debt, including any decision on the question of priority, the creditor may apply to the Court for the decision to be reversed or varied.

(2) A member, a contributory, any other creditor or, in a bankruptcy, a bankrupt, may, if dissatisfied with the office-holder's decision admitting or rejecting the whole or any part of a proof of debt, make such an application within twenty-one days of being notified of the office-holder's decision.

(3) The Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant to the

creditor in question, if the applicant is not the creditor who delivered the proof of debt in question and the office-holder.

(4) The office-holder shall, on receipt of the notice, file with the Court the relevant proof of debt, together with relevant documents.

(5) Where the application is made by a member or a contributory, the Court shall not disallow the proof of debt, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that it is likely that there shall be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(6) After the application has been heard and determined the proof of debt shall be returned by the Court to the office-holder.

Withdrawal or variation of proof of debt

297. A creditor's proof of debt may, at any time, by agreement between the creditor and the office-holder, be withdrawn or varied as to the amount claimed.

Exclusion of proof of debt by the Court

298.—(1) The Court may exclude a proof of debt or reduce the amount claimed—

(*a*) on the office-holder's application where he proves that the proof of debt has been improperly admitted or ought to be reduced; or

(*b*) on the application of a creditor, a member or a contributory if the office-holder declines to exclude a proof of debt or reduce the amount claimed.

(2) Where the application is made by a member or a contributory, the Court shall not exclude a proof of debt or reduce the amount claimed, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that there will be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(3) Where an application is made under subrule (1), the Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant—

(*a*) in the case of an application by the office-holder, to the creditor who made the proof of debt; and

(*b*) in the case of an application by a creditor, a member or a contributory, to the office-holder and to the creditor who made the proof of debt, if the applicant is not the creditor who made the proof of debt.

Debts of insolvent company to rank equally

299.—(1) Subrule (2) apply in cases of—

(*a*) company reorganization; and

(*b*) winding-up of the company.

(2) Debts, other than preferential debts, rank equally between themselves and, after the preferential debts, shall be paid in full, unless the assets are insufficient to satisfy them in full, in which case they abate in equal proportions.

Division of unsold assets

300. In a company reorganization or in a winding-up of the company, the office-holder may, with the permission—

(*a*) in a company reorganization, of the creditors' committee, or, if there is no creditors' committee, the creditors; or

(*b*) in a winding-up of the company, without prejudice to provisions about disclaimer, of the creditors' committee, or, the liquidation committee, or, if there is no creditors committee or liquidation committee, the creditors,

divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Estimate of value of debt

301.—(1) In a company reorganization or in a winding-up of the company, the office-holder shall estimate the value of a creditor's claim which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(2) The office-holder may revise an estimate previously made under subrule (1), if he thinks fit by reference to a change of circumstances or to information becoming available to him.

(3) The office-holder shall inform the creditor his estimate and any revision of the estimate.

(4) Where the value of a creditor's claim is estimated under this rule or by the Court under section 278 of the Act, the amount provable in the case of that claim is that of the estimate for the time being.

302. Unless otherwise allowed by an office-holder, a proof of debt in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security shall not be admitted, unless the instrument or security itself, or a copy of the instrument or security is produced, certified by the creditor or the creditor's authorized representative to be a true copy.

Negotiable instruments, etc.

303. A secured creditor who—

Secured creditors

(*a*) realizes a security, may prove for the balance of the debt owed to him, after deducting the amount realized; or

(*b*) voluntarily surrenders a security for the general benefit of creditors, may prove for the whole debt owed to that secured creditor, as if it were unsecured.

304.—(1) Except where subrule (2) applies, a secured creditor may, with the permission of the Court or with the agreement of the office-holder, at any time alter the value which that creditor has attached to a security in a proof of debt.

Secured creditor: value of security

(2) Where a secured creditor—

(*a*) is the applicant for a company reorganization order and has in the application or the notice of appointment attached a value on a security;

(*b*) has voted in a company reorganization, winding-up of the company by the Court or a bankruptcy in relation to the unsecured balance of the secured creditor's debt; or

(*c*) is the petitioner in a winding-up of the company by the Court or a bankruptcy and has in the petition attached a value on a security,

he may only alter the value of a security with the permission of the Court.

305.—(1) Subject to subrule (2), where a secured creditor omits to disclose a security in a proof of debt, the secured creditor shall surrender that security for the general benefit of creditors.

Secured creditor: surrender for non-disclosure

(2) On application by the secured creditor, the Court may relieve the secured creditor from surrendering his security for the general benefit of creditors on the ground that the omission referred to in subrule (1) was inadvertent or the result of an honest mistake.

(3) Where the Court grants the relief under subrule (2), it may require or allow the creditor's proof of debt to be amended on such terms as the Court considers just.

Secured creditor: redemption by office-holder

306.—(1) The office-holder may, at any time, deliver a notice to a creditor whose debt is secured that the office-holder proposes, at the expiration of twenty-eight days from the date of the notice, to redeem the security at the value attached to it in the creditor's proof of debt.

(2) The creditor shall have twenty-one days, or such longer period as the office-holder may allow, in which to exercise the right to alter the value of a security with the permission of the Court, where rule 304 applies but otherwise without the need for the agreement of the office-holder or the permission of the Court.

(3) Where the creditor alters the value of the security, the office-holder may only redeem at the new value.

(4) Where the office-holder redeems the security, the cost of transferring it is—

(*a*) in the case of a company reorganization or a winding-up of the company, payable out of the assets; and

(*b*) in the case of a bankruptcy, borne by the bankruptcy estate.

(5) A secured creditor may, at any time, by notice, call upon the office-holder to choose whether the office-holder shall or shall not exercise his power to redeem the security at the value attached to it, and the office-holder shall have three months within which to exercise or not exercise his power to redeem.

Secured creditor: potential sale of security

307.—(1) Where the office-holder is dissatisfied with the value which a secured creditor attaches to a security, whether in the proof or by way of alteration of value under rule 304 (1), the office-holder may require the security to be offered for sale.

(2) The terms of sale shall be as agreed between office-holder and the secured creditor or as the Court may direct.

(3) Where the sale is by auction, the office-holder, on behalf of the company or the bankruptcy estate, and the creditor may bid.

(4) This rule shall not apply if the value of the security has been altered with the permission of the Court.

Realization of security by creditor

308. Where a creditor who has valued a security subsequently realizes the security, whether or not at the instance of the office-holder—

(*a*) the net amount realized shall be substituted for the value previously attached by the creditor to the security; and

(*b*) that amount shall be treated in all respects as an amended valuation made by the creditor.

Discounts

309. All trade and other discounts, except a discount for immediate or early settlement, which would have been available but for the insolvency proceedings shall be deducted from the claim.

Company reorganization: mutual dealings and set-off

310.—(1) This rule applies in a company reorganization where the administrator proposes to make a distribution and has delivered a notice to that effect.

(2) An account shall be taken as at the date of the notice of what is due from the company and a creditor to each other from their mutual dealings and the sums due from the one shall be set-off against the sums due from the other.

(3) Where there is a balance owed to the creditor, then only that balance is provable in the company reorganization.

(4) Subject to subrule (5), if there is a balance owed to the company, such balance shall be paid to the administrator as part of the assets.

(5) Where all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the company reorganization of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) an application for a company reorganization order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) an application for a company reorganization order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*c*) a debt arising out of an obligation incurred after the company entered company reorganization;

(*d*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the company entered company reorganization;

(*e*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or a winding-up petition was pending; and

(ii) the winding-up of the company immediately preceded the company reorganization of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or that a winding-up petition was pending; and

(ii) where the winding-up of the company immediately preceded the company reorganization of the company;

(*g*) a debt arising out of an obligation incurred during the winding-up of the company which immediately preceded the company reorganization of the company; or

(*h*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during the winding-up of the company which immediately preceded the company reorganization of the company.

(7) A sum shall be treated as being due to, or from, the company for the purposes of subrule (3) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Winding-up of the company: mutual dealings and set-off

311.—(1) This rule applies in the winding-up of the company where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving for a debt in the liquidation.

(2) An account shall be taken of what is due from the company and the creditor to each other from their mutual dealings and the sums due from the one shall be set-off against the sums due from the other.

(3) Where there is a balance owed to the creditor, only that balance is provable in the winding-up of the company.

(4) Where there is a balance owed to the company, such balance shall be paid to the liquidator as part of the assets.

(5) Notwithstanding subrules (3) and (4), if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the winding-up of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*c*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*d*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*e*) a debt arising out of an obligation incurred during a company reorganization of the company which immediately preceded the winding-up of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during a company reorganization of the company which immediately preceded the winding-up of the company; or

(*g*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into after the company went into liquidation.

(8) A sum shall be treated as being due to, or from, the company for the purposes of subrules (3) and (4) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Debt in foreign currency

312.—(1) For the purpose of proving for a debt incurred or payable in a foreign currency, the amount of the debt shall be converted into Malaŵi Kwacha at a single foreign currency exchange rate for the foreign currency determined by the office-holder with reference to the foreign currency exchange rate prevailing on the relevant date.

(2) Where the office-holder receives any objections from the creditors to the foreign currency exchange rate determined under subrule (1), he shall apply to the Court to determine the rate.

Payments of periodic nature

313.—(1) In the case of rent and other payments of a periodic nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at the relevant date any payment shall have been accruing and becomes due, the creditor may prove for the payment as would have been due at the date, if the payment shall have been accruing from day-to-day.

Interest

314.—(1) Where a debt proved in insolvency proceedings bears interest, the interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) The creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed if the debt is due by virtue of a written instrument and payable at a certain time, in which case interest may be claimed for the period from that time to the relevant date.

(3) Where the debt is due otherwise, interest may only be claimed if, before—

(*a*) the date on which the company—

(i) entered company reorganization or, if the company reorganization of the company was immediately preceded by the winding-up of the company, the date on which the company went into liquidation; or

(ii) went into liquidation or, if the winding-up of the company was immediately preceded by the company reorganization of

the company, the date on which the company entered company reorganization; or

(*b*) the presentation of the bankruptcy petition or the bankruptcy application, a demand for payment of the debt was made in writing by, or on behalf of the creditor, and a notice delivered that interest would be payable from the date of the demand to the date of the payment.

(4) Interest under subrule (3) may only be claimed from the date of the demand to the relevant date and for all the purposes of the Act and these Rules shall be charged at a rate not exceeding the rate under section 65 of the Courts Act on the relevant date.

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(5) In a company reorganization—

(*a*) any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;

(*b*) all interest payable under paragraph (*a*) shall rank equally whether or not the debts on which the interest is payable rank equally; and

(*c*) the rate of interest payable under paragraph (*a*) is whichever is the greater of the rate specified under subrule (4) and the rate applicable to the debt apart from the company reorganization.

Intention to declare and distribute dividend

315.—(1) In a company reorganization and in the winding-up of the company, the office-holder shall deliver notice to the creditors of his intention to declare and distribute a dividend.

(2) In the winding-up of the company, whenever the liquidator has funds available, he shall, subject to the retention of such funds as may be necessary for the expenses of the winding-up of the company, declare and distribute dividends among the creditors in respect of the debts which they have proved.

Notice of intention to declare dividend

316.—(1) Where an office-holder intends to declare a dividend, he shall deliver a notice of his intention to declare a dividend to all creditors who have not proved their debts.

(2) Before declaring a dividend, the office-holder shall, by a notice, invite the creditors to prove their debts, unless he has previously done so by a notice which has been published in the *Gazette* or otherwise advertised.

(3) The notice—

(*a*) shall be published in the *Gazette*; and

(*b*) may be advertised in such other manner as the office-holder thinks fit.

(4) Where a dividend is to be declared for preferential creditors—

(*a*) a notice under subrule (1) need only be delivered to creditors whose debts the office-holder has reason to believe are preferential; and

(*b*) a notice under subrule (3) need only be delivered if the office-holder thinks fit.

Content of notice

317. A notice under rule 316 (1) or (4) shall, in addition to the standard contents—

(*a*) specify a date ("the last date for proving"), by which proofs of debt shall be delivered, and which shall be—

(i) the same date for all creditors; and

(ii) not less than twenty-one days from the date of notice;

(*b*) state that it is the intention of the office-holder to make a distribution to creditors within two months from the last date for proving;

(*c*) specify whether the proposed dividend is interim or final;

(*d*) specify the place to which proofs of debt shall be delivered;

(*e*) in the ease of a company reorganization, state that it is the intention of the administrator to make a distribution to creditors within two months from the last date for proving;

(*f*) in the case of the winding-up of the company or bankruptcy, state that it is the intention of the office-holder to declare a dividend within two months from the last date for proving; and

(*g*) in the case of a members' voluntary winding-up of the company, where the distribution is to be a sole or final distribution, state that the dividend may be distributed without regard to the claim of any person in respect of a debt not proved.

Postponement or cancellation of dividend

318. Where within the two months referred to in rule 317 (*b*)—

(*a*) the office-holder has rejected a proof of debt in whole or in part and an application is made to the Court for that decision to be reversed or varied; or

(*b*) an application is made to the Court for the office-holder's decision on a proof of debt to be reversed or varied, or for a proof of debt to be excluded, or for a reduction of the amount claimed, the office-holder may postpone or cancel the dividend.

Declaration of dividend

319.—(1) Where the office-holder has not had cause to postpone or cancel the dividend in the two months referred to in rule 317 (*e*) or (*f*), he shall within that period proceed to declare the dividend to one or more classes of creditors to which he gave notice.

(2) Except with the permission of the Court, the office-holder shall not declare a dividend as long as there is pending any application to the Court to reverse or vary his decision on a proof of debt, or to exclude a proof of debt or to reduce the amount claimed.

(3) Where the Court gives permission under subrule (2), the office-holder shall make such provision in relation to the proof of debt as the Court may direct.

Notice of declaration of dividend

320.—(1) Subject to subrule (3), where the office-holder declares a dividend, he shall deliver a notice of such declaration to all creditors who have proved their debts.

(2) The notice under subrule (1) shall include the following particulars relating to the insolvency proceedings—

(*a*) amounts raised from the sale of assets, indicating, as far as it is reasonably practicable, amounts raised by the sale of the particular assets;

(*b*) payments made by the office-holder in carrying out his functions in relation to the insolvency proceedings;

(*c*) provision, if any, made for unsettled claims, and funds, if any, retained for particular purposes;

(*d*) the total amount to be distributed and the rate of dividend; and

(*e*) whether, and if so, when, any further dividend shall be declared.

(3) Where the office-holder declares a dividend for preferential creditors only, the notice under subrule (1) shall be delivered to those preferential creditors who have proved their claims.

Payment of dividends and related matters

321.—(1) The office-holder may distribute a dividend simultaneously with the notice declaring the distribution of a dividend.

(2) The office-holder may pay a dividend to the creditor by post, or with the agreement of the creditor, arrange for the dividend to be paid to the creditor by any other means or in any form, or hold for the creditor's collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of the instrument, if required to be produced by the holder for that purpose.

(4) In the declaration of a dividend, no payment shall be made more than once by virtue of the same debt.

Notice of no dividend, or no further dividend

322. Where the office-holder delivers a notice to the creditors that he is unable to declare any dividend or further dividend, the notice shall contain a statement to the effect that—

(*a*) no funds have been realized; or

(*b*) the funds realized have already been distributed, used or allocated for defraying the expenses of conducting the insolvency proceedings.

Declaration of sole or final dividend

323.—(1) When the liquidator in the winding-up of the company has realized all the company's assets or so much of them as can, in the liquidator's opinion, be realized without needlessly prolonging the winding-up of the company, he shall deliver a notice—

(*a*) of the intention to declare a final dividend; or

(*b*) that no dividend or further dividend shall be declared.

(2) The notice under subrule (1) shall contain such particulars as are required by these Rules and shall require claims against the assets to be established by a date set out in the notice.

(3) Where, in a company reorganization or the winding-up of the company, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under these Rules, the office-holder—

(*a*) in the winding-up of the company, shall defray any outstanding expenses of the winding-up out of the assets;

(*b*) in a company reorganization, shall—

(i) pay any outstanding expenses of the winding-up of the company or provisional winding-up of the company that immediately preceded the company reorganization;

(ii) pay any items payable under section 65 of the Act; and

(iii) pay any amounts, including any debts or liabilities and the administrator's own remuneration and expenses, which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which the administrator had custody, possession or control under section 65 of the Act; and

(*c*) in a members' voluntary winding-up of the company may, and in every other case shall, declare and distribute that dividend without regard to the claim of any person whose debt not already proved.

(4) The Court may, on the application of any person whose debt is not already proved, postpone the date specified in the notice.

Admission or rejection of proofs of debt

324.—(1) Unless the office-holder has already dealt with them, he shall, within five business days of the last date for proving—

(*a*) admit or reject, in whole or in part, proofs of debt delivered to him; or

(*b*) make such provision in relation to proofs of debt as he thinks fit.

(2) The office-holder shall not be obliged to deal with proofs delivered after the last date for proving, but he may do so, if he thinks fit.

Company reorganization and winding-up: provisions on dividends

325. In a company reorganization or the winding-up of the company, in the calculation and distribution of a dividend, the office-holder shall make provision for—

(*a*) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to deliver their proofs of debt;

(*b*) any debts which are the subject of claims which have not yet been determined; and

(*c*) disputed proofs of debt and claims.

Supplementary provisions on dividends

326.—(1) Subject to subrule (2), a creditor shall not interfere with the payment of any dividend or making of any distribution on the ground that—

(*a*) the amount claimed in the creditor's proof of debt is increased after payment of the dividend;

(*b*) in a company reorganization, insolvency proceedings or a compulsory winding-up of the company, the creditor failed to prove for a debt before the declaration of the dividend; or

(*c*) in a members' voluntary winding-up of the company, the creditor failed to prove for a debt before the last date for proving or increases the claim in proof of debt after that date.

(2) A creditor shall be entitled to be paid a dividend or receive a distribution which he has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) The dividend under subrule (2) shall be paid or distributed before that money is applied to the payment of any further dividend or making of any further distribution.

(4) Where, after a creditor's proof of debt has been admitted, the proof of debt is withdrawn or excluded, or the amount of the proof is reduced, the creditor shall be liable to repay to the office-holder, for the credit of the insolvency proceedings, any amount overpaid by way of dividend.

Secured creditors

327.—(1) Subrules (2) and (3) shall apply where a creditor alters the value of a security after a dividend has been declared.

(2) Where the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as it is reasonably practicable, repay to the office-holder, for the credit of the administration or of the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) Where the alteration increases the creditor's unsecured claim, the creditor shall be entitled to receive from the office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor shall not interfere with any dividend that has been declared, whether or not the dividend has been distributed, before the date of the alteration.

Disqualification from participation in dividend

328. Where a creditor contravenes the Act or these Rules in relation to the valuation of securities, the Court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

329.—(1) Where a person who is entitled to a dividend ("the entitled person") delivers a notice to the office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned his entitlement to another person, the office-holder shall pay the dividend to that other person.

(2) The notice delivered under subrule (1) shall specify the name and address of the person to whom payment is to be made.

Debt payable in future

330. Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, he shall be entitled to the dividend equally with other creditors, but subject as follows—

For the purpose of the dividend, the amount of the creditor's admitted proof of debt or, if a distribution has previously been made to the creditor, the amount remaining outstanding under the creditor's admitted proof of debt, shall be reduced by applying the following formula—

$$\frac{X}{1.05}\ n$$

where—

"X" is the value of the admitted proof of debt; and

"n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would have been due, expressed in years, part of a year being expressed as a decimal fraction of a year.

Non-payment of dividend

331.—(1) In a company reorganization or the winding-up of the company, where the office-holder refuses to pay a dividend that has been declared, the Court may, if it considers it just, order the office-holder to pay the dividend.

(2) The Court shall order the office-holder to pay, out of his personal money—

(*a*) interest on the dividend, at the rate under section of the Courts Act, from the time when it was withheld; and

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(*b*) the costs of the proceedings in which the order to pay the interest shall have been made.

Division III—Committees and Meetings

Functions of committee

332. In addition to any functions conferred on a committee by any provision of the Act, the committee shall assist the office-holder in discharging his functions and act in relation to him in such manner as may from time to time be agreed.

Composition of committee

333. A committee shall have at least three members but not more than five members.

Eligibility to be member of committee

334. A person claiming to be a creditor shall be eligible to be a member of the creditors' or liquidation committee—

(*a*) in a company reorganization or a receivership if the person's claim—

(i) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(ii) is not fully secured; or

(*b*) in a creditors' voluntary winding-up of the company, a winding-up of the company by the Court or a bankruptcy, if—

(i) the person has delivered a proof of debt;

(ii) the proof of debt has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(iii) the debt is not fully secured.

Eligibility of body corporate to be member of committee

335. A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative duly appointed.

Cessation of creditors' committee when creditors are paid in full

336.—(1) Where the creditors have been paid in full together with interest, if applicable, the liquidator shall—

(*a*) issue a certificate to that effect; and

(*b*) deliver to the Registrar of Companies and the Director a notice to that effect together with a copy of the certificate referred to in paragraph (*a*).

(2) On the issue of the certificate, the creditors' committee shall cease to exist.

(3) The certificate shall—

(*a*) identify the liquidator;

(*b*) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest, if applicable; and

(*c*) be signed and dated by the liquidator.

Filling vacancy in creditors' committee

337.—(1) This rule applies if there is a vacancy in the membership of a creditors' committee.

(2) The vacancy may not be filled if—

(*a*) the office-holder and a majority of the remaining committee members agree; and

(*b*) the number of members does not fall below three.

(3) The office-holder may appoint a creditor, who is qualified to be a member of the committee, to fill the vacancy, if—

(*a*) a majority of the members of the committee agree to the nomination; and

(*b*) the creditor consents to act as such.

(4) Alternatively to subrule (3), a meeting of creditors may resolve that a creditor be appointed, with the creditor's consent, to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a creditors' meeting which the office-holder does not attend, the chairperson of the meeting shall report the appointment to the office-holder.

Resignation of committee member

338. A member of a committee may resign from his office by a notice delivered to the office-holder.

Termination of membership of committee

339. A person's membership of a committee shall automatically terminate if the person—

(*a*) becomes bankrupt, in which case the person's trustee in bankruptcy shall replace the bankrupt as a member of the committee;

(*b*) neither attends nor is represented at three consecutive meetings, unless it has been resolved at the third of those meetings that this rule shall not be applicable in that person's case;

(*c*) has ceased to be eligible to be a member of the committee under these Rules;

(*d*) ceases to be a creditor and three months have elapsed from the date that the member ceased to be a creditor; or

(*e*) is found never to have been a creditor.

Removal of member of committee

340. A member of a committee may be removed by a resolution at a creditors' meeting.

Formalities of establishment of committee: certificate of due constitution

341.—(1) A committee shall not come into being until the office-holder has issued a certificate of its due constitution.

(2) The certificate of due constitution shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state that the committee has been duly constituted;

(*d*) identify each company that is a member of the committee;

(*e*) give the full name and address of a member which is not a company; and

(*f*) be signed and dated by the office-holder.

(3) Where the office-holder is not the chairperson of the creditors' meeting which resolves to establish the committee, the chairperson shall, as soon as it is reasonably practicable, deliver a notice of the resolution to the office-holder or the person the meeting appoints as office-holder, and inform the office-holder of the names and addresses of the persons elected to be members of the committee.

(4) A person shall not act as a member of the committee, unless he consents to act as such.

(5) A person's consent to act as a member of a committee may be given by his proxy-holder attending the meeting establishing the committee or, in the case of a body corporate, by its duly appointed representative, unless the relevant proxy or authorization does not allow the provision of consent to act as such.

(6) The certificate of due constitution shall be issued, as soon as it is reasonably practicable, after the minimum number of persons have agreed to act as members of a committee.

(7) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the certificate to the Registrar of Companies and the Director.

Issue of an amended certificate of due constitution

342.—(1) The office-holder shall issue an amended certificate of due constitution if there is a change in membership of the committee.

(2) The amended certificate shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state the date of the original certificate of due constitution and the date of the last amended certificate, if any;

(*d*) state that this amended certificate replaces the previous certificate;

(*e*) identify each company that is a member of the committee;

(*f*) give the full name and address of a member which is not a company;

(*g*) state whether any member has become a member since the issue of the previous certificate;

(*h*) give the full name and address of any member named on the previous certificate who is no longer a member and the date when such membership ended; and

(*i*) be signed and dated by the office-holder.

(3) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the amended certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the amended certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the amended certificate to the Registrar of Companies and the Director.

Convening committee meeting

343. The convener shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a committee meeting, including the resumption of an adjourned meeting.

Notice of meeting: content and accompanying documents

344.—(1) A notice summoning a meeting shall specify the purpose of, the date, time and venue for the meeting and—

(*a*) in case of a creditors' meeting, state that claims, proofs of debt, if not already delivered, and proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting;

(*b*) in the case of a meeting of contributories, state that proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for contributories to be entitled to vote at the meeting;

(*c*) in the case of a meeting to remove a liquidator in an insolvent or compulsory winding-up of the company, draw the attention of creditors to provisions which relate to the release of the liquidator and provisional liquidator, as the case may be; and

(*d*) in the case of a meeting to remove a trustee in a bankruptcy, draw the attention of creditors to rules which relate to the release of the trustee.

(2) Blank proxies complying with these Rules shall be delivered with every notice summoning a meeting.

(3) This rule shall not apply if the Court orders that a notice of a meeting be given by advertisement only.

Non-receipt of notice of meeting

345. Where a meeting is summoned by a notice under the Act or these Rules, the meeting shall be presumed to have been duly summoned and held, even if not everyone of all those persons to whom the notice was delivered responded in writing or attended the meeting.

Requisitioned meetings

346.—(1) In the case of a company reorganization, a request for a meeting under the Act or these Rules shall be delivered within eight business days from the date on which the administrator's statement of proposals shall have been delivered.

(2) The request for the meeting under subrule (1) shall include a statement of the purpose of the proposed meeting and—

(*a*) a statement of the requesting creditor's claim or contributory's claim;

(*b*) a list of the creditors or contributories concurring with the request and the amounts of their respective claims or values; and

(*c*) a confirmation of concurrence from each creditor or contributory concurring or a statement of the requesting creditor's claim or contributory's claim and that amount alone is sufficient without the concurrence of other creditors or contributories.

(3) In subrule (2), a contributory's value shall be the amount which the contributory may vote at any meeting.

(4) A requisitioned meeting shall be held within twenty-eight days from the date of the request.

Expenses of requisitioned meetings

347.—(1) The convener shall, not later than twenty-one days from the receipt of a request for a meeting, inform the requesting creditor or contributory of the sum to be deposited as security for payment of the expenses of summoning and holding the meeting.

(2) The convener shall not be obliged to summon a requisitioned meeting under subrule (1) unless—

(*a*) the convener has received the required sum; or

(*b*) twenty-one days have expired from receipt of the request for a meeting without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.

(3) The expenses of the requisitioned meeting shall be paid out of the deposit under subrule (1), if any, unless—

(*a*) the meeting resolves that the expenses shall be payable out of the assets of the company as an expense of the company reorganization of the company, winding-up of the company or bankruptcy; and

(*b*) in the case of a meeting of contributories, the creditors are first paid in full and, if applicable, with interest.

(4) Where there is no resolution under subrule (3) (*a*), the expenses shall be paid by the requesting creditor or contributory to the extent that the deposit, if any, is not sufficient.

(5) To the extent that the deposit, if any, shall not be required for payment of the expenses, it shall be repaid to the requesting creditor or contributory, as soon as it is reasonably practicable.

Quorum at meeting of creditors or contributories

348.—(1) A meeting of creditors or contributories shall not be competent to transact any business unless a *quorum* shall have been satisfied.

(2) A *quorum* shall be—

(*a*) in the case of a meeting of creditors, at least one creditor entitled to vote; and

(*b*) in the case of a meeting of contributories, at least two contributories entitled to vote, or all the contributories, if their number does not exceed two.

(3) A meeting of creditors or contributories shall not commence, unless at least the expiry of fifteen minutes after the time appointed for its commencement where—

(*a*) the provisions of this rule as to a *quorum* attending are satisfied by the attendance of the chairperson alone, or one other person in addition to the chairperson; and

(*b*) the chairperson is aware, by virtue of claims or proofs of debt and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

349.—(1) The chairperson of a creditors' meeting or contributories or a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy shall be the convener or an appointee.

(2) Where the convener is the Official Receiver or the Director, the appointment need not be in writing if the appointee is another Official Receiver.

Adjournment by chairperson

350.—(1) The chairperson may, and shall, if it is so resolved, adjourn for not more than fourteen days any meeting of creditors

in company reorganization, but subject to the direction of the Court—

(*a*) any meeting in an insolvent or compulsory winding-up of the company or bankruptcy where the adjournment is with a view to obtaining the attendance of the bankrupt; or

(*b*) any other meeting in an insolvent or compulsory winding-up of the company or bankruptcy.

(2) Further adjournment under this rule shall not be to a day later than fourteen days after the date on which the meeting was originally held.

(3) Where a meeting is adjourned, the chairperson shall, as soon as it is reasonably practicable, unless for any reason the chairperson thinks it unnecessary or impracticable, deliver a notice of the adjournment in an insolvent or compulsory winding-up of the company, to any person—

(*a*) who did not attend the meeting as the chairperson thinks fit; or

(*b*) in a bankruptcy, to the bankrupt if not in attendance at the meeting.

Administrator's proposals: lack of majority at initial creditors' meeting

351. Where an initial creditors' meeting has failed to satisfy the requisite majority for approval of the administrator's proposals for a company reorganization, the chairperson may, and if a resolution is passed to that effect shall, adjourn the meeting for not more than fourteen days.

Adjournment of meetings to remove liquidator or trustee

352. Where the chairperson of a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy is the liquidator or trustee, or the liquidator's or trustee's nominee, and a resolution has been proposed for the liquidator's or trustee's removal, the chairperson shall not adjourn the meeting without the consent of at least one-half, in value, of the creditors attending and entitled to vote.

Adjournment in absence of chairperson

353.—(1) This rule applies to meetings in a company reorganization, an insolvent or compulsory winding-up of the company or a bankruptcy.

(2) Where the chairperson fails to attend a meeting within thirty minutes of the time fixed for the meeting to start, the meeting shall

be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) Where on the second adjournment the chairperson fails to attend the meeting within thirty minutes of the time fixed for the meeting to start and no person is available to act as a chairperson in place of the chairperson, the meeting shall come to an end.

Proofs of debt and proxies on adjournment

354. Where a meeting in a company reorganization, insolvent or compulsory winding-up of the company or bankruptcy is adjourned, claims, proofs of debt and proxies may be used if delivered at any time up to 12:00 noon on the business day immediately before resumption of the adjourned meeting.

Adjournment in receivership

355. A creditors' meeting in a receivership shall not be adjourned, even if no *quorum* is satisfied, except where the chairperson thinks it fit that the meeting may be adjourned to another date, time and venue.

Suspension of meeting

356. In the course of a meeting, the chairperson may, without an adjournment, declare the meeting suspended for one or more periods not exceeding one hour in total.

Creditors' voting rights at meetings

357.—(1) A creditor shall be entitled to vote at a creditors' meeting only if—

(*a*) there has been delivered to the convener—

(i) in a company reorganization or receivership, details of the debt; or

(ii) in an insolvent or compulsory winding-up of the company or bankruptcy, a proof of debt, claimed under subrule (2), including any calculation; and

(*b*) the details of the debt were, or a proof of debt was, delivered to the convener—

(i) not later than 12:00 noon on the business day before the day fixed for the meeting; or

(ii) later than the time in subparagraph (i) but the chairperson of the meeting is satisfied that the delay was due to circumstances beyond that person's control; and

(*c*) the claim has been admitted for the purposes of entitlement to vote; or

(*d*) there has been delivered to the convener any proxy intended to be used on behalf of that person.

(2) A debt shall be claimed under this rule if it is claimed as due from the company or bankrupt to the person seeking to be entitled to vote.

(3) The details of the debt delivered to the convener in a receivership shall state—

(*a*) the creditor's name and address, and, if a company, its unique identifiers under the Companies Act;

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(*b*) the total amount of the claim, including any value added tax, as at the date of the appointment of the receiver, less all trade and other discounts available to the company, or which would have been available to the company but for the appointment, except for any discount for immediate or early settlement;

(*c*) whether or not that amount includes uncapitalized interest;

(*d*) particulars of how and when the debt was incurred by the company;

(*e*) particulars of any security held, the date when it was given and the value which the creditor attaches to it;

(*f*) details of any reservation of title in relation to goods to which the debt refers; and

(*g*) the name, and address and authority of the person making out the claim, if other than the creditor.

(4) The chairperson of a creditors' meeting may call for any document or other evidence to be produced if he thinks it necessary for the purpose of substantiating the whole or any part of a claim.

Calculation of voting rights

358.—(1) Votes shall be calculated according to the amount of each creditor's claim—

(*a*) in a company reorganization, as at the date on which the company entered company reorganization, less—

(i) any payments that have been made to the creditor after that date in respect of the claim; and

(ii) any adjustment by way of set-off under these Rules—

(AA) as if that rule were applied on the date on which the votes are counted if a notice of declaration of a dividend has not been delivered; or

(BB) which has actually been made in calculating the dividend to be paid to the creditor if the notice of declaration of a dividend has been delivered;

(*b*) in a receivership, as at the date of the appointment of the receiver, less any payment that has been made to the creditor after that date in respect of the claim; and

(*c*) in an insolvent or compulsory winding-up of the company or bankruptcy, as set out in the creditor's proof of debt to the extent that it has been admitted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chairperson decides to attach to the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) A creditor may not vote in respect of any claim or part of a claim where the claim or its part is secured, except where the vote is cast—

(*a*) in a company reorganization, in respect of—

(i) the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor; or

(ii) the full value of the debt without deduction of the value of the security in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act and an initial creditors' meeting has been requisitioned under section 35 (6) of the Act; and

(*b*) in a receivership, insolvent or compulsory winding-up of the company or bankruptcy, in respect of the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor.

(4) A vote may not be cast by virtue of a claim more than once on any resolution put to the meeting; and for this purpose, the claim of a creditor and of any member in relation to the same debt are a single claim.

Procedure for admitting creditors' claims for voting at meetings

359.—(1) At a creditors' meeting, the chairperson shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claims.

(2) The chairperson may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the chairperson is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, he shall mark the claim as objected to, and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Procedure for admitting creditors' claims for voting by correspondence

360.—(1) Where a matter is being voted on by correspondence, the office-holder or appointee shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claim.

(2) The office-holder or appointee may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the office-holder or appointee is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, the office-holder or appointee shall mark the claim as objected to and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

361. A resolution shall be passed by creditors when a majority in value of those voting by correspondence or attending and voting at a meeting have voted in favour of the resolution.

Appeals against decisions of meetings

362.—(1) The decision of the office-holder or appointee, in respect of matters considered by correspondence, or the chairperson's decision, in respect of matters considered at a meeting, under these Rules are subject to appeal to the Court by a creditor, a contributory or a bankrupt.

(2) Where the chairperson's decision shall have been reversed or varied, or a creditor's votes shall have been declared invalid, the Court may order another meeting to be summoned or make such order as it considers just.

(3) An appeal under this rule shall not be made later than twenty-one days after the date of the meeting.

(4) The chairperson shall not be personally liable for costs incurred by any person in relation to an appeal under this rule unless the Court makes an order to that effect.

(5) The Court may not make an order under subrule (4) if the chairperson in the winding-up of the company by the Court or a

bankruptcy is the Official Receiver or a person nominated by the Official Receiver to be the chairperson.

Voting rights and requisite majorities at contributories' meetings

363. At a meeting of contributories—

(*a*) voting rights shall be as at a general meeting of the company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation; and

(*b*) a resolution shall be passed if more than one-half of the votes cast by contributories attending shall have been in favour of the resolution.

PART VII

CROSS-BORDER INSOLVENCY

Division I—Application to the Court for Recognition of Foreign Proceedings

Application and sworn statement in support of recognition application *Schedule*

364. A recognition application shall be in Form 1 in the Schedule and shall be supported by a sworn statement sworn by the foreign representative complying with rule 366.

Form and content of recognition application

365. The recognition application under rule 364 shall state the following matters—

(*a*) the name of the applicant and his address for service within Malaŵi;

(*b*) the name of the debtor in respect of which the foreign proceeding is taking place;

(*c*) the name or names in which the debtor carries on business in the country where the foreign proceeding is taking place and in this country, if other than the name given under paragraph (*b*);

(*d*) the principal or last known place of business of the debtor in Malaŵi, if any, and, in the case of an individual, his usual or last known place of residence in Malaŵi, if any;

(*e*) any unique identifiers allocated to the debtor under the Companies Act or Business Names Registration Act, as the case may be;

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(*f*) brief particulars of the foreign proceeding in respect of which recognition is applied for, including the country in which it is taking place and the nature of the proceeding;

(*g*) that the foreign proceeding is a proceeding within the meaning of Part X of the Act;

(*h*) that the applicant is a foreign representative within the meaning of Part X of the Act;

(*i*) the address of the debtor's centre of main interest; and

(*j*) where the debtor does not have its centre of main interests in the country where the foreign proceeding is taking place, whether the debtor has an establishment within the meaning of the equivalent of Part X of the Act in that country, and if so, its address.

Contents of sworn statement

366.—(1) There shall be attached to the application a sworn statement in support which shall contain or have exhibited to it—

(*a*) the evidence and statement required under section 331 (2) and (3) of the Act;

(*b*) any other evidence which in the opinion of the applicant will assist the Court in deciding whether the proceeding, the subject of the application, is a foreign proceeding and whether the applicant is a foreign representative within the meaning of section 318 of the Act;

(*c*) evidence that the debtor has its centre of main interest or an establishment within the country where the foreign proceeding is taking place; and

(*d*) any other matter which in the opinion of the applicant may assist the Court in deciding whether to make a recognition order.

(2) The sworn statement shall also have exhibited to it the translations required under section 331 (4) of the Act and a translation in English of any other document exhibited to the sworn statement which is in a language other than English.

(3) All translations referred to in subrule (2) shall be certified by the translator as a correct translation.

Hearing and powers of the Court

367.—(1) On hearing a recognition application, the Court may in addition to its powers under the Act to make a recognition order—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

(2) Where the Court makes a recognition order under this rule, it shall be in Form 2 in the Schedule. *Schedule*

368.—(1) The foreign representative shall set out any subsequent information required to be given to the Court under section 334 of the Act in a statement which shall be attached to Form 3 in the Schedule and filed with the Court. Notification of subsequent information *Schedule*

(2) The statement shall include details of the information required to be given under section 334 of the Act.

(3) The foreign representative shall send a copy of Form 3, including the statement attached to it, filed with the Court to the following—

(*a*) a debtor; and

(*b*) persons referred to in rule 387 (3).

Division II—Applications for Relief under the Act

369. An application for interim relief must be supported by a sworn statement sworn by the foreign representative stating— Application for interim relief

(*a*) the grounds on which it is proposed that the interim relief applied for should be granted;

(*b*) details of any proceeding under the Act taking place in relation to the debtor;

(*c*) whether, to the foreign representative's knowledge, receiver or manager of the debtor's property is acting in relation to the debtor;

(*d*) an estimate of the value of the assets of the debtor in Malaŵi in respect of which relief is applied for;

(*e*) whether, to the foreign representative's best knowledge and belief, the interests of the debtor's creditors, including any secured creditors, and any other interested parties, including, if appropriate, the debtor, will be adequately protected;

(*f*) whether, to the foreign representative's best knowledge and belief, the grant of any of the relief applied for would interfere with the administration of a foreign main proceeding; and

(*g*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Service of application for interim relief not required

370. Unless the Court otherwise directs, it shall not be necessary to serve the application for interim relief on, or give notice of it to, any person.

Hearing by, and powers of the Court

371. On hearing an application for interim relief, the Court may in addition to its powers under section 335 of the Act to make an order granting interim relief—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

Application for provisional relief

372. An application for provisional relief under section 335 of the Act shall be supported by a sworn statement of the foreign representative stating—

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) an estimate of the value of the assets of the debtor in Malaŵi in respect of which relief is applied for;

(*c*) in the case of an application by a foreign representative who is, or believes that he is, a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the Act, should be administered in the foreign non-main proceeding or concerns information required in that proceeding;

(*d*) whether, to the foreign representative's best knowledge and belief, the interests of the debtor's creditors, including any secured creditors, and any other interested parties, including if appropriate the debtor, shall be adequately protected; and

(*e*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Division III—Replacement of Foreign Representative

Application for confirmation of status of replacement foreign representative

373.—(1) This rule shall apply where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceeding in relation to the debtor.

(2) Where a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, the person may apply to the Court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Rules.

(3) In subrule (2), "the former foreign representative" means the foreign representative referred to in subrule (1).

Contents of application and sworn statement

374.—(1) An application under rule 373 (2) shall, in addition to the matters required to be stated by rule 365, state the following matters—

(*a*) the name of the replacement foreign representative and his address for service within Malaŵi;

(*b*) details of the circumstances in which the former foreign representative ceased to be foreign representative in the foreign proceeding in relation to the debtor, including the date on which he ceased to be the foreign representative; and

(*c*) details of his own appointment as replacement foreign representative in the foreign proceeding, including the date of that appointment.

(2) The application shall be accompanied by an sworn statement of the applicant which shall contain or have attached to it—

(*a*) a certificate from the foreign court affirming—

(i) the cessation of the appointment of the former foreign representative as foreign representative; and

(ii) the appointment of the applicant as the foreign representative in the foreign proceeding;

(*b*) in the absence of such a certificate, any other evidence acceptable to the Court of the matters referred to in paragraph (*a*); and

(*c*) a translation in English of any document exhibited to the sworn statement which is in a language other than English.

(3) A translation referred to in subrule 2 (*c*) shall be certified by the translator as a correct translation.

Hearing by, and powers of, the Court

375.—(1) On hearing an application under rule 373 (2), the Court may—

(*a*) make an order confirming the status of the replacement foreign representative as the foreign representative for the purpose of proceedings under these Rules;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order; or

(*e*) make any other order which the Court considers appropriate, including in particular an order making such provision as the Court considers fit with respect to matters arising in connexion with the replacement of the foreign representative.

(2) Where the Court dismisses the application, it may also, if it considers it fit, make an order terminating recognition of the foreign proceeding and such an order may include such provision as the Court considers fit with respect to matters arising in connexion with the termination.

(3) Rule 376 shall not apply to an order made under subrule (2).

Division IV—Reviews of Court Orders

Reviews of Court orders: where Court makes order of its own motion

376.—(1) The Court shall not, on its own motion, make a modification or termination order, unless the foreign representative and the debtor have—

(*a*) had an opportunity of being heard on the question; or

(*b*) consented in writing to such an order.

(2) Where the foreign representative or the debtor desires to be heard on the question of such an order, the Court shall give all relevant parties a notice of the date, time and venue at which the question shall be considered and may give directions as to the issues on which the Court requires evidence.

(3) Where the Court makes a modification or termination order, the order may include such provision as the Court considers fit with respect to matters arising in connexion with the modification or termination.

(4) For the purposes of subrule (2), all “relevant parties” means the foreign representative, the debtor and any other person who

appears to the Court to have an interest justifying his being given notice of the hearing.

377. An application for review shall be supported by a sworn statement sworn by the applicant stating—

Application for review: sworn statement

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) whether, to the best of his knowledge and belief, the interests of the debtor's creditors including any secured creditors or parties to hire-purchase agreements, and any other interested parties, including, if appropriate, the debtor, shall be adequately protected; and

(*c*) any other matter that in his opinion may assist the Court in deciding whether or not to grant the relief applied for.

378. On hearing an application for review, the Court may, in addition to its powers under the Act to make a modification or termination order—

Hearing of application for review by, and powers of, the Court

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally;

(*c*) make an interim order; or

(*d*) make any other order which the Court considers appropriate, including an order making such provision as the Court considers fit with respect to matters arising in connexion with the modification or termination.

Division V—Court Procedure and Practice with regard to Principal Applications and Orders

379. This Division shall apply to—

Preliminary and interpretation

(*a*) any of the following applications made to the Court under these Rules—

(i) a recognition application;

(ii) an application for provisional relief under section 335 of the Act;

(iii) an application under rule 366 for an order confirming the status of a replacement foreign representative; and

(iv) an application for review;

(*b*) any of the following orders made by the Court under these Rules—

(i) a recognition order;

(ii) an order granting provisional relief under section 335 of the Act;

(iii) an order granting relief under section 337 of the Act;

(iv) an order confirming the status of a replacement foreign representative; and

(v) a modification or termination order.

Form and contents of application *Schedule*

380.—(1) Subject to subrule (4), every application to which this Division applies shall be an ordinary application and shall be in Form 4 in the Schedule.

(2) Each application shall be in writing and shall state—

(*a*) the names of the parties;

(*b*) the nature of the relief or 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;

(*d*) the names and addresses of all those persons on whom these Rules require the application to be served, as far as it is known to the applicant; and

(*e*) the applicant's address for service.

(3) The application shall be signed by the applicant if he is acting in person, or, when he is not so acting, on his behalf by his legal practitioner.

(4) This rule shall not apply to a recognition application.

Filing of application

381.—(1) An application and all supporting documents shall be filed with the Court, with a sufficient number of copies for service and use as provided by rule 382 (1).

(2) Each of the copies filed shall have affixed to each copy, the seal of the Court and be issued to the applicants, and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix the date, time and venue for the hearing of the application and the date, time and venue shall be endorsed on each copy of the application issued under subrule (2).

Service of application

382.—(1) Unless the Court otherwise directs, the application shall be served on the following persons, unless they are the applicant—

(*a*) on the foreign representative;

(*b*) on the debtor;

(*c*) if a Malaŵi insolvency office-holder is acting in relation to the debtor, on him;

(*d*) if any person has been appointed a receiver or receiver and manager of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor in Malaŵi, on him;

(*e*) if to the knowledge of the foreign representative a foreign representative has been appointed in any other foreign proceeding regarding the debtor, on him;

(*f*) if there is pending in Malaŵi a petition for the winding-up of the company or bankruptcy of the debtor, on the petitioner; and

(*g*) on any person who to the knowledge of the foreign representative is or may be entitled to appoint an administrator of the company reorganization of the debtor under Part II of the Act.

(2) In subrule (1), references to the application are to a sealed copy of the application issued by the Court together with a sworn statement and any documents exhibited to the sworn statement.

Manner in which service is to be effected

383.—(1) Service of the documents in an application under rule 382 (1) shall be effected by the applicant, or his legal practitioner, or by a person instructed by him or his legal practitioner, not less than five business days before the date fixed for the hearing.

(2) Service shall be effected by delivering the documents to a person's proper address or in such other manner as the Court may direct.

(3) A person's proper address shall be any which he has previously notified as his address for service within Malaŵi, but if he has not

notified any such address or if for any reason service at such address is not practicable, service may be effected as follows—

(*a*) subject to subrule (4), in the case of a company incorporated in Malaŵi, by delivery to its registered office; and

(*b*) in the case of any other person, by delivery to his usual or last known address or principal place of business in Malaŵi.

(4) Where delivery to a company's registered office is not practicable, service may be effected by delivery to the company's last known principal place of business in Malaŵi.

(5) Delivery of documents to any place or address may be made by leaving the documents at the place or address or by sending the documents by courier.

Proof of service

Schedule

384.—(1) Service of the documents in the application under rule 382 (1) shall be verified by an sworn statement in Form 5 in the Schedule, specifying the date on which, and the manner in which, service was effected and the statement shall be filed with the Court.

(2) The sealed copy of the application, which shall have been served on the other party, shall be returned to the Court, as soon as it is reasonably practicable after service, and in any event not less than three business days before the hearing of the application.

Urgent applications

385. Where the case is one of urgency, the Court may, without prejudice to its general power to extend or abridge time limits—

(*a*) hear the application immediately, with or without notice to, or the attendance of, other parties; or

(*b*) authorize a shorter period of service than the period under rule 383,

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the Court considers fit.

Hearing

386. At the hearing of the application, the applicant and any of the following persons, not being the applicant, may appear in person or be represented by a legal practitioner—

(*a*) the foreign representative;

(*b*) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—

(i) if a Malaŵi insolvency office-holder is acting in relation to the debtor, that person;

(ii) if any person has been appointed a receiver of the debtor or as a receiver or manager of the property of the debtor in Malaŵi, that person;

(iii) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(iv) any person who has presented a petition for the winding-up of the company or bankruptcy of the debtor in Malaŵi;

(v) any person who is or may be entitled to appoint an administrator of a company reorganization of the debtor under Part II of the Act; and

(vi) with the permission of the Court, any other person who appears to have an interest justifying his appearance.

Notification and advertisement of order

387.—(1) Where the Court makes any of the orders referred to in rule 379 (*b*), it shall, as soon as it is reasonably practicable, send sealed copies of the order in duplicate to the foreign representative.

(2) The foreign representative shall send a sealed copy of the order, as soon as it is reasonably practicable, to the debtor.

(3) The foreign representative shall, as soon as it is reasonably practicable, after the date of the order, give a notice of the making of the order—

(*a*) if a Malaŵi insolvency office-holder is acting in relation to the debtor, to him;

(*b*) if any person has been appointed a receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;

(*c*) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(*d*) if there is pending in Malaŵi a petition for the winding-up of the company or bankruptcy of the debtor, to the petitioner;

(*e*) to any person who to his knowledge is, or may be entitled to appoint, an administrator of the company reorganization of the debtor; and

(*f*) to any other person as the Court may direct.

(4) In the case of an order recognizing a foreign proceeding in relation to the debtor as a foreign proceeding, or an order under section 335 or 337 of the Act staying execution, distress or other legal process against the debtor's assets, the foreign representative shall also, as soon as it is reasonably practicable, after the date of the order, give notice of the making of the order—

(*a*) to any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process against the debtor or its property; and

(*b*) to any person who to his knowledge is distraining against the debtor or its property.

Cap. 46:03

(5) Where the debtor is a company registered under the Companies Act, the foreign representative shall send a notice of the making of the order to the Registrar of Companies before the end of the period of five business days beginning with the date of the order.

Schedule

(6) The notice to the Registrar of Companies under subrule (5) shall be in Form 6 in the Schedule.

(7) The foreign representative shall advertise the making of the following orders once it has been published in the *Gazette* and in a newspaper with wide circulation for ensuring that the making of the order comes to the notice of the debtor's creditors—

(*a*) a recognition order;

(*b*) an order confirming the status of a replacement foreign representative; and

Schedule

(*c*) a modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement shall be in Form 7 in the Schedule.

(8) In the application of subrules (3) and (4), the references to property shall be taken as references to property situated within Malaŵi.

Adjournment of hearing: directions

388.—(1) This rule shall apply in any case where the Court exercises its power to adjourn the hearing of the application under rule 382.

(2) The Court may, at any time, give such directions as it considers fit as to—

(*a*) service or notice of the application on or to any person, whether in connexion with the date, time and venue of a resumed hearing or for any other purpose;

(*b*) the procedure on the application;

(*c*) the manner in which any evidence is to be adduced at a resumed hearing and, in particular, as to—

(i) the taking of evidence wholly or in part by an sworn statement or orally; or

(ii) the cross-examination on the hearing in Court or in chambers, of a deponent to an sworn statement; and

(*d*) any matter to be dealt with in evidence.

Division VI—Applications to the Chief Land Registrar or Deeds Registrar

Applications following Court orders Cap. 58:01

389.—(1) Where the Court makes any order in proceedings under this Division which is capable of giving rise to an application or applications under the Registered Land Act, the foreign representative shall, as soon as it is reasonably practicable, after the making of the order or at the appropriate time, make the appropriate application or applications to the Chief Lands Registrar or the Deeds Registrar under the Deeds Registration Act.

Cap. 58:02

(2) In subrule (1), an appropriate application shall be—

(*a*) in any case where—

(i) a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor is made; and

(ii) the debtor is the registered proprietor of a registered land or registered charge and holds it for his sole benefit and an application under Part VII of the Registered Land Act as appropriate to be entered in the relevant registered title is made,

Cap. 58:01

Cap. 58:02

or an application under section 11 of the Deeds Registration Act is made; and

Cap. 58:01
Cap. 58:02

(*b*) in any other case, an application under the Registered Land Act or the Deeds Registration Act for such an entry in the register as shall be necessary to reflect the effect of the Court order under this Division is made.

(3) The entry referred to in subrule (2) (*a*) shall restrict any dealings except under a further order of the Court.

Division VII—Misfeasance by Foreign Representative

Examination of conduct of foreign representative: misfeasance

390. The Court may examine the conduct of a person who—

(*a*) is or purports to be the foreign representative in relation to a debtor; or

(*b*) has been or has purported to be the foreign representative in relation to a debtor.

(2) An examination under this rule shall be held only on the application of—

(*a*) a Malaŵi insolvency office-holder acting in relation to the debtor;

(*b*) a creditor of the debtor; or

(*c*) with the permission of the Court, any other person who appears to have an interest justifying an application.

(3) An application under subrule (2) shall allege that the foreign representative—

(*a*) has misapplied or retained money or other property of the debtor;

(*b*) has become accountable for money or other property of the debtor;

(*c*) has breached a fiduciary or other duty in relation to the debtor; or

(*d*) has been guilty of misfeasance.

(4) On an examination under this rule into a person's conduct, the Court may order him—

(*a*) to repay, restore or account for money or property;

(*b*) to pay interest; or

(*c*) to contribute a sum to the debtor's property by way of compensation for breach of duty or misfeasance.

(5) In subrule (3), "foreign representative" includes a person who purports or has purported to be a foreign representative in relation to a debtor.

PART VIII

MISCELLANEOUS PROVISIONS

391. The rules of practice and procedure of the High Court or the Supreme Court of Appeal shall apply to proceedings under these Rules in the High Court or the Supreme Court of Appeal with such modification as may be necessary for the purpose of giving effect to these Rules and in the case of any conflict between the rules of practice and procedure of the High Court or the Supreme Court of Appeal and these Rules, these Rules shall prevail.

Rules of practice and procedure to apply with modification

392. No appeal shall lie against the decision of a Judge in an interlocutory matter, unless the decision has the effect of completely disposing of the matter.

Appeals in interlocutory matters

393. The Companies (Winding-Up of the Company) Rules and the Bankruptcy Rules are revoked.

Revocation of Rules

SCHEDULE

FORM 1 r. 364

IN THE HIGH COURT OF MALAWÎ

COMMERCIAL DIVISION REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... ("the Debtor")

.... APPLICANT

AND

.... RESPONDENT

RECOGNITION APPLICATION

1. The application of .... being the foreign representative(s) appointed in relation to the above named debtor in a foreign proceeding, under section 331 (1) of the Insolvency Act dated the .... day of ...., 20........
2. The proceeding is in relation to foreign proceeding in relation to .... ("the debtor") lately carrying on business in .... as .... and lately carrying on business in Malaŵi.
3. The debtor's principal/last known place of business in Malaŵi is ....
4. The debtor was incorporated on .... under the Companies Act and the unique identifier of the debtor is ....
5. The principal business lately carried on in Malaŵi is ....
6. The foreign proceeding in which recognition is applied for is taking place in .... about ....
7. The foreign proceeding in respect of which recognition is applied for is a proceeding within the meaning of section 318 (1) of the Insolvency Act, and the applicant is the foreign representative of the debtor within the meaning of section 318 (1) of the Insolvency Act in relation to that proceeding, and the evidence referred to in section 331 (2) of the Insolvency Act is contained in or exhibited to the sworn statement in support attached to this application.
8. The address of the debtor's centre of main interest is ....

   OR

   the address of the debtor's registered office or habitual residence is

   ....
9. An sworn statement in support of this application is attached.
10. The statement referred to in section 331 (3) of the Insolvency Act is exhibited to the sworn statement in support attached to this application.
11. Messrs ...., a duly registered insolvency practitioner, will act with the applicant in accordance with the Insolvency (Practitioners) Regulations.
12. The applicant therefore prays as follows:

    (*a*) that the Court make an order recognizing the foreign proceeding the subject of this application as a foreign main or non-main* proceeding.

    (*b*) state any other ancillary relief.

(signed)

....
Applicant/Legal Practitioner for the Applicant

NB: Attach a notice of hearing.

*Delete as appropriate

FORM 2 r. 367 (2)

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... (“the Debtor”)

.... APPLICANT

AND

.... RESPONDENT

RECOGNITION ORDER

UPON APPLICATION OF ....

Presented to the Court on .... in respect of ....

AND UPON HEARING counsel

AND UPON reading the evidence filed in this application

IT IS ORDERED THAT ....

(i) be recognized as a foreign main proceeding/foreign non-main proceeding* in accordance with section 331 of the Insolvency Act;

(ii) state any other reliefs granted;

(iii) that costs of this application be ....

THIS ORDER TAKES EFFECT FROM ....

Dated the .... day of ...., 20.......

....
Judge

*Delete as appropriate

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r. 368

FORM 3

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... (“the Debtor”)

.... APPLICANT

AND

.... RESPONDENT

STATEMENT OF SUBSEQUENT INFORMATION

I/WE ....

attach a statement providing information under section 334 of the Insolvency Act, as set out in rule 368 of the Insolvency Rules.

Dated the .... day of ...., 20......

....

(Signed)

....

REPRESENTATIVES

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r. 380

FORM 4

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... (“the Debtor”)

.... APPLICANT

AND

.... RESPONDENT

APPLICATION

.... RELET ALL PARTIES concerned attend before the Judge on .... day of ...., 20....... in the .... noon at the High Court Commercial Division, ... Registry, on the hearing of an application on the part of the applicant for an order in the following terms:

....

The grounds on which the applicant claims to be entitled to the order are:

....

The name and addresses of the persons on whom it is intended to serve this application are:

....

OR

It is not intended to serve any person with this application.

(signed)

....
Applicant/Legal Practitioner for the Applicant

FORM 5 r. 384 (1)

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... ("the Debtor")

.... APPLICANT

AND

.... RESPONDENT

SWORN STATEMENT VERIFYING SERVICE

I, ... acting on behalf of the applicant make oath and say as follows:

1. That I did on the .... day of ...., 20....... serve the above named debtor with a copy of the application for .... ("the application") duly sealed with the seal of the Court and its supporting documents by leaving the same at the debtor's address at .... OR by sending the same on the .... day of ...., 20...... by courier in an envelope duly prepaid and properly addressed to the said debtor at ....
2. That I did on the .... day of ...., 20........ serve, ... the foreign representatives* (change as applicable) by leaving the same at the debtor's address at .... OR by sending the same on the .... day of ...., 20....... by courier in an envelope duly prepaid and properly addressed to the said debtor at ....

3. That the same has not been returned to me.

Sworn by

This .... day of ...., 20.........

Before me:

....

COMMISSIONER FOR OATHS

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r. 387 (6)

FORM 6

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... (“the Debtor”)

.... APPLICANT

AND

.... RESPONDENT

NOTIFICATION OF ORDER

The following order has been made in relation to the above debtor under Part IX of the Insolvency Act.

Order made on ....

Name and addresses for foreign representatives: ....

....

---

r. 387 (7)

FORM 7

IN THE HIGH COURT OF MALAŴI

COMMERCIAL DIVISION

.... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .... (“the Debtor”)

.... APPLICANT

AND

.... RESPONDENT

Modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement of order* (change as applicable)

Order made on ....

Name and addresses for foreign representatives: ....

....

INSOLVENCY (PRACTITIONERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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INSOLVENCY (PRACTITIONERS) REGULATIONS

G.N. 13/2017

under s. 351

PART I
PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Insolvency (Practitioners) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"business" includes the carrying on of any trade, profession or vocation and the discharge of the functions relating to any office or employment;

"insolvency legislation" includes the Insolvency Act and the Companies Act; Cap. 11:01 Cap. 46:03

"insolvency practice" means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Malaŵi, and for this

purpose acting as an insolvency practitioner shall include acting as a trustee in sequestration or a judicial factor on the bankrupt estate of a deceased person, receiver, receiver and manager, administrator or liquidator;

"insolvency work experience" means engagement in work related to the administration of the estates of persons in respect of which an office-holder has been appointed;

"office-holder" means a person who acts or has acted as an insolvency practitioner, receiver, a trustee in bankruptcy, provisional liquidator, or liquidator, supervisor on an individual voluntary arrangement, a nominee, an administrator of a company reorganization or in a corresponding capacity under the law of any country outside Malaŵi;

"professional legislation" means any enactment governing any profession recognized in terms of the Act and these Regulations;

"register" means the register of insolvency practitioners referred to in section 8 of the Act;

"recognized professional body" means a professional body declared as such by the Minister in accordance with section 311 of the Act; and

"relevant time" in relation to an individual making an application, means the time of making the application.

PART II

REGISTRATION OF INSOLVENCY PRACTITIONERS

Matters to consider in determining whether an applicant is a fit and proper person

3.—(1) A person shall not be allowed to act as an insolvency practitioner, unless he—

(*a*) is a member of a recognized professional body;

(*b*) meets the education, practical training and experience requirements as set out under these Regulations; and

(*c*) is a fit and proper person to so act in terms of the Act and these Regulations.

(2) Notwithstanding subregulation (1) (*a*) and (*b*), a person shall be deemed qualified under section 311 (1) (*a*) of the Act, if he has been admitted to the practice of insolvency in any jurisdiction that regulates such practice, to at least the standards obtaining in Malaŵi.

(3) The matters to be taken into account in determining whether an applicant is a fit and proper person to act as an insolvency practitioner shall include—

(*a*) whether the applicant has been convicted of any offence involving fraud, dishonesty or violence;

(*b*) whether the applicant has contravened any insolvency legislation, professional legislation or any other written law in Malaŵi or of any country outside Malaŵi, which corresponds to such pieces of legislation;

(*c*) whether the applicant has ever been suspended or removed from the practice of a recognized professional body in Malaŵi or by a comparable professional body outside Malaŵi;

(*d*) whether the applicant has engaged in any practices in the course of carrying on business appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;

(*e*) whether, in respect of any insolvency practice carried on by the applicant at the date of, or at any time prior to, the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;

(*f*) whether the insolvency practice of the applicant is being carried on, or where the applicant is not yet carrying on such a practice, with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner; or

(*g*) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is, or appears to be, a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise.

(4) An insolvency practitioner who is suspended or removed from the practice of a recognized professional body in Malaŵi or by a comparable professional body outside, shall give notice of that fact

First Schedule

to the Director, in the form specified in the First Schedule, within seven days of the insolvency practitioner receiving notice of the suspension or removal from the practice.

Application to act as insolvency practitioner

First Schedule

4.—(1) For the purposes of the Act, every person who intends to practice as an insolvency practitioner shall submit an application to the Director or the Minister, as the case may be, in the form specified in the First Schedule, for the registration of his name to be entered in the register pursuant to the Act.

Second Schedule

(2) An application for registration to practice as an insolvency practitioner shall be accompanied by prescribed fees, as set out in the Second Schedule.

(3) Fees paid under subregulation (2) shall not be refundable regardless of the outcome of the application.

Second Schedule

(4) On issuance of a certificate of registration to practice as an insolvency practitioner, an applicant shall pay fees as set out in the Second Schedule.

(5) The Director shall inform an applicant of the outcome of the application within twenty-eight days of his receipt of a complete application and the application fee.

(6) An application that is required to be made to the Minister under section 312 of the Act, shall be channeled to the Minister through the Director.

(7) For the purposes of section 312 (2) (*a*) of the Act, the competent authority shall be the Director.

Registration of insolvency practitioners

5. For the purpose of an application for registration as an insolvency practitioner, the Director or the Minister, as the case may be—

(*a*) may register a person subject to such conditions, not inconsistent with Act and these Rules, as he may deem expedient; and

(*b*) shall inform a person in writing of his registration in such manner as he may determine.

Refusal to register

6.—(1) The Director or the Minister, as the case may be, may refuse to register a person as an insolvency practitioner where the person does not satisfy the requirements of the Act or these Regulations.

(2) Where the Director or the Minister, as the case may be, refuses to register a person as an insolvency practitioner, he shall inform

the person, in writing, of the refusal, including the reasons for the refusal, within twenty-eight days of receipt of the application and any documents in support of that application by the Director or the Minister, as the case may be.

Duties of recognized professional bodies

7.—(1) A recognized professional body shall provide to its members who wish to register under the Act, such training and examinations relating to the law and practice of insolvency as the Director may, in writing, determine.

(2) Within three years after commencement of the Act, an application for registration as an insolvency practitioner shall be accepted, if the applicant can demonstrate to the Director, in writing, his experience in the practice of insolvency without the need to undergo such training and examinations as may be required by subregulation (1).

(3) On every renewal of registration under the Act, an insolvency practitioner shall provide evidence of any continuing professional education related to the practice of insolvency provided or recognized by a recognized professional body undertaken during the two years immediately preceding the application for renewal of registration.

(4) The Director may exempt any person from the examination requirement under these Regulations if the person has pursued, successfully, a course in insolvency at an accredited institution in the country of qualification at tertiary level.

Qualifications obtained outside Malaŵi, language, etc

8.—(1) The Director may accept for registration an insolvency practitioner who is qualified to act in any jurisdiction outside Malaŵi, where such jurisdiction regulates its insolvency practice to at least the standards obtaining in Malaŵi.

(2) Where the insolvency practitioner is not from an English speaking country or background, he shall provide evidence of his ability to speak and write in English language, as the Director may determine.

(3) Language requirements in subregulation (2) shall not apply in cases of cross-border insolvency, except that the applicant for registration in a case of cross-border insolvency shall provide translations of documents in accordance with the Authentication of Documents Act, that would entitle the applicant to practice as an insolvency practitioner to the Director.

Cap. 4:06

(4) On ceasing to practice, an insolvency practitioner shall complete Form 2 in the First Schedule and submit it to the Director.

First Schedule

Ethics

9. In addition to any rules of ethics to which an insolvency practitioner may be subject to in his recognized professional body, he shall also be subject to the ethical guidelines as provided in the Third Schedule hereto.

Third Schedule

PART III

REMUNERATION

Remuneration: principles

10.—(1) An administrator of a company reorganization, a receiver, a liquidator, including in a members' voluntary winding-up, or a trustee in bankruptcy is entitled to receive remuneration for services as an office-holder.

(2) The basis of remuneration shall be fixed—

(*a*) not to exceed five percentage of the value of—

(i) the property with which the administrator of a company reorganization has to deal with; or

(ii) the assets which are realized, distributed or both realized and distributed by the liquidator or trustee; and

(*b*) by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the company reorganization, winding-up or bankruptcy, as a set amount or any combination of them and different bases may be fixed in respect of different things done by the office-holder.

(3) Where the basis of remuneration is fixed as in subregulation (2) (*a*) (ii), different percentages may be fixed in respect of different things done by the office-holder not exceeding the aforesaid five per cent.

(4) In arriving at a determination, regard shall be had to the following matters—

(*a*) the complexity or otherwise, of the case;

(*b*) any respects in which, in connexion with the company's or bankrupt's affairs, there falls on the office-holder, any responsibility of an exceptional kind or degree;

(*c*) the effectiveness with which the office-holder appears to be carrying out, or to have carried out, the office-holder's duties as such; and

(*d*) the value and nature of the property with which the office-holder has to deal.

(5) Where the office-holder is a legal practitioner and employs his firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid to his firm, unless expressly authorized in the determination by the creditors' committee or, where one is not available, the Court.

Remuneration: procedure for initial determination

11.—(1) Except in a shareholders' voluntary winding-up, the creditors' committee shall, subject to subregulation (4), determine the basis of remuneration.

(2) Where there is no committee, or the committee does not make the requisite determination, and—

(*a*) in a company reorganization, the case does not fall within subregulation (3); or

(*b*) in a creditors' voluntary winding-up or a winding-up by the Court, subject to subregulation (4),

the basis of remuneration may be fixed by a resolution of a meeting of the creditors.

(3) Where the administrator has made a statement under section 35 (5) (*b*) of the Act and there is no creditors' committee, or the committee does not make the requisite determination, the basis of the administrator's remuneration may be fixed by the approval of—

(*a*) each secured creditor of the company; or

(*b*) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold the approval.

(4) In a shareholders' voluntary winding-up, the company in a general meeting shall determine the basis of the remuneration.

(5) Where the basis of the administrator's remuneration or liquidator's remuneration in a voluntary winding-up, including a shareholders' voluntary winding-up, is not fixed as provided in subregulation (1), (2), (3) or (4), it shall, on application by the administrator or liquidator, be fixed by the Court.

(6) An application under subregulation (5) may not be made by the administrator or liquidator without having first sought fixing of the basis in accordance with subregulation (1), (2), (3) or (4), as the case may be, and in any event may not be made more than eighteen months after the date of the administrator's or liquidator's appointment.

(7) In a shareholders' voluntary winding-up, the liquidator shall deliver at least fourteen days' notice of an application under subregulation (6) to the company's contributories, or such one or more of them as the Court may direct, and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

(8) Where, in a winding-up by the Court or bankruptcy, the basis of remuneration is not fixed as above after the liquidator or trustee has requested the creditors to fix the basis in accordance with subregulation (2), or in any event within eighteen months after the date of the liquidator's or trustee's appointment, the liquidator or trustee is entitled to such sum as is arrived at after taking into account all matters referred to in this regulation.

(9) That part of the trustee's remuneration calculated under subregulation (8) by reference to the Court shall not exceed five per cent of the bankruptcy estate.

(10) Where a number of persons are appointed as administrators or joint liquidators or trustees, they shall agree between themselves as to how the remuneration payable should be apportioned, and any dispute arising between them may be referred to—

(*a*) the Court, for settlement by order; or

(*b*) the creditors' committee, a meeting of creditors or in a members' voluntary winding-up, the company in general meeting, for settlement by resolution.

(11) For the purposes of this regulation, a joint appointment shall be regarded as one insolvency practitioner.

Remuneration: recourse to administrator, liquidator or trustee to creditor

12.—(1) Where the basis of—

(*a*) the administrator's or trustee's remuneration has been fixed by the creditors' committee;

(*b*) the liquidator's remuneration has been fixed by the creditors' committee;

(*c*) the liquidator's remuneration had been fixed by the creditors' committee in a preceding company reorganization and the administrator had not subsequently requested an increase under this rule; or

(*d*) the remuneration fixed is considered inappropriate or the amount fixed is considered insufficient by an office-holder,

the office-holder may request that the amount be increased or the basis changed by resolution of the creditors.

(2) Where—

(*a*) the administrator has made a statement under section 35 (5) (*b*) of the Act;

(*b*) the basis of the administrator's remuneration has been fixed by the creditors' committee; and

(*c*) the administrator considers an amount fixed to be insufficient or the basis fixed to be inappropriate, the administrator may request that the amount be increased or the basis changed by the approval of—

(i) each secured creditor of the company;

(ii) if the administrator has made or intends to make a distribution to preferential creditors; and

(iii) preferential creditors whose debts amount to more than fifty per cent of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

Remuneration: recourse by administrator, liquidator or trustee to the Court

13. (1) Where the basis of—

(*a*) the administrator's remuneration has been fixed—

(i) by the creditors' committee, and the administrator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors;

(*b*) the liquidator's remuneration has been fixed—

(i) by the creditors' committee, and the liquidator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors, in a members' voluntary winding-up, by the company in general meeting; or

(*c*) the trustee's remuneration has been fixed—

(i) by the creditors' committee, and the trustee has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or

(ii) by resolution of the creditors, or and the office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate,

the office-holder may apply to the Court for an order increasing the amount or changing the basis.

(2) Where the administrator has made a statement under section 35 (5) (*b*) of the Act, that the basis of the administrator's remuneration has been fixed by the approval of creditors in accordance with these Regulations and the administrator considers an amount fixed to be insufficient or basis fixed to be inappropriate, the administrator may apply to the Court for an order increasing the amount or changing the basis.

(3) Where an application is made under subregulation (2), the administrator shall deliver notice to each of the creditors whose approval was sought.

(4) The administrator, liquidator, except in a members' voluntary winding-up, or trustee shall deliver at least fourteen days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(5) Where there is no creditors' committee, the office-holder's notice of the application shall, except in a members' voluntary winding-up, be delivered to such one or more of the company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.

(6) In a members' voluntary winding-up, the liquidator shall deliver at least fourteen days' notice of the application to the company's contributories, or such one or more of them, as the Court may direct and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

(7) The Court may, if it appears to be a proper case, including in a members' voluntary winding-up, order the costs of the office-holder's application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented, to be paid as an expense of the administration or liquidation or out of the bankruptcy estate.

Remuneration: review at request of administrator, liquidator or trustee

14.—(1) Where, after the basis of the office-holder's remuneration has been fixed, there is a material or substantial change in the circumstances which were taken into account in fixing it, the office-holder may request that it be changed.

(2) The request shall be made—

(*a*) where the creditors' committee fixed the basis, to the committee;

(*b*) where the creditors fixed the basis, to the creditors;

(*c*) where the Court fixed the basis, by application to the Court; or

(*d*) where, in a winding-up or bankruptcy, the remuneration was determined by the liquidator or creditors' committee if there is one and otherwise, to the creditors,

and regulations 11, 12, 13 and 14 shall also apply, as the case may be.

(3) Any change in the basis for remuneration applies from the date of the request under subregulation (2) and not for any earlier period.

Remuneration: new administrator, liquidator or trustee

15. Where a new administrator, liquidator, including in a members' voluntary winding-up, or trustee is appointed in place of another, any determination, resolution or Court order in effect under regulations 11, 12, 13 and 14, immediately before the former office-holder ceased to hold office, continues to apply in relation to the remuneration of the new office-holder until a further determination, resolution or Court order is made in accordance with regulations 11, 12, 13 and 14.

Remuneration: apportionment of set aside fees

16.—(1) In a case, including in a members' voluntary winding-up, in which the basis of the office-holder's remuneration is a set amount and the former office-holder ceases, for whatever reason, to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former office-holder or the former office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) An application may be made by—

(*a*) the former office-holder or the former office-holder's personal representative within the period of ninety days beginning

with the date upon which the former office-holder ceased to hold office; or

(*b*) the office-holder for the time being in office if the former office-holder or the former office-holder's personal representative has not applied by the end of that period.

(3) An application shall be made—

(*a*) where the creditors' committee fixed the basis, to the committee;

(*b*) where the creditors fixed the basis, to the creditors for a resolution determining the portion;

(*c*) where the company in general meeting fixed the basis, to the company for a resolution determining the portion; or

(*d*) where the Court fixed the basis, to the Court for an order determining the portion.

(4) The applicant shall deliver a copy of the application to the office-holder for the time being or to the former office-holder or the former office-holder's personal representative, as the case may be ("the recipient").

(5) The recipient may, within twenty-eight days of receipt of the copy of the application, deliver a notice of intent to—

(*a*) make representations to—

(i) the creditors' committee;

(ii) the creditors; or

(iii) the company in general meeting; or

(*b*) appear or be represented before the Court, as the case may be.

(6) A determination may not be made upon the application until expiry of the twenty-one days referred to in subregulation (5), or if the recipient does deliver a notice of intent in accordance with subregulation (5), until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) Where the former office-holder or the former office-holder's personal representative, whether or not the original applicant,

considers that the portion determined upon application to the creditors' or committee or the creditors is insufficient, that person may apply—

(*a*) in the case of a determination by the committee, to the creditors for a resolution increasing the portion; and

(*b*) in the case of a resolution of—

(i) the creditors, whether under subregulation (3) (*b*) or under paragraph (*a*); or

(ii) the company in general meeting,

to the Court for an order increasing the portion, and subregulations (4), (5) and (6) shall apply, as appropriate.

Creditors', contributories' or bankrupt's claim that remuneration, etc., is, or other expenses are, excessive

17.—(1) The following persons may apply to the Court for one or more of the orders provided in subregulation (11)—

(*a*) a secured creditor;

(*b*) an unsecured creditor with either—

(i) the concurrence of at least ten per cent in value of the unsecured creditors, including that creditor; or

(ii) the permission of the Court;

(*c*) in a shareholders' voluntary winding-up—

(i) members of the company with at least ten per cent of the members having the right to vote at general meetings of the company; or

(ii) a member of the company with the permission of the Court; or

(*d*) the bankrupt.

(2) An application may be made on the grounds that—

(*a*) the remuneration charged by the office-holder;

(*b*) the basis fixed for the office-holder's remuneration under these Regulations; or

(*c*) expenses incurred by the office-holder,

is or are, in all the circumstances, excessive or, in the case of an application under paragraph (*b*), inappropriate.

(3) The application by a creditor or member shall be made no later than four weeks after receipt by the applicant of the progress report, or the final report, which first reports are the basis of the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(4) An application by the bankrupt may be made only on one or both of the grounds in subregulation (2) (*a*) and (*c*) and no later than—

(*a*) four weeks after receipt by the bankrupt of the report under these Regulations; or

(*b*) in all other cases, four weeks after receipt by the bankrupt of notice.

(5) Where the Court considers that no sufficient cause is shown for a reduction, it shall deliver to the applicant notice to that effect, and—

(*a*) if, within five business days of delivery of the notice, the applicant applies to the Court to fix time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall do so; and

(*b*) if the applicant does not deliver notice in accordance with paragraph (*a*), the Court may dismiss the application without a hearing.

(6) The bankrupt may only make an application, under this regulation, with the permission of the Court.

(7) Without prejudice to the generality of the matters which the Court may take into account, permission shall not be given, unless the bankrupt shows that—

(*a*) there is, or would be; or

(*b*) it is likely that there shall be, or would be,

but for the remuneration or expenses in question, a surplus of assets to which the bankrupt would be entitled.

(8) The Court shall fix the date, time and venue for the application to be heard and deliver notice to the applicant if—

(*a*) the application is not dismissed;

(*b*) after a hearing under subregulation (5) (*a*);

(*c*) without a hearing in accordance with subregulation (5) (*b*); or

(*d*) the bankrupt is given permission under subregulation (6).

(9) The time fixed under subregulation (8) shall be not less than twenty-eight days, after delivery to the applicant of the notice under subregulation (7).

(10) The applicant shall, at least fourteen days before the hearing, deliver to the office-holder a notice stating the date, time and venue, and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(11) Where the Court considers the application to be well-founded, it shall make one or more of the following orders—

(*a*) an order reducing the amount of remuneration which the office-holder is entitled to charge;

(*b*) an order reducing any fixed amount;

(*c*) an order changing the basis of remuneration;

(*d*) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration or winding-up or bankruptcy expenses;

(*e*) an order that—

(i) the administrator or liquidator or the administrator's or liquidator's personal representative pay to the insolvent debtor, the amount of the excess of remuneration or expenses or such part of the excess as the Court may specify; or

(ii) the trustee or the trustee's personal representative pay to such person as the Court may specify as property comprised in the bankrupt's estate; or

(*f*) any other order that it considers just.

(12) An order under subregulation 11 (*b*) or (*c*) may be made only in respect of periods after the period covered by the relevant report.

(13) Unless the Court orders otherwise under subregulation (11), the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration or as winding-up or bankruptcy expenses.

(14) The Court may order that the costs may be payable by the applicant, the respondent or as an expense.

Voting on remuneration

18. Where a resolution is proposed in an insolvent or compulsory winding-up or bankruptcy which affects a person in relation to that person's remuneration or conduct as liquidator or trustee, actual, proposed or former, the person and the associates of the person shall not vote on it, whether as creditor, contributory, proxy-holder or corporate representative, except so far as permitted by these Regulations.

Fees for Official Receiver

19. The provisions of this Part in relation to fees shall apply to the Official Receiver.

PART IV

THE REGISTER OF INSOLVENCY PRACTITIONERS

Operation and access to register

20.—(1) In accordance with section 8 of the Act, the Director shall keep and maintain a register of insolvency practitioners, in an electronic form or in any other manner as he may determine.

(2) Subject to subregulation (3), the register shall be available for access and searching by members of the public at all times.

(3) The Director may refuse access to the Register or suspend its operation, in whole or in part, if the Director determines that it is not practical to provide access to the Register.

Purposes of the register

21. The purposes of the register shall be to—

(*a*) enable members of the public to—

(i) determine whether a person is a registered insolvency practitioner;

(ii) choose an insolvency practitioner from a list of registered insolvency practitioners; and

(iii) have access to contact details of their preferred insolvency practitioner; and

(*b*) assist any person in the exercise of the person's powers, or the performance of the person's functions, under the Act or any other written law.

Contents of the register

22.—(1) The register shall contain the following information about each registered insolvency practitioner—

(*a*) the person's full name;

(*b*) the person's business address, both physical and postal;

(*c*) the name and contact details of any recognized professional bodies of which the person is a member; and

(*d*) any other information or documents prescribed by the Act or these Regulations.

Director may amend, omit, remove or restrict access to information in the register

23. The Director may make any amendment to the register that is necessary to—

(*a*) reflect any changes in the information that is contained in the register;

(*b*) correct a mistake caused by any error or omission on the part of the Director; or

(*c*) comply with a Court order.

PART V

MISCELLANEOUS PROVISIONS

Insolvency practitioners in cross-border cases

24. Where an insolvency practitioner is appointed in a cross-border insolvency under regulation 9, he shall only be appointed jointly with an insolvency practitioner resident in Malaŵi.

Professional indemnity

25. An insolvency practitioner shall not be appointed by the Court, in any case, if he is not in possession of professional indemnity insurance applicable to the negligent performance or non-performance of his duties as an insolvency practitioner generally, or as the Court may determine in accordance with the insolvency rules governing such appointments.

Prohibition period

26. For the purposes of section 180 of the Act, the prescribed period shall be five years.

Revocation

27. The Companies (Liquidator's Fees) Regulations are hereby revoked.

FIRST SCHEDULE

reg. 4 (1)

FORM 1

APPLICATION FOR REGISTRATION
AS AN INSOLVENCY PRACTITIONER

PART I
PERSONAL DETAILS

Name ....

Date of birth ....

Nationality ....

Form of Identification and number ....

Cellphone number ....

Office address ....

Residential address ....

Details of residence (for the last five years if not Malaŵi) ....

....

PART II
PROFESSIONAL EXPERIENCE

Qualifications held ....

Name of institution ....

Country of institution ....

Date of qualification ....

Membership of professional body ....

.... None .... Accountancy .... Law .... Neither (Tick as appropriate)

Other professional qualifications and/or membership of international insolvency associations

....

....

Experience as an insolvency practitioner (include dates, names of firms and roles)

....

....

....

Enclosures to attach to this form:

(1) Certified copies of professional qualifications (insert names of certificates)

....

(2) Certified copies of professional body memberships (insert names of professional bodies)

....

(3) Schedule of cases in which you acted as an insolvency practitioner and the values of assets involved (insert extra pages as necessary)

....

On signing this form I declare that—

(*a*) The particulars given in this form are true, accurate and complete to the best of my knowledge and belief and I will provide such further information as the Director of Insolvency may request.

(*b*) I am a fit and proper person and I am not under any suspension.

(*c*) I have taken out professional indemnity insurance of at least K20,000,000 for at least two years coterminous with any registration that may be granted.

(*d*) I undertake to abide by the provisions of the Insolvency Act and related pieces of legislation.

(*e*) I understand that a false declaration will invalidate this application or any registration granted and that I may be liable to prosecution.

(*f*) I authorize the Director to use, verify and make any inquiries relating to the information provided on this form and in relation to any other matter concerning this application.

(*g*) I undertake to notify the Director in the event of any change in the above.

Signature .... Date ....

Before me:

....
Commissioner of Oaths

regs. 3 (4) and 8 (4)

FORM 2

NOTICE OF CEASING TO HOLD OFFICE
AS AN INSOLVENCY PRACTITIONER

TO: The Director of Insolvency

TAKE NOTICE that I have ceased to hold office as an insolvency practitioner for a period of six months.

Full name of insolvency practitioner . ……………………….....................

[*surname first, in block letters*]

Date of ceasing to hold any office as an insolvency practitioner ....

State the nature of the office the insolvency practitioner last held and has now ceased to hold

....

....

(State whether liquidator, trustee of a bankrupt estate, supervisor on an individual voluntary arrangement, receiver or administrator in a company reorganization)

Dated this .... day of ...., 20 ......

....
Signature of Insolvency Practitioner

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regs. 4 (2) and 4 (4)

SECOND SCHEDULE

FEES

Matter	*Amount* K	t
1. Application fees for registration to practice as an insolvency practitioner	20,000	00
2. On issuance of certificate of registration	500,000	00

THIRD SCHEDULE

reg. 9

INSOLVENCY PRACTITIONER'S ETHICAL GUIDELINES

GENERAL APPLICATION OF THE GUIDELINES

PART A

INTRODUCTION

1. These guidelines are intended to assist insolvency practitioners meet the obligations expected of them by providing professional and ethical guidance. Unless otherwise stated, the following definitions shall apply—

"authorizing body" means a professional body to which the insolvency practitioner belongs;

"close or immediate family" means a spouse or equivalent, dependant, parent, brother, sister, child or sibling;

"entity" means a body corporate;

"individual within the practice" means the insolvency practitioner, any principals in the practice or any employees within the practice;

"insolvency practitioner" means the receivers or receiver and manager, liquidator, including provisional liquidator, or trustee in bankruptcy under the Insolvency Act;

"insolvency practitioner's team" means any person under the control of the insolvency practitioner, whether as a partner, employee, consultant or associate;

"practice" means the organization in which the insolvency practitioner practices;

"Insolvency practitioner appointment" means a formal appointment under the terms of a charge, secured debenture, or the Insolvency Act; and

"principal" means in respect of a partnership, a partner, in respect of a sole practitioner, or that person or any person who is held out as being a partner.

2. These guidelines shall apply to all insolvency practitioners. Insolvency practitioners should take steps to ensure that the guidelines are applied in all professional work relating to an insolvency practitioner appointment and to any professional work that may lead to such an appointment. While an insolvency practitioner appointment will be of the insolvency practitioner personally, the insolvency practitioner should ensure that the standards set out in these guidelines are applied by all members of the insolvency practitioner's team.

3. It is these guidelines and the spirit that underlies it, that shall govern the conduct of insolvency practitioners. Failure to observe these guidelines may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an insolvency practitioner.

PART B
FUNDAMENTAL PRINCIPLES

4. An insolvency practitioner is required to comply with the following fundamental principles—

(*a*) Integrity

An insolvency practitioner should be straightforward and honest in all professional and business relationships.

(*b*) Objectivity

An insolvency practitioner should not allow bias, conflict of interest or undue influence of others to override professional or business judgment.

(*c*) Professional competence and due care

An insolvency practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that every assignment receives competent professional service based on current developments in practice, legislation and techniques, including international best practices. An insolvency practitioner should act diligently and in accordance with applicable technical and professional standards when providing professional services.

(*d*) Confidentiality

An insolvency practitioner should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the insolvency practitioner or third parties.

(*e*) Professional behaviour

An insolvency practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

PART C
FRAMEWORK APPROACH

5. The framework approach is a method which insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an insolvency practitioner to—

(*a*) take reasonable steps to identify any threats to compliance with the fundamental principles;

(*b*) evaluate any such threats; and

(*c*) respond in an appropriate manner to those threats.

Throughout these guidelines, there are examples of threats and possible safeguards. These examples are illustrative and should not be considered as exhaustive lists of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles or to specify the safeguards that may be available.

Identification of threats to the fundamental principles

6. An insolvency practitioner should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles which arise during the course of his professional work.

7. An insolvency practitioner should take particular care to identify the existence of threats which exist prior to, or at the time of, taking an insolvency practitioner appointment or which, at that stage, it may reasonably be expected might arise during the course of such an insolvency practitioner appointment. The insolvency practitioner should take these threats into account when deciding whether to accept an insolvency practitioner appointment.

8. In identifying the existence of any threats, an insolvency practitioner should have regard to relationships whereby the practice is held out as being part of a national or an international association. Many threats fall into one or more of five categories—

(*a*) Self-interest threats: which may occur as a result of the financial or other interests of a practice or an insolvency practitioner or of a close or immediate family member of an individual within the practice;

(*b*) Self-review threats: which may occur when a previous judgment made by an individual within the practice needs to be re-evaluated by the insolvency practitioner;

(*c*) Advocacy threats: which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;

(*d*) Familiarity threats: which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and

(*e*) Intimidation threats: which may occur when an insolvency practitioner may be deterred from acting objectively by threats, actual or perceived.

Self-interest threats

9. The following paragraphs give examples of the possible threats that an insolvency practitioner may face. Examples of circumstances that may create self-interest threats for an insolvency practitioner include—

(*a*) an individual within the practice having an interest in a creditor or potential creditor with a claim which requires subjective adjudication;

(*b*) concern about the possibility of damaging a business relationship; or

(*c*) concerns about potential future employment.

Self-review threats

10. Examples of circumstances that may create self-review threats include—

(*a*) the acceptance of an insolvency practitioner appointment in respect of an entity where an individual within the practice has recently been employed by, or seconded to, that entity; or

(*b*) an insolvency practitioner or the practice has carried out professional work of any description, including sequential insolvency practitioner appointments for that entity.

Such self-review threats may diminish over the passage of time.

Advocacy threats

11. Examples of circumstances that may create advocacy threats include—

(*a*) acting in an advisory capacity for a creditor of an entity; or

(*b*) acting as an advocate for a client in litigation or dispute with an entity.

Familiarity threats

12. Examples of circumstances that may create familiarity threats include—

(*a*) an individual within the practice having a close relationship with any individual having a financial interest in the insolvent entity; or

(*b*) an individual within the practice having a close relationship with a potential purchaser of an insolvent's assets and/or business.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

Intimidation threats

13. Examples of circumstances that may create intimidation threats include—

(*a*) the threat of dismissal or replacement being used to—

(i) apply pressure not to follow regulations, these guidelines, any other applicable guidelines, technical or professional standards; or

(ii) exert influence over an insolvency practitioner appointment where the insolvency practitioner is an employee rather than a principal of the practice;

(*b*) being threatened with litigation; or

(*c*) the threat of a complaint being made to the insolvency practitioner's authorizing body.

Evaluation of threats

14. An insolvency practitioner should take reasonable steps to evaluate any threats to compliance with the fundamental principles that he has identified.

15. In particular, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.

Possible safeguards

16. Having identified and evaluated a threat to the fundamental principles an insolvency practitioner should consider whether there are any safeguards that may be available to reduce the threat to an acceptable level.

17. The relevant safeguards will vary depending on the circumstances. Generally safeguards fall into two broad categories—

(*a*) firstly, safeguards created by the profession, legislation or regulation; and

(*b*) secondly, safeguards in the work environment. In the insolvency context, safeguards in the work environment can include safeguards specific to an insolvency practitioner appointment. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged.

18. Some examples include—

(*a*) leadership that stresses the importance of compliance with the fundamental principles;

(*b*) policies and procedures to implement and monitor quality control of engagements;

(*c*) documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level;

(*d*) documented internal policies and procedures requiring compliance with the fundamental principles;

(*e*) policies and procedures to consider the fundamental principles of these guidelines before the acceptance of an insolvency practitioner appointment;

(*f*) policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties;

(*g*) policies and procedures to prohibit individuals who are not members of the insolvency practitioner's team from inappropriately influencing the outcome of an insolvency practitioner appointment;

(*h*) timely communication of a practice's policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures;

(*i*) designating a member of the senior management to be responsible for overseeing the adequate functioning of the safeguarding system;

(*j*) a disciplinary mechanism to promote compliance with policies and procedures; and

(*k*) published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice or the insolvency practitioner any issue relating to compliance with the fundamental principles that concern them.

PART D

Specific Application of the Guidelines

Insolvency practitioner appointments

19. The practice of insolvency is principally governed by primary and subsidiary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by primary or secondary legislation, an insolvency practitioner must comply with such provisions.

An insolvency practitioner must also comply with any relevant authority relating to his conduct such as the Official Receiver and the Director and any directions given by the Court.

20. An insolvency practitioner should act in a manner appropriate to his position as an officer of the Court, where applicable, and in accordance with any quasi-judicial, fiduciary or other duties that he may be under.

21. Before agreeing to accept any insolvency practitioner appointment, including a joint appointment, an insolvency practitioner should consider whether acceptance would create any threats to compliance with the fundamental principles, of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest or by any significant professional or personal relationships.

22. In considering whether objectivity or integrity may be threatened, an insolvency practitioner should identify and evaluate any professional or personal relationship which may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships should then be considered, together with the introduction of any possible safeguards. Generally, it will be inappropriate for an insolvency practitioner to accept an insolvency practitioner appointment where a threat to the fundamental principles exists or may reasonably be expected to arise during the course of the insolvency practitioner appointment unless—

(*a*) disclosure is made, prior to the insolvency practitioner appointment, of the existence of such a threat to the Court or to the creditors, on whose behalf the insolvency practitioner would be appointed to act and no objection is made to the insolvency practitioner being appointed; and

(*b*) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. Where the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

23. The following safeguards may be considered—

(*a*) involving or consulting another insolvency practitioner from within the practice to review the work done;

(*b*) consulting an independent third party, such as a committee of creditors, an authorizing body or another insolvency practitioner;

(*c*) involving another insolvency practitioner to perform part of the work, which may include another insolvency practitioner taking a joint appointment where the conflict arises during the course of the insolvency practitioner appointment;

(*d*) obtaining legal advice from a legal practitioner with appropriate experience and expertise;

(*e*) changing the members of the insolvency practitioner's team;

(*f*) using separate insolvency practitioners or staff;

(*g*) procedures to prevent access to information by the use of information barriers, for instance, strict physical separation of such teams, confidential and secure data filing;

(*h*) clear guidelines for individuals within the practice on issues of security and confidentiality;

(*i*) using confidentiality agreements signed by individuals within the practice;

(*j*) regular reviewing of the application of safeguards by a senior individual within the practice not involved with the insolvency practitioner appointment;

(*k*) terminating the financial or business relationship that gives rise to the threat; and

(*l*) seeking directions from the Court.

24. As regards joint appointments, where an insolvency practitioner is specifically precluded by these guidelines from accepting an insolvency practitioner appointment as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the insolvency practitioner appointment appropriate.

25. In deciding whether to take an insolvency practitioner appointment in circumstances where a threat to the fundamental principles has been identified, the insolvency practitioner should consider, whether the interests of those on whose behalf he would be appointed to act would best be served, by the appointment of another insolvency practitioner who did not face the same threat and, if so, whether any such appropriately qualified and experienced other insolvency practitioner is likely to be available to be appointed.

26. An insolvency practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an insolvency practitioner should conclude that it is not appropriate to accept an insolvency practitioner appointment.

27. Following acceptance, any threats should continue to be kept under appropriate review and an insolvency practitioner should be mindful that other threats may come to light or arise. There may be occasions when the insolvency practitioner is no longer in compliance with these guidelines because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the insolvency practitioner has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In

deciding whether to continue an insolvency practitioner appointment, the insolvency practitioner may take into account the wishes of the creditors, who after full disclosure has been made have the right to retain or replace the insolvency practitioner.

28. In all cases an insolvency practitioner will need to exercise his judgment to determine how best to deal with an identified threat. In exercising his judgment, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the practice.

Conflicts of interest

29. An insolvency practitioner should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles.

30. Examples of where a conflict of interest may arise are where—

(*a*) an insolvency practitioner has to deal with claims between the separate and conflicting interests of entities over whom he is appointed;

(*b*) there is a succession of, or sequential, insolvency practitioner appointments; or

(*c*) a significant relationship has existed with the entity or someone connected with the entity.

31. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance, therefore, the safeguards used should generally include the use of effective information barriers.

Practice mergers

32. Where practices merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing insolvency practitioner appointments should be reviewed and any threats identified. Principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency practitioner appointments to clients of either of the former practices. However, existing insolvency practitioner appointments which are rendered in apparent breach of the guidelines by such a merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate ethical conflict.

33. Where an individual within the practice has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an insolvency practitioner appointment of the

new practice, the individual should not work or be employed on that assignment.

Transparency

34. Both before and during an insolvency practitioner appointment, an insolvency practitioner may acquire personal information that is not directly relevant to the insolvency or confidential commercial information relating to the affairs of third parties. The information may be such that others might expect that confidentiality would be maintained.

35. Nevertheless, an insolvency practitioner in the role as office-holder, has a professional duty to report openly to those with an interest in the outcome of the insolvency. An insolvency practitioner should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An insolvency practitioner should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

Professional competence and due care

36. Prior to accepting an insolvency practitioner appointment, an insolvency practitioner should ensure that he is satisfied that the following matters have been considered—

(*a*) obtaining knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;

(*b*) acquiring an appropriate understanding of the nature of the entity's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;

(*c*) acquiring knowledge of relevant industries or subject matters;

(*d*) possessing or obtaining experience with relevant regulatory or reporting requirements;

(*e*) assigning sufficient staff with the necessary competencies;

(*f*) using experts where necessary; and

(*g*) complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

37. The fundamental principle of professional competence and due care requires that an insolvency practitioner should only accept an insolvency practitioner appointment when the insolvency practitioner has sufficient expertise. For example, a self-interest threat to the fundamental principle of professional competence and due care is created, if the insolvency practitioner or the insolvency practitioner's team does not possess or cannot acquire the competencies necessary to carry out the insolvency practitioner

appointment. Expertise will include appropriate training, technical knowledge, knowledge of the entity and the business with which the entity is concerned.

38. Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments, including—

(*a*) developments in insolvency legislation;

(*b*) the regulations of their professional body, including any continuing professional development requirements;

(*c*) guidance issued by their professional body or any other relevant authority; and

(*d*) technical issues being discussed within the profession, locally and internationally.

Professional and personal relationships

39. The environment in which insolvency practitioners work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

Identifying relationships

40. In particular, the principle of objectivity may be threatened if any individual within the practice, or the close or immediate family of an individual within the practice or the practice itself, has, or has had, a professional or personal relationship which relates to the insolvency practitioner appointment being considered.

41. Professional or personal relationships may include, but are not restricted to, relationships with—

(*a*) the entity;

(*b*) any director or shadow director or former director or shadow director of the entity;

(*c*) shareholders of the entity;

(*d*) any principal or employee of the entity;

(*e*) business partners of the entity;

(*f*) companies or entities controlled by the entity;

(*g*) companies which are under common control;

(*h*) creditors, including debenture holders, of the entity;

(*i*) debtors of the entity;

(*j*) close or immediate family of the officers of the entity; or

(*k*) others with commercial relationships with the practice.

Safeguards within the practice should include policies and procedures to identify relationships between individuals within the practice and third parties in a way that is proportionate and reasonable in relation to the insolvency practitioner appointment being considered.

Is the relationship significant to the conduct of the insolvency practitioner appointment?

42. Where a professional or personal relationship of the type described in paragraph 41 has been identified, the insolvency practitioner should evaluate the impact of the relationship in the context of the insolvency practitioner appointment being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following—

(*a*) the nature of the previous duties undertaken by a practice during an earlier relationship with the entity;

(*b*) the impact of the work conducted by the practice on the financial state and/or the financial stability of the entity in respect of which the insolvency practitioner appointment is being considered;

(*c*) whether the fee received for the work by the practice is, or was, significant to the practice itself or is, or was, substantial;

(*d*) how recently any professional work was carried out? It is likely that greater threats will arise, or may be seen to arise, where work has been carried out within the previous three years. However, there may still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period should elapse before any threat can be reduced to an acceptable level;

(*e*) whether the insolvency practitioner appointment being considered involves consideration of any work previously undertaken by the practice for that entity;

(*f*) the nature of any personal relationship and the proximity of the insolvency practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the insolvency practitioner appointment relates;

(*g*) whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists, for instance, an obligation to report on the conduct of directors and shadow directors of a company to which the insolvency practitioner appointment relates;

(*h*) the nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the entity; and

(*i*) the extent of the insolvency practitioner and his team/team's familiarity with the individuals connected with the entity.

Having identified and evaluated a relationship that may create a threat to the fundamental principles, the insolvency practitioner should consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.

43. Some of the safeguards which may be considered to reduce the threat created by a professional or personal relationship to an acceptable level are considered above in paragraph 41. Other safeguards may include—

(*a*) withdrawing from the insolvency practitioner's team;

(*b*) terminating, where possible, the financial or business relationship giving rise to the threat; and

(*c*) disclosure of the relationship and any financial benefit received by the practice, whether directly or indirectly, to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.

44. An insolvency practitioner may encounter situations where no, or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship ("significant professional relationship") or a significant personal relationship ("significant personal relationship"). Where this is the case, the insolvency practitioner should conclude that it is not appropriate to take the insolvency practitioner appointment.

Consideration should always be given to the perception of others when deciding whether to accept an insolvency practitioner appointment. Whilst an insolvency practitioner may regard a relationship as not being significant to the insolvency practitioner appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

45. Actual or perceived threats, for example self-interest threats, to the fundamental principles may arise when during an insolvency practitioner appointment, an insolvency practitioner realizes assets.

46. Save in circumstances which clearly do not impair the insolvency practitioner's objectivity, insolvency practitioners appointed to any insolvency practitioner appointment in relation to an entity, should not themselves acquire, directly or indirectly, any of the assets of an entity, nor knowingly permit any individual within the practice, or any close or immediate family member of the insolvency practitioner or of an individual within the practice, directly or indirectly, to do so.

47. Where the assets and business of an insolvent company are sold by an insolvency practitioner shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale may also be seen as a threat to objectivity by creditors or others not involved in the prior agreement. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

48. It is also particularly important for an insolvency practitioner to take care to ensure that, where doing so will not conflict with any legal or professional obligation, his decision-making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

Obtaining specialist advice and services

49. When an insolvency practitioner intends to rely on the advice or work of another, the insolvency practitioner should evaluate whether such reliance is warranted. The insolvency practitioner should consider factors such as reputation, expertise, and resources available and applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

Threats to the fundamental principles, for example familiarity threats and self-interest threats, can arise if services are provided by a regular source independent of the practice.

50. Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each insolvency practitioner appointment. Additional safeguards may include clear guidelines and policies within the practice on such relationships. An insolvency practitioner should also consider disclosure of the existence of such business relationships to the general body of creditors or the creditor's committee, if one exists.

51. Threats to the fundamental principles can also arise where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship. An insolvency practitioner should take particular care in such circumstances to ensure that the best value and service is being provided.

Fees and other types of remuneration

52. The following applies prior to accepting an insolvency practitioner appointment—

(*a*) where an engagement may lead to an insolvency practitioner appointment, an insolvency practitioner should make any party to the

work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees;

(*b*) where an engagement may lead to an insolvency practitioner appointment, insolvency practitioners should not accept referral fees or commissions, unless they have established safeguards to reduce the threats created by such fees or commissions to an acceptable level; and

(*c*) safeguards may include disclosure in advance of any arrangements. If after receiving any such payments, an insolvency practitioner accepts an insolvency practitioner appointment, the amount and source of any fees or commissions received should be disclosed to creditors.

53. The following applies after accepting an insolvency practitioner appointment—

(*a*) during an insolvency practitioner appointment, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate;

(*b*) if such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the insolvency practitioner or the practice; and

(*c*) further, where such fees or commissions are accepted an insolvency practitioner should consider making disclosure to creditors.

Obtaining insolvency practitioner appointments

54. The special nature of insolvency practitioner appointments makes the payment or offer of any commission for, or the furnishing of, any valuable consideration towards the introduction of insolvency practitioner appointments inappropriate. This does not, however, preclude an arrangement between an insolvency practitioner and an employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the insolvency practitioner through the efforts of the employee.

55. When an insolvency practitioner seeks an insolvency practitioner appointment or work that may lead to an insolvency practitioner appointment through advertising or other forms of marketing, there may be threats to compliance with the fundamental principles.

56. When considering whether to accept an insolvency practitioner appointment, an insolvency practitioner should satisfy himself that any advertising or other form of marketing pursuant to which the insolvency practitioner appointment may have been obtained is, or has been—

(*a*) fair and not misleading;

(*b*) substantiated and avoids disparaging statements; and

(*c*) compliant with relevant guidelines of practice and guidance in relation to advertising.

57. Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.

58. Where reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.

59. An insolvency practitioner should never promote or seek to promote his services, or the services of another insolvency practitioner, in such a way, or to such an extent as to amount to harassment.

60. Where an insolvency practitioner or the practice advertises for work via a third party, the insolvency practitioner is responsible for ensuring that the third party follows the above guidance.

Gifts and hospitality

61. An insolvency practitioner, or a close or immediate family member, may be offered gifts and hospitality. In relation to an insolvency practitioner appointment, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.

62. The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality, the insolvency practitioner should have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision-making or obtain information, the insolvency practitioner may generally conclude that there is no significant threat to compliance with the fundamental principles.

63. Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. Where an insolvency practitioner encounters a situation in which no, or no reasonable, safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level, he should conclude that it is not appropriate to accept the offer.

64. An insolvency practitioner should also not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

65. It will always be for the insolvency practitioner to justify his actions. An insolvency practitioner will be expected to be able to demonstrate the steps that he took and the conclusions that he reached in identifying, evaluating and responding to any threats, both leading up to, and during, an insolvency practitioner appointment, by reference to written contemporaneous records.

66. The records which an insolvency practitioner maintains, in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

Timeliness

67. Administrations which are conducted in a timely manner will generally be more efficient and effective. In the interests of minimizing costs, administrations should be conducted in a timely manner. To ensure that statutory requirements are met, insolvency practitioners should use and maintain a checklist or other systems which alert them to critical dates such as—

(*a*) statutory obligations and notifications;

(*b*) meetings; and

(*c*) reporting.

68. Where an extension of time is required, the insolvency practitioner will need to—

(*a*) apply to the Court or other approving body; and

(*b*) give reasons for the need for additional time, for instance, in cases where the issue being addressed is complex.

69. An insolvency practitioner may claim remuneration and costs of applying for an extension of time from the administration, subject to any order from the Court. An insolvency practitioner may not claim remuneration and costs for applying for an extension of time, if the reason for the failure to meet the deadline was attributable to his poor conduct, such as—

(*a*) inattention to the passage of time;

(*b*) lack of knowledge of the time limits;

(*c*) poor processes; or

(*d*) inadequately trained or supervised staff.

70. Insolvency practitioners must ensure that stakeholders are clearly advised of time limits that impact on them and the consequences of not meeting those time limits.

PART E

THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

Introduction

71. The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples may assist an insolvency practitioner and the members of the insolvency practitioner's team to assess the implications of similar, but different, circumstances and relationships.

The examples are divided into two parts. Part 1 contains examples which do not relate to a previous or existing insolvency practitioner appointment. Part 2 contains examples that do relate to a previous or existing insolvency practitioner appointment. The examples are not intended to be exhaustive.

Examples that do not relate to a previous or existing insolvency practitioner appointment

72. The following situations involve a professional relationship which does not consist of a previous insolvency practitioner appointment:

A. Insolvency practitioner appointment following audit related work

Relationship: The practice or an individual within the practice has previously carried out audit related work within the previous three years.

Response: A significant professional relationship will arise; an insolvency practitioner should conclude that it is not appropriate to take the insolvency practitioner appointment.

Where audit related work was carried out more than three years before the proposed date of the appointment of the insolvency practitioner, a threat to compliance with the fundamental principles may still arise. The insolvency practitioner should evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the existence or introduction of safeguards.

This restriction does not apply where the insolvency practitioner appointment is in a members' voluntary liquidation. An insolvency practitioner may normally take such an appointment as insolvency practitioner. However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat, to compliance with the fundamental principles. Further, the insolvency practitioner should satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.

B. Appointment as investigating accountant at the instigation of a creditor

Previous relationship; The practice or an individual within the practice was instructed by, or at the instigation of, a creditor or other party having a financial interest in an entity to investigate, monitor or advise on its affairs.

Response: A significant professional relationship would not normally arise in these circumstances, provided that—

(*a*) there has not been a direct involvement by an individual within the practice in the management of the entity;

(*b*) the practice had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

(*c*) the entity was aware of this.

An insolvency practitioner should, however, consider all the circumstances before accepting an insolvency practitioner appointment, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request, or at the instigation, of a secured creditor, who then requests an insolvency practitioner to accept an insolvency practitioner appointment as an administrator, receiver or receiver and manager, the insolvency practitioner should satisfy himself that the company, acting by its board of directors, does not object to him taking such an insolvency practitioner appointment. If the secured creditor does not give prior warning of the insolvency practitioner's appointment to the company or if such warning is given and the company objects, but the secured creditor still wishes to appoint the insolvency practitioner, he should consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Examples relating to previous or existing insolvency practitioner appointments

73. The following situations involve a prior professional relationship that involves a previous or existing insolvency practitioner appointment—

A. Insolvency practitioner appointment following an appointment as receiver or receiver and manager

Previous appointment; An individual within the practice has been a receiver or receiver and manager.

Proposed appointment: Any insolvency practitioner appointment.

Response: An insolvency practitioner should not accept any insolvency practitioner appointment.

This restriction does not, however, apply where the individual within the practice was appointed a receiver by the Court. In such circumstances, the insolvency practitioner should however consider whether any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

B. Conversion of members' voluntary liquidation into creditors' voluntary liquidation

Previous appointment: An individual within the practice has been the insolvency practitioner of a company in a members' voluntary liquidation.

Proposed appointment: Insolvency practitioner in a creditors' voluntary liquidation, where it has been necessary to convene a creditors' meeting.

Response: Where there has been a significant professional relationship, an insolvency practitioner may continue or accept an appointment, subject to creditors' approval, only if he concludes that the company will eventually be able to pay its debts in full, together with interest.

However, the insolvency practitioner should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

G.N. 14/2017

INSOLVENCY (FEES) REGULATIONS

under s. 351

Citation

1. These Regulations may be cited as the Insolvency (Fees) Regulations.

Fees
Schedule

2. Unless otherwise prescribed under the Act, the fees set out in the Schedule hereto shall be payable to the Director or the Official Receiver, as the case may be, in respect of filing of documents.

Fees payable where a person holds more offices

3. Where a person holds more than one office under the Act, fees shall only be payable once, and the document shall be stamped accordingly with official stamps from those relevant offices, as required under the Act.

SCHEDULE reg. 2

Matter	*Fee* K	t
1. Filing any document with the Director or Official Receiver, in relation to company reorganization . .	15,000	00
2. Filing any document with the Director or Official Receiver in relation to receiverships	15,000	00
3. Filing any document with the Director or Official Receiver under winding-up of companies	10,000	00
4. Filing any document with the Director or Official Receiver in relation to bankruptcy and alternatives to bankruptcy	5,000	00
5. Filing any document with the Director or Official Receiver in relation to cross-border insolvency . .	15,000	00
6. Filing any document with the Director or Official Receiver which has not specifically provided for . .	10,000	00

G.N. 15/2017

INSOLVENCY (RECOGNIZED PROFESSIONAL BODIES) ORDER

under s. 311 (1) (*a*)

Citation

1. This Order may be cited as the Insolvency (Recognized Professional Bodies) Order.

Declaration of recognized professional bodies *Schedule*

2. For the purposes of section 311 of the Act, the professional bodies set out in the Schedule hereto are hereby declared recognized professional bodies.

SCHEDULE

1. Malaŵi Law Society
2. Institute of Chartered Accountants in Malaŵi